



31 August 2006

To: Heads of Public Private Partnerships - Northern Ireland

**Implementation of the Second Edition of Standardisation of PFI Contracts, Northern Ireland ("SoPCNI 2")**

Following on from the consultation process earlier this year with both the public and private sectors, this letter sets out the Strategic Investment Board Limited ("**SIB**") guidance on how SoPCNI 2 should be used by public bodies procuring projects through the Private Finance Initiative ("**PFI**").

1. It is intended that a clean copy of SoPCNI 2 will be published on the SIB website ([www.sibni.org.uk](http://www.sibni.org.uk)) on 1<sup>st</sup> September 2006. Two marked-up copies will also be published on 1 September 2006, one showing the changes from Version 1 and a second showing the changes from the May 2006 draft of SoPCNI 2. Both the clean and marked-up copies of SoPCNI 2 will then be freely available to both the public and private sectors. SoPCNI 2 will not be published in hard copy. The changes from the May 2006 draft will be removed from the web site on 1<sup>st</sup> October 2006 to avoid confusion on which is the appropriate document to use.
2. SoPCNI 2 is based on Standardisation of PFI Contracts Version 3 published by HM Treasury in April 2004 ("**SoPC3**") as updated by the Addendum to SoPC3 which was published together with a new insurance chapter (chapter 24) in December 2005.
3. SIB remains committed HM Treasury's policy goal (which is shared by the Department of Finance and Personnel ("**DFP**")) of the rigorous enforcement of standardising key concepts in PFI.
4. In keeping with the policy goal quoted above, SoPCNI 2 should now be used from 1 September 2006 by procuring bodies and their advisers on all PFI projects that have not reached commercial close by that date. It should be noted that as the terms PFI and PPP are often used as synonyms that whether a project is badged as a PFI or PPP is not important. The key is whether it has the characteristics of a PFI transaction. Examples of the characteristics of a PFI transaction are that, although they tend to involve some form of construction or supply of assets, the project is almost always one for the supply of services and payment is made over a period of years by way of a unitary charge for those services. If there is any doubt as to whether a project has PFI characteristics or not, advice should be sought from SIB.
5. Section 1.4 of SoPCNI 2 contains updated specific contract drafting which is required in individual transaction documents and SoPCNI 2 still contains areas where clear contractual principles are set out which must be complied with though there is not specific contract wording. As is current practice any non-compliance with either of these areas of SoPCNI 2 will have to be submitted, in the form of a request for derogations, to the SIB for advice and guidance. There remain many areas in SoPCNI 2 which form less explicit guidance and are in the nature of suggestions or options. Again, in these areas individual procuring bodies and sponsoring Departments will continue to be responsible for assessing whether the approach taken in a specific contract is reasonable and compliant with the overall approach of SoPCNI 2.
6. Given the important benefits which will flow from embedding standardisation across the public sector, projects which are non-compliant with SoPCNI 2 should not expect to have its the Final Business approved and before the Final Business Case is signed off all procuring bodies should now provide written confirmation to the SIB and DFP that their contract is SoPCNI 2 compliant.

7. SIB appreciates that for some projects this may create extra work in implementing SoPCNI 2 at a relatively late stage in the procurement process. However, there has been consultation with the public and private sectors and the SIB consider that it is important that the PFI community should begin to work from a single SoPCNI text as soon as possible. If there are existing cases where the procuring body considers that it would not be feasible to comply with a SoPCNI 2 requirement because the relevant point has already been negotiated and agreed, advice should be sought from the SIB as soon as possible.
8. If a procuring body believes that it is not possible or feasible to amend an individual contract so that it is compliant with SoPCNI 2, it will need to seek the advice of SIB. The procuring body is expected to reduce its requests for derogations to a bare minimum before presenting them to the SIB. Procuring bodies should avoid approaching with a finalised list of derogations without having first convinced themselves through a detailed assessment that there is an exceptional need for such derogation, which may be project specific or sector specific. If the SIB is presented with extensive derogation reports it is likely to revert back to the procuring body to challenge this position. It should also be borne in mind that the more extensive the derogations requested the longer it is likely to take to reach an agreed position. Such timing concerns should be taken into account in timetables for closing deals. Whilst the SIB will make every effort to be responsive to the needs of procuring bodies and Departments the last minute provision of extensive derogations will be likely to extend the procurement process.
9. The SIB would not normally expect to engage directly in contract discussions relating to derogations with private sector parties such as lenders and equity providers. The SIB's contact would normally be through the public sector bodies responsible for the contract. This is to ensure that there remains a clear line of communication and responsibility in such discussions.
10. In order to monitor compliance with SoPCNI 2 and to obtain a better understanding of the nature of PFI deals being undertaken, procuring bodies should forward an electronic copy of all PFI contracts as signed from 14<sup>th</sup> October 2004 to the SIB at [standardisation@sibni.org.uk](mailto:standardisation@sibni.org.uk). If you require any assistance in interpreting SoPCNI 2, please contact the SIB at the same e-mail address or on Tel. 028 9052 8666.

I hope that this clearly sets out both the importance of SoPCNI 2 and the procedure to be followed in the implementation of SoPCNI 2. The SIB looks forward to working with the parties engaged in the preparation and negotiation of PFI contracts so that the above objectives are achieved.



**Richard Goodfellow**

**Company Secretary of Strategic Investment Board Limited**