



**Circular Letter 0003/2019**

**To: The Chief Executives of Education and Training Boards**

**Good Practice Guidelines and requirements in relation to:**

- **Contracts for the Provision of Goods and/or Services**
- **Requirement for Department Approval before:**
  - **providing Non-Core Services**
  - **for Legal Awards and Settlements and**
  - **Other Matters.**

The purpose of this Circular is to encompass and update the provisions of Circular 39/2011 and 15/2013, which are hereby deemed rescinded and replaced by these provisions.

**Background**

1. Rules and regulations governing Department funding of expenditure in ETBs are set out in the annual letter of determination. ETBs are expected to operate in accordance with these rules and regulations.
2. The Education and Training Boards Act, 2013 sets out certain actions which cannot be undertaken without the approval of the Minister for Education and Skills (e.g. the acquisition of land, borrowing).
3. ETBs are also required to obtain, in advance, the written approval of the Department before providing a new programme or activity:
  - (a) Which is not one of its core services (i.e. the provision of primary, post-primary, PLC and further education), or
  - (b) Which it considers to be within its core services, or associated core services, but which is not already established and funded by the Department.
4. In addition, Department of Public Expenditure and Reform Circular 02/16 sets out specific requirements which encompass ICT related expenditure.

5. ETBs should ensure that robust and effective systems and procedures are in place in the ETB concerned to ensure compliance as appropriate, with the relevant principles, requirements and guidelines of the Public Spending Code.

### **Proposals arising as a result of a donation**

6. Before accepting a donation of property or goods to facilitate the provision of a service, ETB's must also undertake a full evaluation of the proposed service as outlined above.
7. Due consideration must be given to any condition attaching to the proposed donation.

### **Evaluation of proposals for the provision of goods and/or services**

8. Before entering into a contract/agreement for the provision of goods and/or services, any proposal must be evaluated in detail in order to establish:
  - that the proposal is of clear benefit to the ETB;
  - that all expenditure on the proposal will represent value for money;
  - That the third party has the capacity to provide the goods and/or services contracted for;
  - That thorough and robust due diligence is undertaken in relation to the third party prior to entering into a contract.

Once the evaluation has been completed, a memorandum should be prepared to include a summary of, and a conclusion to, the evaluation. The memorandum should be signed by those who undertook the work and approved by the chief executive.

### **Evaluation of proposals for provision of new non-core services**

9. Before seeking approval from the Department, all proposals must be rigorously evaluated by the ETB in detail in order to determine:
  - that the proposal is of clear benefit to the ETB;
  - that all expenditure on the proposal will represent value for money;
  - that revenues arising from the activity will meet all costs (including management, administration/ insurance and maintenance) to be incurred in providing the activity. Costs should comprise the initial, ongoing and long-term costs (pay and non-pay), including any costs due to contractual staffing commitments arising from the proposal.

10. Chief executives are requested to note that the costs of the new activity/programme must include interest foregone on exchequer funding that would otherwise be on deposit. In addition, if the proposal involves a contract with a third party, the ETB must ensure that:
- the third party has the capacity to provide the goods and/or services contracted for;
  - thorough and robust due diligence is undertaken in relation to the third party's financial resources to complete the contract.

### **Evaluation of existing non-core services**

11. Existing non-core services should be evaluated in a similar fashion to new proposals and communicated to the Board and the Department through the Annual Service Plan.

### **Submission of proposals to the Department**

12. If the evaluation conducted by the ETB concludes that the proposal is of clear benefit to it, that all expenditure on the proposal will represent value for money and that all costs will be met from associated revenues should seek the Department's approval where the cost of implementing the proposal will exceed €10,000. Where, subsequent to the proposal evaluation stage, it becomes clear that a proposal, for which approval had not been sought, will cost in excess of €10,000, ETBs should seek the Department's approval for the proposal before the additional moneys are spent.
13. This should be done by submitting to the Department a written proposal, to include a summary of the evaluation and its conclusion, and cost projections over the short, medium and long terms. The proposal should be signed by those who undertook the evaluation and approved and signed by the chief executive.
14. Requests for approval should be addressed to the section of the Department responsible for the relevant programme area. For example, if the proposed programme/activity concerns the general and post primary programme requests should be referred to ETB Financial Section. If it concerns the further education programme requests should be referred to Further Education Section or to SOLAS as appropriate.

### **Procurement**

15. As the ultimate owners of, and investors in, State Bodies, including ETBs, citizens and taxpayers have an important and legitimate interest in the achievement of value for money in the State sector. Whether commissioning public services or providing them directly, ETBs have a duty to strive for

economy, efficiency, transparency and effectiveness in their expenditure in accordance with best practice in governance as set out in the Code of Practice for the Governance of Education and Training Boards.

16. It is the responsibility of the Board to satisfy itself that the requirements for public procurement are adhered to and to be fully conversant with the current value thresholds for the application of EU and national procurement rules.
17. Competitive tendering should be standard procedure in the procurement process of ETBs. ETB management, and ultimately the Board, should ensure that there is an appropriate focus on good practice in purchasing and that procedures are in place to ensure compliance with procurement policy and guidelines.
18. In this regard, EU Directives and national regulations impose legal obligations on public bodies in regard to advertising and the use of objective tendering procedures for awarding contracts above certain value thresholds. Even in the case of procurement which might not be subject to the full scope of EU Directives, such as certain 'non-priority' services or service concessions, the EU Commission and European Court of Justice have ruled that EU Treaty principles must be observed.
19. The National Public Procurement Policy Framework requires that all non-commercial state bodies, including ETBs, complete a Corporate Procurement Plan. This plan is underpinned by analysis of expenditure on procurement and the procurement and purchasing structures in the organisation. The plan should set practical and strategic aims and objectives for improved procurement outcomes and appropriate measures to achieve these aims should be implemented. The Chairperson should, following a formal resolution of the Board, in the annual report to the Minister for Education and Skills affirm adherence to the relevant procurement policy and procedures and the development and implementation of the Corporate Procurement Plan.
20. ETBs must ensure that the Tax Clearance requirements set out in Department of Finance Circular 44/06 (21 December 2006), as regards the payment of grants, subsidies and similar type payments, and Department of Finance Circular 43/06 as regards Public Sector Contracts, are fully adhered to.
21. Information on procurement policy and general guidance on procurement matters is published by the Office of Government Procurement. This can be viewed or downloaded from the website <https://ogp.gov.ie/>

### **Borrowing and Leasing**

22. Chief executives are reminded that that all borrowing, including leasing arrangements, must be approved in advance by the Board and the Minister for Education and Skills.

## Legal Awards and Settlements

23. **All legal settlements will require the prior approval of the Department of Education and Skills, except where in respect of claims brought against the ETB:**

- (i) Court Awards against the ETB and costs arising from such court awards, provided that in defending the claim on its merits with appropriate professional legal advice, the ETB satisfies itself in formulating its initial defence that the claim does not have wider public service implications and consults with the appropriate Government Department/s and Public bodies for whom the claim might have implications in order to protect the wider public interest.
- (ii) Out of court settlements costing less than €50,000 where:
  - The settlement does not exceed the plaintiff's claim;
  - The ETB also satisfies itself that there is no wider implication for the public service (as in the case of court awards);
  - The ETB obtains appropriate professional legal advice that there is a strong probability, based on the facts of the case and the evidence, that the plaintiff's claim could succeed if considered by the Court; and
  - Settlement of the claim is fair and reasonable and is proper charge against the relevant funding stream in ETB.

24. Costs paid to legal firms for general legal advice do not require the prior approval of the Department but these costs must be disclosed to the Department's ETB Financial and Administrative Personnel Section as part of the ETBs annual disclosure of consultancy costs.

## Losses and Write-Offs

25. All irregularities, including losses and incidents of fraud must be reported promptly to the Department and to the Office of the Comptroller and Auditor General.
26. Delegated sanction in respect of write-offs and losses of public funds, suspense balances, etc., and for the disposal of property applies only up to the limit of €10,000 subject to compliance with the provisions of C.77-11 of Public Financial Procedures and the following conditions:
- All reasonable efforts have been made to recover the losses/debts;
  - Effective system, controls and cost checks are in place to limit the -ETB's exposure to such losses; and

- Notification to the Department's ETB Financial and Administrative Personnel Section of any case, irrespective of amount which involves an important question of principle, raises doubt about the effectiveness of existing systems or contains lessons which may be of wider interest.

### **Appropriate Funding Source**

27. ETBs are reminded that funds must only be used by the ETB for the purposes for which they were provided. For example, the conditions attaching to the expenditure of ordinary non-pay funding are set out in the annual letter of determination, as are the Minister's expectations regarding the prioritisation of services by an ETB. In particular, ETBs should not use ordinary non-pay funding for IT research and development projects to develop new teaching methods, technologies, FET or capital expenditure to meet the costs of self-financing projects (including outdoor education centres) or other areas of expenditure not in the schools & head office programme.
28. If an ETB is considering expenditure on IT research and development, to develop "cutting edge" IT classroom-teaching tools or other such innovative IT projects it must, in addition to the steps set out at 1 above, ensure itself that it has the capacity to fully evaluate the proposal from a technical perspective. It must also obtain the approval of the Department in advance of entering into any commitment in this regard.
29. Chief Executives should be aware that the PDST Technology in Education (PDST-TIE) may provide advice and assistance to schools and ETBs on all aspects of the integration of ICT into teaching and learning. The PDST-TIE may be in a position to offer a view as to whether an innovative ICT project has merit or whether the proposed project fits with programmes such as the ICT in Schools initiative and the [Digital Strategy for Schools 2015-2020](#).

### **Scope**

30. In addition to programmes/activities to be funded by the Department, this Circular applies to programmes/activities that are to be funded by a body other than the Department, to be self-funded or where they arise from donations.

### **Circulation and Queries**

31. Please ensure that copies of this Circular are provided to all members of the Board of Management/Education and Training Boards and its contents are brought to the attention of all affected staff in your employment including those on leave of absence.
32. This Circular can be accessed on the Department's website under <https://www.education.ie/en/Circulars-and-Forms/>

33. Enquiries regarding this Circular should be e-mailed to [financialetb@education.gov.ie](mailto:financialetb@education.gov.ie).

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29 January 2019