



Bulletin

What Are the Pros and Cons of OCIPs and CCIPs?

INTRODUCTION

A "wrap-up" is a centralized and controlled insurance and loss control program, usually for a single project, which covers the owner, general contractor (GC) and all subcontractors.

There are two commonly-used types of wrap-ups. One is sponsored by the owner, which is called an Owner Controlled Insurance Program (OCIP), and the other, sponsored by the general contractor, is called a Contractor Controlled Insurance Program (CCIP).

An owner or general contractor sponsors a wrap-up because it offers the possibility of a significant cost savings by combining the insurance for all parties on the project into one policy.

Also, unlike non-wrap-up projects where the stronger parties (owner/general contractor) contractually divert as much liability as possible to subcontractors, the wrap-up sponsor can control the defense on a liability claim. This is far more efficient than trying to compel the insurance carriers of the subcontractors to accept a claim and defense of the owner, general contractor or both.

While some subcontractors are infrequently allowed to opt out of enrolling in a wrap-up, those situations are rare and participation is usually non-negotiable—if the subcontractor wants the job, enrollment in the wrap-up is mandatory.

PROJECT PERFORMANCE

As a subcontractor working on projects which are managed under a wrap-up, there are considerations regarding insurance coverage and contractual duties to the project. Some of these include reporting all payroll, claims on the project, providing updated certificates of insurance and post wrap-up coverage. In addition, there are some things to remember including review of loss runs and insurance once the project is completed and off-site coverages.

The contract terms of most wrap-ups include necessary items for the firm and for the sponsor. Subcontractors are strongly advised to request and review the wrap-up manual provided by the owner or general contractor. However, subcontractors may find that it is usually not very detailed which makes it difficult to evaluate the policy exclusions.

Estimating will have some specific challenges on wrap-up jobs. In some cases, the subcontractor will be directed to bid the job including all insurance premiums, and then to provide detailed information related to general liability and workers comp insurance rates along with detailed payroll estimates by classification. These rates will then be used by the wrap-up provider to determine a deduct change order if the contractor is awarded the job. Other times, a subcontractor may simply be directed to bid the job excluding any insurance provided by the wrap-up.

Payroll incurred on the project, wrap-up will be reported to the wrap-up insurance carrier and/or the sponsor of the wrap-up. Similar to the estimating considerations above, the subcontractor may be asked after the bid to furnish the payroll estimates, by classification, for the project, and then compute the premium that the subcontractor would have paid under its own program for doing the job. The sponsor will then deduct the amount of premium determined from this calculation from the subcontractor's contract price. Alternatively, the Subcontractor may be asked to bid the project without insurance costs for the insurance that will be provided by the wrap up.

Payroll reporting and loss data can differ depending on the state in which the project is located. The state worker's compensation bureau may need to be notified of all payroll reported to the project carrier and subsequently by the wrap-up. **For NCCI states, it is important to report the correct reported payroll to the bureau as it is calculated against the losses of the subcontractor's company to reduce its EMR. For monopolistic states, however, any subcontractor losses stay with the project wrap-up insurance and are**

not included in the subcontractor's EMR, so payroll would not be reported in these cases. The administrator of the wrap-up should be contacted to verify all payroll has been reported. While the reporting of payroll under a wrap-up may take up to 20 months to be shown by the bureau, subcontractors should work with their agent to understand the impact and reporting of payroll and losses as well as reviewing the subcontractor's EMR through the period of the wrap-up project and subsequent to its completion.

Claims under a wrap-up must be reported to the sponsor's insurance carrier. While the costs of the claims are paid by the sponsor's carrier, subcontractors should ensure the claim is for its employees and not those of another subcontractor. Be sure to request loss runs from the wrap-up sponsor twice per year during the construction and for a couple of years after completion of the project. Proactive agents will review these loss runs and the losses/reserves of their client companies as they impact the insurance underwriting of insurance renewals for years.

The procedure for claims processing should also be clearly understood. In some instances (especially with a CCIP), the subcontractor finds out after a claim has been submitted that the process the contractor's project carrier uses impacts the subcontractor. Examples of this are most prevalent in the workers comp area, and have included issues like shifting the cost for light duty or other early return to work strategies to the subcontractor, or delays in reporting and processing claims that then result in labor controversies on the job.

Certificates of insurance for off-site activity based insurance should be forwarded to the wrap-up sponsor.

While the project is providing subcontractors with workers compensation, general liability and excess coverage for the project, the contract requirement may mandate that subcontractors provide evidence of off-site coverages that meet the terms of the general contractor (auto liability is a typical example). In addition, be sure to obtain the insurance certificate of the wrap-up for each year and maintain all payroll records to the project as they will be needed at a future payroll audit to verify coverage and reporting of that project payroll in lieu of reporting to the insurance carrier.

All change order pricing should be calculated correctly, either including the cost for insurance if a back end true-up is required, or exclusive of insurance if the change order hours will not be included in the final audit calculation. The sponsor will award contracts to subcontractors based on the bid documents. The sponsor will then have the winning subcontractor and its agent complete some forms which indicate the rates on the subcontractor's general liability and workers compensation policies.

WHAT TO WATCH FOR

While wrap-ups are good for the sponsors, they are not necessarily beneficial for subcontractors.

Exclusions - Buyer Beware

Coverage and exclusions under wrap-up policies can vary widely. Some wrap-ups contain broader exclusions than typical for a subcontractor insurance policy. Other wrap-ups provide similar or even broader coverages than subcontractor typically carry. Subcontractors should make every effort to determine what the policy terms will be before bidding the job. In that manner, the subcontractor can make a complete and accurate comparison to its corporate coverage and, thereby, a

complete and accurate assessment of the risk of the present procurement. But, making this determination is usually difficult or impossible because the sponsor either will not divulge the specific policy terms or it does not have the terms at bid time. It becomes a "buyer beware" situation for subcontractors bidding the job.

While many times it may be impossible to get a copy of the wrap-up general liability policy in advance of the bid, in most cases at least a summary of the wrap-up policy coverages will be included in the bid package. If the subcontractor is not given a copy of the policy before or after the bid process, the sponsor should allow the subcontractor to view it in the sponsor's offices. This opportunity usually will not come until after the contracts have been awarded. In any case, it is a best for the subcontractor to have their insurance agent review the wrap-up policy.

A potentially high risk factor for subcontractors in wrap-ups is that their own liability policies may contain a complete wrap-up exclusion. Each subcontractor should consult with its insurance agent to determine if its general liability policy has such an exclusion. If there is a total exclusion, any claim not covered by the wrap-up policy will likewise be excluded from the subcontractor's policy—no coverage anywhere, an unacceptable situation.

If the subcontractor's liability policy has a total wrap-up exclusion, its agent should try to negotiate a modification that will afford contingent coverage under the subcontractor's policy. Such an endorsement would respond to wrap-up claims if the wrap-up excludes the loss or if the wrap-up limits have been exhausted.

All general liability policies and some wrap-ups will have an exclusion for

damage to the work itself (including that which is caused by the subcontractor's negligence). If there is not a proper mutual waiver of subrogation in the job contracts, the subcontractor could be liable for the entire amount of the damage, unless it has either no wrap-up exclusion or contingent wrap-up coverage on its own general liability policy.

Deductibles

Wrap-ups usually carry large general liability and workers compensation deductibles for the sponsors, and in some cases, the sponsor will make the subcontractors liable for a portion of this amount—maybe the first \$10,000. This is more likely to occur under the general liability than the workers compensation policy. Before the bid, the subcontractor should determine if it might be faced with paying part of any general liability or workers compensation deductibles.

Builder's Risk Policies

Another area of concern is the builder's risk policy. This policy covers property (the work) in the course of construction and typically names the owner, the general contractor, and subcontractors at any tier as named insured.

Builder's risk policies on wrap-ups typically have high deductibles, often \$50,000 or \$100,000. The subcontractor must understand what the builders risk deductible is and how the liability for the deductible will be assigned. Unlike the deductible under an OCIP general liability claim, the entire deductible under a builders risk policy is typically borne by the responsible party. This could present a difficult financial burden for a subcontractor if held responsible for paying the entire deductible. If the subcontractor carries an Installation floater as a part of its own program, this policy could possibly be amended to "buy down" the large builder's risk deductible without invoking a

contributing insurance clause. The subcontractor's agent should be able to explain in greater detail why this is critical.

Other liabilities not covered

Coverage is not usually provided under a wrap-up for pollution and professional liability. Any exposure to hazards covered by these policies should be carefully reviewed between the subcontractor and the subcontractor's insurance agent.

The subcontract agreement with the general contractor must also be scrutinized, where there are likely to be other terms and conditions affecting the insurance coverage.

The subcontractor will still have to produce evidence of general liability, auto and workers compensation coverage for all activities away from the project site, such as shop fabrication work.

DOWNSTREAM SUBS

In most cases any sub-subcontractors will also be covered by the wrap up. Sometimes there are exclusions that can apply to very small sub-subcontracts, but these are usually a case by case basis. Be sure that consideration is given to the impact of the wrap up on sub-subcontractors in the bidding stage of the job.

CLAIMS CONSIDERATIONS

Understand (during bidding stage if possible) how claims will be managed. It is not uncommon to find out once a claim has been incurred that claim management is considerably different and potentially costly for the subcontractor covered under the wrap up. One example is the event of a workers compensation claim, when after the injury is incurred, the Subcontractor is forced to put the

injured worker on mandatory light duty at the Subcontractor's expense.

Lack of Coverage for Suppliers.

Another concern about the wrap-up is the lack of coverage for suppliers. Because suppliers are not considered contractors on site, care should be taken to make sure that the wrap-up has a strong contractual risk transfer. Hold harmless and indemnity agreements become more important as this project is excluded from your primary program.

POST PROJECT CONSIDERATIONS

Once the project insurance has ended and delivered to the owner, any additional work for punch out or warranty should be under the subcontractor's own insurance. All payroll for this work must be turned into the subcontractor's insurance carrier and all claims will be paid under the subcontractor's insurance.

Considerations regarding insurance coverage should include the possibility that wrap-up coverage may be cancelled prior to completion of the work. An experienced insurance broker who manages wrap-ups may best provide advice and endorsements to the subcontractor's primary insurer to ensure that optimal coverage is in place for claims that may occur in the future.

Wrap-ups usually provide completed operations coverage for a specific time after the project has been delivered. Since coverage for this project is usually excluded under your insurance, care should be taken to address the legacy claims issues after the completed operations period.

Liability for warranty work performed after the subcontractor's enrollment in the wrap-up terminates is not covered under the policy, which could be problematic. If a claim later occurs due

to a subcontractor's work, it could be difficult to determine whether it arose from the original installation, or from warranty work. Worse, if the subcontractor has a total wrap-up exclusion on its own general liability policy, a claim arising from warranty work will not be covered under either the sub's policy or the wrap-up.

All wrap-ups provide coverage for the project duration as well as for a fixed number of years after the project is completed. This is usually noted in the wrap-up manual, and should be determined at bid time, if it is not. All available coverage afforded under the wrap-up will terminate at the end of this period. The subcontractor should determine if the post project duration coverage is in line with the statute of limitations or statute of repose for construction contracts in the state in which the project is performed. -If the wrap-up extends coverage for a time which is less than the statute of repose, who (if anyone) provides coverage for the time between when the wrap up policy ends and the statute of repose is over?

CONCLUSION

When bidding a job, know the type of wrap-up required from all management levels. Estimators, sales persons, controllers and risk managers should know the type of project with regards to whether it includes the cost of insurance, it is net of insurance or it is a combination of credits to the project wrap-up sponsor. Your insurance agent should review every bid that has a wrap-up program contemplated. The cost of insurance, incorrectly identified or calculated can cause you to lose a bid or reduce the projected profit for the project.

DEFINITIONS AND OTHER INFORMATION

OCIP: Owner controlled insurance program. This is where all parties of a project (owner, general contractor and subcontractors) are covered under a single policy—one general liability policy (with higher limits) and usually a workers compensation policy.

CCIP: Contractor controlled insurance program. Similar to an OCIP, except it is sponsored by the general contractor instead of the owner.

Wrap-Up: Another name for a CCIP or an OCIP.

OCIP or CCIP Sponsor: The entity (owner or general contractor) who puts the project insurance coverage together with their broker and insurance carrier.

Contractor: Usually refers to the General Contractor for the CIP.

OCIP Broker: The insurance agent/broker who is responsible for securing and placing the insurance coverage for the sponsor of the CIP.

Subcontractors: Subs to the GC who are performing work at the defined work site under the direction of the GC and participating in the OCIP.

Statute of Repose: The amount of time after which a cause of action cannot arise. If an injury occurs after this time has lapsed (5-10 years in most jurisdictions), the contractor is generally not held liable for claims arising from their work. For example, in the the DC area, Virginia's statute of repose is 5 years; DC and MD are 10 years.

Products/Completed Operations

Aggregate: This limit on the Wrap-Up is one amount of coverage to cover any and all claims which occur after completion, and during the statute of

repose. This limit is not replenished annually.

Builder's Risk Policy: Property insurance covering the project while in the course of construction. All of the parties in the project (owner, GC, subs at any tier) are included as named insureds. A substantial deductible usually applies for each loss.

CHECKLIST

1. Determine the builder's risk deductible and how responsibility is apportioned.
2. If one subcontractor causes a loss to another subcontractor's work, what is the extent of coverage and responsibility for deductible under the OCIP?
3. Confirm with the sponsor that the liability coverage provides for separation of insureds. This means that each enrolled entity in a wrap-up will be afforded its own separate defense in the event of a claim. This reduces the potential conflict of interest that could occur under a single, consolidated defense for all parties.
4. The subcontractor should have its agent double check its wrap-up enrollment form to make sure all rates, calculations and other information are correct.
5. Make every effort to eliminate a wrap-up exclusion from the subcontractor's liability policy, or to at least obtain contingent coverage.
6. Verify the number of years of completed operations coverage provided by the wrap-up.
7. Notify the subcontractor's insurance carrier(s) to make sure they will deduct the payroll for wrap-ups from their final audit.

The Management Methods Committee gratefully acknowledges the assistance of:

Michael C. Cash
Insurance Associates Agency, Inc.
Senior Account Manager
10201 Fairfax Blvd.
Fairfax, VA 22030
703-352-7333
703-352-6490
mcash@insassoc.com
<http://www.insassoc.com>

John P. Callahan
Hylant Group
150 N. Wacker Drive
Chicago, IL 60606
John.callahan@hylant.com
www.hylant.com