

Revised PII Requirements and general revisions – Overview

- The Office of Government Procurement published [Circular 05/2022: Construction Procurement Reform – Revised Guidelines for Professional Indemnity Insurance Levels in Public Works Projects](#) on 09/02/2022, in order to introduce a series of amendments to the Capital Works Management Framework (CWMF) made to address those risks the procurement and delivery of capital works projects caused by on-going capacity constraints in the professional insurance indemnity (PII) market. The documents covered by this change Note relate primarily to those documents for the procurement of Consultants.
- In addition to specific amendments made in relation to PII, the amendments also included general updating and re-configuration of documents falling under Pillars 2, (Conditions of Engagement), and Pillar 3 (Suitability Assessment). These changes are aimed at reducing the extent of documentation to be provided by applicants in a procurement process, to better facilitate digital submission and to clarify the process for applicants who are reliant on the capacity of others to meet pre-qualification criteria and are described below.

Pillar 2 (Conditions of Engagement)

PII Amendments in Pillar 2

- For future contracts, the requirement for the provision of PII solely on an “each and every claim” basis has been amended:
 - Where, because of the current insurance market conditions, applicants in a competition are unable to provide PII on an “each and every claim” basis, cover on an “annual aggregate” basis will now be acceptable, subject to the successful Tenderer undertaking a review of the availability of PII on an “each and every” basis with the Client upon the annual renewal of its policy.
 - Where such a review concludes that PII is available on an “each and every” basis within the terms set out in the form of Tender, the Consultant will be required to provide the PII on an “each and every” basis [until the next review].
- Amendments have been made to the forms of Tender and Schedule (FTS-9 and FTS-10), Model Forms 2.1 (PII Certificate) and 2.3 (Collateral Warranty) to implement this mechanism.
- In addition, for current contracts (or related collateral warranties), where, as a result of the current insurance market conditions, a Consultant or a Specialist cannot provide PII on an each and every claim basis at the level required in the contract/collateral warranty, a new via new model form MF 2.11 Letter re Temporary Relaxation of PII Requirements is provide. This letter sets out those conditions that the Consultant must meet that will permit a Client to accept temporary alternative insurance arrangements, which are subject to review on an annual basis.

Other Amendments introduced in Pillar 2

- New Model Forms for Reliance: Where, in order to meet the requirements of a qualification criterion in the SAQ, a successful Tenderer relies upon the resources of another entity (including the provider of a specialist skill who is not the Tenderer itself), the entity relied upon is required to enter into a contractual commitment to make the resources available. MF 2.9 (COE) Reliance Guarantee and MF 2.10 (COE) Reliance Warranty (qualifications and/or experience) are introduced for this purpose.
- In the ITT’s, the requirement that the Tender must be executed in the same way as the contract no longer applies.

Pillar 3 - (Suitability Assessment Questionnaires (QC1 and QC2 SAQs))

PII Amendments

- The minimum standards for the PII criterion in the SAQ's relating to the terms, including the level of excess of the required insurance policy have been amended.
- New requirements are introduced in relation to the entity providing insurances and the form of evidence required to demonstrate an Applicant either does or can meet the requirements for PII (and Public Indemnity and Employers Liability Insurances).

Other Amendments

Reconfiguration of QC1 and QC2

- QC1 and QC2 SAQs have been revised to version 3.0 and are now presented in two separate parts. Part 1, which the Contracting Authority completes, contains Information for Applicants, Project Particulars and the Qualification Criteria. Part 2, which the Contracting Authority also provides, contains Applicants Details and Declaration, which the Applicant completes and provides. Part 2, which forms the basis of an applicant's response, has been standardised to respond to either QC1 or QC2. Evidence, if required to be submitted by the Questionnaire, Authority, must still accompany Part 2 if the submission is to be valid.

Reliance on capacity of entities

- At SAQ stage, entities relied upon by an Applicant are required to provide confirmation that they will provide the appropriate contractual commitment either by completing an eESPD (where an eESPD is required in the competition) or by providing an undertaking in the form of a new letter provided as Appendix D in Pillar 3.
- At award stage, entities relied upon to meet financial and economic criteria, are required to provide a guarantee in the form of MF 2.9 Reliance Guarantee, and entities relied upon for any of the technical competency criteria, are required to provide a warranty in the form of either MF 2.10 Reliance Warranty or a collateral warranty in the form of MF 2.3 (having regard to the resources relied upon) for the benefit of the Client. (Specialist Skill Providers are still required to provide a Collateral Warranty, where it is required in the Particulars.).

Other

- General updating of the documents where appropriate including strengthening of the provisions in the documents for electronic submission and the use of an eESPD to provide a self-declaration in relation to Regulation 57 Exclusion Grounds of SI 284/2016 for above-threshold competitions. Where a competition is sub-threshold, and a Contracting Authority elects to apply the requirements of Regulation 57 (Exclusion Grounds), they may specify either that Applicants provides a self-declaration either by completing a new Appendix A (Applicant's Self-Declaration in relation to the matters in Regulation 57), or an eESPD. Contracting Authorities are encouraged to use electronic submission (and an eESPD, where appropriate) for sub-threshold competitions.
- Former Appendices A (Declaration Under Oath re Article 57) and A1 (Confirmation that the Oath is still valid) are updated for the requirements of Regulation 57 of SI 284/2016 and are now contained in Pillar 2 as Model Forms MF 2.7 and MF 2.8 respectively.

Pillar 4 (Guidance Notes)

- a new Guidance Note GN 1.1.2 has been published that summarises the challenges presented by the current constraints in the PII market. It addresses the impact that the manner in which consultants and contractors are engaged can have on liability, summarises the options available

to a contracting authority with respect to insuring design risk and provides guidance on the measures that can be taken where PII can no longer be obtained to meet contractual requirements.

- Revised guidelines for contracting authorities to select the appropriate levels of PII to apply in competitions for consultants (GN 1.6.3) and contractors (GN 2.3.1.3) are also provided.