Taking the Mystery Out of OCIP and CCIP Insurance

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April 24, 2013

Today's Learning Objectives

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- OCIP or CCIP = Wrap Up
- What a Wrap Up is and the differences with traditional approach
- What a contractor should look for when bidding
- Wrap Up paperwork – what to look for, who should do it
- Financial impact of a Wrap Up
- What happens when the Wrap Up ends

In the interest of full disclosure....

- I'm a proponent of Wrap Ups
- I have sold, placed and administered 7 Wrap Ups totaling $1.5B in hard costs
- If properly administered, they are very effective for both the sponsor and contractors
- 4 of my Wrap Ups involved trade contractor clients of mine

What Can Go Wrong

Why Wrap Ups

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Business Insurance May 12, 2008 | 27

Project wrap-up insurance helps ensure comprehensive cover

Care needed in formulating programs to ensure adequate limits in place, long-tail liability exposures protected

By DAVE LENCKUS

SAN DIEGO—A deadly and destructive construction crane accident in New York demonstrates the value of wrap-up insurance programs, but several coverage factors distinguish wrap-up programs from one another, according to a panel of experts.

In putting together wrap-ups—a master general liability and workers compensation insurance program that covers all contractors working on a project and often the project owner—risk managers have to figure out the appropriate limits and examine whether terms and conditions restrict completed operations coverage, the experts said.

Developing a wrap-up program, also known as an owner- or contractor-controlled insurance program, can be challenging but is worth the effort, panelists said during a session at the Risk & Insurance Management Society Inc.'s recent annual conference.

Without it, project owners and contractors could find themselves with the same kind of complex insurance coverage and liability problems that the owner and contractors of the Manhattan building project face, said Scott R. Whiteside, a San Francisco-based executive vp at Gallagher Construction Services, a division of Arthur J. Gallagher & Co.

Six construction workers and a woman visiting New York were killed March 15 when a crane tore away from a $100 million condominium project and crashed into several buildings. While owners and contractors involved in projects valued at $100 million or more often are covered by wrap-up programs, the Manhattan construction project was not (*BI*, March 24).

As a result, the project's developer and contractors will have to sort out blame for the accident while likely defending against third-party lawsuits and claims filed by the families of those who died in the incident, Mr. Whiteside said during the session, agreeing with other insurance experts who analyzed the accident shortly after it occurred.

But in putting together a wrap-up program, owners and contractors face several tough decisions, the panelists noted.

Chief among them is the amount of liability limits that should be purchased. Panelists and session attendees shared approaches for calculating adequate coverage, including buying limits equal to either 60% of the cost of construction or $50,000 for every individual unit in the project.

NY TIMES

A March 15 crane accident in New York was not covered by a wrap-up program, which will make settling any potential claims from the incident more difficult, experts say.

Whatever approach a risk manager takes, coverage costs can be held down by purchasing a lower amount of limits for contractors' completed operations, which is a smaller risk than their general liability exposure, Mr. Whiteside said.

"Plenty of markets are willing to take that approach," he said.

When purchasing completed operations coverage, however, risk managers should check that the program's various primary and excess policies provide the same 10-year tail coverage, said Mr. Whiteside and Amy B. Briggs, a partner with law firm Manatt, Phelps & Phillips L.L.P. in San Francisco.

Recently, Mr. Whiteside said, he discovered a six-year tail in an excess wrap-up layer that an underwriter was offering a client in California.

"Think of the potential downside if that coverage gap had been missed," Ms. Briggs said.

Risk managers also have to ensure that policies for the various layers contain consistent language on when tail coverage is triggered, Ms. Briggs said. For example, triggers include substantial completion of the project, the close of escrow for the project and the date the project is put to its intended use.

Equally important is that the trigger should be consistent with the jurisdiction's legal definition of a trigger for purposes of calculating the statute of limitations for filing a claim against a contractor, Mr. Whiteside said.

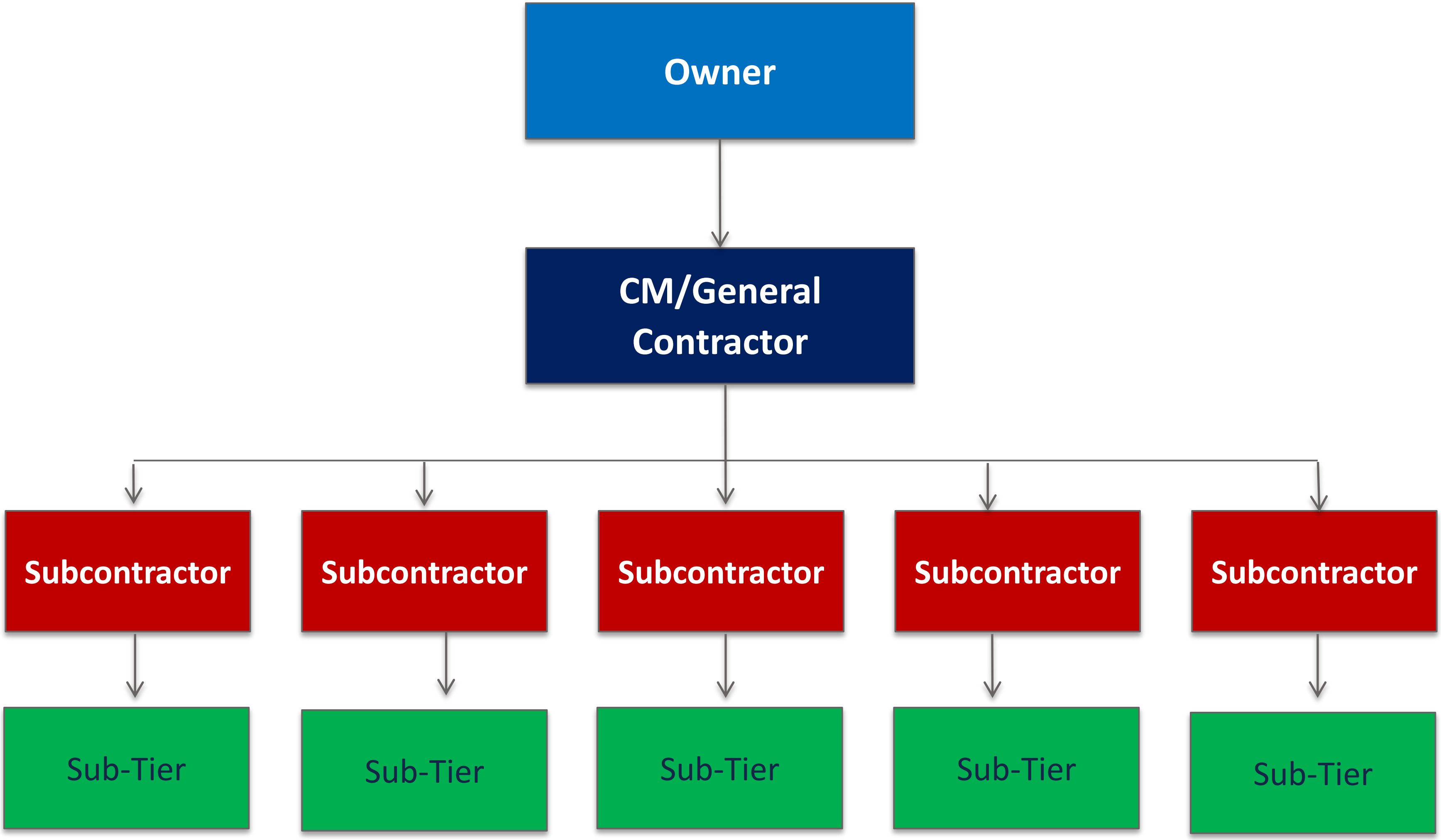
Improperly worded warranty and callback endorsements in completed operations coverage also could cause problems years after the project has been completed, Ms. Briggs said. The policy should provide premises coverage so the contractor is protected if its warranty work damages the facility, she said.

In addition, the policy should cover warranty work performed by a contractor other than the original in anticipation of some original contractors on the project going out of business.

Ms. Briggs and Mr. Whiteside also noted that wrap-up underwriters within the past year have been excluding crane operators more often.

However, crane operators can get coverage on their own, and other contractors working on a project still would be covered if they are pulled into a claim involving the crane operator, Mr. Whiteside said.

Traditional Insurance Approach



Risks with Traditional Approach

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- Exposes owner to CGL claims under its insurance due to
  - Partial or contributory negligence
  - Inadequate contractor insurance
  - Coverage exclusions
  - Improper additional insured endorsements
  - Contractor/Insurer insolvency
  - Discontinuation of coverage (e.g., JV)
  - Reservation of rights
  - Illinois - owner's deductibles/self-insured retentions are exposed (see *Kajima et al. v. St. Paul Fire and Marine, IL. Supreme Court, Docket No. 103588, 11-29-07*)
  - Potential lack of post-construction insurance protection

What is a Wrap Up?

- Project/site specific insurance program
- Consolidated insurance program provided by a sponsor
- Used in lieu of traditional insurance
- Insures owner, GC/CM, all ***enrolled*** subcontractors
- Purchased by sponsor
  - Owner – Owner Controlled Insurance Program (OCIP)
  - Contractor – Contractor Controlled Insurance Program (CCIP)
  - Rolling – Rolling OCIP or CCIP = ROCIP or RCCIP
- Funded by removing insurance costs from contractors' bids

Types of Insurance in a Wrap Up

- Core lines of coverage
  - Workers compensation
  - General liability
  - Excess liability
- May include
  - Professional liability
  - Environmental liability
  - Railroad protective liability

Coverage Secured by Contractors

- Automobile liability
- Aviation liability (as required)
- Watercraft liability (as required)
- Contractor equipment
- Off-site workers compensation, general liability
- Workers compensation for liability only Wrap Ups
- Surety bonds
- Deductible buyback (not required)

Why a Sponsor Wants a Wrap Up

- Isolates construction risk to a project-specific program
- Known dedicated limits, coverages and insurers
- Known completed operations coverage and term
- All contractors comply with on-site insurance requirements
- Reduces litigation – no finger pointing
- Centralized safety and claims management
- Project term pricing protection
- Provides broader scope of coverage and higher limits
- Eliminates concerns over improperly insured contractors
- Potential of savings

Disadvantages of Wrap Ups

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- Administrative burden
- Contractor concerns and objections
- Potentially complicated bidding process
- Collateral requirements (sponsor)
- Potential of unrealized savings
- Failure to meet expectations
- Failure to change mindset

Sponsor Responsibilities

- Control issues
  - Program design
  - Program administration
  - Legal counsel selection
  - Claims settlements within retentions
- Financial issues
  - Program profitability (savings vs. loss)
  - Maintenance of collateral
  - Financial integrity of insurers
- Transparent or seamless programs don’t exist

Suitable Projects For Wrap Ups

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- Size of projects
  - Single projects: $150,000,000+ hard costs
  - Rolling projects: $75,000,000+ per year for 3 years
- Liability only Wrap Ups
  - Project size is less material; can be rolling in nature
  - Effective for sponsors with concerns over subcontractors' insurance coverage
- Only those projects with sponsor attributes of
  - Management commitment
  - High quality safety program
  - Effective and open communication
  - Deliverables are distributed in a timely manner
  - Professional administrative services
  - Customized claims management procedures

Comparison of Approaches

- Wrap Up
  - Single policy
  - Same coverage limits
  - Contractors "enrolled in program
  - Coverage throughout statute of repose/limitation
  - Single primary GL target
  - Unified defense
  - Modified trade responsibility
  - No "fault"
  - Cross-suits eliminated
- Traditional
  - Numerous policies
  - Varying limits of coverage
  - Contractors add owner/ general as additional insured
  - Contractors must continue to provide completed operations
  - Each policy targeted
  - Fragmented defense
  - Each contractor pays for defense
  - Who is at "fault"?
  - Cross-suits are common

Common Obstacles to Success

- Sponsor lacks
  - Experience
  - Strong safety/claims management programs
  - Commitment, preparedness and focus
  - A supportive culture
  - Vision past insurance credit amounts
  - Poor program design
  - Poor communication between participants
  - Conflicting agendas of participants
  - Faulty expectations of participants

Contractor Concerns

- Common administrative complaints
- Perceived loss of profit
- Unfair or abusive credit calculations
- May impact cost of traditional programs
- Resistance by insurance brokers/advisors
- Failure of sponsor to provide timely information
- Documentation/Deliverables
- Mandatory adoption of stringent safety requirements

Contractor Coverage Issues

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- Discrepancies between contract, manual and policies
- Failure to specify responsibility for retentions
- Named insured and additional insured errors
- Failure to complete enrollment process
- Inadequate limits of liability
- Inadequate “project” or “site” descriptions
- Self-insured retentions vs. deductibles
- Failure to extend coverage for delayed projects
- Failure to include primary/non-contributory endorsements

Contractor Coverage Issues

- Missing extended products/completed operations endorsements
- Subrogation actions by Wrap Up insurers against participants
- Failure of excess insurance to “follow form”
- Damage to the project is excluded
- Failure of sponsor to supply copies of policies or other documentation
- Wrap Up exclusions/limitations in own traditional policies

Types of Bid Credits (Deducts)

- Bid credits fund the Wrap Up
- Bid credit methodologies
  - Net Bid – contractor bids without insurance (Bid Accepted)
  - Insurance Add Alternate – insurance costs identified and reviewed (Bid Adjusted)
  - Bid Credit Tracking – insurance costs adjusted for payroll (Bid Adjusted)
- Comparison of methodologies

	Net Bid	Insurance Add Alternate	Bid Credit Tracking
Procedure	Accepted "Net of" Insurance	Insurance Costs Identified In Bid	Costs Identified And Tracked Over Project Term
Identification of Costs	Competition Forces Remove Costs	All Costs Are Identified/Negotiated In Bidding Process	Deduct All Costs Contractors Would Pay In Absence Of A Wrap Up Program
Comments on Savings	Savings Estimated	Savings Identified At Front End (No Payroll Adjustment)	All Insurance Costs Identified And Deducted from Contract Value
Credit Levels	Lower	Medium	Higher

Sample $$ Flow Diagram

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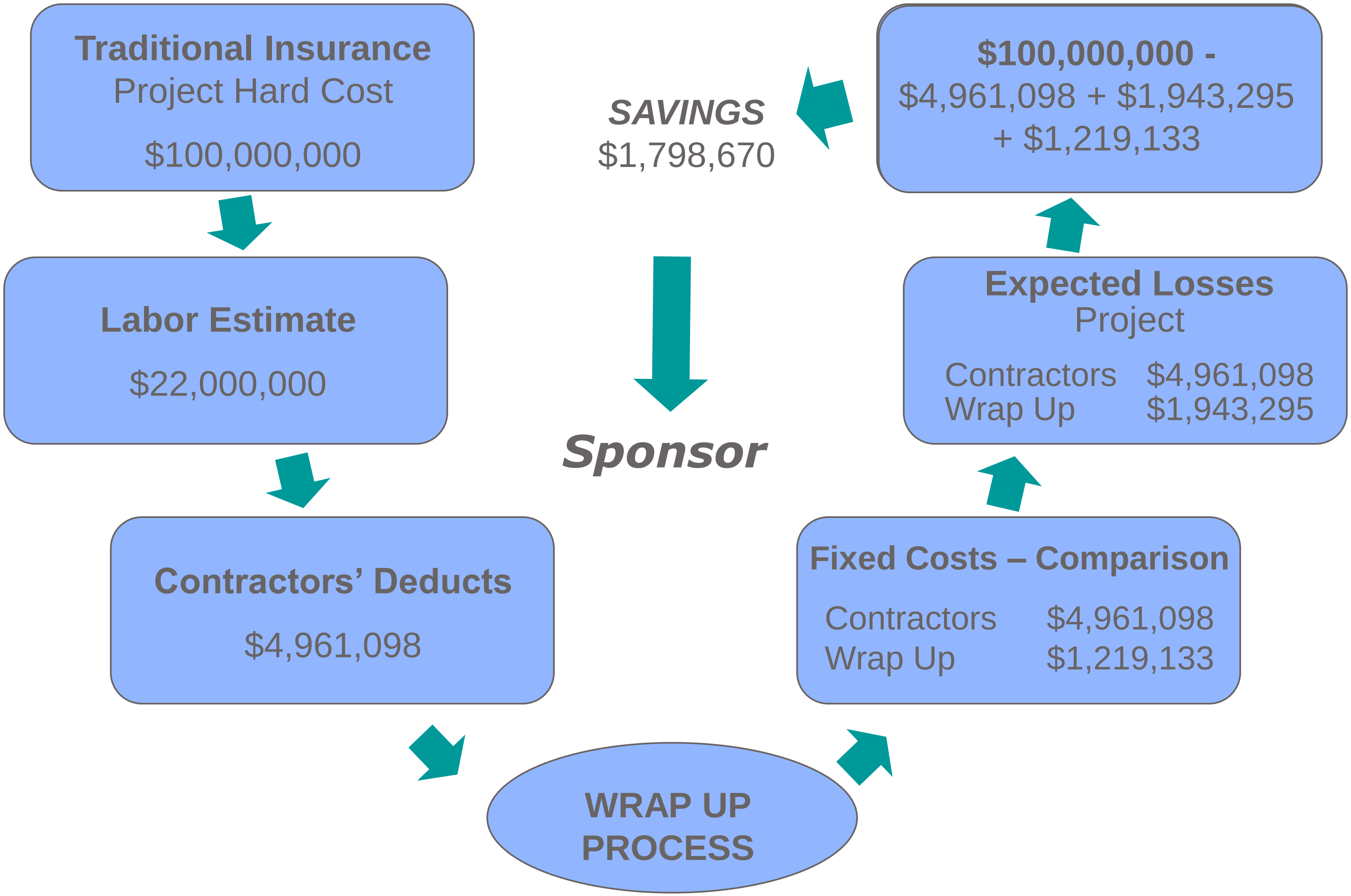
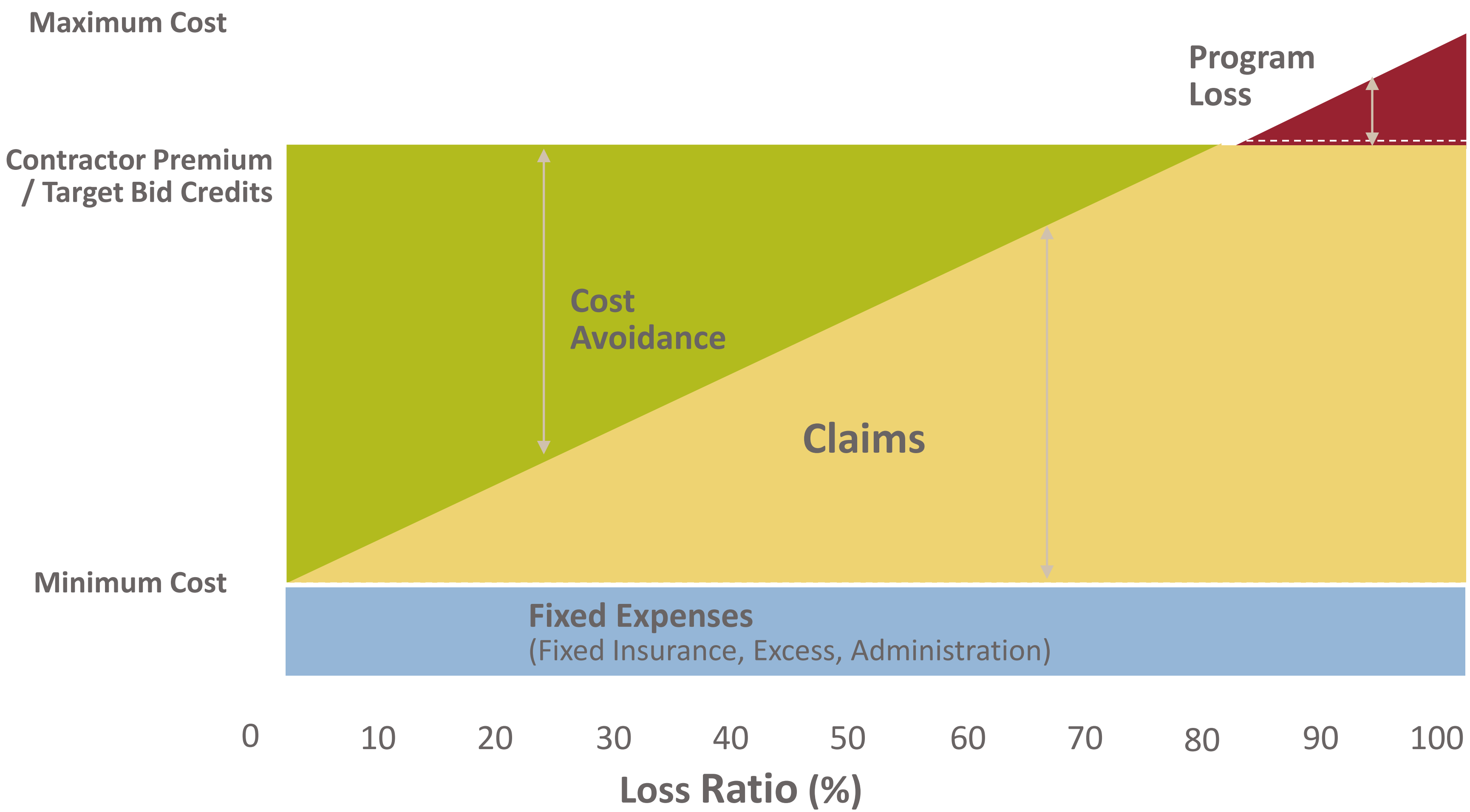


Sponsor Financial Model



Financial Impact on Contractor

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- Audit on traditional policies – proper documentation from sponsor
- Traditional policies may contain a minimum premium (GL)
- Too much Wrap Up work can increase net cost on traditional program
- Experience modifications and contractor credits
- Assumption of retentions greater than traditional program
- Deduct applied to change orders?

Contractor's Experience Modification

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- A Wrap Up has a direct impact on a contractor's experience modification
- Wrap Ups routinely delay the promulgation of the modification
- The contractor must be involved in the claim management process
- What happens when the contractor is not involved
- Prospect renewal modification 1.12
- Prospect renewal modification without Wrap Ups

.78

How to Protect Your Modification

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- Handle claim as if it were on your traditional policy
- Make sure there's a proper medical management program
- Ask for a seat at the claim review table
- Ask if there's a claim consultation agreement with the carrier
- Demand loss runs – the policy is issued in your name
- Return-to-Work program
- Attorney selection

What You Need to Review

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- Complete copy of manual
- Contract which specifically speaks to Wrap Up
  - ***BEWARE*** the contract that has been “amended” to add Wrap Up language!
  - Improperly worded indemnification clauses or offsite AI requirements
- Is project safety plan part of the general conditions of the construction agreement?
- Did sponsor include safety requirements in pre-bid documents?
- Ask for a copy of the policy
- Proper description of project
- Review exclusions, conditions, warranties
- Who is responsible for retentions/deductibles?
- Waiver of subrogation between builders risk and Wrap Up
- Waiver amongst the participants?
- Will change orders be issued downward as well as upward?
- Extended completed operations time frame and wording
- Is warranty work covered?

Enrollment Form

A. Contractor Information: Federal ID # or Soc. Sec. #: 1

	Business Information (headquarters)	Contact Information (address questions to..)
Company Name & dba: Contact Name & Title:	2	3
Address:		
City, State, Zip Code:		
Telephone:		
Fax:		
E.mail Address:		

B BID INFORMATION: Bid Package 1 {Project Name}

Description of Work: 2

Proposed Contract Price $: 3

Are you Submitting a bid to : 5 ❑ Yes ❑ No

Amount of Self Performed Work $: 4

If No, identify to whom: 6

- Contact information
- Bid information

Enrollment Form

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C. Workers' Compensation Insurance Information for Work Described Above: (a) (attach a separate sheet if necessary)

a State	b Class Code	c Description	d Rate (per $100 payroll)	e Man-hours	f Payroll	g WC Premium (Payroll * Rate / 100)
1						
			Total	2	3	4

Identify the Amount of Your Claim Retention 5 ______

rkers' Compensation Experience Modifier: 6

Modified Premium (line C4 x C6): 7

Employers Liability Rate: 8 ______

Employers Liability Premium: 9

10 Modification & Discount Premium Factors		11 Rate	12 Amount
Mod 1:	+ or -		
Mod 2:	+ or -		
Mod 3:	+ or -		
Mod 4:	+ or -		
Mod 5:	+ or -		

Total Modification Amount (Total of all amounts entered in column C12): 13

Total Workers' Compensation Premium (line C7 + C9 + C13): 14

$24,273

- Typical workers compensation information
- How an administrator handles loss sensitive programs
- Include experience modification
- Make sure all credits/modifications are included
- What happens if credits are not included
- Premium without contractors credit
- Premium with contractors credit

Enrollment Form

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D. General Liability: [a] Rate: 1 ______	2 Based On: Total Payroll (C3) Contract Price (B3) Other ______ 3 Rate factor:	Identify the Amount of Your Claim Retention: ______ GL Premium (D2 x D1 ÷ D3): 5
Excess/Umbrella Liability: [a] Rate: 6 ______	7 Based On: Total Payroll (C3) Contract Price (B3) Other ______ 8 Rate factor: Per 100 Per 1,000	Excess/Umbrella Premium (D7 x D6 ÷ D8): 9
E. Builder's Risk/Installation Floater ______		Not Applicable
F. Other Insurance Premiums: [1] (Enter total premium costs identified on page 2)		1
G. Totals	Total of all Insurance P…miums (Total of lines C14 + D5 + D9 + E3 + F1):	1
Overhead & Profit on Insurance Prem. % 2 15%	…H & Profit Amount (G1 x G2):	3
	To… Initial Insurance Cost (Total of lines G1 + G3):	4
	Contractor's Initial Insurance Cost Rate (Line G4 divided by total payroll in line C3 x 100):	5

- Typical general liability information
- How an administrator handles loss sensitive plans
- Excess/umbrella liability – "flat"
- Builders risk/installation floater handled by owner not part of Wrap Up
- Other insurance premiums to be deducted/credited
- Why overhead & profit

Enrollment Form


H. Signature Block: I verify the information presented above and attachments are correct:

Name: ____________ (please print) Date: ____________

Title: ____________ Signature: ____________

Completion of this form is a required part of your bid and must accompany your bid documents. Complete a separate form for each contractor, known Trade Contractor(s) and trades not currently awarded to a Trade Contractor. Duplicate this form as needed.

(a) Please provide copies of the following documents to support your insurance cost calculations:

- ☑ Schedule of Values
- ☑ Workers' Compensation declaration and rate pages
- ☑ Experience Modification worksheet
- ☑ General Liability declaration and rate pages
- ☑ Umbrella/Excess Liability declaration and rate pages
- ☑ 5 years actual loss experience for each line of coverage in which Contractor retains a deductible or SIR.

- Signature block
- All tiers must complete enrollment form
- Required documentation to be included

Enrollment Process Completed

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- Once enrolled you should receive
  - Certificate of insurance for general and excess liability
  - Workers compensation policy binder
  - Workers compensation policy after issuance
- Did sponsor conduct orientation meeting? Who attended from your company?
- Can request copies of general and excess policies
- Manual should have been provided with bid documents
- All subsequent changes to manual
- Monthly payroll tracking
- Change orders if payroll exceeds projected payroll, or
- Change order for payroll difference after your work is completed

The Wrap Up Ends

- Did the Wrap Up end when the project ended?
- Contractor closeout
- Warranty protection
- Extended completed operations
- Claim assistance – sponsor and contractor
- Confirm you have correct paperwork
- Confirm you will receive loss runs for open claims

Q&A