

NCHRP

SYNTHESIS 308

**NATIONAL
COOPERATIVE
HIGHWAY
RESEARCH
PROGRAM**

Owner Controlled Insurance Programs

A Synthesis of Highway Practice

TRANSPORTATION RESEARCH BOARD

of the National Academies

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NCHRP SYNTHESIS 308

Owner Controlled Insurance Programs

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CONSULTANTS

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Eminent Scholar

Arizona State University

and

SANDRA L. WEBER, PH.D., P.E.

Associate Professor

Arizona State University

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Systematic, well-designed research provides the most effective approach to the solution of many problems facing highway administrators and engineers. Often, highway problems are of local interest and can best be studied by highway departments individually or in cooperation with their state universities and others. However, the accelerating growth of highway transportation develops increasingly complex problems of wide interest to highway authorities. These problems are best studied through a coordinated program of cooperative research.

In recognition of these needs, the highway administrators of the American Association of State Highway and Transportation Officials initiated in 1962 an objective national highway research program employing modern scientific techniques. This program is supported on a continuing basis by funds from participating member states of the Association and it receives the full cooperation and support of the Federal Highway Administration, United States Department of Transportation.

The Transportation Research Board of the National Research Council was requested by the Association to administer the research program because of the Board's recognized objectivity and understanding of modern research practices. The Board is uniquely suited for this purpose as it maintains an extensive committee structure from which authorities on any highway transportation subject may be drawn; it possesses avenues of communication and cooperation with federal, state, and local governmental agencies, universities, and industry; its relationship to the National Research Council is an insurance of objectivity; it maintains a full-time research correlation staff of specialists in highway transportation matters to bring the findings of research directly to those who are in a position to use them.

The program is developed on the basis of research needs identified by chief administrators of the highway and transportation departments and by committees of AASHTO. Each year, specific areas of research needs to be included in the program are proposed to the National Research Council and the Board by the American Association of State Highway and Transportation Officials. Research projects to fulfill these needs are defined by the Board, and qualified research agencies are selected from those that have submitted proposals. Administration and surveillance of research contracts are the responsibilities of the National Research Council and the Transportation Research Board.

The needs for highway research are many, and the National Cooperative Highway Research Program can make significant contributions to the solution of highway transportation problems of mutual concern to many responsible groups. The program, however, is intended to complement rather than to substitute for or duplicate other highway research programs.

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The members of the technical committee selected to monitor this project and to review this report were chosen for recognized scholarly competence and with due consideration for the balance of disciplines appropriate to the project. The opinions and conclusions expressed or implied are those of the research agency that performed the research, and, while they have been accepted as appropriate by the technical committee, they are not necessarily those of the Transportation Research Board, the National Research Council, the American Association of State Highway and Transportation Officials, or the Federal Highway Administration of the U.S. Department of Transportation.

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FOREWORD

*By Staff
Transportation
Research Board*

Highway administrators, engineers, and researchers face problems for which information already exists, either in documented form or as undocumented experience and practice. This information may be fragmented, scattered, and unevaluated. As a consequence, full knowledge of what has been learned about a problem is frequently not brought to bear on its solution. Costly research findings may go unused, valuable experience may be overlooked, and due consideration may not be given to recommended practices for solving or alleviating the problem.

There is a storehouse of information relating to nearly every subject of concern to highway administrators and engineers. Much of it is from research and much from work of practitioners faced with problems in their day-to-day work. To provide a systematic means for assembling and evaluating such useful information and making it available to the entire highway community, the American Association of State Highway and Transportation Officials has—through the mechanism of the National Cooperative Highway Research Program—authorized the Transportation Research Board to undertake a continuing study. This study, NCHRP Project 20-5, “Synthesis of Information Related to Highway Problems,” searches out and synthesizes useful knowledge from all possible sources and prepares concise, documented reports on specific topics. Reports from this endeavor constitute an NCHRP report series, *Synthesis of Highway Practice*.

The synthesis series reports on current knowledge and practice, making some recommendations where appropriate but without the detailed directions usually found in handbooks or design manuals. Nonetheless, these documents can serve similar purposes, for each is a compendium of the best knowledge available on those measures found to be the most successful in resolving specific problems.

PREFACE

This report of the Transportation Research Board presents the current best practices in the use of Owner Controlled Insurance Programs (OCIPs) to manage construction risk. It provides a brief history of OCIPs, the OCIP experiences of state DOTs, contractor issues, and controlling risk, and discusses at length how to choose an OCIP, how to develop an OCIP, and how to operate under an OCIP. This report will be of interest to state department of transportation (DOT) highway and roadway design and project engineers, including specifications and standards specialists, contractors, and researchers.

Information was derived from a literature review, responses from surveys received from state DOTs and from contractors, telephone interviews, and contractor meetings. It includes detailed information concerning construction insurance, with examples of existing agency OCIP specifications, contract wording, and forms. Also included in the appendices is an example of an OCIP safety incentive program, in addition to examples of an interim OCIP policy, payroll reporting forms, and an OCIP enrollment form.

A panel of experts in the subject area guided the work of organizing and evaluating the collected data and reviewed the final synthesis report. A consultant was engaged to collect and synthesize the information and write this report. The panel and consultant are acknowledged on the title page of this report. This synthesis is an immediately useful

document that records the practices that were acceptable within the limitations of the knowledge available at the time of its preparation. As progress in research and practice continues, new knowledge will be added to that now at hand.

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Maybe the most knowledgeable person concerning OCIPs was Gary L. Bird, who lived in Tempe, Arizona. Gary had written extensively about OCIPs and the authors intently studied his publications. His work provided critical guidance in structuring this synthesis. On the morning of September 11, 2001, Gary Bird reported for his first day at work at Marsh Inc., on the upper floors of the World Trade Center. *Requiescat in pace.*

Valuable assistance in the preparation of this synthesis was provided by the Topic Panel, consisting of John Bourne, I-15 Project Director, Utah Department of Transportation; Larry G. Crowley, Associate Professor, Auburn University; Steven D. DeWitt, State Construction Engineer, North Carolina Department of Transportation; Tucker Ferguson, Chief, Bureau of Construction Contract Management, Pennsylvania Department of Transportation; Frederick D. Hejl, Senior Program Officer, Transportation Research Board; Gregory G. Henk, Executive Vice President, Flatiron Structures Company; John

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This study was managed by Stephen F. Maher and Jon Williams, Managers, Synthesis Studies, who worked with the consultant, the Topic Panel, and the Project 20-5 Committee in the development and review of the report. Assistance in project scope development was provided by Donna Vlasak, Senior Program Officer. Don Tippman was responsible for editing and production. Cheryl Keith assisted in meeting logistics and distribution of the questionnaire and draft reports.

Crawford F. Jencks, Manager, National Cooperative Highway Research Program, assisted the NCHRP 20-5 Committee and the Synthesis staff.

Information on current practice was provided by many highway and transportation agencies. Their cooperation and assistance are appreciated.

OWNER CONTROLLED INSURANCE PROGRAMS

SUMMARY

Highway construction project complexity is increasing, and the roles assumed by designers, project managers, contractors, and subcontractors are changing. Complex projects combined with management role changes have created ambiguity in responsibilities, especially those concerning safety. Consequently, the project owner, as the party ultimately responsible for the construction work, is seeking to enhance control over project safety and risk management. Controlled insurance programs (CIPs) are highly efficient risk control mechanisms. With a CIP, the interest of the owner, designer, construction manager, contractors, and consultants are covered by one insurance arrangement. The intent of this synthesis is to inform state transportation agencies and contractors about CIPs. Although other types of CIPs are discussed in this synthesis (Contractor Controlled Insurance Programs and Partner Controlled Insurance Programs), this document is specific to Owner Controlled Insurance Programs (OCIPs).

Meeting CIP objectives depends primarily on how owners manage the program, especially regarding safety. To achieve savings with a CIP requires that the owner and all project contractors work closely together to implement and enforce an aggressive safety program.

In a conventional program where contractors provide their own insurance, those contractors with a good loss experience history receive better insurance rates and therefore have a bidding advantage. That advantage does not come free; it is a result of their investment in safety. With an OCIP, the rate break, achieved through the contractor's diligence goes to the owner; this has been a matter of controversy.

In the case of an OCIP, owners need to consider three risk/insurance questions.

1. How much of the risk should simply be assumed? When financially prudent, it is usually best to retain predictable risk. Even when insurance is used an owner retains some risk based on selected deductible levels. This is an important component of the risk acceptance decision.
2. What coverages should be included in the OCIP? Most of the insurance premiums that an owner compensates a contractor for in a traditional project bid situation are those related to workers' compensation and liability insurance, which are almost always included in the OCIP.
3. What limits should be purchased? Is excess coverage desired? Catastrophic risks should be insured when coverage is available at a reasonable price.

The issues in choosing to use a CIP are not about the type of project in terms of the physical work location or the type of construction operations required. The important parameters that owners should consider are

- Risk exposure,
- Potential for catastrophic loss,
- Construction costs—a high payroll component of project costs,
- Extended schedule, and
- Safety/loss control.

For the owner, an expected cost savings is the principle appeal of an OCIP. Cost savings are usually found in the workers' compensation component of insurance expenses. Workers' compensation premiums are based on the number of labor-hours required to complete a project. Therefore, this is a critical decision variable. A safe project will reduce workers' compensation expenses.

Together with direct insurance cost savings there are indirect cost savings associated with having a single point for processing claims and having less litigation. However, the OCIP should be viewed principally as a risk management tool and not as a risk financing tool; what is the best way to protect the project owner from construction project risks?

The contractors who participate in the project OCIP have both real and perceived concerns that must be addressed during design of the insurance program. Attention to contractor concerns will lead to superior OCIP performance, which benefits both the owner and the contractor.

It is difficult to write a definition of the project site that incorporates all the possibilities of where contractor activities might occur to include dedicated casting yards, source pits, and plant locations. To avoid the problems inherent in very specific-site definitions that limit OCIP coverage, the insurance can simply be tied to losses arising out of the *project work*. By limiting coverage to defined sites contractors avoid charging losses associated with other work to the OCIP.

Insurance for a typical CIP includes the following coverages:

- General liability insurance;
- Workers' compensation and employer's liability insurance;
- Builder's risk insurance, including coverage for property in transit and property stored off-site; and
- Umbrella or excess liability insurance.

Depending on project-specific risk and the sponsor's preferences, other coverages may be included in the CIP. For example, for the Central Artery/Tunnel Project in Boston, the owner purchased the following additional coverages:

- Airport contractor's liability insurance, because of the work on and around Logan Airport; and
- Railroad protective liability insurance, because the work abutted and passed under multiple operating railroad lines.

If the project is design-build, professional liability insurance could be included in the CIP.

The process of organizing and starting an OCIP involves strategic decisions concerning how the program will be designed. There are three basic approaches to OCIP administration.

1. The agency establishes its own insurance (or risk management) department,
2. Existing in-house staff is expanded, or
3. An insurance consultant is engaged.

A 1977 Department of Transportation (DOT) study reported that since the early 1960s all agencies undertaking major construction works projects and using an OCIP have, after some study, engaged a consultant. Similarly, a 1999 U.S. General Accounting Office study reported that only one agency administered the OCIP with its own staff.

The OCIP insurance manager has four principal responsibilities.

1. Provide technical advice on insurance complexities,
2. Engage the best available insurance carriers for the planned coverages,
3. Arrange the most favorable insurance costcosts and terms, and
4. Handle the OCIP administration burden.

In most cases the selection of outside administrative support was based on a response to a request for proposals. However, insurance administration is a long-duration partnership and some agencies have contracted their OCIP support with the providers of their current coverage. The risk manager for one large public agency stressed, however, that it is very important to find a broker that understands construction and construction claims.

DOTs that have used OCIPs for their major projects reported very favorable results.

Central Artery/Tunnel Project, Boston, Massachusetts (\$14.5 billion)—Although results are not documented, administrators believe that there are savings through reduced litigation, efficient purchasing of insurance, enhanced safety and loss control, and reduced premiums for general liability and workers' compensation insurance.

I-15 Reconstruction, Salt Lake City, Utah (\$1.6 billion)—Preconstruction survey consultant certifies that more than \$30 million was saved. The safety records, both for the project (loss history declined) and the public (speed through the work zone was 75 mph in a 50 mph zone, with few accidents) were excellent. Good public relations resulted in few complaints over small claims. Overall, the claims process was much better controlled.

Fort Washington Way, Cincinnati, Ohio (\$330 million)—This was a very safe project—after 2.5 million person-hours of work the incident record was 0.17 (this is far below the 4.7 national average). Insurance claims were handled expeditiously. The full-time safety managers (contract requirement and pay item) were important contributors to these results. No savings were realized because of the absence of workers' compensation insurance in the OCIP; \$300,000 in additional costs was reported. The owner wanted a safe project, and believed that the cost was reasonable to obtain that goal.

Based on the surveys of DOTs and contractors engaged in projects using OCIPs, it is clear that owners are pleased with the cost savings and job safety. The favorable safety records were achieved with the OCIPs because there were also very specific contractual requirements pertaining to safety. Coordination of insurance to the satisfaction of the contracting community requires advance planning for the OCIPs structure and the availability of insurance policies with the bid documents.

INTRODUCTION

BACKGROUND

Across the country, owners of transportation facilities are pursuing strategies to improve transportation project delivery (e.g., reduce costs, control risk, and streamline processes). At the same time, the lines of responsibility for construction site safety have become blurred as the number of project participants working in the same physical space increases. On many urban projects there can be multiple prime contractors, municipal utility crews, private utility crews, and even transit authority contractors involved. Project complexity is increasing and the roles assumed by designers, project managers, contractors, and subcontractors are changing (1). Complex projects combined with management role changes have created ambiguity in responsibilities, especially those concerning safety. Consequently, the project owner, as the party ultimately responsible for the construction work, is looking to enhance control over project safety and risk management. Controlled insurance programs (CIPs) are highly efficient risk control mechanisms. With a CIP, the interests of the owner, designer, construction manager, contractors, and consultants are all covered by one insurance arrangement. The intent of this synthesis is to inform state transportation agencies and contractors about CIPs. There are several different names for a CIP: Consolidated Insurance Program; Owner Controlled Insurance Program (OCIP), where the sponsor is the project owner; or a Contractor Controlled Insurance Program (CCIP), where the contractor acts as the program sponsor. The name originally used for such insurance programs was “wrap up” and many in the industry use the term wrap-up insurance and OCIP interchangeably.

Risk management is a vital component for any successful construction project. In the Associated General Contractor’s (AGC) *Guide to Construction Insurance* (2), the risk-management process is explained as having the following five steps:

1. Risk identification,
2. Risk analysis,
3. Selection of the appropriate treatment technique,
4. Implementation of the selected technique, and
5. Measurement of the results.

A 1977 U.S. Department of Transportation (DOT) report (3) outlined a four-step risk-management process:

1. Identify, measure, and analyze the potential risks (this is really a combination of the AGC’s first two steps);

2. Eliminate or reduce risk;
3. Insurance decision step; and
4. Loss prevention program planning.

Although the defined steps are slightly different, the final objective is the same—risk control.

One mechanism that an owner can use to manage construction risk is to engage in a CIP. Such programs have been in use since the 1940s. Based on project size, defense projects undertaken during World War II obtained insurance under what was then called the War Projects Rating Plan. These CIPs were an early form of insurance based on economies of scale. More recently in Houston, Texas, Brown & Root used a CCIP for the Enron Field project. OCIPs are used on almost all “mega” transit projects. Bay Area Rapid Transit (BART), Washington Metropolitan Area Transit Authority (WMATA), Metropolitan Atlanta Rapid Transit Authority (MARTA), and Baltimore Mass Transit Administration (MTA) all used OCIPs. More recently, both the San Joaquin and Eastern Transportation corridor projects in California used OCIPs. Each of these design-build projects had costs of approximately \$800 million.

Transportation construction projects typically involve many types of insurance coverage including workers’ compensation, general liability, builder’s risk, and professional liability. As shown by the U.S. Government Accounting Office (GAO) (4) and confirmed by this study, with so many participants working on large transportation projects—owner representatives, private design professionals, a prime contractor, subcontractors, and suppliers—there may be redundancy and/or gaps in insurance coverage. An OCIP risk-management program can help to eliminate both duplication of coverage and insurance gaps, and can provide all parties with higher coverage limits.

Because CIPs enhance risk management, 10 state DOTs have used some form of controlled insurance on one or more of their projects. DOTs are using OCIPs both for individual transportation projects and for groups of projects. The idea behind these programs is for the sponsor to purchase workers’ compensation and liability insurance for all parties working on a project. The CIP provides a single point of contact for all liability issues, prevents insurance coverage gaps or redundancies, and should reduce underwriting and claims administration expenses. The results of such a program are a safer jobsite and lower construction costs.

TABLE 1
TRANSPORTATION PROJECTS USING OCIP INSURANCE PROGRAMS

| Project | Project Cost (\$ million) | Insurance Savings (\$ million) | Comments |
|---|---------------------------|--------------------------------|--|
| Blue Water Bridge (Michigan) | 97.2 | \$2.9 | Good safety record |
| Central Artery/Tunnel (Boston, Mass.) | 12,000 | \$265.0 | Save 25% on insurance |
| I-15 (Salt Lake City, Utah) | 1,600 | \$29.9 | Two risk management employees |
| CTA Green Line Rehabilitation (Chicago, Ill.) | 409 | \$11.5 | Helped minority subcontractors. Safety incentive program |
| Tri-Met, Westside Light Rail (Portland, Ore.) | 952 | \$9.9 | Provided \$1.3 million for enhanced safety incentives |
| I-75 & I-275 (Detroit, Mich.) | 60 and 50 | \$3.0 | |
| Corridor 44 (New Mexico) | 400 | \$20.0 | |
| E-470 Toll Road (Denver, Colo.) | 320 | \$1.0 | One million person-hours; no lost-time incidents |
| Ft. Washington Way (Cincinnati, Ohio) | 159 | | Currently under construction |

[Source: Attachment E to Arizona DOT office memorandum to Arizona DOT Director Mary Peters (May 19, 2000) (5)].

As their popularity with project owners has grown, OCIPs have been the subject of much scrutiny. Critics have questioned the ability of such arrangements to achieve their stated objectives, and claim that these programs set up the owner and contractor as adversaries. Furthermore, contractors worry that OCIPs create potential coverage gaps in their own insurance programs and can hinder their competitiveness on other projects. Even supporters acknowledge that an owner's ability to meet CIP objectives depends primarily on how the program is managed, especially with regards to safety. To achieve savings with an OCIP requires that the owner and all project contractors work closely together to implement and enforce an aggressive safety program.

In 2000, the Arizona DOT (ADOT) investigated transportation agency experiences with OCIPs and found several agencies reporting favorable results (Table 1). Tom Warne, former Director of the Utah DOT stated, "... overall we are happy with the OCIP Program on the I-15 project" (Tom Warne, UDOT, to Mary Peters, ADOT, personal communication, April 20, 2000.) This statement is in reference to Utah's OCIP for their \$1.6 billion, I-15 reconstruction project in Salt Lake City. Warne did go on to state that there are some issues with contractor acceptance of OCIPs.

CONTRACTOR ISSUES

It should be noted that many in the contracting community are reluctant to be part of an OCIP and contractor concerns must be carefully addressed when structuring such a risk-management program. Specific issues raised by the contracting community included

- Administration expense—What are the administrative functions of the contractor and how is reimbursement made for such activity?
- Claims management—In most jurisdictions, the workers' compensation experience under the OCIP follows the contractor, and affects the construction

company's experience modification rating and the cost of doing business.

- Exclusion clauses—Who is covered by the OCIP: vendors, haulers, truckers?
- Safety incentive programs—Is there an incentive plan and does the contractor receive benefits for a superior performance?
- Punchlist exposure—Does the OCIP cover warranty and callback exposure?
- Loss data, loss runs, and experience modifier rating (EMR) filings—The insurance broker is not a party to the construction contract, but the contractor and every participating subcontractor is the broker's client. Although insurance company is responsible for filing the unit statistical reports, the broker should ensure that the contractors are afforded the opportunity to review claims (for all years) prior to the filing. Contractors must be able to review information before it is filed and receive timely information from the broker.

Several contractors responding to the synthesis study did comment on the benefits of participating in an OCIP.

- "Educational exposure to good safety program and mandatory drug testing was helpful. Also increases mandatory safety supervision and helps all levels of management."
- "Reduced litigation potential. Workers' compensation and liability losses outside of our self-insurance and large deductible programs."
- "Reduced insurance costs."
- "More frequent safety inspections."

HISTORY

The insurance industry has been marketing wrap ups to contractors and owners for more than 50 years, but it is not known which project first used a true OCIP. In the case of public projects, the New York City Housing Authority used wrap ups in 1947 for several large housing projects (6).

The construction in New York of the United Nations building (1953) was also under a wrap up. It is claimed that the Chase Manhattan Bank headquarters building (1957–1960) was the first such project in the private sector. (The building is a steel-framed rectangle, 813 ft high, containing approximately 1.8 million square feet above ground level, with another 600,000 square feet below grade.) It is similarly reported, however, that the Prudential Center (1959–1965) in Boston was the first private project. (This is a steel frame building with 1,178,310 square feet of usable floor area.) One insurance broker reported 122 wrap-up projects placed from 1975 to 1998, or approximately 5 per year. These included eight airport and three light-rail projects, plus one subway project, so it is clear that the use of CIPs is fairly common.

Based on a mid-1970s study (3) of risk management for urban transportation construction, CIPs were recommended by the U.S. DOT for programs or projects greater than \$60 million. That study reviewed the risk-management practices of the BART system, MARTA (Atlanta), WMATA (Washington, D.C.), and the MTA in Baltimore. At the time of the study BART was 10 years and MARTA six and one-half years into construction. The reasons driving these authorities to use OCIPs were purchasing power cost savings and the elimination of the costs associated with multiple administrative tiers. Another significant issue was “assured coverage.” With an OCIP the owner has thorough coverage and protection even when there are “safe place to work statutes.” Some states hold that the duty to provide a safe workplace is a matter of a specific statute (e.g., Title 8 California Code of Regulations § 3203 [8 CCR 3203] and in New York State, Section 240 & 241 of the labor law). The New York State Labor Law imposes “strict liability” on owners and contractors. In other states the safe workplace issue has developed as a result of case law.

Conventional project contracting arrangements require that each project participant individually insure its interests. With an OCIP, the interest of the owner, designer, construction manager, contractors, and consultants are all covered by one insurance program. In Atlanta (MARTA) and Baltimore (MTA) (3), the OCIP even included some public utility companies in connection with the work they had to perform in relocating their facilities because of transit construction. The insurance coverages that are commonly required for transportation projects include commercial general liability, workers’ compensation, builder’s risk, excess/umbrella liability, and automobile liability.

Commercial General Liability

Commercial general liability (CGL) insurance provides, within one policy, three basic coverages: (1) bodily injury and property damage liability, (2) personal and advertising

injury liability, and (3) medical payments. The policy will reimburse medical expenses incurred by members of the public who are injured on a contractor’s premises or because of the contractor’s operations. Bodily injury includes sickness, disease, and death. This coverage pays without regard to legal liability.

Workers’ Compensation

Workers’ compensation insurance provides coverage for statutory benefits payable under state law. Under workers’ compensation insurance there is *unlimited* medical coverage for conditions that result from a covered incident. These benefits are for impairment caused by accident or diseases stemming from employment. The benefits are paid without regard to employer or employee fault (no-fault). In general, the employee, in return for these benefits, loses the right to sue the employer for damages. A workers’ compensation payment does not, however, preclude litigation by the insured employee or the workers’ compensation insurance company in subrogation against a third party. In the industry such a suit is known as a third-party-over action.

All states require that contractors have workers’ compensation insurance. Most states allow the contractor to purchase this insurance from private insurers. In two states, however, Texas and New Jersey, self-insurance is allowed. Five other states require that workers’ compensation insurance be purchased from a monopolistic state fund (North Dakota, Ohio, Washington, West Virginia, and Wyoming).

Builder’s Risk Insurance

Builder’s risk insurance covers losses to the materials and equipment ready for installation, work-in-place, and existing structures damaged or destroyed during the construction process. It covers losses caused by acts of god or fire. It usually excludes damage caused by faulty materials or workmanship, or faulty design, but the terms of this coverage vary from state to state. Coverage also varies from insurance policy form to insurance policy form. On large projects the coverage forms are designed and negotiated to meet the needs of the participants.

Excess/Umbrella Liability Insurance

Excess/umbrella liability insurance is designed to pick up wherever standard coverages end. A standard coverage limit can be insufficient for a catastrophic loss. Without the excess/umbrella coverage the covered party would be responsible for the excess amounts over that paid by the underlying policies. Additionally, it should be noted that

excess/umbrella liability insurance does not provide protection for a builder's risk claim excess.

Automobile Insurance

Automobile insurance protects the company against losses arising from vehicle operations. The most important component of an automobile policy is the liability coverage, which will pay for bodily injury and property damage. This exposure may be the hardest to control because the vehicles are frequently operated away from the worksite and interact with members of the public that may not be as safety conscious as the well-trained employee. OCIPs exclude automobile insurance because vehicles move between other jobs or locations with ease and frequency.

How Insurance Is Priced

Comprehensive general liability insurance is calculated by assessing a rate per \$100 of payroll. With a conventional program, the contractor's cost is based on the book (standard) rate, modified by the experience and judgment of the underwriter, multiplied by the estimated payroll cost. There may be some adjustment upward or downward from the book if the contractor's general experience is bad or good.

Workers' compensation coverage is also calculated at a rate per \$100 of payroll. Each occupational classification has its own rate. The manual (base) premium is adjusted by the application of an experience modifier rating (sometimes referred to as the EMR or E-mod) (7). The EMR is calculated once each year, thus fixing a contractor's workers' compensation insurance rates for the full year. The historical EMR calculation takes into account 3 years of loss history, not including the most recent year, which is not used because there has not been time to clearly establish the amount of loss for recent claims (7). The loss experience of the company compared to the average experience for the industry establishes the rating. In a conventional program where contractors purchase their own insurance, those contractors with a good loss experience history receive better insurance rates and, therefore, have a bidding advantage. That advantage does not come without cost; it is a result of an investment in safety. With an OCIP program the rate break that was earned by the contractor goes to the owner, which has been a matter of considerable controversy.

CONTROLLING RISK

The process of identifying and analyzing risk should begin early in the project planning process (3). An owner's advantage in managing risk over the life of a project is highest early in the planning stage. Risk identification may involve

looking at historical data for the project area with respect to potential problems, unknown soil conditions, labor unrest or shortages, supplier/vendor problems, and crime rates. The project management team should take advantage of past experiences to identify potential problems that could befall the project.

The identified risks must be analyzed to determine the probability of occurrence and the potential impact on the project. There are several tools available for this analysis, but for the construction industry the most common is the Monte Carlo computer simulation. Monte Carlo simulation requires that the user first have an approximation of the underlying risk distribution. This is normally done by fitting data from many observations (usually 25 or more) to one of the 30 or more common distribution functions. Monte Carlo simulation then, using random numbers, makes multiple iterations (usually thousands) to calculate distribution statistics. Thus, the historical data on risk can be used to quantify the expected value of a certain risk, the frequency of its occurrence, or the probability of it exceeding some level.

The simulation results are not the final answer, but they do provide a range of probabilistic impacts. The agency must make a final assessment based on experience and comfort level for accepting risk.

Contractors

There are several techniques available to contractors for managing the risks (business risk). If the risk analysis is completed prior to bidding and the risks deemed too great, the contractor may avoid the risk by choosing not to bid the project. A joint venture is often used to share the risk between two or more companies that have come together for the completion of a particular project. A contractor can also transfer the risk by using subcontractors and pass-through clauses in subcontracts. (These are subcontracts, which state that the subcontractor or supplier will be bound by the provisions in the general contract. Such subcontracts sometimes state that the subcontractor or supplier shall be bound to the general contractor to the same extent as the general contractor is bound to the owner.) Another risk transfer tool is insurance, where the insurance company assumes much of the risk in exchange for premiums. Finally, a contractor can choose to accept the risk.

Owners

Owners must perform the same types of analyses and develop strategies to control risk that protect their interest, but the strategy must also allow for completion of a project for a reasonable cost. In the case of an OCIP, owners need to consider the following three risk/insurance questions:

- How much of the risk should be assumed? When financially prudent it is usually best to retain predictable affordable risk. Even when insurance is used an owner retains some risk based on selected policy deductible levels. This is an important component of the risk acceptance decision.
- What coverages should be included in the OCIP? Most of the insurance premiums that an owner compensates a contractor for in a traditional project bid situation are those related to workers' compensation insurance (4). Core coverages included in an OCIP are workers' compensation, employer's liability, general liability, excess/umbrella liability, and builder's risk.
- What limits should be purchased and is excess coverage desired? It is best to insure catastrophic risks when coverage is available at a reasonable price.

OCIP EXPERIENCE OF STATE DOTs

An objective assessment of the opportunities available by using OCIPs is of critical importance to DOTs. This synthesis is a compilation of the methods and techniques for OCIP insurance arrangements. It provides information on the actual state of practice and presents the details of the arrangements. A list of proven CIP programs with the details of specific risks and benefits realized is also provided. Specific projects are examined so that transportation departments can learn from both the successes and the difficulties experienced during actual execution of CIP programs.

SOURCES OF INFORMATION

A literature review revealed a large number of published papers and other documents addressing OCIPs. These sources of information are used extensively in this synthesis and provide documented references to actual practice.

At the outset of the exploratory work for this synthesis, letters were sent to the DOTs in all 50 states. The purpose of the letter was to identify those states having OCIP experience. Those transit departments with OCIP experience were asked to identify a knowledgeable point of contact, who in turn was asked to complete a questionnaire and participate in a telephone interview. The interviews (Appendix A) lasted approximately 90 min and were used to gather facts and opinions about the respective state's OCIP experiences. The results were transcribed and tabulated for reference and analysis. The responses to the surveys provided practical information concerning specific experiences and strategies.

Several contractor meetings were attended and contractors were engaged in discussions with contractors concerning their OCIP participation experiences. Based on those discussions a contractor survey (Appendix B) was transmitted to all heavy highway contractor members of the AGC. That survey sought information from construction companies having specific OCIP experience and attempted to identify positive and negative aspects of OCIP programs from the contractor's point of view. Many contractor comments are cited in this synthesis.

CHOOSING AN OWNER CONTROLLED INSURANCE PROGRAM

Normally a construction CIP is for a single site (6) and, some believe that ideally, the best OCIP project is one where access can be easily controlled. A fenced project in the middle of a wasteland with a single guarded gate for restricted entry and exit is an ideal CIP candidate. That ideal condition is realized only at a limited number of projects. The construction of a nuclear power plant is an example. In transportation applications, the project site may be defined as those areas the contractors use to accomplish the work. For a highway project the site definition might refer to the land constituting the project right-of-way, but it must also include plant sites and staging areas. It could also be applied to multiple sites that are in close proximity.

Adapting a CIP to transportation projects is effective if risk-management steps are taken to limit the project's liability exposure. CIPs have been used successfully on both linear sites (roadways) and single-location (bridge) transportation projects. They have also been used by DOTs for many airport reconstruction and expansion projects. The OCIP for the Blue Water Bridge project in Port Huron, Michigan, covered both the construction of a new bridge and the reconstruction of the existing adjacent bridge. The I-15 reconstruction project OCIP in Salt Lake City, Utah, covered the rebuilding of 144 bridges and 17 miles of roadway. All of the work was accomplished while maintaining traffic through the work zone. The Suncoast Parkway Toll Road OCIP in Florida covered new construction on new alignment.

The issues involved in choosing to use a CIP do not relate to the type of project in terms of the physical work location or the type of construction operations required. The important parameters that owners should consider when evaluating the use of a CIP are

- Risk,
- Potential for catastrophic loss,
- Construction costs (high payroll component of project costs),
- Extended schedule,
- Safety/loss control, and
- Minority contractor participation.

RISK

Projects exposing the owner to large elements of risk warrant increased insurance limits. Projects that present a

considerable third-party liability exposure can benefit from the coordinated safety program and higher insurance limits of a CIP. Many urban projects fall into this category.

An OCIP eliminates conflicting insurance provisions, removes overlapping policies, and closes coverage gaps (4). Many smaller contractors carry only \$1 million of liability coverage. Insurance coverage degradation can easily occur when an owner relies on contractor insurance. Contract provisions can require that a contractor have higher limits in place, but even with certification of a contractual limit those limits are not dedicated to a specific project. A contractor's policy can be eroded by a major accident that occurs on another owner's project. Additionally, contractor policies typically have to be renewed on an annual basis.

CATASTROPHIC LOSS

Projects that expose the transportation agency to catastrophic loss; for example, hurricanes, floods, or multiple-vehicle accidents, should have very high insurance limits. Using an OCIP allows an owner, because of the inherent economies of scale, to purchase such coverage limits.

A properly designed OCIP assures, while protecting the owner, that adequate limits of coverage are in place for all of the project's partners. The insurance limits are dedicated to the project and cannot be eroded by contractor losses on other projects. Generally with an OCIP broader coverage with substantially higher limits can be provided and the coverage can be placed for the full term of the project plus a completed operations period. For the urban I-15 reconstruction project in Utah the excess liability coverage was \$100 million for each occurrence (8). In New Mexico on the Corridor 44 project, which was primarily a rural reconstruction job, the excess general liability coverage was \$50 million (9).

CONSTRUCTION COSTS

Different reports cite minimum construction cost values below which an OCIP should not be used. Hard costs refer to the expense of actual construction only. In the literature there is a wide range of such values to be found. An OCIP study for the Florida DOT suggested

- A single project with a hard construction cost of \$75 million or more;

- Multiple projects at a single site expected to generate \$100 million or more of hard construction costs over a 2- to 3-year period (e.g., major interchange programs);
- Multiple projects at contiguous sites generating \$100 million or more of hard construction costs; and
- On-going restoration, renovation, and repair work expected to generate at least \$30 to \$40 million of costs per year (e.g., Interstate highway maintenance programs).

Labor Component of Project Cost

A 1999 U.S. General Accounting Office (GAO) report stated that “Large labor-intensive projects with construction costs between \$50 million and \$100 million would be in a better position to obtain wrap up insurance” (4). Gary Bird believed that “Major construction projects with hard costs in excess of \$100 million are definite CIP candidates. Projects as small as \$50 million may also be good candidates if they involve higher than average risks or an unusually high payroll component” (6). The important point being that it is not the hard construction costs but the labor costs that are the critical determinant. Workers’ compensation insurance premiums are largely a function of project person-hours, labor classification, and state set rates, and not a function of total or hard project costs. Consequently, labor cost is important because most of the CIP savings come from reduced workers’ compensation premiums.

EXTENDED SCHEDULE

With long-term projects (those lasting more than 3 years), the use of a CIP assures the owner and contractors that adequate coverages and limits will be in effect for the duration of the work, plus completed operations protection for a fixed time. A CIP significantly reduces the administrative burden of coverage control and monitoring for both the owner and the contractors.

SAFETY/LOSS CONTROL

For projects requiring separate construction contractors and/or multiple subcontractors it is often difficult to coordinate the many individual safety programs. A key element of a CIP and the element that makes such programs attractive to the insurance market is the opportunity to reduce risk through the mandated provision of a professionally developed and managed safety/loss control program. The program involves the entire work force in achieving accident and loss reductions by

- Education,
- Promotion of safe work attitudes,

- Awareness of factors that create accident situations,
- Training,
- Use of safety equipment and clothing,
- Monitoring of compliance with statutory and contractual regulations, and
- Inspections and enforcement actions.

MINORITY CONTRACTOR PARTICIPATION

Minority contractors often experience difficulty in acquiring required project insurance. Minority/Disabled/Women Business Enterprises (MBE/DBE/WBE) frequently lack the ability to purchase the required insurance coverages that are necessary for participation in large projects. A CIP can eliminate this hurdle and allow these firms to participate in large transportation projects.

UNDERSTANDING OCIP ADMINISTRATIVE REQUIREMENTS

Project owners face increased administrative burdens when using an OCIP. It is clear that administering an OCIP requires extra effort from the project management staffs of both the contractor and owner. In 1998, a Transit Construction Roundtable survey on transit agency use of OCIPs reported that “All the respondents affirmed the wrap-up insurance added to their administrative workload, but that the burden was reasonable” (4).

Conscientious administrative supervision is essential to the success of a CIP. Through efficient document control, data management, informative management reports, and regular inspections or audits, the CIP can be guided toward better-than-average experience and the resulting economic rewards (6).

Owner OCIP Administrative Burden

The project owner is responsible for administering the program and must either outsource this function or assign additional administrative staff. Initially, the owner must supply the resources to design and implement the OCIP.

The DOT synthesis questionnaire specifically asked: “Did your DOT have to take on more insurance administration responsibility because of the OCIP?”

Five of the 10 departments with recent OCIP experience reported that their administrative burden did increase. Their responses give an indication of how this burden was handled.

- “Yes, more work, but same number of people. It was not burdensome (just another part of the project). Had a very helpful agent” (Michigan).

- “Yes, but did not add personnel, just made current staff work harder (salary positions)” (New Mexico).
- “Yes, hired a safety manager for the project. Billed salary through the Risk Management Department” (Utah).
- “Sure. In the past the only insurance work was verification of contractor insurance certifications. We have some additional work but the broker does most of it” (Pennsylvania).
- “The broker handles much of the burden” (Massachusetts).

Some departments simply absorbed the burden, whereas others obtained added support by using the state’s risk management office or by hiring insurance brokers. Even those departments that responded that “they” experienced no added burden admitted that the administrative work increased. The difference was that the work was transferred to others.

- “Handled by the Division of Risk Management” (Alaska).
- “No, we contracted it to our construction management team” (Florida).
- “No, a great deal of the responsibilities were delegated to our contract administrator or our insurance broker” (Ohio).
- “No, Risk Management and the broker handled virtually all administration functions” (Arizona).

CIPs emphasize jobsite safety, loss control, and effective claims management. These activities require additional resources for internal audits and risk management (4). Many owners chose to outsource some of the administrative functions to insurance brokers, whereas others perform some or all of the functions with internal staff. For the Green Line Reconstruction project (\$408.7 million), the Chicago Transit Authority relied on a broker to administer the OCIP. In Portland, Oregon, the Tri-County Metropolitan Transportation District used its own staff to administer the Westside Light Rail project (\$952 million) OCIP. The GAO reported that all of the agencies queried in a 1999 study had relied on the insurance companies to investigate and settle claims (4).

Careful negotiations with the OCIP provider/broker can minimize the time requirements of the project staff. In the majority of cases, the broker handled most of the added burden of safety program development and contractor/subcontractor enrollment. The broker usually provided an on-site representative to oversee the safety program and the initial claims filing. By contract, general contractors are typically required to employ their own safety manager. The owner, in an effort to achieve the safety record required for the minimum insurance premium, imposes this requirement on the contractors. Additionally, most owners

hire safety engineers for their OCIP projects. These engineers supplement the insurance and general contractor safety teams.

Contractor OCIP Administrative Burden

For the contractors, the burden of extra paperwork results from having to file the workers’ compensation coverage labor-hour reports. Of the contractors who responded to the synthesis survey, 59% complained about the added payroll-reporting burden. Specific comments received in response to the survey question, “Did working under the OCIP place more of an administrative burden on your company to handle insurance and claims?” included the following:

- “OCIP requires separate payroll entry for workers’ compensation. Never sure how to handle mechanics, servicemen, and deliveries. Big burden to track subcontractor payrolls in order to comply with owner’s plan.”
- “It adds more of an administrative burden. This is related to reporting payrolls and the other requirements to allow the broker to track premiums.”
- “New systems and reporting requirements increased staff burden.”
- “Additional monthly reporting of man-hours to OCIP administrator.”
- “Yes, we had to supply monthly documentation on who worked on the project.”

Labor-hours must be tracked to adjust the workers’ compensation coverage premium. The initial workers’ compensation premium is based on an estimate of the labor-hours made at the beginning of the project. During the project the actual labor-hours are tracked and compared with the estimated labor-hours in order to adjust the premium to match the actual project experience. Contractors have complained that this labor-hour tracking is an undue burden; however, on federally funded projects, contractors must track the hours anyway for the certified payrolls that are required under the Davis–Bacon Act.

For the contractor the cost of labor-hour tracking is a contract or home office overhead issue and should be included in the bid. Therefore, it is important that these CIP payroll reporting requirements be clearly explained in the project bid documents.

Given the contractor responses to the synthesis survey it is interesting to note that in a September 2001, OCIP article (10) in the AGC journal *Constructor*, the issue of increased payroll reporting burden was not discussed. The real central issue for contractors is a well-designed OCIP that addresses the general contractor’s concerns of fairness and equity.

PARTNERING

Partnering is considered by most state agencies to be the key to OCIP success. With partnering, the framework for cooperation and issue resolution is already in place. Regular meetings, with or without the facilitator, help to further contractor understanding of the OCIP process and program. On the I-15 reconstruction project in Utah, the Utah DOT had the OCIP insurance carriers join in the partnering process. The Michigan DOT emphatically stressed the relationship between partnering and a successful OCIP by stating that “. . . we could not have completed the I-75 and I-275 projects without partnering” (John Lavoy, personnel communication, Michigan DOT Construction Staff Engineer).

For the Southeast Corridor Multi-Model Project (now referred to as T-REX), the Colorado Department of Transportation (CDOT), in partnership with the Regional Transportation District (RTD) of Denver, created a unique risk control program based completely on partnering. The owners, CDOT and RTD, and the contractor have established a Partner Controlled Insurance Program (PCIP) for the project.

The vision of this Partnered Controlled Insurance Program is to have **Shared Goals, Shared Decisions, and Shared Savings**. A Partnering team made up of representatives from CDOT, RTD, and the Design/Build Contractor will manage the PCIP. The partnering approach will be incorporated in all aspects of design, implementation, and management of the PCIP. The Carriers will have the opportunity to participate in the partnering process throughout the duration of the project, and beyond through closure of all insurance related aspects of the PCIP. Carriers are encouraged to offer value-added or innovative program suggestions compatible with this partnering concept that will save money, provide superior service, and maximize protection to CDOT, RTD, the contractors and subcontractors, the citizens, and the traveling public (11).

For the T-REX project the critical difference with the controlled insurance approach is that the contractor (the design/builder) is made a part of the team managing the PCIP. CDOT and RTD have worked hard to involve contractors in the design, implementation, and management of the PCIP. In most other cases the CIP was designed and implemented unilaterally by the agency, usually with input *only* from insurance brokers.

CONTRACTOR OCIP PERSPECTIVE

Some agencies view the OCIP as just another business transaction and that the contractors will comply because they are bound by the contract. Agencies should understand that a project OCIP could have significant financial consequences to a contracting firm beyond the life of that single project. For that reason, contractors do not view OCIPs simply as another contract provision. When an owner’s OCIP administrator fails to perform, it is the

contractor who bears the long-term repercussions in terms of increased business costs.

The AGC in its publication “Look Before You Leap! A Contractor’s Guide to Owner Controlled Insurance Programs” (12), identifies some of the administrative burdens that OCIPs impose on contractors, including

- Getting payroll audits performed in a timely and accurate manner,
- Getting at least quarterly loss runs,
- Getting unit statistical information filed promptly,
- Setting up meetings between OCIP administrators and subcontractors,
- Ensuring that subcontractors enroll in the OCIP,
- Ensuring that subcontractors provide certificates of insurance,
- Ensuring that subcontractors provide timely payroll reports,
- Ensuring that subcontractors provide any other documentation that the program may require, and
- In some instances, ensuring that subcontractors make appropriate deductions.

Problems can result if the owner-hired brokers and third-party OCIP administrators do not consider the contractor to be the customer. To avoid such a situation the Utah DOT included the insurance carriers in the partnering process for the I-15 reconstruction project.

INSURANCE MARKETPLACE

The insurance market can greatly affect the level of direct cost savings that a CIP can achieve. The cost of insurance coverage tends to move in cycles, which are referred to as “soft” and “hard” markets. A soft market occurs when the insurance industry is seeking to expand policy issuance to accumulate investment capital; such a situation makes insurance inexpensive and plentiful. During a soft market cycle there is increased competition among insurance companies. Conversely, a hard market occurs when investment capital is not performing. This makes it necessary for the insurance operations to make a profit without the support of investment income. During a hard market cycle insurance is scarce and prices increase. During those times when the insurance market is soft brokers can negotiate policies that are more favorable to the purchaser. During hard insurance markets the brokers must write policies that favor the insurance provider. In either market, however, the central question for the purchaser is how to effectively finance the risk.

In pure insurance arrangements the insurance companies receive all of the cash flow benefits. Premiums are collected in advance for losses payable at some point in the future. The insurance company has the use of the premium

funds for years in the case of workers' compensation claims, which in the case of severe disabilities typically require many years to settle. There are a variety of plans available that allow purchasers to retain more risk and maintain more control of their funds while still transferring losses beyond some agreed upon level. These are broadly referred to as "loss sensitive" and "cash flow" plans.

Guaranteed Cost Insurance

The premiums for guaranteed cost insurance are based on expected losses, and are not subject to adjustment based on actual loss experience during the policy period. In the case of workers' compensation insurance the final premium determined at the end of the policy period will be adjusted only to account for a difference in the estimated exposure and the actual exposure; for example, a difference in estimated and actual project labor payroll. The advantages of guaranteed cost plans are

- The rates are guaranteed, including any negotiated discount.
- The insurance company is motivated to be aggressive in the areas of loss control and claims adjusting.

The disadvantage is that the purchaser does not share in the savings when losses are low. Even with guaranteed cost insurance, however, there are opportunities for savings.

Premium Discounts

The comparative costs to an insurance company of issuing and servicing a policy that generates a large premium is smaller than for a policy generating a small premium. Although the expenses associated with large policies are higher there is a reduction in unit costs. Therefore, at a graduated rate, there are premium discounts available for large policies.

Schedule Ratings

Some states permit schedule ratings, where the premium can be modified to reflect characteristics of risk. Risk condition modifiers can include the conditions of the project site, required safety training programs, or the establishment of on-site medical facilities. The savings on workers' compensation insurance using schedule ratings can be as high as 10%.

Deductibles

The use of deductibles to eliminate the first dollars of a loss from the insurance coverage can produce significant premium savings. Deductibles lower the insurance premiums

by reducing both the expected covered losses and the expense components of the premium. Deductibles preserve the true purpose of insurance, which is to transfer only those losses that threaten the financial stability of the organization.

Almost all nonmonopolistic states allow the use of deductible plans. These plans apply to both medical and indemnity claims.

Loss Sensitive Insurance

Loss sensitive insurance plans provide purchasers with cash flow benefits and an opportunity to reduce workers' compensation insurance costs by aggressively controlling losses. Premiums for loss sensitive insurance plans directly reflect the loss experience of the insured during the coverage period (13). With a commitment to safety and loss control, the long-term cost impact of such programs on workers' compensation insurance costs can be very favorable. There are several different loss sensitive insurance plans available including

- Retrospective rating plans,
- Dividend plans, and
- Retention plans.

Retrospective Rating Plans

The insurance premium for a retrospective rating plan is based on incurred loss at the expiration of a rating period. The final premium is based on the actual losses incurred. When the purchaser of such a plan controls losses there can be a substantially lower premium as compared with guaranteed cost insurance and the benefits of loss control accrue to the insured immediately.

A workers' compensation retrospective plan uses the standard premium as a base upon which the plan is developed. To determine the final premium amount, the retrospective rating formula is superimposed over the standard premium. The exact rules of application will differ by state. The purchaser usually has input in determining the components of the retrospective rating formula.

A retrospective premium is subject to the specific arrangement contractually specified when the coverage is purchased. Although a good loss experience will trigger a premium reduction below the standard premium there is a defined limitation on the savings. Retrospective policies have upper and lower premium limits; there is a maximum premium that places an upper limit on the effect of poor loss experience and a minimum premium that places a limitation on the potential savings resulting from a good loss experience.

Even with a retrospective rating plan the purchaser should be aware that there are still certain actions that can be taken to further reduce the costs of insurance (13) including

- Negotiating and paying the agent's fees and commissions as a fee outside the retrospective rating formula;
- Carefully selecting the minimum and maximum premium ratios after careful analysis of forecasted losses, as these factors are the primary determinants of the size of the insurance charge;
- Negotiating prompt payment of initial retrospective return. Typically, at the first retrospective adjustment, a substantial return premium is indicated because losses are largely undeveloped at that point in time; and
- Monitoring the loss reserves set by the insurer. Loss reserves are part of incurred losses and affect premium costs.

Dividend Plans

Dividend and retention plans have a mechanism to return premium dollars to the insured after the policy expires. Some dividend plans are "sliding scale," meaning the size of the dividend is a function of the loss experience during the policy period. A dividend plan allows the purchaser to share in the benefits of a lower loss experience without increasing exposure to greater than average losses. The net insurance costs under a dividend plan are the difference between the premium and the returned dividend. It must be understood that dividends cannot legally be guaranteed.

A workers' compensation insurance dividend plan will have a loss sensitive structure. With a loss sensitive dividend plan the beginning premium is calculated to reflect a guaranteed cost policy. At policy expiration the dividend is calculated based on the final audit premium and incurred losses. The amount of total incurred losses (the sum of paid losses and loss reserves) is divided by the final premium (i.e., after the labor-hour adjustment) to determine a net-loss ratio. The dividend is then calculated as a function of the final premium and the net-loss ratio.

In the case of a loss ratio above a certain percentage, dividends are not paid. The break point loss ratio is usually around 55%, but the actual percentage varies with the plan and the size of the final premium. Because losses are typically open for several years after policy expiration, dividend payments are usually made periodically as the incurred losses situation clarifies itself.

Retention Plans

A retention plan is a variation of a loss sensitive dividend plan. All retention plans are "participating" in nature. The

insurance company calculates the percentage of the final premium that is attributable to fixed expenses and provided services. This percentage is the *retention factor* (or fixed-cost percentage) and is composed of elements that account for

- Administrative expenses,
- Loss control expenses,
- Premium taxes, and
- Profit.

The insurance company will retain an amount equal to the retention factor multiplied by the final premium as compensation for fixed costs and profits. The remainder of the premium is used to pay losses. The loss payout amount consists of the total of the actual lost amounts plus reserves for losses multiplied by a loss conversion factor. The loss conversion factor reimburses the carrier for claims handling. Any unused amount is returned to the purchaser in the form of a dividend.

Retention plans give the impression of being very much like incurred loss retrospective plans, but there are fundamental differences as shown here. Those differences can significantly affect the purchaser's final cost of insurance and the degree of assumed risk.

- Retrospective plan—Maximum premium: Greater than 100% of the guaranteed cost premium.
- Retention plan—Maximum premium: Exactly 100% of the guaranteed cost premium. A higher amount of underwriting is assumed by the insurer. The retention factor reflects the higher insurer risk. Because dividends cannot be guaranteed, there is the risk that even with a favorable loss experience no dividend will be forthcoming.

Cash Flow Plans

A cash flow plan is structured so that the insured has the benefit of premium dollars until they are actually needed to pay claims. An *expected loss* retrospective rating is a cash flow plan variation on *incurred loss* retrospective rating plans. Under an expected loss retrospective plan, premium payments are determined at policy inception based on a final premium using the reduced loss experience the insured expects to achieve. This is in contrast to an incurred loss retrospective plan where the insured pays the standard premium during the policy term.

There are also paid loss retrospective plans, where the insured reimburses the insurance company as claims are actually paid.

When using an expected loss retrospective plan, premiums are reduced so that the total premium payments prior

to audit equal the retrospective premium with the expected loss experience. The dollar difference between the two premium payment schedules is available to the insured.

Legal Issues—Use of Federal Funds

If federal funds are being used for the project it will be necessary to comply with federal regulations when handling refunds from loss sensitive insurance plans. “These (49 C.F.R. Part 18, Subpart C, Post-Award requirements) Department of Transportation regulations encourage program income in order to reduce program costs. Program income, rebates, refunds, contract settlements, audit recoveries and interest earned on those funds are to be disbursed before requesting additional cash payments” (14).

The Cash Management Improvement Act prescribes rules and procedures for the transfer of funds between the federal government and the states under federal programs. Specifically, this act states

If a State receives refunds of funds disbursed by the State under a Federal program, the State shall return those refunds to the Federal executive agency administering the program or apply those refunds to reduce the amount of funds owed by the Federal Government to the State under such program. Interest earned on such refunds shall be considered when setting overall interest obligations between the State and the Federal Government as required by this section (31 U.S.C. 6503(f)) (15).

Office of Management and Budget Circular A-87 sets forth criteria for determining costs for federal grants, contracts, and other agreements with state and local governments (16).

Applicable credits refer to those receipts or reduction of expenditure-type transactions that offset or reduce expense items allocable to Federal awards as direct or indirect costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the governmental unit relate to allowable costs, they shall be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

Therefore, DOTs must apply any insurance refunds to the costs of the project. Federal guidelines require that overpayments and any resulting interest be immediately recovered and either used to pay current project costs or the federal portion returned to the U.S. Treasury (14).

In May 1999, the Office of Inspector General, U.S. DOT, issued a recommendation that the FHWA review the policy regarding reimbursement for insurance and establish guidelines to ensure that returned premiums are recovered and applied to current costs or returned to the U.S. Treasury. The FHWA responded in September 1999 that it would “... issue a policy on insurance programs that ensures

the Federal share of premium adjustments on highway projects is immediately applied to other project costs or credited to the State’s Federal-aid account, and reserve accounts do not exceed allowable amounts.” An interim policy was issued January 8, 2002 (see Appendix C).

STATE HIGHWAY AGENCY OCIP EXPERIENCE

DOTs that have used OCIPs for their major projects reported satisfaction with the results as shown by the following comments. That satisfaction is the result of a perception that safety was enhanced, responsiveness to the public was enhanced, and in some cases there were cost savings. In Ohio, an extra \$300,000 was spent to enhance safety.

- Central Artery/Tunnel Project, Boston, Massachusetts—Cannot document but believe there are savings through reduced litigation, efficient purchasing of insurance, safety prevention and loss control, and reduced premiums for general liability and workers’ compensation insurance.
- I-15 Reconstruction, Salt Lake City, Utah—Preconstruction survey consultant certifies that more than \$30 million was saved. Safety record, both project (loss history went down) and public (speed through work zone was 75 mph in a 50 mph zone, with few accidents) were excellent. Good public relations lead to few complaints over small claims (contractor less likely to tell folks to ‘buzz-off’). The claims process was controlled much better.
- US Route 220/I-99 Project, Pennsylvania—They are trying to capture data for proof at the end, but it is too early to say right now. They are comparing the project accident and injury rates to national averages.
- Anchorage International Airport Terminal Redevelopment Project, Anchorage, Alaska—The broker must provide savings data. Calculate manual rate costs compared to OCIP costs. Other non-DOT projects have had savings.
- Fort Washington Way, Cincinnati, Ohio—Very safe project: after 2.5 million person-hours incident record is 0.17 (4.7 national average), insurance claims handled expeditiously, full-time safety managers (contract requirement and pay item) help carry the day. Proved there was no savings due to absence of workers’ compensation insurance in the OCIP, in fact, \$300,000 cost. Owner wanted a safe project and felt cost was reasonable to obtain that goal.
- New Mexico Corridor 44 Project, New Mexico—Will try to document at the end. Cost per person-hour will be compared to national average. Should be about one-third of national average.
- Suncoast Parkway Project, Florida—A safe workplace: the loss ratio (L.R.) was lower than the average L.R. for construction statewide. More than 3.3 million

person-hours without a fatality. Financial savings of 2% of construction costs (\$8.8 million). Premiums, \$4.5 million broker insurance loss fund (actual cost/pay out), \$2.3 million loss fund cap (\$2.1 million paid out to date).

- Superstition Freeway, Maricopa County, Arizona—Too early to say, but the intangible benefits from the extensive safety program are very good. Safety is a big plus for the OCIP.
- Blue Water Bridge Project, Michigan—Low loss experience, less than 25%. \$1.8 million reimbursed to Michigan DOT (about 2% of construction costs). Agent estimated \$10 million; actual was \$5 million.

Many of the agencies are candid in stating that they believe there are cost savings, but they were not able to document at the time of the survey for this synthesis. The calculation of actual dollar savings experienced when using an OCIP is a complex task; however, it is possible to develop responsible estimates of the savings.

Pre-Bid Cost Savings Estimate

Any cost savings estimate made before a project is bid will have to rely on (1) estimated labor-hours, by craft, to complete the work and (2) assumed contractor experience modifier ratings (E-mods) necessary to identify applicable insurance rates. With this information an estimated cost of “contractor” insurance can be calculated. The savings would then be projected based on the OCIP obtaining comparable or in most cases better insurance coverage at a lower rate because of a lower expected loss experience and because of economies of scale.

Post-Bid Cost Savings Estimate

After the prime contractor and associated subcontractors are identified, the labor and E-mod information can be solicited directly from the involved contractors. Each con-

tractor project participant as part of the OCIP enrollment process provides their own estimate of labor-hours by craft (see Appendix F, *Insurance Calculation Worksheets*) and their specific E-mod (see Appendix F, *Experience Rating Request Letter*). Again, with those two pieces of information, a contractor cost of insurance can be calculated. In this case *actual* E-mod data are being used, which can improve the estimate; however, there is still the possibility that the labor-hour estimates will not reflect the final labor-hour requirement to complete the work. The savings are calculated using the contractor data and OCIP’s expected lower loss experience insurance rate.

Post-Construction Cost Savings Calculation

The actual OCIP savings can only be calculated after the project is completed. When the project is finished the actual labor-hour data are available to calculate contractor insurance cost. The actual cost of the OCIP is also available at that time. This may, however, be several years after work in the field is completed, because it can take years to finally settle all insurance claims.

Because the actual savings cannot be calculated until some time in the future, some parties have questioned the projected savings that can be achieved with an OCIP. They have a valid point. However, it can also be stated that a contractor has the same problem. A contracting firm purchases insurance based on its historical E-mod. With an OCIP, an agency institutes a very strict safety program to receive a reduced insurance premium based on a projected loss experience that will be better than the contractors’ historical experience. One rate structure is based on looking back and the other is based on taking positive action and looking forward. Savings are realized only if the owner and contractor together achieve the anticipated lost experience. Studying the experience records for the previously mentioned projects, five of the nine specifically comment on “a safe workplace” and “low loss experience,” which are good indicators that the OCIP is a success.

DEVELOPING AN OWNER CONTROLLED INSURANCE PROGRAM

OCIPs are a good risk-management tool for projects having very specific risk and cost characteristics. Therefore, a feasibility study must be undertaken to assess whether a given project has the proper characteristics for a successful OCIP. That study should be conducted prior to any decision on how to administer the program and any negotiations with insurance brokers for services. If external expertise is needed to support or conduct the study a broker or consultant should be hired independently.

Expected cost savings are the primary attraction of an OCIP. Cost savings are usually found in the workers' compensation component of insurance expenses; therefore, the number of labor-hours required to complete a project is a critical decision variable. Together with direct insurance cost savings there are indirect cost savings associated with having a single point for processing claims and, possibly, of most importance, less litigation. However, the OCIP should be viewed principally as a risk-management tool and not as a risk-financing tool; what is the best way to protect the project owner from project construction risks?

The contractors who participate in the project OCIP have both real and perceived concerns that must be addressed during program design. Attention to contractor concerns could lead to superior OCIP performance, which benefits both the owner and the contractor.

SITE DEFINITION

The early CIPs were used for building projects and the site definition for insurance coverage purposes identified a very specific area, usually one that was fenced. Most transportation projects do not fit such an ideal OCIP project site definition. The site for a transportation project can be defined as the land constituting the project right-of-way, but typically the site definition includes not only the physical construction site but also any supporting sites dedicated 100% to the project work. For example, a contractor's portable batch plant located a short distance from the project, but dedicated strictly to the OCIP project, would be covered and subject to the safety program and rules. A material supplier who is providing aggregate for several area projects from the same pit would not be covered. However, if the same aggregate supplier were providing material from the pit solely to the OCIP project, and no other projects, then the supplier would be eligible for inclusion in the OCIP. In one case, the designer's office

space in another state was covered as long as they were working solely on the OCIP project. The site definition generally covers the "zone of influence" with respect to traffic-control devices so that those employees maintaining the signs and devices are covered under the OCIP. The Superstition Freeway (US-60) site definition, extracted here, contains such a zone of influence statement.

Superstition Freeway (US-60), Maricopa County, Arizona

Project Site: For purposes of the OCIP, the Project Site includes the limits of ADOT's right-of-way as described in Section C-III, Section 210, on I-10 the north and south termini of I-10 work, and between I-10 and the east terminus of US-60 work as identified in the Design-Builder's Technical Proposal; areas immediately adjacent thereto on which work is being performed exclusively for the Project, including local roads, public easements, railroads, and temporary construction easements on which Design-Builder and Subcontractors perform work under their respective contracts; *areas where traffic control devices are set exclusively for this project*; and other such sites exclusively related to this Project that have been specifically disclosed by Design-Builder and its Subcontractors, approved by the Project Manager and accepted by the insurance company(ies) prior to work beginning at such site. Some examples of other such sites include staging areas, batch plants, materials pits, storage areas, project offices, and field testing laboratories, but only if used exclusively for this Project. (Italics added.)

Unique site definitions limiting coverage to specific physical areas can cause problems. They can give the impression that if a worker is injured in connection with the project work, but outside the parameters of the site definition, there is no coverage under the OCIP. Under such circumstances, the applicable state statute may automatically extend the coverage beyond any site definition because of the "arising out of or in connection with" rule that applies in most states (17). Use of such site definition statements will also cause problems with the contractor's insurer, who may require full premiums based on all-project payroll because of difficulty in determining which employees and how much of their labor is associated with "off-site activities."

As discussed earlier, contractors generally have numerous off-site activities at laydown yards, temporary plant sites, and equipment maintenance facilities. In the case of the Central Artery/Tunnel (CA/T) project, the OCIP manual

specifically addresses how off-site locations could be added to the OCIP coverage.

Central Artery (I-93)/Tunnel (I-90) Project, Boston, Massachusetts

Project Sites: All designated Project locations in the Central Artery/Tunnel Project construction project under the control of the Massachusetts Highway Department and Bechtel/Parsons Brinckerhoff located in Boston, Massachusetts, surrounding areas, and the West Virginia Tunnel Test Site.

“Project Sites” are further limited to those areas at or from which each Approved Program Participant’s work is performed under its contract.

All designated “Offsite Locations” must be pre-approved for coverage under the Wrap-up Program by submitting the necessary information to the Project Insurance Broker.

It is difficult to describe a site definition that covers all the possibilities. To avoid the problems inherent in very specific site definitions that limit OCIP coverage, the insurance can simply be tied to losses arising out of the project work (17). An example of such an open coverage statement, the Fort Washington Way site definition, is provided here.

Fort Washington Way Highway Project, Cincinnati, Ohio

Project Site: Employees performing services under Contract are covered under the OCIP only while working on-site and under certain circumstances while off-site, as long as their off-site work is directly related to the Project Site. It does not include manufacturing, fabrication, or other operations at the Contractors’ or Subcontractors’ off-site main or branch offices, factories, warehouses, or similar places of business. Employees are not covered while traveling between home and the Project Site.

The reason for limiting coverage to defined sites is to avoid having contractors charge losses associated with other work to the OCIP. If proper management controls are employed in the execution of the OCIP, then an effective audit trail should exist to determine the validity of suspicious claims.

The following are additional site definition examples.

Southeast Corridor Project, Denver, Colorado

Project Site: The T-REX Project Site, specifically including: the geographic location of the project defined by legal boundary lines identified in the Contract Documents between Southeast Corridor Constructors (SECC)

and the Colorado Department of Transportation (CDOT)/Regional Transportation District (RTD), and areas or ways contiguous thereto which are:

1. controlled and directed by SECC where incidental operations are preformed,
2. areas where construction offices are located,
3. locations set up by SECC for storage of material or equipment,
4. temporary locations, and
5. sites used for the import or export of soil.

Including but not limited to:

1. The T-REX project site;
2. 7200 South Alton Way, Englewood, Colorado 80112;
3. 5450 South Syracuse, Greenwood Village, Colorado 80111;
4. Pier 1 Office, 4401 E. Evans Avenue, Denver, Colorado 80222; and
5. Belleview Trailer Complex, 4865 S. Quebec Street, Denver, Colorado 80237.

I-15 Reconstruction Project, Salt Lake City, Utah

Project Site: Those activities at the Project Site or emanating there from. The OCIP does not provide insurance coverage for permanent yards or other locations of any contractor/subcontractor. The OCIP does not cover consultants, suppliers, vendors, materials dealers, guard services, janitorial services, truckers (including trucking to the project where delivery is the only scope of work performed), and other temporary project services.

New Mexico Corridor 44 Project

Project Site: That area described in the construction contract documents including the areas available for contractor operations, access routes, rights-of-way, and any approved additional sites necessary or incidental thereto in connection with the work at or emanating from the project site. (All additional sites must be approved by the carrier.)

INSURANCE COVERAGE

Insurance for a typical CIP includes the following coverages (Appendix D):

- General liability insurance;
- Workers’ compensation and employer’s liability insurance;
- Builder’s risk insurance, including coverage for property in transit and property stored off-site; and
- Umbrella or excess liability insurance.

Depending on project-specific risk and the sponsor's preferences other coverages may be included in the CIP. For the CA/T project in Boston the owner additionally purchased

- Airport contractor's liability insurance, because of the work on and around Logan Airport, and
- Railroad protective liability insurance, because the work abutted and passed under multiple operating railroad lines.

Because the I-15 reconstruction project in Salt Lake City was a design-build project, the OCIP included professional errors and omissions liability insurance. The Metropolitan Washington Airports Authority incorporated a blanket pollution abatement liability policy in their OCIP (18). This policy provided coverage for abatement contractors and third parties during removal and cleanup of underground storage tanks.

Two insurance coverages are never included in a CIP: (1) contractor's tools and equipment, and (2) automobile liability. These coverages always remain the contractor's responsibility. All 10 of the transportation departments interviewed for this synthesis and all CIP experiences that were found in the literature support this blanket assertion. Many CIP reports have definitively stated this point.

No Wrap-up program includes automobile liability for contractors or subcontractors, nor should it. Vehicles move to and from other jobs and other locations with ease and frequency and therefore are best insured separately. And for the same basic reason it is not customary to provide physical loss or damage protection for contractors' equipment (3).

WORKERS' COMPENSATION INSURANCE

Although workers' compensation insurance may not be the primary reason that a CIP is used for project risk control, it is the key financial incentive. The workers' compensation coverage offers the greatest potential for premium savings of any of the coverages under a CIP. Good loss experience, as a result of an aggressive CIP safety program, results in lower premiums and, depending on the structure of the insurance, there can even be refunds at the end of the project. However, in the five states that require all workers' compensation coverage to be purchased from a monopolistic state fund [North Dakota, Ohio, Washington, West Virginia, and Wyoming (Nevada was a monopolistic state until July 1, 1999)], the potential for financial savings from a CIP is practically nonexistent. With the workers' compensation component removed there is very little, if any, financial savings. The only benefit to the owner (and workers) is a very safe project with few if any lost time accidents or fatalities. This safe project issue was the reason that an OCIP was used for the Fort Washington Way

highway project in Ohio. How a monopolistic state fund would react to an offer to participate in an OCIP is unknown; this is a matter that has not been broached.

By state workers' compensation statutes, an employee who suffers a job-related injury because of an accident or occupational disease is entitled to specific employer-provided benefits. An injured worker's sole remedy against their employer is through the workers' compensation law. Therefore, there are no policy limits for workers' compensation insurance statutory benefit obligations. The liability is proscribed under the applicable state workers' compensation law. However, even after such policy payments are made, there still exists the possibility of work-related injury *liability* claims for damages that are outside state statute-prescribed benefits. Such employee injury claims are typically excluded under commercial general liability (CGL) policies. To have protection from liability claims an employer must additionally have nonstatutory coverage.

A standard workers' compensation policy provides two basic coverages: (1) employer statutory liability benefits payable under the laws of the covered state, and (2) employer nonstatutory liabilities. The second coverage provides security for claims by employees or their dependents that fall outside the protection of workers' compensation law.

For the 10 projects studied for this synthesis, two (CA/T and the Anchorage International Airport projects) had employer's liability limits of \$2 million for bodily injury by accident, bodily injury by disease (both policy limit and each employee). The other eight projects all had \$1 million liability limits for bodily injury by accident, bodily injury by disease (both policy limit and each employee).

The benefits payable under the statutory liability portion of the policy are specifically excluded from the coverage under the nonstatutory coverage. This coverage combination is only in respect to the specific state's workers' compensation statute, and there can be liabilities under the laws of other states. Therefore, there can be a third part to the policy—other states insurance—that provides coverage for liabilities payable under workers' compensation statutes of specified additional states.

Other States Coverage

As appropriate for project activities, an "other states" coverage extension can be obtained. The other states workers' compensation insurance extension provides coverage for liabilities payable under the workers' compensation statutes of *specified* additional states. The particular states must be named in the policy because the coverage is *only* for the specified states. The primary workers' compensation risk is at the project site proper, but incidental project activities

may take place in another state or it can happen that crews hired from a different state are employed on the project. A standard workers' compensation insurance policy responds only to statutory liability under the laws of the state named in the policy. Coverage does not apply to claims payable under any other state's statutes unless the state is listed in the other states extension. Additionally, the second part of the workers' compensation policy (employer nonstatutory liabilities) will not respond because that part of the policy specifically excludes benefits payable under a workers' compensation statute.

Other states coverage for incidental exposures in the five monopolistic states cannot be obtained. It is possible, however, to purchase employer's liability insurance to respond to nonstatutory liabilities from injuries in those states. CIP managers should carefully evaluate the issue of exposures in monopolistic states.

Stop Gap Coverage

In the monopolistic states, the state fund workers' compensation insurance applies only to the statutory benefits and does not provide employer liability coverage. Thus, with monopolistic state workers' compensation insurance there can be a gap in liability coverage. Consequently, a CIP in those states would have to either have an employer's non-statutory liability coverage endorsement or the participating contractors would have to purchase such coverage outside the CIP.

Federal Compensation Acts

Standard workers' compensation and employer's liability policies exclude coverage of all bodily injury claims by persons covered by federal compensation acts. One particular act of concern is the Longshore and Harbor Workers' Compensation Act (LHWCA), which frequently applies to construction employees working on or near navigable waters. The International Risk Management Institute reports that federal courts tend to broadly interpret the qualification parameters, thereby making construction workers eligible for coverage under this act when their work is performed on or near navigable waters (19). Specifically, workers constructing bridges over navigable waters are covered under the LHWCA [LeMelle v B.F. Diamond Construction Co., 674 F2d 296 (4th Cir 1982); Gilliam v Wiley N. Jackson Co., 659 F2d 54 (5th Cir 1981); and Browning v B.F. Diamond Construction Co., 676 F2d 547 (11th Cir 1982)]. Typically, the benefits payable under these acts will be two or three times greater than benefits under state workers' compensation statutes. If a project involves work adjacent to or over a navigable waterway an endorsement will be needed to add for LHWCA coverage.

LHWCA coverage endorsements to the standard workers' compensation policy were obtained for the CA/T project in Boston, and for the Blue Water Bridge project in Michigan.

Policy Issuance

In some states it is required that workers' compensation insurance policies be issued to the participants. Therefore, the CIP broker will have to make arrangements for the insurance company to issue individual policies to each contractor (see the New Mexico 44 project and the Pennsylvania US Route 220/I-99 project examples described here). These are typically referred to as "underlying" policies.

Workers' Compensation Insurance Examples

Central Artery (I-93)/Tunnel (I-90) Project, Boston, Massachusetts

Workers' Compensation Insurance in statutory amounts for the Commonwealth of Massachusetts and \$2,000,000 limit of Employer's Liability.

| | |
|------------------------------------|---------------------------|
| Employer's Liability Limits | |
| Bodily injury by accident | \$2,000,000 each accident |
| Bodily injury by disease | \$2,000,000 policy limit |
| Bodily injury by disease | \$2,000,000 each employee |

There is a Workers' Compensation Large Deductible Agreement between the Commonwealth of Massachusetts, acting by and through the Massachusetts Department of Highways (owner) and the insurance company (company). By that agreement the owner is obligated to reimburse the company for loss payments as follows:

| | |
|--|--------------------------|
| Maximum loss reimbursement limit per claim shall be: | |
| For bodily injury by accident | \$1,000,000 per employee |
| For bodily injury by disease | \$1,000,000 each claim |

The maximum loss reimbursement limit for one or more bodily injuries because of one occurrence shall be \$3,000,000, regardless of the number of Named Insureds or the number of persons injured in that occurrence.

The CA/T insurance arrangement is very close to complete self-insurance for all workers' compensation occurrences.

Southeast Corridor Project, Denver, Colorado

Workers' Compensation

Statutory Colorado Benefits

| | |
|------------------------------------|---------------------------|
| Employer's Liability Limits | |
| Bodily injury by accident | \$1,000,000 each accident |
| Bodily injury by disease | \$1,000,000 policy limit |
| Bodily injury by disease | \$1,000,000 each employee |

I-15 Reconstruction, Salt Lake City, Utah

- Limits: 1. Workers' Compensation Statutory
2. Employer's Liability

\$1,000,000 each employee—Bodily injury by accident
\$1,000,000 each employee—Bodily injury by disease
\$1,000,000 Bodily injury by accident or disease—Any one accident.

US Route 220/I-99 Project, Pennsylvania

Workers' Compensation and Employer's Liability Insurance will be provided in accordance with Pennsylvania State Law. Each contractor and all tiers of subcontractors will receive a copy of their own Workers' Compensation policy. Limits of Liability and coverages will be as follows:

- (a) Workers' Compensation—State of Pennsylvania Statutory Benefits

- (b) Employer's Liability—Designated Premises Only

- (i) \$1,000,000 Bodily injury each accident
- (ii) \$1,000,000 Bodily injury by disease—Policy limit
- (iii) \$1,000,000 Bodily injury by disease—Each employee

- (c) Endorsements

- (i) 60 Days Notice of Cancellation
- (ii) Voluntary Compensation Endorsement
- (iii) Other States Endorsement
- (iv) U.S. Longshoremen's and Harbor Workers

(d) SPECIAL CONDITIONS—DRIVERS

DRIVERS FOR ENROLLED CONTRACTORS WILL BE COVERED FOR WORKERS' COMPENSATION WHEN THEY ARE ON SITE. COVERAGE WILL EXTEND TO LOADING AND UNLOADING ON SITE. OFF-SITE COVERAGE WILL BE PROVIDED WITHIN FIVE (5) MILES OF JOBSITE. COVERAGE DOES NOT APPLY TO INDEPENDENT TRUCKERS SINCE THEY ARE NOT EMPLOYEES OF THE ENROLLED CONTRACTOR.

(e) SPECIAL CONDITIONS—BATCH PLANT EMPLOYEES

BATCH PLANT EMPLOYEES OF AN ENROLLED CONTRACTOR WILL BE COVERED FOR WORKERS' COMPENSATION WHILE PLANT IS IN OPERATION. NO ASSEMBLY OR DISASSEMBLY COVERAGE WILL BE PROVIDED UNDER THE OCIP.

New Mexico Corridor 44 Project

Workers' Compensation and Employer's Liability Insurance will be provided in accordance with applicable State laws. Each contractor and all tiers of Subcontractors will receive a copy of their own Workers' Compensation policy. Limits of Liability and coverages will be as follows:

- (a) Workers' Compensation—State Statutory Benefits

- (b) Coverages—Designated Premises Only:

- (i) \$1,000,000 Bodily injury each accident
- (ii) \$1,000,000 Bodily injury by disease—Policy limit
- (iii) \$1,000,000 Bodily injury by disease—Each employee.

Superstition Freeway (US-60), Maricopa County, Arizona

Statutory workers' compensation insurance to cover litigations imposed by federal and state statutes having jurisdiction of its employees engaged in the performance of the work, and employer's liability with minimum limits of liability are as follows:

\$1,000,000 bodily injury by accident for each person
\$1,000,000 bodily injury by disease for each person
\$1,000,000 bodily injury by disease policy limit

Coverage will apply only to employees of the Design-Builder and its subcontractors for work performed at the Project Site. Workers' Compensation Insurance and employer's liability will also include: (1) employees (including drivers) of the Design-Builders or Subcontractors, while hauling in the conduct of business performed exclusively for the Project, and (2) employees of the Design-Builder or Subcontractors engaged in traffic control exclusively for this Project. Coverage will not apply with respect to employees of independent truckers/haulers, vendors, suppliers, or other entities who are not Subcontractors.

COMMERCIAL GENERAL LIABILITY INSURANCE

There are several options for structuring CGL insurance coverage for a CIP. The conventional approach is to have a primary CIP policy for all insureds (owner, contractor, and accepted subcontractors). This policy will have a single per occurrence limit for all insureds and an annual policy aggregate at multiples of that single limit. This is the coverage method used for most transportation projects. (Specific project coverage limits are given in the OCIP Commercial General Liability Insurance Examples section that follows.) A common umbrella policy (excess liability) is used to address project exposures above the primary CIP policy limits. Insurance market conditions will influence the structure of the primary and excess policies, but a reasonably high excess liability is typically a relatively inexpensive program component. This approach will also satisfy large contractors who have concerns about claims exceeding the CIP coverage limits and then adversely affecting their own insurance program (6).

Another option for structuring the CIP general liability coverage is to provide each contractor with a dedicated per occurrence limit, supplemented by a large common excess liability umbrella. This seems to be a more costly approach and has not been used with CIPs for transportation projects.

Some of the coverages under the CGL policies are for liabilities resulting from interactions with the public. Traditionally, when a contractor is faced with a damage claim from a private individual, or someone not associated with the project, there is a tendency to ignore the problem until pressed into litigation. Under a CIP the on-site insurance

TABLE 2
PROPERTY DAMAGE COVERAGE

| Damage to: | Arising out of: | Impact |
|-------------------------------|-------------------------------------|-------------|
| The insured contractor's work | The insured contractor's operations | Not covered |
| The insured contractor's work | A subcontractor's work | Covered |
| A subcontractor's work | That subcontractor's work | Covered |
| A subcontractor's work | Another subcontractor's work | Covered |
| A subcontractor's work | The insured contractor's work | Covered |

[Source: *Construction Risk Management*, Vol. II, International Risk Management Institute (20)].

representative can process many such claims in an expeditious manner. In terms of community relations, prompt settlement of such claims is a bonus for the project. On the other hand, owners have noted that some insurance companies are sometimes too eager to settle without checking the validity of the claim.

CGL coverages that are usually part of a CIP include

- Contractual liability;
- Broad Form Property Damage;
- Independent contractor liability;
- Completed operations;
- Explosion, Collapse, Underground Property coverage;
- Personal and advertising injury liability; and
- Employees as insured.

On the CA/T project in Boston the CGL also included fire damage legal liability.

It is best if standard Insurance Service Office, Inc., policy forms (possibly with modification) are used for the primary layer of CGL coverage. CDOT specifically told contractors that a "Standard Insurance Services Office (ISO) Commercial General Liability Insurance policy or equivalent . . ." would be used for the Southeast Corridor PCIP. Excess liability is always written on nonstandard forms. The advantage of using standard policy forms is that their terms and conditions have already been tested in the courts (6). Standard ISO CGL policies with a 1986 or later edition date automatically include all the above-listed coverages. Coverage A of the ISO CGL policy provides all of the listed types of bodily injury or property damage liability coverages under one agreement. Coverage B of the ISO CGL policy expands the scope of the policy's coverage to include personal and advertising injury liability, and Coverage C reimburses medical expenses incurred by members of the public who are injured on the contractor's premises or because of the contractor's operations (20).

Contractual Liability

Contractors assume substantial liabilities through the indemnity (or hold harmless) provisions of construction

contracts. By contract, it is often required that contractors indemnify the project owner against third-party claims arising from their construction operations on the project. The CGL will cover such liabilities. Additionally, the participants in a CIP are usually insured under one policy, but they remain separate legal entities and can bring suit against one another. The ISO CGL policy makes clear that there is a separation of insureds. This separation preserves the policy's coverage with respect to suits filed by one insured against another insured. (See the OCIP CGL coverage statements for the Fort Washington Way and New Mexico Corridor 44 projects presented in the Commercial General Liability Insurance Examples section.)

Broad Form Property Damage

The standard ISO CGL policies with a 1986 or later edition date have an exclusion that precludes liability coverage for property damage to the contractor's completed work when the damage is the result of the insured contractor's own operations. Coverage is however preserved, by exception to the exclusion, for damage to a subcontractor's work and damages arising out of a subcontractor's work (Table 2). With an OCIP and all parties as named insureds it would be assumed that all work is covered, but this issue should be very carefully reviewed. The presentation in Table 2 is for the case of a policy held by a general contractor. (See the OCIP CGL coverage statements for the Fort Washington Way, New Mexico Corridor 44, I-15, and Superstition Freeway projects presented in the Commercial General Liability Insurance Examples section.)

Independent Contractor Liability

An owner employing a contractor or a contractor employing a subcontractor can be held vicariously (serving in the place of someone, substitution) liable for that independent contractor's negligence. The ISO CGL coverage protects the insured parties liable claims that arise because of an independent contractor's negligence. (See the OCIP CGL coverage statements for the Fort Washington Way, New Mexico Corridor 44, and Superstition Freeway projects presented in the Commercial General Liability Insurance Examples section.)

Completed Operations

Coverage A of the ISO CGL policy will respond to bodily injury and property damage liability arising out of both work in progress and completed work. The insured has coverage subject to a separate “products-completed operations hazard” limit of insurance. Note that for each of the CGL coverages included in the Commercial General Liability Insurance Examples section there is a separate products and completed operations policy limit stated.

“Coverage for completed operations claims arising out of a wrap-up project is a major concern to contractors” (6). With standard “occurrence-based” CGL policies, contractors are able to maintain, under their current CGL policies, completed operations coverage for liability arising out of past projects. However, when a contracting company performs under an OCIP and removes CGL coverage from its own policy there will be no completed operations coverage for the OCIP project under the company’s own insurance program. The cessation of completed operations coverage under the OCIP prior to the running of the state statute of repose plus one year for discovery is imprudent to all layers of the insureds. OCIPs should not be structured without time (tail) extensions the match state statutes. The OCIP CGL coverage for the Fort Washington Way project provided a completed operations extension for 3 years, however, the Ohio statute is 15 years. Both the I-15 and Superstition Freeway projects provided a completed operations extension for 5 years, whereas the Utah statute is 6 years and Arizona’s is 8 years. In Colorado, the PCIP has a 2-year extension of completed operations liability coverage that begins upon termination of the PCIP. However, the contract documents also state that “CDOT/RTD may, in its sole discretion, approve a further time extension of Completed Operations Liability insurance coverage.” Additionally, the policy includes “. . . completed operations coverage extending for 8 years after substantial completion of the jobsite work and acceptance by CDOT/RTD or when the project is put into its intended use” (21). The Colorado statute is 6 years.

Explosion, Collapse, Underground Property Coverage

Prior to 1986, Explosion, Collapse, Underground Property (XCU) coverage was excluded from standard form CGL policies. XCU coverage is now contained in the standard form CGL policies; however, some nonstandard CGLs may exclude one or more of these hazards. The explosion coverage applies to property damage arising from blasting operations or other types of explosions. Collapse covers structural property damage caused by excavation and demolition activities. Underground coverage is for property damage to specifically listed types of property (e.g., wires, pipes, and sewers) caused by mechanical digging,

pile driving, or excavating equipment. These coverages can be eliminated by exclusion endorsements. The OCIP CGL coverage for the Fort Washington Way, New Mexico Corridor 44, and Superstition Freeway projects included XCU coverage. In Colorado, XCU was included because the standard ISO form without the XCU exclusion was used (21).

Personal and Advertising Injury Liability

Personal and advertising injury liability coverage is part of Coverage B of the ISO CGL policy. Personal and advertising injury is defined as injury, including consequential “bodily injury,” arising from any of the following offenses:

- False arrest, detention, or imprisonment;
- Malicious prosecution;
- Wrongful eviction;
- Use of another’s advertising idea in your advertisement; or
- Infringing upon another’s copyright trade dress or slogan in your advertisement.

This coverage can be important because of the security measures that are taken at CIP project sites. Strict security measures expose the owner and contractor to claims of false arrest or wrongful prosecution if someone is detained or charged with trespass. The OCIP CGL coverage for the Fort Washington Way and New Mexico Corridor 44 projects had a \$1 million aggregate limit for this coverage. The Superstition Freeway project OCIP had a \$2 million aggregate limit for this coverage and in Boston the aggregate limit for personal and advertising injury was \$25 million.

Employees as Insured

Employees are insureds for acts within the scope of their employment with the various named insureds. The CIP CGL should cover employees as insureds and provide coverage for suits by one employee against another. The PCIP in Colorado makes this point very clear, because in Appendix B of the *T-REX Project Insurance Manual* (21) it is specifically acknowledged that “Employees are insureds under the policy, and policy terms include ‘separation of insureds,’ as defined by the standard Insurance Service Office (ISO) policy form.”

Fire Damage Legal Liability

Contractor’s tort liability coverage under the policy for damages commonly referred to as “fire legal liability” is included as part of Coverage A. As the name implies, the coverage is only for fire damage and is subject to a sub-

limit within the policy’s overall limit (see the CA/T project limits statement later in this section). When the contractor occupies owner-provided property policy language with the phrase “temporarily occupied by (the named insured) with permission of the owner,” it becomes unnecessary for a formal rental agreement involving the payment of money to be in effect for the named insured to have coverage.

Insurance Limits

CGL insurance policies provide coverage for many different kinds of liability and as a result specific liability limits are specified in the policy for different types of claims. The policy limits apply separately to each consecutive year that the policy is in force.

General Aggregate

The total amount the policy will pay for all bodily injury, property damage, personal and advertising injury, and medical payment claims.

Products–Completed Operations Aggregate

The total amount the policy will pay for all bodily injury and property damage claims included in the products-completed operations hazard.

Personal and Advertising Injury Limit

This is the policy’s per person or per organization limit of liability for claims involving covered personal and advertising injury. Payments are subject to the general aggregate limit.

Each Occurrence Limit

The established maximum the policy will pay for all bodily injury, property damage, or medical payments arising out of any one occurrence.

Medical Expenses Limit

The maximum the policy will pay any one person for first aid and covered medical expenses resulting from one accident.

Commercial General Liability Insurance Examples

The economy of scale afforded by the OCIP package, combined with extensive loss control programs, allowed the owners of the following transportation projects to purchase sizeable liability limits.

Central Artery (I-93)/Tunnel (I-90) Project, Boston, Massachusetts

Commercial General Liability Insurance under the Insurance Services Office 1992 policy form applying to all insureds and with the following limits:

- \$25,000,000 Per occurrence
- \$25,000,000 General aggregate, annually, and applying separately to I-90 and I-93
- \$25,000,000 Products/completed operations aggregate
- \$25,000,000 Personal/advertising injury aggregate
- \$100,000 Fire damage legal liability
- \$5,000 Medical payments
- Deductible***: (Responsibility of approved program participant)
- \$1,000 Per occurrence (property damage only), except
- \$500 Per vehicle.

* Policy deductible is \$2,000,000.

Southeast Corridor Project, Denver, Colorado

Commercial General Liability

Coverage is written on an “occurrence” basis. The policy limits are (these limits reinstate annually):

- \$2,000,000 Bodily injury and property damage combined single limit each occurrence
- \$4,000,000 Annual completed operations limit
- \$4,000,000 Annual general aggregate limit.

I-15 Reconstruction Project, Salt Lake City, Utah

Provides coverage for Bodily Injury, Property Damage, Personal Injury and Products, and Completed Operations (Completed Operations has a 5-year extension).

Scope of Coverage

- Operations:** Work of an enrolled CONTRACTOR/ sub-contractor of any tier performed at the Project Site.
- Insureds:** The State of Utah, DEPARTMENT, CONTRACTOR, and enrolled Subcontractors of all tiers.

- Limits:**
- \$2,000,000 Bodily injury and property damage combined single limit
- \$10,000,000 General aggregate
- \$10,000,000 Products and completed operations and annual aggregate

CONTRACTOR’s Deductible: Pay a deductible for Third Party Property Damage/ Bodily Injury cost of claims up to \$5,000 per claim or \$10,000 per vehicle accident.

Fort Washington Way Highway Project, Cincinnati, Ohio

Commercial general liability insurance is provided for Owner, Contractor, and each Accepted Subcontractor. The policy is written on an ISO equivalent form and includes coverage for premises/operations, independent contractors, products, and completed operations extended for three years after completion of the work, broad form contractual liability, incidental malpractice, personal injury, explosion, collapse and underground damage, and broad form property damage.

| | |
|-------------|--|
| \$1,000,000 | Per occurrence limit |
| \$1,000,000 | Personal and advertising limit |
| \$2,000,000 | Products/completed operations aggregate limit |
| \$2,000,000 | General aggregate limit |
| \$5,000 | Medical payments |
| \$1,000,000 | Fire legal liability |
| \$1,000,000 | Stop gap employer's liability per occurrence limit |
| \$1,000,000 | Stop gap employer's liability aggregate |
| \$1,000,000 | Pollution liability per occurrence limit |
| \$2,000,000 | Pollution liability project aggregate. |

Aggregates are reinstated annually, except for Pollution Liability and the Completed Operations extension. *Limits apply to the project as a whole and not on a per contractor basis.* (Italics added.)

The previous sentence raises major concerns for contractors, especially prime contractors. The Superstition Freeway (US-60) OCIP contains similar language; “The limits of liability apply collectively to all insureds . . .”

When each contracting company provides its own insurance the limits apply only to that company. With an OCIP if there is a major claim by one contractor and later a second contractor experiences a major claim the protection afforded the second contractor has been eroded. It was not clear from the OCIP manuals examined how such a situation would be handled—does the first claim get full coverage and the second only partial or is the protection split between the two claims?

New Mexico Corridor 44 Project

Commercial General Liability Insurance will be provided on an “occurrence” form under a master liability policy. Certificates of insurance will be provided to the contractor and all tiers of Subcontractors reflecting the following Limits of Liability, Coverages, and Terms:

(a) Limits of Liability

| | | |
|-------|-------------|---------------------------------------|
| (i) | \$2,000,000 | Each occurrence |
| (ii) | \$2,000,000 | Personal injury and advertising |
| (iii) | \$6,000,000 | General aggregate reinstated annually |
| (iv) | \$6,000,000 | Products and completed operations |
| (v) | \$1,000,000 | Fire damage |
| (vi) | \$5,000 | Medical |

(b) Coverage and Terms

- (i) Occurrence basis
- (ii) Products
- (iii) Contractual liability specifically designating the indemnity provision of this agreement as an insured contract
- (iv) Completed operations (five-year term)
- (v) Independent contractor's liability
- (vi) Personal injury
- (vii) Explosion, collapse and underground (XCU) exclusion deleted; and
- (viii) Designated premises only.

Superstition Freeway (US-60), Maricopa County, Arizona

Commercial general liability insurance with limits as indicated below, insuring against bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. Further, the policy will include coverage for the hazards commonly referred to as XCU (explosion, collapse, and underground). Coverage will be extended to include all work within fifty (50) feet of any railroad. The products and completed operations coverage will extend for five (5) years after Final Acceptance of the Project or contract termination. The policy will contain a severability of interest provision. *The limits of liability apply collectively to all insureds* (italics added); however, the minimum limits of liability are:

Scope of Coverage:

| | |
|-------------|---|
| \$2,000,000 | Bodily injury and property damage each occurrence |
| \$5,000,000 | General aggregate (annual) |
| \$5,000,000 | Products/completed operations aggregate |
| \$2,000,000 | Personal and advertising injury |

Coverage will apply only to work performed at the Project Site. Such insurance will not include coverage for products liability to any insured party, Design-Builder, Subcontractor, vendor, supplier, material dealer, or others for any product(s) manufactured, assembled or otherwise worked upon away from the Project Site.

US Route 220/I-99 Project, Pennsylvania

Commercial General Liability Insurance will be provided on an “occurrence” form under a master liability policy. Certificates of insurance will be provided to the contractor and all tiers of subcontractors reflecting the following Limits of Liability, Coverages, and Terms:

(a) Limits of Liability:

- i. \$2,000,000 Per occurrence
- ii. \$4,000,000 General aggregate (reinstated annually)
- iii. \$2,000,000 Products/completed operations aggregate

- iv. \$2,000,000 Personal injury and advertising injury per occurrence/annual aggregate
 - v. \$100,000 Fire legal liability
 - vi. \$25,000 Premises medical payments
- (b) Coverage and Terms:
- i. Occurrence basis
 - ii. Products
 - iii. Contractual liability specifically designating the indemnity provision of this agreement as an insured contract
 - iv. Completed operations (five-year term)
 - v. Independent contractor's liability
 - vi. Personal injury
 - vii. Explosion, collapse, and underground (XCU) exclusion deleted
 - viii. Designated premises only.

Commercial General Liability Insurance Summary

A summary of CGL insurance coverage for the 10 CIP programs studied is presented in Table 3.

The standard for bodily injury and property damage seems to be \$2 million of coverage. The completed operations coverage for two of the three mega projects, both urban projects (more than \$1 billion in contract costs) was \$25 and \$10 million. For the third project, which is also in an urban environment, the completed operations limit was only \$4 million. This coverage differential may simply be a result of an advantage in total program pricing. The higher limits affect the umbrella insurance lower limits and pricing. For the other projects completed operations coverage varied from \$2 to \$6 million. General aggregate limits mirrored the completed operations limits in all cases.

BUILDER'S RISK

Construction projects involve unique risks not contemplated by the coverage forms, underwriting approaches, and rating methods used to insure existing buildings and contents (22).

Ownership of a construction project is a complicated issue. The ownership of property and materials used in the con-

struction process changes as the construction work progresses. Materials and installed equipment may be purchased and stored at the project site, at off-site storage locations, or may be in transit (see Superstition Freeway OCIP builder's risk example). Builder's risk insurance is specifically designed to cover the property loss exposures that are associated with work under construction.

It is important therefore that an *all-risk* builder's risk policy be included in the CIP. The policy should be for the benefit of all parties to the project. Even if a CIP includes no other coverages, structuring a CIP exclusively for builder's risk coverage is a recommended risk-management practice, because a single builder's risk policy for the benefit of all parties will eliminate potential coverage conflicts, duplication of services, and gaps, as well as acknowledge that all tiers of contractors are considered as members of the "team."

The CIP builder's risk policy should name all contractors, subcontractors, and suppliers (materialmen) as insureds under the policy. The intent is to provide first-party coverage under a single policy for physical damage losses incurred during construction. Having one policy and naming all entities as insureds avoids disputes between multiple insureds as to which party is responsible for a loss and which party owned what property at the time of the loss.

Consequently, all of the construction contracts between the insured parties should include a waiver of each party's rights of recovery against other insureds with respect to losses covered by the CIP builder's risk policy. A waiver of subrogation endorsement to the policy further clarifies this intent. Failure to execute these waivers may subject the CIP to multiple deductibles (6).

The Arizona Superstition Freeway project OCIP contained the following subrogation language:

The builder's risk policy will be endorsed waiving the carriers right to recovery under subrogation against the Owner, Design-Builder, and its Subcontractors, for losses covered under the builder's risk policy (23).

Builder's risk insurers typically use their own policy forms rather than standardized ISO or American Association of Insurance Services (AAIS) forms. The ISO and

TABLE 3
OCIP COMMERCIAL GENERAL LIABILITY INSURANCE SUMMARY

| Project | Project Size (\$ millions) | Bodily Injury and Property Damage | Completed Operations | General Aggregate |
|------------------------------|----------------------------|-----------------------------------|----------------------|-------------------|
| CA/T (Mass.) | 14,500 | \$400,000,000 | \$25,000,000 | \$25,000,000 |
| Southeast Corridor (Colo.) | 1,670 | \$2,000,000 | \$4,000,000 | \$4,000,000 |
| I-15 (Utah) | 1,600 | \$2,000,000 | \$10,000,000 | \$10,000,000 |
| US Route 220/I-99 (Pa.) | 414 | \$2,000,000 | \$2,000,000 | \$4,000,000 |
| Airport Expansion (Alaska) | 350 | \$2,000,000 | \$4,000,000 | \$4,000,000 |
| Ft. Washington Way (Ohio) | 330 | \$1,000,000 | \$2,000,000 | \$2,000,000 |
| Corridor 44 (N. Mex.) | 250 | \$2,000,000 | \$6,000,000 | \$6,000,000 |
| Suncoast Parkway (Fla.) | 221 | \$5,000,000 | \$5,000,000 | \$5,000,000 |
| Superstition Freeway (Ariz.) | 184 | \$2,000,000 | \$5,000,000 | \$5,000,000 |
| Blue Water Bridge (Mich.) | 110 | \$5,000,000 | \$5,000,000 | \$5,000,000 |

AAIS builder's risk forms have serious coverage limitations and if an insurer proposes to use such standard forms the statements of coverage should be reviewed systematically to ensure that the desired coverage is provided.

Covered Property

The wording of the "Property Insured" and "Property Excluded" sections of the builder's risk policy forms significantly effects the specific property covered by the policy. Consequently, those two sections of the offered policy form should be carefully examined. On a project involving extensive bridge work, with scaffolding and falsework, coverage of such construction items is important (see Superstition Freeway OCIP builder's risk example, where project-specific falseworks and forming are specifically included in the coverage). Underground works, paving, and excavation works may or may not be covered, but if there is no coverage the items can be added by endorsement. Most builder's risk policies cover debris removal costs if the debris is the result of damage to covered property.

This insurance will provide replacement cost coverage for all real and personal property incorporated into the Project (including engineered and project specific false works and formings) while at the Project Site, off-site or in transit (23).

Covered Locations

A project owner, contractor, or subcontractor can be responsible for the loss of construction materials and installed equipment prior to actual delivery to the project site. It is often necessary that materials and equipment be stored at locations away from the project site. Some builder's risk policy forms exclude such stored or in-transit materials and restrict coverage to property at the project site. Policies that include coverage of stored materials, off-site storage, and materials in transit are readily available. With such coverage there are usually specific sublimits to the aggregate limit (see Central Artery/Tunnel OCIP builder's risk example).

Excluded Property

Most builder's risk policy forms exclude (1) automobiles, trailers, aircraft, and watercraft; and (2) contractor's tools, equipment, and machinery not destined to become part of the structure. (See the Superstition Freeway OCIP builder's risk example and note that it specifically states that contractor's equipment is not covered.)

This insurance will not cover any contractor's equipment, including, but not limited to machinery, tools, equipment, or other personal property owned, rented, or used by the Design-Builder or Subcontractors in the performance of their work on

the Project, which will not become a part of the work to be accepted by the Owner (23).

The New Mexico Corridor 44 project OCIP language makes a similar reference to contractor tools and equipment.

The Builder's Risk will not provide coverage against loss by theft or disappearance of any materials (unless the materials are to be incorporated into the Project), tools, or equipment of the Contractor or any tier Subcontractor, or any other person furnishing labor or materials for the Work and Contractor agrees to indemnify, defend, and hold Mesa PDC Building Company and its officers, agents, and employees harmless from any such loss, theft, or disappearance (9).

Covered Perils

Most builder's risk policies are of the "all risk" type. With such a policy the exclusions define the scope of the coverage and commonly include

- War, nuclear hazard, and seizure or destruction of property by governmental order;
- Earthquake, volcanic activity, and other earth movement;
- Flood, sewer backup, and seepage; and
- Design error, except resulting damage.

Many of these exclusions are negotiable. The builder's risk portion of the OCIPs for the CA/T, Southeast Corridor, I-15, and Superstition Freeway projects all include both flood and earthquake coverage. Additionally, the Superstition Freeway project OCIP has design error coverage.

Design Error Exclusion

Most builder's risk policies have a design error exclusion. The exclusion within many policies eliminates coverage only for the cost of correcting the design error, leaving intact coverage for actual physical damage that results from the error (see the Superstition Freeway OCIP example).

The policy will insure against "all risks" of direct physical loss or damage, including flood, earthquake, and ensuing damage as a result of faulty workmanship, material, construction, or design (23).

Builder's Risk Summary

Builder's risk policies characteristically have multiple limits of liability involving overall aggregate limits and sublimits of specific items or events. The CA/T project OCIP has a per occurrence limit with overarching aggregate limits for floods and earthquakes. It also contains sublimits for off-site storage and property in transit. The DOT survey for this synthesis revealed a wide range of builder's risk coverage

TABLE 4
OCIP BUILDER’S RISK INSURANCE

| Project | Project Size (\$ millions) | Limits Each Occurrence |
|------------------------------|----------------------------|--|
| CA/T (Mass.) | 14,500 | \$400,000,000 |
| Southeast Corridor (Colo.) | 1,670 | \$200,000,000 |
| I-15 (Utah) | 1,600 | \$250,000,000 |
| US Route 220/I-99 (Pa.) | 414 | Up to contract value |
| Airport Expansion (Alaska) | 350 | \$170,000,000 (full replacement terminal building) |
| Ft. Washington Way (Ohio) | 330 | Not included |
| Corridor 44 (N. Mex.) | 250 | \$25,000,000 |
| Suncoast Parkway (Fla.) | 221 | \$6,900,000 (for toll building only) |
| Superstition Freeway (Ariz.) | 184 | Blanket limit approach |
| Blue Water Bridge (Mich.) | 110 | Up to contract value |

limits (Table 4). Two projects listed their coverage as up to the contract value.

It can be seen in Table 4 that builder’s risk coverage varies greatly depending on the project location. The most extensive and varied coverage is on the CA/T project, where working underground in a highly urbanized environment presents greater risks. That project included a specialized endorsement to the builder’s risk policy. The next highest coverage limit found was for the I-15 Salt Lake City project OCIP. Again, this was an urban project, but it did not have extensive underground work like the Boston CA/T project. The Salt Lake City project did involve the reconstruction of 144 bridges. The Anchorage International Airport and the Southeast Corridor projects also have very high coverage limits. The Anchorage International Airport project is a terminal renovation project. Major building projects have much higher exposure risk to possible fire damage compared with a highway project where the exposure to damage from fire is minimal. The Southeast Corridor project incorporates 16.6 miles of Interstate highway reconstruction in metropolitan Denver, with 19.1 miles of new light-rail construction. The light-rail transit work includes construction of 13 new transit stations within the Interstate right-of-way. Again, this is a project with a high proportion of building construction exposure. When setting builder’s risk policy limits the owner must evaluate both the type of work and the work location.

Deductibles

Builder’s risk coverage is almost always written subject to per occurrence deductibles (22).

The base OCIP builder’s risk deductible for the transportation projects investigated is tabulated in Table 5. By the construction contract, contractors should be held responsible for reasonable deductibles under the builder’s risk policy. Responsibility for the first \$10,000 to \$25,000 of each loss makes the contractor sensitive to property loss control

TABLE 5
OCIP BUILDER’S RISK INSURANCE DEDUCTIBLE

| Project | Deductible |
|------------------------------|------------|
| CA/T (Mass.) | \$25,000 |
| Southeast Corridor (Colo.) | \$5,000 |
| I-15 (Utah) | \$25,000 |
| Airport Expansion (Alaska) | \$10,000 |
| Corridor 44 (N. Mex.) | \$10,000 |
| Superstition Freeway (Ariz.) | \$25,000 |
| US Route 220/I-99 (Pa.) | \$2,500 |

matters. This responsibility for deductibles should be specifically stated in the construction contract.

Contractors (and all tiers of subcontractors) shall be responsible for the first \$10,000 of each and every Builder’s Risk loss resulting from negligence (directly or indirectly) of said contractor (24).

What this statement does not address is the issue of no negligence. It would not be clear under this OCIP who would pay the deductible in case of damage caused by lightning, windstorm, or some similar type occurrence. Many of the OCIPs reviewed had this same deficiency.

Owners and large contractors may have the capacity to absorb large deductibles, but high deductibles can jeopardize the financial viability of smaller contractors. If it is desirable to purchase insurance with extremely high deductibles the owner can accept responsibility for the deductibles or there can be an arrangement where the owner is responsible for the excess amount of the actual policy deductible over the contractor’s responsibility.

Soft Costs Coverage

Builder’s risk policies typically contain an exclusion for any type of consequential or indirect loss. Nevertheless, coverage for such losses can be added to the builder’s risk policy by endorsement. This could be an important component of the coverage if the project owner is using an anticipated revenue stream to finance the project.

The Southeast Corridor PCIP covers certain soft costs (sometimes referred to as time-element losses), although the specific coverage is not spelled out in the *Manual (21)*. In Exhibit H, under Builder’s Risk Insurance, the PCIP states: “Completed Value Special Perils (“All Risk”) form including sub-limits for delay in completion, certain soft costs . . .” The OCIP for the Superstition Freeway project in Arizona specifically includes soft costs associated with a covered event.

Coverage will be extended to include soft costs, extra expense, expediting expenses, and resultant damage to existing roadways and structures (23).

However, the Arizona OCIP has a further statement identifying certain excluded costs. “This policy will not cover loss of incentive bonuses, penalties for noncompletion, delay in completion, noncompliance with any contract condition, fines, penalties, or any costs incurred to eliminate or reduce any of the foregoing.”

Builder's Risk Insurance Examples

Central Artery (I-93)/Tunnel (I-90) Project, Boston, Massachusetts

Builder’s Risk Insurance

Cover “All Risk” of direct physical loss or damage to property of every kind and description that is destined to be a permanent part of the Central Artery/Tunnel Project with limits of:

Limits:

| | |
|---------------|-----------------------------|
| \$400,000,000 | Per occurrence |
| \$400,000,000 | Flood/annual aggregate |
| \$400,000,000 | Earthquake/annual aggregate |

Sublimits:

| | |
|--------------|---|
| \$25,000,000 | Off-site storage, per occurrence |
| \$10,000,000 | Property in transit, any one occurrence, excluding immersed tube transportation to site |
| \$10,000,000 | Expediting expense, per occurrence |
| \$10,000,000 | Automatic acquisitions |

(Note: These sublimits do not increase the limit of liability payable in any one occurrence.)

Deductible: (Responsibility of approved program participant)

| | |
|-----------|--|
| \$25,000 | Per occurrence, except the Contractor will be responsible for the first \$100,000 of loss, per occurrence, for damage to those contract works which are subject to the higher deductible |
| \$100,000 | Immersed Tube Tunnel Contract #C05A1 |
| \$100,000 | Immersed Tube tunnel Movement and placement in Fort Point Channel Contract #C09B1 |
| \$100,000 | Construction of the Charles River Crossing Contract #C19D1. |

Southeast Corridor Project, Denver, Colorado

Builder’s Risk

| | | |
|------------------------|---------------|-----------------|
| Policy limit | \$200,000,000 | |
| Flood limit | \$10,000,000 | |
| Earthquake limit | \$50,000,000 | |
| Transit limit | \$1,000,000 | |
| Off-site storage limit | \$2,000,000 | |
| Contractor deductible | \$5,000 | per occurrence. |

I-15 Corridor Reconstruction, Salt Lake City, Utah

Builder’s Risk

All Risk coverage to protect against physical loss or damage to work or any part thereof, including transit.

Scope of Coverage

- A. Operations Work done by enrolled Contractors/ Subcontractors of any tier in respect of the I-15 Reconstruction Project.
- B. Insured UDOT, Wasatch Constructors, and all Contractors/Subcontractors of any tier enrolled in the I-15 Reconstruction Wrap-up Program.
- C. Limits \$250,000,000—Project limit per occurrence subject to various sublimits. Coverage includes earthquake and flood sub-limits of \$100,000,000 per occurrence.
- D. Contractor Deductible Contractor shall pay an amount equal to the amount of any claim or \$25,000, whichever is less.

New Mexico Corridor 44 Project

Builder’s Risk Insurance provides “All-Risk” coverage on a replacement cost basis. This insurance will include the interests of Mesa PDC, all Contractors, and all tiers of Subcontractors in the Work.

The Builder’s Risk will not provide coverage against loss by theft or disappearance of any materials (unless the materials are to be incorporated into the Project), tools, or equipment of the Contractor or any tier Subcontractor, or any other person furnishing labor or materials for the Work and Contractor agrees to indemnify, defend, and hold Mesa PDC Building Company and its officers, agents, and employees harmless from any such loss, theft, or disappearance.

Contractor (and all tiers of Subcontractors) shall be responsible for the first \$10,000 of each and every loss resulting from fault of said contractor.

Superstition Freeway (US-60), Maricopa County, Arizona

Builder’s Risk Insurance: Owner will purchase and maintain, at their own expense, a construction “all risk” insurance policy, which will protect the interests of the Owner, Design-Builder,

TABLE 6
OCIP EXCESS/UMBRELLA LIABILITY INSURANCE

| Project | Project Size (\$ millions) | Each Occurrence (\$ millions) | Annual Aggregate (\$ millions) | Products/Completed Operation Annual (\$ millions) |
|--|-------------------------------|----------------------------------|-----------------------------------|---|
| CA/T (Mass.) | 14,500 | 400 | 400 | Included |
| Southeast Corridor (Colo.) | 1,670 | 100 | 100 | 4 |
| I-15 (Utah) | 1,600 | 100 | 100 | 100 |
| US Route 220/I-99 (Pa.) | 414 | 20 | 20 | 20 |
| Airport Expansion (Alaska) | 350 | 50 | 50 | 50 |
| Ft. Washington Way (Ohio) ^a | 330 | 50 | 50 | 50 |
| Corridor 44 (N. Mex.) | 250 | 50 | 50 | 50 |
| Suncoast Parkway (Fla.) | 221 | 4 | 8 | 8 |
| Superstition Freeway (Ariz.) | 184 | 100 | 100 | 100 |
| Blue Water Bridge (Mich.) | 110 | 45 | 45 | — |

^aAggregates are reinstated annually, except for the “Completed Operations” extension.

and Subcontractors of all tiers against loss, as specified below. Such insurance shall commence at the start of the project and remain in force until final acceptance by the Owner. The policies for such insurance will be in a form and amount consistent with coverage commonly purchased for large construction projects.

This insurance will provide replacement cost coverage for all real and personal property incorporated into the Project (including engineered and project-specific falseworks and formings) while at the Project Site, off-site, or in transit. Coverage will be extended to include soft costs, extra expense, expediting expenses, and resultant damage to existing roadways and structures. The policy will insure against “all risks” of direct physical loss or damage, including flood, earthquake, and ensuing damage as a result of faulty workmanship, material, construction, or design.

This policy will not cover loss of incentive bonuses, penalties for noncompletion, delay in completion, noncompliance with any contract condition, fines, penalties, or any costs incurred to eliminate or reduce any of the foregoing.

This insurance will not cover any contractor’s equipment, including, but not limited to machinery, tools, equipment, or other personal property owned, rented, or used by the Design-Builder or Subcontractors in the performance of their work on the Project, which will not become a part of the work to be accepted by the Owner.

The builder’s risk policy will be endorsed waiving the carriers right to recovery under subrogation against the Owner, Design-Builder, and its Subcontractors, for losses covered under the builder’s risk policy. The Design-Builder and Subcontractors shall be responsible for the first \$25,000 of each loss and shall retain responsibility for any loss not covered by the builder’s risk policy.

EXCESS/UMBRELLA LIABILITY

On major construction projects it is advisable to include excess/umbrella policies as part of the CIP (Table 6). Umbrella liability policies provide additional limits over general

liability and employer’s liability policies. In addition, umbrellas typically broaden the coverage, adding some forms of liability that were not covered in any underlying policy. A pure umbrella would exist separate from the underlying liability policy and therefore has its own insuring agreement and exclusions. The more common practice, however, is to have following form coverage that extends higher limits to underlying coverages.

There is a distinction between the terms “excess” and “umbrella” liability. An excess liability policy is issued to provide limits in excess of an underlying liability policy. Its coverage is no broader than the underlying liability policy. An umbrella policy typically provides a combination of excess coverage over the underlying general liability and employer’s liability policies, and adds certain additional coverage that was not included in the underlying policies (25).

Umbrella policies typically contain several limits of liability. The per-occurrence limits determine the maximum amount the insurer will pay for liability arising from a single incident. A general aggregate limit imposes a maximum amount the insurer will pay for all covered claims during the policy period.

Substantial excess or umbrella limits should be procured for the CIP when the primary limit is written with an annual aggregate. Projects in urban centers can present large-risk exposures. It is important to ensure that the minimum limit required in the excess coverage is not greater than the maximum limit of the underlying coverage. When that happens, a gap will exist that the CIP owner will be responsible for in the event of a significant loss. Table 6 presents the OCIP excess/umbrella limits that were in place for the transportation projects studied. Limits apply to the project as a whole and *not on a per contractor basis*.

Again, as is stated in the Commercial General Liability section, this last phrase (*italicized*) raises major concerns

TABLE 7
OCIP POLLUTION /ENVIRONMENTAL LIABILITY COVERAGE LIMITS

| Project | Project Size (\$ millions) | Claim | Project Aggregate |
|--|-------------------------------|--------------|-------------------|
| Southeast Corridor (Colo.) | 1,670 | \$10,000,000 | \$10,000,000 |
| I-15 (Utah) | 1,600 | \$10,000,000 | \$10,000,000 |
| US Route 220/I-99 (Pa.) | 414 | \$10,000,000 | \$10,000,000 |
| Ft. Washington Way (Ohio) ^a | 330 | \$1,000,000 | \$2,000,000 |
| Corridor 44 (N. Mex.) | 250 | \$50,000,000 | \$50,000,000 |
| Suncoast Parkway (Fla.) | 221 | \$3,000,000 | — |
| Superstition Freeway (Ariz.) | 184 | \$5,000,000 | \$5,000,000 |

^aPart of the general liability policy.

for contractors. It was not clear from the OCIP manuals examined how multiple claims from different contractors would be handled.

SPECIAL COVERAGE

The unique risk conditions that may be encountered on a project can usually be covered by special insurance.

Pollution/Environmental Liability

Pollution/environmental liability insurance covers environmental damages associated with accidental chemical spills and the leakage or disbursement of dangerous vapors. CGL policies provide the insured with some important coverage for third-party bodily injury and property damage caused by pollutants; however, unlike broader pollution/environmental liability coverages, this coverage is designed to apply only to liabilities arising from the contractor's operations. Some insurers, however, by exclusion endorsement, remove all pollution damage coverage from the CGL policy.

Pollution liability insurance is available, but it is a non-standard coverage and each form is unique. A 1999 analysis of pollution liability forms did find that all covered "... compensatory damages for bodily injury and property damage, whether by settlement or by verdict, and for claim's expenses incurred investigating, defending, or settling the claim" (26). Table 7 is a summary of the pollution/environmental coverage limits for the OCIPs studied.

Railroad Protective Liability Insurance

When construction work is performed on, over, or under a railroad right-of-way (within 50 ft) the railroad will require indemnification for bodily injury and property damage arising from the construction activities. Such liabilities are generally covered by the contractual liability part of general liability insurance. However, in standard CGL policies any work in connection with railroad property will be

specifically excluded from the coverage. To protect themselves railroads require that special liability insurance be purchased in the name of the railroad.

Railroad protective liability insurance is a combination of two coverages: (1) bodily injury and property damage liability insurance covering the railroad's liability to others, and (2) physical damage to property—property owned by or leased to the railroad (27). The policy covers liability based on the sole negligence of the contractor or the joint negligence of the railroad and the contractor.

A purchaser (owner or contractor) of railroad protective liability insurance has no coverage under the policy. What the policy effectively does is provide indemnification to the railroad because the policy insures liability exposures. Therefore, it is advantageous to have the coverage written in broad terms. It is very important, in terms of the protection afforded, that the policy description of job location and work with respect to coverage be correctly stated. If an accident involving the railroad takes place at a location other than the job location specified in the policy there would be no coverage. Another important point is that an overly broad or general statement of work will result in an increased premium because the policy cost is rated on the total cost of the described work.

Special Insurance Coverage Summary

Many of the surveyed projects carried policies for pollution/environmental or railroad conditions. Table 8 lists the special insurance coverages by project.

DESIGN LIABILITY

A contractor having builder's risk, general liability, and umbrella policies will be protected from many claims arising out of design errors. However, there will remain liability for damage to the contractor's work arising out of the contractor's design work, and other potential gaps or gray areas when traditional insurance policies are the only "in place" coverage. A professional liability policy (Table

TABLE 8
OCIP SPECIAL COVERAGE INSURANCE POLICIES

| Project | Project Size (\$ millions) | Pollution/Environmental Liability | Railroad Protection |
|------------------------------|-------------------------------|--------------------------------------|------------------------|
| CA/T (Mass.) | 14,500 | On one specific contract | Included |
| Southeast Corridor (Colo.) | 1,670 | Included | Included |
| I-15 (Utah) | 1,600 | Included | Included |
| US Route 220/I-99 (Pa.) | 414 | Included | Included |
| Airport Expansion (Alaska) | 350 | Not included | Not included |
| Ft. Washington Way (Ohio) | 330 | Included | Not included |
| Corridor 44 (N. Mex.) | 250 | Included | Not included |
| Suncoast Parkway (Fla.) | 221 | Included | Not included |
| Superstition Freeway (Ariz.) | 184 | Included | Included |
| Blue Water Bridge (Mich.) | 110 | Not included | Included |

TABLE 9
OCIP DESIGN LIABILITY COVERAGE

| Project | Project Size (\$ millions) | Design Professional Liability | | Design-Build Errors and Omissions | |
|------------------------------|-------------------------------|----------------------------------|-----------------------------------|-----------------------------------|---------------------|
| | | Each Occurrence (\$ millions) | Annual Aggregate (\$ millions) | Each Occurrence | Annual Aggregate |
| CA/T (Mass.) | 14,500 | 50 ^a | | — ^b | — |
| Southeast Corridor (Colo.) | 1,670 | 50 ^c | 50 | — | — |
| I-15 (Utah) | 1,600 | 25 ^d | 50 | | — ^e |
| US Route 220/I-99 (Pa.) | 414 | — ^f | — ^f | — ^b | — |
| Airport Expansion (Alaska) | 350 | 10 | 10 | — ^b | — |
| Ft. Washington Way (Ohio) | 330 | — ^f | — ^f | — ^b | — |
| Corridor 44 (N. Mex.) | 250 | 25 | 25 | \$25 | \$25 |
| Suncoast Parkway (Fla.) | 221 | — ^f | — ^f | — ^b | — |
| Superstition Freeway (Ariz.) | 184 | — | — | \$25 ^d | \$25 |
| Blue Water Bridge, MI | 110 | 10 | 10 | — ^b | — |

^a\$500,000 per claim deductible.

^bNot design-build.

^c\$50,000 per claim deductible.

^d\$100,000 per claim deductible.

^eIncluded in professional liability.

^fNot included.

9) will respond to most of the gray areas and to many other losses specifically excluded in builder's risk, general liability, and umbrella policies. In the case of design-build projects it is necessary to have professional liability insurance to cover design errors and omissions (E&O) exposure.

Many of the projects studied included professional liability in the insurance coverage in their CIPs. The design-build projects studied included E&O coverage in the OCIP. On most projects these coverages were little used, but on others there have been significant claims. The Ted Stevens Airport project in Alaska was delayed because the designer did not account for the proper seismic code requirements. On another project the contractor was delayed because of design problems and has filed a claim against the OCIP coverage, believing that for this particular claim there was OCIP coverage. The insurance company, however, has denied the claim. The result is a three-way lawsuit because of a design delay issue. These two cases underscore the importance of carefully structuring the E&O coverage. Table 9 summarizes professional liability and E&O coverage for the projects of this study.

CONTRACT LANGUAGE FOR AN OCIP

The construction contract between the agency (project owner) and the contractors is the enabling component of an effective OCIP. Without each party's responsibilities being *specifically addressed* and *required* by the contract (Appendix E), management of the OCIP is very difficult. The following is an example OCIP contract special provision for the bidders on CA/T projects.

Central Artery/Tunnel Project—Contracts, Special Provision 5.14.

Wrap-up Insurance

The Massachusetts Highway Department will arrange insurance necessary to protect itself and the Contractor on this Project. See Subsection 7.05.

The successful Bidder will be provided with an insurance manual that outlines the insurance program.

The Prime Contractor and Subcontractors will be insured under the policies. Essentially, coverage is provided to employees

working at the jobsite. It also covers employees working at the approved dedicated off-site work sites.

The insurance does not cover vendors, suppliers, material dealers, or others who merely transport, pick up, or deliver materials to or from the jobsite.

The insurance provided by the Wrap-up program meets or exceeds any coverage or limits, which are required by the contract specifications. The Wrap-up program provides:

- Workers' Compensation and Employer's Liability Insurance
- Commercial General Liability Insurance
- Builder's Risk Insurance
- Railroad Protective Liability Insurance.

There is no coverage for asbestos abatement Contractors.

The Wrap-up program has Airport Contractor's Liability Coverage when necessary.

There is no Automobile Liability Insurance included in the Wrap-up program. The Contractor must provide evidence of comprehensive Automobile Liability Insurance for all owned, non-owned and hired automobiles.

The Contractor is also required to provide evidence of Contractor's Equipment coverage on an "all risk" basis covering damage to all tools and equipment including automotive equipment.

Xxxx Xxx Xxxx is the insurance administrator for the CA/T project.

The bid documents should include the OCIP contract terms and conditions. Inclusion of the Project OCIP Insurance Manual and the Safety Manual is preferable so that bidders know the contract insurance provisions and safety performance standards.

The AGC raises the issue of OCIP documents in "Look Before You Leap! A Contractor's Guide to Owner Controlled Insurance Programs" (12), and takes the position that the construction contract should clearly identify all OCIP documents and incorporate them by reference. Additionally, the AGC states that all documents should be available to the bidders and discussed in the instruction to bidders.

Submission of Bids

There are three possible ways to bid a project that will utilize a CIP. All three provide baseline insurance cost information.

1. Gross bid with a deductive alternative for insurance costs.

2. Net bid (ex-insurance), an additive alternative for insurance costs.
3. Net bid (ex-insurance) with insurance costs identified.

Six of the 10 DOT OCIP programs studied for this synthesis required the submission of bids ex-insurance. Evaluation of bids ex-insurance requires less effort and relies on the competitive pressure of the bidding process to ensure that insurance costs are removed from the bids.

On the other hand, having contractors show their insurance costs as part of their bid allows the project manager to make an assessment of the CIP success in terms of the savings generated. The conventional program costs with the contractors providing their own insurance can be compared with the CIP costs (6). This can, however, involve a considerable amount of paperwork for the contractors and the agency, as the Pennsylvania DOT contract requirements for the US Route 220/I-99 projects demonstrate (28).

Contractor Insurance Cost Identification

Contractors and subcontractors of all tiers shall identify the cost of insurance on the **Form-2** (Insurance Cost Identification Worksheet, **Section "VI"**). Contractors and subcontractors of every tier agree to identify all costs associated with the cost of insurance for all work, including but not limited to insurance premiums, expected losses within any retention or deductible program, overhead, and profit. The contractor(s) and subcontractors of every tier shall submit a copy of their policy(ies) declaration page(s) and premium rate page(s) to support the accuracy of each contractor/subcontractor's cost of insurance as identified on the **Form-2**.

The contractor/subcontractor shall identify their cost for providing workers' compensation, general liability, excess liability, builder's risk, pollution liability, and railroad protective liability exposures associated with the contract work for the following limits and coverages:

- (1) Workers' Compensation and Employer's Liability Insurance:
 - Statutory Limits—State of Pennsylvania
 - Employer's Liability Limits:
 - (a) \$1,000,000 Bodily injury with accident—Each accident
 - (b) \$1,000,000 Bodily injury by disease—Policy limit
 - (c) \$1,000,000 Bodily injury by disease—Each employee.
- (2) Commercial General Liability Insurance:
 - (a) \$2,000,000 Each occurrence
 - (b) \$4,000,000 General aggregate
 - (c) \$2,000,000 Products/completed operations.

Coverages should include but not be limited to the following supplementary coverages:

- i. Contractual liability to cover liability assumed under this agreement;
 - ii. Premises operations;
 - iii. Explosion, collapse, and underground hazards (deletion of the XCU exclusions), if such exposure exists;
 - iv. Products/completed operations;
 - v. Broad form property damage; and
 - vi. Independent contractors.
- (3) Excess Liability Insurance:
- (a) Contractor limits of liability:
 - i. \$20,000,000 Any one occurrence and general aggregate annually; and
 - ii. \$20,000,000 Annual aggregate products and completed operations.
 - (b) Subcontractor limits of liability:
 - i. \$2,000,000 Any one occurrence and general aggregate annually; and
 - ii. \$2,000,000 Annual aggregate products and completed operations.
 - (c) Coverages and terms:
 - i. Excess of general liability
 - ii. Excess of employer's liability
 - iii. Completed operations.
- (4) Builder's Risk: All Risk Coverage, including Flood and Earthquake in an amount sufficient to protect the exposure presented on the portion of the project being bid.
- (5) Contractors Pollution Liability:
- (a) Contractor limits of liability:
 - i. \$10,000,000 Each environmental incident
 - ii. \$10,000,000 Policy aggregate occurrence form.
 - (b) Subcontractors pollution liability
 - i. \$5,000,000 Each environmental incident
 - ii. \$5,000,000 Policy aggregate occurrence form.
- (6) Railroad Protective Liability
For operations to be performed by the Contractor or Subcontractor within 50 feet of the railroad's tracks.
- (a) Limits of liability
 - i. \$2,000,000 Combined single limit, per occurrence
 - ii. \$6,000,000 In the aggregate per year.

The information submitted on **Form-2** will be verified based on the contractor's/subcontractor's rates established in previous years' force account records with the Department (when available); analysis of class codes and rates that will be utilized in the performance of the work that is being bid; or industry standards, respectively. Figures must reflect economic benefits that the contractor/subcontractor will realize by not having their existing policies and deductibles exposed to claims when premiums are on a flat rate. Figures must also reflect economic benefits that the contractor/subcontractor will realize even if they do not have an OCIP supplied policy in their corporate insurance.

It is understood and agreed that insurance cost identified on the **Form-2** is an initial estimate only. The final insurance cost will be subject to review and audit of actual insurance policy(ies) rate information, actual payrolls, and revenues for the initial award plus any additive amendments. An initial deductive change order will be processed to transfer the insurance costs into the project insurance program account. During the term of contractor/subcontractor's contract, including extended periods thereof, the Commonwealth of Pennsylvania Department of Transportation shall have the right to recover all costs for insurance as described above that are in addition to those initially identified by the contractor/subcontractor in the initial deductive change order. The Commonwealth of Pennsylvania Department of Transportation shall have the right to recover these additional costs through deductive change orders. If the audit shows a return, the Commonwealth of Pennsylvania Department of Transportation shall have the right to return these costs to the contractor/subcontractor through change orders.

Contractor Bidding Issues

A contractor's insurance cost closely tracks the firm's commitment to safety. Management emphasis on safety, an institutionalized safety program, company safety professionals, and for large contractors an internal risk-management division are company actions that enhance safety and lower insurance costs. These are, however, on-going activities that are usually charged to corporate overhead accounts. They represent a substantial investment in safety and provide a bidding advantage in terms of lower insurance costs. This is a critical issue to a contractor bidding a project that will use an OCIP.

The contractor questionnaire specifically asked: "In reference to your company, was there a critical disadvantage to participating in the OCIP?" Of those responding, 64% stated yes, and the stated reason primarily had to do with their investment in a solid safety program that lowers the contractor's insurance costs.

- Yes, unable to receive the total reward for the investment in safety and loss control.
- We worked very hard in managing insurance costs. That means managing safety. OCIP takes that away.
- We believe our insurance rates are an advantage to us and we lose that advantage in an OCIP.

Another contractor survey question, "Did your insurance carrier charge for the OCIP enrollment and to adjust coverage for non-OCIP work?," sought to probe the issue of contractors experiencing increased insurance costs because of being involved in an OCIP. Only one contractor reported that the carrier charged to help with the OCIP enrollment. One contractor stated that "A large OCIP project caused our carrier to lose interest and we were forced to change carriers." Another said that there was no charge by the carrier to help with the OCIP, but they "... incurred

higher premiums on other coverages as a result of a lower annual premium base.”

This last comment highlights a second contractor issue. It is not clear what effect withdrawing a significant portion of their workers’ compensation insurance premium has on the contractor’s cost to insure non-CIP work and in resulting increased bid prices for non-OCIP projects. As a result of lost buying power it is often assumed that the company’s unit cost for insurance increases. This could be particularly true for medium- and small-size contractors. Therefore, a second contractor question asked about the OCIP’s effect on the cost of insurance for the contractor’s non-OCIP projects: “Did your company experience an escalation of additional or other insurance costs?” Thirty-two percent reported that their companies had experienced increased insurance costs.

- Yes, loss of volume discount.
- Certain fixed premiums (umbrella) could not be absorbed.
- Yes, overlapping of insurance coverage in gray areas.

It should be noted, however, that only one company stated that the increase was because of an actual reduction in the amount of insurance being purchased. Companies that experienced increased costs stated that the causes were to ensure coverage in “gray area” and that their umbrella coverage had to remain in place and its costs were not absorbed by the OCIP.

Contractors must know the details of the CIP coverage before bid submission, so that the costs of their restructured insurance program can be calculated. Contractors can expect several additional insurance expenses when entering into a contract that requires working under an OCIP. Other insurance costs that must be included in the CIP project bid include

- The expense of having an insurance professional evaluate the CIP protection and restructure the contractor’s coverage for work not protected by the CIP.
- The expense of purchasing insurance to cover gaps created by the CIP.

Many CIPS provide only 3 to 5 years of tail coverage; however, contractors need protection extending to the limit of the repose statute of the state in which the project is located. “Statutes of limitations and statutes of repose limit the time frame in which a plaintiff may file a lawsuit against a contractor” (29). Both statutes of limitations and repose deal with time limitations, but they are different. Statutes of limitation stipulate the limiting time duration between when an occurrence happens and when a claim must be filed. A statute of repose stipulates how long after

a project is completed (or substantially completed) that a construction defect claim can be filed.

Repose statutes set an absolute time limit for suits against a contractor for completed work (Table 10). However, many state statutes provide an additional year for discovery. Twenty-seven states and the District of Columbia have statutes of repose with durations of 10 years or longer. Three states, Kansas, New York, and Vermont, have no construction-specific statutes of repose. Only four states have statutes of repose of 5 years or less: Florida and Tennessee 4 years; Arkansas and Virginia 5 years.

A successful contract award process requires that contractors have a clear understanding of the bid process. This necessitates a concerted effort by the agency to educate contractors first about the CIP and second about how the bid process will be structured.

Parties Enrolled in the OCIP

The contract documents should allow the project manager to establish criteria for contractor participation in the OCIP. The objective should be to include all contractors that will have a significant presence on the project while avoiding the importation of injuries from other jobs. It may be desirable to exclude certain contractors because of limited on-site activity. However, enrollment decisions should be based on the risk of the work the contractor will perform.

CDOT/RTD Provided Insurance shall apply to Contractor and eligible Subcontractors who have complied with the insurance requirements, completed the enrollment process, and received notification of enrollment from the Insurance Representative. CDOT/RTD reserves the right to exclude any Subcontractor from the PCIP (21).

Subcontractors providing PCIP Site hauling services with dedicated payroll may be considered eligible for enrollment (21).

Most material and equipment suppliers will not have a significant work site presence and are not included in the OCIP. These project participants typically conduct their business with the project through purchase orders and are therefore not bound by the OCIP requirements of the contract documents.

US Route 220/I-99 Project, Pennsylvania

Ineligible Contractors (not included in the program)—The OCIP does not cover consultants, suppliers (that do not perform or subcontract installation), vendors, materials dealers, guard services, janitorial services, truckers (including trucking to the project where delivery is the only scope work performed), and other temporary project services.

TABLE 10
CONSTRUCTION INDUSTRY STATUTES OF REPOSE

| State | Time Limit (years) | State | Time Limit (years) | State | Time Limit (years) |
|----------------------|-----------------------|----------------|-----------------------|----------------|-----------------------|
| Alabama | 7 | Kentucky | 7 | North Dakota | 10 |
| Alaska | 10 | Louisiana | 10 | Ohio | 15 |
| Arizona | 8 | Maine | 10 | Oklahoma | 10 |
| Arkansas | 5 | Maryland | 20 | Oregon | 10 |
| California | 10 | Massachusetts | 6 | Pennsylvania | 12 |
| Colorado | 6 | Michigan | 6 | Rhode Island | 10 |
| Connecticut | 7 | Minnesota | 10 | South Carolina | 13 |
| Delaware | 6 | Mississippi | 6 | South Dakota | 10 |
| District of Columbia | 10 | Missouri | 10 | Tennessee | 4 |
| Florida | 4 | Montana | 10 | Texas | 10 |
| Georgia | 8 | Nebraska | 10 | Utah | 6 |
| Hawaii | 10 | Nevada | 10 | Vermont | None |
| Idaho | 6 | New Hampshire | 8 | Virginia | 5 |
| Illinois | 10 | New Jersey | 10 | Washington | 6 |
| Indiana | 10 | New Mexico | 10 | West Virginia | 10 |
| Iowa | 15 | New York | None | Wisconsin | 10 |
| Kansas | None | North Carolina | 6 | Wyoming | 10 |

Fort Washington Way Highway Project, Cincinnati, Ohio

Accepted Subcontractors—Each Subcontractor whose on-site payroll is projected to exceed \$5,000 shall be deemed an Accepted Subcontractor and shall be provided the insurance coverages described in Article 1.2, unless Owner gives CONTRACTOR/Subcontractor written notice, promptly after the receipt of the necessary enrollment information that the Subcontractor is not acceptable for inclusion in the Owner Controlled Insurance Program described in Article 1.2.

CONTRACT TERMS AND CONDITIONS

All major construction projects include insurance requirements in the construction contract. Under an OCIP the contract will contain three specific sets of insurance information and requirements.

1. Specific information about the insurance coverage that will be provided under the OCIP and OCIP enrollment procedures.
2. Requirements concerning contractor-provided insurance outside the OCIP.
3. Insurance requirements for contractors not enrolled in the OCIP.

OCIP-Provided Insurance

The pre-bid information about the OCIP should specifically set forth: (1) the coverages provided, (2) limits of the coverages, (3) deductible amounts, (4) the party responsible for deductibles, and (5) duration of insurance beyond the project completion date. The best practice is to have the insurance policies available to the contractors prior to bidding.

When contractors have the opportunity to examine the actual policies, concerns about adequate limits, scope of coverage, and gaps in insurance are usually eliminated, because *the OCIP protection should be better than the contractor's own policies*. However, this may not be true in the case of very large contractors.

Pre-bid information and the presence of contractors at pre-bid meetings cannot be stressed enough. One DOT even suggested special meetings dedicated to discussing OCIP issues in advance of the bid. Typically, the attendees at pre-bid meetings are only prime contractors; therefore, subcontractors may not be as informed about OCIP requirements. Because the OCIP requirements of the contract are as important as any other special conditions, prime contractors should inform subcontractors of these stipulations and all information relating to OCIPs. Prime contractors must inform subcontractors of OCIP details.

Contractor/Subcontractor-Provided Insurance

Contractors will be required to provide insurance for operations performed at work locations other than those covered by the OCIP and for exposures not covered by the OCIP insurance.

Required Coverages

Prior to enrollment and commencement of any work on a project the contractor and all subcontractors will be required to furnish evidence of particular additional insurance coverages for both on-site risks that are not covered by OCIP policies and for off-jobsite activities connected to the project work. For the Southeast Corridor Project in Denver the owner required the following.

1. INSURANCE COVERAGES TO BE PROVIDED BY ENROLLED CONTRACTORS

A. **Workers' Compensation and Employer's Liability** insurance for off-jobsite activities with statutory limits in compliance with the law or laws of the state or states in which employees are hired or will work. In addition, Employer's Liability insurance, including Occupational Disease coverage, with the following policy limits:

- (1) \$500,000 Bodily injury each accident
- (2) \$500,000 Each employee
- (3) \$500,000 Aggregate—Policy limit

Such insurance shall include "Other States" insurance, so as to include all states not named on the declarations page of the insurance policy, except for the monopolistic states.

B. **Commercial General Liability** insurance for off-jobsite activities must be written for the following policy limits:

| | Contractor Limit | Subcontractor Limit | |
|-----|---------------------|------------------------|---|
| (1) | \$5,000,000 | \$1,000,000 | Per occurrence, combined single limit for bodily injury and property damage |
| (2) | \$5,000,000 | \$2,000,000 | General aggregate |
| (3) | \$5,000,000 | \$2,000,000 | Products/completed operations aggregate |

C. **Commercial Automobile Liability** insurance covering the use of all owned, non-owned, and hired automobiles used in connection with the project, both on and off the jobsite, containing a combined single limit of \$5,000,000 per accident (contractor limit); \$1,000,000 per accident (subcontractor limit).

Quality of Coverages

The quality of contractor-purchased coverage can be maintained by requiring that insurance be purchased from companies that qualify for a minimum A. M. Best rating. An example of this requirement, taken for the I-15 Reconstruction Project OCIP (Salt Lake City), is show here.

The Contractor shall procure at its own expense insurance acceptable to the Department as described herein and shall maintain such insurance in full force and effect as specified herein. Insurance shall be procured from insurance or indemnity companies with an A. M. Best and Company rating level of A- or better, Class VIII or better, or as otherwise approved by the Department and authorized to do business in the State.

Other Requirements

The contract should require that the following provisions apply to all other insurance (i.e., non-OCIP):

- The insurance is maintained for the duration of the project.
- Insurance is confirmed by a certificate of insurance.
- The non-OCIP insurance policies waive subrogation against the project owner, brokers, other contractors, and subcontractors of all tiers.
- The non-OCIP insurance policies name the owner and other contractors and subcontractors as additional insureds with respect to any and all liability arising out of the work or the contract.

Examples of other insurance requirements are presented here.

New Mexico Corridor 44 Project

Certificates of Insurance—All required insurance shall be maintained without interruption from the date of commencement of the work under the contract until the date of the final payment. The contractor/subcontractor will provide the Insurance Administrator with a certificate of insurance setting out the above coverages, limits, and amendments to the certificate necessitated by changes to the work to be performed under the contract until the date of final payment.

I-15 Reconstruction Project, Salt Lake City, Utah

Endorsements and Waivers—All general and automobile liability insurance policies required to be provided by the Department, Contractor, or any Subcontractor hereunder shall contain or be endorsed to contain the following provisions (a) through (f); and all workers' compensation and employer's liability policies are to contain or be endorsed to contain the following provisions (e) and (f);

- (a) The Department and/or the Contractor, as appropriate, each affected city or county (and their respective directors, officers, employees, agents, and consultants), shall be covered as additional insureds as respects any and all liability arising out of the Work or this Contract.
- (b) For any claims related to the Project, insurance coverage shall be primary insurance with respect to the additional insureds (and their respective members, directors, officers, employees, agents, and consultants), and shall specify that coverage continues after departure from the site. Any insurance or self-insurance maintained by an additional insured (or its members, directors, officers, employees, agents, and consultants) shall be in excess of such insurance and shall not contribute with it.
- (c) Any failure on the part of the principal insured to comply with reporting provisions or other conditions of the policies, any breach of warranty, any action or inaction of the principal insured or others, any foreclosure relating to the Project, or any change in ownership of all or a portion of the Project shall not affect coverage provided to the additional insureds (and their members, directors, officers, employees, agents, and consultants).
- (d) The insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- (e) Insurance Policies (including the Commercial General Liability, Professional Liability, Workers' Compensation, and Employer's Liability policies) shall include a *waiver of any right of subrogation* against the additional insureds (and their respective members, directors, officers, employees, and agents).
- (f) Each policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after 30 days prior written notice by certified mail, return receipt requested, has been given to the Department, the Contractor, Railroads, and affected cities and counties, as appropriate. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.

Insurance for Contractors Not Enrolled in the OCIP

Contractors not included in the OCIP program must have their own insurance in place to cover work on the project site. That insurance coverage would have to meet all the requirements of the previous section concerning (1) confirmed coverage by certificate of insurance, (2) waive subrogation, (3) additional insureds, and (4) endorsement that coverage shall not be suspended except after written notice to the project owner.

Other Issues

Other special contract provisions should address reporting of payroll data, audits, and returned premiums.

Payroll Data

If workers' compensation insurance is included in the OCIP the contractor and all insured subcontractors will be required to submit accurate payroll data on a regular basis.

Payroll will be recorded using the Monthly Payroll Reporting Form (Insurance Form 3). This form is to be completed by each Contractor/Subcontractor by the tenth day of the month and sent to . . . (8).

All jobsite payroll will be reported to SECC on a regular basis as shown on the Payroll Reporting Form. This payroll will not be reported to your individual insurance carrier. You should not be charged an insurance premium for this payroll by your individual carrier. The PCIP Administrator will provide you with a Certificate of Insurance under the PCIP as proof of coverage for this payroll (21).

Audits

Payroll auditing is usually necessary for the closeout of workers' compensation insurance. By contract provision contractors and subcontractors must be required to open their books and records to examination and audit.

The Xxx may perform physical audits of the contractor's project payrolls periodically during the course of the contract(s) and/or at the completion of contract work (23).

Returned Premiums

Contractors must agree by the contract to relinquish all claims to OCIP dividends, retro refunds, or other forms of returned premiums payable under the OCIP.

The Commonwealth of Pennsylvania Department of Transportation will be responsible for the payment of all premiums associated solely with the OCIP and will be sole recipient of any dividend(s) and/or returned premiums(s) generated by the OCIP (28).

Some programs have clauses for a sharing of OCIP savings (usually as an incentive bonus). Such a sharing arrangement provides some equitable return to the contractors for superior safety performance and serves to encourage OCIP participation.

The Design-Builder's total available incentive value for this contract is \$1,000,000 (One Million Dollars). The amount available for Part 1 is \$750,000, and for Part 2 is \$250,000 (23).

Contractor Concerns

Every OCIP has its own insurance, safety, and claims procedure manuals. Those documents require contractors and their subcontractors to accept responsibilities that other contract documents do not address. If these responsibilities are not contractual obligations, the contractor could find itself in a precarious position. The AGC has expressed the concern that the contractor could find it difficult to compel lower tiers to comply with all elements of the program (12). The construction contract should, therefore, clearly identify all of the OCIP documents and incorporate them by reference. One private owner recommends that there only be one manual, the contractual OCIP manual, which includes both insurance and safety (30).

OCIP ADMINISTRATION

The process of organizing and starting an OCIP involves strategic decisions concerning how the program will be designed. There are three basic approaches to OCIP administration: (1) the agency establishes its own insurance (or risk management) department, (2) existing in-house staff is expanded, or (3) an insurance consultant is engaged. A 1977 U.S. DOT study reported that since the early 1960s all agencies undertaking major construction works and using an OCIP have, after some study, engaged a consultant (3). Similarly, a 1999 GAO study reported that only one agency administered the OCIP with its own staff (4).

The OCIP insurance manager has four principal responsibilities:

- Provide technical advice on insurance complexities,
- Engage the best available insurance carriers for the planned coverages,
- Arrange the most favorable insurance costs and terms, and
- Handle the OCIP administration burden.

In most cases, the selection of outside administrative support was based on a response to a request for proposals. However, because insurance administration is a long-duration partnership, some agencies have tended to contract their OCIP support with the providers of their current coverage. The risk manager for a large public agency stressed, however, that it is very important to find a broker that understands construction and construction claims (31). One agency invited brokers to make presentations about OCIPs. These were strictly educational presentations. After the staff had been educated a request for proposals was issued.

Outside administration can be contracted on either a commission or fee basis. Some of the project insurance cost savings that can be realized with an OCIP involves hiring an administrator for a fee rather than a commission. The first three responsibilities entail packaging the risks and marketing for the desired coverages. Success in accomplishing these responsibilities requires an experienced professional. The fourth task encompasses site safety, effective claims management, controlling losses, and audits. All agencies rely on their insurance companies to investigate and settle claims. Additionally, most agencies hired safety engineers to supplement the insurance broker and contractor safety teams.

The OCIP manager must have systems and procedures in place to record incoming information, and separate files should be kept for each contractor. The administrator generally keeps records of payroll and loss data and provides regular reports to the agency (6). The management systems should allow tracking of each contractor's safety and claim information. Also, it should be a requirement that the administrator continually investigate the data for trends. Program statistics should be shared with all participants.

Good claims service is a must. "Poor claims service will haunt the OCIP administrator, the agency, and the contractors . . ." (3). Claims create an atmosphere of tension; therefore, rapid, simple, fair settlements are desirable to all. Possibly the most critical element that drives program success is claims handling. Claims handling requires contractor participation, particularly with light-duty and return-to-work programs, and the administrator must work as a partner with the contractors to handle such programs. Light-duty and return-to-work programs are important components of a successful OCIP.

The administrator should be available during preconstruction conferences to explain the program and assist in enrolling contractors and all subcontractors. The roles of administrative personnel should be defined for the contractors. The broker and insurers must understand that the contractors are customers.

OCIP SAFETY ADMINISTRATION

A project safety/loss control manual is important to the success of the OCIP. The manual is the result of a careful analysis of project safety issues and appropriate measures to enhance safety. The project owner's most effective period of involvement with safety is before construction begins (3). In developing the project safety plan the owner must

- Establish clear incentives (rewards or penalties) that are clearly communicated and enforceable.
- Develop a psychological climate that sets the tone for a safe job and that spreads to all members of the project team.
- Initiate clear measures and practices that anticipate potential problems, detail contingency actions, and provide needed resource support dedicated to the tasks.

Incentives are generally built into the provisions of the contract and the OCIP and include deductible levels as part of insurance coverage, authority of owner representatives to intrude into contractor operations, and specific rewards for attainment of safety levels. How an organization conducts all aspects of its business tells more about its true regard for safety than a written plan. Many informal signals create the psychological climate for the project work force with regard to safety. The operational aspects of safety must be conducted in a fair, business-like manner. Policies and procedures for dealing with safety issues, required preventive measures, and means for measuring results must be in place before the job begins. Some contractors expressed the opinion that the safety expectations of an OCIP project could be excessive, but most provided comments such as, ". . . because the OCIP applied very strict guidelines, which seemed to help raise the awareness of safety" there was added incentive to work safely.

Reducing Accidents

Studies analyzing the causes of industrial accidents allocate 12% to unsafe conditions in the work environment and 88% to unsafe practices (32). In spite of these figures, nearly all governmental efforts (Environmental Protection Agency, Occupational Safety and Health Administration) address work environment almost exclusively—the area that offers the smallest promise of reducing accidents. Prevention of unsafe practices—the cause of most accidents—

is an owner, contractor, and safety advisor activity that requires a change in worker attitudes. The owner and contractor must conduct safety planning, training, and accountability in a business-like manner. Removal of persistent violators of safe working procedures is essential to reducing accidents. Physical screening of new hires produces information on sight and hearing difficulties, or other factors that affect job safety. Work assignments should be reviewed to establish the minimum physical requirements necessary to perform in a safe manner.

Assure all employees: 1) pass a drug test and 2) attend safety training and orientation required by the Owner, Contractor and OCIP prior to starting work on the project as outlined in the OCIP Manual (8).

Safety Manual

Loss control standards and expectations should be communicated to contractors during the project bidding stage. The project safety manual should be available prior to bidding so that contractors have a clear understanding of these expectations and requirements. Loss control responsibilities should be outlined during pre-bid meetings and reinforced throughout the project.

In some cases the responsibility for developing the “Loss Control Plan” has been placed with the contractor, but whether owner- or contractor-developed, the plan should become part of the contract by reference.

The requirements of the Owner-Controlled Insurance Program manual, including Wasatch Contractors Safety and Loss Control Plan, shall become a part of this Contract Agreement (8).

Inspections

OCIP loss control personnel, both the owner’s (or broker’s) and contractor’s, should carefully evaluate work areas. Attention should also be given to staging areas. Hazards in or around project areas should be identified and communicated to the contractor. Additionally, work methods should be carefully observed to ensure that safe practices are being used.

Violations

The project safety manual should clearly communicate that contractor safety infractions will be recorded and appropriate corrective action taken.

Fire Protection

A fire and explosion plan is an important part of the safety plan. It should address the implementation and enforcement of a fire and explosion prevention program. Such a

program should emphasize good housekeeping and procedures for safe storage and use of fuels, flammables, and explosives. Safe cutting and welding practices should also be addressed.

Public Safety

To protect the public, project activities may require covered walkways and barricades. Other public safety measures include shoring or covering of excavations, warning signs, and the use of flagmen or law enforcement personnel. All of these requirements should be addressed in the project safety manual.

Contingency Plans

The safety manual should incorporate plans to deal with emergency scenarios including (1) critical injuries, (2) fires, (3) explosions, and (4) structural or excavation collapse. The safety plan should outline requirements for contingency plans and may require that an emergency management team be organized to respond to such events.

Medical Support

Prior to the start of work at the project site, arrangements must be made for handling medical emergencies. The medical support plan should include transportation when addressing both the handling of minor first-aid cases and major medical emergencies. Arrangements should be made in advance for ambulance services. The nature and extent of those on-site medical facilities required will depend on the location of the work (proximity to existing medical facilities). On projects involving hazardous activities or a large number of labor-hours it may be beneficial to provide limited medical facilities on-site, which might involve having a full-time nurse or medical technician.

Safety Manual Examples

Superstition Freeway (US-60), Maricopa County, Arizona

The owner specifically required:

- a. Written Safety Program (Reference OSHA 1926) and as defined in the ADOT Standard Specification for Bridge and Road Construction, 2000 Edition, section 107.08.
- b. Site Specific Safety Plan—All Tiers.
- c. Fleet Safety Program including driver qualification, equipment inspections, truck route planning, standing/staging area, parking area, etc., for fleet vehicles for all tiers and vendor haulers.
- d. Management Accountability and Support of the Safety Program.

- e. Emergency Response Plan.
- f. Disciplinary Act Plan.
- g. Full-Time Safety Coordinator.
- h. Return to Work Program.
- i. Safety/New Hire Orientation Program (All Tiers).

BIDDING ISSUES

The bid documents for a construction project typically include the contract terms and conditions, and related OCIP program requirements. However, the OCIP materials are often only in summary form. Many of the major concerns that contractors have with OCIP programs relate to an owner's failure to provide complete information about the program prior to bidding. In his memorandum of January 18, 2001, to the Occupational Divisions of AGC, Dan Fordice, Chairman of the AGC's Risk Management Committee, outlined contractor concerns that should be addressed in the project bid documents.

- Owners are often late to provide details of their OCIPs, making it difficult for contractors to know how to bid work.
- Contractors find it difficult to dovetail the coverage that an OCIP provides with the coverage that their own policies provide.
- Contractors are often surprised to learn—after the fact—that the owner and its broker expect the contractor to play a significant role in the administration of the OCIP.
- Relying on their brokers, owners tend to overestimate the amount that contractors are actually paying for their insurance, causing disputes over the credits that contractors are actually willing to give.

Acceptance of an OCIP by the contracting community is contingent upon the availability of complete and accurate information. In response to the contractor questionnaire one contractor reported, "Resistance by some subcontractors to work under the OCIP or even provide quotes for their work." Copies of the OCIP policies are crucial to contractors if they are to structure their primary program around the OCIP coverages. Examples of specific policy details that must be addressed in the bid documents because of impacts to a contractor's pricing of the work include

- What are applicable deductibles per line of coverage and who is responsible?
- How are losses greater than the excess liability limits handled?
- Does the excess extend to the same completed operations period as the primary liability policies?

Administration issues are also cause for concern. The bidding documents should clearly state who will manage

claims during the project and *after conclusion of the project*. Most general contractors have systems in place to track subcontractor certificates of insurance. However, when involved in an OCIP there are two parts to insurance tracking: (1) ensuring that the subcontractor is enrolled in the OCIP, and (2) obtaining evidence of the subcontractor's other (ex-OCIP) coverages—auto liability, off-site workers' compensation, and general liability. The OCIP administration information should clearly state who is responsible for these two tasks. Most OCIP manuals require the subcontractors to submit ex-OCIP certificates of insurance to the OCIP administrator. In such cases the manual should also address the procedure for providing the prime contractor with copies of the subcontractor's certificates of insurance.

Insurance Costs: In or Out

An OCIP benchmarking study by Xxxx of their CIP book revealed that in the case of public sector projects, 39% are bid with a formal insurance deduct (33). In the case of a project tendered with insurance costs in the bid, it is a very difficult and time-consuming task to verify individual contractor premium credits that will be deducted from the contract amount. (See the language from the Pennsylvania US Route 220/I-99 OCIP in the Submission of Bids section; also, see examples in Appendix F.)

Because verifying insurance costs is a time-consuming task, it appears that the majority of owners favor proposals bid ex-insurance, because this requires less effort to evaluate the appropriateness of each contractor's bid deduction. Ex-insurance bidding relies on the competitive bidding process to ensure that insurance costs have been removed from the proposal. This does not mean, however, that agencies do not attempt to collect cost of insurance information to use in evaluating their programs. The Colorado PCIP language provides an example of ex-insurance bidding, but with an attempt to capture insurance costs.

The Contractor's Cost Proposal shall exclude the cost of any insurance that is included in the PCIP. To enable CDOT/RTD to compare the costs of the PCIP with "traditional" insurance (had a PCIP not been implemented), the Contractor shall ensure that Contractor and all Subcontractors complete the attached SEC PCIP Insurance Calculation Worksheet and submit it to the Insurance Representative before start of Work by such Contractor or Subcontractor. **Satisfactory completion of the SEC PCIP Insurance Calculation Worksheet by the Contractor and all Subcontractors is a requirement of the Contract.**

DISADVANTAGED BUSINESS ENTERPRISE/WOMEN'S BUSINESS ENTERPRISE ISSUES

One of the goals of many OCIPs is to reduce the insurance and bonding barriers faced by small and Disadvantaged Business Enterprise/Women's Business Enterprise (DBE/

WBE) contractors when bidding. Because owners do not deal directly with subcontractors it is difficult to quantitatively prove that OCIPs are actually helpful to small and DBE/WBE contractors. Many of the DOTs questioned stated that they believed that the OCIP helped these contractors, but they also admitted that there were no data to support that perception. All of the 26 general contractors responding to the synthesis OCIP questionnaire stated that working under an OCIP was not helpful in obtaining disadvantaged, minority, or woman subcontractors.

There are some very positive things that an OCIP provides to small and DBE/WBE contractors, with the two primary being

- Exposure to a good safety program and
- Reductions in workers' compensation costs.

Workers' compensation reform in several states has greatly improved the employer's control over injured-employee claim management. Cost control techniques, such as directing employees to Preferred Provider Networks, return-to-work and modified-duty programs, and medical bill reviews, can potentially reduce an employer's workers' compensation costs. Owners provide these program features to all contractors and subcontractors on the OCIP, an advantage to small and DBE/WBE contractors who would not normally benefit from such features with their individual insurance programs.

INCENTIVES

With OCIPs there is usually contract language ensuring that all policy dividends or refunds go to the project owner. Statements such as the following are used for this purpose.

Sign a dividend release form authorizing the insurance companies providing the program to pay any dividend, refunds, or returns directly to CDOT/RTD. CDOT/RTD shall be entitled to retain all dividends, refunds, or returns except as otherwise specified in the Contract (34).

However, there may be other parts of the contract that provide for a sharing of program savings under an incentive plan (see Appendix G).

The Colorado T-REX project PCIP has a contractor incentive plan. A framework for savings was established based on the owner's estimate of labor-hours for the project. After the contractor provides the insurance representative with payroll by workers' compensation class code an initial plan will be drafted and incorporated into the contract. The final amount of the shared savings will be based on audited PCIP payroll and total program costs.

The PCIP has an established program minimum and maximum costs. There is also a program expected cost. The expected cost is pegged at 45% of NCCI (National Council on Compensation Insurance) Colorado expected loss rate. NCCI serves as the filing agency and rating organization for workers' compensation insurance in most states. Additionally, a program midpoint is defined as the amount (cost) midway between the program expected and program maximum costs.

There are progressive rates for savings returned to the contractor based on performance within specific cost ranges. Range I is from the program midpoint to maximum, and if the cost savings fall within this range the contractor will receive a 20% share. Range II is from the program expected to midpoint, and if the cost savings fall within this range the contractor will receive a 60% share. Range III is from the program minimum to expected, and if the cost savings fall within this range the contractor will receive an 80% share (34).

The contract also requires that the contractor share the savings with appropriate subcontractors.

The proposed methodology for sharing these savings (with subcontractors) shall be submitted by the Contractor within 60 days after NTP 1. Such proposed methodology is subject to review and Approval by CDOT/RTD (34).

Although the FHWA has not specifically addressed the use of safety incentives for projects operating under an OCIP the current thinking is that safety incentives are not unlike performance incentives and are therefore permitted. Safety incentives are considered a project cost directed at reducing construction liabilities.

OPERATING UNDER AN OWNER CONTROLLED INSURANCE PROGRAM

Operating under an OCIP need not be a difficult proposition. To achieve OCIP success, “buy-in” by all participants is essential. It was found that for each of the projects studied this was the most important element leading to successful risk management. There are “nay sayers” on each side of the issue and sometimes the state highway agency has just as much difficulty adapting to the change as the contractors. Therefore, education is the key to making everyone familiar and comfortable with the OCIP process.

This chapter focuses on the seven operational aspects of an OCIP

1. Enrollment,
2. Safety training,
3. Control of work—Safety,
4. Definitions of coverage,
5. Payroll reporting,
6. Payroll audits, and
7. Reserve reviews.

Each of these areas is a potential stumbling block; however, a good OCIP administrator or broker can effectively handle each of these activities.

ENROLLMENT

The enrollment process has two major questions that need to be answered.

1. Who is enrolled in the OCIP? and
2. How is enrollment accomplished (see Appendix H)?

Who Is Enrolled

Each of the participants approved by the owner for participation in the OCIP will be enrolled in the program. Typically, this implies that the owner, prime contractor, and subcontractors of any tier are enrolled, and their employees performing work at or from the project site will be covered (see Approved Program participants statement from the CA/T OCIP in the next section). In the case of design-build projects the design-engineering firm should also be enrolled.

Split Time Workers

Workers that split their time between the OCIP project and other projects such as mechanics or specialized work crews

pose a problem; are they subject to the OCIP if they do not spend 100% of their time on the OCIP project? Most programs have concluded that such individuals are covered by the OCIP only while working at locations included under the “site definitions” of the OCIP (see Section 8.4.1 from the I-15 OCIP in the following section). The contractor is required to have other insurance to cover these employees while they are working away from the OCIP site.

The following parties will not be covered by the Wrap-up Insurance Program:

Permanent and/or shop employees, equipment maintenance employees who are servicing equipment on the Project Site and do not work exclusively on the project (35).

Delivery Drivers

Another area of confusion concerns delivery and trucking services. In all of the cases studied, drivers bringing materials to the project site were not enrolled in the OCIP. “Materialmen and Transporters will not be included in the Department Provided Insurance Program” (36). These individuals may be on-site for only a few minutes per week or may visit only once during the duration of the project. They are required, however, to have the appropriate automobile liability coverage to protect the project in the event of a loss.

No insurance coverage provided by the Department under the OCIP shall extend to the activities or products of suppliers, materialmen, vendors, haulers, truckers and “owner/operators,” whose employee(s) perform no on-site work or are engaged solely in the loading, unloading, stocking, testing or hauling of equipment, supplies, or materials. Such persons shall be required to provide their own insurance (8).

Independent Owner/Operators

The case of owner/operators hauling materials to or from the project site for extended periods raises a serious question concerning liability. In most cases independent owner/operators have not been enrolled in OCIPs. The greatest exposure risk for these individuals is usually while they are off-site, traveling on public roads. When independent owner/operators are not enrolled they must provide certification of a specified level of liability insurance, just as they would for a non-OCIP project.

The OCIP for the US-60 widening project in Arizona is using an alternate method to deal with the owner/operator

issue. Truckers that work regularly on the project are being engaged as subcontractors. In this particular case, truckers who will be hauling over an extended period of time are encouraged to apply to become an ADOT subcontractor. They are then eligible to enroll in the OCIP and enjoy the increased coverage. Regular service-type trucking is not covered by the OCIP and must be handled in the conventional manner.

Who Is Enrolled: OCIP Language Examples

Central Artery (I-93)/Tunnel (I-90) Project, Boston, Massachusetts

Approved Program Participants: Management Consultant, Prime Contractor, Contractor or Subcontractor of any tier who perform operations at the Project Sites in connection with the work and who have been approved by the Owner for participation in the Wrap-up Program, with the exception of Asbestos Abatement Contractors who are excluded from the program for Workers' Compensation, General Liability, Airport Contractor's Liability, and Railroad Protective Liability. Asbestos Abatement Contractors are included for Builder's Risk Insurance.

"Insured" shall mean the Owner, Management Consultant, Prime Contractor, Contractors, Subcontractors of any tier, and their employees who have been approved by the owner for participation in the Wrap-up Program. The Wrap-up Program will provide coverage only to employees performing work at or from the project site. It also includes employees working at an approved dedicated off-site work site. Employees performing work for the Project but not on an approved Project Site are not covered. Contractors and Subcontractors should obtain their own non-Project-related insurance for those employees and operations not covered.

The following parties will not be covered by the Wrap-up Insurance Program:

- Vendors, suppliers, material dealers, truckmen, and cement, concrete, and asphalt haulers;
- Force Account Employees (those employees of utilities and other outside agencies performing work on the project);
- Permanent and/or shop employees, equipment maintenance employees who are servicing equipment on the Project Site and do not work exclusively on the project;
- Consultants/Subconsultants contracted indirectly or directly by the Owner in support of the Design/Engineering Work; and
- All contractors and/or subcontractors involved in asbestos abatement, but these contractors will be covered by the Builder's Risk Policy.

The key conditions required to be included in the Wrap-up Program are:

- approval by the Owner for participation,
- work performed at or from approved Project Sites,

- work performed by employees dedicated to the Project (on-site payroll).

I-15 Reconstruction Project, Salt Lake City, Utah

From Addenda (1-8)

8.4 INSURANCE

The Department, through its Owner Controlled Insurance Program (OCIP), will provide at its expense certain insurance coverages for the Contractor and certain Subcontractors as specified in Sections 8.4.1 and 8.4.3. The Contractor shall be responsible for providing certain insurance as specified in Section 8.4.2. The insurance provided under the OCIP shall be available for Contractor's benefit with respect to covered claims, but in no way shall be deemed to relieve the Contractor of any obligations hereunder; the Contractor shall remain fully liable for all deductibles and amounts in excess of the coverage provided. No insurance coverage provided by the Department under the OCIP shall extend to the activities or products of suppliers, materialmen, vendors, haulers, truckers, and "owner/operators," whose employee(s) perform no on-site work or are engaged solely in the loading, unloading, stocking, testing, or hauling of equipment, supplies, or materials. Such persons shall be required to provide their own insurance.

8.4.1 OCIP INSURANCE RELATING TO DESIGN/BUILD WORK INCLUDING MAINTENANCE DURING CONSTRUCTION

Off-site activities will be covered only for those personnel who have been hired by the Contractor and a Subcontractor for the Project and who are dedicated 100% to the Project and for whom requests for coverage for off-site activities have been approved in writing by the Department.

8.4.3 OCIP INSURANCE DURING MAINTENANCE TERM

Off-site activities will be covered only for those personnel who are dedicated 100% to performance of maintenance work.

US Route 220/I-99 Project, Pennsylvania

| | |
|--|--|
| Owner Controlled Insurance Program (OCIP) | The Program under which Workers' Compensation, Employer's Liability, Commercial General Liability, and Excess Liability are provided on a project basis for Contractor/Subcontractor(s) of any tier, who have been properly enrolled, while performing operations at the Project Site. |
| Ineligible Contractors (not included in the program) | The OCIP does not cover consultants, suppliers (that do not perform or subcontract installation), vendors, materials dealers, guard services, janitorial services, truckers (including trucking to the project where delivery is the only scope work performed), and other temporary project services. |

*Fort Washington Way Highway Project, Cincinnati, Ohio***Accepted Subcontractor**

A specified individual, firm, or corporation under Subcontract with a Contractor to undertake construction services at or from the Project Site excluding vendors, suppliers, material dealers, haulers, or others whose function is solely to supply and/or deliver materials, parts, or equipment to and from the Project Site; excluding those Subcontractors who do not meet safety, contract type, and/or contract size (on-site payroll of \$5,000 or greater) criteria as determined by Owner.

Contractor

A specified individual, firm, or corporation under Contract with the Owner or its designee to undertake construction services at or from the Project Site excluding vendors, suppliers, material dealers, haulers, or others whose function is solely to supply and/or deliver materials, parts, or equipment to and from the Project Site. As used in this manual, the term Contractor shall include both Contractors and Subcontractors.

Temporary Site Employees

Those Contractor and Subcontractor employees not assigned to the Project Site (i.e., an employee who does not directly bill his or her time to the Project). As a general guidance, an employee whose salary and overheads are included in the overhead component of Contractor or Subcontractor's bid is not covered under the OCIP even though they may occasionally be on site. Examples include, but are not limited to, home office auditors, sales personnel, payroll clerks, and human relations personnel. Contractor's on-site management team members are not considered temporary Site Employees even though their salary and overheads may be included in the Contractor's bid as an overhead.

*New Mexico Corridor 44 Project***Insured**

Mesa PDC, its parent, subsidiary, and affiliate companies, the state of New Mexico, Contractor(s), and Subcontractors of any tier who are enrolled in the PIP and who have been named in a policy, certificate of insurance, or advice of insurance signed by a duly authorized representative of the Insurers.

The following types of Subcontractors shall not be eligible for coverage in the PIP: consultants, suppliers, vendors, materials dealers, guard services, janitorial services, truckers (including trucking to the project where delivery is the only scope work performed), and other temporary project services.

*Suncoast Parkway Project, Hudson, Florida***7-13.3.6 Mandatory Participation by Contractor and Certain Subcontractors:**

Participation in the insurance provided by Department pursuant to 7-13.3.1 shall be mandatory for the Con-

tractor and each of its Subcontractors which, on the basis of the Request for Insurance submitted pursuant to 7-13.3.5, has including the Jobsite Payroll of any employees leased to such Subcontractor, an estimated Jobsite Payroll of \$10,000 or more for any consecutive 12 month period. Participation in the insurance provided by the Department, for a Subcontractor, which on the basis of its estimated Jobsite Payroll is not required to participate, shall be at the option of the Contractor. However, the Contractor shall make such election prior to the Subcontractor commencing work.

7-13.3.7 Materialmen and Transporters Excluded:

Materialmen and Transporters will not be included in the Department Provided Insurance Program.

*Superstition Freeway (US-60), Maricopa County, Arizona***Program Participant**

Employees of the Design-Builder and its Subcontractors/Subconsultants, for work performed at the Project Site. Workers' Compensation Insurance and Employer's liability will also include: 1) employees (including drivers) of the Design-Builders or Subcontractors while hauling in the conduct of business performed exclusively for the project, and 2) employees of the Design-Builders or Subcontractors engaged in traffic control exclusively for this Project. Coverage will not apply with respect to employees of independent trucker/haulers, vendors, suppliers, or other entities who are not Subcontractors.

Enrollment Process

The OCIP administrator must enroll each approved contractor and subcontractor. Although the enrollment process should be a relatively simple matter, 52% of the contractors that responded to the synthesis survey felt that the enrollment procedures were not clearly defined in the bidding documents. These are contractors who have experience working under OCIP programs. It is typically the OCIP administrator or broker's responsibility to handle the enrollment process. Either the prime contractor or the administrator can handle the safety training and orientation that are part of the enrollment process, but sometimes both contribute to the training.

Enrollment Process Examples

Central Artery (I-93)/Tunnel (I-90) Project, Boston, Massachusetts

5. ENROLLMENT IN WRAP-UP APPLICATION, PROCEDURES, AND FORMS

When Notice of Award (NOA) is sent to you it will include a letter and forms package from the resident Engineer with notification that the Wrap-up Program is in effect and that the contract qualifies for the Wrap-up Program. The CA/T resident Engineers' letter instructs the contractor to complete several forms for enrollment in the

program. The following forms must be completed before work can begin at the Project Sites:

- **Contractor's Request for Insurance—Form 1**

This form shall be submitted by each successful Prime Contractor, Contractor, and Subcontractor at any tier prior to site mobilization FOR EACH CONTRACT ISSUED.

The completed form will be submitted to the Project Insurance Broker who will review the contractor's eligibility with the insurance company and issue a separate Workers' Compensation policy and Certificate of Insurance showing the insurance coverage being provided to the Prime Contractor, Contractor, or Subcontractor as a result of their participation in the Wrap-up Program.

The Certification Section of this form is the contractor's acknowledgment that the information provided is accurate.

(An example of the enrollment form can be found in Appendix H.)

- **ERM-14 Form. Confidential Request for Information—Form 2**

If the contractor is a subsidiary and/or a division of another company, or a Joint venture partner, the ERM-14 form disclosing ownership information must be completed for the Workers' Compensation Rating and Inspection Bureau.

- **Experience Modification Letter—Form 3**

This letter must be typed on Contractor's letterhead, completed, and signed by an officer or partner of the company.

This letter authorizes the Rating Bureau to release Workers' Compensation Experience Modification information to the insurance company.

Your future individual workers' compensation experience modifications will be based on your Project work, as well as your non-project work. It will include only your experience. Other contractor's work on the Project **will not** affect your rating.

- **Assignment by Contractor/Subcontractor Letter—Form 4**

This language should be typed, completed, and signed by an officer or partner of the company and returned to the Project Insurance Broker.

The owner is responsible for all the premiums under the Workers' Compensation program. This letter waives the contractor's rights to premium returns, refunds, discounts, and cancellation. It further relieves the contractor of any and all obligations to reimburse the Owner for premiums, taxes, assessments, and losses.

Therefore, all Approved Program participants are required to exclude all insurance costs for the insurance provided under the Wrap-up Program.

Please return all forms by the date specified in the resident Engineer's letter to the Project Insurance Broker:

The Project Insurance Broker will contact you for any information not included on the forms. The Project Insurance Broker will forward the forms to the insurance company for policy issuance. Your Workers' Compensation policy and Certificate of Insurance will be forwarded to you by the Project Insurance Broker.

THESE FORMS ARE USED TO DETERMINE A FIRM'S ELIGIBILITY FOR COVERAGE UNDER THE WRAP-UP PROGRAM. COMPLETION OF THE FORMS DOES NOT GUARANTEE ENROLLMENT IN THE PROGRAM. IF YOU ARE ELIGIBLE FOR THE PROGRAM, YOU WILL RECEIVE YOUR POLICY AND CERTIFICATE OF INSURANCE CONFIRMING YOUR ENROLLMENT.

I-15 Reconstruction Project, Salt Lake City, Utah

1. Required of all awarded CONTRACTORS and subcontractors.
2. Enroll in the OCIP by completing the attached Forms 1 and 2 and submitting them to the OCIP Administrator by the time the executed contract is returned to DEPARTMENT.
3. Require that each subcontractor enroll in the OCIP by submitting the OCIP Forms 1 and 2 to the OCIP Administrator prior to the subcontractor entering the project site.

Fort Washington Way Highway Project, Cincinnati, Ohio

Section 6 Contractor Enrollment

Once a contract is awarded, but prior to on-site work, the OCIP Administrator will work with you to ensure prompt and accurate enrollment into the OCIP.

Enrollment

When notified by Owner of a Contract award, the OCIP Administrator will mail to Contractor this insurance manual, which contains all necessary forms with instruction regarding:

- Enrollment Application (FORM 2)
- Notice of Subcontractor Award (FORM 3)
- Claim Reporting (FORM 4)
- Sample Certificate of Insurance.

Contractor should complete these forms and return them to the OCIP Administrator within ten (10) business days. It is our recommendation that you contact your risk manager, insurance agent, or broker to assist

you in completing the OCIP Application. Additionally, the contractor's insurance professional should adjust your regular insurance program to conform with the OCIP coverage. Direct any questions concerning the enrollment process to the OCIP Administrator.

Orientation and Enrollment Meeting

The OCIP Administrator will hold OCIP orientation meetings for safety, claim, and payroll representatives of enrolling and newly enrolled Contractors. These meetings will be held at the Project Site.

New Mexico Corridor 44 Project

NEW MEXICO 44 PROJECT SUMMARY (CHECKLIST) OF REQUIRED PAPERWORK

When bid packages are sent out, the prospective subs should be made aware that PIP is in place and a copy of the insurance manual enclosed. Form 2 should be submitted with their bid.

When a contract award is made:

1. Form 1 **Notice of Subcontract Award**—To be completed by the contractor making the award. Information can be handwritten and faxed; hold the original in your file. A separate form must be completed for each subcontractor.

Must be submitted prior to working on project site:

2. Form 2 **Insurance Cost Identification Worksheet**—To be completed by each Contractor and all tiers of subcontractors. Attach copy of your declaration and rating schedule from your primary policies. Information can be handwritten and faxed; hold the original in your file. Policy numbers cannot be assigned or certificate of insurance issued until this form is received.

Once enrolled in the program, this form should be completed for additional contracts or change orders of \$50,000 or more:

3. Form 3 **Supplemental Insurance Information**—To be completed by each Contractor and all tiers of subcontractors if you are awarded an additional contract or have a change order of \$50,000 or more. Information can be handwritten and faxed; hold the original in your file.

Suncoast Parkway Project, Hudson, Florida

7-13.3.5 Determination of Status of Participation Before Commencement of Work:

- 1) The Contractor shall not commence work until the Contractor has submitted a properly completed Request for Insurance and the Department has approved the Contractor for participation in the insurance provided by the Department pursuant to 7-13.3.1

- 2) No Subcontractor, including any Subcontractor for whom participation in the insurance provided by Department is, pursuant to 7-13.3.6, optional at the election of the Contractor, shall commence work until the Contractor has submitted a properly completed Request for Insurance Form to the Department on the Subcontractor, and, on the basis of the Request for Insurance Form on the Subcontractor submitted by the Contractor:
 - (a) the Department has approved the Subcontractor as a Covered Subcontractor; or
 - (b) the Department has determined that participation in the insurance provided by Department is, pursuant to 7-13.3.6, optional at the election of the Contractor and the Contractor has elected to exclude the Subcontractor from participation in the insurance provided by the Department; or
 - (c) the Department has determined that the Subcontractor is, pursuant to 7-13.3.7, excluded from participation in the insurance provided by the Department.

Superstition Freeway (US-60), Maricopa County, Arizona

X. ENROLLMENT PROCEDURES

- 1) Prior to the start of work at the project site, all Approved Contractors and subcontractors of any tier shall complete the following forms and provide them to Xxx Inc., via express delivery, facsimile, or electronically:
 - a) Enrollment Application for ADOT US-60 Design-Build Project Owner Controlled Insurance Program (OCIP) (Form B), which includes the following parts:
 - i. Contractor/Subcontractor Information
 - ii. Insurance Premium Worksheet
 - iii. Certificate of Insurance
 - iv. Certification and Assignment.
- 2) In addition to the enrollment application, all Approved Contractors and Subcontractors, of any tier, shall provide the Arizona Department of Transportation with a Certificate of Insurance evidencing coverages outlined in Section VII: Approved Contractor/Subcontractor Provided Insurance.
- 3) Xxx Xxx Inc., will provide Workers' Compensation insurance policy and General Liability Certificate Insurance naming the enrolled Approved Contractor or Subcontractor as an insured.

NOTE: all questions regarding this procedure should be directed to Xxx Inc., attention Xxx or Xxx.

- 4) It is recommended that you place your current carrier on notice that you are participating in an Owner Controlled Insurance Program.
- 5) Xxx Inc., must be notified of all subcontractor activity. Should there be a change in subcontract activity after the initial contract award (i.e., a subcontractor is added or changed). The "Notice of Contract Award" (Form A) must be completed and sent to Xxx Inc., prior to the Subcontractor starting work at the Project Site.

SAFETY TRAINING

Safety training is one of the crucial aspects of an OCIP. Safe workers have lower loss experiences, which in turn leads to lower workers' compensation rates. As mentioned previously, the workers' compensation part of the insurance package is one of the main CIP components that can generate project cost savings. Some projects split the responsibility for training between the contractor and administrator and others have allowed only administrator training.

The type of training required depends on the scope of the work. All projects need the basics, such as an accident reporting policy, proper Personal Protective Equipment, and ladder safety. Special conditions may require special training, such as trench safety, hazardous material handling and storage, or enclosed space entry.

Initial training is conducted before the employee is allowed to work on the project. Training may include a video of safety basics that can be viewed by one or more employees or a full seminar with an instructor. Weekly "toolbox" safety meetings are required at the crew level and regular project-wide safety meetings are another important component. Specialized crew training could be required if conditions change on the project or a new operation is about to start.

Without exception, the state highway agencies and their brokers felt that there is no such thing as too much safety training. The contractors and subcontractors have a split opinion on the issue; some believed that it was difficult to find the time to send people for training, whereas others thought it to be a worthy investment. No one would say that safety is unimportant, but there is some disagreement as to the degree of training required to achieve the desired end. If contractor supervisors exhibit such attitudes there is an obvious need to change their outlook or remove them from the project. As one major contractor stated, there is no place for the "or" word, as in what do you want, production *or* safety? It is not an either *or* situation, it is a dedication to both safety *and* production.

OCIP Safety Requirement: Examples

I-15 Reconstruction Project, Salt Lake City, Utah

UDOT ADDENDUM SPECIAL CONDITIONS, INCLUSIONS, AND EXCLUSIONS

4. Special Inclusions (Including but not limited to):
 - A. Owner-Controlled Insurance Program

This Project will be covered under an Owner-Controlled Insurance Program ("OCIP") administered by Xxx Xxx. The requirements of the Owner-Controlled Insurance Program Manual, including

the Wasatch Constructors Safety and Loss Control Plan, shall become a part of this Contract Agreement. Contractor/Subcontractor shall cause all provisions and requirements of the OCIP to be included in any contract/subcontract agreement with all lower tier contractor/subcontractor(s), regardless of tier, and shall assure compliance therewith by said lower tier contractor/subcontractor(s).

Loss Control Plan—Contractor/Subcontractor shall comply with all provisions of the Wasatch Constructors Safety and Loss Control Plan for the Project and shall:

1. Be deemed Controlling Employer for purposes of its employees safety and health pursuant to OSHA regulations;
2. Conduct safety inspections of all work areas as per Wasatch Constructors requirements;
3. Conduct toolbox safety meetings for all employees and provide a copy of the topics discussed and the meeting attendees to the Contractor's Safety Representative, per Wasatch Constructors schedule;
4. Assure all employees 1) pass a drug test and 2) attend safety training and orientation required by the Owner, Contractor, and OCIP prior to starting work on the project as outlined in the OCIP Manual;
5. Submit a copy of OSHA 200 Log to Contractor's Project Manager monthly.

The Wasatch Constructors Project Safety and Loss Control Plan shall be the governing document on all jobsites, unless regulatory requirements are more stringent.

Suncoast Parkway Project, Hudson, Florida

The following is an excerpt from the Special Provisions, Florida Job No. 97102-3357 (Suncoast Parkway) (36).

- 7-13.4 Contractor's Safety Program
 - 7-13.4.1 *Provisions Are Supplemental:* The provisions of 7-13.4 are in addition to, and not in lieu of, other provisions of this Contract.
 - 7-13.4.2 *Contractor Solely Responsible for Safety:*
 - (1) The Contractor shall bear sole responsibility for the safety of all persons employed on the Work and persons who may be affected thereby, and for the adequacy of the methods and means the Contractor and its Subcontractors, Materialmen, and Transporters employ in performing the Work. The Contractor shall take all reasonable precautions necessary to assure that its employees and those of its Subcontractors comply with all applicable safety, health, and personnel rules and regulations.
 - (2) Neither the provision of the Department Provided Insurance Program, nor the Department's monitoring of the Contractor's safety program for compliance with federal and state laws and the requirements of the Contract shall:
 - (a) relieve the Contractor of the sole responsibility for the safety of all persons employed

- on or in connection with the Work and persons who may be affected thereby and for the adequacy of the work methods and means employed in performing the Work; or
- (b) constitute an undertaking on behalf of, or for the benefit of, the Contractor, its Subcontractors, or any other persons or organizations to determine, represent, or warrant that such workplaces, structures, operations, procedures, machinery, equipment, or materials are or will be safe or healthful or are or will comply with laws, rules, regulations, codes, or standards.

- (3) Neither the Department nor any of its officers, agents, or employees, nor any persons or organizations acting on behalf of the Department, shall be liable for the failure of the Contractor or any of its Subcontractors to comply with any safety or loss prevention provisions of this Contract.

7-13.4.3 *Contractor's Safety Responsibilities:*

- (1) The importance of the safety of all persons employed on the Work and any other persons at the site of the Work or otherwise who may be affected thereby shall be recognized by the Contractor and its Subcontractors, and safety and loss prevention shall be an integral part of the Contractor's and its Subcontractor's operations.
- (2) The Contractor shall, at the sole cost of the Contractor, develop, maintain, and enforce a written safety and loss prevention program applicable to the Contractor and its Subcontractors, which meets or exceeds all of the requirements of this 7-13.4. The purpose of such safety and loss prevention program shall be to maintain a safe workplace, to prevent damage, injury, or loss to persons or property.
- (3) The Contractor shall comply and cause its Subcontractors to comply with all applicable federal, state, and local laws, ordinances, rules, regulations, and codes pertaining to the health and safety of persons or property, including, but not limited to, OSHA 29 CFR 1910 & 1926 and Florida Department of Labor & Employment Security, Division of Safety Rule 381-17.003.
- (4) The Contractor shall cooperate and cause its Subcontractors to cooperate fully with any other contractors and subcontractors on or in close proximity to the Site of the Work, and the Department and the Department's insurer(s) to coordinate their respective safety programs.
- (5) The Contractor shall provide access to the Site of the Work at all times for any safety and loss prevention inspectors of the Department and of the Department's insurer(s).

7-13.4.4 *Contractor's Safety Representative:*

The Contractor shall designate a responsible member of the Contractor's organization at the Project Site whose primary duty shall be safety and loss prevention. The designated person must:

- (1) be employed on a full-time basis on the Site of the Work;

- (2) devote at least 25 hours per week in connection with safety and loss prevention at the Project Site;
- (3) be available on short notice to meet with representatives of the Department, or of the Department's insurer(s), anywhere on the Site of the Work;
- (4) be available on short notice to accompany representatives of the Department, or of the Department's insurer(s), in inspections anywhere on the Site of the Work; and
- (5) meet the minimum requirements of Florida Department of Labor & Employment Security, Division of Safety Rule 381-10.009.

7-13.4.5 *Minimum Requirements of Contractor's Safety Program:*

The Contractor's safety program shall meet, but not by way of limitation, all of the following minimum requirements:

- (1) Each Project Employee shall be required to attend, at least weekly, a toolbox safety meeting to be held by the Contractor at the Site of the Work. The Contractor shall keep proper records of each toolbox safety meeting for inspection by, or on behalf of, the Department, its insurer(s), and federal, state, and local authorities.
- (2) All persons on the Site of the Work shall be protected with proper personal protective equipment. Safety requirements must also include written programs on respiratory, confined spaces, eye, face, and head protection, protective clothing, shoe wear, and gloves pursuant to OSHA 29 CFR 1926.
- (3) Any source of power (electrical, mechanical, or other) requiring entrance into or close contact with, shall be controlled before any work or service is performed, pursuant to OSHA 29 CFR 1926. An emergency plan shall be provided to ensure locations of shut-offs or disconnects so that, if an emergency arises, immediate action may be taken.
- (4) Signs, signals, barricading, and traffic controls used for the protection of construction personnel or public shall conform to the Federal Highway Administration manual on Uniform Traffic Control Devices.
- (5) A written emergency response plan for any hazardous waste operations must be developed, implemented, and communicated to handle anticipated emergencies prior to the commencement of emergency response operations. The plan must include a site-specific safety and health plan to include training, medical surveillance, and operating procedures pursuant to OSHA 29 CFR 1926.
- (6) All new and existing crawlers, wheel mounted, or truck cranes shall meet design ANSI standards B30.5 and manufacturer's specifications. Crane inspections shall be made at least daily by an operator of the crane. In addition, cranes shall be inspected at least weekly by the person designated by the Contractor as the Contractor's safety representative pursuant to 7-13.4.4. Written records of the inspections must be available for review. A competent person,

recognized by the U.S. Department of Labor, shall provide documentation of each inspection.

- (7) All scaffolding, barricading, man lifts, and work at elevated heights must be in conformance to safe workplace practices. Competent persons approving the construction and monitoring the procedures must be identified and included in the submitted safety program pursuant to OSHA 29 CFR 1926.
- (8) All excavation, trenching, and shoring will be performed in a safe manner, using approved barricades or a safe angle of repose, pursuant to the Florida Trench Safety Act and OSHA 29 CFR 1926, Subpart P.
- (9) All equipment and materials used for concrete, concrete forms, and shoring shall comply with ANSI A10.9-1983 requirements for concrete construction and masonry work.
- (10) The Contractor shall secure the Site of the Work and control entry of unauthorized individuals on the Site of the Work to prevent injury to the third party entities. Site security, escorted visitors, and property securement shall be included in the formal written safety and loss prevention program.
- (11) Temporary erosion control features, hazardous materials, and those substances that may contribute to the pollution of the natural resources must be identified and controlled in a safe and approved manner pursuant to state, federal, and local agency guidelines. In the event of differences between those requirements and pollution control laws, the more restrictive rules or regulations shall apply.
- (12) For exposure defined by employment over or near territorial and navigable waters and under the Longshore and Harbor Workers Act, Contractor shall provide education and training in the recognition, avoidance, and prevention of unsafe working conditions, pursuant to the Code of Federal Regulations.
- (13) When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel in accordance with U.S. Department of Transportation and Mine Safety and Health Administration and OSHA CFR 1926.
- (14) Contractor shall require, and cause its Subcontractors to require, each new Project Employee, before starting work, to be oriented by the supervisor of the Project Employee on the safety and requirements established for the work task(s) to be performed. Weekly toolbox safety meetings are not a substitute for the new Project Employee orientation.

CONTROL OF WORK—SAFETY

The contractor sometimes construes safety issues as controlling the work. Some contractors complain that the strict safety rules will limit construction options and dictate the method of construction. On some early projects, overzealous broker safety people have shut down entire projects because they did not approve of what they saw on a particular operation, whereas others shut down only the offending portion of the operation. This practice was found to be unacceptable to both the state transportation agency and the contractor. Although it is allowed that anyone on the project can halt any operation that poses imminent danger to workers, usually only the project manager or engineer has the authority to shut down the entire project for any reason.

When contractors were asked, “Do you believe that OCIPs take away contractor control?,” the yes/no response was split 50/50. Some contractors attempted to qualify their answers with comments such as

- “Yes, in some specific areas or types of work.”
- “Yes, it can take away control depending upon the situation.”
- “Yes, to some extent.”
- “Certainly to some extent. Insurance and safety should be in a general contract package for single party responsibility.”

All of these comments were marked as a yes for calculation; however, it is clear that at least these quoted contractors were not strongly positioned in their point of view. It could also be inferred from the comments that additional education or program refinement may be necessary.

Contractors were also asked, “Do you believe that OCIPs make contractors less accountable for safety and risk control?,” 73% did not feel it diminished their accountability.

- No, good contractors have a strong safety program and adhere to it regardless of an OCIP program.
- No, still 100% accountable but removes some of the authority.
- It depends on how the OCIP is structured, but generally no.
- Contractors believe OCIP’s losses are not applicable to their losses.

This last statement is a misconception, because *their* losses on the OCIP project are reported to NCCI and will affect the individual contractor’s EMR.

COMPLETE POLICY COVERAGE INFORMATION

The definitions of the various coverage types do not change when operating under an OCIP. The OCIP insurance package

contains most of the typical components of a non-OCIP project such as CGL, workers' compensation, builder's risk, and excess liability. Depending on the project conditions the package may also include additional special coverages such as design professionals errors and omissions (E&O), design-build E&O, pollution/environmental, long-shoreman/maritime, and railroad protection. As mentioned before, automobile and contractor tool and equipment coverage is always excluded from a CIP. The party in control of the program and the broker will ensure that the coverage is adequate and in force to protect all project participants and the public.

CONTRACTOR CONCERNS

Contractors are concerned about participating in CIPs. Unknown or overlooked contract information has always been a risk for the contractor. The unknown information can make the difference between a profitable job and one that could potentially bankrupt the company. Any time a major change occurs in the way a construction firm conducts its business there is the potential for trouble. Working under a CIP could pose such a threat if crucial information is buried in the contract insurance documents and no effort made to educate or inform the contractor and subcontractors about it.

CIP projects are usually very large and may take more than 1 year to complete. Because large contractors construct large projects, only the largest contracting firms have CIP experience. However, CIPs are now being considered for projects under \$100 million, and no longer will CIP projects be the sole domain of the mega-contractor. Many contractors, and especially subcontractors, will be entering into their first CIP contract. Although it is never intentional to develop insurance documents that are misleading, the case studies revealed that some documents were clearer than others. It will be very important for the contractor to have all of the CIP information in an easy-to-use form with clearly stated terms. Contractors with OCIP experience have reported some level of difficulty in finding the important information, a serious problem that state highway agencies must address if their programs are to be successful.

Contractors Opinions

When contractors with OCIP experience were asked to rate if the scope of insurance coverage was clearly defined in the bidding documents, 26% felt that it was no problem or not much of a problem, 15% felt neutral on the question, and 59% felt it was a serious problem.

When the contractors were asked to rate if the scope of insurance coverage was clearly defined in respect to

trucking, the results were 26% felt that it was no problem or not much of a problem, 15% felt neutral on the question, and 59% felt it was a serious problem.

When the contractors were asked to rate if the enrollment procedures were clearly defined in the bidding documents the results were slightly better; 26% felt that it was no problem or not much of a problem, 22% felt neutral on the question, and 52% felt it was a serious problem.

Coverage Limits

Coverage limits are usually adequate, but should be clearly stated in the documents so that the bidding contractors can easily find the coverage information and compare limits. It is especially important for the owner to state the liability coverages. There may be instances where a contractor may wish to purchase additional coverage for high-risk activities such as blasting in populated areas. Presenting the information where bidders can easily find it will enhance the process.

Exclusions

During the bidding process the contractor will need to know not only what is covered by the OCIP, but also more importantly, what is not. For the items not covered the contractor will need to assess the risk and make a decision on how to handle it. The contractor will generally purchase added coverage for the items excluded by the OCIP; therefore, the information about what types of insurance to buy and at what limits is critical.

Excluded coverage is not the only area of interest to the contractor. The contractor must also know about excluded work classifications under the OCIP. It has been discussed previously in the Enrollment section that truckers, vendors, and material suppliers are not covered. It was noted in one project that asbestos abatement workers were excluded from the OCIP. That information would be very important to a subcontractor bidding on abatement work.

Deductibles

Many of the projects studied furnished builder's risk coverage. What were not always clear in the documents, however, were the deductibles. Nearly all of the insurance documents contained wording stating that the contractor is responsible for a builder's risk deductible if the contractor was found to be at-fault for the loss. Some of the deductibles were sizable; therefore, the contractor would need to keep two things in mind: first, owner-provided insurance does not mean that everything is free and second, they may want some type of contingency in place for any deductibles incurred. The amounts for the builder's risk deductible and

any other deductibles should be clearly presented to the bidding contractors.

Who Benefits?

One of the most highly touted benefits of the OCIP is insurance cost savings. Some agencies keep all savings and some share the savings. Contractors are very interested in any available incentives. If the agency does not plan to share the savings, it should be clearly stated and easy to locate in the documents. Conversely, any sharing of savings or incentive programs should also be clearly stated in the documents.

Clarity Matters

OCIPs can be very confusing for contractors and subcontractors bidding or entering into their first OCIP project. It will be a much easier proposition to get the contractor to “buy-in” to the OCIP concept if they are informed and educated about all aspects of the process. Clear insurance documentation, perhaps in table formats, can make the difference between an accurate project bid and one with an error in relation to insurance costs. Bid documents should clearly state the owner provided coverages, liability limits, excluded coverages, excluded personnel, all deductibles, and who benefits from the OCIP.

CLAIMS

Claims management services can be provided by the insurer, a third-party administrator, or by the project manager’s internal staff. The most common method of claims management is to use the insurer’s claims adjusting resources (6). The project’s contractors should be involved in the claims process, but from the replies to the synthesis questionnaire it is clear that many do not understand the importance of claims management.

The question was posed, “Apart from the potential effect on your company’s EMR (or any financial incentive) why would you want to be involved in the OCIP claims process, including periodic claims review?”

Comments such as the following were received from contractors who do not appear to understand claims or who did not understand the question.

- We wouldn’t.
- Would not want to!
- No reason I can think of.
- We have never had any type of a claim review with our OCIP projects. No reason to participate.
- Information only.

However, many contractors *do* understand the importance of good claims management, and their comments were very different from the replies of the first group.

- It is good business practice to be involved in the entire process.
- To stay abreast of how the company is handling each claim and the amount of reserve on each claim.
- In order to ensure the employee received the best treatment and care, and returns to work.
- The injured workers are our people; we want to know how they are being treated.

Most CIPs have an aggressive return-to-work program as part of their claims procedure.

The prompt return to work of all employees as soon as medically possible will support the needs of the injured employee, the Contractor/Subcontractor(s), and UDOT. In this regard, Contractor/Subcontractors will promote the return of their employees by providing alternative jobs involving activities commensurate with the physical limitations which may be medically imposed. These modified duty options may well be extended beyond the job site to include alternative jobs not related to construction or alternative job sites or headquarters’ related positions (8).

There needs to be a full-time claims manager who ensures that claims are handled in a professional manner from day one through to final closing of the claim. Regardless of which party an injured employee is employed by, there must be consistency handling of any claim.

PAYROLL REPORTING

Payroll reporting is required to ensure that the proper premiums are paid for workers’ compensation and CGL policies. Workers’ compensation coverage premiums are based on the actual labor-hours worked for each labor classification. Payroll reporting quantifies the labor-hour portion of the OCIP’s workers’ compensation premium. At the end of a given period—monthly, quarterly, or annually depending on the project size and duration—the contractor and subcontractors submit their payroll reports to the OCIP administrator (Appendix I). Additionally, contractor and subcontractor payrolls are audited at regular intervals to ensure accuracy.

Davis–Bacon Act reporting is already a requirement for transportation projects that have federal-aid money. Therefore, it should not be a real problem to reconfigure the labor-hour information for insurance purposes; however, two unique situations caused some contractors to hold a different opinion. The situations that cause problems are split between (1) job classifications or (2) projects.

Contractors with OCIP experience were asked to respond to a two-part question relating to their experience

with OCIP payroll reporting. Specifically, they were questioned about reporting problems when (1) an employee has split time under multiple job classifications and (2) when employees spent part of their time on the OCIP project and part on another project. On the issue of multiple job classifications, 66% ranked it neutral or no problem. However, one-third of the respondents reported that it was a problem for their company. The responses to the second part of the question that addressed the issue of workers moving between jobs was a closer split, with 48% indicating that it was not a problem and 37% indicating that they had problems. The last 15% were neutral or reported no experience with this issue. What is not known is the sophistication of the respondent's accounting computer systems. Most of the respondents were subcontractors.

Of the contractors responding to the synthesis survey, 36% stated that they had to change their company's job costing system to accumulate the OCIP-required data. Three companies reported that they had to change their accounting software. It appears that these were small subcontractors who did not have sophisticated accounting programs when they enrolled in the OCIP.

Payroll Reporting—OCIP Contract Language Examples

Southeast Corridor Project, Denver, Colorado

SECC (Southeast Corridor Constructors) is the prime contractor for the project.

Project Insurance Manual

** This manual is part of your Contract documents **

How will participation affect you as an enrolled subcontractor?

- All jobsite payroll will be reported to SECC on a regular basis as shown on the Payroll Reporting form. This payroll will **not** be reported to your individual insurance carrier. You should **not** be charged an insurance premium for this payroll by your individual carrier. The PCIP Administrator will provide you with a Certificate of Insurance under the PCIP as proof of coverage for this payroll.
- If you choose to hire a subcontractor to assist you in completing your contracted work, you will be responsible for the following:
 4. All subcontractors will be required to meet the PCIP insurance requirements for contractor-provided insurance. CDOT/RTD has the authority to require SECC to deny access to the jobsite for non-compliance of insurance or safety requirements. It is important that you verify the subcontractors' abilities to meet these requirements prior to awarding work.

Appendix D, Southeast Corridor PCIP Definitions

Payroll Total earnings of a contractor's employees while performing Work at the PCIP Site in accordance with NCCI rules for Workers' Compensation payroll reporting.

EXHIBIT H—PARTNER CONTROLLED INSURANCE PROGRAM (PCIP)

1.10 Contractor and Subcontractors' Obligations

For insurance purposes, Contractor shall require each Subcontractor to keep and maintain an accurate and classified record of its payroll to furnish to CDOT/RTD in accordance with the requirements of the insurance company or companies, and to permit its books and records to be examined and audited periodically by the insurance company or companies, CDOT/RTD, and their respective representatives for the limited purpose of determining the payroll and hours expended of the Project. Contractor and Subcontractor duties and obligations associated with their participation in the Program are set forth below:

- (III) Maintain separate payroll records for the Work they perform. Have such payroll records available for review upon request by CDOT/RTD or insurance company, and prepare and submit required monthly payroll reports to CDOT/RTD's designee.
- (V) Maintain payroll and man-hour records, which show separate crafts by workers' compensation class, and prepare separate "regular" and "overtime" payrolls and man-hours in accordance with the insurance company's standard auditing procedures.
- (VI) Allow CDOT/RTD and/or the insurance company's payroll auditor to make periodic audits of payroll records.

I-15 Reconstruction Project, Salt Lake City, Utah

UDOT ADDENDUM

SPECIAL CONDITIONS, INCLUSIONS, AND EXCLUSIONS

Insurance Premium Audits—For insurance purposes, Contractor/Subcontractor agrees, and will require all tiers of contractor/subcontractor(s) to agree, to keep and maintain accurate and classified record of its payroll for operations at the Project Site.

Contractor/Subcontractor further agrees and will require all tiers of contractor/subcontractor(s) to agree, to furnish to Xxx Xxx and to the Xxx Insurance Company, full and accurate payroll data and information in accordance with the requirements of the Owner-Controlled Insurance Program Manual or Xxx Xxx; to permit its books and records to be examined and audited periodically by the Xxx Insurance Company or Xxx Xxx and their respective representatives; and to provide any additional information to Xxx Xxx as may be required. Further right of examination will include inspection at reasonable time of Contractor/Subcontractor's plants, or such parts thereof as may be engaged in the performance of this Contract.

To properly manage the OCIP, the following procedures must be followed:

- Payroll Reporting and Audits. Payroll will be reported using the Monthly Payroll Reporting Form (Insurance Form 3). This form is to be completed by each Contractor/Subcontractor by the tenth day of the month and sent to Xxx Xxx and UDOT. Standard reports available to Contractor/Subcontractor may be used in lieu of Insurance Form 3 if they contain substantially the same information and upon approval of Xxx Xxx.

- Upon completion of the contract work, the Notice of Completion (Insurance Form 4) will be completed by UDOT and sent to Xxx Xxx. If the form is completed by an awarding Contractor/Subcontractor, a copy of the completed form shall be sent to UDOT. Receipt of this form will alert Xxx Xxx who, in turn, will contact the Insurer's Audit Department and request final audits of payrolls and Contractor/Subcontractor insurance costs.

US Route 220/I-99 Project, Pennsylvania

INSURANCE

D. Audit and Recovery of Contractor and/or Subcontractor "Insurance Cost"

For insurance purposes, contractors and all tiers of subcontractors will agree to keep and maintain accurate and classified records of their payroll for operation at the project site. Contractors/subcontractors further agree to furnish to the OCIP Administrator full and accurate payroll data and information in accordance with the requirements of the OCIP Manual. All contractor/subcontractors shall permit examination and/or audit of its books and records. Contractor/subcontractor shall also provide any additional information to the Commonwealth of Pennsylvania Department of Transportation or their appointed representatives as may be required. During the term of the contractor/subcontractor's contract including extended periods thereof the Commonwealth of Pennsylvania Department of Transportation shall have the right to adjust the contract price to reflect the actual cost of the contractor/subcontractor's insurance costs had the Commonwealth of Pennsylvania Department of Transportation not implemented an OCIP.

F. Contractor/Subcontractor Responsibilities

The contractor/subcontractor is required to cooperate with the Commonwealth of Pennsylvania Department of Transportation and the OCIP Insurance Administrator with regards to the administration and operation of the OCIP. The contractor/subcontractor's responsibilities shall include, but not be limited to:

- (1) Compliance with applicable Construction Safety Program, OCIP Manual, and Claims procedures as outlined in the respective manuals setting forth the administrative procedures required of the contractor/subcontractors;
- (4) Maintenance and provision of monthly payroll records and other records as necessary for premium computation;
- (5) Cooperation with any insurance company or OCIP Administrator with respect to requests for claims, payroll, or other information required under the program;
- (7) Complete the following administrative forms within the time frames specified:
- (d) Submission of Payroll Reporting Form, Form 5—with proper Workers' Compensation Classification Codes.

INSURANCE ADMINISTRATION

The contractor shall adhere to and perform all reporting requirements as detailed. Failure to follow the procedures

outlined in the manual could result in fines assessed by the appropriate state agencies or commissions or default judgments from a lawsuit against the Commonwealth of Pennsylvania Department of Transportation or the contractor. The Party at Fault, shall at its own expense, be responsible for any fines or judgments arising out of failure to follow these procedures. The Commonwealth of Pennsylvania Department of Transportation shall deduct from monies due or to become due under the provisions of this contract for any applicable fines or judgments that are assessed.

A. Administration of the OCIP

Administration is an integral part of the success of the OCIP. All contractors should be properly enrolled in the OCIP before access to the project site is allowed.

To properly manage the OCIP, the following procedures must be followed:

- Payroll Reporting and Audits. Payroll must be recorded monthly on Payroll Reporting Form (Form 5) CERTIFIED PAYROLL REPORTS ARE NOT ACCEPTABLE. All contractors are required to submit a monthly report of work-hours and payroll to the OCIP Administrator. It is the awarding contractor's responsibility to ensure that this information is provided monthly by all tiers of subcontractors.

Project Payroll shall include the total remuneration and hours worked for all employees working at the project site. All payroll records on the Designated project should be kept separate from all other work. This will make the audit process easier.

Payroll reports should be sent to the OCIP Administrator within ten days following the end of the month. You should use the same workers' compensation codes and classifications as shown on your current Workers' Compensation policy. Show only total hours and total payroll for each classification of employee. The report can be handwritten and faxed; hold the original copy in your file. If you have more than one contract and/or work order, please either (1) complete a form for each awarding contractor or (2) show which payroll applies to which contractor.

Earnings for overtime should be included only at the straight hourly rate (DO NOT INCLUDE EXTRA WAGES PAID FOR OVERTIME HOURS). Overtime means those hours in excess of eight hours worked each day, 40 hours in any week or on Saturdays, Sundays, or holidays, but only when there is an increase in the hourly rate to work such hours. The work-hours should reflect all hours worked, including overtime.

ALL CONTRACTORS MUST MAKE THEIR PAYROLL RECORDS AVAILABLE TO THE (INSURANCE COMPANY) AUDITOR AT THE TIME DURING THE POLICY PERIOD AND UP TO THREE YEARS AFTER COMPLETION OF THE PROJECT.

- When the contractor/subcontractor is 85% complete, the Notice of Substantial Completion (Form 4) should be completed by the contractor/subcontractor and sent to the OCIP Administrator. Receipt of this form will alert the OCIP Administrator to notify the Insurer's Audit Department and request final audits of payrolls and the contractor's insurance costs.
- Certificate of Insurance evidencing contractor's current insurance program. The certificate must reflect that your current Workers' Compensation and General Liability policies exclude coverage on the designated project site. This should alert your insurance company to (1) issue the Designated Workplace Exclusion endorsements to your policies, (2) notify the audit department that all payroll and/or receipts for this project should be excluded from your audit.

The certificate must also show that the Commonwealth of Pennsylvania Department of Transportation and its directors, officers, representatives, agents and employees shall be endorsed as Additional Insureds on the Automobile Liability and General Liability, ATIMA (As Their Interest May Appear). (See Appendix I for a copy of the Pennsylvania DOT Project Site Payroll Reporting Form.)

Anchorage International Airport, Anchorage, Alaska

B. Contractor and/or Subcontractor Responsibilities

The contractor's and/or subcontractor's responsibilities shall include, but not be limited to:

- (1) Maintenance and provision of monthly payroll records and other records as necessary for premium computation;
- (2) Cooperation with any insurance company or Program Administrator with respect to requests for claims, payroll, or other information required under the program, because all Workers' Compensation claims will affect the contractor's experience modification;
- (5) Complete the following administrative forms (for the general contractor and all subcontractors) within the time frames specified:
 - (c) Submission of **Interim Audit Report—Workers' Compensation monthly by the 10th of the following month**—with proper Workers' Compensation Classification Codes;

C. Audit & Recovery

For insurance purposes, contractors agree, and will require all tiers of subcontractors to agree, to keep and maintain accurate and classified record of their payroll for operation at the project site. Contractors further agree, and will require all tiers of subcontractors to agree, to furnish to the Program Administrator, full and accurate payroll data and information in accordance with the requirements of the OCIP Contractor's Manual. All contractors and subcontractors shall permit examination and/or audit of its books and records. Contractors or subcontractors shall also provide any additional information to SOA DOT&PF or their appointed representatives as may be required.

ADMINISTRATION OF THE OCIP

Administration is an integral part of the success of the OCIP. All contractors and subcontractors should be properly enrolled in the OCIP before access to the project is allowed.

To properly manage the OCIP, the following procedures must be followed:

- **Monthly Audit Requirement:** all contractors will provide a set of monthly premium reporting forms that must be completed and submitted to Xxx Xxx Corporation of Seattle by the 10th of each month. A sample form is enclosed; however, forms specific to each contractor will be supplied as each OCIP Workers' Compensation policy is issued by Xxx Xxx Insurance Company. **It is the awarding contractor's responsibility** to ensure that this information is provided monthly by all tiers of subcontractors.

Project Payroll shall include the total remuneration and hours worked for all employees working on AIA-TRP project site. All payroll records on AIA-TRP project should be kept separate from all other work. This will make the audit process easier.

Payroll reports should be sent to the OCIP Program Administrator within 10 days following the end of the month.

You should use the same workers' compensation codes and classifications as shown on your current Workers' Compensation policy. Show only total hours and total payroll for each classification of employee. The report can be handwritten and faxed; hold the original copy in your file. **If you have more than one contract and/or work order, please either (1) complete a Form for each awarding contractor, or (2) show which payroll applies to which contract.**

Earnings for overtime should be included only at the straight hourly rate. (DO NOT INCLUDE EXTRA WAGES PAID FOR OVERTIME HOURS.) Overtime means those hours in excess of 8 hours worked each day, 40 hours in any week or on Saturday, Sundays, or holidays, but only when there is an increase in the hourly rate to work such hours. The man-hours should reflect all hours worked, including overtime.

ALL CONTRACTORS AND SUBCONTRACTORS MUST MAKE THEIR PAYROLL RECORDS AVAILABLE TO THE (INSURANCE COMPANY) AUDITOR AT ANY TIME DURING THE POLICY PERIOD AND UP TO THREE YEARS AFTER COMPLETION OF THE PROJECT.

- When contractor's or subcontractor's work is complete, **the OCIP Coordinator will copy Program Administrator on the final completion letter.** Receipt of this letter will alert the Program Administrator to notify the Insurer's Audit Department and request final audits of payrolls and the contractor's or subcontractor's insurance costs.
- **Final Audit Requirement:** A copy of Certified Payroll Reports must be provided to the OCIP coordinator. In addition, Xxx Xxx Insurance Company will perform a physical audit with each contractor for individual workers' compensation policies as well as the OCIP General Liability coverage.

PAYROLL AUDITS

The purpose of payroll auditing is to verify the results of the payroll reporting process. The audits are conducted on an annual basis for multi-year projects. Remember that typically CIP projects are large, \$100 million or greater, and therefore usually take several years to complete. As stated in the previous section on payroll reporting, accurate payroll information is necessary to adjust the insurance premiums for the workers' compensation coverage.

The results of these audits can raise or lower the final premiums. Not all state highway agencies share the workers' compensation insurance savings with the contractor; the incentive for the contractor to perform well may come solely from protecting the company's EMR. Offering to share any workers' compensation savings with the contractor, however, should lead to a safer, more efficient project and greater savings for all parties.

RESERVE REVIEWS

The loss data used to compute workers' compensation experience modifiers are *not* the claim amount that the insurance company actually pays out. Insurance companies report the paid amount and the amount they forecast as additional costs for settling open claims. These estimates of future costs are called reserves. Loss reserves directly impact the calculation of experience modification

factors and can significantly affect final insurance costs (6).

There is little, if any, standardization of setting loss reserve amounts. Some insurance companies take a very conservative approach, but try not to be excessive when estimating claim reserves. Other insurance companies routinely take a worst-case scenario approach (6).

The function of the reserve review is to ensure that the insurance program is fully funded and that the annual aggregates for each coverage are not in peril of depletion. The CIP administrator typically conducts these reviews on a monthly basis. All well-run contractor insurance programs make this a highly important area of concern. It is where the contractors control their experience modifiers and employees. If the CIP has a solid reserve review process, contractors will soon come to realize that they still control their insurance protection.

Contractor participation in a structured reserve review process is critical to a successful CIP. It is where over "reserved" claims are spotted and where arguments can be made to reduce the reserve or in many cases close out the claim. Only the contractor knows if the injured employee has returned to work. It is where the importance of "light duty and return to work" programs becomes clear to the contractors. The review is also where the malingerer is identified. It is therefore extremely important that insurance carrier be required (by contract) to be aggressive in finding and solving challenges in this area.

CONCLUSIONS

Because of the complex relationships between the parties involved in large highway projects and the open-ended nature of construction liability, departments of transportation (DOTs) are facing new and significant construction risk challenges. At the same time, courts have been vague as to who is responsible for construction safety. Some states hold that the duty to provide a safe workplace is a matter of law (Title 8 California Code of Regulations § 3203 [8 CCR 3203] and in New York State, Section 240 & 241 of the labor law). The New York State Labor Law imposes “strict liability” on owners and contractors.

The project owner, as the party ultimately responsible for the construction work, is consequently looking to enhance control over project safety and risk management. Controlled insurance programs (CIPs), if implemented correctly and used on appropriate projects, are highly efficient risk-control mechanisms. With a CIP, the interest of the owner, designer, construction manager, contractors, and consultants are all covered by one insurance arrangement. Owner Controlled Insurance Programs (OCIPs) are insurance packages having reduced premiums because of a very good future projected loss experience and economies of scale.

Transportation construction projects typically involve many types of insurance coverage such as workers’ compensation, general liability, builder’s risk, and professional liability. With so many participants working on large transportation projects—owner representatives, private design professionals, a prime contractor, and subcontractors—there may be redundancy and/or gaps in insurance coverage.

Because CIPs enhance risk management, 10 DOTs have employed some form of controlled insurance on one or more of their projects. DOTs are using CIPs both for individual transportation projects and for groups of projects. A CIP provides (1) a single point of contact for all liability issues, (2) *if properly designed* can prevent insurance coverage gaps or redundancies, and (3) should reduce underwriting and claims administration expenses. The results of such a program are a safer jobsite—2.5 million person-hours in Ohio with an incident rate of 0.17, compared with a national average of 4.7, and lower construction costs—\$30 million saved in Utah and 2% of construction costs saved in Florida.

An injured employee can still sue a contractor under the “safe place to work” doctrine; however, much of the litigation

cost of injured worker third-party-over litigation is eliminated. Also eliminated is the possibility of the subcontractor’s workers’ compensation insurance carrier suing the general contractor in “subrogation” in the name of the injured employee. All of the parties that participate in the CIP have the same insurance carrier; therefore, there is only one defense lawyer and one source of money being defended.

One of the most highly touted benefits of the OCIP is insurance cost savings. Because insurance cost savings are tied to the overall insurance market, the market greatly affects the level of direct cost savings that a CIP can achieve. The cost of insurance coverage tends to move in cycles that are referred to as “soft” and “hard” markets. A soft market occurs when the insurance industry has surplus investment capital and investment earnings; during such times insurance is plentiful and there is significant competition among insurance companies. A lack of investment capital creates a hard market. During a hard market insurance is scarce and prices increase. Some insurance professionals, however, believe that CIP savings will be greater during a hard market. This is because the difference in rate structure between contractor insurance costs and CIP cost would be greater. Contractors will experience higher insurance costs during a hard market as would the CIP, but comparatively the CIP would have a much lower premium rate because of better loss control procedures that enhance safety and reduce risk.

In the case of transportation projects, CIPs have been used successfully on both roadway (linear sites) and bridge (single location) jobs. The OCIP for the Blue Water Bridge project in Port Huron, Michigan, covered both the construction of a new bridge and the reconstruction of the existing adjacent bridge. In Salt Lake City, the OCIP for the I-15 reconstruction project provided coverage for rebuilding 144 bridges and 17 miles of roadway. All of the work was accomplished while maintaining traffic through the work zone. The Suncoast Parkway Toll Road OCIP in Florida covered new construction on new alignment.

When using an OCIP, owners face increased administrative burdens. It is clear that administering an OCIP requires extra effort from the project staffs of both the contractor and the owner. Careful negotiations with the OCIP provider/broker can minimize the time requirements of the project staff. In the majority of cases, the broker handles most of the added burden of the safety program development and contractor/subcontractor enrollment. The broker

usually provides an on-site representative to oversee the safety program and the initial filing of claims. By contract, general contractors are typically required to employ their own safety manager. Additionally, most owners hire safety engineers for their OCIP projects. These engineers supplement the insurance and general contractor safety teams.

Some owners have the attitude that the OCIP is just another business deal and that the contractors must participate because they are bound by contract. Agencies need to understand that a project OCIP can have significant impacts to a contracting firm beyond the life of that single project. Consequently, contractors should not view OCIPs simply as another contract provision. When an owner's OCIP administrator fails to perform, it is the contractor who incurs the residual consequences of increased business costs and those consequences can extend far into the future.

- *Contractor Concerns*

A successful contract award process requires that contractors have a clear understanding of the bid process. This necessitates a concerted effort by the agency to educate contractors about the CIP and about how the bid process will be structured. A contractor's insurance costs closely track the firm's commitment to safety. Management's emphasis on safety lowers a company's insurance costs. Parts of such management emphasis include an institutionalized safety program, company safety professionals, and, for large contractors, an internal risk-management division. These are, however, on-going activities that are usually charged to corporate overhead accounts. They represent a substantial investment in safety and provide a bidding advantage in terms of lower insurance costs. The contractor's bidding advantage resulting from an on-going safety effort will be negated by the OCIP.

Contractors must know the details of the CIP coverage before bid submission, so that the costs of their restructured insurance program can be calculated. State repose statutes stipulate a time limit after a project is completed (or substantially completed) that a construction defect claim can be filed. Repose statutes set an absolute time limit for property damage suits against a contractor for completed work. Many CIPs provide only 3 to 5 years of coverage following project completion. Contractors need protection extending to the limit of the repose statute of the state in which the project is located.

If a contractor is forced to "exclude" the project from the company's normal commercial general liability policy there will be no "completed operations" coverage available after the CIP's tail coverage expires. Language should be included that allows the contractor to keep coverage on a "differences in condition" basis and that requires the contractor to reinstate coverage when the tail expires.

- *OCIP Project Contracts*

All major OCIP construction projects include the contractual insurance requirements listed here.

- General liability is always provided under the CIP.
- Workers' compensation and employer's liability is typically provided under the CIP, but is not legal in monopolistic states.
- Builder's risk is always provided under the CIP.
- Excess/umbrella liability is always provided under the CIP.
- Pollution/environmental liability is sometimes included if there are special pollution risks.
- Airport liability is sometimes included if there is work near airfield operations.
- Railroad protective liability is sometimes provided if there is work abutting railroads.
- Design liability is often provided under the CIP.
- Design-build errors and omissions are sometimes provided if it is a design-build project.
- Contractor tools are always excluded.
- Automobile liability is always excluded.

When an OCIP is used, the contract documents will contain three specific sets of information and requirements.

1. Specific information about the insurance coverage that will be provided under the OCIP and OCIP enrollment procedures.
2. Requirements concerning contractor-provided insurance outside the OCIP.
3. Insurance requirements for those contractors not enrolled in the OCIP.

It is difficult to write a site definition that incorporates all of the possibilities. To avoid the problems inherent in very specific site definitions that limit OCIP coverage, the insurance can simply be tied to losses arising out of the project work. The Fort Washington Way site definition is a good example of such a statement.

Employees performing services under Contract are covered under the OCIP only while working on-site and under certain circumstances, while off-site as long as their off-site work is directly related to the Project Site.

Other special contract provisions should address reporting of payroll data, audits, and returned premiums.

Payroll data—If workers' compensation insurance is included in the OCIP the contractor and all insured subcontractors will be required to submit accurate payroll data on a regular basis.

Audits—Payroll auditing is usually necessary for close-out of workers' compensation insurance. By contract

provision, contractors and subcontractors must be required to open their books and records to examination and audit.

Returned Premiums—Contractors must agree by the contract to relinquish all claims to OCIP dividends, retro refunds, or other forms of returned premiums payable under the OCIP. Some programs have clauses for a sharing of OCIP savings (usually as an incentive bonus). Such a sharing arrangement provides some equitable return to the contractors for superior safety performance and serves to encourage OCIP participation.

Insurance, Safety, and Claims Manuals—Every OCIP has its own insurance, safety, and claims procedure manuals. Those documents require contractors and their subcontractors to accept responsibilities that other contract documents do not address. If these responsibilities are not contractual obligations, the contractor could find itself in a precarious position. The construction contract should, therefore, clearly identify all of the OCIP documents and incorporate them by reference.

- *Bidding Issues*

The bid documents for a construction project typically include the contract terms and conditions and related OCIP program requirements. In many cases, however, the OCIP materials are only in summary form. Many of the major concerns that contractors have with OCIP programs relate to the owner's failure to provide complete information about the program prior to bidding. Acceptance of an OCIP by the contracting community is contingent upon the availability of complete and accurate information. Additionally, when the bidding documents lack the details of an OCIP the contractors are forced to cover unknown risk exposure with dollars.

A CIP benchmarking study by one insurance company revealed that in the case of public sector CIP projects, 39% are bid with a formal insurance deduct. In the case of a project tendered with insurance costs in the bid, it is a very difficult and time-consuming task to verify individual contractor premium credits that will be deducted from the contract amount. Because verifying insurance cost is a time-consuming task, it appears that the majority of owners favor proposals bid ex-insurance, because this requires less effort to evaluate the appropriateness of each contractor's bid deduction. Ex-insurance bidding relies on the competitive bidding process to ensure that insurance costs have been removed from the proposal.

- *Operating Under a CIP*

Operating under a CIP is not that difficult once all the parties involved are educated in the process. In most cases

the broker will administer the program as well as conduct the necessary training to make sure the process runs smoothly.

During the enrollment process a broker ensures that the contractor and all subcontractors have filed the prerequisite information before starting work on the project. A few of the more important items for individual workers include completion of mandatory safety training and passing a drug screen. The contractors must provide proof of insurance for auto liability and non-CIP project operations.

Safety training can include CIP administrator-provided training or contractor safety programs. Training ranges from professional demonstrations down to the weekly "toolbox" talks conducted by the crew foreman. Specialized training should be provided for any unusual conditions or new a process, method, or equipment that is introduced to the work crews.

Claims management services can be provided by the insurer, a third-party administrator, or by the project manager's internal staff. The most common method of claims management is to use the insurer's claims adjusting resources. The project's contractors should be involved in the claims process, but many contractors do not understand the importance of claims management.

Payroll reporting is required to ensure that the proper premiums are paid for workers' compensation policies. Workers' compensation coverage premiums are based on the actual labor-hours worked for each labor classification. Payroll reporting quantifies the labor-hour portion of the CIP's workers' compensation premium.

The purpose of payroll auditing is to verify the results of the payroll reporting process. The audits are conducted on an annual basis for multi-year projects. Accurate payroll information is necessary to adjust the insurance premiums for the workers' compensation coverage. The results of these audits can raise or lower the final insurance premiums.

- *Challenges*

The first challenge is to develop an understanding of the risk-management benefits that a CPI can bring to a large project. Both the transportation department and the contracting community must be educated about benefits and how such programs function. The department should encourage questions from all affected parties to gain understanding and acceptance. Communication is a critical component of success.

The second challenge is to find the right broker/administrator. The selected broker must have a thorough

understanding of construction and construction claims. The broker must also have access to the international insurance marketplace. The department must ensure that the program components and roles of responsibility are established before bidding the project.

The third challenge is to structure the CIP for the particular DOT and project. All construction projects have their unique features, but large projects usually have both unique construction features and unique risk exposures. The CIP cannot be structured until the department has a solid understanding about construction means and methods.

Based on the surveys of DOTs and contractors engaged in projects using OCIPs, owners were pleased with the cost savings and job safety. Coordination of insurance to the satisfaction of the contracting community requires advance planning for the OCIP's structure and the availability of policies with the bid documents.

The following lists the keys to success for OCIPs:

- Involve contractors early,
- Communicate,
- Provide adequate coverage and limits that protect both the transportation department and the contractors,
- Invest in administrative support—skilled and proactive OCIP administration and loss control services are critical to success,
- Ensure that the broker and insurers understand that the contractors are customers,
- Allow enough time to revise contract language before bidding the project,
- Create a team environment,
- Provide incentives for contractors to participate in the success of the OCIP,
- Bid the broker and insurers,
- Respect organizational cultures and be flexible, and
- *Make time to manage the program.*

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APPENDIX A

Department of Transportation OCIP Survey

NAME: _____

TITLE: _____

PHONE: _____

1. On how many hard-bid projects has your agency used an OCIP? _____
2. On how many cost-plus projects has your agency used an OCIP? _____
3. On how many design/build contracts has your agency used an OCIP? _____
4. In the case of the OCIP work that your agency has undertaken:

| Project | Size of the project in dollars | Type of project (new construction or rehabilitation) | Contracting method (design-bid/build or design/build) |
|---------|--------------------------------|--|---|
| No. 1 | \$ | | |
| No. 2 | \$ | | |
| No. 3 | \$ | | |
| No. 4 | \$ | | |

5. If you used a rolling wrap up:
Total amount of work the OCIP covered. \$ _____

| Individual Projects | Size of individual project | Amount of work the OCIP covered | Type of project (new construction or rehabilitation) |
|---------------------|----------------------------|---------------------------------|--|
| No. 1 | \$ | \$ | |
| No. 2 | \$ | \$ | |
| No. 3 | \$ | \$ | |
| No. 4 | \$ | \$ | |

6. Were there any conflicts with your state's competitive bidding statutes that had to be addressed before your agency could use an OCIP?
If yes, how were these issues addressed?
7. Did the OCIP cause any impact or *potential impact* on any statutes limiting the state's liability?
8. Was there a state constitutional issue caused by the fact that via the OCIP the state's credit can be provided to private entities?
9. Did you specify that the contractors bid with the insurance cost in or out of their pricing?
10. Did you attempt to verify the contractor's insurance cost? If so, how?

11. Did you specify that the contractors also provide *an estimate for traditional insurance* should the agency decide not to use an OCIP?

If so, did the agency track the cost of the OCIP against the contractor's estimated cost?

12. Did the contractors carry coverage for differences in conditions?

13. Is "partnering" common in your agency?

If yes, is it voluntary or required by contract?

Again if yes, was it "true partnering," e.g., regular meetings? _____

Did you employ or retain an independent consultant to serve as a full time facilitator? _____

Were the facilitator costs shared? _____

14. Do you believe that "partnering" is important to making an OCIP work?

15. Did you have difficulty defining the project site for the OCIP?

16. How long did it take to create the "work site" definition for your OCIP?

17. How did you include (or did you include) staging areas, batch plants, and material pits in the OCIP site description?

Please provide a copy of your site definition to include in the NCHRP synthesis report.

18. Does a department within your DOT manage your OCIP insurance or is there an overarching state agency?

19. Did your DOT have to take on more insurance administration responsibility because of the OCIP?

20. Were more resources required, for your DOT or the state agency, once the OCIP was implemented? Was it a burdensome increase in workload to the DOT? Explain.

21. Does your DOT or agency charge a fee for project OCIP administration?

22. Conversely, would there have been a fee for non-OCIP contract administration?

23. How is OCIP administered—does the DOT or state risk management contract with an outside firm (e.g., a broker) to investigate individual coverage options and their cost? Briefly explain.

24. If you used an insurance broker, which company did you use and how did you make the selection?

25. On your first OCIP contract, what was the time duration from construction contract award to development of the final OCIP language, which was agreeable to all parties?

26. Did you use "loss sensitive" insurance? _____

27. Did you use "guaranteed cost" insurance? _____

28. Did the OCIP involve multiple insurance policies?

29. What types of coverage were included in the OCIP? Indicate limits of coverage.

| Type of Insurance | Included in the OCIP (yes/no) | Limits of coverage (\$) |
|---|-------------------------------|-------------------------|
| Statutory Workers' Compensation | | |
| Bodily injury by accident each person | | |
| Bodily injury by disease each person | | |
| Bodily injury by disease policy limit | | |
| General Liability | | |
| Bodily injury & property damage each occurrence | | |
| General aggregate (annual) | | |
| Products/completed operations aggregate | | |
| Personal and advertising injury | | |
| Builders Risk Excess Liability | | |
| Each occurrence | | |
| Annual aggregate | | |
| Products/completed operation (annual) | | |
| Pollution Liability | | |
| Design Professional Liability | | |
| Design/Build Errors and Omissions | | |
| Railroad Protection | | |
| Longshoremen/Maritime | | |
| Tool and Equipment | | |
| Automobile Liability | | |
| OTHERS | | |

30. How many different insurance companies issued policies to create the OCIP coverage?

31. If your DOT has had multiple OCIPs, were the same insurance companies used from project to project? If yes, why?

Were there cost savings to the DOT by using the same insurance companies?

32. How are construction delays caused by design (errors and omissions) handled within your OCIP agreements—who pays? Or what coverage pays?

33. Does the OCIP insurance protection automatically extend itself if design errors cause a project delay?

34. When the project is extended for whatever reason (delays caused by the contractor or the DOT) what mechanism extends the OCIP insurance protection?

35. Once the OCIP language was agreed to by the contractor and the owner agency, how many changes were made by the OCIP insurance carrier?

36. If there were changes or additions to the OCIP language required by the carrier(s), broker, or the contractor, what were they?
37. Did the DOT, broker, or insurance carrier perform a preconstruction survey of properties abutting the construction site?
38. Did the OCIP require the prime contractor to carry excess liability insurance for off-site work?
 IF YES, WHAT WAS THE MINIMUM LIABILITY COVERAGE FOR THE GENERAL CONTRACTOR? \$ _____
 WERE THE CONTRACTORS INSTRUCTED NOT TO DEDUCT THE PREMIUMS FOR THE UMBRELLA COVERAGE FROM THEIR BIDS?
39. Did the OCIP require the prime contractors' *subcontractors* to carry excess liability insurance for off-site work?
 IF YES, WHAT WAS THE MINIMUM LIABILITY COVERAGE FOR THE SUBCONTRACTORS? \$ _____
 WERE THE SUBCONTRACTORS INSTRUCTED NOT TO DEDUCT THE PREMIUMS FOR THE UMBRELLA COVERAGE FROM THEIR BIDS?
40. Did the minimum liability limit of the excess liability insurance for off-site work cause *problems for the DBE and WBE subcontractors* participation in the project?
41. Did the OCIP require independent owner/operators (such as truckers, but there are others under this heading) to carry excess liability insurance for off-site work?
 IF YES, WHAT WAS THE MINIMUM LIABILITY COVERAGE FOR INDEPENDENT OWNER/OPERATORS? \$ _____
42. Was working under an OCIP helpful in obtaining minority, disadvantaged, and women subcontractors for the project?
43. Did the DOT take any specific steps to facilitate OCIP enrollment of the contractor and *particularly the subcontractors*?
44. Did the contractor complain that the OCIP took away their control of the work?
45. Was there a reserve review conducted prior to the various unit statistical report filings?
46. Were the proposed filings reviewed before actually being filed?
47. Were the filings accomplished in a timely manner?
48. How were plan errors and omissions covered?
49. Did the DOT share the OCIP financial savings with the contractor(s)? _____
- IF YES, DID THE CONTRACTOR DISTRIBUTE THE INCENTIVE DOWN TO THE SUBCONTRACTORS?
 DID THE CONTRACTOR HAVE A SAFETY INCENTIVE AWARDS PROGRAM AT THE WORKMAN LEVEL?
50. What benefits did the DOT realize by using an OCIP and can the benefits be documented?
51. Has your agency proved that there were OCIP cost saving or is it engaged in determining the saving now?

52. In your opinion, what are/were the most difficult aspects within your agency of implementing the OCIP?

Rate the following ISSUES on a 1 to 5 Scale:

1 being not a problem and 5 indicating a very difficult problem.

| Issue | 1 (not a problem) | 2 | 3 | 4 | 5 (difficult problem) |
|--|-------------------------|---|---|---|-----------------------------|
| 53. The process of enrolling companies in the OCIP. | | | | | |
| 54. Definitions of OCIP insurance coverage. | | | | | |
| 55. Contractor insurance coverage expectations. | | | | | |
| 56. Payroll reporting. | | | | | |
| 57. Audit of payrolls. | | | | | |
| 58. OCIP mandated safety training. | | | | | |
| 59. Time required for safety training. | | | | | |
| 60. Plan errors delaying the project. | | | | | |
| 61. OCIP administrator facilitating quarterly reserve reviews. | | | | | |
| 62. Contractor involvement in the quarterly reserve reviews. | | | | | |

APPENDIX B

Contractor OCIP Questionnaire

30 May 2001
Box 870204
Del E. Webb School of Construction
Arizona State University
Tempe, AZ 85287-0204

RE: OWNER CONTROLLED INSURANCE PROGRAMS

We are developing a National Cooperative Highway Research Program (NCHRP) Synthesis on the use of Owner Controlled Insurance Programs (OCIPs). The results of this work will be available to departments of transportation and other interested parties in the form of a Transportation Research Board published synthesis. The research is sponsored by the American Association of State Highway and Transportation Officials in cooperation with the Federal Highway Administration.

We intend to look at this issue from all three sides, the owner, the contractor, and the insurance provider. In support of this work, we are seeking information from construction companies having specific OCIP experience. We are interested in what were the positives and negatives of these programs along with specific comments. Your completion of the attached questionnaire will greatly facilitate this research effort.

Sincerely
Cliff Schexnayder, P.E.
Del E. Webb School of Construction
Arizona State University

(480) 965-5133
cliff.s@asu.edu

In the case of follow up questions would you please provide the name and phone number of someone in your company that we could contact.

NAME: _____

TITLE: _____

PHONE: _____

OWNER CONTROLLED INSURANCE PROGRAMS—NCHRP PROJECT 20-5

1. What is your company’s approximate annual volume of work? \$ _____
2. Does your company work primarily as a general contractor or as a subcontractor? _____
3. Has your company been involved in a public project that was under an OCIP? _____
4. Has your company been involved in a public project that was under an OCIP? _____
5. What is your company’s EMR? _____

If YES to Question No. 3 or 4, PLEASE CONTINUE.

6. In respect to the OCIP work, what was the

| APPROXIMATE TOTAL PROJECT SIZE IN DOLLARS | WAS THE PROJECT | | | |
|--|-------------------------|--------------------------|----------------------------|--------------------------------|
| | HARD-BID (YES OR NO) | COST-PLUS (YES OR NO) | SINGLE-SITE (YES OR NO) | ROLLING WRAP-UP (YES OR NO) |
| PROJECT 1: \$ | | | | |
| PROJECT 2: \$ | | | | |
| PROJECT 3: \$ | | | | |
| PROJECT 4: \$ | | | | |

7. Was the project?

| NEW CONSTRUCTION OR REHABILITATION | PUBLIC (YES OR NO) | PRIVATE (YES OR NO) | CLOSED SITE— BUILDING JOB | OPEN SITE— ROAD CONST. |
|---------------------------------------|-----------------------|------------------------|------------------------------|---------------------------|
| PROJECT 1: | | | | |
| PROJECT 2: | | | | |
| PROJECT 3: | | | | |
| PROJECT 4: | | | | |

8. Were you required to submit your proposal with the insurance cost included or removed from the bid?

9. Have you bid projects where the insurance cost was removed, but where the owner directed you to *include an estimate for traditional insurance* should the agency decide not to use an OCIP? _____
If yes, please name the project and give the location.

Project: _____

Location (city and state): _____

10. Do you believe that OCIPs take away contractor control of the work? _____
11. Do you believe that OCIPs make contractors less accountable for safety and risk control? _____
12. Did the owner share the OCIP savings with the contractor(s)? _____
13. Did working under the OCIP place more of an administrative burden on your company to handle insurance and claims? _____ If yes, please explain.
14. Did your insurance carrier charge for the OCIP enrollment effort and to adjust coverage for non-OCIP work?

15. Did you have to change your company’s job costing system? _____
16. Did you have to change your company’s accounting software? _____
17. Did your company experience an escalation of additional or other insurance costs? _____

- 18. Was the prosecution of warranty work, after completion of the project, covered under the OCIP? _____
- 19. Was working under an OCIP helpful in obtaining disadvantaged, minority, and women subcontractors for the project?

- 20. *In reference to your company* was there a *strategic advantage* to participating in the OCIP?
- 21. *In reference to your company* was there a *critical disadvantage* to participating in the OCIP?
- 22. Did your company realize any benefits by participating in the OCIP? _____
- 23. When you worked under an OCIP and did not provide your own insurance coverage did you have the same incentive to work safely? _____
If yes, why? If no, why not?
- 24. Did you have any concerns that the state’s competitive bidding statutes were being ignored or violated?

- 25. Apart from the potential effect on your company’s EMR (or any other financial incentive) why would you want to be involved in the OCIP claims process, including the periodic claims review?
- 26. Would you choose an OCIP if it were not a contract requirement? _____ If yes, why?

RATE the FOLLOWING ISSUES on a 1 to 5 scale: 1 meaning not a problem and 5 indicating a very difficult problem.

- 27. Stripping insurance cost out of your bid. _____
- 28. Scope of insurance coverage clearly defined in the bidding documents. _____
- 29. Scope of insurance coverage clearly defined in respect to trucking. _____
- 30. Enrollment procedures clearly defined in the bidding documents. _____
- 31. Payroll reporting differences for Davis Bacon and for the OCIP. _____
- 32. In the case of the OCIP (not Davis Bacon), payroll reporting issues because your accounting software could not identify which workers were covered in specific job classifications
(a) particularly in the case of people working in multiple job classifications. _____
(b) particularly in the case of people moving between projects. _____
- 33. Audit of returned insurance cost. _____
- 34. OCIP mandated safety training. _____
- 35. Time duration of the mandated OCIP safety training. _____
- 36. OCIP administrator’s action or actions impact on your company’s workers’ compensation modifier (EMR)? _____
- 37. OCIP administrator facilitation of quarterly reserve reviews. _____
- 38. Conduct of reserve review prior to the unit statistical report filing. _____
- 39. Difficulties due to a difference between the timing of the OCIP closeout and actual project closeout? _____
- 40. Conflict caused by the timing of the OCIP closeout and completion of change order work? _____
- 41. OCIP administrator final audit provided in a timely manner so you could meet the CFR subcontractor prompt pay requirements? _____

APPENDIX C

Interim Owner Controlled Insurance Program Policy



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: INFORMATION: Interim Owner Controlled
Insurance Program Policy

Date: January 8, 2002

Reply to: HIPA-30

From: King W. Gee
Program Manager, Infrastructure

To: CBU Program Managers
SBU Directors
Directors of Field Services
Division Administrators

Background

Owner Controlled Insurance Programs (OCIPs) are an effective way to improve the safety of construction operations and reduce the cost of insurance on large projects. The basic operational features of an OCIP are: (1) the owner purchases insurance coverage (all or some specific elements) to cover all contractors and subcontractors on a project; (2) there is an integrated owner-contractor managed safety program on the project; and (3) claims are processed centrally. Overall, the use of an OCIP can save money on large projects through lower bulk insurance rates, improved safety management processes, and reduced disputes between contractors over who was responsible for a particular loss.

There are many variations in how an OCIP can be set up. For example, the project owner can purchase coverage, self-insure, or devise a program that blends the two. By retaining more of the risk (through self-insurance or higher deductibles) the owner can obtain lower premiums for the coverage actually purchased. When the insurance program contains a significant element of self-insurance (either a direct self-insurance program or a program with large deductibles) the owner is usually required to provide assurance they will have the money to make those long-term payments as they come due. The State Insurance Agency (and the insurance company, when it pays claims and then recovers deductibles from the owner), may require the owner to provide a letter of credit or establish a reserve account to guarantee it will have the resources to meet its obligations.

The NCHRP is currently preparing a synthesis of best practices regarding the use of OCIPs on projects, and this report is scheduled to be released this winter. We have also procured consultant services to provide FHWA offices and our partners with best practices on the use of OCIPs on projects as well as programs. Upon the completion of this consultant activity,

FHWA will issue more extensive information and guidance on how to establish OCIPs. However, there is a need for immediate interim policy regarding the appropriate use of Federal funds.

Policy

Federal aid funds can be used to participate in OCIPs on Federal-aid projects. OMB Circular A-87 provides guidance and establishes limits on Federal reimbursement of insurance costs. Typical costs that may be eligible for Federal-aid funding include:

1. Costs incurred in the preparation of an OCIP plan, including the procurement of consultant services, the establishment of a letter of credit or the establishment of reserve accounts, and the selection of an insurance provider.
2. Premiums for purchased coverage, up to reasonable limits consistent with standard industry practices.
3. Costs incurred because of losses not covered under nominal deductible insurance coverage, and minor losses not covered by insurance, such as spoilage, breakage, and the disappearance of small hand tools, which occur in the ordinary course of operations.
4. Contributions to reserve accounts to pay allowable retained costs (e.g., self-insured losses/losses under deductibles, and associated expenses) provided:
 - (a) The reserve account balance does not exceed the actuarially projected value of incurred claims. Incurred insurance claims include claims: (a) submitted and adjudicated but not paid; (b) submitted but not adjudicated; and (c) incurred but not submitted. These amounts should be determined not less than annually by an independent actuary.
 - (b) For incurred claims that will pay out in future years (e.g., disability), the reserve is limited to the present value of the expected payment. The difference between the present and future value of the payment is made up by the interest earned on the reserve account, thereby reducing the total cost of the program to the owner and the Federal Government.
 - (c) The reserve account balance is adjusted annually, as necessary, to ensure compliance with this policy.

Costs that will typically not be eligible for Federal-aid funding include:

1. Any costs or reserve amounts for damage to Federal property.
2. Actual losses that could have been covered by permissible insurance (including self-insurance).
3. Future costs (except for the present value of incurred claims as described above).

4. Insurance that protects contractors against losses for the cost of correcting the contractor's own defects in materials or workmanship.

Insurance refunds must be credited against insurance costs in the year the refund is received.

If annual actuarial reviews of reserve accounts disclose excess balances, the Federal share of the excess amount shall be promptly removed from the reserve account(s) and applied to other allowable project costs or returned to the State's Federal-aid account.

APPENDIX D

Types of Construction Insurance

The following is a brief description of each of the various types of insurance coverage used for construction projects.

| | |
|--|---|
| Workers' Compensation | Pays claimant in case of injury, disability, or death of employees resulting from work on the job. |
| General Liability | Protects the owners and the contractors from the financial consequences of various risks, such as accidents, hazardous operations, or accidents during construction and after work is completed. The insurance pays for a variety of benefits, including legal defense expenses, injuries to people, and damage to property. |
| Builder's Risk | Pays for damages and losses to a project that occur while it is being built. |
| Excess Liability | An umbrella policy that pays for losses that exceed primary policy limits, such as general liability, automobile liability, and employer's liability on workers' compensation. |
| Pollution Liability | Pays for environmental losses associated with accidental chemical spills and the leakage or disbursement of dangerous vapors. |
| Design Professional Liability | Pays for architects' and engineers' professional liability for errors and omissions. This coverage is usually purchased by the architectural and engineering firms but could be included under wrap-up insurance for a design-build project. |
| Design-Build Errors and Omissions | Provides coverage for contractor errors for companies working in the design-build arena. |
| Railroad Protective | Liability insurance coverage for railroads, purchased by those who conduct operations (construction) on or adjacent to railroad property. |
| Longshoremen/Maritime | Liability insurance similar to workers' compensation that provides coverage for workers, including construction workers, on the water (working on barges), or those working over water. |
| Automobile Liability | Pays for damage caused by the policyholder's vehicles. Also pays medical costs of persons injured in or by the vehicles. This insurance is typically not included in wrap-up insurance because vehicles are operated outside the confines of the project. |
| Tools and Equipment | Pays when a contractor's tools, equipment, field offices, or other property are destroyed, damaged, or stolen. This insurance is not included in wrap-up insurance because these items are considered mobile and therefore difficult to manage. In addition, the premium costs for these policies are not material and would be difficult to isolate from bids. |

APPENDIX E

Suncoast Parkway Project, Hudson, Florida

FDOT OCIP INSURANCE REQUIREMENTS

18. INSURANCE.

ARTICLE 7-13 (Pages 53 through 55) is deleted and the following is substituted:

7-13 Insurance and Safety

7-13.1 Definitions Applicable to 7-13

7-13.1.1 *Actual Incurred Losses:* For the purposes of 7-13, the term Actual Incurred Losses means the actual losses paid and outstanding (reserved), interest on judgments, expenses incurred in obtaining third-party recoveries and allocated loss expenses covered by the Workers' Compensation and Employer's Liability and Commercial General Liability Insurance provided by the Department for the Contractor and its Covered Subcontractors pursuant to 7-13.3. Actual Incurred Losses shall not include incurred but not reported losses or any margin for adverse development of known losses.

7-13.1.2 *Adjusted Workers' Compensation Standard Premium:* For the purposes of 7-13, the term Adjusted Workers' Compensation Standard Premium means the Workers' Compensation Standard Premium for the Contractor and its Covered Subcontractors which would result, based on Jobsite Payroll, with standard limits of liability under Part Two of the Workers' Compensation and Employer's Liability Policy, after application of the experience modifications for the Contractor and its Covered Subcontractors, but without application of any schedule rating modifications. For the purpose of this definition of Adjusted Workers' Compensation Standard Premium, the term schedule rating modifications includes, but is not limited to, adjustments which would otherwise apply, as the result of coinsurance, deductibles, the Florida Contracting Classification Premium Adjustment Program, the Drug-Free Workplace Premium Credit Program, the Employer Safety Premium Credit Program, the Managed Care Arrangement Premium Credit Program, transition program credits, and Joint Underwriting Association surcharges.

7-13.1.3 *Contract OCIP Premium:* For the purposes of 7-13, the term Contract OCIP Premium means an amount equal to one hundred and fifty percent (150%) of the Adjusted Workers' Compensation Standard Premium from commencement of work until final acceptance of the Work as determined pursuant to 7-13.3.2(3).

7-13.1.4 *Covered Subcontractor:* For the purposes of 7-13, the term Covered Subcontractor means a Subcontractor who has been approved by the Department pursuant to 7-13.3.5 for participation in the Department Provided Insurance Program described in 7-13.3.

7-13.1.5 *Expected Losses:* For the purposes of 7-13, the term Expected Losses means an amount equal to twenty-five percent (25%) of the Contract OCIP Premium.

7-13.1.6 *Jobsite Payroll:* For the purposes of 7-13, the term Jobsite Payroll means "Remuneration" as defined in the Basic

Manual for Workers Compensation and Employers Liability Insurance issued by the National Council on Compensation Insurance (NCCI), as earned during the period for which the Adjusted Workers' Compensation Standard Premium is being determined, by all Project Employees.

7-13.1.7 **Materialman:** For the purposes of 7-13, the term Materialman means any person or organization who merely furnishes materials, equipment or supplies under contract to the Department, the Contractor or any Subcontractor and who, except for the loading or unloading of such materials, equipment or supplies at the Site of the Work, performs no work on the Site of the Work.

7-13.1.8 **OCIP Administrator:** For the purposes of 7-13, the term OCIP Administrator means the person or organization designated as such by the Department who performs services by on behalf of the Department with respect to the administration of the Department Provided Insurance Program described in 7-13.3.

7-13.1.9 **Project Employee:** For the purposes of 7-13, the term Project Employee means, except as otherwise provided, any employee (including executive, supervisory, administrative, and clerical) of the Contractor and its Covered Subcontractors performing the Work:

(1) while such employee is on the Site of the Work,
or

(2) while such employee is traveling between the Project Site and other property included within the Site of the Work, or

(3) with respect to an employee whose usual workplace is on the Site of the Work, while such employee is off the Site of the Work engaged in activities necessary or incidental to the Work.

Materialmen or Transporters shall not be considered Project Employees.

7-13.1.10 **Project Site:** For the purposes of 7-13, the term Project Site means the project limits as such limits are described in this Contract.

7-13.1.11 **Site of the Work:**

(1) For the purposes of 7-13, the term Site of the Work is limited to the Project Site, and, as provided in 7-13.1.11(2), other adjacent or nearby property used by the Contractor or its Subcontractors in performance of the Work.

(2) Except as provided in 7-13.1.11(3), fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., are parts of the "Site of the Work," provided they are:

(a) dedicated exclusively, or nearly so, to performance of this Contract,

(b) are so located in proximity to the Project Site that it would be reasonable to include them in the Site of the Work, and

(c) the Contractor has specifically identified such property(ies) in the Request for Insurance Form(s) submitted by the Contractor for the Contractor or its Subcontractors.

(3) The Site of the Work does not include permanent home offices, branch plant establishments, fabrication plants, and tool yards of the Contractor or any of its Subcontractors whose location and continuance in operation are determined without regard to the construction called for in this Contract. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial supplier or materialman which are established by a supplier of materials before opening of the bids for this Contract and which are not on the Project Site, are not included in the Site of the Work. Such permanent, previously established facilities are not a part of the Site of the Work, even if the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of this Contract.

7-13.1.12 *Subcontractor*: For the purposes of 7-13, the term Subcontractor includes, except as otherwise provided, any person or organization to whom the Contractor has sublet a portion of the work pursuant to 8-1 and their subordinate subcontractors of every tier. Subcontractor shall also include the employer of leased employees who are leased to the Contractor or a Subcontractor. Subcontractor does not include a Materialman or a Transporter.

7-13.1.13 *Transporter*: For the purposes of 7-13, the term Transporter means any person or organization who merely transports materials, equipment or supplies to, or from, the Site of the Work and who, except for the loading or unloading of such materials, equipment or supplies at the Site of the Work, performs no labor on the Site of the Work. Transporter shall not include a person or organization who transports materials, equipment or supplies between the Project Site and other property included within the Site of the Work.

7-13.1.14 *Workers' Compensation Standard Premium*: For the purposes of 7-13, the term Workers' Compensation Standard Premium means the Standard Premium as defined in Rule VII.C.1 of the Basic Manual for Workers Compensation and Employers Liability Insurance issued by the National Council on Compensation Insurance (NCCI) for the Contractor and its Covered Subcontractors.

7-13.2 Contractor Provided Insurance:

7-13.2.1 *Description of Contractor Insurance Required*: Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force Automobile Liability Insurance conforming to the minimum requirements set forth in this 7-13.2.1. Such insurance shall commence prior to the commencement of work by the Contractor and shall be maintained in force until final acceptance of the Work. The Contractor provided insurance shall cover the Contractor for those sources of liability which would be covered by Section II of the latest occurrence edition of the standard Business Auto Policy (ISO Form CA 00 01), as filed for use in the State of Florida by the Insurance Services Office. Coverage shall be included on all owned, non-owned and hired autos used by or on behalf of the Contractor in connection with this Contract. The minimum limits to be maintained by the Contractor, inclusive of

any amounts provided by an umbrella or excess policy, shall be \$5,000,000 Each Occurrence - Bodily Injury and Property Damage Combined.

7-13.2.2 *Evidence of Insurance:* The Contractor shall not commence work until the Contractor has procured the Automobile Liability Insurance required under 7-13.2.1 and the Contractor has furnished the Department with a fully completed certificate of insurance or other evidence satisfactory to the Department signed by an authorized representative of the insurer(s) providing the coverages. The certificate of insurance or other evidence provided pursuant to this 7-13.2.2 shall include the Department's job number for which the insurance is required and shall also provide that the Department shall be given no less than thirty (30) days written notice prior to cancellation or material change in coverage. Until such time as the insurance is no longer required to be maintained by the Contractor, the Contractor shall provide the Department with evidence of renewal or replacement insurance no less than thirty (30) days before the expiration or termination of the insurance previously provided pursuant to this provision.

7-13.2.3 *Qualification of Contractor's Insurers:* The Automobile Liability Insurance required of the Contractor by this Contract must be provided by an insurer or insurers which meet the following minimum requirements.

(1) Each such insurer must be authorized by a subsisting certificate of authority issued to the company by the Department of Insurance of the State of Florida or be an eligible surplus lines insurer under Florida Statutes.

(2) In addition, each such insurer shall have and maintain throughout the period for which coverage is required, a rating, from one or more of the following recognized rating firms, which is equal to or better than the minimum rating specified below for that rating firm:

| <u>Rating Firm</u> | <u>Minimum Rating</u> |
|---------------------------|-----------------------|
| A. M. Best | B+ |
| Duff & Phelps | BBB- |
| Moodys | Baa3 |
| Standard & Poors | |
| Claims-Paying Ability | BBB- |
| Qualified Solvency Rating | BBBq |
| Weiss Ratings, Inc. | C- |

(3) If, during the period when an insurer is providing the Automobile Liability Insurance required by this Contract, the insurer fails to comply with the foregoing minimum requirements, as soon as the Contractor has knowledge of any such failure, the Contractor shall immediately notify the Department and immediately replace the insurance provided by the unacceptable insurer with an insurer meeting the requirements of 7-13.2.3.

7-13.2.4 *Contractor Provided Insurance Primary:* The insurance provided by the Contractor pursuant to 7-13.2 shall apply on a primary basis to any insurance or self-insurance maintained by the Department, a Department's officer, agent or employee or any

person or organization qualifying as an Insured under the insurance provided pursuant to 7-13.2. Any insurance or self-insurance maintained by the Department, a Department's officer, agent or employee or Insured shall be in excess of and not contributing with the insurance provided by the Contractor.

7-13.2.5 *Deductible Provisions:* If the Automobile Liability Insurance maintained by the Contractor is subject to a deductible or self-insured retention, the Contractor shall pay on behalf of the Department or the Department's officer, agent or employee any such deductible applicable to a claim against the Department or the Department's officer, agent or employee for which the Department or the Department's officer, agent or employee qualifies as an insured.

7-13.2.6 *Contractor Provided Insurance Is Additional Remedy:* Compliance with the insurance requirements of this Contract shall not limit the liability of the Contractor, its Subcontractors, its officers, agents or employees to the Department or others. Any remedy provided to the Department or the Department's officers, agents or employees by the insurance shall be in addition to, and not in lieu of, any other remedy available under this Contract or otherwise.

7-13.2.7 *Insurance on Subcontractors:* Except to the extent a Subcontractor is a Covered Subcontractor under the Department Provided Insurance Program, the Contractor shall require its Subcontractors to maintain any and all insurance required by law.

7-13.2.8 *No Waiver By Approval/Disapproval:* Neither approval by the Department nor failure to disapprove the insurance furnished by the Contractor shall relieve the Contractor of the Contractor's full responsibility to provide the insurance as required by this Contract.

7-13.2.9 *Cost of Other Insurance Coverage:* Except with respect to reducing the amount of the Contract adjustment by the Department pursuant to 7-13.3.17 for insurance for which the Department had previously assumed responsibility under this Contract, any insurance or self-insurance obtained by the Contractor and its Subcontractors shall be the responsibility of and at the sole expense of the Contractor and its Subcontractors.

7.13.2.10 *Joint-Use Utility Poles - Indemnification:* Except to the extent any such claims, demands, liabilities and suits are insured under the Department Provided Insurance Program, when the work under this Contract involves the installation of, or attachments to, a joint-use utility pole, the Contractor hereby agrees to indemnify, defend, save and hold harmless the Department, any owner of any such utility pole (hereinafter the Utility Company) and any owner of equipment attached to or supported by a jointly used pole (hereinafter joint pole equipment owner) from all claims, demands, liabilities and suits whether or not due to or caused, in whole or in part, by negligence of the Department, the Utility Company or any joint pole equipment owner for bodily injuries or death to person(s) or damage to property resulting in connection with the performance of the described work by the

Contractor or its Subcontractors, agents or employees. This indemnification shall extend up to but shall not exceed the sum of \$1,000,000 for bodily injury or death of person(s) for any one occurrence and \$300,000 for property damage for any one occurrence. The remedy provided by this provision to the Department shall be in addition to, and not in lieu of, any other remedy available to the Department under this Contract or otherwise.

7-13.3 Department Provided Insurance Program:

7-13.3.1 Department Provided Insurance: Subject to the right of the Department to terminate or modify the insurance or require the Contractor and its Subcontractors to provide insurance pursuant to 7-13.3.16, the Department shall provide insurance for the Contractor and its Covered Subcontractors as described in this 7-13.3.1.

(1) Workers' Compensation and Employer's Liability

Except as otherwise provided, the Department shall provide Workers' Compensation and Employer's Liability Insurance which shall cover the Contractor and its Covered Subcontractors for those sources of liability which would be covered by the standard Workers' Compensation Policy as filed for use in Florida by the National Council on Compensation Insurance. If applicable, coverage will be provided for the Longshore & Harbor Workers Act, Maritime (including Jones Act) and the Federal Employers Liability Act.

(a) The coverage afforded will apply only to claims which both:

1. arise out of accidents or exposures to conditions (i) at the Site of the Work, or (ii) which arise out of activities necessary or incidental to operations at the Site of the Work; and
2. arise out of injury to or death of a Project Employee or Project Employees of the Contractor or its Covered Subcontractors.

(b) The minimum limits of coverage shall be as follows:

1. Subject to the restrictions of coverage found in the standard Workers' Compensation Policy, there shall be no limit on the amount of coverage for liability imposed by the Florida Workers' Compensation Act (Part One of the standard Workers' Compensation Policy).
2. Subject to the restrictions of coverage found in the standard Workers' Compensation Policy, the minimum limits of coverage for Employer's Liability (Part Two of the standard Workers' Compensation policy) shall (inclusive of any amounts provided by an umbrella or excess policy) be \$5,000,000 per accident for each employee, \$5,000,000 for disease for each employee, and \$5,000,000 aggregate where such aggregate is applicable under the terms of the standard Workers' Compensation policy. These minimum limits shall apply solely to liability arising out of, or in connection with, the Work. These minimum limits shall apply on a shared basis to the Department, the Contractor, the Contractor's Covered Subcontractors, and any other insureds for whom the

Department has agreed to provide such insurance in connection with the Work.

(2) Commercial General Liability

Except as otherwise provided, the Department shall provide Commercial General Liability Insurance which shall cover the Contractor and its Covered Subcontractors for those sources of liability which would be covered by an occurrence form Commercial General Liability policy.

(a) In addition to the usual exclusions, coverage will not be provided for:

1. Medical Payments; or
2. Fire Damage Legal Liability; or
3. the liability of an architect, engineer, construction manager or surveyor arising out of the rendering of or failure to render any professional services including the preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and designs or specifications and supervisory, inspection, architectural or engineering activities; or
4. any bodily injury which results from absorbing, ingesting or inhaling asbestos in any form or property damage that results from the existence of asbestos in any form; or
5. the Contractor or its Covered Subcontractors for any liability of a vendor, supplier, manufacturer or the parent, subsidiary or affiliate companies of any such vendor, supplier, manufacturer which is contractually assumed by the Contractor or any of its Covered Subcontractors.

(b) There shall be a \$500 per occurrence deductible applicable to Property Damage Liability claims otherwise covered by the Commercial General Liability policy and such deductible shall be the sole responsibility of the Contractor. The Property Damage Liability deductible shall not be applicable to defense costs associated with any Property Damage Liability claim.

(c) Coverage will apply only to claims which either:

1. arise out of operations which are performed by or on behalf of the Contractor pursuant to this Contract and which either (i) are performed by or on behalf of the Contractor at the Site of the Work, or (ii) are incidental to such operations and are neither performed at locations owned by, rented to, or otherwise occupied by the Contractor or its Covered Subcontractors nor while going to or coming from any such locations; or
2. arise out of products which were furnished by or on behalf of the Contractor pursuant to this Contract and which were furnished to become a part of the Work.

(d) Subject to the restrictions of coverage found in the standard Commercial General Liability Policy, the minimum limits of coverage for the Commercial General Liability Insurance shall (inclusive of any amounts provided by an umbrella or excess policy) be as follows:

| | |
|-------------|--|
| \$5,000,000 | General Aggregate Limit (other than Products/Completed Operations) |
| \$5,000,000 | Products/Completed Operations Aggregate Limit |
| \$5,000,000 | Personal and Advertising Injury |
| \$5,000,000 | Each Occurrence |

These minimum limits shall apply solely to liability arising out of, or in connection with, the Work. These minimum limits shall apply on a shared basis to the Department, the Contractor, the Contractor's Covered Subcontractors, and any other insureds for whom the Department has agreed to provide such insurance in connection with the Work.

7-13.3.2 **Contract Adjustments:** In consideration of the Department's providing the Department Provided Insurance Program, any amounts otherwise payable to the Contractor shall be adjusted as described in this 7-13.3.2.

(1) Adjustment to First Estimate

The first estimate pursuant to 9-6 otherwise due the Contractor shall be reduced, prior to the withholding of any retainage, by an amount equal to six percent (6%) of the amount of the first estimate which would otherwise be due pursuant to 9-6.

(2) Adjustments to Subsequent Estimates

(a) As a condition to receiving any estimate pursuant to 9-6 subsequent to the first estimate, the Contractor and each of its Covered Subcontractors shall furnish each week in which any Work is performed, to the Engineer, an original certified payroll of wages paid each of its Project Employees. The payroll submitted shall set out accurately and completely all the information required to calculate the cumulative Adjusted Workers' Compensation Standard Premium. The payroll submitted shall contain the name, social security number, and address of each Project Employee, the correct Workers' Compensation classification, hourly rate of wages paid, daily and weekly hours worked on the Contract, gross wages paid each Project Employee, and the total gross wages paid for each Workers' Compensation classification. The Contractor is responsible for the submission of copies of payrolls on all Covered Subcontractors. The payrolls are due within seven (7) days of the regular payment date of the payroll.

(b) If the Contractor and each of its Covered Subcontractors provide all of the certified payrolls required by 7-13.3.2(2)(a) with respect to such estimate, the estimate otherwise due the Contractor shall be adjusted as follows:

1. Based on the data provided in the certified payrolls, provided by the Contractor and each of its Covered Subcontractors pursuant to 7-13.3.2(2)(a), the Department shall calculate the cumulative Adjusted Workers' Compensation Standard Premium for that period of time or periods of time for which prior

estimate or estimates have previously been sought by the Contractor pursuant to 9-6.

2. The estimate otherwise due the Contractor for the current estimate shall be adjusted, prior to the withholding of any retainage, by an amount equal to: (1) six percent (6%) of the amount of the current estimate which would otherwise be due pursuant to 9-6, plus (2) one hundred and fifty percent (150%) of the cumulative Adjusted Workers' Compensation Standard Premium determined pursuant to 7-13.3.2(2)(b)1, minus (3) the cumulative amount of any previous adjustments made pursuant to 7-13.3.2(1) or 7-13.3.2(2).

(c) If the Contractor, or one or more of its Covered Subcontractors, fails to provide the Department with one or more of the certified payrolls required by 7-13.3.2(2)(a) with respect to any estimate, the Department may, at its option, either:

1. entirely withhold the estimate being sought by the Contractor, or,

2. reduce, prior to the withholding of any retainage, the estimate otherwise due the Contractor for the estimate by an amount equal to fifteen percent (15%) of the amount of the estimate which would otherwise be due pursuant to 9-6.

(3) Adjustment to Final Payment

(a) As a condition to receiving any final payment or retainage pursuant to 9-9, the Contractor and each of its Covered Subcontractors shall provide the Department with certified payrolls, setting forth in the manner prescribed by the Department, the payroll and other data reasonably necessary to enable the Department to calculate the Adjusted Workers' Compensation Standard Premium from commencement of work until final acceptance of the Work.

(b) Based on the data provided in the certified payrolls, the Department shall calculate the Adjusted Workers' Compensation Standard Premium from commencement of work until final acceptance of the Work.

(c) The final payment otherwise due the Contractor shall be adjusted by an amount equal to the difference between:

1. one hundred and fifty percent (150%) of the Adjusted Workers' Compensation Standard Premium from commencement of work until final acceptance of the Work, and

2. the sum of those amounts by which the Contract has previously been adjusted pursuant to 7-13.3.2(1) and 7-13.3.2(2).

(4) Safety Incentive Based on Actual Incurred Losses

(a) The Department shall determine the amount of Actual Incurred Losses valued as of six months after final acceptance of the Work.

(b) Within eight months after final acceptance of the Work, if the amount of Actual Incurred Losses as determined pursuant to 7-13.3.2(4)(a) is less than the amount of Expected Losses, the Department shall pay to the Contractor, as a safety incentive, an amount equal to fifty percent (50%) of the difference

between the Expected Losses and the Actual Incurred Losses as determined pursuant to 7-13.3.2(4)(a). If the amount of Actual Losses as determined pursuant to 7-13.3.2(4)(a) is equal to or more than the amount of Expected Losses, there shall be no safety incentive paid.

(c) After the one time determination of the safety incentive, as provided in 7-13.3.2(4)(b), regardless of the change in Actual Incurred Losses thereafter, there shall be no adjustments of the safety incentive.

7-13.3.3 *Commencement of Department Provided Insurance:*
The insurance provided by the Department to the Contractor pursuant to 7-13.3.1 shall not commence until the status of the Contractor as covered by the insurance shall have been determined and approved by the Department pursuant to 7-13.3.5. The insurance provided by the Department to any of its Subcontractors pursuant to 7-13.3.1 shall not commence until the status of the Subcontractor as a Covered Subcontractor shall have been determined and approved by the Department pursuant to 7-13.3.5.

7-13.3.4 *Termination of Department Provided Insurance:*

(1) *Termination of Coverage Except for Products - Completed Operations*

Except with respect to claims for damages for bodily injury or property damage included in the "products-completed operations hazard" (as defined in the standard Commercial General Liability policy), coverage for the Contractor, and its Covered Subcontractors shall terminate at the earliest of:

(a) final acceptance of the Work if this Contract has been completed, or

(b) if work by the Contractor is permanently terminated prior to final acceptance of the Work, at the time the work is permanently terminated, or

(c) thirty (30) days after written notice of the Department's election to require the Contractor to effect alternate insurance pursuant to 7-13.3.16(2).

(2) *Termination of Coverage for Products - Completed Operations*

With respect to claims for damages for bodily injury or property damage included in the "products-completed operations hazard" (as defined in the standard Commercial General Liability policy), coverage for the Contractor, and its Covered Subcontractors shall terminate at the earliest of:

(a) two years after final acceptance of the Work if this Contract has been completed, or

(b) if work by the Contractor is permanently terminated prior to final acceptance of the Work, two years after the time the work is permanently terminated, or

(c) thirty (30) days after written notice of the Department's election to require the Contractor to effect alternate insurance pursuant to 7-13.3.16(2).

7-13.3.5 *Determination of Status of Participation Before Commencement of Work:*

(1) The Contractor shall not commence work until the Contractor has submitted a properly completed Request for Insurance and the Department has approved the Contractor for participation in the insurance provided by Department pursuant to 7-13.3.1.

(2) No Subcontractor, including any Subcontractor for whom participation in the insurance provided by Department is, pursuant to 7-13.3.6, optional at the election of the Contractor, shall commence work until the Contractor has submitted a properly completed Request for Insurance Form to the Department on the Subcontractor, and, on the basis of the Request for Insurance Form on the Subcontractor submitted by the Contractor:

(a) the Department has approved the Subcontractor as a Covered Subcontractor; or

(b) the Department has determined that participation in the insurance provided by Department is, pursuant to 7-13.3.6, optional at the election of the Contractor and the Contractor has elected to exclude the Subcontractor from participation in the insurance provided by the Department; or

(c) the Department has determined that the Subcontractor is, pursuant to 7-13.3.7, excluded from participation in the insurance provided by Department.

7-13.3.6 *Mandatory Participation by Contractor and Certain Subcontractors:* Participation in the insurance provided by Department pursuant to 7-13.3.1 shall be mandatory for the Contractor and each of its Subcontractors which, on the basis of the Request for Insurance submitted pursuant to 7-13.3.5, has, including the Jobsite Payroll of any employees leased to such Subcontractor, an estimated Jobsite Payroll of \$10,000 or more for any consecutive 12 month period. Participation in the insurance provided by the Department, for a Subcontractor which, on the basis of its estimated Jobsite Payroll, is not required to participate, shall be at the option of the Contractor. However, the Contractor shall make such election prior to the Subcontractor commencing work.

7-13.3.7 *Materialmen, and Transporters Excluded:* Materialmen and Transporters will not be included in the Department Provided Insurance Program.

7-13.3.8 *Applications, Audits and Records:* In addition to, and not in lieu of, any requirements of this Contract with respect to books, records of payroll or other data, the Contractor shall comply, and cause its Subcontractors to comply, with the requirements of 7-13.3.8.

(1) *Maintenance of Records*

The Contractor agrees to keep and maintain, and to cause its Subcontractors to keep and maintain, for insurance purposes, accurate and properly classified records of payroll and other data necessary for the proper computation of premiums, taxes and adjustments thereto with respect to the insurance provided by the Department. The Contractor's and its Subcontractors' books and records must be maintained to show separately by employee and class of work, or comparable information acceptable to the Department, its insurers, and the OCIP Administrator all necessary pertinent

payroll data including the premium portion of overtime and the average weekly maximum limitation per employee (executive officers, partners and proprietors), for the purpose of developing and determining premiums and shall keep their records relating to the work performed pursuant to this Contract in such a manner that said records can readily be separated from other work of the Contractor or its Subcontractors.

(2) Submission of Reports

The Contractor agrees to submit such records of payroll and other data for itself and its Subcontractors, in the form, and as requested by the Department, to the Department, or its insurers, or the OCIP Administrator, on a weekly basis or as otherwise requested by the Department. Upon completion of a Subcontractor's work pursuant to this Contract, the Contractor shall render to the Department, its insurers, or the OCIP Administrator all necessary data to permit complete insurance premium determination with respect to such Subcontractor. Upon final acceptance of the Work, the Contractor shall render to the Department, its insurers, or the OCIP Administrator all necessary data to permit complete insurance premium determination with respect to the Contractor and its Subcontractors.

(3) Agreement to Audits and Cooperation

The Contractor agrees to permit, and to cause its Subcontractors to agree to permit, such books and records to be examined and audited as reasonably necessary by the Department, its insurers or the OCIP Administrator. The Contractor shall at all times cooperate with and assist, and shall cause its Subcontractors to at all times cooperate with and assist, the Department and its insurers to develop the necessary data for premium computation.

7-13.3.9 *Notice of Cancellation on Department Provided Insurance:* The Department shall provide, or shall cause to be provided, written notice of cancellation to the Contractor and its Covered Subcontractors at least 30 days prior to cancellation of the insurance provided by the Department pursuant to 7-13.3. However, the requirement for notice of cancellation shall not apply to the Contractor or any of its Subcontractors for whom the insurance has not commenced prior to the providing of written notice by the insurer to the Department of the insurer's intent to cancel the insurance. Nor shall the requirement of notice of cancellation apply to the Contractor or any of its Subcontractors where the insurance for the Contractor or the Subcontractor has terminated or will otherwise terminate before the effective date of the cancellation of the policy pursuant to 7-13.3.4.

7-13.3.10 *Department Provided Coverages Subject to Limitations:* The Department's obligation to provide insurance for the Contractor and its Covered Subcontractors shall be limited to providing such insurance in generally accepted form and subject to the provisions, terms, conditions and exclusions inherent in, or commonly endorsed on, generally accepted insurance policies. The Department assumes no responsibility for losses incurred by the Contractor or its Covered Subcontractors which would not be covered by the terms of such generally accepted policies, including

commonly endorsed exclusions. Nor shall the Department be responsible for that portion of any loss which exceeds the amount of coverage which the Department has agreed to provide.

7-13.3.11 *Department Provided Coverages Not All Inclusive:* The providing of insurance by the Department pursuant to 7-13.3 shall not constitute any representation by the Department with respect to the adequacy of the insurance to protect the Contractor or its Covered Subcontractors against the obligations imposed by law or by this Contract or any other contract. The Department emphasizes that the coverages provided by the Department are limited in scope and do not necessarily include all insurance coverages either desirable or normally maintained by the Contractor or its Covered Subcontractors.

7-13.3.12 *Department Entitled to Premium Adjustments:* The Department shall be entitled to all return premiums, dividends, credits or other adjustments which may become payable at any time for whatever reason in connection with the Department Provided Insurance Program. The Contractor hereby assigns to the Department all such premiums, dividends, credits and other adjustments. All Covered Subcontractors shall be deemed to have assigned to the Department all such premiums, dividends, credits or adjustments and the Contractor shall execute and cause its Covered Subcontractors to execute any instrument either necessary or convenient to evidence the Department's right to such premiums, dividends, credits or adjustments.

7-13.3.13 *Review of Policies by Contractor:* Upon their request, the Contractor and its Covered Subcontractors may, at the offices of the Department, during the regular business hours of such offices, review and obtain copies of the policy(ies) or other evidence of insurance procured by the Department pursuant to 7-13.3.

7-13.3.14 *Cooperation and Assistance with Accidents and Claims:* The Contractor and each of its Subcontractors shall assist the Department and the Department's insurers and fully cooperate with them in connection with the reporting, investigation and adjusting of claims and accidents of whatever nature and whether or not involving the respective Contractor or Subcontractor. Such cooperation shall include, but not be limited to, assistance in the making of settlements, in the conduct of suits and in enforcing rights of contribution or indemnity; attendance at hearings or trials; and assistance in the securing and giving of evidence and obtaining the attendance of witnesses. Failure of the Contractor or any of its Covered Subcontractors to fully cooperate shall be grounds for denial of coverage for the Contractor or Covered Subcontractor under the Department Provided Insurance Program.

7-13.3.15 *Responsibility for Fines and Increased Cost:* The Contractor shall be responsible for any increase in the cost of the Department Provided Insurance Program (including, in addition to any increase in premiums, any fines, penalties, assessments or amounts of indemnity) which results from either: (1) the failure of the Contractor or any of its Subcontractors to comply with any law, rule or regulation, or (2) the failure of the Contractor or

any of its Subcontractors to provide in a timely manner, or to provide access to in a timely manner, any applications, reports, notices of claims or other documents, or updates thereof.

7-13.3.16 *Department's Right to Terminate, Modify, Self-Insure or Replace:* The Department reserves the right, at any time during the course of this Contract, to terminate in whole or in part or modify through the selection of different perils, terms, conditions, deductibles, whole or partial self-insurance or otherwise modify all or part of the Department Provided Insurance Program as described in 7-13.3. In the event of termination or modification (whether initiated by the Department or its insurers), the Department may, at its sole option, either:

(1) assume the responsibility for that portion of any loss suffered by the Contractor or its Covered Subcontractors which would have been covered by the described Department Provided Insurance Program, or

(2) require the Contractor to procure and maintain alternate insurance in the manner described in 7-13.3.17 and 7-13.3.18, and reduce, in the manner described in 7-13.3.17(3), the amount of contract adjustment which would have otherwise been made pursuant to 7-13.3.2.

7-13.3.17 *General Provisions Applicable to Contractor's Alternate Insurance:* In the event the Department elects to require the Contractor to provide alternate insurance pursuant to 7-13.3.16(2), the provisions of this 7-13.3.17 shall apply.

(1) *Notice of Election to Contractor and Covered Subcontractors*

The Department shall provide the Contractor and its Covered Subcontractors with written notice of the Department's election to reduce or eliminate the amount of contract adjustment which would have otherwise been made pursuant to 7-13.3.2 and to require the Contractor to effect alternate insurance. The notice shall identify the alternate coverage or coverages which are to be provided by the Contractor. The notice shall be mailed or transmitted to the Contractor and its Subcontractors at least thirty (30) days before the date the Contractor's alternate insurance is to be effective. In the event the date specified by the Department as the date alternate insurance is to become effective is less than thirty (30) days after mailing or transmittal, the effective date for alternate insurance shall be on the 30th day following such mailing or transmittal. This requirement for notice shall not apply to the Contractor or any of its Subcontractors for whom the insurance has not commenced prior to the providing of written notice by the insurer to the Department of the insurer's intent to cancel the insurance. Nor shall the requirement of notice apply to the Contractor or any of its Subcontractors where the insurance for the Contractor or the Subcontractor has terminated or will otherwise terminate before the effective date of the cancellation of the policy pursuant to 7-13.3.4.

(2) *Limitations on Department's Responsibility for Loss*

The Department shall not be responsible for that portion of any loss which would not have been covered by the Department Provided Insurance Program as described in 7-13.3. In addition, the Department's assumption of loss suffered by the Contractor or its Covered Subcontractors pursuant to 7-13.3.16(1) shall not apply to that portion of any loss which would not have been covered by the described Department Provided Insurance Program if the Department's obligation to provide the coverage had terminated and the Department's respective insurance had been canceled as of 12:01 A.M. on the earlier of the following dates:

- (a) the inception of alternate coverage on the respective Contractor or Covered Subcontractor, or
 - (b) with respect to the respective Contractor or Covered Subcontractor, thirty (30) days after the Department mailed or otherwise transmitted notice to the Contractor or Covered Subcontractor pursuant to 7-13.3.17(1).
- (3) Department's Reduction of Contract Adjustment in Recognition of Alternate Insurance

Except as specifically provided in this 7-13.3.17(3), the cost of alternate insurance shall be at the sole expense of the Contractor. Subject to the further limitations in this 7-13.3.17(3), the Department shall, in recognition of requiring the Contractor to provide alternate insurance, reduce or eliminate the amount of contract adjustment which would have otherwise been made pursuant to 7-13.3.2.

(a) If the Department elects to require the Contractor to provide alternate Workers' Compensation Insurance as described in 7-13.3.18(1), the Department shall reduce the amount of contract adjustment which would otherwise have been made pursuant to 7-13.3.2 by an amount equal to one hundred percent (100%) of the Adjusted Workers' Compensation Standard Premium as determined in accordance with 7-13.3.2 for work performed after the date the Contractor's alternate insurance is to be effective.

(b) If the Department elects to require the Contractor to provide the alternate insurance required for construction of railroads as described in 7-13.3.18(2) and/or the alternate insurance for protection of utility owners as described in 7-13.3.18(3), the Department shall reduce the amount of contract adjustment which would otherwise have been made pursuant to 7-13.3.2 by an amount equal to fifty percent (50%) of the Adjusted Workers' Compensation Standard Premium as determined in accordance with 7-13.3.2 for work performed after the date the Contractor's alternate insurance is to be effective.

(4) Submission and Approval of Policies; Termination

(a) At the later of the date such alternate insurance is to be effective pursuant to 7-13.3.17(1), or at least seven days before beginning any operation in the immediate vicinity of the railroad, the Contractor shall furnish to the Department's District Railroad Coordinator two copies of each policy which the Contractor shall carry for the protection of the railroad owner; the original policies subsequently to be forwarded to the railroad company by the District Railroad Coordinator.

(b) At the later of the date such alternate insurance is to be effective pursuant to 7-13.3.17(1), or at least seven days before beginning any installation of, or attachments to, joint-use utility poles, the Contractor shall furnish the Department's District Utility Coordinator two copies of each policy which the Contractor shall carry for the protection of the utility owner; the original policies subsequently to be forwarded to the utility company by the District Utility Coordinator.

(c) All insurance policies to be provided by the Contractor under 7-13.3.18(2) and 7-13.3.18(3) shall be in such form and with such insurer as may be acceptable to the Department and to the railroad company or the utility owner. Insurance in behalf of a railroad company shall be in force until all work required to be performed under the terms of the contract is satisfactorily completed, as evidenced by the formal acceptance by the Department. Insurance in behalf of a utility owner shall be in force, in the full amount specified herein, until 30 days after acceptance of the attachments by the Department.

(d) The Contractor shall also furnish to the railroad company involved a copy of the evidence of insurance coverage required in 7-13.3.18(2)(a) and 7-13.3.18(2)(b) to be furnished to the Department. The Department job number for which the insurance is required shall be indicated on the evidence.

7-13.3.18 *Description of Alternate Insurance:* Except as otherwise provided, in the event the Department elects to require the Contractor to provide alternate insurance pursuant to 7-13.3.16(2), the provisions of this 7-13.3.18 shall apply to such alternate insurance.

(1) **Alternate Workers' Compensation Insurance**

If, pursuant to 7-13.3.16(2), the Department has elected to require the Contractor to effect alternate Workers' Compensation Insurance, the Contractor shall provide Workers' Compensation Insurance in accordance with the laws of the State of Florida and in amounts sufficient to secure the benefits of the Florida Workers' Compensation Law for all of the Contractor's employees. If any of the work is sublet the Contractor shall insure that the employees of the subcontractors are covered by similar insurance. Equivalent approved protection may be provided, however, in lieu of insurance.

(2) **Alternate Insurance Required for Construction at Railroads**

If, pursuant to 7-13.3.16(2), the Department has elected to require the Contractor to effect alternate insurance required for construction at railroads, in addition to any other forms of insurance or bonds required under the terms of the contract, when the contract includes the construction of a railroad grade crossing, overpass or underpass structure, or a railroad crossing signal installation, the Contractor shall provide insurance of the types set forth below and in amounts not less than specified herein.

(a) **Contractors' Public Liability and Property Damages Liability Insurance**

The Contractor shall furnish evidence to the Department that, with respect to the operations the Contractor performs, the Contractor carries regular Contractors' Public Liability Insurance providing for a limit of not less than \$300,000 for all damages arising out of bodily injuries to or death of one person, and subject to that limit for each person, a total limit of \$2,000,000 for all damages arising out of bodily injuries to, or death of two or more persons in any one occurrence, and regular Contractors' Property Damage Liability Insurance providing for a limit of not less than \$50,000 for all damages arising out of injury to, or destruction of, property in any one occurrence and, subject to that limit per occurrence, a total (or aggregate) limit of \$100,000 for all damages arising out of injury to or destruction of property during the policy period. If any part of the work is sublet, similar insurance shall be provided by or in behalf of the subcontractors to cover their operations.

(b) Contractors' Protective Public Liability and Property Damage Liability Insurance

The Contractor shall furnish evidence to the Department that, with respect to the operations performed for the Contractor by subcontractors, the Contractor carries in the Contractor's behalf regular Contractors' Protective Public Liability Insurance providing for a limit of not less than \$300,000 for all damages arising out of bodily injuries to, or death of one person and, subject to that limit for each person, a total limit of \$2,000,000 for all damages arising out of bodily injuries to, or death of two or more persons in any one occurrence, and regular Contractors' Protective Property Damage Liability Insurance providing for a limit of not less than \$50,000 for all damages arising out of injury to, or destruction of property in any one occurrence, and, subject to that limit per occurrence, a total (or aggregate) limit of \$100,000 for all damages arising out of injury to or destruction of property during the policy period.

(c) Railroads' Protective Public Liability and Property Damage Liability Insurance

In addition to the above, the Contractor shall furnish to the Department for transmittal to the railroad company, an original insurance policy which, with respect to the operations the Contractor or any of his subcontractors perform, will provide for and in behalf of the railroad company, regular liability insurance providing coverage for bodily injury, death, and property damage limited to a combined single limit of \$2,000,000 per occurrence with an aggregate limit of \$6,000,000 for the term of the policy. Such insurance is to conform with the requirements of the U.S. Department of Transportation, Federal Highway Administration, Federal-Aid Highway Program Manual, Volume 6, Chapter 6, Section 2, Subsection 2, Transmittal 350, dated October 1, 1982, and any supplements thereto or revisions thereof.

(d) Requirements for Other Work or Operations Within Railroad Right of Way

The requirements for Railroads' Protective Public Liability and Property Damage Liability Insurance, as specified in

7-13.3.18(2)(c) and for the submission of the policies therefor, as specified in 7-13.17(4)(a), shall also apply to all other work or operations by the Contractor within the limits of the railroad right of way, including any encroachments thereon from work or operations in the vicinity of the railroad right of way.

(3) **Alternate Insurance for Protection of Utility Owners**

(a) If, pursuant to 7-13.3.16(2), the Department has elected to require the Contractor to effect alternate insurance for protection of utility owners, when the work under the Contract involves the installation of attachments to joint-use utility poles, the Contractor shall furnish evidence to the Department that, with respect to the operations the Contractor performs, the Contractor carries General Comprehensive Liability Insurance or its equivalent providing for a limit of not less than \$1,000,000 for bodily injury or death to person(s) per occurrence and \$300,000 property damage each occurrence. Said liability policy shall be endorsed with a Broad Form Contractual Endorsement covering the below indemnification or the Department and Utility Company are to be Additional Named Insureds and the policy will be primary to any coverage maintained by the Department or Company. No material change or cancellation will be made to the policy without ten days written notice to the Department. In addition, copies of the policies will be furnished to Department.

(b) The Contractor hereby agrees to indemnify, defend, save and hold harmless the Department and any owner of equipment attached to or supported by a jointly used pole from all claims, demands, liabilities and suits whether or not due to or caused by negligence of the Department or joint pole equipment owners for bodily injuries or death to person(s) or damage to property resulting in connection with the performance of the described work by Contractor, its subcontractors, agents or employees. This indemnification shall extend up to but shall not exceed the sum of \$1,000,000 for bodily injury or death of person(s) for any one occurrence and \$300,000 for property damage for any one occurrence. If, pursuant to 7-13.3.16(2), the Department has elected to require the Contractor to effect alternate insurance for protection of utility owners, the indemnification above shall supersede and entirely replace the provisions of 7-13.2.10.

7-13.3.19 *Comparison With Contractor Provided Insurance:* For the purposes of determining its cost effectiveness, the Department may compare the estimated cost of the Department Provided Insurance Program with an estimate of the cost the Contractor would have included in its bid for insurance in the absence of the Department Provided Insurance Program. To assist in this endeavor, the Contractor shall, upon request by Department, submit to the Department, and cause its Subcontractors to submit to the Department, records (including copies of proposals and policies on other work) and data, reasonably necessary to determine the cost which would have been incurred by the Contractor and its Subcontractors for such insurance and the estimated amount which

would have been included in the Contractor's bid for insurance in the absence of the Department Provided Insurance Program.

7-13.4 Contractor's Safety Program:

7-13.4.1 *Provisions Are Supplemental:* The provisions of 7-13.4 are in addition to, and not in lieu of, any other provisions of this Contract.

7-13.4.2 *Contractor Solely Responsible for Safety:*

(1) The Contractor shall bear sole responsibility for the safety of all persons employed on the Work and persons who may be affected thereby, and for the adequacy of the methods and means the Contractor and its Subcontractors, Materialmen, and Transporters employ in performing the Work. The Contractor shall take all reasonable precautions necessary to assure that its employees and those of its Subcontractors comply with all applicable safety, health, and personnel rules and regulations.

(2) Neither the provision of the Department Provided Insurance Program, nor the Department's monitoring of the Contractor's safety program for compliance with federal and state laws and the requirements of the Contract shall:

(a) relieve the Contractor of the sole responsibility for the safety of all persons employed on or in connection with the Work and persons who may be affected thereby and for the adequacy of the methods and means employed in performing the Work; or

(b) constitute an undertaking on behalf of, or for the benefit of, the Contractor, its Subcontractors or any other persons or organizations to determine, represent or warrant that such workplaces, structures, operations, procedures, machinery, equipment or materials are or will be safe or healthful or are or will comply with any laws, rules, regulations, codes or standards.

(3) Neither the Department, nor any of its officers, agents or employees, nor any persons or organizations acting on behalf of the Department, shall be liable for the failure of the Contractor or any of its Subcontractors to comply with any safety or loss prevention provisions of this Contract.

7-13.4.3 *Contractor's Safety Responsibilities:*

(1) The importance of the safety of all persons employed on the Work and any other persons at the Site of the Work or otherwise who may be affected thereby shall be recognized by the Contractor and its Subcontractors, and safety and loss prevention shall be an integral part of the Contractor's and its Subcontractors' operations.

(2) The Contractor shall, at the sole cost of the Contractor, develop, maintain and enforce a written safety and loss prevention program applicable to Contractor and its Subcontractors which meets or exceeds all of the requirements of this 7-13.4. The purpose of such safety and loss prevention program shall be to maintain a safe workplace, to prevent damage, injury or loss to persons or property.

(3) The Contractor shall comply and cause its Subcontractors to comply with all applicable federal, state and local laws, ordinances, rules, regulations and codes pertaining to

the health and safety of persons or property, including, but not limited to, OSHA 29 CFR 1910 & 1926 and Florida Department of Labor & Employment Security, Division of Safety Rule 38I-17.003.

(4) The Contractor shall cooperate and cause its Subcontractors to cooperate fully with any other contractors and subcontractors on or in close proximity to the Site of the Work, and the Department and the Department's insurer(s) to coordinate their respective safety programs.

(5) The Contractor shall provide access to the Site of the Work at all times for any safety and loss prevention inspectors of the Department and of the Department's insurer(s).

7-13.4.4 *Contractor's Safety Representative:* The Contractor shall designate a responsible member of the Contractor's organization at the Project Site whose primary duty shall be safety and loss prevention. The designated person must:

(1) be employed on a full time basis on the Site of the Work;

(2) devote at least 25 hours per week in connection with safety and loss prevention at the Project Site;

(3) be available on short notice to meet with representatives of the Department, or of the Department's insurer(s), anywhere on the Site of the Work;

(4) be available on short notice to accompany representatives of the Department, or of the Department's insurer(s), on inspections anywhere on the Site of the Work; and

(5) meet the minimum requirements of Florida Department of Labor & Employment Security, Division of Safety Rule 38I-10.009.

7-13.4.5 *Minimum Requirements of Contractor's Safety Program:* The Contractor's safety program shall meet, but not by way of limitation, all of the following minimum requirements:

(1) Each Project Employee shall be required to attend, at least weekly, a tool box safety meeting to be held by the Contractor at the Site of the Work. The Contractor shall keep proper records of the tool box safety meetings for inspection by, or on behalf of, the Department, its insurers, and federal, state and local authorities.

(2) All persons on the Site of the Work shall be protected with proper personal protective equipment. Safety requirements must also include written programs on respiratory, confined spaces, eye, face, and head protection, protective clothing, shoe wear, and gloves pursuant to OSHA 29 CFR 1926.

(3) Any source of power (electrical, mechanical, or other) requiring entrance into or close contact with, shall be controlled before any work or service is performed, pursuant to OSHA 29 CFR 1926. An emergency plan shall be provided to insure locations of shut offs or disconnects so that, if any emergency arises, immediate action may be taken.

(4) Signs, signals, barricading and traffic controls used for the protection of construction personnel or public shall conform to the Federal Highways Administration Manual on Uniform Traffic Control Devices.

(5) A written emergency response plan for any hazardous waste operations must be developed, implemented and communicated to handle anticipated emergencies prior to the commencement of emergency response operations. The plan must include a site specific safety and health plan to include training, medical surveillance, and operating procedures pursuant to OSHA 29 CFR 1926.

(6) All new and existing crawlers, wheel mounted, or truck cranes shall meet design ANSI standards B30.5 and manufacturer's specifications. Crane inspections shall be made at least daily by an operator of the crane. In addition, cranes shall be inspected at least weekly by the person designated by the Contractor as the Contractor's safety representative pursuant to 7-13.4.4. Written records of the inspections must be available for review. A competent person, recognized by the U.S. Department of Labor, shall provide documentation of each inspection.

(7) All scaffolding, barricading, man lifts and work at elevated heights must be in conformance to safe workplace practices. Competent persons approving the construction and monitoring the procedures must be identified and included in the submitted safety program pursuant to OSHA 29 CFR 1926.

(8) All excavation, trenching, and shoring will be performed in a safe manner, using approved barricades or a safe angle of repose, pursuant to the Florida Trench Safety Act and OSHA 29 CFR 1926, Subpart P.

(9) All equipment and material used for concrete, concrete forms, and shoring shall comply with ANSI A10.9-1983 requirements for concrete construction and masonry work.

(10) The Contractor shall secure the Site of the Work and control entry of unauthorized individuals on the Site of the Work to prevent injury to the third party entities. Site security, escorted visitors and property securement shall be included in the formal written safety and loss prevention program.

(11) Temporary erosion control features, hazardous materials and those substances that may contribute to pollution of the natural resources must be identified and controlled in a safe and approved manner pursuant to state, federal and local agency guidelines. In the event of differences between those requirements and pollution control laws, the more restrictive rules or regulations shall apply.

(12) For any exposures defined by employment over or near territorial and navigable waters and under the Longshore and Harbor Workers Act, Contractor shall provide education and training in the recognition, avoidance, and prevention of unsafe working conditions, pursuant to the Code of Federal Regulations.

(13) When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel in accordance with U.S. Department of Transportation and Mine Safety and Health Administration and OSHA 29 CFR 1926.

(14) Contractor shall require, and cause its Subcontractors to require, each new Project Employee, before starting work, to be oriented by the supervisor of the Project Employee on the safety and requirements established for the work task(s) to be performed. Weekly tool box safety meetings are not a substitute for the new Project Employee orientation.

7-13.4.6 *Contractor's Drug-Free Workplace Program:*

(1) The Contractor shall, at its sole expense, implement and maintain, and cause its Covered Subcontractors to implement and maintain, a drug-free workplace program at the Site of the Work in accordance with Sections 440.101 and 440.102, Florida Statutes, except as otherwise provided herein.

(2) In addition to any testing otherwise required by Sections 440.101 or 440.102, Florida Statutes, prior to any employee of the Contractor, or any employee of its Covered Subcontractor, performing any Work at the Site of the Work, the Contractor shall require, and shall cause its Covered Subcontractors to require, such employee to submit, within thirty (30) days of first performing any Work at the Site of the Work, to a drug test meeting the requirements of Sections 440.101 and 440.102, Florida Statutes.

7-13.4.7 *Failure to Maintain Safety and Loss Prevention Program:*

(1) *Notice of Imminent Danger*

In the event of any failure of the Contractor or any of its subcontractors or any employee thereof to adhere to the minimum safety and loss prevention rules and regulations established pursuant to this Contract, which, in the opinion of the Department, the CE&I, or the Department's insurer(s), constitutes an "imminent danger," the Department, the CE&I, or the Department's insurer(s) may give immediate written or oral notice to the Contractor of such failure. Upon receipt of such notice, the Contractor shall take, or cause its Subcontractors to take, at the sole cost of the Contractor, all steps necessary, including the suspension of Work, to immediately eliminate or correct the condition which constitutes such an imminent danger. The Contractor shall not be entitled to either an extension of time or any additional payment which results from the steps taken to eliminate or correct the condition. For the purposes of 7-13.4, the term "imminent danger" means a condition which, if not eliminated or corrected, is reasonably expected to threaten human life or limb.

(2) *Notice of Other Failure*

In the event of any failure by the Contractor or any of its subcontractors or any employee thereof to adhere to the minimum safety and loss prevention rules and regulations established pursuant to this Contract, the Department, the CE&I, or the Department's insurer(s) may provide written notice to the Contractor of such failure. Such notice may include recommendations and a cure period if the noncompliance is not susceptible to immediate cure, for the Contractor to comply with and enforce the minimum safety and loss prevention rules and regulations established pursuant to this Contract.

(3) **Withholding of Payment or Termination for Cause**
Failure of the Contractor to establish, maintain and enforce a safety and loss prevention program conforming to the minimum requirements established pursuant to this Contract shall be grounds to withhold, in whole or in part, any payments otherwise due the Contractor. Persistent or repeated failure to establish, maintain and enforce a safety and loss prevention program conforming to the minimum requirements established pursuant to this Contract shall be grounds to terminate the Contract for cause.

(4) The Department may, at its option, direct the Contractor to replace any employee of the Contractor or any Subcontractor who persistently or repeatedly fails or refuses to adhere to the minimum safety and loss prevention rules and regulations established pursuant to this Contract.

7-13.4.8 **Responsibility for Penalties:** Any civil or criminal penalties imposed upon the Contractor pursuant to OSHA or other laws, rules or regulations by governmental agencies having jurisdiction shall be the sole responsibility of the Contractor and shall not constitute reimbursable costs of the Contractor. In addition, the Contractor shall reimburse the Department for costs of compliance incurred by the Department and, to the extent permitted by law, any penalties relating to OSHA or other legal citations incurred by Department arising from the Contractor's or its Subcontractors' violations. The Contractor shall remedy, at its own expense, the situation which produced the citation within the time set forth in such citation. A copy of all OSHA citation reports, as well as any State safety or loss prevention inspection reports, shall be submitted to Department immediately upon receipt in each instance by the Contractor or Subcontractor.

APPENDIX F

Insurance Calculation Worksheets

Southeast Corridor Project, Denver, Colorado

T-REX Project PCIP Insurance Calculation Worksheet

(Show the insurance cost you would have incurred had there been no PCIP on this project.)

Contractor Name: _____ Contact Person: _____
 Contract Price: _____ Work Description: _____
 Subcontractor to (if applicable) _____

I. Workers' Compensation & Employers Liability

| Labor Classification | WC Code | Total Labor Hours Estimate | Payroll Estimate | WC Rate per 100 of Payroll* | Premium |
|----------------------|---------|----------------------------|------------------|-----------------------------|---------|
| | | | | | |
| | | | | | |
| | | | | | |

Sub-total _____
 Increased Employers Liability Factor x _____
 Experience Modification Rate (ERM) x _____
 Other Factors (Identify) x _____
 Other Factors (Identify) x _____
 Other Factors (Identify) x _____
Total Workers' Compensation Premium (A) \$ _____

II. Primary General Liability

| Labor Classification | GL Code | Est. Payroll or Contract Value | Rate* | Premium |
|----------------------|---------|--------------------------------|-------|---------|
| | | | | |
| | | | | |
| | | | | |

Total General Liability Premium (B) \$ _____

III. Excess/Umbrella Liability

| Est. Payroll or Contract Value | Rate* | Premium |
|--------------------------------|-------|---------|
| | | |

If excess premium is flat-charge, develop rate by dividing your excess policy annual premium by estimated annual payroll. Apply this rate to the estimated payroll for this project.

Total Umbrella Liability Premium (C) \$ _____

IV. Profit Overhead & Contingency _____ % of Payroll (D) \$ _____

V. Total Initial Insurance Cost Credit (Lines A+B+C+D) \$ _____

 Contractor or Subcontractor signature Date

* Policy rate pages must be submitted with this worksheet.
 (Over)

Agreement:

I hereby warrant that this worksheet accurately reflects the projected insurance cost that will apply if our regular insurance program were to provide coverage for this work. **Copies of my actual insurance policies are attached to confirm these costs.**

I also hereby warrant the accuracy of payroll information provided and agree that CDOT/RTD, its insurance representative, and/or PCIP carrier may audit the contractor's and each subcontractor's records to confirm the accuracy of payrolls, including, without limitation, any changes to the work as referenced in this contract.

Contract price and assignment of return premium — CDOT/RTD, at its sole expense, will furnish the PCIP coverages listed for the benefit of all enrolled contractors and their subcontractor(s). In consideration of CDOT/RTD providing PCIP coverages, the contractor will:

- Remove all applicable insurance costs from the contract price that would duplicate or provide similar insurance coverage provided for the contractor in the PCIP and show those insurance costs on this form.
- Assign to CDOT/RTD all return premiums, dividends, refunds, discounts, and/or other credits due under the PCIP policies.

The "Insurance Calculation Worksheet" represents the amount of **insurance cost** not included in the contract price for **insurance** since CDOT/RTD anticipates furnishing PCIP insurance coverage. In the event insurance is **not** provided by CDOT/RTD, this **amount** will be added back into the contract amount.

Signed by: _____ Date: _____
Contractor/Subcontractor

The Insurance Calculation Worksheet is used to verify the insurance premium excluded from your cost proposal. The Insurance Calculation Worksheet is to be completed using your current insurance rates, experience modification rate, and any other factors applicable (except factors applicable to deductible programs).

Complete the form using estimated payroll and man-hours for the contract you have been awarded. If you have been awarded more than one contract, a separate worksheet is required for each contract.

NOTE: We recommend that you fill in the appropriate class codes and estimated payroll, then forward to your insurance agent for the correct insurance calculations.

Please note: In the Workers' Compensation section, any factors used in the calculations must be **clearly identified** by description as well as by percentage amount/factor.

Copies of your policy rates pages are required to be submitted in addition to the Insurance Calculation Worksheet.

If you have questions concerning completion of this form, please contact your insurance representative or the PCIP Administrator.

T-REX Project PCIP Experience Rating Request Letter

The letter on the following page must be typed on **your company's letterhead**. It is necessary to secure your current and renewal experience modifications to accurately rate your PCIP Workers' Compensation premium. The **original** of this letter must be included with your enrollment application.

NOTE: A copy of your current Experience Modification Worksheet from NCCI is acceptable in lieu of this letter.

Sample Letter Request:

Your Company's Letterhead

NCCI
ATTN: EXP. MOD FACTOR
750 Park Commerce Dr.
Boca Raton, FL 33487

Re: Federal Employer ID # _____

This represents your authority to release our current experience modification and rating to:

St. Paul Fire and Marine Insurance Company
Mail Code 505P
385 Washington Street
St. Paul, MN 55102-1396
Attention: Richard C. Anderson

Sincerely,

YOUR COMPANY'S NAME

By: _____

Title: _____
(Must be an officer of the company)

T-REX Project PCIP Assignment and Transfer Form

The paragraph below applies to any return premium due CDOT/RTD as a result of any payroll audits, dividend calculations, or retro adjustments on the PCIP policies ONLY. This "Assignment of Rights to Return Premium" is in no way related to the Insurance Calculation Worksheet information. This assignment states that you will not try to claim any return premiums due CDOT/RTD as a result of purchasing the insurance policies for the project.

Whereas, and to the extent CDOT/RTD has furnished and paid for contractors' and subcontractors' insurances, of any tier under this contract; and, **whereas**, we, the contractor, and on behalf of our subcontractors, of any tier, have accepted the insurances; and, **whereas**, we, the contractor, certify that all of our subcontractors, of any tier, have or will cause to have executed an identical assignment; and, **whereas**, we, the contractor, and on behalf of our subcontractors, of any tier, certify that we have not duplicated, and **will not duplicate** such owner-furnished insurances; and, **therefore**, for good and valuable considerations, we do hereby assign and transfer any and all rights, title, and all interests in any dividends, retrospective adjustments, participation payments and/or return premiums, which may be payable to us, by any insurance company under policy or policies furnished by CDOT/RTD under this contract.

Signature

Contractor Name

Date

APPENDIX G

Safety Incentive Program, Arizona DOT, US 60 Project OCIP

OVERVIEW

The Owner has established a Safety Incentive Program to promote **safety awareness** on this Project and reduce the frequency and severity of accidents. Achieving these objectives will reduce the number and severity of accidents that result in Lost Time claims against workers' compensation insurance.

The Design-Builder shall complete and submit to the Project Manager, the Safety Incentive Program 15 days from the date of the Notice of Award letter.

The Program consists of two parts: Part A—Design-Builder Incentive Program and Part B—Employee Safety Incentive Program. Design-Builder Incentive Program (Part 1) will be divided into two parts: Part 1—**During the Project** and Part 2—at the **End of the project**.

The Design-Builder shall work with the Owner and the Owner Controlled Insurance Program (hereafter referred to as OCIP) Safety Team and participate in all required planning and review meetings. The OCIP Safety Team members will be: the Owner's Loss Prevention Representative, the Design-Builder's Safety Coordinator, the OCIP insurance carrier loss control representative(s), the broker risk control consultant, and others identified by the Owner. The OCIP Safety Team shall work with the Design-Builder to prepare announcements to publicize the incentive program activities and results.

Final approval of the incentive program as implemented shall rest with the Owner.

The Safety Incentive Program shall BEGIN on an agreed upon Monday within 30 days from the date of the Notice of Award letter.

The Safety Incentive Program will require that the Design-Builder qualify for the Incentive Program by developing and maintaining a Safety Program with emphasis on **Safety Awareness** and **Safety Activities** that will be audited for the purpose of earning the incentive. Sample safety programs, inspection forms, reporting forms, etc., for the development of the safety program and the incentive program can be obtained from the Owner's Loss Prevention Representative and broker risk consulting staff.

The Owner and OCIP Safety Team, which includes the Design-Builder's safety coordinator, will develop the various forms in a consensus manner for the success of the project. The OCIP Safety Team will finalize the incentive plan document, affirm all forms to be used, and finalize the evaluation procedures. The Owner and the OCIP Safety Team will also develop the **safety audit** and **safety citation** procedure based on the safe work practices established in the safety program including OSHA requirements and hazard recognition and correction.

The safety program minimums are directed at Pre-Project Planning and Pre-Task safety planning and initial/ongoing safety training for all tiers.

The **Safety Audit** shall be used to develop periodic **Safety Scores** during the project. Subsequent to developing the incentive program, meetings will be held to establish and implement inspection forms, corrective action responses, reporting procedures, and periodic incentive program status meetings.

The Design-Builder's qualifying **Safety Program** shall include, **at a minimum**, the following elements:

1. Written Safety Program (Reference OSHA 1926) and as defined in sub-section 107.08 of the ADOT Standard Specifications for Road and Bridge Construction, 2000 Edition.
2. Site Specific Safety Plan (All Tiers).
3. Fleet Safety Program including driver qualification, equipment inspections, truck route planning, standing/staging area, parking area, etc., for fleet vehicles for all tiers and vendor haulers.
4. Management Accountability and Support of the Safety Program.

5. Emergency Response Plan.
6. Disciplinary Action Plan.
7. Full-Time Safety Coordinator.
8. Return to Work Program.
9. Safety/New Hire Orientation Program (All Tiers).
10. Personal Protective Equipment Program (All Tiers).
11. Drug and Alcohol Program (All Tiers).
12. Employee Safety Training Initial and Ongoing through project completion.
13. Accident Reporting and Investigation Procedures.
14. Near Miss Reporting and Investigation Procedures.
15. Corrective Action Procedures including discipline procedures.
16. Daily Safety Inspections.
17. Daily Construction Equipment Inspections.
18. Daily Traffic Control Plan Updates.
19. Weekly Safety Tool Box Meetings (All Tiers).
20. Weekly Management Safety Meetings.
21. Weekly Subcontractor Safety Training Updates.
22. Weekly Incident Report Review as compiled by an Incident Review Team.
23. Monthly Review of Site Specific Safety Plan.
24. Monthly Traffic Control Plan Update.
25. Safety Certifications Reviewed and Updated, inclusive of OSHA Competent Persons for excavations, confined space entry, scaffolding, fall protection, powered industrial trucks, cranes/rigging, etc., and all flaggers certified by ATSA or equivalent national traffic safety certification.
26. Monthly Management Review/WH Reports/OSHA Log.

During the project (Part 1) the Design-Builder Incentive Program will have two required elements for each incentive period. These elements are:

- 1a. The **Safety Score** expressed in percent will be from an AUDIT of safety activities completed for each measurement period. The audit, as completed by the OCIP Safety Team, will list all of the above 26 required activities and satisfactory completion will result in a certain number of points for each activity. The total points for each item (1–26) will vary based upon the importance of the item and the number of sub-components for each item. For example, OSHA 200 record keeping has a total of 4 points available. Trenching and shoring programs, however, will have a total of 24 points available, as there will be six 4-point sub-components in the audit. The audit will consist of observations of work practices, review of all reports and meeting minutes, and all training records. See Appendix G for a sample of several items in the audit instrument.

Design-Builder Affidavits: For each incentive period, the Design-Builder shall complete a Safety Incentive Affidavit and forward it to the Owner. The signed affidavit shall be affirmed by the Design-Builder as being a true and correct description or tally of the activities completed during the measurement period. The Owner will reserve the right to audit a minimum of 25% of the Design-Builder records and documents noted in the affidavit to support the incentive process and verify that certain activities have been satisfactorily completed as affirmed. The affidavit audit will take place within 30 days after the end of the measurement period. If the affidavit is found to be in error, point totals will be adjusted on the Safety Audit and will affect the Safety Score. An example can be found in Appendix G.

- 1b. The **Number of Lost Time Incidents** that will be measured against established goals and the associated incentive values determined in accordance with this Program for each measurement period.

Favorable safety performance by the Design-Builder will result in credits/payments to the Design-Builder out of the Design-Builder Incentive Program Allowance for this contract.

At the End of the Project (Part 2), the Design-Builder Incentive Program will review the **total incurred losses**, that will be measured against established goals and the associated incentive values determined for the project incentive period.

The **Employee Safety Incentive Program (Part B)** will be developed and administered by the Design-Builder. All costs of the Employee Incentive Program will be borne by the Design-Builder. The Employee Incentive Program must meet or exceed the requirements listed herein. The Design-Builder will submit its entire incentive program to the Project Manager and OCIP Team for approval prior to beginning work.

Resources Required: The Design-Builder shall maintain the appropriate staff and resources necessary for the administration of the Safety Program (OSHA and Project Safety Programs) and the Safety Incentive Program. These resources will include the Design-Builder's Full Time Safety Coordinator and clerical support staff to assure that all project safety documents and records are maintained and available at all times for review by the Owner. The minimum administrative time needed to manage and document the Design-Builder's and all tiers activities for the Safety Incentive Program shall be 15 hours per month, with an additional 10 to 15 hours at the end of each measurement period, when and if an audit occurs. Additional time shall be furnished by the Design-Builder, as necessary.

PART A—Design-Builder Incentive Program

The Design-Builder's total available incentive value for this contract is \$1,000,000 (One Million Dollars). The amount available for Part 1 is \$750,000, and for Part 2 is \$250,000.

Part 1

During the Project the total incentive value is based on the type and amount of work being performed in a safe manner resulting from a superior safety awareness program (**Safety Score**); and upon potential savings in workers' compensation costs from the reduction in accidents, and a reduction in the Lost Time Incident Rate (LTIR) below those rates which are established for the type of work performed under the Contract.

Note: Depending on the actual insurance program design, the owner reserves the right to expand the incident description to other losses that occur on the project such as property damage to third parties and selected builder's risk losses. Each such incident may be counted the same as one (1) Lost Time Incident for the purpose of this incentive program. Actual modification to the incentive plan will be determined by a review of the insurance program by the OCIP Safety team and will be made within 30 days from the date of the Notice of Award letter.

During the project, the available incentive consists of two parts for each incentive period:

Part 1a: SAFETY SCORE expressed in %, above 50%.

Part 1b: Lost Time Incident Rate (LTIR) Below 4.2 (per 200,000 hours worked)

The Design-Builder will be entitled to a Safety Incentive Payment, if the Safety Score for that period is above 50% and the calculated LTIR during a specified time period is below the target LTIR established for this Contract.

The target Incident Rate established for this Contract is 4.2. This Incident Rate is the average of the Bureau of Labor Statistics 1998 and 1999 Occupational Injury and Illness Rates for heavy construction, excluding building.

The LTIR will be calculated in accordance with the Bureau of Labor Statistics computation method as follows:

$$LTIR = \frac{LWDC \times 200,000}{WH}$$

LWDC: Lost Work Day Cases are the number of injuries and/or illnesses, during the incentive period under review, that result in one or more workdays (consecutive or not) away from work during which the employee would have worked but could not because of the occupational injury or illness. *This number will not include those injuries that result only in medical treatment or restricted work duty.*

WH: Work Hours are the total project hours worked by Design-Builder's and Subcontractors' employees based on the certified workers' compensation payroll reports submitted as part of the OCIP program for the incentive period under review.

200,000: Hours per 100 full-time equivalent workers, working 40 hours per week, 50 weeks per year.

Incentive Payments for Part 1 during the project:

1. There will be five incentive periods, in intervals divided equally according to the percentage of the project completed. **Each incentive period will end on the last day of the month in which 20%, 40%, 60%, 80% of project completion is achieved, respectively, and at 100% completion and final project acceptance.** The maximum incentive for each period will be \$150,000. The total incentive amount for Part 1 is \$750,000.
2. During the project, at the end of each incentive period, the Safety Score, expressed in percent, will be developed based upon the total points earned in that period divided by the total points applicable.

Points will be based on scoring per the completion or compliance of all required safety activities as described herein. Points will be converted to a standard percent by dividing the total points earned by the total points available, up to 1,000, for each 6-month period. The number will be rounded to two decimal places. This value will be the **Safety Score** for that period only. The next period will begin with zero points. See Appendix G for sample pages of the **Safety Audit**. The final comprehensive document will be a customized **Safety Audit** and **Score Sheet** for the Project, completed by the OCIP Safety Team, and accepted by the Owner.

3. Bonus Points: For exemplary performance of safety awareness activities, the Owner shall be able to award additional points to the Design-Builder during each period to a maximum of 10% of the points available. The maximum possible score is 110%.
4. Low Scores: If the Safety Score is below 50% no incentive will be available for that period.

5. SAFETY SCORE EXAMPLES:

Audit Points for period are 935

Total points available are 1,000, divide for standard percent:

$$\frac{935}{1000} = 0.935 = 0.94 \text{ (rounded)} = 94\%$$

or

Audit points are 865

Total points available are 920, divide for standard percent:

$$\frac{865}{920} = 0.940 = 0.94 \text{ (rounded)} = 94\%$$

6. At the end of each incentive period, the LTIR will be calculated based on the number of lost workday cases for that period only and shall not be cumulative.

LTIR EXAMPLE:

Number of Lost Workday Cases: 4

Total Hours Worked: 400,000

$$\text{LTIR} = 4 \times \frac{200,000}{400,000} = 2.0$$

LTIRs will be rounded to the nearest tenth (one decimal place).

7. No incentives can be earned during a period with an LTIR of 4.2 or above.

Calculating the Incentive for each period. For each period in which the LTIR is below 1.0, the maximum amount for the period of \$150,000 will be used in the calculation. The denominator in the calculation is derived by establishing the range of the LTIR: the upper range of the LTIR is 4.2; the best LTIR is below 1.0. Therefore, the LTIR range available is 4.2 – 1.0 or a constant LTIR of 3.2.

1. For each period the Safety Incentive will be calculated for **Safety Scores** above 50% and LTIRs below 4.2 and above 1.0.

$$\text{Incentive} = \frac{\$150,000 \times (4.2 - \text{LTIR for period})}{3.2} \times \text{Safety Score}$$

EXAMPLE:

LTIR for the incentive period is 2.0

Safety Score is 94%:

$$\text{Incentive} = \frac{\$150,000 \times (4.2 - 2.0)}{3.2} = \$103,124 \times 0.94 = \$96,937$$

If the LTIR is less than 1.0 the formula is:

$$\text{Incentive} = \$150,000 \times \text{Safety Score}$$

2. Lost Time Incidents that have occurred prior to and including the last day of a month during which a progress milestone is achieved will be included in determining the LTIR for that period.
3. Part 1 Incentive will be calculated and paid within 45 days from the end of the incentive period.
4. If an injury resulting in permanent total disability (PTD) or a fatality occurs resulting from an occupational injury or illness, there shall be no incentive payment made during the period regardless of the safety score or the periodic LTIR.

Part 2

Six Months following the End of the Project, to allow for all known claims within the OCIP to be filed and developed, the Total Incurred Losses (TIL) shall be tallied and the Part 2 incentive payment calculated based on the TIL. The end of the project shall be at 100% completion and final acceptance of the project.

At The End of the Project: Total Incurred Loss (TIL) Incentives

1. The Design-Builder will be entitled to a final Safety Incentive Payment 6 months after the end of the project if the calculated Total Incurred Losses percentage rate for Worker's Compensation Losses at the end of the project is below the target TIL percentage rate established for this Contract. **The target TIL percentage rate established for this Contract is 4.0%.** The TIL percentage rate will be calculated as follows:

$$\text{Total Incurred Losses Percentage Rate} = \frac{\text{Project Total Incurred Losses}}{\text{Payroll}} \times 100$$

Project Total Incurred Losses: Total Incurred (Paid plus Reserves) Workers' Compensation losses for all contractors of any tier enrolled in the OCIP based on OCIP carrier loss runs valued on the last day of the month prior to Final Contract Closeout. For purposes of the incentive calculation, any single claim will be capped at \$250,000.

Payroll: Total reported workers' compensation payroll for all contractors of any tier enrolled in the OCIP as determined by monthly reports submitted to XXXX, the OCIP Administrator. All submissions must be made by the 7th day of the following month.

The TIL percentage rate will be calculated to the nearest hundredth.

Incentive Payment for Reduced TIL

Six months following completion and final acceptance of the project (100%), the Total Incurred Losses (TIL) percentage rate will be calculated. The Design-Builders final payment for work performed and release of retention is not subject to this calculation. The TIL percentage rate as calculated will be compared against the established goal of 4.0%.

No incentive will be paid for a percentage of 4.0 and above.

The total incentive of \$250,000 will be paid for a TIL of 1.0% or below.

If the TIL is between 1.0% and 4.0% of payroll, the incentive will be calculated as follows:

$$\text{Incentive} = \frac{\$250,000 \times (4.0\% - \text{TIL Percentage Rate})}{3\%}$$

EXAMPLE:

| | |
|--|--------------|
| Project Total Incurred Losses | \$550,200 |
| Total Reported Workers' Compensation Wages | \$21,000,000 |

$$\text{TIL Percentage Rate} = \frac{\$550,200}{\$21,000,000} \times 100 = 2.62\%$$

$$\text{Incentive} = \frac{\$250,000 \times (4.0\% - 2.62\%)}{3\%} = \$115,000$$

Calculating Incentive Scores and Incentive Values

The Owner will calculate the **Safety Score**, the LTIR, and the TIL and associated incentive values based upon the Design-Builder's certified workers' compensation payroll reports and the number of Lost Time Incidents and Total Incurred Losses chargeable during the period under review. The Owner will furnish the results of the calculation to the Design-Builder.

The number of Lost Time Incidents, Days Lost, and Total Hours Worked will be determined by the OCIP Administrator, XXXX USA, from certified worker's compensation payroll reports and OSHA Recordable Injury Logs (OSHA 200) which are maintained by the Design-Builder/Subcontractors as required by law. The Insurance Broker may use other available data sources to verify and/or determine these numbers.

PART B—Employee Safety Incentive Program

This safety incentive program is intended to enhance safety awareness and encourage superior safety performance through safety orientation and training and pre-task planning to prevent accidents and injuries. The program also requires that all injuries and accidents be reported to the appropriate safety representative. Prompt and responsive medical attention is essential to a work force that is healthy and safe in the long run. The State also encourages a formal return to work program. The program is not intended to create peer pressure situations that may tempt employees to work while not fully recovered or not to report incidents. The program should provide incentives for higher levels of safety consciousness for each shift and worker while fostering teamwork among individual participants.

The program shall apply to all employees who are performing direct field labor on this Project, including superintendents, foremen, and trades people.

The Employee Incentive Program will be developed and administered by the Design-Builder. The Employee Incentive Program must meet or exceed the requirements listed herein. The Design-Builder shall submit their program to the Project Manager and Owner for approval prior to beginning work.

The Employee Incentive Program shall consist of two parts:

- Part 1—Monetary incentives for crews or shifts.
- Part 2—Non-monetary incentives and recognition for individuals.

Crew/Shift Incentives:

1. The Design-Builder shall develop a program to provide monetary incentives to crews or shifts that have an exemplary safety record for a specified time period. Crews/shifts shall at a minimum meet the following requirements to receive an incentive:
 - All required safety training completed and documented
 - All payroll has been reported to XXXX by the 7th day of each following month in the specified time period
 - No Lost Time Incidents
 - No more than two safety citations during the period
 - Did not cause a recordable incident or property or equipment damage

The Design-Builder's program shall be designed to spread their incentive payout over the entire project. The incentive periods shall not be less than three months or more than six months.

2. The objective of this incentive is to recognize each crew/shift that effectively trains employees, reinforces safe behaviors, controls accidents, injuries, and damage by promoting worker to worker encouragement to work safely.

Individual Rewards:

1. The Design-Builder shall develop a program to provide non-monetary incentive to individuals who have an exemplary safety record for a specified time period. The minimum requirements to be eligible for an individual incentive shall be the following:
 - Have completed all required safety training for the period
 - No Lost Time Incidents
 - No safety citations
 - Did not cause a recordable incident or property or equipment damage

The incentive periods shall not be less than three months or more than six months. The non-monetary incentive may include free lunches, gift certificates from major department or home improvement stores, job logo hats and shirts, etc.

2. The Design-Builder shall also develop a procedure for instant recognition of individuals who go beyond their normal duties to prevent accidents or who recognize and report an unsafe condition, which had the potential of causing serious injuries. The Design-Builder shall consider movie tickets, gift certificates for CD's, or fast food redemption, etc.
3. The Design-Builder's Individual Incentive Program shall be designed to spread the incentive payouts over the entire project time.

Disciplinary Program

1. Any individual who pressures another employee not to report an accident, injury, or illness or to seek medical treatment will, at a minimum, forfeit all of their safety incentives for six months. This action will be considered an offense as described in the Safety Manual Disciplinary Program; therefore, more stringent disciplinary actions will be taken if prior offenses have been committed. If the severity of the situation warrants, the Design-Builder shall remove the individual the job site.
2. Any individual who does not report an accident, injury, or illness or does not seek medical treatment, when needed, will, at a minimum, forfeit all of their safety incentives for six months. This action will be considered an offense as described in the Safety Manual Disciplinary Program; therefore, more stringent disciplinary actions will be taken if prior offenses have been committed.

C . Owner's OCIP Statement

This Safety Incentive Program is based upon the Owner Controlled Insurance Program. If the OCIP coverage is cancelled, suspended, modified, or terminated by any party for any reason, all or part of the Design-Builder Safety Incentive Program may be canceled, modified, suspended, or terminated by the Owner. In the event of cancellation, suspension, or termination of the Design-Builder Incentive Program, no additional incentives will be calculated or paid. The Employee Safety Incentive Program, as established by the Design-Builder, shall continue in effect for the duration of the project, with all costs borne by the Design-Builder, even if the Design-Builder Incentive Program is cancelled, suspended, modified, or terminated.

APPENDIX H

OCIP Enrollment Forms

Central Artery (I-93)/Tunnel (I-90) Project, Boston, Massachusetts

Form 1 (page 1 of 3)

**CENTRAL ARTERY/TUNNEL PROJECT
REQUEST FOR CONTRACTOR'S INSURANCE INFORMATION FORM**

Date: _____

Contract Number/Description: _____

CONTRACTOR OR SUBCONTRACTOR TO BE INSURED

Contractor's Name: _____

Address: _____

Telephone: () _____ FAX: () _____

Federal Employer I.D. # _____

| | Project Representative | Insurance Rep/Risk Manager |
|------------|------------------------|----------------------------|
| Name: | _____ | _____ |
| Address: | _____ | _____ |
| | _____ | _____ |
| Telephone: | () _____ | () _____ |

Detailed description of jobsite activities:

Estimated commencement of jobsite activities: _____

Estimated cessation of jobsite activities: _____

Project Broker:

Federal Street, Suite
Telephone: (617)

Attention: CA/T Team
_____, Boston, MA
FAX: (617)

Workers' Compensation Data:

Include only the estimated jobsite payroll to be directly performed by your company (and not by your subcontractors). Use additional pages if necessary.

| <u>Classification</u> | <u>Code</u> | <u>Total Payroll for Contract Period</u> | <u>Est. Payroll 11/1/95-96</u> | <u>Est. Payroll 11/1/96-97</u> |
|-----------------------|-------------|--|--------------------------------|--------------------------------|
| _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ |

WC Exp. MOD: _____ Anniversary Rating Date: _____

Mass Workers' Compensation Bureau Risk No.: _____

Interstate Risk ID (if applicable): _____

Location of Payroll Records: _____

Contact: _____

Estimated Contract Amount: \$ _____

Present Insurance Coverage

| | |
|-----------------------|-------------------|
| Workers' Compensation | General Liability |
|-----------------------|-------------------|

Insurer: _____

Policy No.: _____

Effective Date: _____

Agent/Broker: _____

Address: _____

Account Exec.: _____

Telephone: _____

Are you currently in the Assigned Risk Pool? _____ Yes _____ No

Project Broker: _____ Attention: CA/T Team
 _____ Federal Street, Suite _____, Boston, MA 02108
 Telephone: (617) _____ FAX: (617) _____

Form 1 (page 3 of 3)

ADDITIONAL INFORMATION

If your firm anticipates that some of the work to be done under your contract will be subcontracted to others, **indicate the names and addresses of the firms which will act as your subcontractors (attach additional pages if necessary).**

Is your firm a subsidiary and/or a division of another company (yes/no)? _____

If you are a subsidiary and/or a division of another company you must complete an **ERM-14 Form** supplied in the Insurance Manual.

If you are a participant as a Joint Venture partner, you must complete an **ERM-14 Form** supplied in the Insurance Manual.

CERTIFICATION

I certify that the statements in this request for insurance are true to the best of my knowledge. I understand that my firm's Workers' Compensation loss experience incurred on this project is reported annually to the Bureau and is used to promulgate my experience modification factor.

Officer

Title

Date

THESE FORMS ARE USED TO DETERMINE A FIRM'S ELIGIBILITY FOR COVERAGE UNDER THE WRAP-UP PROGRAM. COMPLETION OF THE FORMS DOES NOT GUARANTEE ENROLLMENT IN THE PROGRAM. IF YOU ARE ELIGIBLE FOR THE PROGRAM, YOU WILL RECEIVE YOUR POLICY AND CERTIFICATE OF INSURANCE CONFIRMING YOUR ENROLLMENT.

Project Broker: _____ **Attention: CA/T Team**
 _____ **Federal Street, Suite _____, Boston, MA 0 _____**
Telephone: (617) _____ FAX: (617) _____

Southeast Corridor Project, Denver, Colorado

T-REX Project PCIP

Contractor/ Subcontractor Enrollment Form

I. GENERAL INFORMATION

Company Name: _____

Applicant is a: Corporation Partnership Individual
 WBE MBE DBE

Address: _____

Contact Name: _____ Title: _____

Phone: _____ Fax: _____

Federal Employer's Identification Number: _____

NCCI Experience Modification Identification Number: _____

Normal Workers' Compensation Anniversary Rating Date: _____

II. CONTACTS

Payroll Reporting:

Name: _____ Phone: _____ Fax: _____

Claim Reporting:

Name: _____ Phone: _____ Fax: _____

Safety Officer:

Name: _____ Phone: _____ Fax: _____

Insurance Information:

Name: _____ Phone: _____ Fax: _____

III. CONTRACT INFORMATION

Contract Number: _____ Contract Value: _____

Estimated Start Date: _____ Estimated Completion Date: _____

Awarding Contractor: _____

Type of Work: _____

Do you expect to subcontract any of your work? Yes No

Please list anticipated subcontractors:

NOTE: Subcontractor Notification Form must be sent to PCIP Administrator within one day of award to a subcontractor.

IV. OTHER CONTRACTS AND PURCHASE ORDERS

List all other open contracts or purchase orders you have for Work at the PCIP Site.

| Contract Name | Location |
|---------------|----------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

I-15 Corridor Reconstruction, Salt Lake City, Utah

INSURANCE FORM 1



OCIP/WRAP-UP ENROLLMENT

Your Company Name _____
 Owner/Contact Name _____
 Title _____

Address 1 _____
 Address 2 _____
 City _____ State _____ Zip _____
 Phone #: _____ Cellular #: _____
 Fax #: _____ Pager #: _____
 E-Mail Address: _____ Federal ID #: _____

I-15 Reconstruction Project Information

Awarding Contractor _____
 Type of work to be done _____
 Start Date _____ End Date _____
 Contract Value: \$ _____
 Estimated Payroll: \$ _____ Estimated Hours: _____
 % of Self-performed Work: _____

Amount of bid deduction given for the OCIP coverages below:

Workers' Compensation \$ _____
 General Liability: \$ _____
 Umbrella \$ _____

*This application must be completed and returned to A _____ ; at _____ , P.O. Box _____ ,
 Salt Lake City, UT _____ no later than thirty (30) days prior to starting work on the Project.*

INSURANCE FORM 1

Insurance Information

Insurance Contact Name: _____ Phone: _____

Insurance Broker or Agent Information

Company Name: _____ City: _____

Contact: _____ Phone: _____

General Liability Policy Information

Insurance Company: _____ Policy No.: _____

Policy Term: _____ Policy Limit: \$ _____ Deductible: \$ _____

 Rate per \$1000 Payroll _____ Flat Rate*Umbrella Policy Information*

Insurance Company: _____ Policy No.: _____

Policy Term: _____ Policy Limit: \$ _____ Deductible: \$ _____

 Rate per \$1000 Payroll _____ Flat Rate*Automobile Policy Information*

Insurance Company: _____ Policy No.: _____

Policy Term: _____ Policy Limit: \$ _____ Deductible: \$ _____

Workers' Compensation Policy Information

Insurance Company: _____ Policy No.: _____

Policy Term: _____ Policy Limit: \$ _____ Deductible: \$ _____

Experience Modification Factor: _____

Credit/Surcharge Before: _____ Credit/Surcharge After: _____

INSURANCE FORM 1

Workers Compensation Estimated Payrolls by Class Code

| Classification | Code | Rate/\$100 Payroll | Hours | Payroll |
|----------------|------|-----------------------|-------|---------|
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| | | Totals | | |

Fort Washington Way, Cincinnati, Ohio

FWW FORM 2

OCIP ENROLLMENT FORM

1. GENERAL INFORMATION

- a. Company Name: _____
- b. Applicant is a: Corporation Sole Proprietor
 Partnership Limited Partnership
 Limited Liability Company Other _____
- c. Address: _____
Street P.O. Box

City State Zip Code

- d. Federal Employer's Identification Number: _____

2. OCIP CONTRACT INFORMATION

- a. Contract Number: _____ b. Estimated Value: _____
- c. Effective Date: _____ d. Completion Date: _____
- e. Awarding Contractor: _____
- f. Are you currently subcontracting any work under one or more of the above contracts? Yes No
- g. Do you expect to subcontract any work under one or more of the above contracts? Yes No
- h. Estimated number of employees that will be on the project site _____

3. ON & OFF-SITE WORKERS' COMPENSATION INSURANCE INFORMATION:

- a. Contractor's Workers' Compensation Insurer: _____
- b. Policy Number: _____
- c. Policy Period From: _____ To: _____
- d. Interstate Experience Modifier: _____ Effective Date: _____
- e. Workers' Compensation Bureau Identification Number: _____
- f. Unemployment ID Number: _____
- g. Broker/Agent: _____

4. OFF-SITE GENERAL LIABILITY INSURANCE INFORMATION:

- a. Contractor's General Liability Insurer: _____
- b. Policy Number: _____
- c. Policy Period From: _____ To: _____
- d. Broker/Agent: _____

5. CONTRACTOR'S ON-SITE CONTACTS

Identify the individuals who will be responsible for the following functions at the Project Site.

Payroll Reporting: _____

| | | |
|--------|------------|----------|
| Name | Phone | |
| Title | Fax Number | |
| Street | PO. Box | |
| City | State | Zip Code |

Claim Reporting:
(Primary Contact)

| | | |
|--------|------------|----------|
| Name | Phone | |
| Title | Fax Number | |
| Street | PO. Box | |
| City | State | Zip Code |

Claim Reporting:
(Back-up Contact)

| | | |
|--------|------------|----------|
| Name | Phone | |
| Title | Fax Number | |
| Street | PO. Box | |
| City | State | Zip Code |

Safety Contact: _____

| | | |
|--------|------------|----------|
| Name | Phone | |
| Title | Fax Number | |
| Street | PO. Box | |
| City | State | Zip Code |

6. CONTRACTOR'S CONTACTS

Risk Manager:

| | | |
|--------|------------|----------|
| Name | Phone | |
| Title | Fax Number | |
| Street | PO. Box | |
| City | State | Zip Code |

Payroll Audit:

| | | |
|--------|------------|----------|
| Name | Phone | |
| Title | Fax Number | |
| Street | PO. Box | |
| City | State | Zip Code |

Workers' Comp
Claim Manager

| | | |
|--------|------------|----------|
| Name | Phone | |
| Title | Fax Number | |
| Street | PO. Box | |
| City | State | Zip Code |

General Liability
Claim Manager

| | | |
|--------|------------|----------|
| Name | Phone | |
| Title | Fax Number | |
| Street | PO. Box | |
| City | State | Zip Code |

7. GL CLAIM HANDLING PROCEDURES

Check the box for each individual who needs to receive a copy of the First Report of Loss filed on your behalf by the Hamilton County Ombudsperson.

- Site Claim Representative
- Site Safety Representative
- Corporate WC Claim Manager
- Risk Manager

Superstition Freeway (US60), Maricopa County, Arizona

**ENROLLMENT APPLICATION
OWNER CONTROLLED INSURANCE PROGRAM (OCIP)**

This form is to be completed by every Contractor and Subcontractor performing on-site work.

Note: Consult your regular workers' compensation and general liability policies and/or your insurance agent/broker before completing this form. This form is to be completed by every tier eligible subcontractor of every tier. This coverage may not extend to contract haulers, vendors, suppliers, material dealers, equipment owner/operators, or others whose sole purpose is to make deliveries or supply materials, parts or equipment to and from the project site.

BID PACKAGE NAME: _____ **BID PACKAGE #** _____

1. IDENTIFICATION

| | | | |
|---------------|-------|----------------------|-------|
| Company Name: | _____ | Federal ID#: | _____ |
| Address: | _____ | WC Risk ID#: | _____ |
| Phone/ Fax: | _____ | Rate Date: | _____ |
| | | Experience Modifier: | _____ |

Applicant is: Corporation Partnership Sole Proprietorship Joint Venture

Note: If Partnership, Sole Prop. or Joint Venture, list individuals: _____

2. CONTACT INFORMATION

| | Insurance Information | Payroll Clerk | Project Superintendent |
|-----------------|-----------------------|---------------|------------------------|
| Contact Name: | _____ | _____ | _____ |
| Phone: | _____ | _____ | _____ |
| Fax: | _____ | _____ | _____ |
| E-mail Address: | _____ | _____ | _____ |

3. CONTRACT INFORMATION

Name of Specific Job: _____ Est. Start Date: _____
 Est. Contract Value: _____ Est. Completion Date: _____

What % of the total contract do you expect to self perform?

SCOPE OF WORK

| |
|--|
| |
| |
| |

WC CODES & EST. PAYROLL

| CODE | EST. ON-SITE PAYROLL |
|------|----------------------|
| | |
| | |
| | |
| | |

4. CONTRACTOR STATUS

Who is your contract with?

| | |
|---|--|
| <input type="checkbox"/> Owner Directly | <input type="checkbox"/> General/ Prime Contractor |
| <input type="checkbox"/> Construction Manager | <input type="checkbox"/> Subcontractor |
| <input type="checkbox"/> MBE/DBE | <input type="checkbox"/> Other (specify) _____ |

STAFFING: Check all that apply

| | |
|--|------------------------------------|
| <input type="checkbox"/> Leased Labor | <input type="checkbox"/> Union |
| <input type="checkbox"/> Day Labor | <input type="checkbox"/> Non-Union |
| <input type="checkbox"/> Subcontracted Labor | |

5. SUBCONTRACTS

Will you subcontract any of your work? Yes No If Yes, list your potential subcontractors on this project.

| Subcontractor's Name | Phone Number |
|----------------------|--------------|
| | |
| | |
| | |

Enrollment Form Attached

| | |
|------------------------------|-----------------------------|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No |

| | | |
|--|----------------|-------------|
| Page 2 – Complete if Lump Sum. If T & M complete Page 2 for T & M | | PAGE 2 OF 4 |
| BID PACKAGE NAME: | BID PACKAGE #: | |

IDENTIFICATION

| | |
|-----------------|--|
| Company Name: | |
| Contact Person: | |
| Phone: | |
| Fax: | |
| E-mail Address: | |

Est. Contract Value: \$

Contract Type:

GMP
 FIXED PRICE
 TIME & MATERIALS

2. OFF-SITE WORKERS' COMPENSATION INSURER:

3. ESTIMATED PROJECT PAYROLLS AND PREMIUMS (ON-SITE PAYROLLS ONLY)

| Classification Description | Class Code | Estimated Man Hours | On-Site Payrolls | WC Rates Per \$100 | Premium Payroll/\$100 x Rate |
|-----------------------------------|------------|---------------------|------------------|--------------------|------------------------------|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| Estimated Total Premium | | | | | |
| Experience Mod. Factor | | | | | |
| =Modified Premium | | | | | |
| Other Applicable Factors (if any) | | | | | |
| Premium after factors | | | | | |
| Program Surcharges (if any) | | | | | |
| Total Workers' Comp. Cost | | | | | |

4. OFF-SITE GENERAL LIABILITY INSURER:

5. ESTIMATED PROJECT PAYROLLS AND PREMIUMS (ON-SITE PAYROLLS ONLY)

Is the rate shown a combined rate for Premises & Operations and Products/Completed Operations? Yes No

| Classification Description | Class Code | Payrolls/Contract Value (circle one) | Rate Per \$1,000 | Premium |
|---|------------|--------------------------------------|------------------|---------|
| Premises & Operations Classes: | | | | |
| | | | | |
| | | | | |
| Products/Completed Ops. Classes: | | | | |
| | | | | |
| | | | | |
| Total GL Premium | | | | |
| Umbrella/Excess Premium | | | | |
| Total Liability Premium | | | | |
| Profit & Overhead on Insurance | | | | |

Est. Subcontractors Ins. Cost (Include WC & GL)

Grand Total of All Insurance Costs (WC, GL, XS, Subcontractors) *

INSURANCE PREMIUM WORKSHEET (Cont.)

PAGE 3 OF 4

Please complete the following information for environmental coverage only if it has been deemed necessary in their bid documents.

6. ENVIRONMENTAL LIABILITY INSURER:

7. SPECIFY ENVIRONMENTAL LIMITS PURCHASED:

8. SPECIFY SELF-INSURED RETENTION or DEDUCTIBLE THAT APPLIES TO YOUR ENVIRONMENTAL LIABILITY INSURANCE: \$

| Classification Description | Class Code (if applicable) | Contract Value | Rate Per \$1,000 | Premium |
|---|----------------------------|----------------|------------------|----------------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| Total Environmental Liab. Premium | | | | <input type="text"/> |
| Umbrella/Excess Premium | | | | <input type="text"/> |
| Profit & Overhead on Insurance | | | | <input type="text"/> |
| Total Environmental Premium | | | | <input type="text"/> |

Grand Total of All Insurance Costs (WC, GL, XS, Environmental Subcontractors) *

**Use the Grand Total from previous worksheet and add it to the Total Environmental Premium to arrive at this cost.*

It is extremely important to accurately estimate exposure anticipated for this contract. The rates shown are subject to verification against your policy. Please contact your agent/broker with any questions regarding this form. INSURANCE PREMIUM WORKSHEET MUST BE SUBMITTED WITH YOUR BID PRIOR TO THE START OF WORK.

Contractor's Authorized Representative _____

Date _____

Printed Name _____

Title _____

CERTIFICATE OF INSURANCE

- The required Certificate of Insurance evidencing my off-site coverages is attached. The certificate evidences General Liability, Automobile Liability, and Workers Compensation.
- The certificate has the required Waiver of Subrogation wording shown. (A sample certificate was provided to you outlining the required wording.)
- The certificate has the required Additional Insured wording shown. (A sample certificate was provided to you outlining the required wording.)
- The certificate provides the required 30-day notice of cancellation.

SAFETY

Name of Company Safety Representative:

Address:

Phone:

Fax:

e-mail Address:

| |
|--|
| |
| |
| |
| |
| |

CERTIFICATION & ASSIGNMENT

I/We hereby certify that the cost of insurance for those coverages provided by the Owner Controlled Insurance Program has not been included in my/our firm's bid price. Further, I/we hereby assign, transfer and set over absolutely unto the Owner its right, title and interest to any and all returns of premiums, dividends, discounts, or other adjustments to an Owner Controlled Insurance Program. This assignment shall pertain to the policies as now written and as subsequently modified, rewritten or replaced in the Owner's insurance company, including any additional amount or coverages as a result thereof. I/We also assign my/our right of cancellation of all Insurance policies provided to me/us by Owner. This assignment is only valid for Insurance policies where the Owner on behalf of me/us has paid premiums. I/We agree that by signing this form that we are enrolled in the OCIP Program, Certification and Assignment applies and coverage is first effective when workers come on to the project site.

Dated at: _____ this _____ day of _____, _____

Contractor's Authorized Representative

Title

Printed Name

Any questions regarding this form should be directed to:

Marsh ADOT OCIP Administrator (TBD). (602) 337-6300

ENROLLMENT APPLICATION MUST BE SUBMITTED WITH YOUR BID PRIOR TO THE START OF WORK.

Please return completed forms to:

Marsh
Attn: Marsh USA Inc.
OCIP Administrator
3131 E. Camelback Rd., Suite 400
Phoenix, AZ 85016
or via fax at: (602) 337-6399

| FOR INTERNAL USE ONLY | |
|-----------------------------|--|
| Effective Date of Coverage: | |
| Policy No.: | |
| Contractor No.: | |

APPENDIX I

Payroll Reporting Forms

Southeast Corridor Project, Denver, Colorado

Payroll Report Page 1

T-REX Project PCIP Payroll Reporting Form

From: _____ No payroll for this month
Contractor Name

To: **Mr. A n, SECC Compliance Officer**
Phone: (303) 3 0
Fax: (7 3) 3-4
E-Mail: .e.ar. i@se im.com Contract Name/#: _____

Subject: PCIP Jobsite Payroll Report Reporting Period Ending: _____

Do you lease employees? Yes No
If yes, does payroll include leased employees? Yes No

| WC Code | WC Description | Straight Time | | Overtime* | | Number of Employees |
|----------------|----------------|---------------|---------|-----------|----------|---------------------|
| | | Hours | Payroll | Hours | Payroll* | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| TOTALS: | | | | | | |

Payroll verified by: _____
Controller or Company Officer

Date: _____ Is this your last report? Yes No
(If yes, please complete Notice of Completion Form and fax to PCIP Administrator.)

Payroll may be audited by Lockton Companies and/or the insurance company.

Please send form by 10th day after end of report period to:

Mr. A n, SECC Compliance Officer
7200 S. Alton Way
Englewood, CO 80112-2201

Helpful hint: Send a copy to your own insurance carrier/agent to advise that this PCIP payroll should not be included in your regular workers' compensation policy audit (see sample letter.)

* Earnings for overtime should be included only at the normal hourly rate.
(Do *not* include extra wages paid for overtime hours.)

This form must be completed each reporting period by contractor and any tiers of subcontractor(s) on the jobsite for each contract awarded, including zero payroll, if applicable, until completion of the work under each contract. The completed form is to be sent to SECC by the tenth day following the end of the reporting period, or payments to contractor will be withheld. The contractor will be responsible for enforcing the submission of this form by its subcontractor(s). Contractors' and/or subcontractors' computer-generated payroll report is acceptable if similar information is provided.

Payroll Reporting Form Instructions

1. **Reporting Period Ending:** Enter the last day of the reporting period for which this report is supplying payroll information.
2. **Name of Contractor:** Enter your firm's name.
3. **Workers' Compensation Class Code:** List your Workers' Compensation class code. This information can be obtained from your Workers' Compensation policy, your insurance agent, or the information you supplied on the Insurance Calculation Worksheet.
4. **Man-hours and Payroll:** List man-hours and payroll for each class code. List straight time and overtime. List one cumulative total for all employees who fall under each class code. There is no need to break out figures on a per employee basis.
5. **Sign and Date Form.**

Definitions

- Audit** All payroll records related to this PCIP are subject to physical audit by an auditor representing the "Insurer." Audits will be scheduled shortly after the anniversary date of the PCIP Program to verify the prior year's reported payroll. The "Insurer" reserves the right to audit subcontractors' payroll records at any time, subject to one week's written notice of such audit.
- Certified Payroll** PCIP payroll reports must reflect certified payroll. Signature verification by your Controller or another company officer is adequate to certify your payroll report.
- Class Codes** Subcontractor is responsible for assigning Workers' Compensation codes for each of its employees. You should use the same classifications that would have applied under your current Workers' Compensation policy. Any questions regarding classification should be directed to the PCIP Administrator.
- Multiple Contracts** If a subcontractor has multiple contracts, that subcontractor shall complete a separate Monthly Payroll Report for each contract.
- PCIP Payroll** Reported payroll shall include the total payroll and hours split out by Workers' Compensation Class Code for all employees working on the jobsite based on the NCCI rules for payroll inclusion.
- Overtime Payroll** Earnings for any overtime work should be reported at the straight-time rate, overtime hours multiplied by straight-time hourly wage. Do not include the premium portion of the wage paid to the employee. Overtime means those hours in excess of 8 hours worked each day, 40 hours in any week, or work on Saturdays, Sundays, or holidays, but only when there is an increase in the hourly rate to work such hours.

| SAMPLE CALCULATION | | | | |
|--------------------|--------------|-----------|---------------|---------------|
| | Hours | Wage Rate | Payroll | PCIP Payroll |
| Straight Time | 40.00 | \$10/hr | \$ 400 | \$ 400 |
| Overtime | 20.00 | \$15/hr. | \$ 300 | \$ 200 |
| TOTAL | 60.00 | | \$ 700 | \$ 600 |

Records Retention Payroll records (related to jobsite work) for employees covered by the PCIP should be maintained separately from all other contractor payroll records. These records shall be retained for three years following completion of your work under each subcontract with CDOT/RTD.

Report Due Date Regardless of your accounting period, payroll reports (PCIP Payroll Report or equivalent) are due by the tenth day following the end of the reporting period. These reports should be faxed to:

Mr. [Name], Compliance Officer
 SECC
 1 S. [Street Name]
 [City], CO [Zip Code]

Phone: (303) 741-8888 Fax: (719) 441-2333 E-Mail: [Email Address]

Failure to provide reports by the due date may cause your payments to be delayed.

Please Note: All contractors must report man-hours and payroll. This includes time and materials and lump sum contractors.

**NEW MEXICO 44 PROJECT
PROJECT SITE PAYROLL REPORTING FORM**

Contractor: _____ Location Code #: _____
 Address: _____ Phone: _____ Fax: _____
 Awarding Contractor: _____ Prime Contractor: _____

Please indicate Project Site payroll and forward within two weeks following end of prior month.
 Please retain a copy for your files.

MONTH ENDING _____

| <i>Project Site Payroll/Receipts Only</i> <i>Attach additional pages if necessary</i> | | | | |
|--|--------------------------------|-------------------------|---------------------|--------------------|
| <i>Classification</i> | <i>W.C. Code G.L. Code</i> | <i>Payroll/Receipts</i> | <i>Manhours Reg</i> | <i>Manhours OT</i> |
| 1. WC | | | | |
| 1. GL | | | | |
| 2. WC | | | | |
| 2. GL | | | | |
| 3. WC | | | | |
| 3. GL | | | | |
| 4. WC | | | | |
| 4. GL | | | | |
| 5. WC | | | | |
| 5. GL | | | | |
| <i>Totals:</i> | | <i>\$</i> | | |

- Earnings for overtime should be included only at straight hourly rates. Do Not Include the Extra Wages Paid for Overtime Hours.
- Overtime means those hours in excess of 8 hours worked each day, 40 hours in any week or on Saturdays, Sundays, or holidays, but only when there is an increase in the hourly rate to work such hours.
- Hours should be shown on overtime.

The above is a true and complete statement of the entire remuneration of services rendered by employees of the company shown above.

Signature: _____

Title: _____ Date _____, 19__

Send this form to: _____ The Prime Contractor will fax to _____ at () _____ and forward the original to _____ es who will forward original to _____ s also.

Anchorage International Airport Terminal Redevelopment Project, Anchorage, Alaska



INTERIM AUDIT REPORT
WORKERS COMPENSATION

Named Insured:

Producer:

Policy Number:

Policy Period:

Reporting Period:

This form is due to your broker with payment by the 10th of each month.

SEE REVERSE FOR REPORTING GUIDELINES

SECTION I - Enter the titles, names, duties and gross payroll paid during the reporting period for officers, partners or sole proprietors. Please include this payroll in Section II also.

| TITLE | NAME | SPECIFIC DUTIES PERFORMED | SALARY |
|-------|------|---------------------------|--------|
| | | | |
| | | | |
| | | | |

SECTION II - Enter the total gross payroll for all employees by classification. If any work was performed but not described by a classification listed, give a description of the work done and list payroll separately. Premium Subtotal should be multiplied by the modifying factors, i.e. Experience Modification, Premium Discount. If you have no payroll to report, indicate 'NONE' and return the form.

| CLASS CODE | CLASSIFICATION DESCRIPTION | PAYROLL | RATE PER \$100 | PREMIUM |
|------------|------------------------------|---------|----------------|---------|
| | Alaska - State Act | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | Premium Subtotal | | | |
| 9816 | Employers Liability | **** | | |
| 9898 | Experience Modification | **** | | |
| 9887 | Schedule Modification | **** | | |
| | ****Total Remittance Due**** | **** | | |

Print Name/Title

Date

Phone & Fax

TO BE COMPLETED BY PRODUCER

The total remittance due hereunder has been received from the insured.

Signature

Date

REPORTING GUIDELINES

PAYROLL REPORTING**EMPLOYEES (Workers Compensation and General Liability)**

PAYROLL is the total gross wages paid by you to your employees. **INCLUDE** the following as wages: hourly wages; salaried wages; commissions; bonuses; vacation pay; holiday pay; sick leave pay; rental value of living accommodations provided for employees; payment for piece work; profit-sharing payments; payment for tools provided by employees and used on the job and value of meals provided to employees (except in California).

OVERTIME is included also but at the straight time rate. When you have paid overtime at time and a half, **INCLUDE** only 2/3 of the overtime. If you pay at double time, **INCLUDE** only half of the overtime. Exclusion of overtime does not apply to any Stevedoring classification with a code number followed by the letter F, except in Texas. **EXCLUDE** the following: Tips received by employees; dismissal or severance pay and fringe portion of Davis Bacon wages (in Alaska only).

SUBCONTRACTORS (Workers Compensation only)

If you have hired subcontractors to do any work, you should obtain a Certificate of Insurance from them showing that they carry their own workers compensation insurance. If they do not carry their own workers compensation insurance, they are treated as your employees and you are responsible for their coverage. **INCLUDE** all uninsured subcontractors with your payroll in Section II in the appropriate class. If you have obtained a certificate you do not need to include them.

SUBCONTRACTORS (General Liability only)

If you have hired subcontractors to do any work, you should obtain a Certificate of Insurance from them showing that they carry their own general liability insurance. If they do not carry their own general liability insurance, they are treated as your employees and you are responsible for their coverage. **INCLUDE** all uninsured subcontractors with your payroll in Section II in the appropriate class. If they **DO** have general liability insurance, the total **COST** of all work sublet, including labor, materials and equipment furnished for use must be reported.

EXECUTIVE OFFICERS, PARTNERS, SOLE PROPRIETORS (Workers Compensation only)

All E/O's are covered **UNLESS** they have obtained a waiver. Partners and sole proprietors must elect to be covered. If they **HAVE**, they are to be **INCLUDED**. Refer to the table below for the amounts to report.

EXECUTIVE OFFICERS, PARTNERS, SOLE PROPRIETORS (General Liability only)

Payroll for all E/O's, partners, and sole proprietors must be reported **UNLESS** they are strictly clerical, salespersons or drivers. Refer to the table below for the amounts to report.

GENERAL LIABILITY ONLY

Payroll for the following classifications shall be **EXCLUDED**: Clerical office employees; outside sales; drivers; and aircraft operations.

GROSS SALES shall be reported as the gross receipts received by you or others trading under your name for: ALL goods or products, sold or distributed; operations performed during the reporting period; and rentals.

INCLUDE: Freight allowance to customers; total sales of consigned goods and warehouse receipts; trade or cash discounts; and bad debts.

EXCLUDE: Sales or excise taxes; credits for repossessed merchandise and products returned; allowances for damaged or spoiled goods; finance charges for items sold on installments; freight charges on sales if freight is charged as a separate item on customers invoice.

| State | Work Comp E/O Max. | Work Comp E/O Min. | Work Comp Ptnrs/Sole Prop. | General Liability E/O/Ptnrs/Sole Prop. |
|-------------|--------------------|--------------------|----------------------------|---|
| Alabama | \$2,000 per week | \$200 per week | \$35,000 per year | \$18,300 per year |
| Alaska | \$1,200 per week | \$300 per week | \$20,100 per year | \$36,400 per year |
| California | \$1,325 per week | \$475 per week | \$24,700 per year | \$33,600 per year |
| Louisiana | \$ 750 per week | \$100 per week | \$20,600 per year | \$15,600 per year |
| Mississippi | \$ 400 per week | \$100 per week | \$12,000 per year | \$5,200-26,000 - E/O \$10,400 - Ptnr/SP |
| Texas | \$1,200 per week | \$150 per week | \$34,000 per year | \$31,900 per year |
| Washington | \$1,100 per week | \$300 per week | N/A | \$17,800 per year |
| Oregon | \$1,900 per week | \$300 per week | \$20,800 per year | \$31,100 per year |

For a complete explanation of these rules, call your broker.

Commonwealth of Pennsylvania Department of Transportation**PROJECT SITE PAYROLL REPORTING FORM****Contractor:** _____ **Location Code #:** _____**Address:** _____ **Phone:** _____ **Fax:** _____

Awarding Contractor: _____ Prime Contractor: _____

*Please indicate Project Site payroll and forward within two weeks following end of prior month. Please retain a copy for your files.***MONTH ENDING** _____**Project Site Payroll/Receipts Only****Attach additional pages if necessary****Classification****W.C. Code****G.L. Code****Payroll/Receipts****Man-hours Reg.***Man-hours OT*

1. WC

1. GL

2. WC

2. GL

3. WC

3. GL

4. WC

4. GL

5. WC

5. GL

TOTALS:

\$

\$

\$

WC:

- *Earnings for overtime should be included only at straight hourly rates. Do Not Include the Extra Wages Paid for Overtime Hours.*
- *Overtime means those hours in excess of 8 hours worked each day, 40 hours in any week or on Saturdays, Sundays, or holidays, but only when there is an increase in the hourly rate to work such hours.*
- *Hours should be shown on overtime.*

GL:

- *If reporting GL based on payroll, only show GL code.*
- *If reporting GL based on sales/receipts, show GL code and sales/receipts amount.*

The above is a true and complete statement of the entire remuneration of services rendered by employees of the company shown above.

Signature: _____

Title: _____ *Date* _____

Send this Form to: Xxx Xxx of Pennsylvania, Inc., Attention: Xxx Xxx.

THE NATIONAL ACADEMIES

Advisers to the Nation on Science, Engineering, and Medicine

The **National Academy of Sciences** is a private, nonprofit, self-perpetuating society of distinguished scholars engaged in scientific and engineering research, dedicated to the furtherance of science and technology and to their use for the general welfare. On the authority of the charter granted to it by the Congress in 1863, the Academy has a mandate that requires it to advise the federal government on scientific and technical matters. Dr. Bruce M. Alberts is president of the National Academy of Sciences.

The **National Academy of Engineering** was established in 1964, under the charter of the National Academy of Sciences, as a parallel organization of outstanding engineers. It is autonomous in its administration and in the selection of its members, sharing with the National Academy of Sciences the responsibility for advising the federal government. The National Academy of Engineering also sponsors engineering programs aimed at meeting national needs, encourages education and research, and recognizes the superior achievements of engineers. Dr. William A. Wulf is president of the National Academy of Engineering.

The **Institute of Medicine** was established in 1970 by the National Academy of Sciences to secure the services of eminent members of appropriate professions in the examination of policy matters pertaining to the health of the public. The Institute acts under the responsibility given to the National Academy of Sciences by its congressional charter to be an adviser to the federal government and, on its own initiative, to identify issues of medical care, research, and education. Dr. Harvey V. Fineberg is president of the Institute of Medicine.

The **National Research Council** was organized by the National Academy of Sciences in 1916 to associate the broad community of science and technology with the Academy's purposes of furthering knowledge and advising the federal government. Functioning in accordance with general policies determined by the Academy, the Council has become the principal operating agency of both the National Academy of Sciences and the National Academy of Engineering in providing services to the government, the public, and the scientific and engineering communities. The Council is administered jointly by both Academies and the Institute of Medicine. Dr. Bruce M. Alberts and Dr. William A. Wulf are chair and vice chair, respectively, of the National Research Council.

The **Transportation Research Board** is a division of the National Research Council, which serves the National Academy of Sciences and the National Academy of Engineering. The Board's mission is to promote innovation and progress in transportation by stimulating and conducting research, facilitating the dissemination of information, and encouraging the implementation of research results. The Board's varied activities annually engage more than 4,000 engineers, scientists, and other transportation researchers and practitioners from the public and private sectors and academia, all of whom contribute their expertise in the public interest. The program is supported by state transportation departments, federal agencies including the component administrations of the U.S. Department of Transportation, and other organizations and individuals interested in the development of transportation. www.TRB.org

www.national-academies.org