

New Insurance Guidance Published

The long-awaited review of how to treat the issue of insurance costs on PFI schemes has now been concluded. PUK have issued guidance which explains how Authorities should address an Insurance Cost Sharing Schedule ('ICSS'), to be included as part of the standard documentation for PFI projects.

It is expected that the ICSS will become a standard feature of both PFI and PPP projects, as Contractors look to Authorities for relief against the uncertainties posed by future changes to the insurance market over the lifetime of contracts.

The ICSS anticipates that the insurance costs to be paid by the Contractor will be solely for the Contractor's account, unless the relevant costs increase or decrease by 30%. This is to be reviewed every two years. Authorities can consider the value for money offered by increasing the threshold up to 50%, and also consider moving the review to take place every three years.

If the changes in insurance costs are due to insurance premium tax, fees and commissions, or the actions of the Contractor, then these are for the account of the Contractor.

Where the increase in costs of insurance exceeds the agreed threshold, then the Authority will be liable for 85% of the cost above that threshold. Where the relevant costs decrease below the threshold, the Authority will take 85% of the additional saving below that threshold. This sharing mechanism provides an incentive on the Contractor to ensure that insurance costs are minimised. In order to succeed, this mechanism will require Contractors to engage in an open and transparent process of demonstrating the costs of insurance, so that the variation between modelled and actual costs can be viewed and understood by both parties.

After the long period of consideration and consultation over the drafting of the ICSS, it is to be hoped that the mechanism can be accepted by all parties as being a fair and appropriate sharing of risk.

In addition to the ICSS, PUK have also issued a Standard Required Insurance Schedule Pro Forma, which sets out a template for the required insurances. This Pro Forma should assist parties in agreeing the final form insurance schedule for inclusion within the project documents. There are also detailed notes on how to address the difficult position of the unavailability of terms or conditions on the subsequent renewal of insurance. This wording provides that if particular terms or conditions are not available, then the whole insurance risk should not be considered to be unavailable, instead the alternative or replacement term shall apply.

Further details of the guidance can be found on PUK's website at www.partnershipsuk.org.uk.