

OWNER-CONTROLLED INSURANCE PROGRAMS AS RISK MANAGEMENT FOR MUNICIPAL CONSTRUCTION PROJECTS

Murray Sali — Attorney-in-Fact, SUMAssure Insurance Reciprocal

Municipal construction projects typically involve multiple staff, council, architects, engineers, and various contractors. With multiple parties involved, the best way to ensure success is by consolidating and maintaining control where you can, but where do you start?

Deciding where to start is a common challenge for municipalities when assessing risk-management strategies for new construction projects. One effective risk-management tool is designing and implementing an owner-controlled insurance program (OCIP). Under an OCIP you are in control of the insurance, instead of contractually assigning it to the general contractor.

There are several benefits for municipalities to act as a project owner when arranging for their insurance on a specific project. With the greatest financial exposure, municipalities should ensure coverage is project specific and designed to protect its interests. There is always potential for project coverage to be deficient in protecting the interests of a municipality when policies are shared among multiple contractors.

An OCIP cannot guarantee that every possible contingency associated with a construction project will be addressed. However, it does provide municipalities

with some certainty in these areas:

- Broader and more consistent coverage for all contractors and subcontractors involved in the project
- Substantial reduction of administrative costs for the municipality
- Dedicated limits of insurance for the project
- Often lower premiums for dedicated project coverage, compared to the premium paid by individual contractors, collectively
- Avoid finger pointing and cross claims when multiple insurers are involved in one claim
- Less time involved in reaching a settlement
- Completed operations coverage for up to three years, even if the contractor is no longer in business.

If you decide an OCIP is the right choice for your next construction project, here are six key areas to address.

Risk Assessment

Carefully review the project details — including scheduling, specifications, and contract form. This review can substantially reduce the risk of disputes, and provide a basis for timely resolution in case of a problem. This process will help municipalities formulate a risk-manage-

ment plan specific to each project's needs.

The risk assessment begins at the concept/design stage, is incorporated into the eventual tender and contract, and continues through the remainder of the project.

Surety Bond Requirements

Use the appropriate bonds:

- **Bid bonds** guarantee contractors will hold their bid price if awarded the project.
- **Consent of surety** confirms that successful contractors will be able to provide performance bonds, and labour and material payment bonds.
- **Performance bonds** guarantee contractors will complete projects on time, within contract specifications, and within quoted prices.
- **Labour and material payment bonds** ensure subcontractors and suppliers will be paid by the general contractor.

Property Insurance Requirements

The appropriate risk-transfer mechanism for the property exposure is a builder's risk or course of construction policy. This policy provides coverage against all risks of physical loss or damage, including the result of flood or earthquake. It also provides coverage for materials forming part of the project while in transit, in storage awaiting delivery, or at the project site during and after being incorporated into the project.

Other considerations for this policy:

- **Soft Costs** - In the event of an insured loss, covering the costs of project overhead, such as bridge financing, architectural redesign, interest costs on financing for the construction phase, and permanent financing.
- **Delayed Start-Up Coverage** - In the event of an insured loss, this coverage covers costs for business interruption and lost rents coverage from the delay in opening.
- **Mechanical Breakdown (Boiler and Machinery)** - This coverage is critical for complex mechanical or electrical systems such as a water treatment plants, chillers for arenas, and boiler systems for facilities. This provides comprehensive coverage for project start up and testing on that equipment.





Liability Insurance Requirements

This policy addresses third-party property damage and bodily injury for exposure outside the project. Municipalities can ask each party working onsite to provide evidence of their own liability coverage, or they can provide a wrap-up policy to provide coverage for all contractors and subcontractors.

This is an effective method of ensuring everyone is covered for a limit appropriate to the size of the project.

The wrap-up liability policy can also provide extended coverage for any claims for a period of up to three years following the completion of the project. The completed operations extension assures that coverage is still available even if the contractor ceases business, or has exhausted their combined liability limits.

Project Professional Liability Insurance

This type of insurance is often overlooked, yet project owners are most likely to file claims against architects or engineers for faulty design. This policy will respond to errors in design caused by engineers, architects, or project managers. Municipalities also have a stake in ensuring that the professional's insurance will respond effectively. Project professional liability provides specific coverage for your project alone, and dedicates limits that are not affected by other projects the architects or engineers are working on.

Environmental Liability

Environmental liabilities present challenges for municipalities. Whether a regulator or a contaminated-site owner, municipalities are often faced with the challenge of facilitating remediation and determining who ought to pay. To reinforce that the polluter pays, sound environmental risk management is imperative to keep environmental liabilities off the ledger during a construction project.

Here are some of the policies offered by the insurance marketplace to address this issue:

- **Contractor's Pollution Liability** – a policy provided to a contractor that will insure against a range of contracting operations, including environmental, civil, and general construction work performed by or on behalf of the contractor.
- **Fixed Site Pollution Liability** – covers pollution risks associated with owning,

leasing, financing, or otherwise operating a facility or site.

- **Clean-Up Costs** – a financing mechanism that provides protection for owners, buyers and/or sellers of contaminated properties from cost overruns associated with remediation of contaminated properties, closure of landfills, hazardous waste treatment or disposal facilities, and

post-closure care and monitoring of such facilities.

As municipalities address their infrastructure deficits, it is in their best interest to consult with an experienced broker with a specific focus on insurance and bonding to understand the complexities of an OCIP. With this sound advice and preparation, municipalities can proceed with confidence. ■

The advertisement features a photograph of children playing on a circular playground structure. Overlaid on the image is the word "Play" in a large, white, cursive font. To the right, a vertical blue banner contains the text "CANADIAN-MADE" in white, bold, capital letters. At the bottom center, there is a circular logo with "PLAY STRONG" at the top, "100" in the middle, and "BLUE IMP" at the bottom, with "1917" and "2017" on either side of a small Canadian flag.

Blue Imp is proud to celebrate 100 years success as Canada's playground manufacturer! We invite you to check out our new exciting new *Centennial Series* and *Centennial Giveaway!*

To find out more, call us at **1.877.594.0541** or visit www.blueimp.com