

Owner Controlled Insurance Programs for School District Construction Projects *By Eric R. Dill*

As C.A.S.H. Chair Eric J. Hall mentioned in last month's letter, Owner Controlled Insurance Programs (OCIP) can help districts lower the overall cost of a construction project. The district purchases general liability, workers' comp, and builder's risk insurance on behalf of the contractors and subcontractors who are then required to remove the cost of their insurance and associated overhead and profit from their bids. Savings are achieved by purchasing insurance at lower rates than those of most contractors and by eliminating contractor mark-up on insurance costs.

Districts can compare contractor insurance costs to OCIP premiums during the bid phase by making the bidder's insurance and associated OH&P either an additive or deductive alternate. If the numbers are close, I would recommend going with the OCIP for the following reasons:

- **Higher limits and broader coverage:** In our OCIP, all contractors are covered up to \$35 million per occurrence with the broadest coverage available.
- **Term:** Our OCIP has a "tail-end" term often years past project completion which means we will have a highly-rated, California-admitted carrier, with limits and broad coverage in place during the time any construction defects are discovered instead of a series of contractor-provided carriers, if any.
- **Uniform coverage among all contractors:** There are no exclusions, insufficient or depleted limits, non-admitted, or insolvent carriers to complicate claim recoveries.
- **No "finger pointing" saves time and money:** One uniform policy covering the district and all contractors on a project can

eliminate years of battling between contractors, carriers, attorneys, and the district trying to place the blame on each other in the event of a construction defect claim, third-party liability claim, or workers' comp subrogation between contractors.


- **Contract administration of insurance is simplified:** No time is spent chasing down certificates of insurance and additional insured endorsements, verifying limits & coverage, or tracking expiration/cancellation dates.
- **Potential for a premium rebate:** At the end of the project, the premium is audited against actual payrolls and loss history. Assuming the project enjoyed a favorable loss experience and that actual payrolls are not far off from estimates, a portion of the premium may be refunded to the district.

The potential risks include:

- If contractor insurance is an additive alternate, bidders with excessive losses who pay higher insurance premiums are given equal standing against other bidders, who may have a better track record in the areas of employee safety or construction defects. Since these contractors might delay the project due to accidents or affect your potential rebate, consider including language in the bid which will allow you to reject bidders with unusually high claim experience.
- If contractor insurance is a deductive alternate, savings might not be maximized if the low bidder's insurance costs are lower than other contractors who may be close to the winning base bid. Districts might invite bid challenges if they

award to a contractor who is not the presumptive low bidder.

- Change orders, contractors who estimated their payrolls unreasonably low, or an increase in local labor costs will cause a premium increase when it is audited at the end of the project. A favorable claims experience may offset the additional premium owed to the carrier, but a high loss ratio may result in a net premium increase.
- Contractors might be less vigilant with their safety and quality assurance programs if they think another entity is responsible for their claims—make sure your contractors know their claim experience will follow them, even though the OCIP is providing coverage. Also, make sure your broker or carrier will provide frequent, meaningful on-site loss control inspections and resolve issues with your general contractor or construction manager as they arise.
- Tail-end coverage of less than ten years may cause an uninsured gap during the construction defects statute of limitations period. Broker fees and administrative costs on smaller projects may outweigh potential savings.

School districts should consider taking advantage of the savings generated by Owner Controlled Insurance Programs. By lowering up-front costs and reinvesting premium rebates back into capital funds, your district can demonstrate its commitment to prudent spending of state and local money to the taxpayers and voters who narrowly passed Proposition 55 and deliver what they deserve most—new and better school facilities. 

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