

**METROPOLITAN EXPOSITION-RECREATION COMMISSION**

**Resolution 2000-04**

**Agenda Item:** Selection and Approval of Contract No. 921831 for an Insurance Brokers to advise and administer an Owner Controlled Insurance Program (OCIP) for the expansion of the Oregon Convention Center.

The Metropolitan Exposition-Recreation Commission finds:

1. **WHEREAS**, an OCIP will likely lead to increased worker safety, improved claims management, less disputes among contractors, lower losses, along with other advantages;
2. **WHEREAS**, an OCIP will result in uniform insurance coverage for all contractors and increase the ability for minority and women and emerging small business to participate in the project;
3. **WHEREAS**, an OCIP is expected to achieve financial savings;
4. **WHEREAS**, the Metropolitan Exposition-Recreation Commission authorized issuance of an RFP for an OCIP administrator in which two responses were received and evaluated by staff and independent parties.

**BE IT THEREFORE RESOLVED** that the Metropolitan Exposition-Recreation Commission selects Marsh USA Inc. to provide insurance services and OCIP administration and authorizes the Chair and Secretary/Treasurer to execute Contract No. 921831, attached as Exhibit A for the Oregon Convention Center Expansion.

Passed by the Commission on January 19, 2000.

George S. Bell  
Chair  
Indol  
Secretary-Treasurer

APPROVED AS TO FORM:  
Daniel B. Cooper, General Counsel

By: Kathleen Pool  
Kathleen Pool, Senior Assistant Counsel

## **MERC STAFF REPORT**

**Agenda Item:** Selection and Approval of Contract No. 921831 for an Insurance Brokers to advise and administer an Owner Controlled Insurance Program (OCIP) for the expansion of the Oregon Convention Center.

**Resolution No.:** 2000-04

**Presented By:** Scott Moss

**Date:** January 19, 2000

### **Background and Analysis:**

The State of Oregon authorizes Owner Controlled Insurance Programs (OCIP) for projects exceeding \$90 million. Owner controlled insurance programs allow the owner to purchase insurance for a specific construction project.

Effectively this groups together insurance requirements of the contractors into one unit, thus saving insurance costs by volume of coverage. As a result, contractor bids and proposals are requested without insurance related cost. This in turn translates the cost savings of grouped insurance into construction cost savings.

Aggressive use of loss control and safety programs results in fewer injuries to employees, less liability claims and increased savings. The presence of an OCIP ensures that owner has adequate insurance coverage and that all employees and contractors have access to uniform and quality insurance coverage, such as workers' compensation. This benefit to the employees is enhanced by provision of a safety coordinator to run the program under the general direction of the project manager.

Resolution 99-34 authorized MERC in conjunction with Metro Risk Management to release a Request for Proposals for an Insurance Broker to administer an Owner Controlled Insurance Program.

Two proposals were received from insurance brokers. Metro Risk Management, MERC staff and an independent expert from Oregon Health Sciences University evaluated the responses. The most responsive proposal was received from Marsh USA Inc.

As part of the proposal, Marsh conducted a feasibility study of developing an OCIP for the OCC expansion. The study indicates MERC will realize significant non-financial advantages by using an OCIP. Additionally, MERC is likely to realize financial savings.

#### **Principal OCIP advantages:**

- Uniform insurance coverage for all contractors.
- Increased emphasis on safety.
- Increased ability to include minority-owned, women-owned, and emerging small business participation in the project.
- Cost savings by "buying insurance in bulk."

It is important to note that the program does not reduce the insurance coverage for workers on the job, nor release any contractor from providing necessary workers compensation or liability insurance.

**Fiscal Impact:** The following estimate of costs will be incurred to operate an OCIP for the OCC expansion:

Estimate of Insurance cost	\$550,000
Broker & Loss Control	\$660,000
Estimate of losses	<u>\$700,000</u> (Note: This estimate is significantly higher than expected)
Total Cost	\$1,910,000

Estimate of insurance cost passed by contractors to MERC for conventional project: \$2,300,000 to \$3,300,000. The estimated potential savings is projected to be between \$350,000 and \$1,000,000.

**Recommendation:** Risk Management staff recommends that the Metropolitan Exposition Recreation Commission authorize the Chair and the Secretary/Treasurer to enter into a contract for OCIP Broker Services with Marsh USA Inc. to advise and administer an owner-controlled insurance program for the Oregon Convention Center Expansion.

**Oregon Convention Center Expansion  
OCIP Feasibility Analysis – Executive Summary  
January 2000**

*Provided by:*  
**Robert J. Limperis  
Shon De Vries  
Marsh USA Inc.  
Portland, OR**

# **Oregon Convention Center Expansion OCIP Feasibility Analysis – Executive Summary**

## ***Background***

The Risk Management Division of the Administrative Services Department of Metro awarded a contract to Marsh to study the feasibility of insuring the Oregon Convention Center Expansion Project (OCC Expansion) through an Owner Controlled Insurance Program (OCIP) in December 1999. This report summarizes our findings. This analysis assumes that Metro and MERC will begin the OCC Expansion in late Summer 2000 with estimated costs of \$106,000,000 over three years.

In the 1999 Session, the Oregon Legislative Assembly passed Senate Bill 787 which allows projects with over \$90,000,000 (previously \$100,000,000) in total project costs over a five year period to be insured through a Wrap-Up or OCIP. Based on the information provided by Metro and MERC, we feel that the OCC Expansion is an eligible project under Oregon Statute and would benefit from the use of an OCIP to insure the project.

## ***What is an OCIP?***

An OCIP (also know as wrap-up) is an insurance technique for large construction projects that protects the interests of the owner and all tiers of contractors and subcontractors. In an OCIP the owner pays the premium and controls costs instead of contractors and subcontractors providing coverage and passing cost to the owner. OCIPs typically include General Liability, Excess/ Umbrella Liability, Workers Compensation and Builders Risk coverage but can be expanded to protect other risks. There are currently over 400 active wrap-ups in the United States. Over 50% of these wrap-ups are public entity projects. A majority of convention centers, sports arenas and other large municipal projects are insured through some type of wrap-up.

The traditional method of insuring a construction project is to require all contractors to provide their own insurance, meeting specific requirements in the contract. This allows contractors to maintain and control their own insurance. It also allows contractors to use their insurance as a profit center by adding a percentage “mark-up” to their insurance and charging back to the owner. This creates an unfair advantage for contractors whose size allows them to negotiate more favorable insurance rates. It also creates an inefficient insurance environment with inconsistent or overlapping insurance coverage; cross litigation between insurers who represent separate contractors; multiple claims adjusters from many insurers with varying procedures; and independently administered safety programs.

OCIPs avoid many of the inefficiencies of contractor provided insurance by coordinating insurance procurement and controlling related services. The specific advantages of OCIPs are:

- Fewer barriers to entry for M/W/ESB Contractors (“level playing field”)
- All Contractors Have Same Insurers, Coverage and Limits
- Coordinated Project Safety Program
- Centralized Claim Reporting and Handling
- Promotes Early Return to Work for Injured Workers
- Eliminates Gaps and Duplications of Coverage
- Eliminates Cross Litigation between Contractors’ Insurers
- More Cost Effective for All Participants

However, there are some disadvantages to using OCIPs. Contractors historically do not support OCIPs because they remove a source of profit. OCIPs also increase administration for both the Owner and Participants.

An OCIP is administered by a broker/consultant with specific capabilities and experience. The OCIP Administrator provides initial feasibility and risk analysis; designs and markets the insurance program; enrolls individual contractors in the program; assists in development and oversight of the project safety program; and manages insurance carrier services. The OCIP Administrator becomes an integral member of the project team and works extensively throughout the term of construction.

### *Elements of a Successful OCIP*

Marsh has a national reputation as a leading OCIP provider to public entities. We have administered over three times more wrap-ups than our closest competitor. In Oregon, Marsh has developed and administered more OCIPs than any other broker/consultant. Our current OCIP clients include the City of Portland and the Port of Portland. We also administered OCIPs for the Tri-Met Westside Light Rail Project and the Oregon Arena Project. All projects administered by Marsh have achieved successful results in loss prevention, M/W/ESB participation (when required), public relations and financial cost savings.

We invite the members of the MERC Commission to call our clients to discuss the benefits of OCIPs. (phone numbers can be provided upon request):

- Catherine Brown, OHSU
- Chris Novotny, Port of Portland
- Karen Frey, Tri-Met
- Mike Reiner, City of Portland

### *Recent Oregon Projects*

#### **A. OCIP**

- Oregon Arena Project
- Port of Portland - Airport Expansion Projects
- Tri-Met Westside Light Rail
- Intel - Semiconductor Fabrication Plants
- City of Portland - Combined Sewer Overflow Projects
- Nike Campus Expansion

#### **B. Non-OCIP**

- Hatfield Federal Building
- Fox Tower
- ODS Tower
- Expo Hall E
- Oregon Convention Center (original construction)

### ***Do OCIPs Save Money?***

Marsh performed a benchmarking study in 1999 of 30 projects across the United States that were insured through OCIP. This study showed that:

- 27 out of 30 projects saved money
- Average cost if contractor provided insurance was 2.86% of construction cost.
- Average cost if owner provided insurance was 1.96% of construction cost.

### ***Financial Feasibility Results***

A copy of the financial feasibility analysis is included in the appendix of this report. The OCIP insurance mechanism is usually a loss sensitive policy, which means the total cost increases as insured losses increase. The feasibility model shows that the variable cost of an OCIP for the OCC Expansion is estimated between \$1,206,057 to \$1,969,342 (including broker/consultant fees).

In an OCIP, Contractors are required to deduct the cost of insurance from their Bid. As part of this process, they complete an Enrollment Form which is tallied by the OCIP Administrator. Based on results from similar projects, the deducted cost of insurance for the OCC Expansion is estimated between \$2,300,000 and \$3,300,000.

Based on our feasibility analysis (see Appendix), the savings for the OCC Expansion OCIP will ***range from \$330,658 to \$1,093,943***, depending on losses and program options. This is a conservative estimate based on contractor deductions of ***\$2,300,000***.

### ***Recommendation***

Marsh recommends that Metro and MERC provide an Owner Controlled Insurance Program for the OCC Expansion Project. This recommendation is based on the increased potential for better safety/loss prevention, reduced claims, coordinated claim handling, improved minority contractor utilization and cost saving potential.

## Appendix



**PERSONAL SERVICES AGREEMENT**

**THIS AGREEMENT** is entered into between the Metropolitan Exposition-Recreation Commission (MERC), whose address is P.O. Box 2746, Portland, Oregon 97208 and Marsh USA Inc. whose address is 111 SW Columbia, Portland, OR 97201, hereinafter referred to as the "CONTRACTOR."

In exchange for the promises and other consideration set forth below, the parties agree as follows:

**Duration**

This personal services agreement shall be effective January 20, 2000 and shall remain in effect until and including December 31, 2003, unless terminated or extended as provided in this Agreement.

**Scope of Work**

All of the provisions of the proposal documents including the Proposal and Scope of Work are hereby expressly incorporated by reference. CONTRACTOR shall provide all services and materials specified in the attached "Exhibit A — Scope of Work," and "Exhibit B — Proposal Options." CONTRACTOR, in accordance with the Exhibits, shall provide all services and materials in a competent and professional manner.

**Payment**

MERC shall pay CONTRACTOR for services performed and materials delivered in the amount(s), manner and at the time(s) specified in the Exhibits for a maximum sum not to exceed SIX HUNDRED AND FOUR THOUSAND, TWO HUNDRED AND FIFTY DOLLARS AND NO CENTS (\$604,250.00)

**Insurance**

CONTRACTOR shall push and maintain at CONTRACTOR'S expense, the following types of insurance covering the CONTRACTOR, its employees and agents.

- A. Broad form comprehensive general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability. The policy must be endorsed with contractual liability coverage.
- B. Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an aggregate limit, the aggregate limit shall not be less than \$1,000,000. MERC its elected officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED. Notice of any material change or policy cancellation shall be provided to MERC thirty (30) days prior to the change.
- C. Insurance Agents/Brokers Errors and Omissions Insurance. Insurance coverage shall be a minimum of \$5,000,000 per claim.

This insurance as well as all workers' compensation coverage for compliance with ORS 656.017 must cover CONTRACTOR'S operations under this Contract, whether such operations be by CONTRACTOR or by any subcontractor or anyone directly or indirectly employed by either of them.

CONTRACTOR shall provide MERC with a certificate of insurance complying with this article and naming MERC as an additional insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

CONTRACTOR shall not be required to provide the liability insurance described in this Article only if an express exclusion relieving CONTRACTOR of this requirement is contained in the Scope of Work.

#### **Indemnification**

CONTRACTOR shall indemnify and hold MERC, its agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of CONTRACTOR'S designs or other materials by MERC and for any claims or disputes involving subcontractors.

#### **Maintenance of Records**

CONTRACTOR shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow MERC the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by CONTRACTOR for three years after MERC makes final payment and all other pending matters are closed.

#### **Ownership of Documents**

All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by CONTRACTOR pursuant to this Agreement are the property of MERC, and it is agreed by the parties that such documents are works made for hire. CONTRACTOR hereby conveys, transfers, and grants to MERC all rights of reproduction and the copyright to all such documents.

#### **Project Information**

CONTRACTOR shall share all project information and fully cooperate with MERC, informing MERC of all aspects of the project including actual or potential problems or defects. CONTRACTOR shall abstain from releasing any information or project news without the prior and specific written approval of MERC.

### **Independent Contractor Status**

CONTRACTOR shall be an independent CONTRACTOR for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall CONTRACTOR be considered an employee of MERC. CONTRACTOR shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. CONTRACTOR is solely responsible for its performance under this Agreement, the quality of its work, for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement, for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work, and for meeting all other requirements of law in carrying out this Agreement. CONTRACTOR shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to MERC.

### **Right to Withhold Payments**

MERC shall have the right to withhold from payments due to CONTRACTOR such sums as necessary, in MERC's sole opinion, to protect MERC against any loss, damage, or claim which may result from CONTRACTOR'S performance or failure to perform under this Agreement or the failure of CONTRACTOR to make proper payment to any suppliers or subcontractors.

### **State and Federal Law Constraints**

Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. CONTRACTOR shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

### **Situs**

The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the state of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

### **Assignment**

This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

### **Termination**

This Agreement may be terminated by mutual consent of the parties. In addition, MERC may terminate this Agreement by giving CONTRACTOR written notice of intent to terminate, without waiving any claims or remedies it may have against CONTRACTOR. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

**No Waiver of Claims**

The failure to enforce any provision of this Agreement shall not constitute a waiver by MERC of that or any other provision.

**Modification**

Notwithstanding and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties.

\_\_\_\_\_

Metropolitan Exposition-Recreation Commission

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

## Exhibit A — Scope of Work

### From REQUEST FOR PROPOSALS for OREGON CONVENTION CENTER EXPANSION OCIP BROKER RFP NO. 99R - 44- MERC

#### I. PROPOSED SCOPE OF WORK/SCHEDULE

MERC is seeking proposals from qualified firms to perform the following services and to deliver the products described:

##### A. Phase 2

###### OCIP Development and Administration

Anticipate the length of time needed to develop program as required by this document to be ready for the 1<sup>st</sup> day of construction.

- 1) Obtain approval for this OCIP from the Oregon Insurance Division.
- 2) In conjunction with MERC, GM/GC & Metro Risk Management design, staff, implement and administer an OCIP in compliance with Oregon State law and Insurance Division requirements.
- 3) Analyze project hazards and recommend appropriate levels of risk retention and transfer needed to protect MERC and Metro from financial loss.
- 4) Identify providers and develop underwriting submissions to firms capable of providing the desired coverage.
- 5) Analyze submissions and make recommendations for appropriate coverage and providers.
- 6) Negotiate prices and premiums and place all coverages.
- 7) Administer, review, and track all placements, binders, policies and endorsements to avoid lapses in coverage and verify conformance of policies with desired coverage.
- 8) Act as the sole coordinator between MERC, Metro and all insurers.

##### B. Construction Documents/Bid Request

- 1) In conjunction with GM/CG, MERC and Metro staff, develop, provide and review appropriate bid and construction documents for language concerning OCIP, safety programs and award programs as appropriate.
- 2) Review submissions and assist in reviewing proposals and construction documents as part of OCIP and safety program administration.
- 3) Where applicable, coordinate insurer review of construction documents.
- 4) Suggest and review construction and bid documents language pertaining to vendors and suppliers.

##### C. Insurance Services

- 1) Develop, issue, track, maintain and update procedures, manuals or other documents needed administer insurance programs.
- 2) As required or requested, issue binders, certificates of insurance and policies to all insured parties.
- 3) Amend or change policies in response to exposure changes or market conditions over course of project.
- 4) Produce and verify the accuracy of bill, audits and any other premium adjustments.
- 5) Advance premium as required and forward monthly bills to MERC for payment.
- 6) MERC, Metro and contractor may choose to jointly develop a method or procedure to handle premium and claims payment over the course of the project.

**D. Claims**

- 1) As part of the OCIP and in conjunction with MERC and Metro staff, develop claims reporting, processing and adjusting procedures. MERC expects the contractor to coordinate all aspects of every claim covered under the OCIP. Contractor should evaluate the need for, recommend and implement:
- 2) Onsite or convenient claims reporting and processing procedures.
- 3) Onsite medical or 1<sup>st</sup> aid provider.
- 4) Cost containment, structured settlements or other methods to reduce claim costs.
- 5) Adjusting procedures.
- 6) The need for legal counsel
- 7) Procedures for claims resulting from the project but not insured under the OCIP.
- 8) Develop, issue, distribute and update as needed claims handling procedures and manual(s).
- 9) Present claims to insurers for insured losses.
- 10) Provide or coordinate prompt payment or settlement of claims.
- 11) In accordance with claims procedures and MERC and Metro staff, initiate adjusting services or involvement of legal counsel as required by circumstances surrounding claims.
- 12) At a minimum, by the 7<sup>th</sup> of each month, provide a summary of claims occurring the previous month to GM/CG, MERC and Metro Risk Management Staff. Summary should include date, type of claim, cause of claim, paid cost, reserve cost, total cost.
- 13) Hold quarterly claim reviews to discuss status of all open claims, claim trends, aggregate cost to date, exposure changes and safety and loss control recommendations.

**E. Safety and Loss Prevention**

- 1) Contractor will develop a safety and loss control program for this project.
- 2) Contractor will recommend appropriate staffing for a project of this size.
- 3) In conjunction with MERC and Metro Staff, contractor may be asked locate, evaluate and hire or contract with staff to develop and monitor safety and loss control program for the OCIP.
- 4) Contractor and/or safety staff will work with MERC and Metro to develop safety and loss control contract language for all construction bid and contract documents. This may include:
  - a) Authority to stop activities deemed imminently hazardous to employees, workers or the general public.
  - b) Recommendations on selection of contractors and subcontractors based on safety performance.
  - c) Safety programs, cash incentives and/or safety recognition programs.
  - d) Develop written safety and loss control manuals for use of the GM/CG, contractors, subcontractors, MERC and Metro staff.
  - e) Develop bilingual safety orientation program as needed by contractors or subcontractors.
  - f) If required, prepare program specific pamphlets or handouts for use by contractors or subcontractors. Be prepared to provide bilingual copies if required by employees.
  - g) Institute, conduct or develop training programs for contractors and subcontractors as needed during project.
  - h) Provide risk control services including exposure identification, evaluation, analysis and recommendations for appropriate controls.
  - i) Coordinate and attend safety meetings.
  - j) Assist the GM/CG in formulation of project specific policies, procedures and action plans concerning project medical/1<sup>st</sup> aid services, employee drug testing, security guard force operations, emergency/disaster plans, OSHA or OR-OSHA policies or inspections or any other safety program requested by CM/GC, MERC or Metro staff.
  - k) Prepare OSHA 200 logs or other required reports.
  - l) Provide monthly safety reports including analysis of accidents, frequency, severity, causes and recommended preventative action.
  - m) Make recommendations for and assist in developing safety incentive and safety recognition programs. Programs should be structured so contractors will have incentives to maintain favorable safety records.
  - n) Recommend appropriate funding level for incentive and recognition programs.

**F. Risk Management Information System**

- 1) In conjunction with MERC and Metro Risk Management, develop a system to maintain or provide project, claim and loss information, insurance tracking, incentive tracking and other project tracking as agreed by the parties.

**G. Non-OCIP Responsibilities**

- 1) Review construction contracts and bids requests and make recommendations for appropriate non-OCIP coverage for contract documents.
- 2) Secure, review, maintain and track certificates of insurance or other evidence of any insurance coverage required by construction documents not covered by OCIP.

**H. Special Provisions**

- 1) Commit and designate that the named principals and loss control staff will not be removed from the account without prior consultation of MERC or Metro.
- 2) When requested, attend or participate in Metro Council meetings or MERC meetings concerning the project.
- 3) When requested, attend or participate in Metro or MERC staff meetings concerning the project.
- 4) Prepare an annual report summarizing insurance coverages, costs, fees, savings, and recommendations. The first report shall be submitted 13 months after the effective date of the contract and thereafter in 12 months increments.
- 5) Provide service until the OCIP rating plan is considered closed and final, even after completion of the construction project.
- 6) Identify how return to work programs can be structured into the workers compensation program. If requested, administer the return to work program.
- 7) Provide a project end report.

## Exhibit B — Proposal Options

1. Per the Marsh USA proposal dated December 14<sup>th</sup>, 1999, MERC retains the option to have Marsh hire safety professional at rate of \$60,000 per year. This safety professional will work an average of 16-20 per week on the OCC Expansion.
2. Contractor will bill on either monthly basis for services described in this agreement.