

**OWNER-CONTROLLED INSURANCE PROGRAM  
OWNER'S CHECKLIST**

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An OCIP's hallmarks are its cost-effective, broad coverage for every enrolled Contractor, subcontractor, and some vendors (typically those who perform work on the job site); its safety record and reduced lost time due to injury; its reduced litigation between insured Contractors; and its responsible and financially reliable insurers which stand behind the coverage for the years before, during, and after the project is completed. A construction Owner can also mitigate its costs by utilizing the OCIP administration personnel, rather than its own operations staff, to address claims issues long after contract close-out. Insurance protection in most cases can continue after project completion through the repose period (in some jurisdictions up to 10 years), allowing the Owner to rely upon coverage to reimburse losses attributed to latent defects resulting from a subcontractor's defective or deficient work.

The basic OCIP insurance products include Worker's Compensation and General Liability with excess limits not ordinarily available for the traditional insurance program, but the Owner may also add builder's risk; professional liability for (1) designers, Contractors, and the Owner's own employees who participate in creative collaboration on the project and could contribute to design risks and for (2) consultant and Contractor risks for managing building information modeling (BIM) and manufactured products; environmental; and others. Policies are often specially negotiated for premium reduction and to cover risks unique to the project.

OCIP benefits are not guaranteed and just as with any worthwhile venture, an Owner must exert itself to capture them. The following sets forth a general checklist for the Owner's use from project conception through close-out.

**I. Is it feasible for the Owner to use an Owner-Controlled Insurance Program?**

Project characteristics:

Does the project size (price, complexity) make it cost-effective for an OCIP?

Is the total project cost \$30M and above?

Does payroll constitute at least 25% of total project cost?

Will the project be able to bear an OCIP premium of \$2M annually for worker's compensation and general liability coverage?

What self-insured retention can the Owner bear on the OCIP program generally? (Individual deductibles and contractor liability for individual deductibles are considered in a later section)

Is the project to be built-out in phases aggregated over several years?

Is the project on a single site or are the sites in close proximity or all part of an institutional system (*i.e.*, school district or university)?

Is the site a closed site or capable of being closed?

Does the project require ten (10) or more prime contractors?

Is the project control and administration vested in a single entity for contract administration and progress payments?

Is the project set to have a specific commencement date and a specific completion date?

Is the project duration expected to be more than three (3) years?

Regulatory scheme:

Do regulatory or legal restrictions complicate, limit, or prohibit the Owner's use of an OCIP in the jurisdiction where the project is located?

Does the state require insurers to file rates or obtain rate approvals?

Does the state consider an OCIP to be a violation of open competition among insurance agents?

How does the state's worker's compensation law affect an OCIP?

Check to determine whether an Owner is treated as an "employer" for purposes of employer immunity from injured worker claims. (This may prove important not only regarding the Owner's defenses for injured employee damages but also regarding the confidentiality of drug and alcohol tests for drug-free workplace requirements.)

Does the state prohibit assignment of insurance policy returns or dividends to the Owner, *i.e.*, a third party to the insurance policy?

OCIP broker/administrator:

What is the broker's experience with:

Securing the broadest coverage from the highest rated insurers?

Securing the most favorable coverage interpretation from insurers?

Developing an excellent loss control and safety incentive program?

Examining the Contractor's safety program so that it meets or exceeds the OCIP Loss Prevention Program?

Prepare and provide the Insurance Manual describing the policies, the bid credit procedure for contract execution, the bid credit procedure for change order negotiations, and project close-out?

Is the broker willing to provide:

Samples of loss control and safety incentive program manuals?

References from other projects?

Sample contract provisions?

Sample forms for use in the invitation to bid, bid credit analysis, and in change order negotiations?

Does broker have Owner buy-in so that it can get the Feasibility Study underway at least 150 days prior to construction commencement?

What is the OCIP administrator's experience in claims administration?

Owner requirements:

Is Owner willing to:

- administer an effective contractual conflict resolution process that moves from project executive negotiation, through mediation or dispute review board considerations to litigation?

- involve all key project personnel (project directors, contract administrators, financial analysts) in OCIP process?

-manage its own operational personnel or rely on a professional administrator to evaluate and extract credits for insurance from the Contractor at contract bid, at change order pricing, and at contract close-out?

-control the workplace through a closed site and project security so that a strong safety and loss control program will be successful?

-support an aggressive and comprehensive loss prevention and mitigation program, safety incentive program, and otherwise cooperate with an OCIP administrator in order to redeem savings from a successful OCIP?

-maintain on-site medical and claims administration facilities?

-maintain claims administration through total project close-out approximately six (6) months or more after substantial completion

-involve its legal counsel early to anticipate, address, and contractually allocate risks under an OCIP?

## **II. What insurance policies are in the OCIP?**

Does the OCIP include:

Worker's Compensation/Employer Liability?

General Liability?

Excess/Umbrella Liability?

Will the Owner purchase:

Builder's Risk from the OCIP or a different insurer?

Environmental Insurance from the OCIP or a different insurer?

Which Contractors are to be enrolled?

Which Contractors or others will not be enrolled?

Has the Owner included all OCIP Enrolled Contractors as Additional Insureds under the Builder's Risk and Environmental policies?

Will Owner provide professional liability?

Are Owner personnel collaborating with design consultants beyond an Owner's standard programming involvement to influence production of construction documents or design of manufactured products to be installed in the Project?

**III. What insurance coverage will the Contractor be required to provide its off-site construction risks and at what limits?**

Automobile liability:

Is more than the standard \$1M in limits necessary?

Does Owner have sufficient operations staff to monitor insurance certificates renewed annually for this important coverage?

Aircraft Liability:

Does the Contractor anticipate transporting project labor to the site by owner or chartered aircraft? (e.g., off shore construction)

Are limits of \$1M adequate for aircraft liability?

**IV. What are the critical bid and contract considerations:**

Bid:

Is Contractor required to:

bid job and identify its insurance costs as a separate line item in bid?

disclose its experience modifier rate (“Experience Mod” or “EMR”)

Cooperation:

Does Contractor agree to express duty to cooperate with OCIP administrator and Owner regarding administration of the OCIP and its loss prevention program throughout contract performance and close-out after the project is complete?

Insurance provisions:

What coverage should the Contractor provide for its off-site risks?

Worker’s Compensation at statutory limits?

Employer Liability coverage at required policy limit?

Is Contractor coverage primary and non-contributing for off-site risks?

Does Contractor coverage list Owner and Owner-entities as additional insured?

Does provision include a certain A.M.Best rating for carriers Contractor uses?

Does Contractor coverage waive subrogation against Owner?

Does provision advise that Contractor remains liable for contract performance even if it fails to provide insurance coverage?

#### Indemnity:

Does provision avoid tying indemnity requirements to insurance coverage?

Does provision include indemnification of Contractor “arising from, related to, or resulting from acts or omissions, negligence, gross negligence or intentional misconduct in the performance of the Work”?

Does indemnity include not only Contractor but all subcontractors and suppliers of any tier?

#### Deductibles:

Does Contractor remain liable to pay its own deductibles for Contractor-provided insurance?

Is Contractor required to pay a portion of deductibles attributable to losses covered by the OCIP?

#### Safety:

Does Contractor remain responsible for its own safety program?

Is Contractor required to meet or exceed the OCIP requirements set forth under the OCIP Loss Prevention Program?

Does Contract expressly disclaim Owner liability for safety?

#### Changes in the work

Is Contract clear that Owner is entitled to recover credits for insurance that Contractor would otherwise charge for changes in the work priced if no OCIP were in place?

#### Unforeseen site conditions:

For any losses which might be covered under insurance, does Owner give time plus an equitable adjustment for such risks encountered in actual construction?

#### Mutual waivers of consequential damages:

Are any Owner consequential damage risks covered by Owner's private insurance?

Are such covered damages omitted from any mutual waiver?

Audit rights:

Does Owner have the right to audit all contracts and subcontracts, including but not limited to lump sum contracts and subcontracts?

Does Owner retain the rights to audit for any extended period after completion?

Is contractor required to retain documents through any statute of repose period?