

# Property & Casualty Newsletter

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## Navigating Controlled Insurance Programs from a Subcontractor's Perspective

Controlled insurance programs (CIPs), whether sponsored by the owner or general contractor, are increasing in popularity. Touting lower costs, dedicated and higher limits, and cooperative defense, CIPs are now being used by owners and contractors on smaller and less complex construction projects, when once CIPs were reserved for construction projects over \$200 million. In its simplest form, a CIP is a single project-specific insurance program for on-site risks, losses, and casualties that protects most project participants. A CIP is quite a departure from the traditional way of insuring a project. Under the traditional way, each contractor and subcontractor individually purchases and negotiates its own insurance programs to transfer risk and address liability.

Given their increased popularity, most subcontractors today have participated in more than one CIP. But even with that previous experience, subcontractors should establish an internal protocol to individually evaluate the risk associated with a CIP program. Each CIP is different and there is no standard for coverage and administration. The extent of coverage offered by a CIP can vary significantly; it may provide broader coverage than a subcontractor would ordinarily procure, but it can also impose different administrative burdens on the subcontractors. A subcontractor should never assume anything when it comes to CIPs. Accordingly, it is critical that a subcontractor request and review all available information from the CIP sponsor at the earliest possible stage of the bid process.

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During its pre-bid investigation, a subcontractor should review, alongside its insurance and legal professionals, the following:

- The bid proposal form and instructions
- The CIP manual, including any separate safety and claims manuals
- The policies forms for the primary and all excess layers of coverage, including endorsements
- The CIP contract language
- The CIP administration forms and instructions

CIP sponsors and administrations should be invested in full transparency of their programs and should make the foregoing documents readily available to a subcontractor prior to bidding. A sponsor's unwillingness to provide a subcontractor with full transparency could be a red flag.

While all of the foregoing documents are important, the CIP manual and policy forms, at a minimum, must be reviewed. This manual generally explains the administrative requirements for the program, including instructions on insurance cost calculations, enrollment, payroll reporting, and audits. The policy forms will detail the coverage and liability limits of the CIP. The policy forms will inform the subcontractor if the "named insured" in the CIP policies and the description of the "project site" are consistent with the contractual documents. Subcontractors should engage with their insurance professionals to carefully evaluate the scope of coverage and limits available under the CIP.

More frequently, CIP sponsors are attempting to allocate a significant portion, or all, of the program's deductible to certain project participants based on the sponsor's determination of fault. Often these allocations are arbitrary and not related to the risk or contract value. If deductible information is not available pre-bid, subcontractors should consider including language in their bids stating that they will not be bound by their bids unless they approve the method of deductible allocation and payment timing.

Ultimately, a failure to properly vet a CIP project can leave a subcontractor exposed to increased administrative costs without an avenue to recoup these costs, a bid deduction that is too large in light of the insurance coverage provided to the CIP participants, and an obligation to contribute to a large deductible with no procedure for objecting to the sponsor's or administrator's allocation of fault.



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