



Gallagher

Consideration of Owner Controlled Insurance Programs for Public Entities



Owner controlled insurance programs (OCIPs), a type of controlled insurance program (CIP), are comprehensive insurance solutions designed to provide coverage for all or most parties involved in a construction project under a single policy. These programs are particularly advantageous for large-scale public entity construction projects, offering streamlined coverage and centralized risk management. Unlike contractor controlled insurance programs (CCIPs), OCIPs are managed by the project owner, giving public entity owners greater control over insurance terms, coverage and costs.

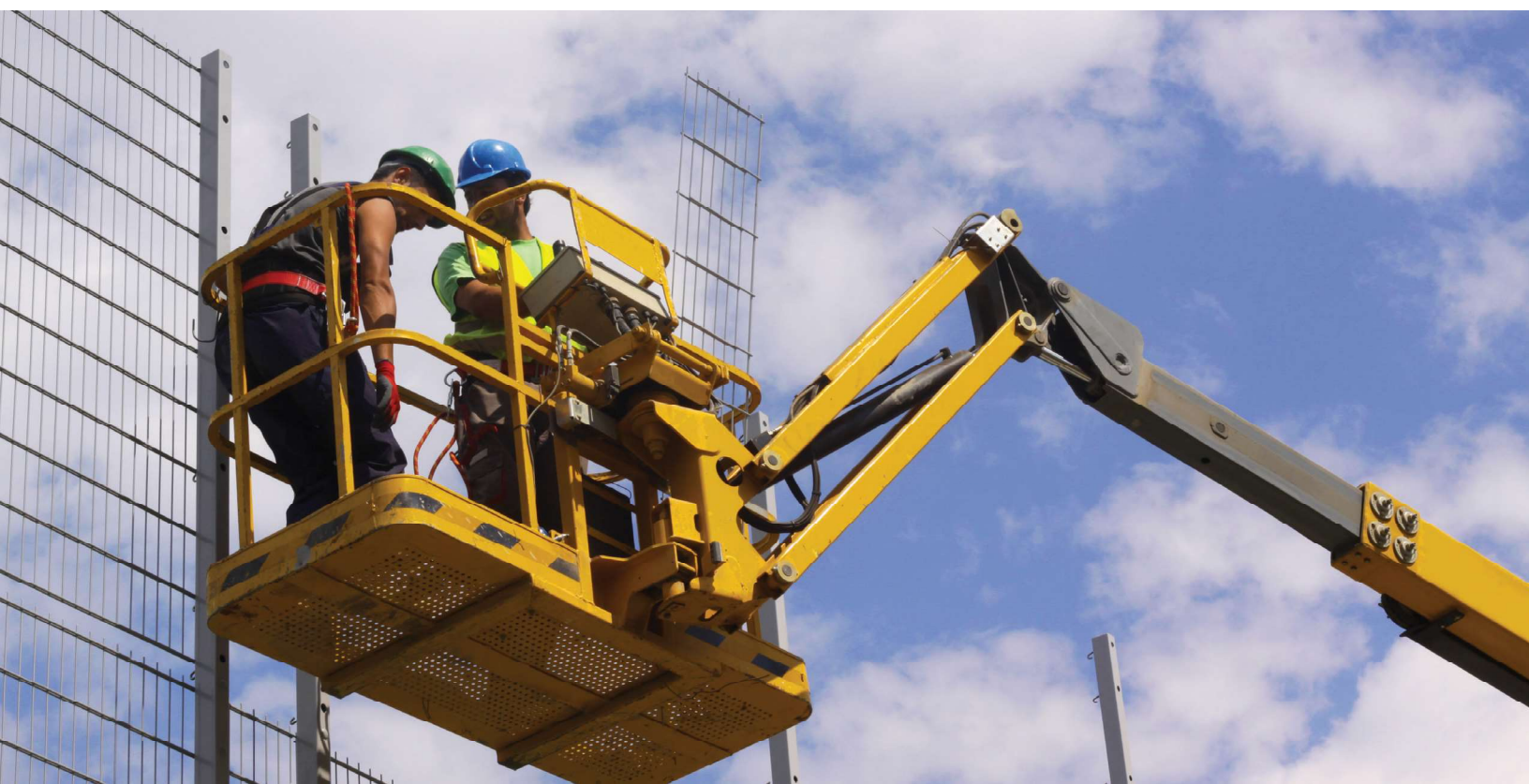
Legislative changes, such as anti-indemnity statutes enacted in 17 states as of January 1, 2012, have further highlighted the importance of OCIPs. These statutes restrict the ability of owners to transfer broad indemnity (sole negligence) to contractors and limit the use of additional insured provisions that previously extended contractor insurance coverage to owners. As a result, public entities face potential coverage gaps under traditional insurance arrangements. OCIPs address these challenges by providing a unified and comprehensive insurance solution, ensuring consistent protection for all project stakeholders.

Owner Controlled Insurance Program (OCIP)

An OCIP is a comprehensive method of procuring insurance where the owner purchases insurance on behalf of the contractor and subcontractors working on a project, thus minimizing issues of risk transfer caused by the anti-indemnity statute. The OCIP provides general liability and excess liability coverage for ongoing and completed operations to protect the owner and all enrolled contractors against third-party injuries and liabilities arising out of the project.

Additional coverage such as builder's risk, covering the property during the construction period; pollution liability, protecting all parties and the site against environmental hazards; and owner's professional protective indemnity, protecting the owner and contractors from professional liability and design claims, are also available. There are other numerous benefits provided by an OCIP as outlined on the following page.

Please note, the sponsor of the project, whether it's the owner or contractor, is responsible for claims occurring during the course of construction, as well as the full statute of repose in the state where the construction takes place (usually ten years).



CIP — General Liability

The CIP provides multiple benefits over traditional insurance:

- Broader terms and conditions for the sponsor and all enrolled subcontractors.
- All contractors enrolled in the project will have the same limits.
- Completed operations tail covering construction defect for all parties through the statute of repose (completed operations claims).
- Dedicated limits for your project for both ongoing operations and products completed operations.
- Reinstatement of aggregate limits to prevent erosion is possible.
- Cost can be advantageous vs traditional insurance.

Improved Claims Handling

A single source of recovery and claims eliminates finger-pointing between insurers. A unified defense lowers claim costs and ensures expedited claim payments. Choice of counsel and experienced local adjusters enhances our ability to deliver turn-key customer service.

Administration

Gallagher offers in-house administration associated with the management of controlled insurance programs. Administration is priced based on services requested for either one-line or two-line CIPS (GL only or GL and WC). These services include providing an insurance manual outlining all coverages and claims processes, a kickoff meeting, enrollment of all contractors, tracking WC payroll (when requested), verification of insurance deductions for contractors' insurance line items (or application of credits), certificate tracking, claims advocacy and closeout of the project.

Construction Pollution Liability Wrap (CPL Wrap)

A CPL wrap policy provides coverage for pollution conditions arising out of either pollutants brought to the site or conditions arising out of construction activities, including pollutants in transit and at disposal sites. This coverage is placed as a wrap-up, which provides coverage for all contractors and the owner.

While it is possible to place a policy that will respond to both site- and contractor-related issues, we recommend buying separate policies for both exposures. This approach will prevent erosion of limits, and many site pollution policies exclude development work and costs.

We recommend placing a CPL wrap for the following key reasons:

- 1** The cost to insure all parties can be comparable to requiring the contractor to purchase a project-specific policy — and eliminates the need for subcontractors to carry and charge for their pollution coverage.
- 2** Some of the subcontractors (especially smaller ones) may not carry CPL coverage or may not carry the limits that will be required for a given project.
- 3** The CPL wrap policy will be written with an extended reporting period, which provides coverage for pollution conditions arising from construction through the statute of repose (usually ten years). With this coverage in place, it ensures all contractors are adequately covered should an issue arise.



Owner's Professional Protective Indemnity

There are various different approaches to insuring the professional liability exposures for a project. Potential options include buying project-specific owner's professional and protective indemnity (OPPI), buying a project-specific architects and engineers professional liability for all parties (team coverage), or relying on architects, engineers, consultants and design subs to provide their own insurance. Similarly to the pollution wrap, there are issues with the traditional "bring your own insurance" model when it comes to professional liability. Project-specific professional liability policy sits as primary coverage for the architect and engineers, the owner and all entities providing professional services for the project.

OPPI provides professional liability for the owner only and sits as excess over the A&E's professional liability insurance, as well as excess coverage over the contractors and other design firms' professional policies. The OPPI coverage also includes protective indemnity coverage, which indemnifies the owner for their established or negotiated loss caused by the negligence of a subcontracted design professional or other professional consultant.

An owner's protective professional indemnity (OPPI) policy offers several key benefits and options for public entities to consider:

- **Cost Efficiency:** The cost to insure all parties under an OPPI policy is often comparable to requiring the architect, design professionals, consultants, contractor and design subcontractors to purchase a project-specific policy or could increase their limits beyond what they traditionally carry. Additionally, it eliminates the need for these parties to obtain and charge for additional professional liability coverage.
- **Coverage Gaps:** Many subcontractors, particularly smaller ones, may not carry professional liability coverage or may not meet the required limits for a given project. An OPPI policy helps address these potential gaps.
- **Architect Liability Limits:** Architects often limit their liability to the limits of their insurance, which could result in uninsured losses. An OPPI policy provides the owner with an additional layer of protection.
- **Extended Reporting Period:** OPPI policies are written with an extended reporting period, ensuring coverage for professional liability claims through the statute of repose. This eliminates the challenge of verifying that subcontractors maintain the required coverage.

We do more than help protect your business. We help build it.

Connect With Us

Construction Expert

Jacqueline M. Robinson

Area Vice President, Managing Director
Operations | Construction Practice

T: 415.288.1604

E: jjacqueline_robinson@ajg.com

Public Entity Expert

Shannon Gunderman

Managing Director | Public Sector &
K-12 Education

T: 847.621.8070

E: shannon_gunderman@ajg.com