City and County of San Francisco

Owner Controlled Insurance Program (OCIP) Guidelines and Recommendations

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1

Executive Summary

Purpose and Composition of the OCIP Working Group

The City and County of San Francisco's (CCSF or City) Risk Management Office and Controller's Office convened an Owner Controlled Insurance Program (OCIP) Working Group from September through December of 2002. The Working Group was composed of fourteen staff from the following six departments: Risk Management Office, City Attorney's Office, Controller's Office, Municipal Railway (MUNI), Public Utilities Commission (PUC), and the San Francisco International Airport (Airport).

The purpose of the Working Group was to evaluate OCIPs from a citywide perspective, to discuss how City departments have administered OCIPs in the past, to research best practices, and to provide recommendations for the implementation of existing and future OCIPs. In the past, both MUNI and the Airport had OCIPs for the MUNI Metro Turnback Project and the Airport Master plan. Currently, MUNI has an OCIP for the Third Street Light Rail Transit Project and PUC has an OCIP for 42 distinct projects.

The Results of the Working Group's Effort

The result of the Working Group's internal debates, analyses, interviews with other jurisdictions implementing OCIPs, and best practice research is provided in this report, which includes 64 recommendations. The recommendations provided in this report range from high-level policy issues such as OCIP program oversight, to more technical and detailed matters such as appropriate bid and contract language.

Specifically, the Working Group's recommendations address several key areas including (A) General Policy, (B) Feasibility Analysis, Bid/Request for Proposal (RFP) and Contract Language, (C) Insurance Program Design, (D) Safety and Loss Control, (E) Administration, (F) Claims Management and Adjudication and (G) the CCSF Legal Environment.

A Brief Summary of Key Recommendations

Given the broad range of issues the Working Group tackled, it is difficult to provide a brief summary of all 64 recommendations. Therefore, Section 2 of this report provides a list of all the recommendations under each of the key areas. However, there are some recommendations, because of their relative importance that are worth noting at this time.

The Working Group's review of the City's past and existing OCIPs resulted in the recommendation for the creation of a Construction Risk Management Committee (Committee) chaired by the Risk Manager and composed of representatives from the City Attorney's Office, the Controller's Office, the Mayor's Office of Finance and Legislative Affairs, and the Department of Public Works. On a semi-annual basis, departments that are implementing OCIPs would be required to report to the

Committee.[1] In addition, other recommendations related to greater oversight and monitoring from the City's Risk Management Office and the City Attorney's Office, including periodic claims review meetings.[2] Moreover, the Risk Management Office is to be automatically notified of major claims and when aggregate deductibles hit key thresholds.[3]

Following the Working Group's review of current OCIP broker and insurance agreements, the Working Group recommends that the broker RFP specify that claims protocols will be negotiated with the insurance carrier *upfront*, before any contract is executed, so that the City's Charter and ordinance requirements are followed, and that duplication of effort by the City and the insurance company is avoided.[4]

In terms of construction contracts, the Working Group recommends that the contractor's Experience Modifier (EMR) should be used to pre-qualify contractors, because EMR gauges safety performance and experience. In the case of joint ventures, each partner's EMR should be used in proportion to its participation in the joint venture.[5] The Working Group further recommends that incentive/disincentive language be added to construction contracts to hold contractors accountable for their safety programs.[6]

In evaluating alternative insurance program designs, the Working Group recommends that guaranteed cost coverage be considered for OCIPs because they not only limit the risk of higher losses, they also provide upfront cost certainty.[7]

Specific to safety and loss control, the Working Group recommends that OCIPs model their safety program after the PUC safety program.[8] In addition, the Working Group recommends pre-employment and post-accident drug and alcohol testing for contractors.[9]

The Working Group's review of the City's Legal Environment resulted in a key finding that the City has a direct service contract with the insurance companies with which the OCIP program insurance is placed. As a result, both the broker and the insurers are contractors for the purpose of San Francisco Administrative Code Chapter 12B, which includes the Equal Benefits Ordinance.[10]

Conclusion

After an intensive three-month study of OCIPs, the Working Group believes that there are a number of compelling reasons why the City would consider implementing an OCIP for large construction projects. OCIPs can ensure broader insurance coverages, dedicate policy limits solely to the City's projects, and extend coverage terms (sometimes 10 years) after project completion. Moreover, because the City is responsible for the safety of all parties on the project, the City can establish a single safety program for all contractors and subcontractors, thereby establishing a uniform standard. The City also works with a primary insurance broker, so insurance project management is streamlined by having a number of insurance functions such as loss control, safety management, and record

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[1] Recommendation #2
[2] Recommendation #46 and #57
[3] Recommendation #43
[4] Recommendation #21 and 63
[5] Recommendation #25
[6] Recommendation #24
[7] Recommendation #32
[8] Recommendation #37
[9] Recommendation #40
[10] Recommendation #62

keeping under a single entity. This makes monitoring and oversight easier for the City. Lastly, although it is unclear that the City's experience yielded cost savings, other jurisdictions reported cost savings of 1 to 2 percent of total project costs by the bulk purchase of insurance coverage and aggressive loss control programs.

In conclusion, one of the most important lessons learned during this exercise is that OCIPs are complex risk management tools and the City must not reinvent the wheel every time a department has a major construction project. The recommendations made in this report are intended to effectively manage the City's capital project risk exposure and assign program responsibility. A Construction Risk Management Committee must be created to ensure that current and future OCIPs are properly planned and implemented so that the City's tax dollars are prudently spent.

Organization of this Report

The report is organized as follows:

Section 1: Executive Summary—provides a high level summary of the purpose of the Working Group and major recommendations.

Section 2: Summary of Working Group Recommendations—summarizes the 64 recommendations developed by the Working Group.

Section 3: Introduction—provides the purpose and methodology of the Working Group, gives an overview of the primary and secondary research, and provides a framework for analyzing risk management issues.

Section 4: Implementation Plan and Suggested Tools—addresses several key areas including (A) General Policy Recommendations, (B) Feasibility Analysis, Bid/RFP and Contract Language, (C) Insurance Program Design, (D) Safety and Loss Control, (E) Administration, (F) Claims Management and Adjudication and (G) the CCSF Legal Environment.

Section 5: Conclusion—offers the Working Group's final thoughts on OCIP.

Section 6: Appendices—includes key documents such as templates for RFP and contract language for brokerage services and construction contracts, template for a safety and loss control program, and sample OCIP reports such as feasibility study and project closeout report. In addition, a Glossary of Terms can also be found in Appendix I.

Section

2

Summary of Working Group Recommendations

A. General Policy Recommendations

1) The Risk Management Office will oversee all OCIPs and may administer future OCIPs to ensure economies of scale, coordination of efforts, expertise and knowledge, and greater centralization and management of OCIPs.

2) A Construction Risk Management Committee (Committee) should be created. The Committee should be chaired by the Risk Manager and other members would include representatives from the City Attorney's Office, the Controller's Office, the Mayor's Office of Finance and Legislative Affairs, and a construction engineer from the Department of Public Works.

3) The Committee should be charged with the following duties: (1) to semiannually review and monitor the performance of all existing OCIPs, (2) to review and authorize expansions to existing OCIPs, and (3) to review and authorize all future OCIPs.

B. Feasibility Analysis, Bid/RFP and Contract Language

Feasibility

4) A feasibility study will be completed for any new OCIP or to expand any existing OCIPs.

5) With the approval of the Construction Risk Management Committee, a feasibility study will be completed either by City employees who have OCIP expertise or an RFP will be issued to find an independent, expert consultant who does not have any affiliation with insurance carriers and/or brokers.

6) The responsible department will be actively involved in the planning and implementation of the feasibility study.

7) The feasibility study will identify the risks involved in the project.

8) The feasibility study will survey the market and identify what coverages should be included.

9) The feasibility study will identify the pros and cons of conventional/Contractor Controlled Insurance Program/Owner Controlled Insurance Program coverages, and any other program alternatives as applicable.

10) The feasibility study will estimate the total costs, including premiums and administration, under conventional program, Contractor Controlled Insurance Program, Owner Controlled Insurance Program, and any other program alternatives as applicable.

11) The feasibility study will compare the administrative costs to estimated Consolidated Insurance Program savings and to total construction costs.

12) The feasibility study will be used as a monitoring tool throughout the OCIP administration process, realizing that change-orders must be factored in.

RFP and Contract for Brokerage Services

13) An RFP will be issued to obtain brokerage services.

14) The RFP should require that brokers fees be included in the response and that this be a factor in the evaluation process. The RFP should also require that the Broker secure premium indicators from underwriters to determine market pricing with the understanding that the premium indicators may not be binding.

15) The RFP should include the brokerage services contract with more details specified in the scope of work.

16) The contract should include all CCSF contracting requirements and that brokers can clearly articulate these requirements to the insurance carriers.

17) The contract should encompass City's processes and procedures upfront so that roles and responsibilities can be more clearly assigned to brokers and/or carriers. For example, claims management and protocols should be stated upfront in future RFPs and contracts.

18) Departments should use City-approved master RFP templates, with modifications incorporating Department- and project-specific requirements.

19) Departments should use City-approved master contract templates, with modifications incorporating Department- and project-specific requirements.

20) The OCIP Broker Report should include the calculation of losses per man-hour similar to the approach taken by BART, and include any other relevant metrics determined by the Department.

21) The broker's RFP should specify that claims protocols will be negotiated with the insurance carrier upfront, before any contract is executed, so that the City's Charter and ordinance requirements are followed, and that duplication of effort by the City and the insurance company is avoided.

22) The insurance carrier and/or broker will provide (1) PPOs/Pharmaceutical Network—extends to those covered by OCIP, (2) Physician review, (3) Medical bill review, and (4) Litigation review.

Bid and Contract for Contractors

23) The contract specifications should include a safety program modeled after the PUC program. The program will identify the minimum qualifications that contractors must meet and relates specifically to the City's operations. The three components of the PUC program are: (1) the Insurance Requirements (Document 00805), (2) the Safety Program and Procedures (Section 00814), and (3) the Insurance Manual. These documents are included in the Appendix and are templates that may be modified in the future incorporating Department- and project-specific requirements.

24) Depending on project funding, incentive/disincentive language should be added to construction contracts. The amount should be significant enough to effect change if contractor's safety programs are inadequate and should reflect contract size.

25) Depending on project funding, a contractor's Experience Modifier (EMR) should be used to pre-qualify contractors, because EMR gauges safety performance and experience. In the case of joint ventures, each partner's EMR will be used in proportion to its participation in the joint venture.

26) Contractors should bid with insurance costs in future construction projects.

27) Under an OCIP, contracts should include language clarifying that there is no financial recourse for contractors' private attorneys.

C. Insurance Program Design

Insurance Program Design Alternatives

28) For any proposed capital project potentially under an OCIP, a comparative analysis of all insurance program alternatives, along with the funding strategies, should be undertaken. This analysis should at a minimum include consideration of cost, control, coverage, safety program compliance and efficacy, and claims management.

29) In addition to reading the materials included in this report and its appendices, Gary Bird's The Wrap-Up Guide is required reading for any insurance program/risk manager – regardless of the insurance program being undertaken (but especially for those considering CCIPs and OCIPs).

30) If a risk assessment was not performed during the feasibility study, one should be completed during Insurance Program design and prior to going to the insurance market.

Funding Strategies – Guaranteed Cost vs. Loss Sensitive

31) If a risk assessment was not performed during the feasibility study, one should be completed during Insurance Program design and prior to going to the insurance market.

32) Guaranteed cost coverage should be considered for OCIPs because they not only limit the risk of higher losses, they also provide upfront cost certainty. Market

conditions must also be considered during this analysis, as well as the potential impact of insurance program growth due to project expansion or change orders.

33) Loss sensitive funding strategies should generally not be used for coverage other than worker's compensation due to the relative infrequency and high severity potential of the claims.

Coverage Terms

34) OCIP coverage terms should seek to include Extended Construction Completed Operations Coverage of up to the statutory limits.

35) All aspects of the insurance arrangement should be negotiated upfront, including coverages, funding strategies, payment terms and agreements, etc.

Alignment of Interests

36) Interests should be aligned and operationalized by including economic incentives or disincentives. Pass-through deductibles per occurrence should be considered, as well as other alignment strategies.

D. Safety and Loss Control

37) A safety program modeled after the PUC program should be implemented for OCIP projects, not a safety manual.

38) Departments should provide safety training to all City project personnel.

39) Depending on the size of the construction project, the department should determine the appropriate number of safety personnel and whether they should be City employees or non-City employees. Note: This administrative cost may diminish program savings, but where loss-sensitive funding is used, it becomes increasingly important.

40) Pre-employment, random and post accident drug and alcohol testing should be mandated for contractors to the extent allowed by law.

41) The safety reports included in the OCIP Monthly Broker Reports should be shared with Management on a monthly basis.

42) Safety reports included in OCIP Monthly Broker Reports should be sent to the City's Risk Management Office on a quarterly basis, as well as summarized semi-annually for the Committee.

43) The City's Risk Management Office should be notified when the aggregate deductible is reached (i.e., at 25%, at 50%, at 60%, at 70%, at 80%, at 90%, at 100%, and at project closeout).

44) The City's Risk Management Office and City Attorney's Office should be notified when there are major claims.

45) The City's Risk Management Office should make recommendations to department management about risks and liabilities.

46) The City's Risk Management Office should take appropriate actions based on risks and estimated or potential liabilities. For example, the Risk Management Office may conduct investigations and recommend action to Department management. Or the Risk Management Office may consult the City Attorney's Office and the Mayor's Office or seek an opinion from the appropriate state regulatory agency.

E. Administration

47) The administrative process detailed in Figure B on pages 40 through 42 should be adopted by all current and future OCIPs.

48) The contract should include language that gives the safety representative authority to require that identified work not proceed until the safety representative is present to observe.

49) OCIP and safety personnel should be given the authority to enforce the safety program.

F. Claims Management and Adjudication

General Liability Protocols

50) The draft General Liability Claims Protocol provided in the Appendix of this report should be adopted with the understanding that it will change based on negotiations with the insurance carrier. Also that for future OCIPs, these protocols will be drafted from the beginning, so the contents may change.

51) Should an injured worker file a worker's compensation claim and a third party liability claim, the City Attorney's Office must be notified to trigger the General Liability protocols.

Worker's Compensation Protocols

Legal Environment

52) The City department and insurance carrier will coordinate the handling of OCIP Worker's Compensation claims, therefore, the City Attorney's Office will be involved only on a periodic or quarterly basis to review claims and provide expertise as needed.

53) The City Attorney's Office or the City's Risk Management Office conduct periodic training in Worker's Compensation laws and other laws, to assure City departments are aware of changes in the legal environment.

Administrative—Penalties/Indemnifications

54) The insurance carrier will indemnify the City from all penalties and consequences should the insurance carrier not meet statutory guidelines such as, but not limited to, failing to deny timely a disputed claim, failing to pay benefits or not authorizing appropriate treatment.

55) Serious and Willful Misconduct—the contractor knew or should have known about a dangerous condition. If the Worker's Compensation Appeals Board determines that the contractor knew or should have known about the dangerous condition, the City will not pay for the contractor's serious and willful claims.

56) Discrimination-Labor Code section 132A—retaliation or discrimination occurs after the worker's compensation claim is filed. If the Worker's Compensation Appeals Board determines that the contractor discriminated, the City will not pay.

Administrative—Periodic Claims Review

57) Periodic claims reviews will include the City Attorney's Office, City's Risk Management Office, OCIP owner, Broker and insurance carrier. Funding should be included in the capital project budget for all insurance program costs, including costs associated with the Risk Management Office and the City Attorney's Office review and oversight.

58) Departments should engage in active monitoring of worker's compensation claims management to ensure that costs are kept to a minimum and that the carrier and/or Third Party Administrator (TPA) provide effective claims management.

Settlement

59) For a Compromise and Release (C&R) settlement, the City may be paying to settle a contractor's labor dispute. The C&R should be reviewed by the department, City's Risk Management Office, City Attorney's Office, and the insurance carrier and/or broker on a case-by-case basis before settlement. C&R is where an employee's claim (either under Worker's Compensation or General Liability) is determined through investigation to be a personnel-related issue versus a medical, work-caused issue. CCSF should not pay these claims, and should pursue the employer for reimbursement of any claims payments and ancillary expense.

G. CCSF Legal Environment

60) All OCIP contracts (either direct or indirect)[11] must be reviewed by the City's Risk Management Office and the Construction Team of the City Attorney's Office.

61) Departments are responsible for ensuring all contracts are in compliance with all CCSF contracting laws.

62) Where the City enters into an OCIP arrangement, the City has direct services contract with both the broker and the insurance companies with which the insurance is placed. As a result, both the broker and the insurers are contractors for the purpose

[11] Includes broker contracts, insurance policies, funding agreements etc.

of San Francisco Administrative Code Chapter 12B, which includes the Equal Benefits Ordinance.

63) OCIP Claims Management and Adjudication processes and procedures must comply with section 6.102 of the City Charter and must be coordinated with the City Attorney's Bureau of Claims Investigation and Administration from conception to closure to avoid duplication of efforts and costs. Coordination will include periodic claims reviews and joint enforcement of claims protocols.

64) We strongly encourage the City Attorney's Office and the departments to conclude its negotiations with the carriers and to finalize the various agreements, including the claims protocol and payment agreements.

Section

3

Introduction

A. The Challenge: Effective Risk Management

Capital Project Risk Management

The City is continuously involved in construction. Projects range from installation of light rail tracks to reservoir rehabilitation and seismic upgrades. Most projects are relatively small (under $5 million construction costs). Some are significantly larger – into billions of dollars for major public works. For example, the Airport's Master Plan was a $2.4 billion expansion project consisting of a new terminal, light rail system, and other improvements. In the past two years, MUNI and PUC have embarked on $290 million and $220 million construction programs respectively. With the voters' approval of PUC bonds in the November 2002 elections, PUC is anticipating a further $1.6 billion in construction projects over the next ten years.

Traditionally, the City manages the risks arising from construction projects under a "conventional or traditional" insurance program. This arrangement requires all tiers of contractors to provide and show proof of insurance, with coverage provisions to indemnify and defend the City for any claims, losses or lawsuits.

Aside from construction projects and certain other exceptions,[12] it is the policy of the City not to purchase commercial insurance against property or liability risks. Instead, the City self-insures believing that it is more economical to manage its risks internally and set aside funds as needed for estimated current claim settlements and unfavorable judgments through the annual budget process and supplemental appropriation, as needed. The City is also self-insured for workers' compensation claims. The City's insurance/self-insurance program is reviewed annually during the budget process.

With the assistance of the City's Risk Management Office, three City departments (Airport, MUNI, and PUC) have embarked upon an alternative coverage approach called an Owner Controlled Insurance Program (OCIP). This alternative provides that the project owner (i.e., the City department responsible for the project) arranges for insurance coverage and manages the insurance program collectively for all contractors working on a capital project. Contractors, in turn, remove the insurance costs from their respective bids.

[12] Exceptions include coverage for various enterprise fund departments.

Purpose of the Study and Methodology

Purpose

The primary purposes of this study are the following:

- identify insurance program alternatives for capital project risk management;
- assess how alternative insurance programs impact the City;
- research how City departments are administering existing OCIPs;
- evaluate OCIPs from a citywide perspective;
- determine if current City OCIPs will save money and/or accomplish other City goals;
- research how other jurisdictions are utilizing OCIPs;
- summarize and recommend best practices for capital project risk management for the City; and
- provide recommendations on effective insurance program design and implementation.

Methodology

The Risk Management Office and the Controller's Office convened a working group composed of six departments and 14 individuals. Over a three-month period, the working group:

- identified and assessed key issues and potential risks involved in large capital projects and related insurance programs,
- collected, analyzed and summarized insurance program and risk management research (both primary and secondary),
- considered and assessed the risk management alternatives against a comprehensive list of evaluative criteria, including projected outcomes and tradeoffs, and
- concluded with a final assessment of how insurance programs should be reviewed and implemented going forward, through consolidated best practices and recommendations included in this report.

Our conclusions are based upon objective analysis and rigorous debate about key evaluative criteria and probable outcomes of the insurance program alternatives. The evaluative criteria used include:

- risk management criteria – broad coverage and limits adequate enough to protect the City;
- financial criteria – probable total estimated savings and loss-limiting exposure;

- administrative criteria – practical implementation, affording efficient and effective safety and loss control program as well as active claims management and adjudication; and

- legal criteria – compliance with the City's Charter and ordinances.

- social benefits criteria – impact on the City's policy initiatives, including the Equal Benefits Ordinance.

This report summarizes the Working Group's final recommendations, including a discussion of risk management alternatives, prescribed guidelines and implementation strategies.

B. Research and Analysis of OCIPs

Primary Research

CCSF Past OCIPs: MUNI Metro Turnback Project and the Airport Master Plan

The Working Group reviewed reports and interviewed participants involved in San Francisco's first two OCIPs—the MUNI Metro Turnback Project and the Airport Master Plan. Our goal was to learn about the City's experience implementing these programs and the overall performance of past OCIPs in the City. For reasons detailed below, the reports about the MUNI and Airport's OCIP programs were helpful, but limited in scope.

MUNI Metro Turnback Project

The MUNI Metro Turnback Project (MMT) was the first OCIP to exist in the City. The MMT was a $202 million extension of the MUNI Metro subway under Market Street. Due to the significant risks identified in the project, an OCIP program was first discussed in 1985, during the preliminary design phase, and put into effect at the start of construction in 1993. The OCIP program included integrated professional liability, general liability, builder's risk and worker's compensation policies.[13]

The Working Group consulted two reports to learn more about the MMT's OCIP. The reports helped the Working Group understand some of the detail behind the OCIP, but the reports fell short of providing an evaluation of the program's performance.

<u>Sutter and Grand Report: 1995 Rapid Transit Conference</u>

David Sutter, formerly Senior Project Manager at the San Francisco Public Transportation Commission, and Keith Grand, the City's former Risk Manager prepared a report about the MMT OCIP for the 1995 Rapid Transit Conference. According to Sutter and Grand, the purpose of the MMT OCIP was to assure that (1) policy limits were dedicated solely to the MMT Project, (2) that losses from unrelated operations of project contractors would not erode aggregate amounts of coverage, (3) that potential coverage disputes would be eliminated, (4) that the MMT project team would control claims administration, and (5) that public funds would be used most effectively for insurance purposes.

[13] Please refer to the Glossary of Terms in the Appendix for definitions of insurance terms.

While the report by Sutter and Grand present the general and special features of the insurance coverages secured by the OCIP, as well as discuss the mechanics involved in OCIP program implementation, it does not provide a comprehensive evaluation of the effectiveness of the MMT OCIP. However, there are some successes worth noting.

First, at the time of placement in 1992, the Professional Liability policy limit of $40 million was the highest limit available. In addition, since the City obtained the $40 million of Professional Liability, the General Liability exclusion was modified to extend coverage to third-party liability claims for bodily injury or property damage resulting from design error. Successfully negotiating this provision in the General Liability policy preserved the $40 million Professional Liability limit for those categories to which only it would respond. This was accomplished at no additional General Liability premium.

It is interesting to note that the purpose of the MMT OCIP, as outlined by Sutter and Grand, is focused on managing the high risk associated with the MMT. Cost-savings resulting from the bulk purchase of insurance is not mentioned as an explicit goal of the OCIP program.

MMT Project Close Out Report

The second report reviewed by the Working Group, the MMT Project Close Out Report, also falls short of providing an evaluation of the effectiveness of the MMT OCIP. The report states that the OCIP resulted in (1) reduction in overall claims costs, (2) mitigation/elimination of potential lawsuits, and (3) overall insurance cost savings. However, the analysis and information necessary to substantiate these findings are not present in the report.

Specifically, in terms of the reduction in overall claims costs, the report points to the 76.6 percent Worker's Compensation Loss Ratio. According to the authors, the prime contractor Tutor-Saliba-Perini lacked control and action to provide their employees a safe work environment. However, the aggressive claims management by the insurance carrier, Argonaut Insurance and the OCIP Administrator, Sedgwick/Leong prevented further escalation of claims costs. While, this statement may be true, this information alone is insufficient to provide adequate support.

The same also applies to the analysis of General Liability, Excess Liability, Builder's Risk and Professional Liability. For each type of coverage, the report provides information on limits, deductibles, total premium costs, total claims reported, total claims cost and loss ratios. The information, while important, is descriptive in nature. An analysis comparing the MMT's actual loss ratios to expected loss ratios, or the actual loss ratios compared to the loss ratios for projects of similar size and scope is not provided in the Project Closeout Report. Without an analysis of the descriptive information, it is not possible to make definitive statements about the effectiveness of the OCIPs claims management program.

In regards to overall insurance cost savings, the report does not look at the difference between the actual MMT OCIP insurance cost and what the same insurance would have cost the City had the contractors provided the insurance. Instead, the report compares the estimated insurance premiums against the actual premium costs. Actual exceeded estimated by $923,910. This analysis does not truly reflect cost savings.

In sum, the Working Group's review of the MMT project provided useful information about insurance coverages and the mechanics involved in OCIP program implementation. That information informed the Working Group's discussions and recommendations.

Unfortunately, neither report offers a comprehensive evaluation of the performance of the MMT.

Airport Master Plan

The Airport Master Plan was a $2.4 billion expansion project of the San Francisco International Airport. The centerpiece of the program was the construction of a new International Complex consisting of a new terminal, light rail system, connection to the Bay Area Rapid Transit (BART) regional rail system, and improved roadways.

In 1992-93, the Airport first started considering an OCIP program for the Master Plan because of the risks inherent in having multiple contractors on one site, the potential savings that could result from premium discounts, and to allow for increased participation by minority-, woman-, and locally owned businesses. In November of 1993, a feasibility study was completed recommending the implementation of an OCIP. Savings were estimated at $28.7 million over the life of the Master Plan through a retrospective premium loss sensitive worker's compensation plan with 50 percent loss experience and through premium discounts resulting from the single-source purchase of insurance.

The Airport proceeded with OCIP in 1994 and purchased General and Excess Liability, Worker's Compensation and Builder's Risk insurance coverage. The Airport OCIP officially ended in September 2002.

In August of 2002 the Airport's Business Division issued an audit of the Airport's OCIP. The purpose of the audit was to identify remaining program obligations and to evaluate and report on the overall performance of the program. Key findings in that audit included:

- The total cost of the Airport's Master Plan OCIP is estimated to be approximately $76.7 million for program premiums, broker fees, internal administrative salaries, incremental debt service and the safety award program. The Airport's OCIP will exceed the estimated cost of a conventional program by approximately *$8.9 million*.

- The most prominent factor contributing to the over spending was the actual OCIP Worker's Compensation loss ratio of 96 percent. Had the Airport achieved a loss ratio of 50 percent as originally assumed, the costs of the OCIP Worker's Compensation premium would have been approximately $19 million less than the cost of the traditional program.

As the figure below shows, this factor alone could have resulted in a cost-effective OCIP program with a total savings of *$12.8 million*.

Worker's Compensation Loss Ratio	OCIP Total Estimated Program Costs	Conventional Total Estimated Program Costs	Difference
Actual Loss 96%	$76.7 million	$67.7 million	*$8.9 million loss*
Anticipated Loss 50%	$54.9 million	$67.7 million	*$12.8 million savings*

- In addition, the audit found that the Airport did not modify its construction contracts to exclude the Worker's Compensation component of the Cal Trans Surcharge from being applied to change orders. This decision resulted in the Airport incurring duplicate costs for change order work. This has been referred to the City Attorney's Office.

- The audit identified retrospective premium credits of approximately $5.8 million held by the insurance carrier without the benefit of interest. The audit estimates that the Airport lost approximately $350,000 in interest.

According to the audit there are a number of lessons learned or recommendations for the future. Those include:

- Monitoring and responding to increasing Worker's Compensation claims losses in a timely manner.

- Including in the construction contracts financial disincentives for exceeding acceptable claims loss ratios.

- Implementing a comprehensive safety program.

- Systems and procedures for collecting cost data (including soft costs) to provide accurate and timely information to senior management about the total financial condition of the OCIP program.

While the audit provided a high level view of the cost overruns associated with the Airport OCIP program, as well as recommendations for future OCIPs, some members of the Working Group believe that it would be more helpful to understand why the high loss ratio occurred in the first place. This level of detail was not provided in the Airport audit and additional analysis and research would be required to better understand the causes of the high loss ratios and the implementation problems in general. Nevertheless, the audit, while limited in scope, did inform the work of the Working Group and the experience of the Airport is reflected in this report.

Current OCIPs

In the past two years, MUNI and the PUC have embarked on $290 million and $220 million construction projects respectively. MUNI's OCIP covers construction activities for the Initial Operation Segment of the Third Street Light Rail Transit Project. The PUC OCIP covers 42 distinct projects. In addition, with the approval of PUC bonds in the November 2002 elections, PUC is anticipating an additional $1.6 billion in construction projects over the next ten years. Depending on the performance of the current PUC OCIP, the PUC may opt to expand its OCIP to include new construction projects. The types of insurance purchased by MUNI and PUC, including information about premiums and deductibles are detailed in Section 4C - Insurance Program Design. Sections 4D, 4E, 4F will also highlight information about PUC and MUNI's safety and loss control programs, administrative processes, and claims management and adjudication.

The experiences of MUNI and PUC to date contributed significantly to the discussions of the Working Group and the recommendations of this report.

Interviews

The Working Group's primary research also included interviews and data collection with other jurisdictions implementing OCIPs. We met with the following organizations and staff:

- State of California's Office of Risk and Insurance Management (ORIM): Gary Estrada, Assistant Chief, Dave Thomson, Associate Risk Analyst, and Charl Sanchez, Associate Risk Analyst.
- Port of Oakland: Jane Keegan, Port Risk Manager, Bob Metzger, OCIP Safety Manager, and Audree Thomas, Risk Management Analyst.
- BART: Scott Schroeder, Controller-Treasurer and Jim Bridgeman, Department Manager, Insurance.

In addition to the interviews, we invited Jim Bridgeman from BART and Jane Keegan from the Port of Oakland to join Cesare Mitrani, Executive Vice President of Willis (Insurance Broker) for a more extended discussion about OCIPs. Bridgeman, Keegan and Mitrani shared their experience with implementing OCIPs, as well their thoughts about San Francisco's particular concerns and issues. These discussions also shaped the Working Group's final recommendations.

Secondary Research

Best Practice Research

The Working Group performed an extensive literature review of OCIP. Over 35 reports, articles and documents related to OCIP best practices were collected. Appendix C of this report gives a detailed list of our research and includes reports issued by the United States General Accounting Office, Journal of Construction Education, United States Transportation Department, and the Associated General Contractors of America (AGCA). Although this report does not address contractors' concerns about OCIPs, future OCIP administrators may find it useful to read AGCA's "OCIP's Look Before You Leap!".

OCIPs How Tos

The Working Group found two reports in particular to be the most helpful in defining the implementation issues around OCIPs, in particular, David Grenier's "Owner Controlled Insurance Program Part 1 and Part 2," and Gary Bird's "The Wrap-Up Guide," issued by the International Risk Management Institute. The Wrap-Up Guide influenced our decision to break the Working Group into six sub-committees so that specific issues of implementation could be addressed in more detail. The work of those sub-committees is largely reflected in Section 4 of this report.

C. What are the Risk Management Alternatives?

Effective insurance program design should be designed to implement the broadest, appropriate insurance program at the most reasonable cost to adequately protect the City and all other parties against the risks arising out of the construction project. Currently the City has available three insurance program alternatives to manage the risks: (1) Conventional or Traditional Insurance Program; (2) Contractor Controlled Insurance Program (CCIP); or (3) Owner Controlled Insurance Program (OCIP). When determining the best approach, it is important to conduct a project risk assessment and identification of exposures to determine the need for appropriate coverages and coverage terms, limits, funding strategies, and the alignment of interests between the City, the Contractor, the Insurance Broker, and the Insurer. Please see Section 4C of the report for greater detail on the three program alternatives and guaranteed cost versus loss sensitive funding strategies.

D. How can the alternatives be effectively evaluated or compared?

Having an insurance program for capital projects is widely recognized to be prudent and customary. Whether that insurance program is controlled by individual contractors, a general contractor or the owner poses advantages and disadvantages. While smaller, stand-alone capital projects (i.e., those less than $100 million) generally lend themselves toward a traditional or conventional insurance program, larger capital projects open up consideration of a CCIP or OCIP approach. How to evaluate the alternatives can be difficult because not only must an insurance program be evaluated (i.e., traditional vs. CCIP vs. OCIP), but so too must the funding strategy (i.e., guaranteed cost coverage vs. loss sensitive coverage).

Before deciding on the best fitting insurance program and funding strategy, several key areas of evaluative criteria must be considered. These include the criteria below, with sample sub-elements provided as examples of specific criteria.

Risk Management Criteria

The insurance program must include coverage for all key project risks. The program must be structured to promote safety and loss control (e.g., alignment of interest among owner-insurer-broker-contractor). Coverage limits must be adequate. The stop-loss level must be reasonable given the type of project, risk characteristics, etc. The insurance program must effectively address moral hazard and fraud[14].

[14] Moral hazard is the tendency for insurance or risk transfer to change the behavior of those who are not on the 'hook' for the loss. For example, if an employee of a contractor on a non-OCIP job is hurt, that worker could be transferred to another OCIP-covered worksite where that same contractor is also working. This would mean that the insurance loss ratio (or experience modification factor) would then be better for the contractor and come insurance policy renewal time, his/her premium increase would be lower than that of the owner's in the case of the OCIP-covered worksite. Another example is the tendency of an automobile owner to be less concerned whether he/she leaves the car unlocked, because if it is stolen, the insurance company would pay for its replacement. Having deductibles (i.e., that is not having first-dollar cost coverage) helps to guard against moral hazard.

Financial Criteria

The owner must ask whether the insurance program will save money. If the answer appears to be yes, the owner must verify that the feasibility comparison is not comparing apples to oranges, i.e., guaranteed cost vs. 'estimated' loss sensitive coverage. The funding strategy must limit the City to financial exposure or claims risk. Program design must align the financial interests of the owner-broker-insurer-contractor. In addition, program design must effectively address fraud. The owner must inquire whether the insurance program will likely affect the total project cost adversely if a funding strategy other than guaranteed cost is used. In addition, the owner must anticipate any changes to the construction project that may increase the costs for insurance and ensure that there are effective change order contractual provisions.

Administrative Criteria

Claims must be managed effectively. The loss control program must be workable in the 'real world.' Key administrative tasks such as how the insurance program will be rolled out and how contractors will be enrolled must be thoroughly considered. In addition, the commitment and cost required for contractor training must be considered. Bid deduct or any other tracking must be useful and/ or administratively possible. Policies must be managed, coverages must be guaranteed, and claims must be reported and analyzed. Accounting procedures must be designed to capture insurance program costs from the outset. It must be ensured that the City is not overpaying for insurance when change orders occur.

Legal Criteria

The insurance program and funding strategy must comply with City regulation. The indemnification provisions must effectively limit the City's risk exposure. Legal defense provisions must adequately cover the City. Claims adjudication must comply with Charter mandates. Contracting, including broker contracts, insurance policies and funding agreements, must comply with City regulations.

Other Criteria

Also for consideration is whether the social policies of the City, such as the Equal Benefits Ordinance will be furthered.

E. Projecting Outcomes of Success and Insurance Program Tradeoffs

Because the insurance market is dynamic in coverage pricing and terms availability, a wholesale recommendation of one insurance program alternative against the evaluative criteria is impossible to complete at any time other than project inception. With that said, however, each insurance program alternative can be structured to minimize the risk exposure of the City. At the time of capital project planning, a feasibility study needs to be completed including the market conditions for traditional, CCIP and OCIP alternatives, along with funding strategy availability and costs. Once the feasibility study is complete, the projected outcomes included in that study can be reviewed for each insurance program alternative and funding strategy and evaluated against each of the evaluative criteria (see examples of evaluative criteria above).

At the time of the writing of this report, the insurance market has hardened (i.e., pressures for price increases abound). The effects of the September 11th terrorist attacks and subsequent claims on insurer reserves, along with the weak to negative investment returns over the last three years in particular, persist in putting upward pressure on pricing. Additionally, statutory changes (like AB 749 in California)[15] have increased the projected costs of worker's compensation insurance. All these factors, including the eagerness of insurers to grow their block of business, drastically impact availability and pricing. For all of these reasons, evaluating and deciding on the right alternative must be done for each capital project at project inception.

Nevertheless, to make the best decision possible, the fundamental assessments of the three C's – coverage, cost and control – must ultimately be made. This is not an easy exercise and is one of the reasons this report recommends the formation of the Construction Risk Management Committee, a committee charged with the review, monitoring and permission granting authority over all existing OCIP expansions and all future OCIPs of the City.

[15]California Assembly Bill 749 becomes effective January 1, 2003 and significantly increases most classes of Worker's Compensation benefits.

Section

4

Implementation Plan and Suggested Tools

A. General Policy Recommendations

The Working Group completed much of its work through subcommittees centered around proper planning, administration, claims management, and loss and safety control. Its recommendations are outlined in subsections 4B through 4G. Above and beyond these recommendations came the realization that greater management and oversight is needed for risk and insurance management. OCIPs are complicated and complex programs that depending on the construction project can take years to complete. Staff that may have been around in its inception are often not the same staff that complete the closeout. Therefore, the lessons learned and the practical expertise of implementing an OCIPs and any other controlled insurance programs require greater oversight. After extensive discussions, the Working Group makes the following general policy recommendations:

1) The Risk Management Office will oversee all OCIPs and may administer future OCIPs to ensure economies of scale, coordination of efforts, expertise and knowledge, and greater centralization and management of OCIPs.

2) A Construction Risk Management Committee (Committee) should be created. The Committee should be chaired by the Risk Manager and other members would include representatives from the City Attorney's Office, the Controller's Office, the Mayor's Office of Finance and Legislative Affairs, and a construction engineer from the Department of Public Works.

3) The Committee should be charged with the following duties: (1) to semiannually review and monitor the performance of all existing OCIPs, (2) to review and authorize expansions to existing OCIPs, and (3) to review and authorize all future OCIPs.

B. Feasibility Analysis, Bid/RFP and Contract Language

Feasibility Study

Best Practices

According to Gary Bird's The Wrap-Up Guide, Controlled Insurance Programs (CIPs) are not recommended for every construction project. A feasibility study is needed to assess whether a given project has the characteristics for a successful CIP. CIPs can be "sold" even when their use is not in the best interests of the project participants; therefore the wrap-up sponsor must confirm that the feasibility study correctly and objectively follows the valuation process.

Because the decision of whether to utilize a CIP could influence the choice of a broker and other key players, the feasibility analysis should be conducted before service providers are chosen. If outside expertise is needed for the feasibility study, a consultant can be hired independently to assist in this process.

Research of California Jurisdictions

	MUNI Turnback (1993)	SFO (1993)	Port of Oakland (1998)	BART (1999)	MUNI Third Street (2001)	SFPUC (2001)	CA State (2002)
Feasibility Study	No	Yes	Yes	No	No	No	No

Findings

Although different jurisdictions have used feasibility studies sporadically, SFO and the Port of Oakland examples have demonstrated that there is inherent value in conducting feasibility studies. The feasibility study would include:

- interviews with department finance and construction management personnel and the City's Risk Management Office;
- review of prior studies and reports pertaining to the department's planned Capital Improvement Program;
- discussions with and review of documents regarding costs and coverages provided by department risk management, insurance brokers and/or carriers; and
- preparation of report.

Recommendations

We recommend the following regarding feasibility studies:

4) A feasibility study will be completed for any new OCIP or to expand any existing OCIPs.

5) With the approval of the Construction Risk Management Committee, a feasibility study will be completed either by City employees who have OCIP expertise or an RFP will be issued to find an independent, expert consultant who does not have any affiliation with insurance carriers and/or brokers.

6) The responsible department will be actively involved in the planning and implementation of the feasibility study.

7) The feasibility study will identify the risks involved in the project.

8) The feasibility study will survey the market and identify what coverages should be included.

9) The feasibility study will identify the pros and cons of conventional/Contractor Controlled Insurance Program/Owner Controlled Insurance Program coverages, and any other program alternatives as applicable.

10) The feasibility study will estimate the total costs, including premiums and administration, under conventional program, Contractor Controlled Insurance Program, Owner Controlled Insurance Program, and any other program alternatives as applicable.

11) The feasibility study will compare the administrative costs to estimated Controlled Insurance Program savings and to total construction costs.

12) The feasibility study will be used as a monitoring tool throughout the OCIP administration process, realizing that change-orders must be factored in.

Outstanding Issue

The Working Group did not develop a template RFP and contract language for a feasibility study. It is recommended that this be developed before another OCIP is considered in the City.

RFP and Contract for Brokerage Services

Best Practices

The Working Group reviewed RFPs and contracts for the Port of Oakland, State of California, and BART. The Port of Oakland's RFP document is particularly worth noting, because of its highly unusual nature. The RFP soliciting the broker services was literally a four-page document, and the Port managed to obtain cost effective insurance coverages. Fortunately for the Port, the insurance market was quite favorable for the buyer in late 1998. The contracts were similar in content, laying out the scope of services to be performed, insurance coverages to be supplied, personnel requirements, and termination of OCIP coverages if necessary.

In this section, the focus was to survey best practices and to make recommendations on how to best align the interests of the City, insurance broker and the insurance carrier. Our lessons learned is the need to state clearly from the beginning what the roles and responsibilities are for City departments and the brokers. The City has particular ways of doing business, and to the extent possible, we need to reduce duplication of efforts and costs. Another difficult lesson learned is that the broker represents the City with the insurance carrier that will ultimately administer the claims. Therefore, functions will have to planned and coordinated so that the interests between the City and the insurance carrier are also aligned. As appropriate, the recommendations have been incorporated in the template RFP and contract documents. Please see Appendix D and Appendix E.

Recommendations

We recommend that for brokerage services:

13) An RFP will be issued to obtain brokerage services.

14) The RFP should require that brokers fees be included in the response and that this be a factor in the evaluation process. The RFP should also require that the Broker secure premium indicators from underwriters to determine market pricing with the understanding that the premium indicators may not be binding.

15) The RFP should include the brokerage services contract with more details specified in the scope of work.

16) The contract should include all CCSF contracting requirements and that brokers can clearly articulate these requirements to the insurance carriers.

17) The contract should encompass City's processes and procedures upfront so that roles and responsibilities can be more clearly assigned to brokers and/or carriers. For example, claims management and protocols should be stated upfront in future RFPs and contracts.

18) Departments should use City-approved master RFP templates, with modifications incorporating Department- and project-specific requirements.

19) Departments should use City-approved master contract templates, with modifications incorporating Department- and project-specific requirements.

20) The OCIP Broker Report should include the calculation of losses per man-hour similar to the approach taken by BART, and include any other relevant metrics determined by the Department.

21) The broker's RFP should specify that claims protocols will be negotiated with the insurance carrier upfront, before any contract is executed, so that the City's Charter and ordinance requirements are followed, and that duplication of effort by the City and the insurance company is avoided.

22) The insurance carrier and/or broker will provide (1) PPOs/Pharmaceutical Network—extends to those covered by OCIP, (2) Physician review, (3) Medical bill review, and (4) Litigation review.

Bid and Contract for Contractor

Best Practices

The Working Group reviewed contract documents for contractors from the Port of Oakland, State of California, and BART. In all three examples, we reviewed the entities' project safety standards as well. (See Safety and Loss Control section for further details.) The focus was to survey best practices and to modify the City's contracting language as necessary, so that the interests of the City and the contractors were aligned. In short, that the contractors will be held accountable for an effective safety program.

Because the City is paying for insurance on behalf of the contractors, the City must administer the program responsibly so that the City is not paying more than necessary. For example, contractors must exclude the Worker's Compensation component of the Cal Trans surcharge from change orders. The City must also find contractors that have good safety records and hold them financially responsible for their safety programs throughout the life of the construction project. For this reason, we found BART's incentives/disincentives contract language particularly helpful. The City currently does not have use incentives/disincentives to make the contractors more accountable. As appropriate, the recommendations have been incorporated in the template RFP and contract documents. Please see Appendix F.

Recommendations

As a result of our analysis, we recommend that for construction bids and contracts:

23) The contract specifications should include a safety program modeled after the PUC program. The program will identify the minimum qualifications that contractors must meet and relates specifically to the City's operations. The three components of the PUC program are: (1) the Insurance Requirements (Document 00805), (2) the Safety Program and Procedures (Section 00814), and (3) the Insurance Manual. These documents are included in Appendix F and are templates that may be modified in the future incorporating Department- and project-specific requirements.

24) Depending on project funding, incentive/disincentive language should be added to construction contracts. The amount should be significant enough to effect change if contractor's safety programs are inadequate and should reflect contract size.

25) Depending on project funding, a contractor's Experience Modifier (EMR) should be used to pre-qualify contractors, because EMR gauges safety performance and experience. In the case of joint ventures, each partner's EMR will be used in proportion to its participation in the joint venture.

26) Contractors should bid with insurance costs in future construction projects.

27) Under an OCIP, contracts should include language clarifying that there is no financial recourse for contractors' private attorneys.

C. Insurance Program Design

Insurance Program Design Alternatives

When an owner is contemplating major capital projects and infrastructure improvements, the owner can use three insurance program alternatives to effectively manage the risks. These include: (1) **Traditional or Conventional Insurance Program**; (2) **Contractor-Controlled Insurance Program (CCIP)**; or (3) **Owner-Controlled Insurance Program (OCIP)**. Additionally, within these three insurance program alternatives, various funding strategies exist, ranging from ***guaranteed cost*** to ***loss sensitive*** coverage.

Insurance Program	Definition
Traditional or Conventional	Contractor and subcontractors provide all insurances required under the contract and include these costs in their bid.
Contractor-Controlled (CCIP)	General or prime contractor provides required insurances for all contractors and subcontractors working on a project.
Owner-Controlled (OCIP)	The owner or City purchases the required insurances for all contractors and subcontractors, often at limits far greater than what would be available or required of individual contractors under the traditional program.

When determining the best risk management approach, tradeoffs will exist among the three insurance program alternatives as well as the funding strategies. Key areas to consider are: **cost, control, coverage (how uniform and broad), safety program compliance and efficacy, and also claims management**. These areas all significantly impact the likely success of any insurance program. While the tradeoffs may appear easy to evaluate, given the difficulty in projecting the frequency and severity of claims, the risk / savings proposition is indeed very complex.

28) For any proposed capital project potentially under an OCIP, a comparative analysis of all insurance program alternatives, along with the funding strategies, should be undertaken. This analysis should at a minimum include consideration of cost, control, coverage, safety program compliance and efficacy, and claims management.

Under a traditional insurance program, the owner basically decides what insurance requirements are needed and relies on the contractor to design, purchase and maintain an adequate coverage. Certificates of Insurance can be required and reviewed, but they provide limited information. Inherent risks under this program alternative include: (1) the owner will not be notified in the event of cancellation or non-renewal of a contractor's insurance program, and/or (2) the coverage placed by the contractor is inadequate in coverage or limits or contains restrictive endorsements. In addition, once the work has been performed and the contractor has been paid, it is difficult to obtain Certificates of Insurance showing renewal policies that would provide completed operations (construction defect) coverage and even more difficult to get insurance carriers to endorse the policies to provide Additional Insured status for the owner. It is the Additional Insured status that allows the owner to be defended under the contractor's policy. To the degree that the contractor's program is inadequate, the owner would have to rely on the contractor's ability to pay loss out of their assets.

Under a CCIP or OCIP, the owner plays a more active role in designing, purchasing and/or managing the insurance program. According to Gary Bird's The Wrap-Up Guide, to design an appropriate insurance program, the insurance program / risk manager will need a detailed understanding of the project's scope and the type of work it will entail. If a risk assessment was not performed during the feasibility study, one should be performed well in advance of approaching any insurance markets. At a minimum, a schedule of the types of work involved, and their corresponding risks, should be developed. With this data in hand, the insurance program / risk manager or broker can better target the consolidated insurance program market of insurers (a niche within the insurance market with the expertise in underwriting these types of project risks).

29) In addition to reading the materials included in this report and its appendices, Gary Bird's The Wrap-Up Guide is required reading for any insurance program/risk manager – regardless of the insurance program being undertaken (but especially for those considering CCIPs and OCIPs).

30) If a risk assessment was not performed during the feasibility study, one should be completed during Insurance Program design and prior to going to the insurance market.

To illustrate the importance of a risk assessment, consider the example of a highway construction project, which will be characterized by some or all of the following hazards.

- Covers a large geographical area (at least several miles)
- Involves some high-risk work in densely populated areas
- Requires working around high-speed traffic
- May cross railroad tracks
- Involves a number of bridges or other concrete structures
- Is vulnerable to catastrophic risks such as flood or earthquake
- May unearth items/materials that impede the progress of the work.

Many of these risks are unique to the type of project or even to the specific project. However, given the magnitude of City & County's existing and potential future projects, this step is especially important.

The following is a short list of particularly critical areas under insurance program design:

- Coverages;
- Limits;
- Funding Strategies (guaranteed costs vs. loss sensitive, including deductibles);

- Coverage Terms;
- Alignment of Interests (Owner-Contractor-Broker-Insurer).

Coverages

As outlined in the example above, the combination of risks present on the capital project will have impact on the scope and amounts of coverage needed to adequately protect project participants.

For CCIPs or OCIPs, the coverages that are typically included are:

- General Liability, including products and completed operations coverage (preferably ISO Commercial General Liability form CG 0001, 1986 or later edition date) ;[16]
- Excess or Umbrella Liability,
- Worker's Compensation and Employers Liability Insurance;
- Builders Risk Insurance, including coverage for property in transit and property stored off-site.
- Other coverages as needed: Environmental/Air Quality Insurance, Aircraft & Watercraft Liability; Design Errors and Omissions, Business Interruption, Force Majeure, etc. [17]

One type of coverage that should not be included in an OCIP is Automobile Liability. This is because contractors purchase this one their own. For explanations of individual coverages, please see Glossary of Terms (Appendix I).

Limits

A limit is the maximum amount of benefits payable for a given situation or occurrence. For general liability coverage, the per occurrence limit on the primary policy is typically $2 million with aggregate limits of $4 million. Additional limits are available through the purchase of excess and/or umbrella coverage which are purchased in layers that reflect the capacity in the insurance marketplace at the time the program is arranged.

Worker's compensation coverage is dictated by statutory regulations. There is no maximum amount, and all policies will cover medical costs and lost time. All policies will also cover Employer's Liability, which should be scheduled onto the excess and/or umbrella liability program to cover situations, which are permitted to go beyond the exclusive remedy of workers' compensation.

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[16] Contractors should be required to provide evidence of insurance coverage for risks not included in the consolidated insurance program (OCIP or CCIP for that matter) prior to beginning work. Because an OCIP generally covers only on-site exposures, contractors need their own insurance to protect them "up to the gates" of the project. Coverages typically required outside the wrap-up include general liability and workers compensation for off-site activities, automobile liability, and aviation or professional liability (where applicable).

[17] The need for additional coverage should be evaluated on a case-by-case basis depending on the construction project and the risks associated with it.

Funding Strategies – Guaranteed Cost vs. Loss Sensitive

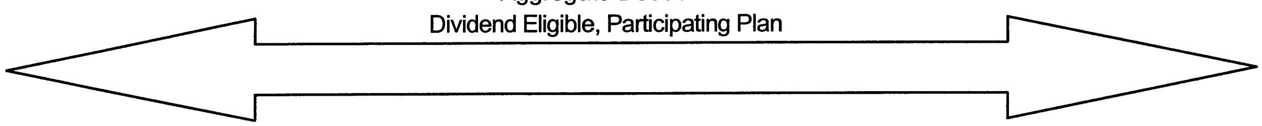
Insurance program design includes coverage and funding. The latter component can be arranged as either guaranteed cost or loss sensitive. The market has varying ranges of loss sensitive funding strategies. Tradeoffs, however, are ever present as varying degrees of risk and corresponding potential cost savings exist across funding strategies. The funding strategy selected should be based on the nature of the project, the project manager's tolerance for risk, and also the project manager's ability to effectively manage safety compliance and claims incidence. Procuring quotes for guaranteed cost and loss-sensitive funding strategies will allow the owner to compare funding strategies – regardless of the insurance program undertaken. Key funding strategies are outlined below. When available in the marketplace, OCIPs can be written on either a Guaranteed Cost basis or on a Loss Sensitive basis.

31) If a risk assessment was not performed during the feasibility study, one should be completed during Insurance Program design and prior to going to the insurance market.

Guaranteed Cost

Hybrid
e.g. Stop Loss
Aggregate Deductible
Dividend Eligible, Participating Plan

Loss Sensitive
Retrospective Rating Plan



Higher Certainty
Lower Risk
Higher Upfront Costs

Moderate Certainty

Lower Certainty
Higher Risk
Lower Upfront Cost
Possibly Lower Total Costs
Depending on Claims/Losses

Guaranteed Cost

Under a Guaranteed Cost program, the owner pays a fixed premium amount for its insurance program coverages. In the most extreme case, coverage for the project can be provided on a first-dollar basis, with no deductibles to the owner (insureds). The total premium costs to the owner is known with certainty and capped at a pre-determined amount tied to the projected construction values and payroll projections. If these parameters change, the premiums will be adjusted in an upward direction if these values increase, and potentially in a downward direction if these values decrease, however, a minimum premium threshold is usually established upfront and is likely to be at least 80% of the quoted premium.

In general, when insurance market pricing and conditions are highly favorable to the insurance buyer, guaranteed cost programs are often the preferred program design. Although the savings potential may not be quite as great (theoretically) as in loss-sensitive program, the insured locks in certainty and risk limits upfront - guaranteed. The Port of Oakland elected this funding strategy in the 1990s for their OCIP, a decision, which in retrospect was extremely beneficial. In today's hard insurance market, it appears very difficult or at best expensive to purchase guaranteed cost coverage. Market conditions are dynamic; however, meaning that is should still be considered for all future OCIPs.

32) Guaranteed cost coverage should be considered for OCIPs because they not only limit the risk of higher losses, they also provide upfront cost certainty. Market conditions must also be considered during this analysis, as well as the potential impact of insurance program growth due to project expansion or change orders.

Loss Sensitive

A loss-sensitive funding strategy allows the insured (owner in the case of an OCIP) to recapture premium that is 'left over' after payment of claims and insurer charges are covered. A loss-sensitive funding strategy allows an insured to participate in the benefits of better claims experience – this is not the case under a guaranteed cost strategy. However, the 'benefit' can turn negative if claims costs are higher than expected. Using a $100,000 program as an example, assuming insurer charges and overhead of 20% and claims costs of 30%, 50% or $50,000 would be unspent and returned to the insured as a retrospective adjustment or dividend. In exchange for this potential for savings due to good experience, the insured assumes more risk if losses are worse than expected. This funding strategy offers the greatest savings potential in the workers' compensation area, although at greater financial risk.

Loss sensitive program design must be coupled with effective safety and claims management procedures. Considering loss-sensitive programs for any insurance other than workers' compensation is generally advised against, as claims frequency and severity are too unpredictable. General liability claims are not limited (in amount) by statute, as are workers' compensation claims. Also, general liability premiums are likely to be far lower than workers' compensation premiums, so any savings from taking more risk in the general liability area would be small in view of the risks involved.

33) Loss sensitive funding strategies should generally not be used for coverage other than worker's compensation due to the relative infrequency and high severity potential of the claims.

More sophisticated consolidated insurance programs involve higher risks for the project manager, but they also offer the opportunity for greater cost savings. Retrospective rating plans are generally the most popular with major projects. Not only are the premiums lower in loss-sensitive programs, but also any reductions in actual losses will generate additional savings. On the other hand, the project manager must recognize the potential for actual costs premiums to be greater than the standard premium that would be charged under a more conservative plan. Depending on the structure of the plan, this would usually occur if actual losses exceed anticipated losses.

Loss Sensitive – Aggregate Deductible Approach

Under an Aggregate Deductible approach, the OCIP insurer charges a fixed premium for OCIP coverages that contemplates a significant per occurrence and aggregate deductible obligation of the owner. Deductible levels typically begin at a minimum of $250,000 per occurrence, with multiples of the per occurrence deductible as the program aggregate deductible, the point where the owner reaches the maximum and no further deductibles apply. Under this approach, the fixed premium costs can be significantly lower than a Guaranteed Cost program. However, the total costs could be higher if higher loss ratios occur. If the owner implements a successful safety program on the project which results in minimal losses (i.e., lower loss ratios), the owner can potentially save significant dollars by avoiding losses which would have been paid through their deductible obligation. For example, in MUNI's OCIP, if project losses are maintained at a 50% loss rate, MUNI will save approximately $2.3 million against their maximum program (workers compensation, primary general liability) cost of $7.3 million. To maximize their opportunity of substantially reducing their program costs, MUNI has invested additional funds to facilitate an insurer-provided dedicated on-site safety specialist.

After claims exceed the aggregate deductible, the insurer pays for all losses. The decision on whether to use an aggregate deductible approach is generally assessed based upon the attachment point and the cost of the coverage. Aggregate deductibles may be secured in a couple of ways. In MUNI's case, the aggregate deductible of $4.5 million is placed in a Security Trust Agreement with a third party, J.P. Morgan. The monies are invested and earn interest for the City. As claims are filed, the insurer will pay the claims upfront. On a monthly basis, the insurer will invoice the department for reimbursement and draw down the account. From an owner's point of view, the San Francisco Transportation Authority retains fiscal control over the dedicated funds. In PUC's case, the PUC paid the aggregate deductible of $1 million directly to the insurer, who in turn gives the City interest payments. As additional construction projects are added to the current list of projects covered in the OCIP, PUC may consider another method of handling its aggregate deductible.

Loss Sensitive – Deductible & Retention Approach

Deductibles (or retentions) are the amount of covered claims expenses that must be incurred by the insured before benefits become payable by the insurer. Deductibles and retentions should be selected based upon the owner's risk tolerance. These are also dictated, however, by what is available in the market. If all other factors are the same, the higher the deductible, the lower the insurance premium. Conversely, the lower the deductible, the higher the insurance premium. Premiums are negotiated and then may be fixed, so owners cannot get premiums back if they have a safer program (i.e., lower claims) than anticipated. Paying out deductibles, on the other hand, can be controlled if the owner has an aggressive safety program and keeps losses at a minimum. In today's market place, a deductible of $250,000 per occurrence appears to be typical for OCIPs. Having deductibles makes an insurance program loss sensitive.

Coverage Terms

Coverage terms are the terms and conditions in each policy that will guide how claims will be addressed. While workers' compensation coverage terms are largely (but not entirely) standard, coverage terms may vary considerably for general liability, excess and/or umbrella liability, and builders risk. This is one of the major advantages under an OCIP. Terms and conditions are typically broader under an OCIP than under conventional insurance programs. Under a conventional program, the contractor needs to renew its general liability policy to have completed operations coverage for construction defects that "occur" in that year. Under an OCIP, the owner may have up to ten years of coverage after project completion. PUC was able to negotiate a five-year term and MUNI has a ten-year term. Currently the statute of limitations for construction defects is ten years after project completion. So, contractors are responsible for their work for ten years after the work is turned over to the owner. In the absence of an OCIP, there is no assurance that contractors will continue to renew their policies and have coverage for this period. Once the contractor has been paid, it is difficult for the owner to enforce insurance requirements.

34) OCIP coverage terms should seek to include Extended Construction Completed Operations Coverage of up to the statutory limits.

Another key term is that of payment for coverage. The owner and the insurer may negotiate premiums and deductibles under a "Payment Agreement." The payment agreement stipulates when the owner is obligated to pay the carrier. The Agreement includes two important sections: (1) a schedule of payments and (2) contractual language regarding the terms, reviews of accounts, and carrier's "refund" of moneys. The San Francisco County Transportation Authority has signed the Schedule of Payments with the carrier and is in negotiations regarding the contractual language. The PUC has yet to sign either documents.

35) All aspects of the insurance arrangement should be negotiated upfront, including coverages, funding strategies, payment terms and agreements, etc.

Alignment of Interests

Aligning the interests of the owner, funding agency, contractor, broker and insurer, increases the likelihood of a successful, cost-saving insurance program. Strategies to do this include: pass-through deductibles for contractors and other incentive/disincentive programs. Pass-through deductibles are the amount that the contractors is obligated to pay per claims occurrence. Pass-through deductibles must be made high enough to provide economic incentive for safety. Additionally, increasing deductibles could be used, e.g. $5,000 for first claim, $7,500 for the second and $10,000 for the third, and so on. Doing this puts additional pressure and burden on unsafe contractors, thereby increasing their incentive for safety.

Another strategy includes the owner and contractor agreeing to a fixed pass-through deductible. This 'fixed' approach was used by MUNI whereby a $5,000 per occurrence pass-through deductible was established. Additionally, the owner and contractor may agree to a sliding scale depending on the size of the contract. PUC is structured along this manner and the range is $1,000 to $25,000.

Some major construction projects with consolidated insurance programs have used incentives in the form of dividends to the contractors for achieving low loss levels. In the risk management and safety communities, this concept has become somewhat controversial. Some argue that incentives increase contractor awareness and promote safety. Others contend that incentives merely overpay contractors for what they are already obligated to do. Another problem with loss-control incentives is the difficulty in establishing meaningful measures. For example, the Los Angeles County MTA's Red Line OCIP came under criticism as contractors received bonuses for low accident frequency rates while the severity of certain accidents, including fatalities, were ignored (from a bonus standpoint).

36) Interests should be aligned and operationalized by including economic incentives or disincentives. Pass-through deductibles per occurrence should be considered, as well as other alignment strategies.

Figure A on the next page provides detailed information about the OCIPs at the Airport, MUNI and PUC.

FIGURE A	Airport	MUNI	PUC
Construction Value	$2.4 billion	$290 million	$220 million
	Insurance Carriers		
Worker's Compensation	Argonaut	AIG	AIG
General Liability	Lloyds	AIG	AIG
Excess Liability	Not applicable	AIG	AIG
Builder's Risk	F.M. Global	Allianz	Lexington (Primary BR) Zurich American (Excess BR)
Other Carriers	Not applicable	Railroad Protective Liability (Union Pacific)	Project Professional Liability (AIG)
	Premiums and Aggregate Deductible/Stop Loss		
Worker's Compensation	$47.8 million	$1.7 million	$507,000
General Liability	$14.8 million	$1.1 million	$551,000
Excess Liability	Not applicable	$1.2 million	$516,000
Builder's Risk	$4.1 million	$1.1 million	Primary Builder's Risk $514,000 Excess Builder's Risk $117,000
Other Premiums	Not applicable	Railroad Protective Liability $3,900	Project Professional Liability $1.2 m
Aggregate Deductible/ Stop Loss	Not applicable	Aggregate Deductible $4.6 m	WC/GL Stop Loss Fund $1.6 m
Total for Premiums and Aggregate Deductible/ Stop Loss	$66.7 million	$9.7 million	$4.9 million

FIGURE A (continued)	Airport	MUNI	PUC
Deductibles			
Worker's Compensation	No deductible	$250,000	$250,000
General Liability	$10,000 (Original Period) $500,000 (Extension)	$250,000	$250,000
Builder's Risk	$100,000	$100,000	$100,000
Contractor Deductible	0$ - $10,000 for General Liability and Builder's Risk	$5,000 per occurrence	$5,000-$25,000 for General Liability $5,000-$100,000 for Builder's Risk
Other Information			
Insurance Broker	Marsh and Merriwether & Williams (Joint Venture) $7.3 million	Merriwether & Williams (Prime) Marsh (Sub) $704,000	AON (Prime) Merriwether & Williams (Sub) $700,000

D. Safety and Loss Control

Research

Best Practices

According to Gary Bird's The Wrap-Up Guide, a standard project loss control manual is critical to the success of a Consolidated Insurance Program. Occasionally printed as part of a single-project CIP manual, this document should clearly state the owner's expectations, express enthusiastic support for the principles behind the loss prevention program, and provide standard minimum requirements for all contractors on the project site. Standards should be established for all critical areas, including safety and health, public safety, protection of property, and security of individuals. The desire to produce a project without injury or damage must be emphasized.

The project loss control manual should be included in the contract documents, so it must be designed and ready for distribution prior to bidding the first project contracts. The manual should be reviewed and updated as needed to keep pace with the best practices in loss prevention and control.

This document should address various administrative matters such as minimum levels of employment requiring the presence of professional safety staff; reporting requirements; authority levels and communications; available loss control resources, supplies, equipment, or training facilities; and any other information the project manager wants contractors to know.

Lines of Authority and Reporting Requirements: Loss control responsibilities should be outlined during the bidding process and reinforced throughout the project. The project manager's authority to take measures necessary to enforce loss control standards, up to and including termination of the contract, should be clearly noted. Project managers should support decisions by loss control personnel to curtail or stop work by contractors that fail to adhere to regulatory requirements and project safety, health, or other standards.

Loss Control Responsibilities: Contractors' responsibility for loss prevention and control should be emphasized. Loss control standards and expectations should be clearly communicated to contractors during the bidding stage. CIP loss control professionals are there to assist, support, and consult with the contractor and its personnel to assure proper training, job safety preparation, and planning and promotion of a safe work environment, but ultimate responsibility for enforcement rests with the contractor. CIP personnel are also charged with auditing contractor compliance.

Other California Jurisdictions

As part of our research, the OCIP Safety and Loss Control Committee analyzed the safety manuals and/or programs from several organizations:

- San Francisco Public Utilities Commission's Construction Safety Program (January 23, 2002);
- MUNI's two samples of contracting requirements pertaining to Health and Safety;

- State of California's CALTRANS District 7 Headquarters;
- State of California's Butterfield Way Office Building;
- BART's San Francisco Airport Extension;
- Port of Oakland's OCIP Construction Safety Standards.

Findings and Recommendations

Findings

We asked two safety experts, one from the Public Utilities Commission and one representing OCIP carrier and broker to review the documents. They recommend that the best safety and loss control program is one modeled after the PUC program. This program places the responsibility for the safety program squarely on the contractor. In contrast, the owner's responsibility is to monitor the contractor's activities, not write the program for the contractor. Our experts concluded that the other safety programs contain CAL OSHA and other standards that need not be repeated, unless the owner wants to emphasize particular safety standards. Important information may be buried amongst all the duplication, information such as the owner's requirement for more stringent standards of performance and project-specific applications and requirements. One best practice used by other jurisdictions that they recommend is BART's Construction Safety Incentive/Disincentive program. The program promotes construction safety awareness during the construction phase of the contract and may reduce the number of claims against worker's compensation insurance and, thereby reduce or eliminate increased insurance premiums charged to BART. The maximum incentive to be earned by, or disincentive to be assessed the contractor is $350,000. Finally, the experts recommend that the City and County's goal should be ZERO accidents and that all efforts should be aimed at obtaining that goal.

The PUC uses two documents -- Construction Safety Program and the Project Insurance Manual -- to communicate its safety program to contractors. The document lays out the Safety Program and Procedures highlighting the contractors' responsibilities; documentation and reporting requirements; and execution of the safety program (including certification and permits, Hazard Communication Program, safety surveys, and Accident Investigation Requirements). In contrast to earlier OCIP programs implemented in the City and County, the Jobsite Drug Free Policy and six foot fall protection are included. Samples of the various reporting and documentation is included. These documents are incorporated in contract specifications provided to prime and sub-contractors.

In addition to the PUC's documents, the contractors must submit its Safe Plan of Action (SPA) and its Injury and Illness Prevention Plan (IIPP). These documents are also required by MUNI, however their use of the IIPP is different.

If enforced, there are a number of controls in place to insure an aggressive safety program. First, on an administrative level, there are safety surveys and reporting. Accident Investigation Reports are given to the Safety Program Manager and these issues are discussed weekly at department meetings. These meetings include the OCIP manager, brokers and/or carriers, and contractors as appropriate. Second, on the job site, all personnel can stop work involving imminent danger, and only the Resident Engineer and/or designee can restart the work. On a more forceful note, the Resident Engineer can issue a "Notice of Safety Non-Compliance" to the contractor. If the safety lapses continue, the department can then withhold progress payments. As a final recourse, the department can assert that there has been a breach of contract and debar the contractor from future work with the City for five years.

(Note: for the purposes of consolidating the recommendations, please see Bid and Contract for safety information.)

Recommendations

The Committee recommends the following:

37) A safety program modeled after the PUC program should be implemented for OCIP projects, not a safety manual.

38) Departments should provide safety training to all City project personnel.

39) Depending on the size of the construction project, the department should determine the appropriate number of safety personnel and whether they should be City employees or non-City employees. Note: This administrative cost may diminish program savings, but where loss-sensitive funding is used, it becomes increasingly important.

40) Pre-employment, random and post accident drug and alcohol testing should be mandated for contractors to the extent allowed by law.

41) The safety reports included in the OCIP Monthly Broker Reports should be shared with Management on a monthly basis.

42) Safety reports included in OCIP Monthly Broker Reports should be sent to the City's Risk Management Office on a quarterly basis, as well as summarized semi-annually for the Committee.

43) The City's Risk Management Office should be notified when the aggregate deductible is reached (i.e., at 25%, at 50%, at 60%, at 70%, at 80%, at 90%, at 100%, and at project closeout).

44) The City's Risk Management Office and City Attorney's Office should be notified when there are major claims.

45) The City's Risk Management Office should make recommendations to department management about risks and liabilities.

46) The City's Risk Management Office should take appropriate actions based on risks and estimated or potential liabilities. For example, the Risk Management Office may conduct investigations and recommend action to Department management. Or the Risk Management Office may consult the City Attorney's Office and the Mayor's Office or seek an opinion from the appropriate state regulatory agency.

E. Administration

Best Practices

According to Gary Bird's The Wrap-Up Guide, conscientious administrative supervision is essential to the success of an OCIP. Through efficient document control, data management, informative management reports and audits, the OCIP can be guided toward better than average experience and the resulting economic rewards.

Overseeing the operational aspects of the program should be assigned to the OCIP manager. The OCIP manager should provide regular up to date reports on the performance of the OCIP and the enrolled contractors. In most cases, official reports should be provided on a quarterly or semiannual basis, but loss information, insurance premiums, staffing levels, information on major incidents, and projected results of the program should be reasonably accessible at all times.

In addition to the OCIP manager, the OCIP team is made up of a several participants including:

- Insurance Broker
- Insurance Carrier
- Safety representatives from the broker, carrier and City department
- City's Risk Manager
- City Attorney's Office

The work of OCIP Team will be enhanced during different points in the administrative process with representatives from City department construction and project professionals, as well as finance and senior management.

The administrative process is defined in four stages: (1) Bid, Award and OCIP Enrollment, (2) Ongoing Monitoring, (3) Contract Closeout and (4) Project Closeout. These four stages include key administrative provisions such as monitoring reports, audit points, oversight meetings and the identification of key personnel such as department management and third party oversight. A detailed description of these four stages is provided in Figure B. The OCIP Working Group recommends:

47) The administrative process detailed in Figure B on pages 41 through 43 should be adopted by all current and future OCIPs.

A brief description of the administrative process detailed in Figure B, including the recommendations specific to each of the administrative stages are provided below.

Bid, Award and OCIP Enrollment

The administrative stage of Bid, Award and OCIP Enrollment is defined by the following six key points:

- Review Contract Specifications—OCIP staff ensures that the contract specifications include key OCIP provisions such as the safety program.
- Contract in Bid—OCIP staff ensures that the OCIP is properly and clearly presented to bidding contractors.
- Bids in—the evaluation of the bid should include contractor's safety record. Contractors with better loss experiences and safety performances should be favored in the bidding process.
- Notice to Proceed/Award—OCIP staff verifies that the successful bidders have provided separate insurance data.
- Enrollment—OCIP staff reviews the contractor safety programs and contractor insurance cost deductions are audited.
- Pre-Construction Meeting—OCIP staff explains the OCIP, clarify its requirements and present the prime and sub contractors with needed documents and forms.

As stated above in "Bids in," we believe that the contractor safety performance is a key evaluative criterion to be used during the bidding process. Therefore, as written early in this report under recommendation #25, we believe that the contractor's Experience Modifier (EMR) should be used to pre-qualify contractors because the EMR gauges safety performance and experience.

Ongoing Monitoring

Once construction begins, six key meetings define the administrative stage of Ongoing Monitoring. Those six meetings, as well as their purpose, are briefly described below. Please refer to Figure B for more detail such as the key discussion points and the individuals that should be involved in the meetings.

- Periodic OCIP Meeting—to review the OCIP Broker Report.
- Periodic Claims Review Meeting—to provide oversight of insurance carrier's performance in claims management.
- Project Management Monthly Meeting—to update all project managers, construction managers and resident engineers on the program of projects. OCIP staff provide a status and issues report.
- Contract Level Weekly Meeting—to discuss all upcoming construction work. OCIP safety staff reviews work and provides recommendations to resident engineer.
- Quarterly Senior Management Meeting—to update senior management on the progress of OCIP.
- Periodic Contractor Meeting—to hold contractor accountable for safety.

Specific to Ongoing Monitoring we recommend the following:

48) The contract should include language that gives the safety representative authority to require that identified work not proceed until the safety representative is present to observe.

49) OCIP and safety personnel should be given the authority to enforce the safety program.

Contract Closeout

Contract closeout involves receiving a report of substantial completion and using that information to disenroll prime and sub contractors. Key to this administrative task is ensuring that all contractor insurance deductibles have been paid to the City before the release of final payment.

Project Closeout

The OCIP program's overall evaluation should be prepared and recommendation for future OCIPs should be provided. In addition, the buy-out of outstanding claims from the insurance carrier should be evaluated.

Figure B. OCIP Administration Process

Bid, Award and OCIP Enrollment

Review Specs → Contract in Bid → Bids in → Notice to Proceed/ Award → Enrollment → Pre Construction Meeting

Review Specs

PROCESS:
-Contract Administration notifies OCIP staff of specs.

-OCIP staff reviews specs (including the safety program) & includes projects into OCIP.

CRITERIA FOR OCIP INCLUSION:
-Contracts greater than $250k

-Non emergency response

-Timeline is greater than 2 weeks.

-Labor costs are greater than costs for materials.

-Inclusion of professional services in OCIP should be on a case by case basis.

RECOMMENDATION:
-The contractor's Experience Modifier (EMR) gauges safety performance and experience and should be used to prequalify contractors. (See Appendix F)

DOCUMENTS:
-Boilerplate for Specs

-Contractor's Insurance Manual (Appendix F) and Construction Safety Program (Appendix F) as an addendum to the specifications.

Contract in Bid

PROCESS:
-Contract Administration notifies OCIP staff when ready to go out to RFP.

-OCIP staff attends all pre-bid conferences and provides the information in the OCIP Information Sheet.

DOCUMENTS:

Contract
-Application for Enrollment/ Instructions

-Insurance Cost Worksheet

OCIP Information Sheet
-Provided to contractors during pre-bid meeting.

Bids in

PROCESS:
-Contract Administration opens bids.

-OCIP, no role.

AUDIT POINT:
Recommend use of EMR to screen contractors with poor safety performance as appropriate.

Notice to Proceed/ Award

PROCESS:
-Contract Administration advises successful bidder.

-Successful bidder has 10 days to submit (1) Insurance Cost Worksheet, (2) Policy Declaration and Rate pages, and (3) Enrollment Form to Contract Administration.

-If the awardee fails to submit the required paper work the contract can be disallowed and the City can return to bid.

-The awardees' paper work is sent to the OCIP staff and the Insurance Broker.

-Broker verifies that the insurance has been deducted from the contract accurately.

DOCUMENTS:
-Insurance Cost Worksheet

-Policy Declaration and Rate Pages

-Enrollment Form

Enrollment

PROCESS:
-Contractor is enrolled.

-Insurance costs are allocated to the projects.

-Contractor submits Injury and Illness Prevention Plan (IIPP), Job Site Safety Program & Resume of Safety Rep

-OCIP staff review contractor safety program and assist contractor if program is not acceptable.

DOCUMENTS:
-IIPP

-Contractor Safety Program

-Name & resume of contractor safety representative.

AUDIT POINTS:
-OCIP Staff reviews the contractor's safety program and provides recommendations to the Resident Engineer (RE). The RE approves safety program. OCIP staff will assist contractor to develop a program if standards are not met.

-Broker verifies insurance deduction. If contractor does not deduct insurance correctly a reverse change order is issued.

Pre Construction Meeting

PROCESS:
-Safety requirements are reviewed and the exposure of the particular job are highlighted by the department's safety representative (in-house or insurance and or broker provided).

-Insurance Manuals are provided to prime and sub contractors.

-Claims packets with insurance forms are provided to prime and sub contractors.

DOCUMENTS:
-Contractor's Insurance Manual

-Claims Packets

-Pre-Construction Meeting Minutes

Figure B. OCIP Administration Process (continued)

Ongoing Monitoring-Construction Begins

Periodic OCIP Meeting

PURPOSE:
Review OCIP Broker Report

KEY DISCUSSION POINTS:
1. Claims & Losses
-Loss Run Report
-Loss Ratio Calculation
-Claims Report
-Losses per Man-hour*
-Are claims increasing at an accelerated rate?
-Deductible status
-Deductible recovery from contractors

2. Safety
-Review reports and pictures.
-Recommendations and mitigations such as formal walk-about with contractor safety rep and project manager.

ATTENDEES:
1. OCIP Manager**
2. Safety Representatives from Broker, Department, and Carrier.
3. Insurance Carrier Rep
4. Insurance Carrier Adjuster

RECOMMENDATION:
* Require broker to make this calculation using the BART model. See page 8 of BART Report.

ATTACHMENT:
BART OCIP Monthly Report (Appendix G)

**Indicates who sets the agenda.

Periodic Claims Review Meeting

PURPOSE:
Oversight of Insurance carrier's performance in claims management. This meeting should increase in frequency if claims become a problem.

KEY DISCUSSION POINTS:
-Claims that meet a certain criteria such as dollar amount paid out, reserve amount, or length of open claims should be discussed.
-Cost of loss versus severity of injury should be discussed.

ATTENDEES:
1. OCIP Manager**
2. City's Risk Manager (RM)
3. City Attorney-Worker's Compensation
4. City Attorney-Department
5. Broker Worker's Compensation Specialist
6. Insurance Carrier
7. Safety Representatives from Broker, Department, and Carrier.
8. Construction Contractors if appropriate.

AUDIT POINT:
RM is notified of major claims and when agg deductible hits 25/50/60/70 percent of total.

Project Mgt. Monthly Meeting

PURPOSE:
To update all project manager, construction managers and resident engineers on the progress of all projects.

KEY DISCUSSION POINTS:
OCIP Team addresses serious infractions and spikes in losses. A status and issues report is given.

ATTENDEES:
1. Project Managers**
2. Construction Managers
3. Resident Engineers
4. OCIP Manager

Contract Level Weekly Meeting

PURPOSE:
To discuss all upcoming construction work.

KEY DISCUSSION POINTS:
-Work is coordinated between contractors.
-When planning for the upcoming week's construction projects, safety representatives can insist that certain conditions are met or that safety personnel be present before any work can proceed.*

ATTENDEES:
1. Resident Engineer (RE)**
2. Contractor Representative
3. OCIP Safety Representatives (in-house, broker and/or carrier)

AUDIT POINT:
OCIP Safety Rep reviews prospective work and recommends controls to the RE. Safety Rep can recommend to RE that work not proceed. RE can stop work if safety requirements are not met.

Quarterly Meeting with Senior Management

PURPOSE:
To update senior management on the progress of OCIP.

KEY DISCUSSION POINTS:
-Trends in claims.
-Concerns about safety.
-Mitigations
-Problem contractors.

ATTENDEES:
1. Business and Finance
2. Construction
3. Project Management
4. OCIP Manager**
5. Insurance Broker

AUDIT POINT:
Audit of payroll, claims management or OCIP administration.

Periodic Meeting with Contractor

PURPOSE:
If safety problems persist the City has multiple avenues of recourse.

POSSIBLE ACTIONS:
1. Accident follow-up meeting.
2. Resident Engineer can issue notice of safety non-compliance.
3. Department withholds progress payments.
4. Contractor deemed in breach of contract and the City terminates the contract. The contractor is barred from participating in future work with the City for five years.

ATTENDEES:
1. OCIP Manager**
2. Safety Representatives (in-house, broker or carrier)
3. Resident Engineer
4. Contractor

Figure B. OCIP Administration Process (continued)

Contract Closeout

Report of Substantial Completion

PROCESS:
Project Manager issues report of substantial completion which includes a "punch list" of outstanding construction tasks to be completed by prime or subs.

Disenroll Sub Contractors

PROCESS:
-OCIP Staff forward Report of Substantial Completion to the Insurance Broker (specifically to the person that handles enrollment).

-Insurance Broker issues cancellation of insurance policy.

-OCIP Broker Report Reflects disenrollment of sub contractor.

DOCUMENT:
OCIP Broker Report

Disenroll Prime Contractors

PROCESS:
-OCIP Staff forward Report of Substantial Completion to the Insurance Broker (specifically to the person that handles enrollment)

-Verify that all insurance deductibles have been paid by prime contractor before the release of final payment.

-Insurance Broker issues cancellation of insurance policy.

-OCIP Broker Report Reflects disenrollment of prime contractor.

NOTE:
The cancellation of the prime's insurance policy does not cancel the insurance policies of the subs.

DOCUMENT:
OCIP Broker Report

AUDIT POINT:
Verification that all insurance deductibles have been paid to the City

Project Closeout

Prepare Final Report

REPORT CONTENTS:
-Restate the theoretical baseline values established in the Feasibility Study.

-Determine the actual baseline values by reviewing the bid deducts which capture traditional insurance costs.

-Compare theoretical and actual baseline values to the final outcome. Inputs for final outcome include:
1. Total Construction
2. Total Payroll
3. Loss Ratio
4. Additional coverages if secured.
5. Deductible.

-Report should determine cost savings and other successes.

-Report should provide recommendations for future OCIPs.

AUDIT POINT:
Report should be subject to audit by independent third party.

Evaluate Insur. Carrier Buy-out

KEY FINANCIAL DECISION:
-Evaluate whether it is in the City's financial interest to negotiate a lump-sum buy-out of outstanding claims with the insurance carrier so that any future claims are solely the responsibility of the insurance carrier.

F. Claims Management and Adjudication

General Liability Protocols

The City Attorney's Office with the cooperation of MUNI, PUC and their insurance brokers, AON and Merriwether and Williams developed OCIP General Liability protocols. These protocols define the roles and responsibilities of the insurance carrier and the City in liability claims management and adjudication and will be negotiated with MUNI and PUC's insurance carrier AIG. Based on this experience of negotiating claims protocols at the back-end of the process, the OCIP Working Group recommends that:

50) The draft General Liability Claims Protocol provided in Appendix H of this report should be adopted with the understanding that it will change based on negotiations with the insurance carrier. Also that for future OCIPs, these protocols will be drafted from the beginning, so the contents may change.

51) Should an injured worker file a worker's compensation claim and a third party liability claim, the City Attorney's Office must be notified to trigger the General Liability protocols.

Worker's Compensation Protocols

Worker's Compensation protocols are determined and regulated by State of California statute. All Worker's Compensation cases that occur in CCSF construction projects will be in compliance. In addition, the Working Group recommends the protocols outlined below.

Legal Environment

52) The City department and insurance carrier will coordinate the handling of OCIP Worker's Compensation claims, therefore, the City Attorney's Office will be involved only on a periodic or quarterly basis to review claims and provide expertise as needed.

53) The City Attorney's Office or the City's Risk Management Office conduct periodic training in Worker's Compensation laws and other laws, to assure City departments are aware of changes in the legal environment.

Administrative—Penalties/Indemnifications

54) The insurance carrier will indemnify the City from all penalties and consequences should the insurance carrier not meet statutory guidelines such as, but not limited to, failing to deny timely a disputed claim, failing to pay benefits or not authorizing appropriate treatment.

55) Serious and Willful Misconduct—the contractor knew or should have known about a dangerous condition. If the Worker's Compensation Appeals Board determines that the contractor knew or should have known about the dangerous condition, the City will not pay for the contractor's serious and willful claims.

56) Discrimination-Labor Code section 132A—retaliation or discrimination occurs after the worker's compensation claim is filed. If the Worker's Compensation Appeals Board determines that the contractor discriminated, the City will not pay.

Administrative—Periodic Claims Review

57) Periodic claims reviews will include the City Attorney's Office, City's Risk Management Office, OCIP owner, Broker and insurance carrier. Funding should be included in the capital project budget for all insurance program costs, including costs associated with the Risk Management Office and the City Attorney's Office review and oversight.

58) Departments should engage in active monitoring of worker's compensation claims management to ensure that costs are kept to a minimum and that the carrier and/or Third Party Administrator (TPA) provide effective claims management.

Settlement

There are two types of settlements: (1) Compromise and Release (C&R)—the claim is settled and extra is paid to release the employee and (2) Stipulation—the employee continues to work.

59) For a Compromise and Release (C&R) settlement, the City may be paying to settle a contractor's labor dispute. The C&R should be reviewed by the department, City's Risk Management Office, City Attorney's Office, and the insurance carrier and/or broker on a case-by-case basis before settlement. C&R is where an employee's claim (either under Worker's Compensation or General Liability) is determined through investigation to be a personnel-related issue versus a medical, work-caused issue. CCSF should not pay these claims, and should pursue the employer for reimbursement of any claims payments and ancillary expense.

G. CCSF Legal Environment

A primary concern of the Working Group throughout this process was the issue of whether OCIP program implementation conformed to the City's Charter and laws. As mentioned in the introduction (Section 3A), it is the policy of the City to be self-insured. Because of our self-insurance status, the City has established a Bureau of Claims Investigation and Administration within the City Attorney's Office. The Bureau has particular processes and procedures to handle and settle (or deny) claims as appropriate. The City Attorney's authority in this area is defined in Charter Section 6.102, which reads as follows:

> 9. Establish in the City Attorney's Office a Bureau of Claims Investigation and Administration which has the power to investigate, evaluate and settle for the several boards, commissions and departments all claims for money or damages. The Bureau shall also have the power to investigate incidents where the City faces potential civil liability, and to settle demands before they are presented as claims, within dollar limits provided for by ordinance, from a revolving fund to be established for that purpose.

When an OCIP is implemented, claims administration is one of the services that the insurance carrier and/or Third Party Administrator (TPA) may perform. For Worker's Compensation claims filed under an OCIP, the protocols are determined and regulated by State of California statute. For General Liability claims filed under an OCIP, the City must take into account the existing processes and procedures and modify them to accommodate the role of the insurance carrier and/or TPA. Therefore, new protocols must be drafted to define the roles and responsibilities of the carrier and the City to avoid duplication of efforts and costs. (See Section 4F for more details).

Because of the importance of the claims function and other legal considerations pertaining to OCIP agreements, we make the following recommendations:

60) All OCIP contracts (either direct or indirect)[18] must be reviewed by the City's Risk Management Office and the Construction Team of the City Attorney's Office.

61) Departments are responsible for ensuring all contracts are in compliance with all CCSF contracting laws.

62) Where the City enters into an OCIP arrangement, the City has direct services contract with both the broker and the insurance companies with which the insurance is placed. As a result, both the broker and the insurers are contractors for the purpose of San Francisco Administrative Code Chapter 12B, which includes the Equal Benefits Ordinance.

63) OCIP Claims Management and Adjudication processes and procedures must comply with section 6.102 of the City Charter and must be coordinated with the City Attorney's Bureau of Claims Investigation and Administration from conception to closure to avoid duplication of efforts and costs. Coordination will include periodic claims reviews and joint enforcement of claims protocols.

[18] Includes broker contracts, insurance policies, funding agreements etc.

64) We strongly encourage the City Attorney's Office and the departments to conclude its negotiations with the carriers and to finalize the various agreements, including the claims protocol and payment agreements.

Section

5

Conclusion

OCIPs are one of many risk management tools available to City departments. City departments must assess all risk management alternatives available before deciding on the right tool. Each risk management tool (whether OCIP, CCIP or traditional) is a unique arrangement that must be structured to meet the risks and requirements of the environment in which it is created. Each area of risk must be weighed and those risks likewise must be managed through appropriate insurance program implementation.

After an intensive three-month study of OCIPs, the Working Group believes that there are a number of compelling reasons why the City would consider implementing an OCIP program for large construction projects. OCIPs can ensure broader insurance coverages, dedicate policy limits solely to the City's projects, and extend coverage terms (sometimes 10 years) after project completion. Moreover, because the City is responsible for the safety of all parties on the project, the City can establish a single safety program for all contractors and subcontractors, thereby establishing a uniform standard. The City also works with a primary insurance broker, so insurance project management is streamlined by having a number of insurance functions such as loss control, safety management, and record keeping under a single entity. This makes monitoring and oversight easier for the City. Lastly, although it is unclear that the City's experience yielded cost savings, other jurisdictions reported cost savings of 1 to 2 percent of total project costs through the bulk purchase of insurance coverage and aggressive loss control programs.

OCIPs are complex management tools and the City must not reinvent the wheel every time a department has a major construction project. Successful OCIP implementation requires careful planning, documentation, analysis, monitoring, and program administration. The City's Risk Management Office and the City Attorney's Office should be considered key participants in the process. Therefore, the Working Group recommends the establishment of a Construction Risk Management Committee and that the Committee include representatives from these two offices. In addition, we recommend that the Controller's Office, the Mayor's Office of Finance and Legislative Affairs, and the Department of Public Works be included on the Committee. The Committee will ensure that current and future OCIPs are properly planned and implemented so that the City's tax dollars are prudently spent.

In conclusion, this report was developed to assist with program implementation and provide recommendations and tools (including templates and flowcharts) that may be useful with appropriate modifications to someone who must administer or evaluate an OCIP program. The recommendations made in this report are intended to effectively manage the City's capital project risk exposure, assign program responsibility, and improve the likely success of existing and future OCIPs.