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Professional Indemnity Insurance for Consultants engaged on Education Sector Construction Projects

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Guidance notes on Professional Indemnity Insurance for Consultants for Public Sector Construction Projects

- 1 All Contracting Authorities¹ are required under National procurement guidelines² to ensure that Consultants engaged by that Contracting Authority have adequate professional indemnity insurance cover. It is the responsibility of the Contracting Authority to assess the risk associated with a particular contract for professional services and to determine the level of Professional Indemnity (PI) insurance cover required taking into account the circumstances in a particular case.
- 2 While emphasising that the determination of the appropriate level of professional indemnity insurance is the responsibility of the Contracting Authority concerned, this document sets out certain key principles that should be taken into account in making such a determination.
- 3 Professional Indemnity Insurance protects the Consultant from claims against him/her arising out of negligent performance or breach of contractual duty. It does not protect the Contracting Authority! PI Insurance does however give the Contracting Authority a level of assurance that, in the event of a successful claim against the Consultant, there is some lessening of the risk of insufficient assets being available to meet the claim.
- 4 As part of the process of engaging a consultant the Contracting Authority should consider the nature and level of risk that the consultant is taking on before deciding the level of PI Insurance required. The most important risks that a public body needs to be concerned about arise where the professional services involve design or other work relating directly to the construction process itself. Claims for damages against the Consultant could arise as a result of losses arising from increased construction cost, the undertaking of remedial works to damaged and/or dangerous buildings, failures in procurement advice provided or, in some cases, personal accident and/or injury.
- 5 The Contracting Authority should take the following general factors into account in assessing the level of risk:
 - (a) The nature of the professional services provided.
[A lesser minimum level of PI insurance cover may be required for 'non-construction' work such as feasibility studies, desk studies, etc.]
 - (b) the size and complexity of the project,
 - (c) the method of procurement [e.g. traditional construction contract, D&B or PPP]
 - (d) the extent of high risk activities, and
 - (e) other types of insurance cover in place.
- 6 The Contracting Authority should be aware that excessively high minimum Professional Indemnity Insurance cover requirements limit the number of small to medium Consultancy firms (otherwise suitable to carry out the work) who are eligible for consideration, thereby reducing competition. It also represents an additional cost to the Consultant which may be recouped either by a higher fee or a reduced service.

¹ For the purpose of this document, the term Contracting Authority means the Client or organisation in charge of the Project, normally the Board of Management or other body legally entrusted with the management of the School or Educational Facility.

² Public Procurement Guidelines (1994)

- 7 Table [1] below is an indicative guide to the minimum level of PI insurance cover that might be sought from Consultants for Construction Projects without particular risks. Higher levels of cover should be sought where the Contracting Authority considers that this is reasonable, having regard to the nature of the risk involved.

TABLE [1] Indicative Minimum PI Insurance cover levels for construction contracts

Estimated Value of Construction Contract	Minimum Professional Indemnity Insurance
Up to €1m	€0.5m
Over €1 - €10 million	€1 m
Over €10 - €20 million	€2 m
Over €20 - €30 million	€3 m
Over €30 - €40 million	€4m
Over €40 - €50 million	€5m
Over €50 - €60 million	€6 m
Over €60 m	€6.5m

- 8 It is a normal requirement within the Insurance Industry that the Consultant be required to maintain P.I. cover for six years after completion of the construction works in respect of the services provided. A lesser period may be agreed where no design or construction related work is directly involved. This requirement is subject to such cover being remaining available at commercially reasonable rates of premium.
- 9 It is also normal for there to be an excess on the policy below which the consultant would bear the costs. The Contracting Authority should be aware of the level of excess and, in the event that it is of an amount that in the reasonable opinion of the Contracting Authority would render the cover ineffective, seek to have it reduced. A normal excess level within the industry would be between 1 and 2% of annual turnover for the consultant concerned to apply in respect of each and every claim notified during the period in question.
- 10 It is essential that the P.I. Insurance is current! The Contracting Authority should seek through the Consultant a letter from the Consultant's broker/Insurance company confirming the level of cover, the level of excess, the issue date and the renewal date.
- 11 The Contracting Authority should also seek (through the Consultant) written confirmation from the Consultant's broker/ Insurance company that the following standard conditions are included as part of PI insurance cover:
- Cover is provided on an 'each and every' claim basis,
 - That aggregate cover will apply in respect of pollution/contamination. [It is accepted that it may not be possible to get cover for terrorism or asbestos related risks.]
 - That the conditions, under which the PI insurance is provided, provide for claims for breaches of professional duty or civil liability as well as negligence,
 - That legal costs will be provided for in addition to the level of cover,
 - That cover extends to include specialist advisers engaged as sub-consultants by the consultant or in joint venture arrangements with the insured, as applicable,
 - That cover is provided in respect of Joint & Several liability.

- 12 The Contracting Authority should also obtain from the Consultant an undertaking that the Consultant will notify the client if, at any time within the period for which the cover is to be maintained, (a) the cover is terminated, (b) the level of cover reduced or (c) the conditions under which the cover was originally provided altered. Written confirmation that cover is in place should be provided at renewal date each year by the consultant.
- 13 If a consultant does not have the required level of cover at the time of submitting a proposal or bid, the consultant may provide specific confirmation [from a reputable insurance broker or insurance company] that effecting the requisite cover will be possible and that in the event that the contract is awarded to the consultant that the required level of cover will be provided.
- 14 Verification Certificate
Before entering into any contract for professional services the public sector client should require that the consultant complete and sign a P.I. Insurance Confirmation Form along the lines of the sample in Appendix 1.

Sample Professional Indemnity Insurance Confirmation Form:

Project Details

Contracting Authority Name & Address:	
Name of Project (if applicable):	
Contract:	[Brief description of Professional Services covered]

General

Name and Address of Insured:	
Name and Address of Insurer: (Insurance Company not Broker)	
Policy Number:	

Details of Cover

Period of Insurance Cover:	From:	To:
Level of Insurance Cover:	€	
Excess applied to each claim:	€	

Main Conditions of Cover

Cover applies on an 'each and every' claim basis: YES / NO

Cover is provided in respect of Joint & Several liability: YES / NO

Legal costs are additional to the level of cover: YES / NO

Cover includes for professional advisers engaged as sub-consultants or in joint venture arrangements with the insured: YES / NO

Exemptions

List here any special conditions, exemptions or requirements relating to the insurance cover.

Duration of Cover

The insured hereby confirms that the level of insurance cover, under the conditions pertaining at present, will be maintained in force for [six] years from _____, subject to such cover being available at commercially reasonable rates. In the event that there is a significant change in the level of cover or conditions relevant to the project during the period covered by this Certificate, the insured will immediately contact the client and provide details of any such changes.

The insured will provide written confirmation to the client each year on _____ [e.g. date of renewal of PI insurance cover] of the continuation of the existing cover.

The insured hereby gives authorisation to the client to contact the insurer referred to in this Certificate to confirm the veracity of the information contained in the certificate.

Signed : _____ Company / Practice _____

Date: _____