



**Comptroller and Auditor General
Report for presentation to Dáil Éireann**

**Kildare and Wicklow Education and Training Board
Financial Statements 2015 — Supplementary Report**

**Lapses in controls over procurement of capital
projects and certain other expenses**

Kildare and Wicklow Education and Training Board — Lapses in controls over procurement of capital projects and certain other expenses

In addition to providing an opinion on the financial statements of an education and training board on completion of the audit, Section 7(4) of the Comptroller and Auditor General (Amendment) Act 1993 (as amended by the Education and Training Boards Act 2013) provides for the Comptroller and Auditor General to draw up a supplementary report in writing on

- such matters arising from the audit of an education and training board as s/he considers it appropriate to report on, and
- such matters as s/he considers it appropriate to report on arising from her/his examination of the system of internal control operated by a board to ensure
 - the regularity of its financial transactions
 - the correctness of its income and expenditure
 - the reliability and completeness of its accounting records, and
 - the safeguarding of the assets owned or controlled by it.

The report has been prepared under Section 7(4) (as amended) arising from the audit of the 2015 financial statements of Kildare Wicklow Education and Training Board.

The report deals with lapses in controls over the use of the resources of Kildare and Wicklow Education and Training Board with respect to the procurement of capital projects and certain other expenses identified during the audit. The sole and exclusive focus of this report is on Kildare and Wicklow Education and Training Board, and not on staff members or any third parties. For the avoidance of doubt, this report does not make any criticism or comment, whether express or implied, with respect to staff members of Kildare and Wicklow Education and Training Board or any third party, and should not be understood as doing so.



Seamus McCarthy
Comptroller and Auditor General

24 December 2018

Kildare and Wicklow Education and Training Board — Lapses in control over procurement of capital projects and certain other expenses

- 1 Kildare and Wicklow Education and Training Board (KWETB) was established in July 2013 by the Education and Training Boards Act 2013 (the Act). Under the Act, the assets, liabilities and staff of Kildare Vocational Education Committee and Wicklow Vocational Education Committee were transferred to KWETB.

Corporate governance of Education and Training Boards

- 2 Corporate governance is concerned with developing appropriate structures and processes for directing and managing an organisation so that stakeholders can be assured that the organisation is doing its job, in line with statutory requirements and any funding rules and restrictions, in an effective and efficient manner.
- 3 The Board of an Education and Training Board (ETB) is one of the core elements of corporate governance in ETBs. The Board of an ETB is made up of 21 members — 12 members elected by the relevant local authorities, with the remainder being made up of staff of the ETB, parents of students registered with the ETB and bodies who have a special interest in, or knowledge of, education and training.
- 4 The Act sets out the functions of the Board. The key reserved functions of the Board specified in the Act include
 - the appointment and suspension of a chief executive
 - the establishment of a finance committee to examine and report to the Board on financial matters relating to KWETB
 - the establishment of an audit committee to assist the Board in discharging its internal audit functions
 - keeping all proper and usual accounts of monies received or expended by it, and
 - preparation, adoption and submission to the Minister of Education and Skills (the Minister) of an annual report in relation to the performance of the Board's functions.
- 5 Every function of the ETB that is not a reserved function of the Board is an executive function. The executive functions of an ETB are performed by the chief executive of that ETB. In addition, the chief executive is
 - required to provide such information to the Board/Minister regarding the performance of his or her functions as the Board/Minister may from time to time require
 - accountable to the Board for the due performance of his or her functions
 - accountable to the Board for the performance of the functions delegated by him or her to a specified member of staff.

Code of Practice for the Governance of Education and Training Boards

- 6 In addition to the Act, ETBs operate under codes of practice. KWETB operated under the provisions of the *Code of Practice for the Governance of Vocational Education Committees* (issued in 2005) until the (March 2015) *Code of Practice for the Governance of Education and Training Boards* (the Code) was adopted by KWETB in May 2015. Under the Code, the Board is responsible and accountable for the proper direction and control of the ETB. The Code sets out standards for members and staff of ETBs. Members and staff are expected to ensure that their activities in relation to the ETB are governed at all times by those standards, in letter and in spirit.
- 7 ETBs face a wide range of strategic, operational and financial risks. The Code states that each ETB should develop a risk management policy. The Board should approve that policy and the related framework, and monitor their effectiveness. Key elements of the Board's oversight of risk management would include
- making the management of high level risk a standing agenda item at Board meetings
 - approving the risk register, at least annually, and
 - requiring external review of effectiveness of the risk management framework on a periodic basis.
- 8 A requirement set out in the Code is that the ETB should have procedures to identify, monitor and manage actual and perceived conflicts of interest of Board members and executive management.
- 9 The statement of Board responsibilities contained in the financial statements states that the Board is responsible for, amongst other things, safeguarding its assets and taking reasonable steps for the prevention and detection of fraud and other irregularities. In addition, in the financial statements, the Chairperson acknowledges the responsibility of the Board for ensuring that an efficient and effective system of internal control is maintained and operated.

Audit of 2015 financial statements

- 10 The fieldwork for the 2015 financial audit of KWETB took place between January and March 2017. During fieldwork, the audit team requested routine documentation and explanations about aspects of procurement, project cost overruns and propriety matters in 2015. The information KWETB provided to the audit team in response to those requests was not sufficient, and certain concerns were identified. Additional testing was undertaken and further explanations were sought. Audit concerns remained. As a result, a formal audit query on these matters was issued to the (then) Chief Executive of KWETB in June 2017.

Audit query

- 11 The audit query requested additional information and supporting documentation in relation to
 - contract documentation
 - ‘summer’ capital works and related payments
 - project cost overruns and
 - propriety matters.
- 12 The audit query contained questions on related parties. The audit found evidence of a connection between an identified supplier (Contractor A) and the (then) Chief Executive. The audit query requested KWETB to state if there was any family, personal or business connection between certain entities and the (then) Chief Executive. In the response provided by the (then) Chief Executive, he declared a close family connection with Contractor A. A connection with an extended family member was also declared in relation to Contractor B. In addition to the response provided, the (then) Chief Executive supplied a copy of a revised annual declaration of interests for 2016 which included a declaration of interest to KWETB in respect of Contractor A.
- 13 The information and supporting documentation provided by KWETB on 5 July 2017 in response to the audit query were also considered to be inadequate. The audit concerns were not allayed. I took legal advice, and acting on that advice, my Office brought the issues of concern to the attention of the (then) Chair and Vice Chair of the Board of KWETB, and the Chair of its Audit Committee on 13 July 2017. The (then) Chair of the Board has stated that the issues had not been brought to the attention of the Board by members of the executive.
- 14 My Office also informed the Department of Education and Skills (the Department) of the audit concerns on 21 July 2017. The Department pursued its own enquiries with KWETB arising from these issues as well as other matters of concern to the Department. In October 2017, the Minister appointed a statutory inspector^a to carry out a statutory investigation on the performance by KWETB of its functions, particularly in relation to public procurement, usage and disposal of assets and propriety matters.
- 15 The (then) Chief Executive of KWETB retired in December 2017.
- 16 The statutory inspector appointed by the Department issued a draft report in March 2018, a copy of which was supplied to my Office.
- 17 The audit query was re-issued to KWETB in April 2018 in order to allow KWETB the opportunity to reflect on the original response and to provide a revised response with additional information. The Chief Executive provided a response to my Office in May 2018. Annex A summarises the issues raised in the original and reissued audit queries, and sets out the KWETB responses.
- 18 A final report from the statutory inspector was supplied to my Office in July 2018 (Annex B) and a formal Ministerial direction was issued to KWETB in October 2018 (Annex C).

^a Appointment by the Minister as provided for in Section 40 of the Education and Training Boards Act 2013.

Weaknesses in governance

- 19** Some key weaknesses in the governance of the ETB were noted
- Due to the holding of local elections, no Board meeting was held after May 2014 until a new Board was in place in September 2014.
 - No finance committee or audit committee was in place during the period June 2014 to May 2015.
 - There was no risk function or approved risk register in place in KWETB during 2015. The risk register was approved by the Audit Committee in August 2016 and a risk function was implemented in December 2016.
 - No annual report was provided to the Minister by KWETB in respect of 2014 or 2015.

Declaration of interests

- 20** The Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001 provide for the disclosure of interests by public servants through an annual written statement.^a This statement of interests is required to be furnished not later than 31 January of the following year. It should disclose the interests of the person, of his or her spouse or civil partner, or of a child of the person or of his or her spouse.
- 21** In addition, where a member of staff of an ETB has an interest in any contract or proposed contract, they should disclose to the Board the nature of their interest and not influence or seek to influence a decision to be made in the matter.^b
- 22** There is a requirement that statement of interests forms for the relevant staff of KWETB are submitted to the Chief Executive. Where a relevant staff member considers that s/he has no interest to declare, there is no legal obligation on her/him to make a return.
- 23** KWETB reported that 167 staff members were potentially required to complete an annual statement of interests form for 2015. 144 statements were returned, all of which were 'nil'. In the most recent year (2017), 134 staff members were potentially required to complete statement of interests forms. 127 statements were returned, 126 of which were nil. There was one declaration of interests which KWETB stated that it noted.
- 24** As part of the audit, statements of interests were reviewed for senior members of staff. The table below details the disclosures by the (then) Chief Executive. Copies of the 2014, 2015 and original 2016 disclosures were obtained by the audit team as part of the audit fieldwork. All of these disclosed nil relevant interests. Following the issuing of the original (June 2017) audit query, a revised form was provided by the (then) Chief Executive in relation to 2016. The (then) Chief Executive has stated that he relied on legal advice when completing the declaration of interests form for 2014 that was signed together with the 2015 form, in October 2015.
- 25** The KWETB records do not indicate whether the (then) Chief Executive's declarations of interests were submitted to the Chair of the Board as required by KWETB procedures and the Ethics in Public Office Act 1995.

^a Under the Acts, emerging conflicts of interest must also be disclosed when they are identified, and a conflicted official must withdraw from relevant decision-making.

^b ETB Act 2013, schedule 3 (paragraph 12).

Figure 1 Statements of interests made by the (then) Chief Executive

| Year | Statement of interests | Due date | Signed |
|---------------|------------------------|-----------------|-----------------|
| 2014 | Nil | 31 January 2015 | 19 October 2015 |
| 2015 | Nil | 31 January 2016 | 19 October 2015 |
| 2016 original | Nil | 31 January 2017 | 9 May 2017 |
| 2016 revised | Disclosure | 31 January 2017 | 5 July 2017 |

Source: Kildare and Wicklow Education and Training Board

- 26 The (then) Chief Executive's revised statement of interests for 2016 disclosed that a family member has an interest in a firm of contractors (Contractor A) that benefitted from a number of capital projects procured by KWETB.

Key audit concerns

- 27 Annex A provides detail in relation to the issues that were covered in the audit query and the responses received from the (then) Chief Executive and, subsequently, in response to the re-issued audit query, by the current Chief Executive.
- 28 Concerns remaining after the audit include
- Incomplete documentation in relation to certain procurements.
 - KWETB procurement documentation was held 'off-site' i.e. not within the direct control of the ETB.
 - Consultants to advise on certain capital projects were appointed without competition.
 - Some contracts were awarded where it appeared from documentation that the successful bidder failed to meet certain required minimum standards.
 - Documentation provided to the audit team did not explain the basis on which certain decisions were taken — there were inconsistencies and a lack of supporting information for the scoring of tenders.
 - Contracts were identified that were awarded to a firm with connections to the (then) Chief Executive, which were not disclosed.
 - KWETB rented an industrial property in 2015 which was subsequently partially licensed to the same connected firm, with inadequate documentation of the on-licensing arrangements — rent and service costs were only paid to KWETB after concerns were raised by the audit.
 - Procedures regarding change orders in relation to the construction of a school in Arklow were not followed. This resulted in additional expenditure of €483,000.
 - KWETB disposed of a van within a year of purchase, but received no payment until after audit queries were raised. In addition, a full year's motor tax was paid by KWETB just before the disposal occurred.
 - KWETB incurred significant expenditure with certain hotels without a competitive procurement process.
 - Subsistence claims by the (then) Chief Executive did not comply with regulations.

Conclusions

Specific to Kildare and Wicklow Education and Training Board

- 29** Conflicts of interest which are not disclosed to a public body cannot be appropriately managed. KWETB did not actively pursue non-submission of declarations, nor did it critically review the content of declarations.
- 30** The Board did not effectively challenge the executive during the period under review. Underlying causes for this include incomplete information being provided to the Board, delay in establishment of statutory sub-committees and a lack of internal audit resources. An effective process for review of internal controls was not in place.

Response of the Chief Executive of KWETB

KWETB has implemented and actively manages a process for dealing with conflicts of interests. This process includes written formal requests, review of same and a procedure for the management of conflicts in line with the 2015 *Code of Practice for the Governance of ETBs*, Sections 9 - 11.

Persons with nil interests are not, under the current legislation, required to submit a declaration. However, KWETB does follow up in writing.

Each Board member and staff member has been made aware of their responsibilities under Sections 9 - 11 of the Code.

KWETB approved its protected disclosures policy in March 2017 and all staff and Board members have been made aware of same.

KWETB are currently reviewing its conflict of interest and protected disclosures policies, both due to be completed in early 2019.

In 2015, a system of internal controls was in place and was approved by the Audit Committee in April 2016.

In December 2017, a review commenced to further develop a comprehensive and more robust system of internal controls which was approved by the Audit Committee in March 2018. This is a live document and is currently being enhanced in light of the statutory inspector's and Comptroller and Auditor General reports. The revised internal controls framework includes a robust set of controls designed to identify and mitigate against risks in the areas of, but not limited to, capital project management, procurement of goods and services, invoice management, financial management, creditor control and bank account management.

There is currently a comprehensive reporting system to the Board from the Executive on the key functions of the organisation.

In addition, KWETB (in line with the recommendations of the statutory inspector's report) is engaged in a process of self-review and evaluation to develop a more robust governance framework to enable full oversight by the Board.

The KWETB finance committee is currently fully constituted and meets in line with the requirements as outlined in the 2015 *Code of Practice for the Governance of ETBs*.

The KWETB audit committee was fully constituted until 30 September 2018 when the Chairperson resigned. KWETB is in the process of appointing a new member and a new Chairperson. The audit committee meet in line with the requirements as outlined in the 2015 *Code of Practice for the Governance of ETBs*.

Secretary General's response

The statutory inspector's report highlighted that effective governance of procurement requires that a range of policies, procedures and structures be in place to give effect to a robust and transparent system of procurement. He makes a number of findings and recommendations in relation to a range of specific matters which he investigated, including that the Board of KWETB should take an active, rather than passive, role in ensuring that there is effective oversight of governance arrangements within KWETB. Overall, he concluded that in the case of KWETB the main components of a robust and transparent procurement framework were in place. The statutory inspector also found that, while there were gaps, these do not explain the failures to meet the procurement requirements approved by KWETB.

Furthermore he found that if adhered to, the procurement governance arrangements in place were sufficient to ensure conflicts of interest did not arise in procurement matters but there was disagreement on whether or not the procurement function was delegated.

The statutory inspector has made a number of recommendations in relation to his findings. In addition to setting out that the Board of KWETB should take an active, rather than passive, role in ensuring that there is effective oversight of governance arrangements within KWETB, he recommends that the Board, utilising the services of an external agency, should develop policies and procedures covering

- procurement and any related matters
- managing real or perceived conflicts of interest at Board or Executive level, and
- the functioning of the Audit Committee to ensure that its effectiveness and make adjustments as required.

On foot of the statutory inspector's report, the Minister issued final directions under Section 41 of the 2013 Act to KWETB which require the Board to, *inter alia*, review the actions in the action plan which the ETB prepared upon receipt of an earlier draft of the statutory inspector's report and to implement a final action plan arising from this review. The Board was also asked to review measures regarding conflicts of interest, undertake mandatory governance training, conduct a self-evaluation and provide a comprehensive update to the Department on all matters within three months and thereafter until otherwise notified. It is also required to engage with the Department on governance and oversight arrangements and to comply with any obligations arising from the ongoing investigations by statutory agencies on matters arising from the report.

General conclusions regarding governance of ETBs

- 31** The Boards of ETBs have key functions to perform, including oversight of their executives. In effect, however, the Board is heavily dependent on the executive in the exercise of its functions.

Secretary General's response

The Department places a high value on the role of ETBs in the education sector and recognises the importance of the provision they make across several levels of education. ETBs are supported by funding, provided directly by my Department and via SOLAS, which amounted to in excess of €1.8 billion in 2017. Given that level of funding support, ongoing management and monitoring of their supports is a constant feature of the Department's work.

Like all areas of the civil and public service, ETBs suffered retrenchment during the financial crisis but the Department has placed an increased emphasis on supporting them in recent years. In relation to supports for administration and governance in ETBs, a range of measures and improvements have been provided.

This includes a review of structures for senior management in ETBs at Director grade which saw the Department sanction an additional 39 posts providing critical support by way of a significantly enhanced senior management tier to Chief Executives, Board administration, further education and schools directorates. Work is ongoing with management, staff and their representatives on the appropriate staffing structures at the level below Director to further support and embed the Department's strategic plan for ETBs as part of the current phase of organisational design.

Permanent staffing posts have been sanctioned across many grades in ETBs in recent months in recognition of the retrenchment which occurred during the financial crisis for work in key areas such as finance, human resources and corporate services. In addition, the Department has provided separate support to ETBs for immediate pressures in areas such as pensions and General Data Protection Regulation.

The Department, in 2017, sanctioned additional posts for the Internal Audit Unit (IAU) of the ETBs (IAU-ETBs), doubling its staffing levels, to allow it to undertake the necessary audits of internal controls and systems within ETBs. The increased complement also includes provision for a Deputy Director of the Unit. The recruitment is ongoing. In the meantime, the Department has supported the work of the Unit by the provision of additional funding to secure external audit expertise. It is likely to be early 2019 before the full complement of staff will be available in the IAU-ETBs.

The Department has an ambitious programme of reform in ETBs including for shared payroll and finance services. This will allow for ETB resources to be freed up to focus on their core mission as the areas of payroll and finance services will migrate to centralised shared services. Work is progressing well and it is envisaged that the ETB payroll shared service will go live from mid-2019 with two ETBs. Following on from this, the remaining ETBs will migrate to payroll shared services following a planned wave migration strategy through to 2021. In terms of financial shared services, it is envisaged that a request for tenders will be published in the coming months.

The Department considers that the strengthening of Education and Training Boards Ireland (ETBI) is critical and has provided dedicated resources to ETBI in a number of areas. ETBI is uniquely placed at the core of the ETB sector to provide a consistency of approach to key matters such as procurement, legal work, and human resources and to embed the public sector and Department's change management programme. Sectoral fora as well as dedicated units with expertise on key issues within ETBI are central to this process and have to-date been very successful, given ETBI knowledge of the work and challenges for ETBs.

In 2017, the Department collaborated with the ETBI, the Office of the Comptroller and Auditor General and the IAU-ETBs to provide briefing/information sessions in three regional locations to all members of ETBs' audit and finance committees. Department staff also provided input at ETBI events such as a Chairpersons' briefing session on governance matters as well as ETBI's sectoral fora.

In 2015, the Department rolled out a *Code of Practice for the Governance for ETBs* in conjunction with the sector. Work on updating that Code in light of the requirements of the 2016 *Code of Governance for State Bodies* issued by the Department of Public Expenditure and Reform as well as other developments is well advanced and scheduled to be finalised by the end of 2018. Oversight agreements and performance delivery agreements will form a key part of the roll-out and embedding of that Code in the sector. The Department will work closely with ETBs and ETBI on the programme of implementation for the Code.

Annex A

Overview of audit query and responses

Section 1 — Contract documentation

- 1.1** In order to ensure compliance with public procurement regulations and departmental guidelines when purchasing goods and services, public bodies are required to maintain documentation to provide evidence of compliance for audit purposes. In an audit, the audit team select a sample of suppliers where expenditure was incurred and request evidence of the procurement process followed for these suppliers in order to show that value for money was obtained for the supplies.
- 1.2** In January 2017, the audit team requested the supporting information for a sample of contracts with 22 suppliers. Satisfactory information was provided for ten of the samples. Four of the procurements raised significant concerns for the audit team. The main concerns were: difficulties in obtaining the supporting file; acceleration of a project leading to additional costs; and additional work and costs incurred.
- 1.3** In February 2017, the sample was extended. There were concerns in relation to Contractor A and Contractor B due to the fact that they had been recently set up and were involved in multiple works contracts. Some of the procurements for these contracts had originated in the previous audit period.
- 1.4** The documentation routinely requested when reviewing a procurement process includes evidence that the appropriate tender process is used based on the expected monetary value of the goods or service. There should be evidence that the award criteria are fair and transparent. This includes evidence that
- the tenders are opened in the presence of more than one person
 - the evaluation criteria are set in advance
 - the scoring is completed in line with the evaluation criteria and
 - the results of the competition are communicated with the tenderers.
- 1.5** The audit also reviews the contract with the winning tenderer to ensure that
- it is signed
 - the key terms and deliverables agree to the original requirements of the tender and
 - the invoices charged agree to the contract terms.
- 1.6** The departmental guidelines contained in the Technical Guidance Document (TGD-007) lists the key requirements for the procurement process, including that
- Appropriate tender processes are in place for the procurements, having regard to the expected monetary value. For capital projects expected to cost more than €50,000, an advertisement must be placed on eTenders.
 - Deadlines in place for tender returns should facilitate a competitive tender process — a minimum of 15 days is required in most cases.
 - Tenderers are required to submit a suitability declaration form confirming that minimum standards relating to turnover and experience, amongst other things, have been met. Where tenderers do not submit the declaration, they should be excluded from the process. The minimum standards expected for annual turnover is that the contractor's annual turnover for the previous three years was not less than 1.5 times the sum tendered for the project. In addition, it is required that the contractor has carried out and satisfactorily completed three works of a similar nature, size and complexity within the last seven years.¹

¹ Standards set by the Department of Education and Skills in the Declaration of Suitability for Contractors for Small Works (Open Procedure only) Section 3.3 and 3.4 as required to be completed under Technical Guidance Document TGD-007 Design Team Procedures for Small Works. Circular 0059/2013 requires compliance with the Guidelines of TGD-007 for Summer Works Schemes.

- 1.7** In relation to Summer Works Schemes, it is a requirement that all records in relation to a project for which funding is approved must be kept for seven years at the school.
- 1.8** The audit query enquired as to why key contract documentation was held at their own premises by consultant advisors retained by KWETB, and not by the ETB. There were a number of instances where tender information was not provided during audit fieldwork and copies of any missing documents located since the audit team left in March 2017 were requested.
- 1.9** In the response to the audit query the (then) Chief Executive noted that the practice has been to maintain tender and contract documents with the consultants and to only keep reports in the ETB. It notes practical and storage reasons for this practice but notes it has now been changed. The response of the Chief Executive in May 2018 repeats this original response.
- 1.10** In relation to the missing documentation, the (then) Chief Executive provided hand written notes on the projects and included some additional information in his response. The Chief Executive responded in May 2018 by requesting additional time to complete the compilation of outstanding documentation in a comprehensive manner.

Conclusion

- 1.11** Proper procurement processes are an important element for ensuring that value for money is being obtained for the purchases of goods and services. In order to secure departmental funding on certain projects, there is also a requirement that records are maintained by the school/Board. The lack of evidence available from KWETB to support procurement processes is concerning. It is indicative of a poorly controlled process.

Response of the Chief Executive of KWETB

We accept that in certain instances and in relation to certain projects, there was an absence of supporting documentation.

The 2015 procurement policy has now been replaced by the ETB Sectoral Policy which was adopted by KWETB in March 2018. Work is ongoing to ensure full understanding and implementation of this policy.

Supporting documentation is required at all levels of approval and at all stages of the procurement process. This is further supported by a financial authority and approvals levels policy.

Section 2 — Summer works and related payments

- 2.1** It is customary for educational bodies to carry out building and refurbishment works in the summer months in order to avoid disruption during term time. Funding was announced by the Department in Circular 0059/2013 in relation to the Summer Works Scheme (SWS) 2014.
- 2.2** The Department has produced guidance in relation to the appointment of consultants — *Guidance on Procuring Consultants for Small Works*.¹ In addition, the SWS circular states that the onus is with the school authority to ensure that the appropriate level and range of service is procured and it must ensure that the consultant is in the appropriate discipline for the works concerned.
- 2.3** The conditions attached to the drawing down of SWS funding from the Department include certain confirmations. The Board of Management/Chief Executive must confirm that
- the tender process and the contract award for the appointment of a consultant has been carried out in accordance with the Department's *Guidance on Procuring Consultants for Small Works*
 - the tender process and contract award has been carried out in accordance with the terms outlined in the Department's technical guidance documents as relevant, and a specific reference is made to TGD-007
 - the works undertaken are in accordance with the scope of works for which the grant was approved
 - the Board of Management has placed a contract for the proposed works with the successful contractor and the contractor is on site and has commenced the works.
- 2.4** The audit query requested explanations for the variance in relation to the number of quotations required for contracts less than €50,000. The KWETB procurement policy requires three quotes from suppliers, while the guidelines issued by the Department require that a minimum of at least five quotes must be sought from suitable contractors and a minimum of five obtained. If fewer than five firms submit tenders, the Contracting Authority should only proceed with an award if it considers that there has been genuine competition and that the tender being considered for acceptance represents value-for-money.
- 2.5** In his response, the (then) Chief Executive explained that this was a conscious decision due to the difficulty in obtaining five quotations. The Chief Executive has stated that irrespective of the policy, the majority of works contracts in KWETB relate to Department funded projects where the guidelines issued by the Department apply.

¹ Small works are defined as projects with a capital value of €1 million or less.

Engagement of consultants

- 2.6** The audit requested information in relation to the appointment of consultants on five SWS contracts — St Conleth's Community College heating system, the Blessington Community College boiler upgrade, KWETB boiler and plant maintenance contract, Confey College drainage upgrade, and the purchase of modular buildings.
- 2.7** The key areas to be addressed were
- the process followed in the appointment of these firms
 - quotations submitted by each firm
 - evidence of their experience in projects of a similar nature
 - evidence of qualifications and
 - letters of appointment/contracts containing the agreed scope of work and the level of fee payable.
- 2.8** The same consultant, Consultant X, was engaged for three of the contracts. These projects are St Conleth's Community College heating system, the Blessington Community College boiler upgrade and the KWETB boiler and plant maintenance contract.
- 2.9** Concerns identified in relation to the appointment of Consultant X to the St Conleth's Community College heating system project were
- Only three quotations were requested rather than the five required under the SWS Circular. Two were dated in April and one request was made in May.
 - A letter to an unsuccessful tenderer informing them of the result of the award was signed and dated before the closing date for the receipt of tenders.
 - Scoring errors were noted in the evaluation table contained in the letters to unsuccessful tenderers.
 - There are no records available for the opening and evaluation process completed prior to the award of this contract.
- 2.10** No procurement documentation has been provided by KWETB in relation to the appointment of Consultant X on the Blessington Community College boiler upgrade and the KWETB boiler and plant maintenance contracts.
- 2.11** A firm of consultant engineers, Consultant Y, was appointed to advise on the procurement of the Confey College drainage upgrade. The following issues were noted
- The same scoring errors were noted in the evaluation table contained in the letters to the unsuccessful tenderers as were included in the letters on the St Conleth's project.
 - There are no records available for the opening and evaluation process completed for the award of this contract.

- 2.12** The audit query requested supporting documentation in relation to the appointment of Consultant Z to a 'modular building' project. In response, the (then) Chief Executive supplied information relating to design and build services for the provision of a temporary post primary school. The information supplied was a copy of the request for tender/quote, details of tender queries, tender report and copies of correspondence. The original tenders submitted and opening records were not supplied. There is one reference in the tender report to the experience of the consultants for the contract. In relation to Consultant Y, who was appointed on the Confey College drainage upgrade, the (then) Chief Executive notes he was unable to locate the documents in relation to the appointment.
- 2.13** Further information was provided by the Chief Executive in relation to the appointment of Consultant X on the St Conleth's project and Consultant Y on the Confey College Drainage Upgrade. The Chief Executive also requested additional time in order to examine documents on the appointment of Consultant X on the Blessington Community College boiler upgrade and the KWETB boiler and plant maintenance contracts. The Chief Executive did not provide any additional information in relation to the appointment of Consultant Z.

St Conleth's Community College heating system replacement — €298,000

- 2.14** The contract for the replacement of a heating system in St Conleth's Community College was awarded to Contractor A in July 2014. The following concerns were identified by the audit team
- This contract was advertised, awarded and substantially completed during the period when there was no Board in place in KWETB.
 - There was a reduced deadline for the submission of bids (5.5 working days, instead of the recommended minimum of 15 days) and only one tenderer submitted a tender.
 - Consultant X reported that they did not attend the tender opening. A requirement of TGD-007 is that tenders received on or before the due date and time should all be opened together after the closing date for receipt of tenders, and only by a nominated official of the school authority in the company of the consultant(s).
 - There is no evidence that the successful bidder submitted a signed 'suitability declaration for small works' declaring that they met the requirements with respect to turnover and experience. Non submission of the declaration is a basis for exclusion from consideration for the award of a contract.
 - There is no record of the evaluation process completed prior to the award of this contract.
 - The Board minutes confirm that there was correspondence provided to the Department to confirm that the procurement of this contract complied with TGD-007. On this basis, the Department provided funding for this project.
 - Subsequent to the issuing of the audit query, the (then) Chief Executive declared that a family member has an interest in Contractor A.
 - The successful tenderer, Contractor A, did not meet the minimum standards in relation to turnover and experience as the company was only incorporated in March 2014 i.e. three months prior to the tender notice.
- 2.15** The (then) Chief Executive did not provide an explanation to the questions in this section but provided a letter from Consultant X in his response. The reason advanced for the reduced time was to get the works started within a reasonable timeframe for completion in August. The letter notes that there were no grounds for eliminating the successful contractor and that the consultant was satisfied that the contractor had the capacity to carry out the works and that all the employees were competent.
- 2.16** In response to the revised audit query, the Chief Executive references the above letter with respect to an explanation for the reduced timeframe. With respect to TGD-007, the Chief Executive reported that there is no documentation to indicate how KWETB satisfied itself in June 2014 that Contractor A met the requirements of TGD-007.

Blessington Community College boiler upgrade — €268,000

2.17 Also, in June 2014, KWETB ran a separate procurement competition for the decommissioning and replacement of the existing heating system in Blessington Community College, which was also awarded to Contractor A. Concerns identified by the audit team were

- reduced deadlines for the submission of tenders (10.5 working days in this instance)
- how the successful tenderer, Contractor A, met the requirements of TGD-007
- when evaluating the tender submitted by the successful bidder for the Blessington project, Consultant X referred to the previous experience of the personnel employed by the firm, as opposed to the firm itself
- in order for KWETB to obtain funding for this project it would have had to confirm that the procurement complied with the requirements of TGD-007
- subsequent to the issuing of the audit query, the (then) Chief Executive declared that a family member has an interest in the successful bidder, Contractor A.

2.18 In his response the (then) Chief Executive referenced Consultant X's letter noting the explanation for the shortened time period. An explanation was not provided with respect to conformity with the requirements of TGD-007. However, additional information was provided with respect to the opening and tendering for this contract. The following was noted from the information provided

- This contract was advertised, awarded and substantially completed during the period that there was no Board in place in KWETB.
- Consultant X was not present at the opening of the tenders.
- There is no evidence that the successful bidder submitted a signed 'suitability declaration for small works' with its tender submissions.

2.19 The response provided by the Chief Executive with respect to the timeframe references that substantial works were required throughout the school building and it was preferable that those works were carried out in the summer months.

2.20 In relation to the requirements of TGD-007, the Chief Executive notes that prior to the award of the Blessington contract, a member of staff in KWETB sent an email to the (then) Chief Executive and pointed out that the successful bidder did not meet the minimum standards of TGD-007. The Chief Executive notes that an instruction was issued by the (then) Chief Executive to the staff member to proceed with the engagement of the successful bidder as the contractor for the project.

Boiler and plant maintenance contract — €72,000

- 2.21** In July 2015, KWETB sought tenders for a boiler and plant maintenance contract for all KWETB schools covering the period up to the end of 2017. Following a tender competition, Contractor A was awarded the contract. The concerns identified by the audit were
- The invitation to tender did not include reference to the requirement for applicants to include a signed 'suitability declaration for small works' — this is a requirement under TGD-007 and must be complied with in order to secure departmental funding.
 - There is no evidence that the successful bidder submitted a signed 'suitability declaration for small works' with its tender submission — tender submissions were not provided.
 - The successful bidder, Contractor A, did not meet the minimum standard in relation to turnover requirements etc. under TGD-007.
 - No documentation has been provided by KWETB to support the awarding of full marks to the successful bidder on every award criteria apart from price.
 - Errors and inconsistencies in relation to awarding marks to tender submissions were observed on the tender report produced by Consultant X.
 - No quotes were included in the tender report.
 - Subsequent to the issuing of the audit query, the (then) Chief Executive declared that a family member has an interest in the successful bidder, Contractor A.
- 2.22** The response of the (then) Chief Executive did not provide a specific explanation for the non-compliance with the requirements of TGD-007. In relation to the award of marks, the letter provided to KWETB by Consultant X explained that the successful bidder answered all relevant questions as required and provided evidence on all counts of their intention and ability to carry out the works. An additional letter provided by Consultant X in 2017 stated that there was a typographical error in the tender report, accounting for the difference in the marks explained in the description of the evaluation and the score table.
- 2.23** The response by the Chief Executive noted that there was no documentation to indicate how KWETB satisfied itself that Contractor A met the requirements of TGD-007 or to explain how it was awarded maximum marks on all criteria other than price.

Confey Community College drainage upgrade — €122,000

- 2.24** In August 2015, KWETB sought tenders for drainage upgrade works at Confey Community College. The firm who won the works contract, Contractor B, was incorporated in 2014 and therefore did not meet the minimum standards in terms of turnover requirements under TGD-007. Questions in the audit largely focused on the lack of supporting documentation surrounding the procurement, the contract variations that were noted and how Contractor B met the requirements of TGD-007 — particularly in relation to turnover and experience.
- 2.25** In the response to the audit query the (then) Chief Executive provided additional supporting documentation and also the departmental approval for the additional costs. With respect to TGD-007, the response was that an explanation was ‘to follow.’
- 2.26** The response by the Chief Executive notes that the relevant procurement file is in the possession of Consultant Y — this is not in compliance with the Summer Works Scheme (SWS) circular. Her response in relation to compliance with TGD-007 is that there is no documentation available to indicate how KWETB satisfied itself that the winning bidder, Contractor B, met the requirements of TGD-007.

Conclusions

- 2.27** KWETB was not in compliance with procurement regulations and departmental guidelines in respect of a number of ‘summer works’ projects. In particular, the basis of assessment for the selection of contractors was not documented. In some cases, the facts known about certain contractors casts doubt over their qualification to receive the contracts.
- 2.28** The use of truncated deadlines, failure of successful bidders to meet certain minimum standards in respect of turnover and experience, errors, inconsistencies and lack of supporting information for scoring all raise serious concerns as to the overall integrity of the process.

Response of the Chief Executive of KWETB

We accept the conclusions. The above matters are also the subject of the statutory inspector’s investigation. KWETB have implemented the Sectoral Procurement Policy which was adopted by KWETB in March 2018 and work is ongoing to ensure full understanding and implementation of this policy. A schedule of briefing/training sessions has commenced for staff, including organisation support and development staff, school principals and training centre managers.

Section 3 — Project cost overruns

- 3.1** The provision of facilities for education and training requires significant capital investment. It is important that investment proposals are supported by a clear business case and credible estimates of cost. Once a contract has been awarded, the effective management of the contract is vital to ensure that successful outcomes are achieved. The following capital projects were reviewed by the financial audit team.

Arklow College — total capital cost of €10.8 million

- 3.2** In order to ensure completion of the project on time and within budget, the Department stipulates that a named 'employer's representative' (ER) is appointed for each project. The ER is normally the design team leader (e.g. the architect) and is responsible for all progress reports. The ER has authority to issue minor change orders but there are contractual limitations on the value of their authorisation. Departmental procedures outline that no client requested change shall be permitted (whether within the ER's authority or not) without prior departmental authorisation.
- 3.3** In July 2014, KWETB appointed a contractor, Contractor C, to construct Arklow Community College. The contracted completion date for the college was 21 March 2016.
- 3.4** In May 2015, the (then) Chief Executive of KWETB issued an instruction to Contractor C to have the new school ready for occupation in September 2015. In the event, 60% of the building was complete on 14 September 2015 and 100% complete on 23 December 2015 — three months ahead of the original contract completion date.
- 3.5** In the May 2015 Board minutes, there is a report regarding Arklow Community College to the effect that 'An accelerated building programme is being tabled by' Contractor C 'to allow for moving into the new school in September as opposed to the contract programme which allows for the move to take place in the October 2015 midterm break.' There is no record of any discussion on this or of any consideration with respect to the cost implications of this building acceleration.
- 3.6** The instruction to bring forward completion gave rise to an acceleration claim from Contractor C for €755,000. Following a conciliation process, the claim was settled for €483,000. Other claims submitted by Contractor C were also settled at conciliation for €426,000.

- 3.7** The questions raised in the audit query focus on the reasons surrounding the decision to accelerate the project, the advice sought, the estimated acceleration costs, the projected benefits, the sanction sought from the Department and the reasons for the 'other' contract variations. In particular, the audit identified the following concerns
- In his draft recommendation, the conciliator reported that 'the revised requirements in effect amounted to an instruction' to Contractor C 'to accelerate the works and increase the production on site for which' Contractor C is 'entitled to compensation.'
 - Under the contract, any instructions to the contractor should issue from the employers representative — this procedure was not followed in this instance.
 - KWETB did not prepare an estimate of the additional cost of accelerating the project and did not request an estimate from the contractor, as is required under the contract.
 - There is no evidence that alternative solutions were examined before the instruction to accelerate was issued.
 - KWETB did not seek sanction from the Department to accelerate the project.
- 3.8** In his response to the audit query, the (then) Chief Executive provided the following explanations.
- The old school was not fit for purpose. As part of the construction process, seven classrooms were removed as well as the 'life systems' in the building. In addition, staff at the end of term in May 2015 had decommissioned the building and all materials etc. were packed and placed in storage.
 - He had received advice that the old building would require a new fire and disability access certificate and that given the condition of the building, it would not obtain the certificates. He was advised that the building would not be fit for teaching purposes and that he could be charged with culpable manslaughter if an event occurred during occupancy.
 - His priority was to ensure the education of the children in the Board's care was not interrupted and accordingly instructed that a portion of the new building be made fit for purpose for September 2015. He was advised that this was achievable and he directed accordingly.
 - He stood over that decision as it was in accordance with his statutory functions and the project was a devolved project. He did not instruct that the entire new school building be commissioned by September 2015.
 - It was a devolved project and decisions were made on health and safety grounds. It was not an acceleration instruction but a request to have part of the building ready for September occupancy.
- 3.9** In response to the revised audit query, the Chief Executive refers to the response received from the then Chief Executive and that this is the only rationale available to KWETB at this time.

Temporary accommodation — €279,000

- 3.10** In July 2014, additional temporary accommodation — a modular double classroom — was approved by the Department for Naas Community National School (Naas CNS). The contract was completed in April 2015 and the total cost was €206,000.
- 3.11** In July 2015, the modular classroom was moved from Naas to Maynooth to provide additional accommodation for Maynooth Post Primary School at a total cost of €73,000. Contractors A and B were engaged on this project to provide mechanical, electrical and building works for the relocation.
- 3.12** Questions contained in the audit query focused on the business case for the original purchase of the classrooms, followed shortly thereafter by a relocation to Maynooth; the procurement process followed in the appointment of Contractors A and B to install the classrooms in Naas and the procurement process followed when appointing the same contractors to relocate the classrooms to Maynooth.
- 3.13** The following concerns were identified
- There is no evidence that the classrooms were ever used by Naas CNS.
 - An open tender process was not followed for the removal of the modular classrooms to Maynooth, as is required under departmental funding guidelines.
 - The contracted firms did not meet the minimum standards i.e. Contractor A and Contractor B were incorporated in March 2014 and therefore did not satisfy minimum standards in terms of turnover and experience.
- 3.14** The (then) Chief Executive has provided the following response to these issues
- The original sanction for the two prefabs was based on demographic growth of Naas CNS. However, when the additional prefabs were installed, a serious health and safety issue arose in relation to the existing eight prefab classrooms and ancillary accommodation. Following consultation with the Department, it was decided by the Department to relocate Naas CNS to Craddockstown — a new build which was vacant. Parallel to this event, due to technical delays with the building project in Maynooth, the Department authorised the transfer of the two new classrooms in Naas to Maynooth as a cost effective solution.
 - Procurement was by quotation.

High Court settlement

3.15 In May 2015, the ETB agreed a settlement in relation to a dispute over a rented property. Questions were raised in the audit query in relation to the nature of the dispute and the compensations payable by KWETB.

3.16 KWETB have provided the following response

- A former school building held under lease was in use solely for the Bray Vocational Training Opportunities Scheme (VTOS) up to June 2016. It was occupied by Bray VTOS and North Wicklow Educate Together school for 2016/2017, and is occupied only by North Wicklow Educate Together from 2017/2018. A former monastery building is attached to the school building. The lease taken by KWETB included a basement area which is located under the monastery. However, there was an understanding with the former owners of the monastery that the basement area would not be occupied until it was refurbished. In lieu of the basement area, a space not included in the lease (part of the monastery) was occupied by KWETB on the ground and first floor. The refurbishment was deferred.
- The current owner of the monastery issued a schedule of dilapidations and sought to implement the strict terms of the lease which were disputed by KWETB.
- Dilapidations compensation payable by KWETB is €37,500 per year for four years and a one off payment of €45,000 (total €195,000).
- Legal fees incurred were €33,325.

Conclusions

3.17 Non-compliant contract management practice contributed to additional costs of €483,000 on the Arklow College project.

3.18 The funding and installation of temporary classrooms at a school site at a cost of €210,000 appears to have been unnecessary as the classrooms were never used at this location. Instead, they were removed within a year and installed in a different location, with additional expense.

3.19 KWETB was not in compliance with procurement regulations and departmental guidelines in procuring contractors to move the temporary accommodation.

Response of the Chief Executive of KWETB

KWETB accepts that there was non-compliant management practices on the Arklow College Project. The decision to accelerate the project resulted in an extra payment of €483,000 which was agreed through a conciliation process.

It was established in June 2014 that there was an educational need for the prefabs, given the rise in pupil numbers at School A. The situation subsequently changed when the Department sanctioned School A moving to a different location (a Department owned vacant permanent building), negating the need for the prefabs at School A. However, in August 2015, a new need arose for two prefabs in School B and the Department sanctioned the transfer of the two prefabs to this new site.

Following our review of the situation, we have concluded that KWETB was not fully compliant in procuring contractors to move the temporary accommodation. We can confirm that all necessary procedures and processes with regard to procurement will be followed in similar circumstances, should they arise.

Section 4 — Propriety matters

- 4.1** Propriety matters are examined as part of audit procedures to review standards of conduct, behaviour and corporate governance. The principles of fairness and integrity, the avoidance of personal profit from public business, and the avoidance of waste and extravagance are also examined under this remit.

Rental of Unit A, Naas Business Park, Naas

- 4.2** KWETB entered into a licence agreement in June 2015 for the rental of a property at Naas Business Park ('Maudlins') for an annual rent of €40,000, payable in advance. The property was earmarked as a further education training centre.
- 4.3** In response to inquiries about the use of the premises, the audit was provided with an unsigned licence agreement which indicates that, on 29 June 2015, the ETB sublet the premises to Contractor A. The unsigned agreement provides that KWETB would let the property at a reduced rent because 'the property is not in a fit state for occupation'. The unsigned agreement specifies that Contractor A would make the entire property fit for occupation by cleaning up internally and externally, installing a new fire alarm and security alarm and upgrading all communications in the property. In consideration for carrying out the prescribed works, Contractor A could use a part of the premises "at no extra charge for a period of 3 to 6 months".
- 4.4** Questions raised in the audit query primarily related to the following areas
- how KWETB established it had a requirement for renting the building, and what was its current use
 - whether KWETB sought Departmental sanction prior to entering into a rental agreement
 - whether condition surveys were carried out before and/or after Contractor A was in possession of the premises
 - what works were undertaken by Contractor A and what payments were made to Contractor A for those works
 - what rent was paid/payable by Contractor A
 - what utility and associated costs were incurred by KWETB in relation to the building, and whether these were recouped from Contractor A.

4.5 The (then) Chief Executive and the Chief Executive have provided additional information and supporting documentation in relation to the questions raised in the audit query. However, the following concerns remain

- There is no evidence that a condition survey was carried out prior to KWETB entering into the licence agreement.
- There is no signed agreement with Contractor A in relation to the sub-letting of the premises.
- As there was no approval at Board level, Contractor A had no right to be granted access to assets of KWETB.
- Although Contractor A was apparently to carry out work on the premises in return for a rent-free period, Contractor A was paid €36,000 by KWETB in February 2016 for initial works carried out on the property. This comprised
 - €21,000 related to heating system repairs, water services installation, electrical installation and data cabling installation
 - €6,000 related to facilities upgrades
 - €9,000 related to unspecified additional works.
- Contractor A was also awarded further works contracts on this property. Three separate contracts were awarded in January 2017 for works on the property totalling €125,000.
- Inadequate documentation was provided to support the tender processes completed in relation to the appointment of Contractor A in relation to the multiple works contracts for this property.
- Contractor A did not make any payments to KWETB until the audit queried the arrangement. An invoice was raised by KWETB dated 21 July 2017 for the period August 2015 to May 2016 for rent of €6,700 and utility charges of €1,800. Previously these utilities were met by KWETB. KWETB has stated that payment in the amount of €6,000 was received on 30 August 2017 and lodged to the ETB account.
- There is no evidence that the property has been used as a further education training centre since the date the licence was signed. In May 2018, KWETB reported that the building was currently being renovated and was not in use. The renovations have not been completed due to a planning issue.

Disposal of a motor vehicle

- 4.6** KWETB has acquired a number of pool vehicles for the use of staff for business purposes, but not for personal use. The audit query focused on the business case for the purchase of the vehicles, where the vehicles are kept overnight, details of any personal use, benefit-in-kind tax liabilities and the sale of any of these pool vehicles.
- 4.7** KWETB purchased a van for €12,715 in January 2016. The van was disposed of — apparently by auction — in January 2017, for a reported price of €5,500.
- 4.8** While additional documentation and explanations were included with the responses received from the (then) Chief Executive and the Chief Executive, the following concerns remain
- An alleged oil leak was discovered in December 2016. There was no evidence that an assessment was completed by a mechanic indicating an estimate of the costs required to repair the vehicle.
 - A full year's motor tax (€333) was paid in January 2017, just before the alleged sale of the van.
 - The sale allegedly occurred in January 2017. However, no proceeds of the sale were paid to KWETB until October 2017, following a query by the audit.
 - An invoice dated June 2017 for the sale of the van was provided following a query by the audit, but this showed KWETB as the purchaser rather than the seller. Another sales invoice for the van also dated June 2017 was provided that showed an individual as the purchaser.
 - On receipt of the €5,500 in October 2017, KWETB explained that the funds had been held by the auctioneers as security against other purchases. It was stated that these purchases included a hammer, flower pots, floor mats, a generator, a grinder and racking and shelving valued at €3,700 on a separate invoice dated June 2017.
- 4.9** In addition, any potential benefit-in-kind liabilities cannot be assessed as KWETB did not maintain an accurate log of vehicle use or location.

Hotel expenditure

- 4.10** In 2015, total hotel expenditure by KWETB amounted to €61,550. Payments to a five-star hotel and golf resort accounted for over one third of this with one event costing €10,450.
- 4.11** The audit query requested additional information in relation to the business case for this event, a breakdown of the €10,450 and how the hotel was selected for this event.
- 4.12** In his response, the (then) Chief Executive stated that the event was a two-day strategic planning meeting involving a review of the year, production of new policies, up-skilling of the team and presentations by external experts. The Chief Executive refers to a subsequent response to the Department by the (then) Chief Executive that states that the event was a residential course provided to the ETB principals, deputy principals and senior administrative staff to review the outcomes of the previous year and plan for the next academic year. No supporting material was provided in relation to how the hotel was procured, and the invoice provided contained very little detail.
- 4.13** The Chief Executive provided some material in relation to pricing at three potential locations in relation to the event. However, the following concerns remain
- A list of attendees was not maintained.
 - Irrespective of the distance travelled to attend the event, the cost paid for participants included full-board accommodation.
 - There is no evidence of quotes received prior to procurement in 2015. One comparative costing provided was done in 2017, based on rates advertised on a hotel website.

Subsistence claims

- 4.14** A review of a sample of the (then) Chief Executive's travel and subsistence claims for 2015 was carried out during the audit. The audit team noted instances where it appeared that subsistence may have been incorrectly claimed by the (then) Chief Executive. For example, the minimum distance threshold for determining whether an employee has an entitlement for a payment for subsistence should be measured from the employee's 'point of deviation' i.e. his/her normal place of work or residence, whatever is the lesser. In many instances, it appears that the (then) Chief Executive based claims for subsistence on the longer distance.
- 4.15** It was noted for these instances that only subsistence claims were made. There were no other associated claims, such as mileage.
- 4.16** My Office requested that all the claims submitted by the (then) Chief Executive be reviewed by KWETB. The Chief Executive has confirmed that the review of the former Chief Executive's travel and subsistence for 2015 is now complete and monies owed are being pursued. A review of the former Chief Executive's subsistence for 2016 and 2017 has commenced and if any monies are owed to KWETB for these years, they will also be pursued. The (then) Chief Executive submits that he has complied with Revenue Commissioner guidelines on subsistence claims, although he accepts that these differ from ETB guidelines in several respects.

Conclusions

- 4.17** There was no clear business purpose in place when KWETB entered into the licencing agreement for the 'Maudlins' property. Due to the unusual rental arrangements and the lack of evidence regarding both procurement processes and details of work done in return for payment, there are concerns as to the regularity of this arrangement.
- 4.18** As KWETB did not monitor the use of vehicles it owned, it cannot be established if there was personal use of the vehicles by staff members, and whether a benefit-in-kind liability arises.
- 4.19** Documentation provided by KWETB in relation to the sale of a van is confusing and incomplete. The documentation, the use of the auction house to complete the sale and the basis for the auction house allegedly holding proceeds as security have not been adequately explained. Therefore, there are concerns as to the regularity of this transaction.
- 4.20** Expenditure by KWETB in 2015 at a five star hotel and golf resort appears excessive, with no evidence of any attempts to achieve value for money for the service procured.

Response of the Chief Executive of KWETB

We note the findings of the Comptroller and Auditor General in relation to the licensing agreement for the property referred to as 'Maudlins'. Matters relating to the arrangement at that time have been referred to An Garda Síochána. Whilst there was a demand for training in Kildare articulated in the annual service plans with SOLAS, KWETB accept the conclusion in relation to procurement matters. A lease agreement, in line with KWETB's procurement policy, is now in place for the Naas Training Centre (previously referred to as Maudlins). The redevelopment of the premises for electrical apprentice training is underway as per the KWETB strategic agreement with SOLAS for education and training provision.

Procedures for monitoring the use of pool vehicles were in place but were not followed in all cases and therefore gaps in records have been identified. Following a review of the business case for using pool vehicles in KWETB, we can confirm that the practice is now discontinued.

Following a KWETB review of the sale of the van through an auction house, we accept that information provided to the Office of the Comptroller and Auditor General is incomplete. While we are unable to locate any further documentation that would clarify the situation, we can confirm that KWETB no longer uses or will use the services of an auction house for the purchase or disposal of vehicles.

KWETB accepts the conclusion of the Comptroller and Auditor General about the expenditure at a five-star hotel and golf resort. We are currently carrying out a full review of our hospitality and travel policies to ensure value for money in line with best practice and relevant Department of Education and Skills and Department of Public Expenditure and Reform circulars.

Annex B

Investigation into Certain Matters in Kildare and Wicklow Education and Training Board

Investigation into Certain Matters in Kildare and Wicklow Education and Training Board

Report Prepared by Dr. Richard Thorn, 4th February, 2018

Technical Clarifications submitted on 1st March, 2018

FINAL Report, following right of reply, submitted on 4th July, 2018

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1. Background and Layout of Report

1.1 Comptroller and Auditor General Audit

In the course of the Audit by the Comptroller & Auditor General (the **'C&AG'** hereafter) of the Kildare and Wicklow Education and Training Board's (the **'KWETB'** hereafter) financial statements for 2015 the C&AG raised queries directly with the KWETB and then brought a number of issues to the attention of the Department of Education and Skills (the **'Department'** hereafter). The Department corresponded with KWETB and sought responses to the issues concerned.

1.2 Investigation Under Section 40 of the Education and Training Board Act, 2013¹

Having considered the issues raised by the C&AG and the subsequent correspondence between the Department and the KWETB, in exercise of his power under Section 40 of the Education and Training Board, Act 2013, the Minister for Education and Skills (the **'Minister'** hereafter) appointed Dr. Richard Thorn, President Emeritus of the Institute of Technology, Sligo to carry out an investigation (the **'Investigator'** hereafter). The investigation was to consider the performance by the Board of its functions particularly, in relation to public procurement, usage and disposal of assets and propriety and other matters, to submit a Draft report to the Board and Final report to the Minister as soon as was practicable after the Board had considered and responded to the Draft report.

1.3 Layout of Report

The Report consists of ten sections, including this Background, plus two Appendices. An Acknowledgements section is followed by a section dealing with the Conduct of the Investigation. Sections 4 to 9 deal with specific matters identified for investigation in the original Terms of Reference, plus an additional matter included during the course of the investigation (see below). In each of these sections a short Narrative is followed by a Finding(s) and, where necessary, a Recommendation(s). Section 10 is a Summary of Findings and Recommendations. Appendices One and Two reproduce section 40 of the Education and Training Board Act and the Terms of Reference respectively. Appendix Three is the response of the Board of the KWETB.

During the course of the investigation a matter was brought to the attention of the Investigator that was considered to be relevant to the investigation. The matter is included under Term of Reference 2 b) and is dealt with in conjunction with Term of Reference 1 a) ix in this Report.

¹ The full Act may be found at <http://www.irishstatutebook.ie/eli/2013/act/11/enacted/en/html>. Section 40 is included in full in Appendix One.

1.4 Sub Judice Matters

This investigator has been informed that some of the matters considered by it may be the subject of legal proceedings. This Investigator is a stranger to all such proceedings and unaware of their precise subject matter and status. However, the Investigator is cognisant of the need to avoid any act or omission that would amount to a contempt of court in relation to matters that are *sub judice*. If, and to the extent therefore that this Report is circulated beyond the Department of Education and Skills or the Kildare Wicklow Education and Training Board, then consideration should be given to the redaction of sections of this Report the publication or circulation of which might infringe the *sub judice* rule.

1.5 Background Notes

Kildare and Wicklow Education and Training Board was formed on 1st July, 2013. Prior to this the Board consisted of Kildare and Wicklow Vocational Education Committees. In 2017 the Board had a recurrent budget of c. 129 million EUR including 17 million EUR capital. The staff headcount was c. 2,500 and the Board catered for just under 30,000 post primary and further education and training beneficiaries².

During the course of the investigation it became clear to the Investigator that the establishment of the Board in 2013 and its immediate aftermath was characterised by challenging circumstances with new Board and Executive structures to be accommodated and developed, different organisational cultures to be aligned and straitened financial circumstances to be overcome. It is also recognised that this VEC is located in one of the fastest growing areas of education demand in Ireland which poses significant challenges to the Board in meeting its education mission. It is clear that while new staffing arrangements, particularly at Director level, are helping the organisation to meet its educational objectives, challenges remain.

² Figures supplied by the KWETB

1.6 Investigator Statement

During the period that the investigation was being undertaken the author of the Report, Dr. Richard Thorn, was engaged as a Subject Matter Expert by Prospectus, a consulting company, which had been engaged to undertake a Mid Term Review of the SOLAS strategic plan. The investigator disclosed this matter to officials of the Department and to all relevant persons during the course of the Mid Term Review. At no stage was there overlap of this investigation with the Investigator's work on behalf of Prospectus.

The author of the report has no other connection, current or historic, with KWETB.

2. Acknowledgements

The Investigator gratefully acknowledges the support provided by the Department of Education and Skills to the investigation. In particular, the Investigator wishes to thank Geraldine Kennedy, who provided administrative assistance to the investigation.

The Investigator wishes to thank members of the Executive of KWETB, in particular Joe Kelly and Mary Dillon, who assembled the large amount of information required for consideration, who answered queries and who provided working space within the KWETB offices in Naas. The Investigator is grateful to Mr. Michael Lanigan of Poe Kiely Hogan Lanigan Solicitors, legal advisors to the Board in respect of the investigation, for his helping to establish a constructive working relationship which enabled the efficient running of the investigation. The Investigator also wishes to acknowledge the many people in KWETB, and associated with KWETB, who assisted the investigation by providing information and/or who attended for interview.

3. Conduct of Investigation

3.1 Commencement and Submission

The Terms of Reference for this statutory investigation were announced on 4th October, 2017. The investigation commenced on 20th October, 2017. In accordance with the Education and Training Board Act, 2013, Section 40 (the ‘**Act**’ hereafter) a Draft was submitted to KWETB on 2nd January, 2018. The Board responded within the calendar month specified in the Act. The full response of the Board is included, as received, at Appendix Three. The Investigator considered the Board’s response and made a very small number of minor technical adjustments to the Report – these did not include any changes to findings or recommendations. Beyond noting the comprehensive nature of the response and, in the opinion of the Investigator, the constructive approach to dealing with the Recommendations no observations are made on the Board’s response. The report was forwarded to the Department on the 2nd February and, following a request to clarify a number of technical matters, was resubmitted on 1st March, 2018. Following the provision of a right to reply to certain individuals, the FINAL report was submitted to the department of education and Skills on 4th July, 2018.

3.2 Contacts and Meetings

The Investigator was contacted confidentially by four individuals who wished to provide information. These individuals were met and documentation provided by them was accepted and considered.

In addition to the individuals referred to in the paragraph above, thirteen individuals were met during the course of the investigation. These included the Chief Executive (the ‘**CE**’ hereafter) of KWETB during the period being considered and the Chair and Vice Chairpersons, who were also the Chair and Vice Chairpersons of the KWETB (the ‘**Chairperson**’ and ‘**Vice Chairperson**’³ hereafter) during 2015, prior to their resignation in December, 2017. The Investigator also met the current Chairperson. Two other individuals provided written submissions, upon request, to the Investigator.

3.3 Approach to Investigation

The Department provided a set of files to the investigation that included queries and responses to the C&AG and the Department. In addition, the KWETB provided a comprehensive range of documentation, as requested, during the course of the investigation. These documents formed one component of the investigation.

³ The current Chairperson and Vice Chairperson were, respectively, the Vice Chairperson and Chairperson during 2015.

A second source of information available to the investigation was information made available during the course of meetings or correspondence with persons of interest to the investigation. At an early stage in the process, the legal advisor to the Board of the ETB on matters associated with this investigation, Mr. Michael Lanigan of Poe Kiely Hogan Lanigan Solicitors, was met and a protocol was agreed for meeting with the persons of interest to the investigation. This protocol included, but was not restricted to, Mr. Lanigan being available in advance of and during the meetings to persons the investigation wished to meet. An addition to the Protocol during the period when the Board was considering its Draft responses was that all matters that members wished the Final report to consider were to be transmitted through the Chairperson for the Board as a whole to consider.

A third source of information was written and oral communication with persons of interest to the investigation who were not employees of the KWETB.

Where individuals were met, a note of each meeting was prepared. Where, subsequently, it was decided to use information from these meetings, the relevant section of the Draft was sent to the individual for verification.

In accord with the format adopted in the Terms of Reference whereby individuals, companies and schools were not named, so to in this report. Individuals have been assigned a letter (A, B, C etc) and companies and schools have been assigned a numeral (1, 2, 3 etc).

In June, 2018, following consultation with, and a request from, the Department of Education and Skills a right of reply was offered to the CE and to Company 3. The CE responded by the deadline required. Company 3, sought and received a short extension to the deadline, but by the extended deadline no submission had been received.

4. Terms of Reference 1 a) i, ii and iii

4.1 Introduction

Terms of Reference 1 a), i, ii, and iii are concerned with procurement and are, for the purposes of this Report, grouped together. The relevant Terms of Reference with the preceding statement of requirements are:

'To examine and report on the robustness of the ETB's responses to the issues raised in the C&AG Audit and the Department's subsequent correspondence and identify any lacunae, inconsistencies or insufficient clarity in the responses provided with particular reference to the following matters:

- *Compliance with Department procedures in relation to the procurement and delivery of various building projects*
- *The governance arrangements in relation to procurement matters in 2015, 2016 and to date in 2017*
- *The effectiveness of arrangements put in place, in the years 2015, 2016 and to date in 2017, by the delegation of functions or otherwise to ensure a conflict of interest did not occur with particular regard to procurement, asset disposal or leasing that concerned companies referred to in the C&AG Audit'*

4.2 1 a) i - Narrative

'Compliance with Department procedures in relation to the procurement and delivery of various building projects'

A range of EU Directives, national requirements, Department requirements - as expressed through guidelines - codes of practice and established practices cover procurement and the interaction between employer/client, Employer Representative on building projects and building contractors, as considered in this report. In all cases where the Investigator has made a finding in respect of a procurement action or an action in respect of a building project he has referenced the/a particular document that covers the matter.

The matters covered by this Term of Reference comprehend minor building works, as *per* Term of Reference 1 a) iv a contract for heating and plumbing services, as *per* Term of Reference 1 a) viii, an acceleration of a school building project as *per* Term of Reference 1 a) ix, the employment of a consultant on a school building project as *per* term of reference 1 a) x, and a school building project as *per* Term of Reference 2, b).

The Investigation has considered each of these matters in sections following in this report and findings are summarised here. Recommendations specific to the findings at 4.3 are dealt with in the relevant sections in the report.

4.3 1 a) i – Findings

- **Term of Reference 1 a) iv – There are several inconsistencies surrounding the procurement of the minor building works that are beyond the powers of the investigator to reconcile and this matter has been referred to the Garda Economic Crime Bureau.**
- **Term of Reference 1 a) viii – A contract for heating and plumbing services for a summer works scheme did not breach Department procurement requirements but the process was suboptimal. In respect of a tender for a drawdown contract, the tender evaluation process appears flawed.**
- **Term of Reference 1 a) ix – The acceleration ('in effect' - as found by a Conciliator) of a school building project was not in accord with Department contract management guidelines.**
- **Term of Reference 1 a) x – The procurement of a mediator by the CE for a school building project did not accord with procurement guidelines. The mediator's appointment did not appear to meet the contract requirements for dispute resolution.**
- **Term of Reference 2 b) – The intervention by the CE in the final account agreement process was not in accord with Department contract management guidelines.**

4.4 1 a) ii - Narrative

'The governance arrangements in relation to procurement matters in 2015, 2016 and to date in 2017'

The governance arrangements for procurement are addressed by having a suite of policies in place that cover the ethical and technical aspects of procurement that in turn deal with conflict of interest and procedural matters. Further, these policies and procedures are embedded through training, ensuring that disclosures of interest and any conflicts of interest are established and having the necessary structures (e.g. an Audit and Risk Committee) in place to support the work of the Board.

The Board of KWETB approved a procurement policy at its meeting on January 5th, 2015. The policy, developed internally and based on relevant national and EU requirements, remains in force to the present.

On 16th March, 2015 the Board received a briefing from the CE on the Code of Practice for the Governance of Education and Training Boards and this was adopted on 12th May, 2015.

Undated Codes of Conduct for Board members and staff, that cover conflicts of interest, disclosures of interest and requirements to abide by procurement requirements, are in existence. It has been confirmed to the Investigator that these were considered as part of the Code of Practice briefing referred to in the previous paragraph.

Finance and Audit Committees were established at the Board meeting of 12th May, 2015. The Audit Committee is an important part of the Governance framework for an organisation. This Investigator has been informed that, in practice, the structure of the Audit Committee is not fit for purpose. Three reasons are advanced. First, it has no control over the matters it wishes to have audited – these being determined by the Department of Education and Skills Internal Audit Unit (IAU) – even though it may have identified matters germane to the functioning of the ETB and have submitted these issues in writing to the IAU for the ETB's for inclusion in their annual audit plan. Second, the meetings are restricted to four per year - a number not sufficient to undertake the business required of the Committee. Third, membership and attendance requirements mean that meetings have been inquorate and/or problematic to organise thus furthering the difficulty of the Committee meeting its obligations to the Board.

It is this Investigator's understanding that the challenges faced by Audit Committee may not be unique to this ETB.

The requirements of the Standards in Public Office legislation have been met through the submission of disclosure of interest forms. However, the Board has no procedures to manage real or perceived conflicts of interest other than through the Codes of Conduct.

4.5 1 a) ii – Finding

- **Effective governance of procurement requires that a range of policies, procedures and structures be in place to give effect to a robust and transparent system of procurement. In general, the main components of a robust and transparent procurement framework are in place in the KWETB. While there are gaps, which are addressed in the recommendations in section 4.6, they, of themselves, do not explain the failures, noted elsewhere in this report, to meet the procurement requirements approved by the KWETB.**

4.6 1 a) ii – Recommendations

- **The Board of KWETB, utilising the services of an external agency, should develop a checklist of policies and procedures covering procurement, and**

any related matters, to include their version control, promulgation and sign off by Board members and members of the Executive.

- The Board of KWETB, utilising the services of an external agency, should develop and approve a policy and procedures for managing real or perceived conflicts of interest at Board or Executive level.
- The Board of KWETB, utilising the services of an external agency, should review the arrangements for the functioning of the Audit Committee to ensure its effectiveness and make adjustments as required.
- The Board of KWETB should take an active, rather than passive, role in ensuring that there is effective oversight of governance arrangements within the KWETB.

4.7 1 a) iii - Narrative

'The effectiveness of arrangements put in place, in the years 2015, 2016 and to date in 2017, by the delegation of functions or otherwise to ensure a conflict of interest did not occur with particular regard to procurement, asset disposal or leasing that concerned companies referred to in the C&AG Audit'

In respect of the CE's role in procurement, Section 16 of the Education and Training Board Act of 2013 provides for a Chief Executive to delegate functions. Such a facility provides a mechanism for the CE to distance themselves from matters, particularly those dealing with procurement, that might constitute a conflict of interest. The CE has noted in correspondence with the Department of Education and Skills (4th September, 2017) that the use of a digital signature on procurement documentation was a legacy issue and should not have happened after the delegation of authority in the ETB's new corporate structure. The Investigator draws the inference (confirmed by the CE) that procurement matters were to be the responsibility of a Chief Operating Officer (COO) in the new corporate structure. Documents detailing these new operating structures, with one noting them to come into effect from the 1st July, 2013, were made available to the Investigator. The documents provide for the COO to take over responsibility for a wide range of functions hitherto the responsibility of the CE. The Minutes of the Board meeting of 10th November, 2015 note the CE briefing the Board on changes to the staff structure and the assignation of staff duties. It should be noted that there is no specific reference to the COO taking over responsibility for procurement in either the document referred to above or from the minutes of the Board meeting. The Chair and Vice Chairpersons do not recall the CE at this meeting specifically delegating responsibility for procurement. The then COO has confirmed that at no stage was he assigned responsibility for procurement matters.

The Report has noted (section 4.5) that, in general, the main components of a robust and transparent procurement framework are in place in the KWETB. The Investigator does not believe that the absence of a policy and procedure for the management of conflict of interest can explain the failures in respect of governance of procurement described in the following sections; the procurement guidelines, the code of practice for governance of education and training boards and the codes of conduct, if adhered to, provide a satisfactory ethical and technical framework for the governance of procurement.

4.8 1 a) iii – Finding

- **If adhered to, the procurement governance arrangements in place in 2015, 2016 and 2017 were sufficient to ensure conflicts of interest did not arise in procurement matters. There is disagreement on whether or not the procurement function was delegated.**

4.9 1 a) iii – Recommendations

- **Any functions delegated under Section 16 of the Act should be clearly and unambiguously laid out in a document prepared by the CE and tabled at the Board.**
- **The Board of KWETB should take an active, rather than passive, role in ensuring that there is effective oversight of governance arrangements within the KWETB.**

5. Terms of Reference 1 a) iv and v

5.1 Introduction

Terms of Reference 1 a) iv and v are concerned with a rental property and are grouped together for the purposes of this report. The relevant Terms of Reference with the preceding statement of requirements are:

'To examine and report on the robustness of the ETB's responses to the issues raised in the C&AG Audit and the Department's subsequent correspondence and identify any lacunae, inconsistencies or insufficient clarity in the responses provided with particular reference to the following matters:

- *The access to and usage of an ETB rented property by a company referred to in the C&AG Audit, the origin of this arrangement, the agreements reached, the conditions attached including rent level, payments in respect of works carried out, the timeliness of invoicing for rent and utilities due and receipt of same*
- *The business case for the ETB's intended use of the rented property and any impact of its unavailability for this intended use'*

5.2 1 a) iv - Narrative

'The access to and usage of an ETB rented property by a company referred to in the C&AG Audit, the origin of this arrangement, the agreements reached, the conditions attached including rent level, payments in respect of works carried out, the timeliness of invoicing for rent and utilities due and receipt of same'

The background and business decision making process to the selection of a property for training is dealt with in 5.5 below. This section is concerned with the rental and remediation arrangements of the property by Company 1⁴. It should be noted that Company 1 was connected through a family member to the CE of KWETB.

The CE, in an undated 'Aide Memoir' on the KWETB files on acquiring a property in Naas for training, notes that the search for a suitable premises revealed rental rates – established by phone – for two properties of 80k and 50k. The property at 50k was selected and rent subsequently negotiated down to 40k. A licence for the use of the property was signed on 29th June, 2015.

⁴ It should be noted that Company 1 is a business name owned by Company 2. Company 2 was named in many of the emails relating to the property.

The property had been used as a dog food factory and required some remedial works prior to occupation and conversion to a training facility.

In the same aide memoir noted previously the CE notes that he requested Company 1 to carry out a range of works to make the property safe including electrical works, air conditioning and cleaning. In response to a query on the use of the property by Company 1 from the Department on 4th September, 2017 the CE states that 'Company 2' were carrying out works for the ETB elsewhere at the time and were asked to make the property safe and that in lieu of the costs of the works they would use two offices. It should be noted that there is no suggestion in the CE's communication with the Department, nor in any of the contemporaneous documentation, that a tender process was used to select Company 1. Subsequently, Company 1 occupied a portion of the building in return for a rent waiver against the work undertaken. A senior staff member from the ETB has confirmed to the Investigator that it was always understood that the cost of the remedial works would be offset against the rent. The rent waiver agreement was subsequently withdrawn for tax reasons and Company 1 was required to pay the rent separately. An invoice for 8,519.12 EUR (rent - 6666.70, telephone charges - 882.00 and electricity charges - 970.42) was issued on 21st July, 2017 for a ten-month occupation from August 2015 to May 2016. On 30th August, 2017 a sum of 6,000 EUR was paid in partial payment of the invoice. It is understood that Company 1 is no longer trading.

Regarding the cost of works carried out, three invoices totalling 32,025 EUR were supplied to the investigator. These are dated 19/1/2016 (19,100 EUR), 3/2/2016 (7,800 EUR) and 4/2/2016 (5,125 EUR).

Between June and November 2017, the ETB was given the opportunity to provide documentation associated with the rent and refurbishment of the property (first by the C&AG, on two occasions by the Department and on two occasions by the Investigator). During the course of interview, the CE was also offered the opportunity to provide information on tendering of the remedial works – none was forthcoming. The protocol for the conduct of the Investigation provided for individuals to receive section(s) of the narrative that drew from their evidence to the Investigator. In this regard the CE received an extract noting that no documentary evidence had been provided of tendering the remedial works. On 19th December, shortly before the deadline for a response, the Investigator received an email with an attached Tender Report for the tendering of the remedial works. The Tender report had been prepared by Company 3 (see below) and was dated 15th December, 2015. A separate email from Company 3 to the KWETB with some back up documentation was also sent on the 19th December.

5.3 1 a) iv - Finding

- **The Investigator finds several inconsistencies in the narrative noted above:-**
 - 1. The CE has stated in correspondence and in an aide memoir that Company 1 was requested to make the property safe in return for a rent waiver. There is no contemporaneous documentary or oral confirmation from other than the CE, other than the Tender Report and documentation produced on the 19th December, 2017 that tendering took place.**
 - 2. In Section 4.7 the CE asserts that there was delegation of the procurement function from mid-2013. That being the case, it is not clear why other staff within the ETB were not aware of a tendering process in respect of this project at that time. It should also be noted that the COO maintains that procurement was not delegated to him.**
 - 3. The Tender Report is dated 15th December, 2015. The first invoice is dated 8th January, 2016. Given the intervening Christmas period this appears to be a very short period of time to allow response to the successful tenderer, for that contractor to mobilise on site and for the work to be undertaken.**
 - 4. The fact that an invoice for rent and utilities to cover a period of occupation prior to the date of the tender report was issued in July 2017 supports the CE's original assertion that Company 1 was requested to undertake remedial works in return for a rent waiver and was thus already in occupation of the building prior to the date of the tender report.**
 - 5. With the exception of the tender report and documentation received shortly before the deadline for response, there is no evidence that a tender process took place. The Investigator cannot make a finding as to the authenticity of the tender process disclosed at a very late stage in the investigation.**
 - 6. The CE, in an email, states that the work for the 19,100 EUR invoice noted above was tendered but the additional work was not.**

5.4 1 a) iv – Recommendation/Action

- **In the absence of the establishment of the authenticity of the tender report and documentation, the Investigator cannot make a finding as to whether an acceptable procurement process for the remedial works took place. Determination of the authenticity of the tender report and documentation reconciliation of the inconsistencies requires investigative powers beyond the scope of this Investigation and the matter has been forwarded to the Garda National Economic Crime Bureau**

5.5 1 a) v – Narrative

'The business case for the ETB's intended use of the rented property and any impact of its unavailability for this intended use'

In early 2014 KWETB submitted a service plan to SOLAS that identified a lack of capital resources necessary to discharge its training function. In late 2014 the ETB established a project timeline for the implementation of the service plan for 2015. At this point training had not been formally transferred to KWETB from SOLAS but it was anticipated that this would happen in 2015. During 2015 a search for suitable properties was initiated. A property at Naas Business Park was identified as being potentially suitable. A licence for the use of the property was signed on 29th June 2015.

The property, which had been used for the manufacture of dogfood, required preparatory work prior to conversion to a training facility. Between late 2015 and September 2016 the property was occupied by Company 1 (see above). During this period Company 1 undertook remedial works on the property.

At the meeting of the Board in August 2016 the CE presented a list of properties he proposed to lease, including that at Naas Business Park, the minutes of the meeting do not record formal approval for any of the leases proposed by the CE. The Code of Practice for the Governance of Education and Training Boards notes that 'the acquisition, development and disposal of land, including buildings, or any interest in land, including buildings' requires approval by the Board. It has been confirmed to the Investigator by the person taking the minutes that the leases were in fact approved but not recorded in a sufficiently clear fashion.

In September 2016 a warehouse training course commenced in the property. In October 2016 SOLAS recommended to the Department that a lease be entered into for the property and that the rent proposed was reasonable provided that the building required no major repairs. In January 2017 SOLAS visited the property to see if the building was suitable for the training of electricians. The report of the visit - issued in February 2017 - noted it was suitable.

5.6 1 a) v – Findings

- **There was a demand for training in the KWETB. This demand was articulated in a service plan submitted to SOLAS. The ETB made the necessary planning arrangements to ensure that training could commence in a timely manner. The occupation of the property designated for training provision by Company 1 between late 2015 and 2016 did not hinder the use of the property for any planned training activity.**

5.7 1 a) v – Recommendation

- **Notwithstanding the urgency of a requirement to establish education and training provision in any location, the Executive and Board members of the Kildare and Wicklow Education and Training Board should ensure that the requirements of the Code of Practice for the Governance of Education and Training Boards in respect of Board approval for ‘the acquisition, development and disposal of land, including buildings, or any interest in land, including buildings’ are adhered to.**

6. Terms of Reference 1 a) vi and vii

6.1 Introduction

Terms of Reference 1 a) vi and vii are concerned with motor vehicles and are grouped together for the purposes of this report. The relevant Terms of Reference with the preceding statement of requirements are:

‘To examine and report on the robustness of the ETB’s responses to the issues raised in the C&AG Audit and the Department’s subsequent correspondence and identify any lacunae, inconsistencies or insufficient clarity in the responses provided with particular reference to the following matters:

- *The operation and use of pool vehicles and business case for same*
- *The sale of a motor vehicle and the timelines in relation to the decision to dispose of the vehicle, the assessment of its value, the date of sale, the supporting documentation in relation to the sale and the timeliness of receipt of the proceeds of same by the ETB’*

6.2 1 a) vi - Narrative

‘The operation and use of pool vehicles and business case for same’.

KWETB owns and operates a number of vehicles. The insurance schedule for the period under investigation shows ten vehicles (excluding lawnmowers) insured by Irish Public Bodies. Many of these vehicles are linked to Outdoor Education Centres and are used for the transport of attendees at these centres to and from activity sites. The CE has confirmed to the Investigator that as part of the cost management process a decision was taken to purchase vehicles for staff use so as to reduce travel expenses. In interview, the CE asserted that a business case for the purchase of vehicles had been previously prepared. During the course of the Investigation a document titled ‘Travel Costs/Expenditure for KWETB’ was provided. The document, which was undated, provides an analysis of the likely savings from using car pool vehicles for the transport of KWETB staff instead of own vehicles. The Investigator understands that this document may have been prepared prior to the merger between Kildare and Wicklow VECs.

The use of ‘car pool’ vehicles is covered by Revenue advice⁵; ‘A car-pool is where the car is available and used by more than one employee. The car must not be kept overnight at or near the home of any of your employees.’ A normal procedure to ensure that no benefit in kind accrues to a staff member through the use of a car pool vehicle for private use, is to maintain a vehicle log. Vehicle key

⁵ <https://www.revenue.ie/en/employing-people/benefit-in-kind-for-employers/private-use-of-company-cars/categories-of-car-use.aspx>

logs covering the period from 2014 to the present were provided to the investigation. The logs record vehicle details and the date and time each is logged out and logged in to its base.

6.3 1 a) vi – Finding

- **A business case for the use of car pool vehicles was provided to the Investigation. A vehicle log covering the period 2014 to the present is in existence.**

6.4 1 a) vii – Recommendation

- **The business case for maintaining a collection of car pool vehicles should be reviewed to ensure currency and the procedure for recording vehicle use examined to ensure that it meets standards required to ensure no BIK obligations accrue.**

6.5 1 a) vii - Narrative

'The sale of a motor vehicle and the timelines in relation to the decision to dispose of the vehicle, the assessment of its value, the date of sale, the supporting documentation in relation to the sale and the timeliness of receipt of the proceeds of same by the ETB'.

On 4th January, 2016 a van was purchased by KWETB. The insurance schedule for the period shows the van valued at 12,715 EUR. On 14th December, 2016 the CE received a letter from a KWETB staff member, who had been using the vehicle, reporting numerous faults and advising replacement rather than repair. The CE decided to sell the van. During January 2017 the KWETB received two valuations for 5,500 and 5,250 EUR respectively. It has been suggested to the Investigator that the cost of repair would have run to c. 4,000 EUR which would give a depreciation of approximately 4,000 EUR between the time of purchase and the sale. While the sale price matches the market value for the van, the purchase price a year earlier appears excessive given the subsequent condition of the van.

The CE's response to the report notes that the insurance valuation showing 12,715 EUR should have been adjusted downwards by the ETB thus reducing the apparent over valuation of the vehicle.

On 29th January, 2017 a member of staff received a request from the CE to release the vehicle license certificate to another member of staff. A letter dated 25th August, 2017 notes that a representative of an auction room confirmed a sale date of 19th January, 2017. The sales invoice for the van, for 5,500 EUR, is dated 19th June, 2017. The Investigator was informed that the discrepancy arose from the

fact that a) the sale proceeds were being held by the auction house to be set against other items that had been purchased by the KWETB⁶ and b) the finance system in operation in the auction house could not backdate the sale date.

6.6 1 a) vii – Finding

- **The documentation provided by KWETB shows a logical sequence of events leading to the sale of the van. The delay in receipt of sale proceeds is explained, but the offset of proceeds against the purchase of other items at auction cannot be regarded as good financial management. The difference between the purchase price, as reflected in the insurance valuation, and the sale price does not represent a good value transaction.**

6.7 1 a) vii – Recommendation

- **The practice of offsetting sales proceeds against items purchased, as here, and as initially proposed at section 5 above, is not a good practice and should cease. Future purchases of motor vehicles should be from reputable dealers willing to provide guarantees.**

⁶ The material provided to the Investigator contains a list of items purchased at auction by the ETB from the auction house on 3rd June, 2017. The value of the items listed is 3,682.83 EUR.

7. Term of Reference 1 a) viii

7.1 Introduction

The relevant Term of Reference with the preceding statement of requirements is:

'To examine and report on the robustness of the ETB's responses to the issues raised in the C&AG Audit and the Department's subsequent correspondence and identify any lacunae, inconsistencies or insufficient clarity in the responses provided with particular reference to the following matter[s]:

- *The tender assessment process in relation to a drawdown contract awarded to a company referred to in the C&AG Audit'*

7.2 1 a) viii – Narrative

'The tender assessment process in relation to a drawdown contract awarded to a company referred to in the C&AG Audit'

Correspondence between the C and AG and the KWETB referenced a number of heating and boiler and plant maintenance contracts. The Investigator considered that two contracts dealing with a Summer Works Scheme and a Boiler and Plant Maintenance Contract should be considered under this heading.

The first contract considered was a contract for a summer works scheme. On 19th March, 2014, the Department approved an application by KWETB for boiler replacement works at School 1 as part of the Summer Works Scheme; the amount approved was 318,000 EUR to include VAT and fees. The works were to include a new gas fired heating plant and radiators and pipework throughout the school. Following approval, the KWETB invited applications for a Building Services Consulting Engineer in early April. A tender from Company 3 was accepted on 12th May, 2014.

On 16th June, 2014 a contract notice for the works was posted to the eTenders website with a response deadline of 24th June, 2014 – 5.5 working days. Only one company responded – Company 1, noted previously in this Report – whose tender was within the amount approved by the Department. A contract with Company 1 was signed on 18th July, 2014.

The Department's technical guidance on small building projects, in operation at the time, notes that for projects of this value a minimum period of 15 days should be allowed for prospective tenderers to respond. An exception may be made in emergency cases.⁷ The schedule for the works, in respect of the 'Time for

⁷ Department of Education and Skills (2014) Technical Guidance Document TGD-007. Design Team Procedures for Small Works

Completion', notes a time requirement of '60 days starting from 14th July 2014. All works to be completed by the 22nd August 2014'. There are contradictions in this statement; 60 days would bring project completion to mid-September; the contract was signed on 18th July and not 14th July. A representative of Company 3 has confirmed that the inclusion within the 'Time for Completion' requirement of '60 days' was a mistake and that the critical date was the completion date – to allow for reopening of the school. Given that the works involved the replacement of piping and radiators in classrooms then completion by the last week in August was required. Thus, a shortened time for response to the tender request may have been justified but was suboptimal given the Department guidelines on tender processes. It is a fact that there was a tender response time of 5.5 days and the sole and successful tenderer was a company related to the CE through a family member.

The second contract was a drawdown contract for boiler and plant maintenance of KWETB schools, colleges and various education centres. The tender for this contract was issued in June 2015 and covered the 2015 to 2017 period. Company 3 assessed the eleven tenders that were submitted by the appointed date and time. Company 1 was deemed to have won the tender.

The Investigator has examined the material on file for this tender⁸. This material included the original tender submissions from the companies. Company 1 was awarded the highest marks possible in each category, except price. These categories included company structure, CVs for contract manager and service technician, marks for similar projects, transport fleet, technical equipment and after sales service. The Investigator, is not qualified to comment on technical matters such as similar projects, technical equipment and after sales service. However, other aspects of the material on file appear to indicate that full marks should not have been given in respect of CVs, as these were not present in the tender submission examined by the Investigator. Further, a pre-qualifying requirement for the tender was that the company should have three years of average annual manpower and management staff in the company including service technicians; according to the Companies Registration Office Company 1 was only established in 2014 and thus, on the basis of the documentation on file, could not have met the section criteria.

⁸ The consideration of this tender was restricted to a desk based review. Concerns arising from lacunae and inconsistencies in respect of Company 1 and Company 3 (see Term of Reference 1 a) iv) had been brought to the attention of An Garda Síochána in an earlier stage of the investigation. Accordingly, and because the same two companies were involved in this contract, the investigator restricted his analysis to a desk based review of available documents.

Recognising that the consideration of the tender was desk based and that further information may be available, the Investigator is of the opinion that the tender evaluation process appears flawed and that Company 1 could have been excluded from the process and, once allowed in, should not have received maximum marks in at least some of the categories.

7.3 1, a), viii – Finding

- **In respect of the summer works scheme contract, a shortened tender response of 5.5 days was suboptimal. The Investigator recognises the urgency of the works programme to allow for school opening. Only one company responded to the tender, Company 1, with which the CE had a family connection.**
- **In respect of the drawdown contract, the Investigator is of the opinion that the tender evaluation process appears flawed and that Company 1 could have been excluded from the process initially and, once allowed in, could not have received maximum marks in at least some of the categories.**

7.4 1, a), viii – Recommendations

- **In respect of the summer works scheme contract, reduced tender times bring the risk of diminished competition and thus increased costs. While a shortened tender response time is provided for in the Department guidelines, this should only be used *in extremis*, be fully justified, and auditable, and documented at the time of the decision to reduce the tender response time. Further, every effort should be made, within procurement guidelines, to maximise the opportunity for tenderers to make submissions so as to ensure competition is maximised.**
- **Should the restriction on the drawdown contract element of the investigation be lifted, the Investigator recommends that Company 3 be requested to provide any and all documentation relating to this tender process to determine if CVs and financial information, not present in the files of the ETB, were present for the evaluation.**

8. Terms of Reference 1 a) ix and Matter Under Term of Reference 2 b)

8.1 Introduction

In respect of Term of Reference 1 a) ix, the preceding statement of requirements is:

'To examine and report on the robustness of the ETB's responses to the issues raised in the C&AG Audit and the Department's subsequent correspondence and identify any lacunae, inconsistencies or insufficient clarity in the responses provided with particular reference to the following matter[s]:

- *The sequence of events and the nature of the particular problems which gave rise to claims for additional payments on a building project referred to in the C&AG audit'*

8.2 1 a) ix – Narrative

'The sequence of events and the nature of the particular problems which gave rise to claims for additional payments on a building project referred to in the C&AG audit'

On 1st July 2014 KWETB accepted a tender from Company 4 for the construction of a new school (School 2). A contract programme dated 12th May, 2014 was for a completion date of 23rd September, 2015. On 13th April, 2015 Company 4 proposed a new completion date of 31st August, 2015 but this was not requested by the Employer's Representative.

A letter dated June 2015, signed by the CE and addressed to the Employer's Representative (Person A) requesting activation of a plan with the contractor to ensure that partial completion was achieved to enable occupation of the building by the start of the school year, was made available to the Investigator. It should be noted that in correspondence with the Investigator, the Employer's Representative states that this letter was not received by him until December 2015. The reason for the difference between the date of the letter and the receipt by the Employer's Representative has not been established.

On 30th November, 2015 Company 4 submitted an acceleration claim. As part of the claim the Company asserts that a representative of the Company 'was met by the employer on site in May 2015 and was instructed to do what was necessary to ensure that the new school was opened safely for September 2015'. The CE did visit the site on several occasions between May and September, 2015 to check on progress, but not for formal site meetings.

Agreement on the costs of the project was made the subject of conciliation on 15th April 2016. The final agreed figure was 909,988 EUR of which 483,000 EUR was for costs arising from a requirement for early completion - 'in effect' an acceleration – according to the Conciliator's report. The Conciliator in his determination notes that 'In June 2015 the Employer⁹ issued a letter to [Company 4] confirming that the School Building must be complete and ready for occupation by 1st September 2015'. It is not clear whether the letter the Conciliator is referring to is the same letter as that dated June 2015 and addressed by the CE to the Employer's Representative. The CE denies writing directly to Company 4 in June 2015. Person A, likewise, did not issue a written instruction nor is there evidence to this Investigator of the question of acceleration arising at site meetings during this period. It seems likely, if Company 4's assertions about an on-site meeting are correct, that visits by the CE and discussion on site to check on progress resulted in an interpretation by the contractor as a request for completion for the opening of the School at the beginning of the School year and ultimately as an interpretation – by the Conciliator as - 'in effect' – an instruction for acceleration.

8.3 1 a), ix – Finding

- **A Conciliation hearing found that 'in effect' an acceleration request was issued. Person A denies issuing such an instruction as the Employer's Representative. The CE denies writing directly to Company 4. It is likely that the CE, at some form of on-site gathering in June 2015, requested that the school be ready for opening in September, 2015 and that this request was interpreted as a request for acceleration.**
- **The apparent direct involvement of the Employer, as represented here by the CE, particularly when the Employer's Representative appears to have been attempting to hold the contractor to the terms of the contract was ill-conceived and likely to lead to confusion and increased difficulty in agreeing final accounts.**

8.4 1 a), ix – Recommendation

- **The role of the Employer's Representative, as established in construction practice in various guidelines, should be respected in all building projects for which the KWETB is the employer.**

8.5 2, b) – Narrative

The matter concerns the provision of a new school building for School 3 for which agreement on the final account is disputed.

⁹ This is understood to mean KWETB

At a meeting on the 27th September, 2016, the final account for the project was discussed. The CE asserts that it was necessary to hold the meeting because there had been a significant lapse in time post-completion of the contract. Following the meeting at which a member of the design team, but not the Employer's Representative (who was not invited – as confirmed by the ER to the Investigator) -, the CE of KWETB and representatives for the contractors, were present, the member of the design team present submitted a recommendation to the Employer's Representative for payment. The Employer's Representative wrote back disagreeing with the recommendation and noting their concerns. On 29th May, 2017 the CE wrote to the Employer's Representative requiring the issuance of a Penultimate Payment Certificate and, given the near-ending of the Defects Period, advising the full release of Retention. The Employer's Representative is refusing to release the certificate asserting that monies will not be paid for works not completed.

The Department's guidelines¹⁰ note that the Employer's Representative is responsible for issuing certificates for payment. The Guidelines do not provide for the Employer, in the absence of the Employer's Representative, agreeing a final account.

It will be noted that the intervention by the CE in the building project noted above (Term of Reference 2 b)) involved the same main building contractor as that in the project noted in Term of Reference 1 a), x in the following section.

8.6 2, b) – Finding

- **The CE attended a meeting at which the Employer's Representative was not present, and had not been invited, agreed a final account figure and, issued instructions to the Employer's Representative to issue the relevant certificates. Such actions subordinate the role of the Employer's Representative and run counter to the Department's guidelines. The direct involvement of the Employer, as represented here by the CE, was ill-conceived and has the potential to lead to confusion and increased difficulty in agreeing final accounts.**

8.7 2, b) – Recommendation

- **The role of the Employer's Representative, as established in construction practice in various guidelines, should be respected in all building projects for which the KWETB is the employer.**

¹⁰ https://www.education.ie/en/School-Design/Procedures-and-Cost-Plans/pbu_DTP-2012_Construction_Stage4.doc

9. Terms of Reference 1 a), x

9.1 Introduction

The relevant Term of Reference with the preceding statement of requirements is:

'To examine and report on the robustness of the ETB's responses to the issues raised in the C&AG Audit and the Department's subsequent correspondence and identify any lacunae, inconsistencies or insufficient clarity in the responses provided with particular reference to the following matter[s]:

- *'To examine and report on the purpose for and the procurement and award of a contract to an independent expert for a school building project'*

9.2 1 a), x – Narrative

'To examine and report on the purpose for and the procurement and award of a contract to an independent expert for a school building project'

KWETB is the contracting authority for the building of School 1. In 2016 a dispute arose between the main contractor and some members of the design team. The Investigator is aware that this contract is the subject of ongoing disputes and that the project has proved problematic.

The CE asserts that, in an attempt to solve the problems on the contract, he procured, on an emergency basis, the services of Company 5 as represented by a specific individual; Person B. A letter of engagement issued by Company 5 was signed on 15th August, 2016 by the CE of KWETB and Person B on behalf of Company 5. The purpose of this contract was, according to the letter of engagement, to act as mediator/expert in the dispute. The CE signed on behalf of KWETB and Person B on behalf of Company 5. The total amount paid to Company 5 in respect of this contract was 9,787.75 EUR.

On 23rd January, 2017, in response to a request from the main contractor, KWETB instructed Company 5 to expand the scope of the work to include the assessment of Quantum. A contract to that effect was signed on the 23rd January 2017 by the CE of KWETB. The total amount paid by KWETB to Company 5 in respect of the expanded scope of work was 14,138.85 EUR.

The Procurement Guidelines for KWETB provide for urgent situations - under the heading 'Single or Sole Source' suppliers. Where it is intended to use the provision, the guidelines require that documentation on the approval process be held on file for audit purposes. No such documentation has been provided to the Investigator.

A matter of concern to the investigation is the issuing of a follow-up contract to expand the services provided by Company 5. The Procurement Guidelines, drawn from EU and Irish requirements, specifically prohibit entering into open-ended agreements that roll over. The Investigator is of the opinion that the signing of a second contract represents a roll-over. It has been confirmed to the Investigator, by members of the KWETB executive, that the ETB has requested that the process be terminated. However, Company 5 has informed the ETB that this can only be done if both parties agree; currently Company 5 are still making determinations on behalf of the main contractor. KWETB are currently seeking legal advice on extracting the Board from the contract.

During the course of the investigation it came to the attention of the Investigator that the determinations made by the representative of Company 5 have been the subject of dispute including allegations of bias in the determinations. The Employer's Representative wrote to the KWETB on 26th July, 2017 expressing concern over the status of Company 5 in the context of the contract governing the project and the independence of the representative of Company. The Investigator is not qualified to consider the technical aspects of the disputed determinations. However, it is a matter of concern that the appointment of a mediator directly by the CE of KWETB, in a manner that appears to this Investigator to be outside the agreed contract requirements for dispute resolution¹¹, undermines the authority of the Employer's Representative to act in the best interests of the Employer. It is not possible to determine what the long-term effect of this intervention will be because the project is not yet complete but it would appear likely that disputed determinations, particularly where those determinations have been made through an unagreed process, may lead to enhanced claims.

It will be noted that the intervention by the CE in the building project noted above involved the same main building contractor as that in the project noted in Term of Reference 2 b) in the previous section.

The CE, in the course of the response to the report, argues that they were obliged to intervene in the contract described here in section 9 and in the contracts described in section 8 because of concerns about the completion of the contracts. These concerns arose, because the CE claims, from difficulties in the contract process and dispute between the Employer's Representative and contractors. The Investigator understands how such concerns might arise but does not accept that interventions in the manner described are anything other than ill-conceived and thus are likely to lead to additional claims.

¹¹ <http://constructionprocurement.gov.ie/wp-content/uploads/PW-CF1-v2.2-09-01-17.pdf>

9.3 1 a), x – Findings

- The CE entered into a contract with Company 5 on the basis of urgency – no approval process documentation is available. The CE subsequently entered into an extension of the contract thus, *defacto*, entering into an open-ended arrangement. Both of these contracts breached the KWETB's own procurement guidelines and, in the case of the roll-over, the EU and Irish requirements. The arrangement with Company 5 appears to this Investigator to be outside the agreed contract process for dispute resolution. The determinations of the expert are contested.
- The engagement by the CE of a mediator, apparently outside the agreed contract process for dispute resolution, was ill-conceived and was likely to lead to confusion and increased difficulty in agreeing final accounts.

9.4 1 a), x – Recommendations

- The Procurement Policy of the KWETB is based on national and EU requirements and should be adhered to in all cases without exception.
- The role of the Employer's Representative, as established in construction practice and through various guidelines, should be respected in all building projects for which the KWETB is the employer.

10. Summary of Findings and Recommendations

‘Compliance with Department procedures in relation to the procurement and delivery of various building projects’

Findings

- **Term of Reference 1 a) iv – There are several inconsistencies surrounding the procurement of the minor building works that are beyond the powers of the investigator to reconcile and this matter has been referred to the Garda Economic Crime Bureau.**
- **Term of Reference 1 a) viii – A contract for heating and plumbing services for a summer works scheme did not breach Department procurement requirements but the process was suboptimal. In respect of a tender for a drawdown contract, the tender evaluation process appears flawed.**
- **Term of Reference 1 a) ix – The acceleration (‘in effect’ - as found by a Conciliator) of a school building project was not in accord with Department contract management guidelines.**
- **Term of Reference 1 a) x – The procurement of a mediator by the CE for a school building project did not accord with procurement guidelines. The mediator’s appointment did not appear to meet the contract requirements for dispute resolution.**
- **Term of Reference 2 b) – The intervention by the CE in the final account agreement process was not in accord with Department contract management guidelines.**

‘The governance arrangements in relation to procurement matters in 2015, 2016 and to date in 2017’

Finding

- **Effective governance of procurement requires that a range of policies, procedures and structures be in place to give effect to a robust and transparent system of procurement. In general, the main components of a robust and transparent procurement framework are in place in the KWETB. While there are gaps, which are addressed in the recommendations in section 4.6, they, of themselves, do not explain the failures, noted elsewhere in this report, to meet the procurement requirements approved by the KWETB.**

Recommendations

- **The Board of KWETB, utilising the services of an external agency, should develop a checklist of policies and procedures covering procurement, and any related matters, to**

include their version control, promulgation and sign off by Board members and members of the Executive.

- The Board of KWETB, utilising the services of an external agency, should develop and approve a policy and procedures for managing real or perceived conflicts of interest at Board or Executive level.
- The Board of KWETB, utilising the services of an external agency, should review the arrangements for the functioning of the Audit Committee to ensure its effectiveness and make adjustments as required.
- The Board of KWETB should take an active, rather than passive, role in ensuring that there is effective oversight of governance arrangements within the KWETB.

'The effectiveness of arrangements put in place, in the years 2015, 2016 and to date in 2017, by the delegation of functions or otherwise to ensure a conflict of interest did not occur with particular regard to procurement, asset disposal or leasing that concerned companies referred to in the C&AG Audit'

Finding

- If adhered to, the procurement governance arrangements in place in 2015, 2016 and 2017 were sufficient to ensure conflicts of interest did not arise in procurement matters. There is disagreement on whether or not the procurement function was delegated.

Recommendation

- Any functions delegated under Section 16 of the Act should be clearly and unambiguously laid out in a document prepared by the CE and tabled at the Board.
- The Board of KWETB should take an active, rather than passive, role in ensuring that there is effective oversight of governance arrangements within the KWETB.

'The access to and usage of an ETB rented property by a company referred to in the C&AG Audit, the origin of this arrangement, the agreements reached, the conditions attached including rent level, payments in respect of works carried out, the timeliness of invoicing for rent and utilities due and receipt of same'

Finding

- The Investigator finds several inconsistencies in the narrative noted above:-
 1. The CE has stated in correspondence and in an aide memoir that Company 1 was requested to make the property safe in return for a rent waiver. There is no contemporaneous documentary or oral confirmation from other than the CE, other than the Tender Report and documentation produced on the 19th December, 2017 that tendering took place.

2. In Section 4.7 the CE asserts that there was delegation of the procurement function from mid-2013. That being the case, it is not clear why other staff within the ETB were not aware of a tendering process in respect of this project at that time. It should also be noted that the COO maintains that procurement was not delegated to him.
3. The Tender Report is dated 15th December, 2015. The first invoice is dated 8th January, 2016. Given the intervening Christmas period this appears to be a very short period of time to allow response to the successful tenderer, for that contractor to mobilise on site and for the work to be undertaken.
4. The fact that an invoice for rent and utilities to cover a period of occupation prior to the date of the tender report was issued in July 2017 supports the CE's original assertion that Company 1 was requested to undertake remedial works in return for a rent waiver and was thus already in occupation of the building prior to the date of the tender report.
5. With the exception of the tender report and documentation received shortly before the deadline for response, there is no evidence that a tender process took place. The Investigator cannot make a finding as to the authenticity of the tender process disclosed at a very late stage in the investigation.
6. The CE, in an email, states that the work for the 19,100 EUR invoice noted above was tendered but the additional work was not.

Recommendation/Action

- In the absence of the establishment of the authenticity of the tender report and documentation, the Investigator cannot make a finding as to whether an acceptable procurement process for the remedial works took place. Determination of the authenticity of the tender report and documentation reconciliation of the inconsistencies requires investigative powers beyond the scope of this Investigation and the matter has been forwarded to the Garda National Economic Crime Bureau.

'The business case for the ETB's intended use of the rented property and any impact of its unavailability for this intended use'

Findings

- There was a demand for training in the KWETB. This demand was articulated in a service plan submitted to SOLAS. The ETB made the necessary planning arrangements to ensure that training could commence in a timely manner. The occupation of the property designated for training provision by Company 1 between late 2015 and 2016 did not hinder the use of the property for any planned training activity.

Recommendation

- Notwithstanding the urgency of a requirement to establish education and training provision in any location, the Executive and Board members of the Kildare and

Wicklow Education and Training Board should ensure that the requirements of the Code of Practice for the Governance of Education and Training Boards in respect of Board approval for 'the acquisition, development and disposal of land, including buildings, or any interest in land, including buildings' are adhered to.

'The operation and use of pool vehicles and business case for same'.

Finding

- A business case for the use of car pool vehicles was provided to the Investigation. A vehicle log covering the period 2014 to the present is in existence.

Recommendation

- The business case for maintaining a collection of car pool vehicles should be reviewed to ensure currency and the procedure for recording vehicle use examined to ensure that it meets standards required to ensure no BIK obligations accrue.

'The sale of a motor vehicle and the timelines in relation to the decision to dispose of the vehicle, the assessment of its value, the date of sale, the supporting documentation in relation to the sale and the timeliness of receipt of the proceeds of same by the ETB'.

Finding

- The documentation provided by KWETB shows a logical sequence of events leading to the sale of the van. The delay in receipt of sale proceeds is explained, but the offset of proceeds against the purchase of other items at auction cannot be regarded as good financial management. The difference between the purchase price, as reflected in the insurance valuation, and the sale price does not represent a good value transaction.

Recommendation

- The practice of offsetting sales proceeds against items purchased, as here, and as initially proposed at section 5 above, is not a good practice and should cease. Future purchases of motor vehicles should be from reputable dealers willing to provide guarantees.

'The tender assessment process in relation to a drawdown contract awarded to a company referred to in the C&AG Audit'

Finding

- In respect of a summer works scheme contract, a shortened tender response of 5.5 days was suboptimal. The Investigator recognises the urgency of the works programme to allow for school opening. Only one company responded to the tender, Company 1, with which the CE had a family connection.
- In respect of the drawdown contract, the Investigator is of the opinion that the tender evaluation appears flawed and that Company 1 could have been excluded from the

process initially and, once allowed in, could not have received maximum marks in at least some of the categories.

Recommendations

- In respect of the summer works scheme contract, reduced tender times bring the risk of diminished competition and thus increased costs. While a shortened tender response time is provided for in the Department guidelines, this should only be used *in extremis*, be fully justified, and auditable, and documented at the time of the decision to reduce the tender response time. Further, every effort should be made, within procurement guidelines, to maximise the opportunity for tenderers to make submissions so as to ensure competition is maximised.
- Should the restriction on the drawdown contract element of the investigation be lifted, the Investigator recommends that Company 3 be requested to provide any and all documentation relating to this tender process to determine if CVs and financial information, not present in the files of the ETB, were present for the evaluation.

‘The sequence of events and the nature of the particular problems which gave rise to claims for additional payments on a building project referred to in the C&AG audit’

Finding

- A Conciliation hearing found that ‘in effect’ an acceleration request was issued. Person A denies issuing such an instruction as the Employer’s Representative. The CE denies writing directly to Company 4. It is likely that the CE, at some form of on-site gathering in June 2015, requested that the school be ready for opening in September, 2015 and that this request was interpreted as a request for acceleration.
- The apparent direct involvement of the Employer, as represented here by the CE, particularly when the Employer’s Representative appears to have been attempting to hold the contractor to the terms of the contract was ill-conceived and likely to lead to confusion and increased difficulty in agreeing final accounts.

Recommendation

- The role of the Employer’s Representative, as established in construction practice in various guidelines, should be respected in all building projects for which the KWETB is the employer.

The matter concerns the provision of a new school building for School 3 for which agreement on the final account is disputed.

Finding

- The CE attended a meeting at which the Employer’s Representative was not present, and had not been invited, agreed a final account figure and, issued instructions to the Employer’s Representative to issue the relevant certificates. Such actions subordinate the role of the Employer’s Representative and run counter to the Department’s guidelines. The direct involvement of the Employer, as represented

here by the CE, was ill-conceived and has the potential to lead to confusion and increased difficulty in agreeing final accounts.

Recommendation

- The role of the Employer's Representative, as established in construction practice in various guidelines, should be respected in all building projects for which the KWETB is the employer.

'To examine and report on the purpose for and the procurement and award of a contract to an independent expert for a school building project'

Findings

- The CE entered into a contract with Company 5 on the basis of urgency – no approval process documentation is available. The CE subsequently entered into an extension of the contract thus, *defacto*, entering into an open-ended arrangement. Both of these contracts breached the KWETB's own procurement guidelines and, in the case of the roll-over, the EU and Irish requirements. The arrangement with Company 5 appears to this Investigator to be outside the agreed contract process for dispute resolution. The determinations of the expert are contested.
- The engagement by the CE of a mediator, apparently outside the agreed contract process for dispute resolution, was ill-conceived and was likely to lead to confusion and increased difficulty in agreeing final accounts.

Recommendations

- The Procurement Policy of the KWETB is based on national and EU requirements and should be adhered to in all cases without exception.
- The role of the Employer's Representative, as established in construction practice and through various guidelines, should be respected in all building projects for which the KWETB is the employer.

Appendix One

Section 40 of the Education and Training Board Act, 2013

Report on operation of education and training board.

40.— (1) Where the Minister is of the opinion that any of the functions of an education and training board are not being effectively discharged, the Minister may, having considered any representations made to him or her under subsection (3), appoint a person (in this section referred to as an “investigator”) to carry out an investigation into the performance by the board of its functions either generally or with reference to any particular function during such period as the Minister may determine.

(2) The Minister shall, by notice in writing, inform the education and training board concerned where he or she proposes to appoint an investigator under subsection (1).

(3) A notice under subsection (2) shall state that the education and training board may make representations to the Minister in relation to the proposed appointment not later than 14 days after the service of the notice on the board.

(4) An investigator shall be entitled at all reasonable times to enter any premises occupied by the education and training board concerned and shall be afforded every facility and cooperation by the board, chief executive and members of staff of the board, including access to all records, to perform his or her functions.

(5) An investigator shall on completion of his or her investigation prepare a draft report on the investigation.

(6) An investigator shall provide a copy of the draft report prepared under subsection (5) to the education and training board concerned and that board may, within one month from the provision of the report to it, make representations in writing to that investigator about that report.

(7) After consideration of any representations made to the investigator under subsection (6), that investigator may make any amendments to the draft report that he or she thinks appropriate.

(8) The investigator shall submit his or her final report to the Minister as soon as practicable after the report is completed.

(9) A chief executive and an education and training board shall supply such information regarding the performance of the board’s functions as—

- (a) the Minister may from time to time require, and
- (b) an investigator requires for the performance of his or her functions under this section.

Appendix Two

Terms of Reference

In the course of the Audit by the Comptroller & Auditor General of the Kildare & Wicklow ETB's financial statements for 2015 (which is ongoing) the C&AG brought a number of issues to the attention of the Department of Education and Skills. The Department corresponded with Kildare & Wicklow ETB and sought responses to the issues concerned.

Having considered the issues raised by the C&AG and the subsequent correspondence between the Department and the ETB, in exercise of his power under Section 40 of the ETB Act 2013 the Minister for Education and Skills has appointed an investigator to carry out an investigation into the performance by the board of its functions particularly in relation to public procurement, usage and disposal of assets and propriety matters and to submit a final report to the Minister as soon as practicable after the report is completed.

The terms of reference for this investigation are:

1. a) To examine and report on the robustness of the ETB's responses to the issues raised in the C&AG Audit and the Department's subsequent correspondence and identify any lacunae, inconsistencies or insufficient clarity in the responses provided with particular reference to the following matters:
 - i. Compliance with Department procedures in relation to the procurement and delivery of various building projects
 - ii. The governance arrangements in relation to procurement matters in 2015, 2016 and to date in 2017
 - iii. The effectiveness of arrangements put in place, in the years 2015, 2016 and to date in 2017, by the delegation of functions or otherwise to ensure a conflict of interest did not occur with particular regard to procurement, asset disposal or leasing that concerned companies referred to in the C&AG Audit
 - iv. The access to and usage of an ETB rented property by a company referred to in the C&AG Audit, the origin of this arrangement, the agreements reached, the conditions attached including rent level, payments in respect of works carried out, the timeliness of invoicing for rent and utilities due and receipt of same
 - v. The business case for the ETB's intended use of the rented property and any impact of its unavailability for this intended use
 - vi. The operation and use of pool vehicles and business case for same
 - vii. The sale of a motor vehicle and the timelines in relation to the decision to dispose of the vehicle, the assessment of its value, the date of sale, the supporting documentation in relation to the sale and the timeliness of receipt of the proceeds of same by the ETB
 - viii. The tender assessment process in relation to a drawdown contract awarded to a company referred to in the C&AG Audit
 - ix. The sequence of events and the nature of the particular problems which gave rise to claims for additional payments on a building project referred to in the C&AG audit
 - x. To examine and report on the purpose for and the procurement and award of a contract to an independent expert for a school building project.

- b) Where lacunae, inconsistencies or insufficient clarity are identified, to establish the factual position in relation to the matters in question in so far as it is reasonably practicable to do so.
 - c) In the light of the above, to report and make recommendations as appropriate, in relation to the ETB's compliance with the relevant requirements regarding governance, procurement, ethics and Department policies and procedures.
- 2. The investigation may include:
 - a) any other matter which was raised in the C&AG Audit or the Department's subsequent correspondence which, in the light of the ETB's response, the Investigator considers is a cause of concern or a matter of public interest, and
 - b) any other matter which, during the course of his/her investigation, comes to the attention of the Investigator and which the Investigator considers is a cause of concern or a matter of public interest. If the Investigator considers that it is not feasible or appropriate to deal with such matters within this investigation, s/he may bring such matters to the attention of the Minister.
- 3. The investigation may encompass examination of documents and matters which relate to periods before or after the year 2015, if deemed relevant by the Investigator.
- 4. The investigator shall be entitled at all reasonable times to enter any premises occupied by Kildare & Wicklow ETB and shall be afforded every facility and cooperation by the board, chief executive and members of staff of the board, including access to all records, to perform his or her functions.
- 5. Where appropriate, the Investigator will interview or consult with any relevant member of staff of the Board, member of the Board, or any other person, in relation to the matters identified. The Investigator may revert to any party if further clarification or information is required.
- 6. The investigator will have access to any persons with relevant specialist expertise, as required.
- 7. To ensure that it is effective, the investigation will proceed on the basis that confidentiality will be maintained during the investigation process.
- 8. Following his/her investigation, the Investigator will prepare a draft report and a final report in accordance with the provisions of Section 40 of the Act.
- 9. It is envisaged that the investigation will be completed in Quarter 1 2018.
- 10. The terms of reference may be subject to such addition or amendment as the Minister considers appropriate in the context of this investigation.

Appendix Three

KWETB Response to Section 40 Investigation Draft Report

Background

On the 4th of October 2017 the Minister for Education and Skills in exercise of powers under Section 40 of the ETB Act 2013, appointed Mr Richard Thorn to carry out an investigation into the performance by KWETB of its functions particularly in relation to public procurement, usage and disposal of assets and propriety matters. The Board committed to engaging fully with the Ministerial Investigator from the outset.

Over the subsequent weeks, KWETB through its Executive, provided the Investigator with all material requested and the Board met with the Investigator who provided insight as to how he proposed to conduct the Investigation. The Board notes the Investigator has acknowledged the cooperation received by him from KWETB.

During the course of the Investigation, the Chairperson and Vice Chairperson announced their resignations on the 30th of November 2017. The CE at the time of the appointment of the Investigator has retired as of the 31st of December of 2017.

On the 21st of December 2017, the Board appointed Noel Merrick as Chairperson and John McDonagh as Vice Chairperson and KWETB has a new acting CE Rory O'Toole.

On the 2nd of January 2018, members were sent copies of the Confidential Draft Report prepared by Richard Thorn.

The Board has held meetings to consider the said Report on the 9th, 22nd and 30th of January 2018.

Legislative Scheme

The Legislative provision governing this matter is contained in S.40 of the Education and Training Boards Act 2013 which provides -

40.— (1) Where the Minister is of the opinion that any of the functions of an education and training board are not being effectively discharged, the Minister may, having considered any representations made to him or her under subsection (3), appoint a person (in this section referred to as an “investigator”) to carry out an investigation into the performance by the board of its functions either generally or with reference to any particular function during such period as the Minister may determine.

(2) The Minister shall, by notice in writing, inform the education and training board concerned where he or she proposes to appoint an investigator under subsection (1).

(3) A notice under subsection (2) shall state that the education and training board may make representations to the Minister in relation to the proposed appointment not later than 14 days after the service of the notice on the board.

(4) An investigator shall be entitled at all reasonable times to enter any premises occupied by the education and training board concerned and shall be afforded every facility and cooperation by the board, chief executive and members of staff of the board, including access to all records, to perform his or her functions.

(5) An investigator shall on completion of his or her investigation prepare a draft report on the investigation.

(6) An investigator shall provide a copy of the draft report prepared under subsection (5) to the education and training board concerned and that board may, within one month from the provision of the report to it, make representations in writing to that investigator about that report.

(7) After consideration of any representations made to the investigator under subsection (6), that investigator may make any amendments to the draft report that he or she thinks appropriate.

(8) The investigator shall submit his or her final report to the Minister as soon as practicable after the report is completed.

(9) A chief executive and an education and training board shall supply such information regarding the performance of the board's functions as—

(a) The Minister may from time to time require, and

(b) An investigator requires for the performance of his or her functions under this section.

As provided for in S40 (6) the Board has resolved to make representations to the Investigator and this document is to be regarded as same.

The Investigator's Findings and Recommendations

The Board hereby formally records it has noted each of the Investigator's Findings and Recommendations.

The Board's Response

The Board has commenced a positive response to the Investigation. It is committed to providing effective governance and to be guided by –

1. Strong commitment to integrity and ethical values.
2. Comprehensive stakeholder engagement.
3. Determining the interventions necessary to optimise the achievement of intended outcomes.
4. Developing the capacity of KWETB, including the capability of its leadership and the individuals within it.
5. Managing risks and performance through robust internal control.
6. Implementing good practices in transparency and reporting to deliver effective accountability.

The Board in that regard sought the response of the Acting CE of KWETB on the S.40 draft Report and same is annexed to this document at Appendix 1 and should be read as part of the Board's formal response. The Board has sought and obtained detail in relation to the timeline for Actions thereunder and the Director or Officer responsible for oversight of delivery.

In addition the Board has resolved to implement the following actions to address matters raised in the draft Report.

1. The Board to review all approvals to date regarding the acquisition, development and disposal of land, including buildings, or any interest in land, including buildings. This to comprise of a formal Register of same.
2. The Board shall direct the Executive to include all Licences in the Register mentioned at 1 above. For the purposes of clarity all licences being entered into by KWETB are to be placed before the Board for approval from this time forward.
3. The Board has resolved that "Conflict of Interest" will be item 2 on the agenda of all Board meetings.
4. The Board shall review the Codes of Conduct for members and staff forthwith.
5. The Board shall conduct a review of all procurement procedures within KWETB to ensure the transparency of same.
6. The Board is committed to full cooperation by it and all staff with any investigations which may be conducted by the Garda National Economic Crime Bureau.
7. The Board believes that an Ethics Registrar should be appointed by KWETB to oversee compliance with duties to oversee adherence to the Codes of Conducts which were issued to all members and employees, completion of Annual Declarations of Interests, and compliance with the law relating to ethics and standards in public office. The Board notes that the Act of 2013 does not put this role on a statutory footing in contrast with the legislative intervention by the Local Government Act of 2001 with regard to Local Authorities. The Board believes the Minister should give consideration to amending the Act to provide for this.
8. The management and reduction of risk is a governance matter of considerable importance to the Board. The Board, in the course of dealing with the matters herein became aware that issues pertaining to procurement within Kildare VEC were an issue in 2012 for the Comptroller and Auditor General. On its establishment under the 2013 Act, the Board of KWETB were not informed of this and believe that Board members and new Board members should have been briefed on same and should in the future be briefed on same if they are to be expected to discharge their duties of good governance. This should be addressed at Department level to provide a coherent national response. In the meantime the Board has agreed that "Risk" be an agenda item at each Board meeting.
9. The Board notes that the Investigator has recommended that certain matters be referred to the Garda National Economic Crime Bureau and the Board has been advised by a member that a Garda investigation has commenced with regard to matters pertaining to construction works at School 1. The Board would ask that the Department would disclose to the Board members all investigations that it is aware of into matters within the Board's jurisdiction.
10. The Board at paragraph 7 above has directed attention to what it sees as a lacuna in the legislation regarding Ethics. The Board is concerned that the 2013 Act should be reviewed in full as to whether amending legislation or Ministerial regulation would provide clarity in many areas. One fundamental absence in the Act is a lack of definition as to the meaning of "Board" throughout same. The Investigator and Department are directed to the fact that in the 2015 Code of Practice for Governance of Education and Training Boards it was felt necessary at page 5 to include a footnote stating "The term "Board" as used throughout this document refers to the entity comprising the elected and appointed members of the ETB". It is respectfully submitted that a matter of such importance for the interpretation of much that is in the Act should be contained within the Act and not merely be clarified in a footnote to a document issued two years after the legislation.

The Board believes that such legislative review should examine the quora requirements for the Board and its committees and resourcing in general.

11. The Board has received a response from the Chairman and Members of the Audit Committee of KWETB to page 11 para 4, and pages 11/12 section 4.5 of the Findings and Recommendations contained in the Report. Same is attached as Appendix 2 to this Response and was adopted by the Board as part of its response.

The Board wishes that it be noted that the Audit Committee was asked by the Internal Audit Unit to identify risk issues in 2016. By letter of the 10/02/16 the Committee made a submission requesting it to review the Risk Register, Contracts of Services and largescale Procurement especially in non-core areas such as land and building purchases and building works. The response from the IAU of the 7/3/16 was to reject these as areas of audit. The areas it decided to proceed with were none of those addressed by the Audit Committee. The areas requested have a striking similarity to those which are the subject of this S.40 Investigation. The Board believes that it is legitimate for the Department to examine that sequence of events and to in examine in particular the IAU response to requests by the Audit Committee for resources to examine these matters.

Again the Board believes that it is a flaw in the legislative scheme that the Executive are not given a fixed period of time within which to respond to the Audit Committee after that Committee had conducted an Internal Controls Review.

The Board believes that the criticism that the Audit Committee is “not fit for purpose” is not directed at the Audit Committee of KWETB solely but to the “Audit Committees” as provided for in the 2013 Act and the Board opines that the structure and functional parameters of same are flawed and require review.

12. The Board notes that the 2016 Accounts have not been brought before it for approval. The Board is committed to subjecting them to scrutiny with regards to issues raised in this Report.
13. The Board is committed to pursuing and scrutinising all matters of concern raised by the Comptroller and Auditor General and not referred to in this Report.
14. The Board is of the view that it is in the interests of all stakeholders in KWETB that this Report and Response be made public by the Minister as soon as possible.

Dated 1st day of February 2018

Noel Merrick

Chairperson of Kildare and Wicklow ETB

Appendix One

Acting Chief Executive's Response to the Chairperson of KWETB on the Section 40 Investigation Draft Report

Introduction

On behalf of the KWETB Executive, I am pleased to provide the following response on the Investigation Draft Report recently provided to the Board by Dr. Richard Thorn. This submission is intended to inform the Board's formal response to the Draft Report, due on 2 February 2018. As the draft report is confidential to the Board, this response is prepared in collaboration with the KWETB Directorate only.

The Draft Report outlines a number of findings and provides recommendations arising from those findings. This submission identifies key actions carried out to date by KWETB which will contribute to addressing the recommendations outlined in the report. The narrative and findings were also considered in the preparation of this response. In addition to actions completed to date, the submission identifies future and in-progress actions which will be required to ensure that KWETB conducts all activities to the highest standard. The actions and responses identified in this submission are focused on addressing shortcomings identified in the Draft Report and they are embedded in a framework of KWETB governance and improvement strategies.

While the findings of this Draft Report are clearly a matter of regret for our organisation, the recommendations align clearly with organisational, leadership, and change management processes that our senior management team are actively promoting and directing. The Draft Report identifies deficiencies in key practices, particularly around procurement and construction project management. I am satisfied to report at the outset that improvements in these areas will be achieved and it is heartening to read that the Investigator was of the view that the main components of a robust and transparent framework are in place in the KWETB.

This is a critical time for our organisation. The recent introduction of the leadership directorate for the ETB sector has provided the stimulus for a review of leadership approaches, organisational effectiveness, strategic direction, and corporate governance. On completion of the Phase 2 reconfiguration of the ETB sector, I hope that our organisation will be able to avail of improved structures and staffing levels. This workforce review of the ETB sector is in recognition of the dramatic changes in the scope of provision now under the remit of ETB's, including the very significant area of training.

An important element of the success of this action plan and indeed the wider improvement programme that is envisaged for KWETB is the effective relationship between the executive and non-executive branches of our organisation. In setting out this action plan, it is intended that non-executive members of our organisation will have a clear understanding of the roadmap to improvement that is currently in train and to invite observations on this approach. As part of the development of our Organisational Strategy, we will include a consultation phase with Members of the Board, Staff, Learners and Stakeholders in order to ensure that the organisation is effective and progressive.

I would also like to thank and acknowledge the commitment of staff to deliver on the improvements outlined in this response.

Summary

The Acting CE and Directorate have reviewed the draft report from Dr. Richard Thorn and current practices within KWETB and are responding to each of the recommendations in the form of an action plan with key deliverables, timelines, and outcomes to demonstrate our response to the findings. The Draft Report was made available to the Acting Chief Executive on 10 January 2018.

Details of key actions completed or planned are included in this submission. While some actions are identified as 'Complete', this should be interpreted as the completion of a key stage within a broader strategic response rather than the full achievement of a longer-term objective. Indicative time-frames for the completion of key actions are included. However, it is anticipated that these time-frames will be revised as the final recommendations of the report emerge and the wider Senior Management Team of KWETB engage with these proposals.

The general indicators of progress for each action are estimates and are described as follows:

| | |
|------------|--|
| 0% | (Action Not Yet Commenced) |
| 0% to 30% | (Action Commenced) Action at Early Stage of Commencement |
| 30% to 60% | (Action in Progress) Action Substantially Commenced |
| 60% to 90% | (Action in Progress) Action Entering Completion Stages |
| 100% | (Action Complete) |

The key actions identified include:

- KWETB has secured the services of an external expert agency (Irish Public Bodies) to advise on best practice and procedures in respect of Corporate Governance and to respond to any recommendations arising from reports on the performance of KWETB.
- KWETB is in negotiation with the Institute of Public Administration (IPA) to explore the suitability of the Institute to contribute to the organisational development programme in train.
- A review of existing procurement policies and procedures has been conducted.
- Workshops with Finance and Procurement teams were established to identify issues, clarify expectations and identify actions to enhance existing practices.
- A procurement plan for OGP Frameworks for 2018-2020 was prepared.
- Formal training in Public Procurement Systems and Practices for the Procurement Team was undertaken, including team members attending Certificate in Public Procurement Programme
- Actions to promote best procurement behaviour through leadership role modelling, encouraging appropriate behaviour and identifying behaviour that may not be aligned with expectations and policy are in train.
- A memorandum of clarification has been issued to all staff with a role in procurement to emphasise that practices on sales proceeds referred to in the report are inconsistent with the KWETB Procurement Policy.
- KWETB is currently reviewing the operation of a carpool with a view to the review or termination of this practice.
- Actions to identify staff training needs with respect to procurement to develop the competencies of the KWETB Procurement Team are in train.
- A plan to heighten awareness of procurement practices and policies across KWETB among Board Members, Senior Managers, Principals, FET Coordinators, OSD Managers and staff in general is in development. This will entail carrying out a procurement training needs analysis.

- The objective to review and optimise Asset Management Systems across KWETB is emphasised.
- An audit of current building projects is complete to confirm that no instructions to accelerate construction projects are in effect.
- KWETB confirms that the role of the Employer's Representative, as established in construction practice in various guidelines and relevant contracts is, and will continue to be, adhered to in all building projects for which the KWETB is the employer.
- KWETB confirms that it will adhere to DES technical guidelines and provisions included in relevant construction contracts.
- KWETB confirms that the Procurement Policy of the KWETB is based on national and EU requirements.
- The support of an external expert agency will be sought to assist KWETB in ensuring that the Procurement Policy will be adhered to through the development of a system of internal controls.

Terms of Reference 1 a) To examine and report on the robustness of the ETB's responses to the issues raised in the C&AG Audit and the Department's subsequent correspondence and identify any lacunae, inconsistencies or insufficient clarity in the responses provided with particular reference to the following matters:

1.1 Terms of Reference 1 a) i. Compliance with Department procedures in relation to the procurement and delivery of various building projects

1.2 Terms of Reference 1 a) ii. The governance arrangements in relation to procurement matters in 2015, 2016 and to date in 2017

Findings

Effective governance of procurement requires that a range of policies, procedures and structures be in place to give effect to a robust and transparent system of procurement. In general, the main components of a robust and transparent framework are in place in the KWETB. While there are gaps, which are addressed in the recommendations in section 4.6, they, of themselves, do not explain the failures, noted elsewhere in this report, to meet the procurement requirements approved by the KWETB.

Recommendations

- The Board of KWETB, utilising the services of an external agency, should develop a checklist of policies and procedures covering procurement, and any related matters, to include their version control, promulgation and sign-off by Board members and members of the Executive.
- The Board of KWETB, utilising the services of an external agency, should develop and approve a policy and procedures for managing real or perceived conflicts of interest at Board or Executive level.
- The Board of KWETB, utilising the services of an external agency, should review the arrangements for the functioning of the Audit Committee to ensure its effectiveness and adjust as required.

Response

| Actions Completed | Due Date | Progress | Owner |
|---|------------|--------------------------|--------------|
| KWETB has secured the services of an external expert agency (Irish Public Bodies) to advise on best practice and procedures with respect of Corporate Governance and to respond to any recommendations arising from reports on the performance of KWETB | 22/12/2017 | 100% (Action Complete) | Director OSD |
| Actions in Progress | Due Date | Progress | |
| KWETB is engaged with an external expert agency (Irish Public Administration) to determine their suitability to compliment the work of IPB with respect to enhancement in Corporate Governance | 30/01/2018 | 50% (Action in Progress) | Director OSD |
| Actions Not Yet Commenced | Due Date | Progress | |
| Active engagement with external expert agency or agencies to develop | 30/03/2018 | 10% (Action Commenced) | Director OSD |

| | | | |
|--|--|--|--|
| a strategy for a comprehensive review of Corporate Governance structures at KWETB and to address any gaps identified | | | |
|--|--|--|--|

1.3 Terms of Reference 1 a) iii. The effectiveness of arrangements put in place, in the years 2015, 2016 and to date in 2017, by the delegation of functions or otherwise to ensure a conflict of interest did not occur with particular regard to procurement, asset disposal or leasing that concerned companies referred to in the C&AG Audit

Findings

If adhered to, the procurement governance arrangements in place in 2015, 2016, and 2017 were sufficient to ensure conflicts of interest did not arise in procurement matters. There is disagreement on whether or not the procurement function was delegated.

Recommendations

Any functions delegated under Section 16 of the Act should be clearly and unambiguously laid out in a document prepared by the CE and tabled at the Board.

Response

| Actions Completed | Due Date | Progress | |
|--|------------|--------------------------|--------------|
| Internal review of existing procurement policies and procedures | 29/09/2017 | 100% (Action Complete) | Director OSD |
| Workshop with Finance and Procurement team to identify issues, clarify expectations and identify actions to enhance existing practices | 29/09/2017 | 100% (Action Complete) | Director OSD |
| Create a KWETB procurement plan compliant with OGP Frameworks for 2018-2020 | 29/12/2017 | 100% (Action Complete) | Director OSD |
| Formal training in Public Procurement Systems and Practices for the Procurement Team including team members attending Certificate in Public Procurement Programme | 29/12/2017 | 100% (Action Complete) | Director OSD |
| KWETB representation on national ETBI procurement networking forum for best practice | 29/09/2017 | 100% (Action Complete) | Director OSD |
| Actions in Progress | Due Date | Progress | |
| Promote best procurement behaviour through leadership role modelling, encouraging appropriate behaviour and identifying behaviour that may not be aligned with expectations and policy | 28/12/2018 | 100% (Action Complete) | Director OSD |
| Carry out a comprehensive procurement training needs analysis to identify staff training needs with respect to procurement to develop the competencies of the KWETB Procurement Team | 28/12/2018 | 75% (Action in Progress) | Director OSD |

| | | | |
|--|-----------------|---------------------------|--------------|
| Implement plan to heighten awareness of procurement practices and policies across KWETB among Board Members, Senior Managers, Principals, FET Coordinators, OSD Managers and staff in general | 28/09/2018 | 10% (Action Commenced) | Director OSD |
| Review KWETB staffing levels and roles and responsibilities as part of ongoing Workforce Planning | 29/06/2018 | 10% (Action in Commenced) | Director OSD |
| Introduce best-practice document management and policy approval practices and conventions including revision dates, by whom, promulgation, changes, distribution etc. | 29/06/2018 | 75% (Action in Progress) | Director OSD |
| Actions Not Yet Commenced | Due Date | Progress | |
| Develop an organisational chart and related policies clearly identifying areas of delegated responsibility with respect to procurement and other key decision-making functions, with these arrangements to be brought to the Board | 30/03/2018 | 10% (Action Commenced) | Director OSD |
| With the support of an external expert agency, review protocols to ensure conflicts of interest do not influence procurement matters. | 30/03/2018 | 20% (Action Commenced) | Director OSD |

1.4 Terms of Reference 1 a) iv. The access to and usage of an ETB rented property by a company referred to in the C&AG Audit, the origin of this arrangement, the agreements reached, the conditions attached including rent level, payments in respect of works carried out, the timeliness of invoicing for rent and utilities due and receipt of same

Findings

There are several inconsistencies surrounding the procurement of the minor works that are beyond the powers of the investigator to reconcile and this matter has been referred to the Garda Economic Crime Bureau.

With the exception of the tender report, but no backup documentation, there is no evidence that a tender process took place. Further, with the exception of the tender report, the evidence suggests the absence of a tender process.

Recommendations

No recommendations identified

Response

| | | | |
|---|-----------------|------------------------|--------------|
| Actions Completed | Due Date | Progress | Owner |
| KWETB has secured the services of an external expert agency (Irish Public Bodies) to advise on best practice and procedures with respect of Corporate Governance and to respond to any recommendations arising from reports on the performance of KWETB | 22/12/2017 | 100% (Action Complete) | Director OSD |

1.5 Terms of Reference 1 a) v. The business case for the ETB's intended use of the rented property and any impact of its unavailability for this intended use

Findings

There was a demand for training in the KWETB. This demand was articulated in a service plan submitted to SOLAS. The ETB made the necessary planning arrangements to ensure that training could commence in a timely manner. The occupation of the property designated for training provision by Company 1 between late 2015 and 2016 did not hinder the use of the property for any planned activity.

Recommendations

Notwithstanding the urgency of a requirement to establish education and training in any location, the Executive and Board members of the Kildare and Wicklow Education and Training Board should ensure that the requirements of the Code of Practice for the Governance of Education and Training Boards in respect of Board approval for 'the acquisition, development and disposal of land, including buildings, or any interest in land, including buildings' are adhered to.

Response

| Actions in Progress | Due Date | Progress | Owner |
|--|------------|--------------------------|--------------|
| KWETB will ensure that the requirements of the Code of Practice for the Governance of ETB's in respect of the Board approval for 'the acquisition, development and disposal of land or any interests in land including buildings' are adhered to and recorded appropriately in Board minutes | 30/03/2018 | 50% (Action in Progress) | Director OSD |

1.6 Terms of Reference 1 a) vi. The operation and use of pool vehicles and business case for same

Findings

The business case for the use of carpool vehicles was provided to the investigation. A vehicle log covering the period 2014 to the present is in existence.

Recommendations

The business case for maintaining a collection of carpool vehicles should be reviewed to ensure currency and the procedure for recording vehicle use examined to ensure that it meets the standards required to ensure no BIK obligations accrue.

Response

| Actions in Progress | Due Date | Progress | Owner |
|---|------------|--------------------------|--------------|
| KWETB is currently reviewing the operation of a carpool with a view to the review or termination of this practice | 30/03/2018 | 50% (Action in Progress) | Director OSD |

1.7 Terms of Reference 1 a) vii. The sale of a motor vehicle and the timelines in relation to the decision to dispose of the vehicle, the assessment of its value, the

date of sale, the supporting documentation in relation to the sale and the timeliness of receipt of the proceeds of same by the ETB

Findings

The documentation provided by KWETB shows a logical sequence of events leading to the sale of the van. The delay in receipt of sale proceeds is explained, but the offset of proceeds against the purchase of other items at auction cannot be regarded as good financial management. The difference between the purchase price, as reflected in the insurance valuation, and the sale price does not represent a good value transaction.

Recommendations

The practice of offsetting sales proceeds against items purchased, as here, and as initially proposed at Section 5 [above], is not a good practice and should cease. Future purchases of motor vehicles should be from reputable dealers willing to provide guarantees.

Response

| Actions Completed | Due Date | Progress | Owner |
|--|------------|------------------------|--------------|
| A memorandum of clarification has been issued to all staff with a role in procurement to emphasise that the practices on sales proceeds referred to in the recommendation are inconsistent with the KWETB Procurement Policy | 16/01/2018 | 100% (Action Complete) | Director OSD |

1.8 Terms of Reference 1 a) viii. The tender assessment process in relation to a drawdown contract awarded to a company referred to in the C&AG Audit

Findings

A contract for heating and plumbing services did not breach Department procurement requirements but the process was suboptimal

A shortened tender response of 5.5 days was suboptimal. The investigator recognises the urgency of the works program to allow for school opening. Only one company responded to the tender, Company 1, with which the CE had a family connection.

Recommendations

Reduced tender times bring the risk of diminished competition and thus increased costs. While a shortened tender response time is provided for in the Department guidelines, this should only be used in extremis, be fully justified, and auditable, and documented at the time of the decision to reduce the tender response time. Further, every effort should be made, within procurement guidelines, to maximise the opportunity for tenderers to make submissions so as to ensure competition is maximised.

Response

| Actions Completed | Due Date | Progress | Owner |
|--|------------|------------------------|--------------|
| Internal review of existing procurement policies and procedures | 29/09/2017 | 100% (Action Complete) | Director OSD |
| Workshop with Finance and Procurement team to identify issues, clarify expectations and identify actions to enhance existing practices | 29/09/2017 | 100% (Action Complete) | Director OSD |

| | | | |
|---|-----------------|---------------------------|--------------|
| Create a KWETB procurement plan compliant with OGP Frameworks for 2018-2020 | 29/12/2017 | 100% (Action Complete) | Director OSD |
| Formal training in Public Procurement Systems and Practices for the Procurement Team including three team members attending Certificate in Public Procurement Programme | 29/12/2017 | 100% (Action Complete) | Director OSD |
| KWETB representation on national ETBI procurement networking forum for best practice | 29/09/2017 | 100% (Action Complete) | Director OSD |
| Actions in Progress | Due Date | Progress | |
| Promote best procurement behaviour through leadership role modelling, encouraging appropriate behaviour and identifying behaviour that may not be aligned with expectations and policy | 28/12/2018 | 100% (Action Complete) | Director OSD |
| Identify staff training needs with respect to procurement to develop the competencies of the KWETB Procurement Team | 28/12/2018 | 50% (Action in Progress) | Director OSD |
| Implement plan to heighten awareness of procurement practices and policies across KWETB among Board Members, Senior Managers, Principals, FET Coordinators, OSD Managers and staff in general | 28/09/2018 | 10% (Action Commenced) | Director OSD |
| Review KWETB staffing levels and roles and responsibilities as part of ongoing Workforce Planning | 29/06/2018 | 10% (Action in Commenced) | Director OSD |
| Review and optimise Asset Management Systems across KWETB | 29/06/2018 | 25% (Action in Progress) | Director OSD |
| Actions Not Yet Commenced | Due Date | Progress | |
| With the support of an external expert agency, review protocols to ensure conflicts of interest do not influence procurement matters, that systems of internal control are fit for purpose, and ensure compliance with relevant regulations | 29/06/2018 | 25% (Action in Progress) | Director OSD |
| Clarify roles, responsibility and authority with respect to procurement processes and systems of internal control | 29/06/2018 | Action Not Yet Commenced | Director OSD |

1.9 Terms of Reference 1 a) ix. The sequence of events and the nature of the particular problems which gave rise to claims for additional payments on a building project referred to in the C&AG audit

Findings

A Conciliation hearing found that 'in effect' an acceleration request was issued. Person A denies issuing such an instruction as the Employer's Representative. The CE denies writing directly to Company 4. It is likely that the CE at some form of on-site gathering in June 2015 requested that the school be ready for opening in September 2015 and that this request was interpreted as a request for acceleration.

The apparent direct involvement of the employer, as represented here by the CE, particularly when the Employer's Representative appears to have been attempting to hold the contractor to terms of the contract was ill-conceived and likely to lead to confusion and increased difficulty in agreeing final accounts.

Recommendations

The role of the Employer's Representative, as established in construction practice in various guidelines, should be respected in all building projects for which the KWETB is the employer.

Response

| Actions Completed | Due Date | Progress | Owner |
|---|------------|--------------------------|--------------|
| Conduct an audit of current building projects to confirm that no instructions to accelerate construction projects are in effect | 16/01/2018 | 100% (Action Complete) | Acting CE |
| The role of the Employer's Representative, as established in construction practice in various guidelines and relevant contracts is, and will continue to be, adhered to in all building projects for which the KWETB is the employer. | 01/12/2017 | 100% (Action Complete) | Acting CE |
| KWETB confirms that it will adhere to DES technical guidelines and provisions included in relevant construction contracts | 01/01/2018 | 100% (Action Complete) | Acting CE |
| Actions in Progress | Due Date | Progress | |
| With the support of an external expert agency, develop a risk management architecture for KWETB with respect to construction projects | 29/06/2018 | 25% (Action in Progress) | Director OSD |

1.10 Terms of Reference 1 a) x. To examine and report on the purpose for and the procurement and award of a contract to an independent expert for a school building project.

Findings

The CE entered into a contract with Company 5 on the basis of urgency - no approval process documentation is available. The CE subsequently entered into an extension of the contract thus, de facto, entering into an open-ended arrangement. Both of these contracts breached the KWETB's own procurement guidelines and, in the case of the rollover, the EU and Irish requirements. The arrangement with Company 5 appears to this investigator to be outside the agreed contract process dispute resolution. The determinations of the expert are contested.

The engagement by the CEO of a mediator, apparently outside the agreed contract process for dispute resolution, was ill-conceived and was likely to lead to confusion and increased difficulty in agreeing final accounts.

Recommendations

The Procurement Policy of the KWETB is based on national and EU requirements and should be adhered to in all cases without exception.

The role of the Employer's Representative, as established in construction practice and through various guidelines, should be respected in all building projects for which the is the employer.

Response

| Actions Completed | Due Date | Progress | Owner |
|---|------------|----------------------------------|--------------|
| The role of the Employer's Representative, as established in construction practice in various guidelines and relevant contracts is, and will continue to be, adhered to in all building projects for which the KWETB is the employer. | 01/01/2018 | Progress: 100% (Action Complete) | Acting CE |
| KWETB confirms that it will adhere to DES technical guidelines and provisions included in relevant construction contracts | 01/01/2018 | 100% (Action Complete) | Acting CE |
| That the Procurement Policy of the KWETB is based on national and EU requirements is confirmed | 16/01/2018 | 100% (Action Complete) | Director OSD |
| Actions in Progress | Due Date | Progress | |
| With the support of an external expert agency, develop a risk management architecture for KWETB with respect to construction projects | 29/06/2018 | 25% (Action in Progress) | Director OSD |
| The support of an external expert agency will be sought to assist KWETB in ensuring that the Procurement Policy will be adhered to through the development of a system of internal control | 29/06/2018 | 50% (Action in Progress) | Director OSD |

1.11 Terms of Reference 2 b) The investigation may include: any other matter which, during the course of his/her investigation, comes to the attention of the Investigator and which the Investigator considers is a cause of concern or a matter of public interest. If the Investigator considers that it is not feasible or appropriate to deal with such matters within this investigation, s/he may bring such matters to the attention of the Minister.

Findings

The CE attended a meeting at which the Employer's Representative was not present, and had not been invited, agreed a final account figure and issued instructions to the Employer's Representative to issue the relevant certificates. Such actions subordinate the role of the Employer's Representative and run counter to the Department's guidelines. The direct involvement of the employer, as represented here by the CE, was ill-conceived and has the potential to lead to confusion and increased difficulty in agreeing final accounts.

Recommendations

The role of the Employer's Representative, as established in construction practice in various guidelines, should be respected in all building projects for which the KWETB is the employer.

Response

| Actions Completed | Due Date | Progress | Owner |
|--|------------|----------------------------------|-----------|
| The role of the Employer's Representative, as established in construction practice in various guidelines and relevant contracts is, and will continue to be, adhered to in all | 01/01/2018 | Progress: 100% (Action Complete) | Acting CE |

| | | | |
|---|-----------------|--------------------------|--------------|
| building projects for which the KWETB is the employer | | | |
| KWETB confirms that it will adhere to DES technical guidelines and provisions included in relevant construction contracts | 01/01/2018 | 100% (Action Complete) | Acting CE |
| KWETB confirms that the Procurement Policy of the KWETB is based on national and EU requirements | 01/12/2017 | 100% (Action Complete) | Director OSD |
| Actions in Progress | Due Date | Progress | |
| The support of an external expert agency will be sought to assist KWETB in ensuring that the Procurement Policy will be adhered to through the development of a system of internal control. | 29/06/2018 | 50% (Action in Progress) | Director OSD |
| With the support of an external expert agency, develop a risk management architecture for KWETB with respect to construction projects | 29/06/2018 | 25% (Action in Progress) | Director OSD |

Terms of Reference for Which No Recommendations Were Identified

1.12 Terms of Reference 1 b) Where lacunae, inconsistencies or insufficient clarity are identified, to establish the factual position in relation to the matters in question in so far as it is reasonably practicable to do so.

Findings

No findings or recommendations identified under this Term of Reference in the Draft Report.

1.13 Terms of Reference 1 c) In the light of the above, to report and make recommendations as appropriate, in relation to the ETB's compliance with the relevant requirements regarding governance, procurement, ethics and Department policies and procedures.

Findings

No findings or recommendations identified under this Term of Reference in the Draft Report.

1.14 Terms of Reference 2 a) The investigation may include: any other matter which was raised in the C&AG Audit or the Department's subsequent correspondence which, in the light of the ETB's response, the Investigator considers is a cause of concern or a matter of public interest

Findings

No findings or recommendations identified under this Term of Reference in the Draft Report.

Appendix Two

Response of the Chairman and Members of the Audit Committee of the KWETB to page 11 para. 4, and pages 11/ 12, section 4.5 – Findings & Recommendations, of the Thorn Report.

- The observations and findings outlined by Dr. Thorn on page 11 para. 4, and (4.5 1a1), are endorsed by the Audit Committee, as the issues highlighted do impact currently on the effective workings and role of the Audit Committee.
- The Audit Committee welcomes the recommendation on page 12 (4.5 1a2) that ***‘The Board of the KWETB, utilising the services of an external agency, should review the arrangements for the functioning of the Audit Committee to ensure its effectiveness and make adjustments as required’***
- The Audit Committee will engage with, and support, the external experts when appointed, to review, renew and craft the necessary processes and procedures, to ensure an effective new role and function for the KWETB Audit Committee going forward.

- In developing a revised role and function for the Audit Committee, the expert review exercise must consider;
 - the influences and impacts of the role of the Internal Audit Unit of the ETBs,
 - the existing guidelines for the funding and resourcing of the Audit Committee of the KWETB,
 - that the Chair and or representatives to the Audit Committee be invited to present their work progress to the Board at least once a year and invite the Board in turn to communicate their experience and concerns directly to the Audit committee,
 - the guidelines for Audit Committees as outlined in Section 45.(1) of the Education and Training Boards Act 2013.

Dr. Tony Ienehan,
Chairman—Audit Committee KWETB.

22/01/2018

Annex C

Ministerial Direction to Kildare and Wicklow Education and Training Board



Oifig an Aire Oideachais agus Scileanna
Office of the Minister for Education and Skills

Mr Noel Merrick

Chairperson

Kildare and Wicklow Education and Training Board

Devoy Park

Áras Chill Dara

Naas West

Naas

Co. Kildare

th
cy October 2018

Kildare and Wicklow Education and Training Board
Report Prepared Under Section 40 of the Education and Training Board Act 2013

Dear Mr Merrick,

I refer to my letter to you of 12th September 2018 which set out my opinion and proposed direction to Kildare and Wicklow Education and Training Board (KWETB) under Section 41 (1) of the Education and Training Boards Act 2013.

I have received, and welcome the contents of, the representation made by the Board of KWETB in your response of 21st September 2018

I now wish to confirm that my direction to KWETB under Section 41 (3) of the Act is as follows:

- To review the actions set out in Appendix Three to the Section 40 report in the light of receipt of the final report and the findings and recommendations contained therein.
- To implement a final action plan arising from the review above. The action plan should be agreed with my Department before finalisation.
- To review the measures which are in place in the ETB to prevent conflicts of interest and inappropriate interventions in processes, which may be contrary to Public Procurement Procedures/internal controls in relation to procurement, contract and project management in particular. This review is to include circumstances where emergency situations arise with school or other buildings.
- To ensure that mandatory governance training is provided to new and existing board members;

- To conduct a Board self-evaluation, with appropriately qualified external input, to ensure that the Board is operating effectively and has appropriate procedures in place, including in relation to the management of conflicts of interest and oversight of the executive which is accountable to the Board for the carrying out of executive functions.
- To provide a comprehensive update to the Department on the above matters within three months and quarterly thereafter until notified otherwise.
- To engage with my Department as required in the context of the response of the ETB to the report and any other matters related to the report or to governance and oversight arrangements in the ETB.
- To ensure that any obligations to report to relevant statutory agencies in relation to the matters raised in the report (such as, but not limited to, An Garda Síochána, the Comptroller and Auditor General, the Charities Regulator, Standards in Public Office Commission) are addressed.

Section 41 (4) obliges the Board and Chief Executive to comply with the above direction. The ETB should make contact with my officials to agree the format of engagement between it and the Department in relation to the implementation of the above measures.

Yours sincerely,



Richard Bruton TD

Minister for Education and Skills

c.c. Dr. Deirdre Keyes, Chief Executive, Kildare and Wicklow Education and Training Board