

# Insurance and Risk : Satisfying Authority Requirements in Waste PFIs

Willis Project Risk Consulting

Presentation to IRM PPP/PFI SIG Meeting

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The Willis logo consists of the word "Willis" in a white, serif font, centered within a dark blue rectangular box. This box is positioned on the right side of a horizontal yellow bar that spans the width of the slide.

# Running Order

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# Introductions

## ■ Willis Project Risk Consulting

- Authority advisers
- Contractor advisers
- Co-ordination of Willis expertise (broking, construction, environmental and risk management)

## ■ Presentation Team

- Simon Young
- Chris Lloyd
- Rhys Newland

# Context - May 2009

- Standardisation of PFI Contracts v4 (SoPC4)
- Waste Infrastructure Delivery Programme (WIDP)
- Increasing number of signed deals
- Competitive Dialogue – reduced “wriggle-room”
- Small community of advisers
- Insurance viewed as an “SME” issue
- Fewer “integrated” deals

# What is an Authority looking for?

“... we would like insurance to be one of those subjects which can be left “silent running”, with no surprises ...”

Senior PFI Solicitor, County Council

“... our previous experience is that insurance has always been an issue which caused difficulty and delay just before contract close. We do not want a repeat of this for the waste PFI ...”

Project Manager, Waste Partnership

# What is an Authority looking for?

- Compliance
- Transparency
- Bankability
- Cost saving opportunities (Group Insurances)

# Compliance

- WIDP drafting
  - Clause (Part X)
  - Required Insurance Schedule (Schedule 10)
  - Insurance Premium Risk Sharing Schedule (“IPRSS”)
- Market standard variations
  - Marine Cargo / Marine DSU
  - EIL or CPL
  - BI / DSU – Contractor’s LATS liability
  - Engineering Breakdown
- Base Cost(s) set before Preferred Bidder
- Insurability of facilities
- An experienced team of advisers

# Transparency

- Underlying premium rating
- Reconciliation with Financial Model
  - Insurance Premiums and Base Cost(s)
  - IPT
  - Broker Fees
  - Contingencies (premium movement, deductible and sub-deductible payments, IPT)
- Broker sign off
- Calculation of IPRSS Base Cost(s) – “median level”
- Post Preferred Bidder “fine tuning” (SoPC4 Chapter 32)

# Bankability

- No surprises from Lender DD (Final Bid)
- Sector-specific derogations agreed
- Economic Reinstatement Test
- Robust Business Interruption insurance solution – indemnity periods, inter-dependencies, LATS liability, liquidated damages, status of operating contractor
- An experienced team of advisers

# Group Insurances

## Advantages

- Recognised option for Corporate Financed deals- SoPC4 Chapter 37
- Operational insurance cost saving
- Stability of price
- Breadth of cover

# Group Insurances

## Disadvantages

- Reduced protection for Authority
- Reduced control
- Insurer security (captives)
- Aggregate limits of liability – products / EIL / CPL
- What if Contractor changes his mind?

# Group Insurances

SoPC4 Provision	Group Y/N	Alternative Solutions
Authority as co-insured	Negotiable	Note interest, indemnity to principals, subrogation waiver
Subrogation waiver	Negotiable	Depends on corporate policy
Non-vitiation	Negotiable	Contractor obligation not to vitiate
Notice from insurer of cancellation, non-renewal or amendment	Negotiable	Contractor obligation, also in BLU
Copy policies	N	Broker's certificate or summary of insurance
Notification of claims	Y	Relating to Project only, not wider Group experience
Insurer approval	N	Notice of insurer's identity only
Reinstatement/Joint Insurance Account	Y	-
Premium movement	Negotiable	Increase must relate to "market" and "the Project"
Uninsurability/Unavailability	Y	-
Broker's Letter of Undertaking (BLU)	Y	Subject to de-tuned obligations

# Changing from Group to Project-specific

## **A mechanism may be required to provide for an option exercised:**

- By the Authority - usually due to Contractor default; or
- By the Contractor - due to change of ownership / corporate policy

## **The mechanism should address:**

- Permitted reasons for a change
- Contractor's recovery of initial difference between the then Actual Relevant Insurance Cost and the new Project-specific cost
- Calculation of "new" Base Cost
- Recovery of additional unbudgeted costs e.g. broker's fee

# Environmental Provisions

**Fundamental to the PFI procurement process is the aim to achieve optimum allocation of risk between the Authority and the Contractor:**

**The Contractor and its Lenders are more able to accept transfer of project risks where they can insure these as the SPV will have limited tolerances for financial risks**

**Key for all parties:**

- to understand the insurability or otherwise of project risks and
- to analyse the value for money represented by the insurance proposals within the Contract

**Environmental Risk no different**

# EIL versus CPL

## Two main UK policy forms:

### Contractors Pollution Liability:

Covers the acts/omissions of a contractor undertaking 'covered operations' usually defined relative to sites and the PFI contract. Can cover 'aggravation' of existing and new pollution.

### Environmental Impairment Liability (PLL/PARLL/ESL/PPL):

Cover is relative to a site(s) environmental contamination (on-site/off-site, pre-existing/new conditions) and is defined by site boundary.

# Environmental Risk Allocation

## Two allocations dictate policy choice:

- Historic (pre-existing) conditions risk transferred to Contractor = EIL. (e.g. Cornwall, Lancashire, Derbyshire)
- Historic conditions retained by Council but Contractor takes risks from running service including development of contaminated sites = CPL (most common form of waste PFI risk allocation). (e.g. West Sussex, Cambridge, Greater Manchester)

**Third way: Group policy use on corporate financed deals. (e.g. Shropshire)**

# Environmental PFI Contractual Issues

- Uninsurability/Unavailability – small specialised market and prone to changes in cover due to losses, also high deductibles risks
- Premium Risk – no specific IPRSS cover therefore ‘PFI market’ changes only
- Known Conditions – restrictions of cover possible for difficult issues e.g. JKW
- Surveys – ISDS pricing issues, sometimes Final Bid pricing issues (may have to be left open)
- Insured Contract – ‘insured vs insured’
- Quirks – primary, indemnity to principals, subrogation
- Environmental Schedule – handback regime (uninsured risks)

# Reference Projects

Greater Manchester Waste PFI

Cornwall County Council Integrated Waste Management PFI

Cambridgeshire County Council Waste Management PFI

Leicestershire County Council Waste Management PFI

Suffolk County Council Waste Management PFI

Bradford & Calderdale Waste PFI

West Sussex PFI

Somerset PPP

Northumberland PFI

Lancashire (including previous Leyland project) PFI

Wiltshire PPP

RE3 PFI

Cumbria PPP

Shropshire PFI

West Sussex 2 PPP

Derbyshire PPP

NLWA PPP (North London)

SLWP PPP (South London)

Southwark PFI

STWWMP (South Tyne & Wear)

Lakeside EfW

Belvedere/Riverside EfW

Southwark PFI

ARC 21 (Belfast)

North Yorkshire PFI

Essex PFI

Merseyside PFI

NI North West PPP

Oxfordshire PFI

Cheshire PFI

Barnsley Doncaster Rotherham

Surrey PPP

# Open Forum

- Questions
- Comments
- Anecdotes and experiences