

**Programme Title:** Review of procurement practice and the management of contracts in the South Eastern Education and Library Board

**Project Ref:** GWY/000/137

**Privacy Marking:** UNCLASSIFIED

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## **Review of SEELB Procurement**

**Version number:** Final

**Date of issue to SRO:** 15/12/2010

**SRO:** John McGrath, Deputy Secretary

**Department:** Department of Education

**Agency or NDPB:** South Eastern Education and Library Board

**Healthcheck Review dates:** 06/12/2010 to 10/12/2010

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### **Review Team Leader:**

**Nigel Burchett**

### **Review Team Members:**

**John Dodd**

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**Programme Title:** Review of procurement practice and the management of contracts in the South Eastern Education and Library Board

**Project Ref:** GWY/000/137

**Privacy Marking:** UNCLASSIFIED

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## **Executive Summary and Delivery Confidence Assessment**

<b><u>Delivery Confidence Assessment</u></b>	
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### **Establishment of Contracts Amber/Red**

The approach to the establishment of contracts within SEELB is fragmented, lacks consistency and for the most part does not yet comply with best practice guidance. Despite the inherent risks, there is no single person within the Senior Leadership Team (SLT) who has been nominated to oversee procurement.

Best practice requires a procurement strategy and plan signed off at Board level but these do not exist. Governance and assurance processes including risk management are weak and there is a shortage of appropriate skills.

In the area of maintenance standing contractor lists and Measured Term Contracts have been extended a number of times when they should have been re-competed. Steps are now being taken to rectify this with the introduction of new contracts based on NEC3 Forms which moves towards best practice. **However procurement of the first of these new contracts is well advanced and we have significant concerns in respect of this. This represents a major change in procedures and steps must be taken urgently to manage associated risks as highlighted in recommendation 5 of this report.**

### **Management of Contracts Amber/Red**

Contract management arrangements are currently weak and do not follow current best practice guidance. There is no active performance monitoring against pre determined key performance indicators, which could lead to poor value for money.

There is an over reliance on staff acting up into more senior roles over an extended period and few individuals have appropriate professional or technical qualifications. In addition there are several key posts currently vacant.

There is a serious capacity issue associated with ensuring a smooth transition to new contract arrangements whilst maintaining an adequate standard of service to schools.

**Programme Title:** Review of procurement practice and the management of contracts in the South Eastern Education and Library Board

**Project Ref:** GWY/000/137

**Privacy Marking:** UNCLASSIFIED

Controls and Compliance **Amber/Red**

There are control weaknesses: for example in the separation of duties between those setting up the tender list, the awarding of contracts, and the subsequent checking of invoices and payment. Procurement within the SEELB does not have the critical mass to achieve full separation of duties and this is a significant controls risk. Whilst the Manhattan property system has inbuilt mechanisms to enable rotation of contractors these can be manually overridden and there is no system audit trail of such alterations.

We believe that factors such as a shortage of appropriate skills, high vacancy rates, the lack of appropriate management attention may be creating the environment for possible irregularities, including fraud to occur.

The Delivery Confidence assessment RAG status uses the definitions below.

<u>RAG</u>	<u>Criteria Description</u>
Green	Successful delivery of the project/programme to time, cost and quality appears highly likely and there are no major outstanding issues that at this stage appear to threaten delivery significantly
Amber/Green	Successful delivery appears probable however constant attention will be needed to ensure risks do not materialise into major issues threatening delivery
Amber	Successful delivery appears feasible but significant issues already exist requiring management attention. These appear resolvable at this stage and if addressed promptly, should not present a cost/schedule overrun
Amber/Red	Successful delivery of the project/programme is in doubt with major risks or issues apparent in a number of key areas. Urgent action is needed to ensure these are addressed, and whether resolution is feasible
Red	Successful delivery of the project/programme appears to be unachievable. There are major issues on project/programme definition, schedule, budget required quality or benefits delivery, which at this stage do not appear to be manageable or resolvable. The Project/Programme may need re-baselining and/or overall viability re-assessed

**Programme Title:** Review of procurement practice and the management of contracts in the South Eastern Education and Library Board

**Project Ref:** GWY/000/137

**Privacy Marking:** UNCLASSIFIED

### Summary of Report Recommendations

The Review Team makes the following recommendations:

<b>Ref. No.</b>	<b>Recommendation</b>	<b>Criticality</b>
1.	The Governance arrangements for procurement within SEELB must be reviewed urgently. There should be single person within the Senior Leadership Team who has the capability and procurement skills to oversee all procurement.	Do Now
2.	SEELB must strengthen its assurance controls in the area of procurement to enable it to manage risks in a more pro-active and timely fashion.	Do Now
3.	SEELB must develop a Procurement Strategy and Procurement Plan for all further procurement activities under its direct control and the Board and Senior Leadership Team must sign this off before procurement activity is commenced.	Do by 31 <sup>st</sup> March 2011
4.	There should be an urgent review of procurement structures, skills and resources. Key posts should be filled with immediate effect. SEELB professionally qualified resources should be utilised to best effect.	Do Now
5.	The three new area based Term Services Contracts should not be allowed to go live on 1 <sup>st</sup> January 2011 as planned and should not do so unless and until the SRO: <ul style="list-style-type: none"> <li>• Has reassurance that the tender process has been robust and the risk of challenge is minimised.</li> <li>• A thorough risk assessment has been undertaken relating to the new main contractor/sub contractor structure to confirm its appropriateness and deliverability.</li> <li>• Appropriate training is in place regarding the introduction of the new NEC3 Forms of contract for all staff within the maintenance area.</li> <li>• Ensure a robust communications and stakeholder management plan is in place for the introduction of the new contracts</li> </ul>	Do Now
6.	In reviewing procurement structures, skills and resources urgent attention should be paid to providing adequate separation of duties.	Do Now
7.	SEELB should ensure that further awareness training in anti fraud and procurement procedures and policies is implemented.	Do by 31 <sup>st</sup> March 2011
8.	SEELB should urgently seek the support of appropriately qualified person(s) to provide capacity to carry out independent verification of prices and quantities.	Do Now
9.	Mandate a field for recording the reason for a change in contractor selection within the Manhattan system and investigate with the software provider making this a system feature in future versions.	Do Now

**Programme Title:** Review of procurement practice and the management of contracts in the South Eastern Education and Library Board

**Project Ref:** GWY/000/137

**Privacy Marking:** UNCLASSIFIED

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## **Background**

### **Background for the Review:**

On 23 November 2010, the Minister for Education made a Written Statement to the Assembly about Procurement in the Education Sector. In the Statement the Minister announced that, in the light of concerns arising in relation to the management of Measured Term Contract for maintenance work in the South Eastern Education and Library Board, she had commissioned a (comprehensive investigation into the operation of the contract) and wider procurement practice in the Board

### **The aims of the Review:**

The Department of Education wished to carry out an independent review of procurement practice and the management of contracts in the SEELB carried out by means of an Independent Gateway style Healthcheck Review with a strong emphasis on compliance with the regulations and best practice. The purpose of the Healthcheck Review is to:-

- review the procedures for **establishing** these contracts; and review compliance with procedures.
- review the procedures for **managing** these contracts; and review compliance with procedures
- determine if **controls over the prevention and detection of fraud** and error related to the establishment and management of these contracts are considered to be in line with industry best practice

### **The scope and purpose of the Review:**

#### **Establishment of Contracts**

- to review the current procurement strategy for maintenance, repairs and support works;
- to review the method for letting of contracts including consistency of approach and best practice application;
- to assess if types of contracts used are appropriate for the services being delivered; and
- to determine if the contract terms provide adequate protection from poor performance.

**Programme Title:** Review of procurement practice and the management of contracts in the South Eastern Education and Library Board

**Project Ref:** GWY/000/137

**Privacy Marking:** UNCLASSIFIED

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### Management of Contracts

- to review the framework under which contracts are managed to consider if management of contracts is in line with best practice;
- to consider whether or not a consistent method of contract management is applied to different types of procurement i.e. response maintenance versus adaptations or scheme works;
- to identify the key controls in place to manage contracts to ensure that quality of works undertaken is monitored and price variations are identified, valued and approved;
- to consider whether or not current management information on the delivery of contracts is adequate to support robust contract management and the degree to which this is used to inform management decision making processes and systems;
- to establish what information is received by the Commissioners and/or audit committee and if it's fit for purpose;
- to assess whether staff have the required knowledge and skills and are supported by appropriate training processes in order to effectively manage contracts;
- to make any recommendations on further actions to improve outcomes; and
- to recommend further reviews considered necessary and the timescale.

### **Current position regarding SEELB Healthcheck Reviews:**

This is the first Healthcheck Review within SEELB looking at the procurement strategy for maintenance, repairs and support works.

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### **Conduct of the Healthcheck Review**

This Review was carried out from 06/12/2010 to 10/12/2010 at the Department of Education, Rathgael House, Balloo Road, Bangor, Belfast and SEELB Headquarters, Grahamsbridge Road, Dundonald, Belfast. The team members are listed on the front cover.

The people interviewed are listed in Appendix A. Good Practice Guidance can be found in Appendix B

We would like to thank the Project Sponsor, The Department of Education, SEELB and those interviewed for their support and openness, which contributed to our understanding and the outcome of this Review

**Programme Title:** Review of procurement practice and the management of contracts in the South Eastern Education and Library Board

**Project Ref:** GWY/000/137

**Privacy Marking:** UNCLASSIFIED

---

## **Findings and recommendations**

### **Introduction**

This review has been conducted against the backdrop of uncertainty regarding the future of the SEELB Education Board in the light of the proposed introduction of the new Education and Skills Authority (ESA) and a single Centre of Procurement Expertise (CoPE). There have been ongoing and continuing delays in the introduction of these new arrangements. We recognise that this has been an important influence on long term business planning decisions regarding procurement matters.

#### **1: Establishment of Contracts**

We have found that the approach to Procurement within SEELB is fragmented, not consistent and does not accord in some areas with relevant current good practice. Procurement of “goods and services”, “minor and major works”, Northern Ireland Public Private Partnerships Education Service (NIPPES), and “maintenance” have different governance arrangements, structures, practices and procedures and are conducted largely in isolation from each other.

During the Review we identified other pockets of procurement activity, for example HR, legal services, grounds maintenance.

We noted that the draft Internal Statement of Control has no reference to procurement within it.

There is no single point accountability and responsibility for the pro-active co-ordination and management of procurement activities within SEELB. Procurement governance arrangements is via different line managers and we heard some criticism that there is a lack of strong senior leadership, senior managerial guidance and some line managers have a limited understanding of the procurement process.

**Recommendation 1: The Governance arrangements for procurement within SEELB must be reviewed urgently. There should be single person within the Senior Leadership Team who has the capability and procurement skills to oversee all procurement.**

There does not appear to be any pro-active scrutiny by the Board regarding procurement risks and issues nor performance management against agreed targets. There are no procurement highlight reports submitted to the Board and procurement risks and issues identification appears ad hoc and certainly not comprehensive. This means that the Accounting officer cannot be fully assured in this area.

**Programme Title:** Review of procurement practice and the management of contracts in the South Eastern Education and Library Board

**Project Ref:** GWY/000/137

**Privacy Marking:** UNCLASSIFIED

---

**Recommendation 2: SEELB must strengthen its assurance controls in the area of procurement to enable it to manage risks in a more pro-active and timely fashion.**

There is no over arching Procurement Strategy for SEELB and no supporting Procurement Plan. This means that the Board only has partial oversight of procurement activities and has limited ability to ensure that milestones and performance targets for delivering value for money are being achieved.

**Recommendation 3: SEELB must develop a Procurement Strategy and Procurement Plan for all further procurement activities under its direct control and the Board and Senior Leadership Team must sign this off before procurement activity is commenced.**

We found numerous vacancies that have not been filled due to “vacancy control” having been introduced and “budgetary constraints” and there are a number of individuals acting up into various positions over extended periods. There appears to be an over-reliance upon a few key individuals and some spoke to us of being over stretched, demoralised and under- valued.

In the area of mechanical and electrical maintenance there is currently no Senior Maintenance Officer available and in addition there are maintenance officer vacancies. The Senior Building Maintenance Officer is trying to cover this but there is a high operational risk in relying upon this individual solely. Whilst we were pleased that goods and services are being procured through a Chartered Institute of Purchasing and Supplies (CIPS) qualified professional we again noted that there is large degree of responsibility and reliance upon this individual and a business risk if this person is for whatever reason unavailable.

Of additional concern to us are the limited numbers of professionally qualified procurement and estates professionals and the poor utilisation of those that are available. For example, outside the NIPPES team where there are a number of qualified professionals, we also became aware of a Chartered Surveyor, two Chartered Architects as well the Purchasing and Supplies individual mentioned above. Because of the current structural arrangements there is limited co-ordination across these disciplines and sharing of expertise. However in the areas of goods and services there is co-operation with other Education Boards in the form of collaborative Procurement.

**Recommendation 4: There should be an urgent review of procurement structures, skills and resources. Key posts should be filled with immediate effect. SEELB professionally qualified resources should be utilised to best effect.**



**Programme Title:** Review of procurement practice and the management of contracts in the South Eastern Education and Library Board

**Project Ref:** GWY/000/137

**Privacy Marking:** UNCLASSIFIED

---

## **2: Management of Contracts**

We found a high degree of inconsistency in the way procurement contracts are managed within SEELB. It would appear that the procurement of “good and services” and “Minor and Major Capital works” has made some progress towards adhering to best practice guidance. We have not looked into the management of PFI and PPP projects but given the length of such contracts for 25/30 years it is important that robust ongoing management arrangements are in place.

We were presented with the current guidance that SEELB is using for the management of maintenance contracts namely “The contracts Handbook” dated September 2004. This should be read in conjunction with the “ Proposed Amendments to Commissioners’ Standing Orders Relating to Contracts”

SEELB has been utilising standing lists for the appointment of contractors for various work types. These lists were initially for one year, generally for all geographical areas within the SEELB region and we were told that there are circa 134 approved contractors covering some 12 areas of activity. These lists have not been regularly refreshed. In addition some 15 Measured Term Contracts are currently in existence from 1<sup>st</sup> June 2006 and we are advised that extensions without competition have been approved repeatedly due to the uncertainty of the date of establishment of ESA.

The existing time and material and Measured Term Contracts for building maintenance are to be replaced with three area based Term Service Contracts based on the NEC 3 forms. The procurement process has reached the point whereby a decision has been made on which lead contractors will be appointed and we believe that contractors have been informed and the statutory standstill period has commenced. The intention is that the new contracts will come into force in January 2011. Although these contracts were not specifically included in our brief and we have not had the opportunity to scrutinise the process in depth but we believe that it will be unwise to proceed until the following has been undertaken:

**Recommendation 5: The three area based Term Services Contracts should not be allowed to go live on 1<sup>st</sup> January 2011 as planned and should not do so until unless the SRO:**

- **Has reassurance that the tender process has been robust and the risk of challenge is minimised.**
- **A thorough risk assessment has been undertaken relating to the new main contractor/sub contractor structure to confirm its appropriateness and deliverability.**

**Programme Title:** Review of procurement practice and the management of contracts in the South Eastern Education and Library Board

**Project Ref:** GWY/000/137

**Privacy Marking:** UNCLASSIFIED

---

- **Appropriate training is in place regarding the introduction of the new NEC3 Forms of contract for all staff within the maintenance area.**
- **Ensure a robust communications and stakeholder management plan is in place for the introduction of the new contracts.**

There is currently no accredited CoPE across Education. During the course of Review we heard that the lack of an accredited CoPE within Education is creating significant challenges at operational level within SEELB especially because of the limited access to professional skills, expertise and critical mass.

We heard wide support amongst professionals we interviewed for the introduction of a unified CoPE for Education or if not introduced rapidly, a shared services style organisation whereby all those involved in procurement can be attached to and supply a range of professional service (PPP, Minor and Major works, maintenance etc) for all school sectors. This in their view would provide career opportunities, critical mass of skills with appropriate deployment of resources, the introduction of consistent processes, greater accountability, improved value for money and strengthened leadership.

### **3: Controls for Detecting Fraud**

Certain procurement practices and processes within SEELB are not fully in line with best practice procedures and we detected a lack of understanding of these amongst certain line managers who appear over reliant on a few key individuals. Some senior managers responsible for supervision have never attended a procurement training course, have limited if any knowledge of the details of procurement policies, procedures and contracts and might not be aware of areas where fraud could take place.

Given the shortage of skills and high level vacancies there are points of possible single failure and appropriate separation between those placing contracts, managing suppliers and approving payments is not as robust as it should be. Having said this, those we spoke with, recognised this as an area of weakness and appeared to be cognisant of the scrutiny under which they could come. We were told that that staff would appreciate a greater degree of supervision for their own protection. We heard also of the annual pressure to spend money quickly at year end should additional funding become available which has the potential to encourage a deviation from due process.

**Recommendation 6: In reviewing procurement structures, skills and resources urgent attention should be paid to providing adequate separation of duties.**

In view of the shortage of appropriate skills and high vacancy rates, the lack of appropriate supervision in certain areas, many individuals acting up into higher grade positions, a less than robust segregation of duties, a lack of adequate knowledge of the details of the contractual arrangements by some staff, coupled with work pressures, the environment for possible irregularities including fraud certainly exists and we are aware of matters that are now the subject of separate investigation.

**Recommendation 7: SEELB should ensure that further awareness training in anti fraud and procurement procedures and policies is implemented.**

Several of those interviewed highlighted the need to employ an appropriately qualified person e.g. a Quantity Surveyor to ensure robust cost estimates for works are made, tenders are being properly evaluated and costs in relation to invoices for work undertaken is properly scrutinised and where necessary challenged.

**Recommendation 8: SEELB should urgently seek the support of appropriately qualified person(s) to provide capacity to carry out independent verification of prices and quantities.**

**Programme Title:** Review of procurement practice and the management of contracts in the South Eastern Education and Library Board

**Project Ref:** GWY/000/137

**Privacy Marking:** UNCLASSIFIED

---

The SEELB along with other with the Education Boards use the Manhattan property management system and this is now been introduced into the Department of Education. This is encouraging as it provides a common platform for the holding of property information and the raising of orders as well as the production of management reports.

There is currently no link to the Oracle financial system so we understand that invoice information has to be re-keyed.

We were provided with a demonstration of the Manhattan system and whilst it appears to be a good tool there is still the opportunity under current contracting arrangements for fraudulent activity if proper supervision is not conducted. For example the strict rotation of contractors on an approved list can be manually overridden without the reason being recorded. Also it is possible to amend initial estimates on price at a later date to match the contractors pricing. However no property system is fool proof and it is essential that checks and balances are in place including appropriate supervision and interrogation of the management reports.

**Recommendation 9: Mandate a field for recording the reason for a change in contractor selection within the Manhattan system and investigate with the software provider making this a system feature in future versions.**

### **Next Steps**

This review highlights some significant shortcomings within the procurement process including the way contracts are both let and managed. We strongly advise that an action plan is drawn up urgently to address our recommendations and a further review is commissioned by the Department to ensure that these have being actioned appropriately within the timescales recommended.

**Programme Title:** Review of procurement practice and the management of contracts in the South Eastern Education and Library Board

**Project Ref:** GWY/000/137

**Privacy Marking:** UNCLASSIFIED

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## **APPENDIX A**

### **Interviewees**

<b>Name</b>	<b>Role</b>
Diarmuid McClean	Director, Investment and Infrastructure Directorate, DE
Michelle Anderson	Head of Internal Audit, DE
Stanton Sloan	Chief Executive, SEELB
Stewart Heaney	Central Procurement Directorate (DFP), Director of Construction and Advisory Division
Gavin Boyd	Chief Executive, Education Skills Authority
Des Armstrong	Director, Central Procurement Directorate (DFP)
Pat Carvill	Head of Commissioners SEELB
Brian Malone	Central Procurement Directorate
Bill Stevenson	SEELB, Manhattan
Jimmie Cousins	Senior Maintenance Officer SEELB
Neil McVeigh	Estate Policy Team, SEELB
Pauline Canning	Estate Operations Team, SEELB
Lawson McDonald	Chair of SEELB Audit Committee
Brian Hasson	Head of SEELB Internal Audit
Neil Craig	Chief Finance Officer, SEELB
Tom Walsh	Head of Property Services, SEELB
Stephen Connolly	CoPE rep, SEELB
David Gilmore	CoPE rep Goods and Services
Anne Hanratty	Head of NIPPPES
Janice Greer	Help Desk, SEELB
Gerry Anderson	Procurement Officer, CPD,
Stephen Creagh	DE Investment and Infrastructure Division
Mr T McCavery	Principal, Regent House Grammar School
Norma Crookes	Bursar
Jim Hopley	Caretaker
Mr Magee	Principal, Andrews Memorial Primary School
Tom Sweeney	Manager, WJ McCormick
Mr David Graham	Manager DMG

**Programme Title:** Review of procurement practice and the management of contracts in the South Eastern Education and Library Board

**Project Ref:** GWY/000/137

**Privacy Marking:** UNCLASSIFIED

---

## **ANNEX B – Examples of Best Practice Guidance**

### **Procurement**

The Review of Public Procurement in NI took place in 2002 and the NI Executive agreed to a revised public procurement policy for all Northern Ireland Departments, their Agencies, Non Departmental Public Bodies (NDPBs) and Public Corporations.

The Central Procurement Directorate Northern Ireland Public Procurement Policy (version 4 December 2009) sets out the procurement policy principles and implications of these. It also outlines the roles and responsibilities of the Procurement Board, Central Procurement Directorate and Centres of Procurement Expertise (CoPE); the need to have appropriate procurement processes and practices and to ensure compliance with these and guiding policies. There is a raft of good practice guidance available for download from the CPD website.

In addition to the above, Procurement should also be conducted in the knowledge of other legislation and guidance such as the provisions of the European Community (EC) Treaty and EC Directives transposed in both Public Contracts and Utilities Contracts Regulations 2006, Statements of Internal Control and other Standing Financial Instructions.

The Northern Ireland Executive has agreed that procurement policy should be guided by a clear definition of “public procurement” and the concept of “best value for money” and has adopted the following definitions:

*“Public procurement is the process of the acquisition, usually by means of a contractual arrangement after public competition, of goods, services, works and other supplies by the public service”.*

The public procurement process spans the whole life cycle from initial conception and definition of the needs of the public service through to the end of the useful life of an asset or the end of a contract.

### **Contract management**

Northern Ireland Public Procurement Policy was approved by the Executive in 2002. In approving the policy the Executive took the decision that legislation was not necessary to ensure that Departments, their Agencies, non-Departmental Public Bodies and Public Corporations complied with the policy. Instead it considered that compliance could be achieved by means of administrative action.

CPD Procurement Guidance Notes are the administrative means by which the Northern Ireland Public Sector is advised of procurement policy and best practice. Procurement Guidance Note 05/10 Contract Management Procedures and Principles Guidance Note 05/10 was approved by the Procurement Board on 11<sup>th</sup> November 2010.

**Programme Title:** Review of procurement practice and the management of contracts in the South Eastern Education and Library Board

**Project Ref:** GWY/000/137

**Privacy Marking:** UNCLASSIFIED

---

Contract management is the phase of the procurement cycle in which a contractor delivers the required goods, services or works in accordance with a Department's specification and Terms and Conditions of Contract. CPD guidance specifies that: "Forms of contract other than NEC3 should only be used for construction works or services if they demonstrably add value in comparison to NEC3 and only following approval by the Head of the relevant CoPE"

Public procurement policy dictates that all contracts should be awarded on the basis of the Most Economically Advantageous Tender (MEAT). Contract management procedures must therefore ensure that contractors deliver the contract requirements in accordance with the quality commitments stated in the tender submission.

In addition "A good practice framework for contract management" was developed by the Office of Government Commerce in parallel with the National Audit Office following the report on "*Central government's management of service contracts*". Although it is a good practice guide for managing a broad range of contracts it is particularly relevant where services are delivered over a long period of time (5 years plus), especially those covering information and communications technology, facilities management and business processes, where service levels and value have to be maintained and improved over longer contract periods.

There is a presumption that Northern Ireland Civil Service Code of Ethics and standards of Behaviour will also be adhered to.

The Procurement Board Strategic Plan 2008-2011 set the strategic objective: by 31 March 2010 at least 95% of all Departmental procurement spend will be channelled through a Centre of Procurement Expertise. This places a requirement on all education sector bodies which receive funding from DE to procure through an accredited CoPE.

## Fraud

The National Audit Office( NAO) and HM Treasury (HMT) has produced a "Good Practice Guide on Tackling External Fraud" . This was issued in NI by DFP in August 2008 replacing previous guidance issued in 2004..

The current SEELB Anti Fraud Policy came into operation on 1<sup>st</sup> June 2009. The Financial Memorandum agreed between the Department of Education (DE) and the SEELB requires the SEELB to ensure that the risks it faces are dealt with in an appropriate manner and specifically to implement policies and practices to safeguard itself against fraud and theft. In practice, the Chief Executive as Accounting Officer

**Programme Title:** Review of procurement practice and the management of contracts in the South Eastern Education and Library Board

**Project Ref:** GWY/000/137

**Privacy Marking:** UNCLASSIFIED

---

will ensure that adequate internal management arrangements and financial controls are maintained by the SEELB, including effective measures to protect against fraud and theft.

In addition The South Eastern Education and Library Board (SEELB) has prepared a Fraud Response Plan dated June 2009 as a guide for staff where a fraud has been detected or is suspected. This plan complements the SEELB's Anti-Fraud Policy Statement

SEELB has a Whistle Blowing Policy dated February 2006 which aims to provide an avenue for employees to raise concerns and receive feedback on any action taken. Employees may take matters further if they are dissatisfied with responses received.