

Evaluation of Owner Controlled Insurance Programs (OCIP's) for Use on WisDOT Mega-Corridor Projects

A Review of the Marquette Interchange Owner Controlled Insurance Program

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Executive Summary

In December 2006, the Wisconsin Department of Transportation (WisDOT) requested that the Construction and Materials Support Center (CMSC), University of Wisconsin – Madison, conduct an evaluation of Owner Controlled Insurance Programs (OCIP's) for use on future WisDOT mega corridor projects. The CMSC determined that the evaluation should be conducted by the University of Wisconsin risk management and insurance MBA program. The study was based upon a review of the Marquette Interchange Reconstruction project OCIP.. The purpose of the project was to determine whether or not a similar insurance program should be implemented for up-coming WisDOT mega-corridor projects, including those planned for U.S. Highway 41 and Interstate 94 North South Corridor.

Based on the extensive analysis reported here, the MBA Review Team recommends continued use of OCIPs for up-coming mega-corridor projects, totaling over \$100 million in construction costs. The overall project safety and potential for cost savings provide sufficient benefits to warrant their use. Specific recommendations are:

- While future WisDOT mega-corridor projects may be much more linear than the Marquette Interchange project, that should not preclude the use of OCIP's on these type projects. These projects will provide different administrative challenges and may require the development of multiple OCIP's within the overall project corridor to be most efficient.
- Future WisDOT mega-corridor projects like the US Highway 41 and I-94 North-South Corridor will be of longer duration than the Marquette Interchange and comprised of more individual construction contracts. Use of multiple OCIP's of shorter duration within the overall project should be considered to provide the most cost efficient insurance program.
- Future WisDOT mega-corridor projects that contain large interchange reconstruction components similar to the Marquette Interchange, such as the Mitchell Interchange and the Zoo Interchange, should consider stand-alone OCIP's for these projects since they are in a relatively confined geographical area.
- Each mega-corridor project presents its own unique challenges and risks that need to be considered when considering an OCIP program. Also, market conditions fluctuate as to the interest of underwriters in taking on large construction wrap-up insurance programs. Individual project feasibility studies should be conducted before ultimately deciding to pursue an OCIP. These should be conducted approximately 2 to 3 years prior to the start of construction to best assess the current insurance market conditions and when an accurate construction estimate is available.
- Use of OCIP's on construction projects can be controversial. In general, larger prime contractors are not in favor of their use. WisDOT management should be fully involved in the decision to utilize an OCIP and be actively engaged in supporting their use.

We further recommend improvements in the current OCIP by undertaking the following:

- * Develop a mechanism to share the benefits (and costs) of safety programs between WisDOT and the contractors. This mechanism might work best if related to contract size or loss type. We believe this sort of process will help develop buy-in from the contractors and generate a sense of shared purpose.
- * Continue and enhance the current team approach to safety among all the parties involved, rather than the more authoritarian approach that was initially implemented.
- * Communicate more effectively with contractors and subcontractors by providing quarterly reports of progress, claims, and other factors that may affect their relationships with insurers. This quarterly report should replace much of the other paperwork currently flowing to the contractors and subcontractors.
- * Develop a written protocol for the claims process to improve understanding and communication of the OCIP. This protocol should detail the entire process from initial notification, collection of deductibles, claim payment, and closeout.
- * Provide a liaison to negotiate and mediate between the contractors on site and WisDOT. This is particularly important as Kevin Gehrman retires and a new WisDOT Risk Manager is hired.
- * Work more with contractors to teach them how to provide bids with and without insurance costs.
- * Tailor OCIP provisions to specific project characteristics. For example, with upcoming linear projects, the paramedic and safety trailers should be mobile.
- * Evaluate the geographic limitations in the current insurance program and eliminate if possible. Also use a Probable Maximum Loss analysis to set limits.

Our recommendations generate from an extensive analysis conducted through interviews, document review, cost estimates, and insurance coverage analysis. The interviews were conducted directly and by survey with contractors, subcontractors, consultants and representatives from AON, ESIS, the Department of Workforce Development (DWD), and WisDOT. Documents include claim runs, correspondence among the parties, general information regarding OCIPs, the original AON feasibility study, and WisDOT documents of project purposes. Our cost estimates indicate a savings of 19% of workers compensation insurance premiums, given a variety of assumptions. Overall the insurance coverage itself appears to have provided adequate limits and broad coverage. Moreover, the rapid payment of claims promoted the WisDOT public relations efforts.

Our recommendations, however, are swayed most heavily by the very favorable safety record under the OCIP. Virtually all parties agreed that the safety mechanisms in place for the OCIP were noticeably better than what is observed on the average work site. Successful safety leads to positive outcomes for the workers, lower costs for contractors and WisDOT, and better public relations for all the parties involved. Especially when combined with the other improvements noted above, an OCIP project offers a better safety program and lower costs while adding to the satisfaction of the parties.

The remainder of this document presents the rationale for our recommendations. We begin with background on the OCIP, follow with discussion of our analyses, and conclude with results that lead to our recommendations.

A. Study Recommendations

Based upon an overall review of the Marquette Interchange OCIP program, the University of Wisconsin OCIP review team recommends that WisDOT consider the utilization of OCIP programs in the future for mega projects totaling over \$100 million in construction costs. The favorable safety program created a safety umbrella under which all project workers were associated, leading to an extremely safe work environment with no major events to date. Numerous individuals and companies associated with the OCIP program were extremely complimentary of the safety program and other procedures in place. The insurance coverage purchased under the OCIP provided adequate limits and excellent coverage. Moreover, the rapid payment of claims promoted the WisDOT public relations efforts, and prevented timely stoppages of work that may have otherwise disrupted a non-OCIP project. Finally, the DWD highly encourages OCIP programs, due to the organized safety and low pseudo modification factor in place for OCIPs. All of these factors contribute to our recommendation for WisDOT to further investigate the implementation of OCIP programs on future mega projects, which would include WisDOT's request for the state's broker to perform separate feasibility studies for such projects.

The feasibility studies should be conducted 2 to 3 years prior to the start of construction when the project construction estimates are known and a reasonable assessment can be made of the market conditions regarding insurance underwriters for these types of programs. The feasibility study should also evaluate the optimum time periods and geographical areas to be covered by a single OCIP. Future WisDOT mega-corridor projects are likely to be of longer duration and cover a more linear construction site and these need to be matched to the unique project risks of each corridor to obtain the most efficient wrap-up program. The longer corridor projects may be made up of multiple OCIP's rather than a single OCIP as was provided for the Marquette Interchange. Future interchange reconstruction projects such as the Mitchell Interchange and Zoo interchange would be prime candidates for future OCIP's given their fairly compact project footprints and large contract amounts.

WisDOT management needs to be involved decisions to utilize OCIP's in the future and to actively support the administration of them should they be utilized. The prime contractors on the Marquette Interchange reconstruction project expressed strong opinions that they would not like to see WisDOT continue to require OCIP's and they can be expected to continue to express opposition to future OCIP's.

However, WisDOT should strive to initiate improvements in the OCIP program structure in the future. Communication between WisDOT, contractors, AON (in house and safety individuals), and the claims adjusters should be improved to ensure the contractors are kept abreast of claims and developments. Further, gaps could exist in worker's compensation coverage for work performed off site if the contractors do not carry their own worker's compensation insurance for workers outside the project footprint. Thus, WisDOT should at least investigate whether the geographic limitation for worker's compensation coverage could be affordably eliminated or at least decreased to guarantee that the OCIP worker's compensation insurance covers as many workers as possible. The contractors should be reminded to purchase insurance for those individuals working outside the footprint of the project. The contractors also

should be educated regarding how to carve insurance costs out of their bids, and bids should be submitted with and without insurance included. Although WisDOT and AON stressed that they provided these educational opportunities via workshops prior to the bid due date, many contractors apparently did not attend these workshops and did not read the literature provided instructing the contractors how to carve insurance costs from their bids.

Less paperwork would also be optimal to improve contractor relations. WisDOT contended that the paperwork for an OCIP was approximately equal to a non-OCIP program. Most contractors, however, disagreed, which indicated to the UW OCIP team that the contractors' claims may have some merit. Finally, the unique nature of future WisDOT projects should be closely evaluated and considered in deciding whether to implement an OCIP program for such projects. If an OCIP program is deemed appropriate for future projects, then WisDOT will need to determine how to adapt the safety program and other features in place on the Marquette Interchange OCIP for future mega projects.

B. General Introduction to the Wrap Up Programs and OCIP Programs in General

Owner Controlled Insurance Programs (OCIP) have been popular ways to insure construction projects for transportation facilities. In a typical OCIP, all parties participating in a construction project are covered under one insurance program, which includes the liability and/or property policies necessary for the specific project. The OCIP replaces the traditional method of insuring projects, whereby contractors and subcontractors assume project risks through indemnification and hold harmless agreements, each being insured through their individual policies. The key feature of an OCIP is not only risk transfer, but also the implementation of a centrally coordinated risk control program. Through a centrally controlled system, owners can improve project safety, reduce the frequency and severity of the losses, save related risk costs, ensure quality of the project, enhance public relations, and complete the project according to schedule.

The most compelling reasons to use an OCIP for a transportation construction project derive from the project characteristics. First, transportation construction projects are generally large in physical size and monetary value, and therefore, have a great potential for loss. The owners of the projects have greater incentives to closely manage the safety of the work.

Second: The public is often exposed to the risk in a transportation project, presenting potential liabilities in terms of public safety and public relations. In many cases, transportation projects have the potential to adversely impact surrounding properties. These aspects can present additional engineering and technical challenges to successfully completing the operation.

Third: As the size and technical complexity of the project grow, the number of contractors and subcontractors working on the project site at the same time also grows. Enforcing the practice of proper safety procedure by the multiple parties is a challenging task for the owner, who bears the ultimate risk of the project. It is an even greater challenge to coordinate the multiple contractors and subcontractors to make certain that they properly manage their own efforts. Centrally coordinated risk management may reduce the lack of control in safety procedures, thereby reducing the potential of cross litigation among contractors,

subcontractors and insurers, which can delay a project's schedule. Improving the project's schedule and reducing losses also promotes improved public relations.

Fourth: An OCIP can result in cost savings. By purchasing one insurance policy through an OCIP rather than absorbing the costs of each contractor and subcontractor purchasing insurance separately, the owner has leverage through bargaining power and economies of scale. Costs may be saved through reduced premiums, broker or agent commissions and other costs such as risk management consulting fees. Because of the size of the insurance premium, brokers and agents are usually willing to reduce their commission percentage. The insurance carriers can also charge less because of their savings in costs related to underwriting and policy issuance. Also by using retrospective plans or loss retention alongside a strict loss control program, the owner will see the financial benefits of the safety and loss control programs implemented.

Studies show further advantages to an OCIP. Through an OCIP, project owners of the projects can secure broader coverage than that typically available to individual contractors. Small contractors and subcontractors such as disadvantaged business entities are sometimes not able to obtain broad insurance coverage or to afford the limits required by the owners. These limitations can prevent them from participating in large construction projects. Small contractors may also not have their own risk management or safety control programs in place. Their inclusion in these programs through an OCIP provides them with access to these tools.

The construction of a transportation project requires the owners to implement a risk management program that coordinates the work of multiple participants in a project. This program, which minimizes risks and maximizes potential project values through centralized control as well as risk transfer, may be facilitated through an OCIP.

Despite the many advantages of an OCIP, potential drawbacks exist. An OCIP generally increases the administrative burden of both the owner and contractors. Owners need time and resources to prepare and implement the program. It requires administrative work that either the owner's employees, outsourced brokers, risk management consultants or other professional service consultants such as third party administrators may perform. Contractors and subcontractors argue that their administrative workloads also increase through activities such as enrollment in the OCIP and payroll reporting.

Another issue associated with an OCIP is whether cost savings truly are present. Although it is an intuitively persuasive argument that an OCIP should reduce costs, it can be difficult to prove. If contractors are required to submit two kinds of bids, bids with and without insurance costs, some cost savings are more obvious. However, the carving out of premiums from contractors' bids may involve discretionary decisions by contractors. This brings up questions regarding whether the insurance part of the bid is an accurate estimate. Owners also need to spend time and effort to closely monitor whether contractors and subcontractors have carved out their premium costs from their bids, and sometimes, owners may dispute those premium costs.

Contractors sometimes complain about OCIP programs because they feel their own risk management programs are superior. Many large contractors and a portion of small contractors

and subcontractors maintain good risk management programs. Contractors with such risk management programs often believe they possess lower premium costs using their individual insurance policies because of their excellent past loss records. Also, contractors who work primarily or exclusively on OCIP projects may experience setbacks in their business relations with their existing insurers. In addition, certain OCIPs have deductibles or other obligations imposed on contractors in the event a loss occurs. The retention level may be higher than individual contractors' existing policies, exposing them to undesired risks, which are costly to insure.

Other disadvantages may include operational or cultural conflicts in administering the OCIP. Contractors and subcontractors may feel that working under OCIP safety personnel is intrusive and overbearing. Contractors may also resist stricter safety requirements than they would otherwise enforce. Working with an OCIP also changes the structure of financing for the owner, as the owner must pay for a large volume of insurance premium up front, creating a cash flow disadvantage.

C. The Marquette Interchange OCIP

1) AON Feasibility Study

In 2003, AON presented the results of its research and study for the Marquette Interchange Project through *A Feasibility Study for A Wrap-Up Insurance Program on The Marquette Interchange Project*. AON's feasibility study was based on its analysis of existing publications such as *Transportation Infrastructure Advantages and Disadvantages of Wrap-Up Insurance for Large Construction Projects* by the U.S. General Accounting Office, and *National Cooperative Highway Research Program Synthesis 308, Owner Controlled Insurance Program: A Synthesis of Highway Practice* by the Transportation Research Board of the National Academies. Also, the report was based on AON's own expertise in working with numerous prior wrap-up insurance programs.

After reviewing the various advantages and disadvantages, the report recommended for WisDOT to undertake an OCIP program for the Marquette Interchange. AON reasoned that through the implementation of an OCIP program, WisDOT could save as much as 43% of the premiums from Worker's Compensation (WC), General Liability (GL or CGL) and Umbrella (UL) policies for the Marquette Interchange project. AON based its calculations on WisDOT's estimated costs of the projects and assumed retrospective insurance programs would be utilized. AON's calculations were predicated on AON's estimation of variables such as payroll, premium rates, discounts, payout patterns and other factors.¹

Although the feasibility study was based on many assumptions, it provided comprehensive and helpful insights to WisDOT regarding whether or not to use an OCIP and how to successfully develop and implement the program. AON's Marquette Interchange feasibility report and separate feasibility studies will likely assist WisDOT in its consideration of OCIPs for future mega WisDOT projects.

¹ These will be discussed in more detail in the *Cost Saving Analysis* section of this report.

2) Department of Workforce Development Evaluation Prior to Approval of Program

The Department of Workforce Development (DWD) conferred with the Marquette Interchange OCIP review team via telephone in April 2007. The DWD evaluates and approves or rejects applications for OCIP programs in Wisconsin. They stated that a project must meet a minimum threshold of \$25 million in estimated construction costs to qualify for an OCIP program. They receive 1-3 applications for OCIP programs a year, and they estimated that 8 OCIP projects were ongoing at the time of the telephone conference.

The DWD agreed that it was difficult to measure whether the OCIP projects were actually safer than other projects. Nonetheless, the pseudo modification factor (MOD) created for OCIP projects is .68, which is much lower than the MODs of most contractors. The DWD attributes the success of the OCIP programs to the owner's support of and dedication to safety as the primary reason for the OCIP structure of the program. The OCIP brings safety under one umbrella, and provides a sense of unity to the projects' workers and contractors.

The DWD estimated the total number of OCIP programs to date in Wisconsin at 55, commencing in 1972. The DWD noted that contractor controlled insurance programs are not permitted in Wisconsin, because they are not mentioned in the Wisconsin code pertaining to wrap up programs. They do not see this changing any time in the near future. The DWD did not see a reason to permit contractor controlled insurance programs (CCIPs), because the benefits of wrap ups were already in place with OCIP programs. The DWD also thought that the OCIP allowed smaller subcontractors to bid on large projects when they otherwise could not procure the necessary insurance limits to bid on a large job such as the Marquette Interchange.

The DWD believed that OCIP programs' safety benefited from placing the owner in charge of the insurance program. The OCIP places all the contractors and workers under one safety program and management. They thought that OCIP programs' concentrated safety efforts resulted in fewer accidents and injuries, and in a safer and healthier workforce. They also felt that a cost savings often existed between owners and insurers.

The DWD interviews the owner and potential insurer before approving the OCIP program to ensure that they can handle the responsibilities associated with managing and insuring a wrap up program. Other factors that weigh into the DWD's approval of an OCIP program are the nature and geographic location of the project, the size, the risk factors and danger associated with the project, and proof of an adequate safety program to ensure worker and public safety. The DWD requires the owner to submit a written safety plan for the DWD's review prior to approval of the OCIP.

For the two future DOT projects at issue, the DWD agreed that the linear nature of the highway projects may present a concern. Nonetheless, the DWD representatives insisted that whether the owner understands the safety concerns and risks of the project is far more important than the characteristics of the actual project itself.

All contractors working on the project must be included in the OCIP program. The exclusion of trucks in the Marquette Interchange was an exception made to the program, resulting from the lack of onsite work the trucks actually performed, as they were concerned with

transporting materials and equipment to and from the site. Yet, this would change if the truck drivers were more integrally involved in the project, such as is proposed for the two future WisDOT mega-corridor projects.

Moreover, with regard to bidding with and without insurance, the DWD admitted that the code requires all OCIP bids to be submitted on an ex-insurance basis. However, the DWD opined that an owner could ask for bids with and without insurance in attempting to determine whether to use an OCIP or not, but only accept the ex-insurance version of the bids if the DOT decided on an OCIP program for the project.

Overall, the DWD has been extremely satisfied with the Marquette Interchange OCIP program. They believed the DWD managed the program well, and that things ran smoothly. Incentives were offered back to the contractors through the safety fines collected, such as the distribution of Marquette Interchange t-shirts. WisDOT still has fine money to allocate to possible meals and other perks for the contractors.

The DWD listed three main concerns regarding future WisDOT OCIP projects: 1) enrollment of contractors on OCIP, including safety training, drug testing, and job site training; 2) the establishment of a proper safety program in place to adequately address linear projects; and 3) the creation of an adequate claims review process for a linear project. The DWD did not believe an owner controlled safety program absent the OCIP insurance program would be as effective. They expressed concern that contractors do not always report claims and accidents to the owners. The PPO in place for the Marquette OCIP also provides considerable cost savings for health care, and the onsite paramedic trailer assists in the rapid treatment of minor injuries. The DWD thought OCIP programs for future projects would need to be structured differently, but encouraged that they were feasible.

D. Review of Marquette Interchange OCIP

1) Interviews and Survey Feedback

On March 2, 2007, members of the OCIP project review team met with and interviewed representatives of the DOT, at least 5 consultant firms, Marquette Constructors, 2 subcontractors, and the AON safety personnel on site. Following these interviews, the OCIP review team followed up with representatives from AON, ESIS (the claims management company hired by AON), and various subcontractors. Each of these companies maintained unique perspectives regarding the OCIP program in place for the Marquette Interchange project, which are summarized hereinafter. As a reminder, the subsequent interview and survey summaries merely represent the views and opinions of the interviewees/respondents, and not those of the UW OCIP review team.

a. Department of Transportation Perspective

The Marquette Interchange is the first OCIP structured insurance program WisDOT has used to date. WisDOT felt that the high risk in place for a large and lengthy road construction project such as the Marquette Interchange Project made it ideal for an OCIP program. OCIP's provided the WisDOT with more control over the safety of the project. The higher level of safety helped to prevent disastrous events, and in the event of a disastrous event, the OCIP program would likely allow WisDOT to continue the project without extreme delays. Further, it

allowed WisDOT the opportunity to handle claims in an expeditious manner, and without delays that potential finger pointing could cause on a non-OCIP project.

WisDOT provided each contractor with a safety manual prior to the commencement of work. Each contractor was responsible for learning and abiding by the terms of the manual. WisDOT claimed that the contractors knew they would be held responsible for and fined for violations of the safety manual. Each contractor was also required to submit a safety plan to WisDOT. When WisDOT felt that the work environment was unsafe, it had the authority to stop work and remedy the problem. The fines also presented additional safety checks that WisDOT would not have otherwise possessed. The north leg of the Marquette Interchange Project, which included the prime contractor, Walsh Constructors, and its subcontractors, received the most fines, which resulted in backlash and disputes in at least one meeting.

However, WisDOT received compliments from many contractors regarding the safety program in place. The safety program brought a more detailed focus to construction safety, and made the project safer than prior projects. At first, the detailed safety rules took time to grow accustomed to, but it did not take long for the contractors' workers to abide by the rules.

The safety program required the contractors to attend regular safety meetings. However, on other non-OCIP projects, prime contractors have held safety meetings as well. Further, all workers were mandated to undergo initial and random drug testing to work on the Marquette Interchange site. These types of safety requirements, the drug testing in particular, are not used to the same extent on non-OCIP projects. A paramedic has been on site for the entire duration of the project, which is also unusual for an OCIP safety program.

The OSHA inspections resulted in no citations or fines. OSHA was obviously pleased with the safety measures in place.

AON created the insurance manual with the scope and breadth of the construction work in mind. AON and WisDOT kept the contractors informed of the nature of the insurance coverage that was provided for the OCIP program, and then the contractors were responsible for adjusting their bids to prevent duplicate coverage. The program covered the entire footprint of the project, and covered all events that happened therein (with the exception of injuries or claims involving utility workers and truck drivers).

To improve the project, WisDOT officials working on site stated that they would have preferred a WisDOT representative versed in the OCIP insurance program and coverage on site or nearby to answer questions and to act as an intermediary. They believed that some of the insurance issues, especially with regard to builders' risk and general liability coverages, were hard to understand and interpret. The WisDOT officials felt that Bob Wosniak handled matters nicely when he intervened and managed safety issues. However, with regard to claims, the WisDOT officials stated that a lack of communication appeared to exist between WisDOT and the contractors. WisDOT received complaints regarding a lack of reporting and updates with regard to claims. For example, in November 2005, a steel cage rebarb fell on a steam line. To date, WisDOT on site officials have not heard from the Madison WisDOT officials or AON regarding a ruling on the claim. The WisDOT officials thought payment was made at the

beginning of 2007, but were unsure. The WisDOT officials believed a claims timeline could have been established and spelled out with regard to how claims were and are processed.

The WisDOT officials interviewed resolved that the Marquette Interchange Project and the OCIP insurance program in place for the project ran smoothly. Yet, the WisDOT officials were not sure how a large catastrophe would have affected the project.

b. Project Consultant Perspective

At least 7 professional consultant firms met with us to discuss their experience on the Marquette Interchange OCIP Project, many of which had previously worked on OCIP projects. The consultants agreed that the Marquette Interchange project was well administered. On this OCIP project, these individuals reported an unprecedented number and quality of safety individuals. Further, the consultants opined that the fine system made the contractors more conscious of their workers and the workers' adherence to the safety rules. The consultants thought the state had spent more money on the OCIP safety program for this project than on other OCIP safety programs for other projects.

The consultants credited the impeccable loss history of the Marquette Interchange Project to the OCIP safety program in place on the project. The learning curve on the OCIP program appeared to be overcome quickly. The consultants thought that the OCIP safety officials rapidly handled any safety issues or mishaps.

The consultants believed that more claims were paid under the OCIP program for the Marquette Interchange. The consultants reported that this created some problems with the contractors because WisDOT paid claims under the deductible, and then WisDOT sent a bill to the contractors for the deductible. The contractors complained that claims were paid without sufficient investigation. The consultants thought that WisDOT wanted to create an atmosphere of good will and a positive public impression by paying claims quickly and not contesting them as vehemently as a contractor would. The contractors complained to the consultants that the contractors were not responsible for some of the claims for which they were billed. The consultants contemplated that WisDOT may want to revisit this aspect of the claims process for future OCIP projects.

The consultants thought that the OCIP insurance program in place was complicated, and could have been better explained to the contractors. The consultants also felt the Marquette Interchange Project would have benefited from a WisDOT intermediary on site to handle disputes and complex insurance issues. The consultants were also troubled because the two WisDOT officials with the greatest knowledge regarding OCIP programs are retiring, and they did not know what that meant for future OCIP projects.

The consultants did not express any concern with regard to working on another OCIP project in the future. They thought the administration costs of determining the footprint of the project and who to enroll in the OCIP was high, and that WisDOT's administration of the program did not always run smoothly. They opined that all the contractors were required to submit a safety program, which is not required for other projects. The consultants stated that a time savings also appeared to exist for WisDOT due to the lack of delays in handling claims.

However, the consultants could not quantify a cost savings they experienced for participating in an OCIP versus a non-OCIP project. They noted that if one existed, it was extremely low.

c. Contractor Perspective

Representatives from each of the contractors forming the joint venture Marquette Constructors provided extensive feedback regarding the OCIP program.² Unfortunately, these contractors expressed mostly negative feedback when questioned about the OCIP structure of the Marquette Interchange Project. Further, they were unanimous in their opinions regarding the various facets of the program.

All the prime contractors possessed prior experience with an OCIP. They stated that the OCIP program provided adequate insurance coverage, but that it lacked environmental liability coverage and a few other areas they purchased as a joint venture. They also believed that the \$10,000 deductible for the program was too low. However, they noted that the OCIP program covered builders' risk, which otherwise they may not have carried. Yet, they thought it may have overinsured the contractors.

The primes remarked upon the stringent safety program and personnel in a relatively favorable light. Yet, they noted that their safety personnel were better trained than the AON personnel. They stated it appeared the AON safety personnel were only trained in general construction safety, and not in bridge building and the specific type of risks involved in the Marquette Interchange Project. They believed that the AON safety team did not make the primes' workers conduct themselves in a safer manner, due to the primes' high safety standards and requirements. They believed the safety team acted "heavy-handed" in their fining and oversight, and picked on small things that were unimportant. They also attributed the lack of OSHA fines and citations to the fact that the project foremen and superintendents were cognizant of the safety required on this job.

The primes stated that they have very low modification factors (MODs), and could likely purchase cheaper insurance than WisDOT for such a project. They said the OCIP ignores these MODs, and installs safety programs when the contractors have equally or more appropriate safety personnel and programs in place. Ignoring the contractors' safety histories and MODs places these contractors on even footing with more unsafe contractors who have not worked on reducing their MODs. The primes all agreed that they spent a great deal of time and money developing risk management and safety control programs over the past several years. They claimed that it is impossible to carve their risk control costs out of their bids for OCIP programs – they cannot and will not discontinue these programs simply because WisDOT has initiated risk and safety control on OCIP projects. They remarked that the OCIP programs take away their incentive to act safely on jobs and to reduce their MODs, since they are essentially ignored.³

The prime contractors also complained that they duplicated insurance costs and safety costs during the Marquette Interchange project. They stated that these are difficult, if not

² Walsh did not offer any feedback, despite Gary Whited's repeated contact attempts.

³ However, it is worth noting that had the joint venture purchased insurance, it would have been assigned a MOD of 1 due to its lack of past losses. In purchasing environmental liability insurance and other coverages not provided under the OCIP program, it could not take advantage of the loss records of its members.

impossible, to carve out of their bids. The contractors agreed that the joint venture added inefficiency to the situation, but claimed that their fixed costs were still remarkably higher with the OCIP program. They admitted to the ability to pull out payroll hours from worker's compensation insurance, but they all feared that these amounts did not match dollar for dollar. They also complained that the return to work policies for the OCIP program were not flexible to accommodate the contractors, requiring the workers to return to work on the project site itself rather than simply for the contractor in any capacity and at any location.⁴

The contractors did not believe an on site paramedic was necessary, due to the close proximity of medical facilities. They also counted 7 safety individuals onsite at one time, including their own safety team, and they believed the high number of safety personnel constituted a waste of money. The contractors also expressed a concern about the claims affecting their own MODs, even though the contractors were not able to use their MODs to purchase insurance for the project. They were also concerned with how and which claims were reported to the National Council on Compensation Insurance (NCCI), and whether the contractors would be made aware of any such reports.

The contractors complained of a lack of communication with regard to the claims process, especially in the beginning of the project. They stated that they were unsure whether claims were fought or paid, until they received a bill for the deductible months later. The contractors believed the claims were paid prematurely and without enough prior scrutiny and investigation. The primary criticism with regard to the claims handling pertained to the contractors' lack of control. They opined that the DOT's focus on public relations drove WisDOT to pay many frivolous and meritless claims.

The contractors admitted that they would bid on a WisDOT OCIP project in the future, because they needed the business. However, they were also troubled regarding Kevin Gehrman's retirement, and who would take over and properly handle any OCIP programs for the WisDOT in the future. The contractors thought that disadvantaged business enterprises (DBEs) may be drawn to OCIP programs because of the insurance coverage and lack of MOD consideration, but averred that WisDOT was paying a higher premium to insure them and entitling subcontractors with poor safety records to work on a high risk project.

d. Subcontractor Perspective (Including DBEs)

We were able to speak directly with representatives of subcontractors Dolsen and Habermehl. We also had a lengthy telephone conversation with another key subcontractor's owner, Brian Mitchell. In general, these three subcontractors also did not favor the OCIP structure of the insurance program in place for the Marquette Interchange project. They criticized the burdensome paperwork requirements, and asserted that they did not obtain an advantage in their insurance coverage.⁵

⁴ The prime contractors were mistaken in their collective belief that the workers were required to return to work on the Marquette Interchange site. In fact, the safety manual simply mandated that the workers should return to work either on site or off site, and that proof of the workers' reinstatements was provided to WisDOT/AON Safety Personnel.

⁵ WisDOT disagrees with the contractors' assertions that the paperwork provided an additional burden upon the contractors, stating that only a few additional pages were contained in the bid documents, specifically pertaining to

Although these three contractors were disadvantaged business enterprises (DBEs), they all claimed they possessed low MODs. They remarked that participating in the OCIP affected their relationships with their insurers, due to the fact that they did not purchase worker's compensation insurance from their individual insurers during the project. One subcontractor even stated that his company was placed into Wisconsin's pool of worker's compensation insurers because his volume of non-OCIP work was so low while he was actively working on the Marquette project. This meant his premiums were very high for the non-OCIP work. The lack of worker's compensation coverage volume impacts the influence these subcontractors have upon their insurers. The subcontractors with whom we conferred did not see any advantage in the OCIP insurance coverage due to the fact that they claimed they all maintained excellent safety records and MODs. A couple of the subcontractors also complained that the deductibles were too high.

The subcontractors stated that they were forced to carry duplicate liability and other coverage, and thus, they did not carve out these amounts from their bids. They expressed that they thought no simple way existed to carve out general liability and other coverage costs. They also stated that any claims or losses were reported and would impact their MODs, although their MODs could not be utilized to purchase the insurance or to obtain a competitive advantage over other subcontractors. One contractor stated that it did not use the AON form to calculate the amount to carve out of its bid for the OCIP program because he did not understand it, and due to an abundance of other confusing paperwork associated with the OCIP program.

The contractors did agree that the OCIP program brought the safety program under one umbrella, making the safety force much more visible than on non-OCIP projects. After the initial onslaught of fines, the subcontractors thought the safety program ran smoothly, and the nit-picky fines decreased drastically. However, the subcontractors noted that the individual contractors were still held responsible for the enforcement of safety rules when the safety team was not around. One contractor claimed that the safety on the Marquette Interchange Project was no greater than on any prior projects, but admitted that OSHA prefers the safety programs in place for OCIP projects.

The subcontractors griped that the program forced the subcontractors to place injured employees on light duty on the project itself, and not in their offices or on another project. This provided the subcontractors with limited options as to where the returning worker could be placed until his/her full recovery. Yet, as previously noted, the subcontractors were mistaken in their belief regarding the return to work policy for the Marquette Interchange OCIP safety program, because the program merely required the contractors to return their workers to work, and did not specify that the worker needed to return to the job site.

The subcontractors also noted the lack of control they felt they possessed regarding claims. One subcontractor claimed that the subcontractors were initially notified of a claim, but oftentimes, they would hear nothing further. The contractors did not know whether these claims were reported to the NCCI, and if so, whether they had any right to challenge these claims and

the OCIP program. WisDOT did not feel the paperwork was more burdensome than what is required for bids for other projects.

their affect upon their MODs. This same contractor suggested an annual audit, in which each contractor is provided with an annual claims update to address issues such as these.

One subcontractor stated that if faced with an opportunity to work for an OCIP versus a non-OCIP project, the company would choose the non-OCIP. The other two subcontractors said they would bid on projects regardless of their classification as OCIP or non-OCIP because they desired the work.

The remaining subcontractors received a survey from the OCIP review team regarding the OCIP program for the Marquette Interchange Project. The results of the returned surveys are relatively consistent with what we heard from the three subcontractors above.

Out of 17 valid survey responses, 35% of subcontractors indicated they preferred working under an OCIP program. The credit mostly goes to the safety program of OCIP. 45% of subcontractors preferred a non-OCIP program. Large amounts of paperwork and time consumption are the two major reasons for these subcontractors' negative positions towards OCIPs. Other subcontractors felt neutral on OCIP or non-OCIP programs, stating they needed the business and would bid anyway.

About half of the respondent subcontractors stated that they bid differently for an OCIP, and carved some insurance premium (mostly worker's compensation) out of their bid price. However, only a couple of subcontractors noted the benefit of lower premiums with an OCIP compared to each contractor carrying its own coverage.

About half of the subcontractor respondents claimed they were carrying duplicate coverage. Most subcontractors felt the OCIP coverage limit was adequate, but some subcontractors found the deductible of \$10,000 was too high. About one fourth of subcontractors stated that the OCIP program hurt their relationship with their own insurers.

30% of subcontractors found their workers acted in a safer manner on an OCIP project, because of the daily reports they were required to complete and AON's on site safety personnel. The other subcontractors claimed that they either possessed their own stricter safety standards or that they have always worked in an extremely safe manner. Some contractors noted fewer injuries or claims as a result of the OCIP program.

Several subcontractors complained the claims process was a bit slow in general. One subcontractor opined that it was not well informed regarding the status of injured workers. Another subcontractor said that for other, prior OCIP programs, an insurance agent handled the monthly wage reporting. He was not convinced the online payroll reporting system was accurate so he insisted on faxing and following up on his report to make sure the correct wages were reported.

e. AON Perspective

AON acted not only as the broker for the Marquette Interchange OCIP Insurance Program, but it also coordinated the on site project safety team, the OCIP claims management and claims tracking. Via telephone, we spoke to numerous AON representatives ranging from

loss control managers to brokers who specialize in wrap up programs. They all spoke very highly of the OCIP insurance program in place on the Marquette Interchange Project.

AON noted that this wrap up program differed from others in that the OCIP insurance program covered every person working in the footprint of the site, with the exception of truck drivers and utility personnel. Further, AON claimed the safety program was unique in that it was far more extensive and detailed than other wrap up programs. WisDOT and AON worked closely together to develop a 180 page safety program/manual, which was distributed to all the contractors bidding for the project. It required drug testing of all workers, a safety orientation prior to the commencement of work, a full time safety staff to oversee the project, an on site paramedic in a medical trailer, and more stringent safety requirements than OSHA. AON also arranged for a PPO to handle the workers' medical claims, which it believed reduced costs significantly.

AON stated that multiple prime contractors were working on the site at one time and no single prime contractor possessed control over the safety of the entire project. Further, over 300,000 cars pass through the Marquette Interchange every day. These particular factors indicated to AON that a strict and one of a kind safety program needed to be implemented for the Marquette Interchange Project.

AON commended Steve Lafkis and the AON safety personnel. They claimed it was extremely difficult to locate a competent safety manager who could commit to a project for multiple years. AON opined that the excellent safety record for the Marquette Interchange was largely due to the OCIP safety program. AON does not view the additional expenses, such as drug testing of all workers, the paramedic trailer, and so forth, as a waste of resources.

AON believed that it and WisDOT made it clear to the contractors that they should carve out insurance from their bids for this project, due to the OCIP program in place. However, AON admitted that the contractors still needed to carry insurance for events occurring outside the project footprint.

AON stated that all claims were initially reported to Steve Lafkis, its on site safety director, and then AON forwarded the claims to the insurers. The insurers utilized ESIS, a claims administration company, to adjust claims from that point forward. AON believed ESIS acted similar to an administrator for the contractors' own insurers. AON noted that ESIS's claims policy included initial contact with the contractor against which the claim was submitted, and a full investigation of the claim. AON possessed claims managers for wrap ups, including Bob Dolman, who followed the claims and ensured they were being addressed. AON held quarterly claim reviews with the adjusters to discuss claims strategies.

AON suggested on future wrap up program projects to tighten up some insurance issues, including deductibles, and to better address communication issues experienced with regard to claims. However, specifically with regard to the amount of the liability deductible, AON reasoned that it was a reasonable deductible considering the contractors working on the project. If AON would have increased the deductible, it would have been too high for the subcontractors, and if AON decreased the deductible significantly, it would be too low for the primes.

AON and WisDOT stated that recently, they have been communicating very well with the prime contractors. Yet, they agreed that the communication situation with the subcontractors could improve, primarily due to prime contractors' apparent failure to communicate the status of claims to their subcontractors.

AON stated that the insurance premium prices for the wrap up programs are comparable to other coverages. Although the market was soft prior to 9/11, it hardened significantly thereafter, but has gradually softened since. Yet, the market has not reached its competitive pre-9/11 state. Only four insurers presently write wrap up programs, and AON felt that ACE has been extremely satisfied with the way the Marquette Interchange OCIP program unfolded. AON thought that the insurance purchased for the OCIP was far cheaper than a contractor soliciting CCIP coverage, or each contractor carrying its own coverage.

AON admitted that with a more linear project, there is less geographic control over the project. These types of projects could be subdivided into separate OCIP contracts by time periods. AON believes WisDOT would benefit from implementing OCIP insurance programs on future projects.

f. Perspective of AON Safety Director – Steve Lafkis

AON hired Steve Lafkis to manage the safety program for the Marquette Interchange OCIP program. Steve directly oversaw two other safety personnel during the project. He also assisted in writing the WisDOT safety program, and in creating many of the unique safety measures for this project. He felt these safety measures created a very safe work environment and resulted in minimal claims for the project. He thought that the fining procedure related to safety violations worked extremely well, because it provided the safety rules with “teeth” in the event of violations. The contractors quickly responded to the fines and changed their behaviors. Lafkis believed that the AON safety team was more organized and reacted quicker to safety violations, claims, and injuries than WisDOT or the contractors would have done on their own.

Lafkis stated that changes were made to the safety program after the project commenced. These changes resulted from loopholes discovered by Walsh, a prime contractor, and were put into place for new contractors on the project. The safety team also modified the fine system to issue warnings for minor violations prior to fines, after receiving numerous complaints from the contractors.

Lafkis also stated that he had the power to stop the project to correct safety violations before the project proceeded. He admitted that the power and control with which he was provided over the project was a major reason he decided to accept the position. He claimed that a safety manager with his experience would not take a position managing the safety of a large project such as this unless he/she maintained authority to enforce the rules. He said he often took pictures during the project to document safety violations and claims that arose.

Lafkis commended the strong return to work program in place for the project, stating that the sooner a worker returns to work, the sooner he/she will recover from his/her injury. Lafkis believed there were only a total of \$1 million in claims in 2.5 years of the project, which was extremely low for this type of project.

g. Claims Administration for the Marquette Interchange Project—ESIS, AON and WisDOT

The Marquette Interchange OCIP review team conferred with various ESIS and AON representatives, and Kevin Gehrman with WisDOT via telephone. All of the ESIS and AON individuals had previously worked on OCIPs and wrap up programs. They all agreed that they worked closely together before and during the project to ensure the claims handling procedure went smoothly. AON stated that claims manuals were provided to the contractors after they enrolled in the program, and a manual was provided to those contractors who requested one prior to bidding on the project.

AON and Mr. Gehrman agreed that all worker's compensation and a majority of general liability claims were first reported to the AON safety trailer. Then, they stated that Steve Lafkis sent copies of the contractors' claims reports to an AON representative, and to Mr. Gehrman. They noted that Astech acted as the claims reporting entity in charge of creating and distributing the claims reports to the contractors, WisDOT and AON. Medical-only claims were treated differently from loss claims, and sent to separate ESIS for claims management. The ESIS representatives claimed that all worker's compensation claims were immediately investigated by contacting the claimant, the medical provider, the insurer, and possibly the safety personnel onsite or the contractor for whom the worker was employed. The ESIS personnel remarked that all of these contacts were interviewed extensively, and recorded statements were occasionally taken for serious or repetitive injuries.

Moreover, with regard to liability claims, the ESIS representative stated that he routinely followed up with the contractors, including subcontractors, within 24 hours of the filing of a claim. He also claimed he interviewed witnesses and key persons involved in the claim, and often took recorded statements if the claim alleged an injury. He stated that if after an initial investigation, it became clear no liability existed, the claims were quickly denied. General liability claims were billed on a quarterly basis, and they were not billed until the claims were resolved. ESIS averred that all the claims were closely monitored, and were not paid out automatically.

AON stated that at the beginning of the project, a monthly report and update of all claims were given to Steve Lafkis, who in turn communicated these claims to the contractors in meetings. However, AON and WisDOT ceased the circulation of the reports due to complaints regarding the publication of the information contained therein. Mr. Gehrman also did not feel that reserve information should be made known to the contractors. Now, Mr. Gehrman submits these directly to the safety directors for Marquette Constructors, the prime joint venture, but not to the subcontractors. He assumed the primes would communicate the claim reports to the subcontractors, but apparently, the subcontractors are not obtaining this information. In the present on site meetings, Steve Lafkis simply discusses accidents and claims from a safety standpoint.

WisDOT and AON stated that they hold quarterly stewardship meetings to discuss any claims or concerns of the prime contractors. However, they admitted that the subcontractors have not been invited to these meetings, and none have appeared on their own accord to offer input. Mr. Gehrman felt that the primes were given substantial input and updates regarding their claims, especially after they complained at the beginning of the project of a lack of

communication. However, Mr. Gehrman agreed that some subcontractors were not contacted after an initial claims investigation.

To date, the AON personnel reported an excellent loss record for worker's compensation. Yet, the liability claims have been a little high due to a few expensive utility concerns. Overall, Mr. Gehrman agreed that WisDOT preferred to pay claims rather than to dispute them, to further the public relations campaign of WisDOT and to save time squabbling over small claims. Everyone agreed that communication, especially with the subcontractors, should be improved in the future and on any future OCIP projects.

2. Coverage Analysis

a. Overall Comments

It is our opinion that WisDOT has excellent insurance coverage for the Marquette Interchange project, with a few minor exceptions outlined in this section. For future projects, we recommend that WisDOT not give insurance companies and brokers specific guidelines for their quotations, other than basic coverage conditions such as overall limits and policy types. This will grant insurance providers with discretion to submit creative coverage solutions, to make their submission more attractive. This approach, nonetheless, may present WisDOT with difficulty in comparing quotations. WisDOT can also request that providers submit quotations based on specific guidelines, along with WisDOT's suggestions to improve coverage.

b. Included Programs in OCIP

The Marquette Interchange OCIP includes Worker's Compensation, Employer's Liability, General Liability, Excess Liability and Builder's Risk Insurance. According to NCHRP (National Cooperative Highway Research Program) Synthesis 308 Report,⁶ these policies are the standard lines of insurance purchased by US transportation facilities construction projects. The summary of the coverage provided for each of these policies is attached. (See appendix.) The Marquette Interchange OCIP does not include certain insurance programs such as Automobile, Professional Liability, Pollution Liability or first party Contractors Machinery and Equipment (CPE) insurance.

According to the same NCHRP report, Automobile and CPE insurance have not been included in other OCIPs, but Professional Liability and Pollution Liability Insurance have been included. It is reasonable and practical to exclude Auto and CPE due to the fact that the insured objects are moving continually from one job site to another.

WisDOT stated that it closely worked with the Wisconsin Department of Natural Resources staff and a number of environmental consultants to analyze pollution risk exposures associated with the Marquette Interchange Project. They concluded that pollution liability risk was not a major concern on the Marquette Interchange Project. The lack of concern regarding pollution exposures, WisDOT's legal immunity limiting their pollution liability, and the Wisconsin DNR-approved material handling plan for the project, provided the basis for the decision to exclude Pollution Liability Insurance from the OCIP. To offer some pollution protection, the project's design professional liability insurance included a pollution endorsement limit of \$300 million. Although we did not have a chance to fully review the details of the

⁶ NCHRP Synthesis 308 Owner Controlled Insurance Programs, A Synthesis of Highway Practice.

analysis and the design professional liability policy, the decision to not purchase pollution liability insurance appears to have been carefully made with the potential risks in mind.

c. Covered Parties

The policies included in the OCIP generally maintain comprehensive definitions of covered parties or insureds, and provide coverage to all parties' individual or collective risks. Although the Marquette OCIP insurance manual excludes certain parties from enrollment, including hazardous materials remediation companies, vendors, suppliers, and contractors that do not perform any actual labor on the project site, the exclusion of these parties seems reasonable as they present either abnormally high risk exposures or no risks at all. The OCIP insurance manual and contract contain well defined insurance requirements for excluded parties with guidelines regarding their own insurance.

d. Insurance Limits

When compared to other projects of similar size (see Appendix), the Marquette Interchange's insurance limits are at least as large as comparable projects. The builder's risk insurance limits are equivalent to the total estimated project value. The overall insurance limits seem to be reasonable and adequate. However, for future mega projects, approaches other than benchmarking projects to comparable projects may be valuable to WisDOT.

There are several methods used to set appropriate insurance limits. The most conservative method mandates for the owner to insure up to the total values at risk. Another more progressive, cost saving method requires a limit at the estimated Probable Maximum Loss (PML). The PML is most extensively used for property insurance. However, the concept of a PML can be beneficial for setting liability insurance limits and sub-limits of the Builder's Risk Policy, such as earthquake, flood and delay-in-completion coverage. Specially trained engineers typically perform PML estimates. Many large brokers, insurance carriers, or independent consultants provide this type of service. Depending on the size of the policy, WisDOT may be able to obtain a free PML analysis through its broker or insurance provider.

e. Cross Liability and Waiver of Subrogation

One of the largest concerns in mega construction projects insured under wrap up insurance programs is the potential cross liability and subrogation of claims. Since many contractors and subcontractors are working at the same time and on the same site for mega projects, it is typical for one party to damage another party's works. If the contractors are insured under separate policies, the losses could be covered under the CGL policy of the responsible contractor or subcontractor. Yet, because they are insured under the same policy in a wrap up program such as an OCIP, i.e. they are all insureds, the liabilities are not covered in principle, and accordingly, need special conditions which provide coverage for those cross liability situations among insureds. We found that the "separation of insureds" clauses in the OCIP liability policies properly addressed this issue. Also, in the Builder's Risk policy, the insurer clearly waived its subrogation rights against all insureds.

f. Covered Location

In CGL and WC policies, geographic coverage limitations restrict coverage to 10 miles from the job site, with the exception of certain specified incidental works or properties. Even though the job site is properly fenced and controlled geographically, the potential of losses or

claims always exists beyond that artificial restriction. If the contractors do not carry worker's compensation insurance on workers outside the geographic limitations, then a gap in coverage could exist for those workers. It is questionable if the distance limitation imposed by the WC policy endorsement is legitimate because worker's compensation is strictly subject to statutes that typically grant coverage for incidents arising out of and in the course of employment, regardless of the geographic limitations. If a contractor fails to carry adequate worker's compensation insurance outside the job site footprint, it is questionable whether WisDOT and the worker's compensation insurer for the project would be liable to the worker. Thus, it is recommended that the endorsement's legal implications and loss potentials are reviewed, and that WisDOT consider deleting this endorsement from OCIP programs used on future projects.

g. Covered Perils or Risks

The Marquette OCIP insurance CGL policy is essentially in Insurance Services Office (ISO) form. ISO form has been used widely and is generally regarded as well tested and proven. No potential major coverage problems were apparent for the Marquette OCIP CGL policy. The Builder's Risk Policy, on the other hand, is manuscript form, which is an "All Risks" type of policy. The exclusions in this policy are narrow, and thus, ensure broader coverage. Special coverages and endorsements were designed appropriately for the Marquette project. The Umbrella and Excess Policies also closely follow this well-designed coverage format. Those policies are following form policies, and do not provide potential for coverage gaps.

h. Additional Comments

In addition to the aforementioned points, we closely reviewed each policy's declaration page, policy language, terms and conditions, and endorsements, and the following provides a summary of our review:

- WC: It was found that the policy has appropriate endorsements addressing coverage gaps, including: Other State Coverage, Stop Gap Coverage, Federal Compensation Coverage or LHWCA.
- CGL: The policy has a well designed, 5-year coverage extension for Completed Operation Coverage, which is an effective way to address contractors' and subcontractors' needs for tail coverage.
- CGL: It was noticed that CGL covers Explosion, Collapse, and Underground Property risks, which are some of the major concerns of construction operations.
- CGL: Personal and Advertising Injury Liability is included. This valuable coverage includes any potential claims arising out of the control of the public's ingress and egress of the job site.
- CGL: The defense costs are outside policy limits or in addition to the limits, which potentially provides additional limits in the event of claims.
- CGL: It was found that the CGL policy is not contributory with other insurance policies. This is an excellent condition to have in the policy because some contractors and subcontractors still carry their own policies to meet their own various needs.
- Builder's Risk: Although the insured amount is based upon estimated project costs, the policy does not make premium adjustments after the completion of the project. This may either advantage or disadvantage WisDOT. If WisDOT made conservative estimates in construction costs, and accordingly, if it is likely to have smaller value estimates of the final project, it may cost WisDOT more than it would

otherwise, and vice versa. To prevent this, WisDOT may consider purchasing a Builder's Risk Policy with premium adjustment conditions.

i. Insurance Companies

The insurance companies insuring the Marquette Interchange OCIP all possess A+ financial ratings from AM Best, except RSUI Indemnity, which possesses an A rating. Although the financial rating itself cannot guarantee the insurers' fulfillments of contractual obligations, the overall A ratings are regarded as a positive signs of financial strength. However, we recommend one important point for WisDOT. Because of the characteristic of longer time periods for OCIP programs, it is better to insure with providers with higher financial ratings. Also, due to warnings of potential problems with rating inflation, WisDOT should review the insurers' financial situations before making final selections. Further, it may request brokers to monitor and report insurers' financial ratings movements over time.

3. Cost Savings Analysis

Cost savings are often cited as advantages of OCIP programs. Although attaining cost savings was not the primary reason WisDOT decided to utilize an OCIP program for the Marquette Interchange project, potential cost savings can be achieved in several areas, including the elimination of contractor mark-ups on insurance costs and insurance premium credit for "bulk" purchasing. It is reasonable to expect that the "bulk" insurance policy is less expensive than the sum of each contractor's individual policies.

In this analysis, we will take the worker's compensation premium as an example to illustrate the cost savings of OCIP. Because the Worker's Compensation of Marquette Interchange Project is a retrospective plan, good loss experience, due to increased safety, also contributed to the savings.

In the *Wrap-Up Feasibility Study – Marquette Interchange Project*, AON generated a financial pro-forma, which estimated the cost of the contractors' insurance, then compared it to the cost of providing an OCIP program. We will follow this logic to conduct our analysis.

a. Worker's Compensation premium if purchased by contractors individually

The total project value of \$650,000,000 was broken down into eight job classifications (Table 1). Then, it was assumed the payroll totaled approximately 20% of the project value. The product of payroll and the corresponding worker's compensation rate provides the estimated worker's compensation premium. As estimated, the average annual worker's compensation premium if purchased by contractors individually would total \$1,371,836.

Table 1

WC Code	WC Classification	Estimated Construction Value	Estimated WC Payroll	Wisconsin WC Rate	Estimated WC Premium
0042	Landscaping	45,500,000	9,100,000	9.52	866,320
5213	Concrete Drives	39,000,000	7,800,000	11.96	932,880
5222	Concrete Bridges	149,500,000	29,900,000	7.34	2,194,660
5506	Street or Road	338,000,000	67,600,000	8.79	5,942,040
5190	Electrical	45,500,000	9,100,000	4.78	434,980
5437	Carpentry	11,375,000	2,275,000	2.15	48,913
5606	Exec. Supervision	14,625,000	2,925,000	0.30	8,775
8810	Clerical	6,500,000	1,300,000	9.54	124,020
Estimated Manual Premium Before Discount:					\$ 10,552,588
Discount for Current Market Condition & Self-Insureds:					35%
Estimated Cost For Contractors Worker's Compensation:					\$ 6,859,182
Average Annual Worker's Compensation cost:					\$ 1,371,836

b. Worker's Compensation under OCIP program

The retro premium is calculated based on formula: (Basic premium + (Losses * LDF)) * Tax Multiplier. Plugging in all the factors, we calculate the annual Worker's Compensation premium of \$1,113,641. (Table 2.)

Table 2

Factors	Formula	Amount
Payroll ^a		42,893,278
Basic Premium	1.944% ^b * Payroll =	833,845
Losses (2005-2006) ^a		1,309,834
Loss Conversion Factor ^b		1
Tax Multiplier ^b		1.039
Premium (2005-2006)	(Basic premium + (Losses * LDF)) * Tax Multiplier =	2,227,283
Average Annual WC cost:		\$1,113,641

a. *Marquette Interchange Stewardship (Quarterly report), January 18, 2007, AON.*

b. *NOTICE OF ELECTION OF RETROSPECTIVE RATING PLAN, from AON.*

Compared to individually purchasing insurance, the OCIP program lowered Worker's Compensation costs by 19%. It is reasonable to expect that the OCIP program may also achieve similar cost savings on other insurance lines, such as General Liability and Umbrella Liability.

It should be noted that many assumptions were made for the above analysis, including the estimation of payroll, losses, market conditions, and so forth. AON's *Wrap-Up Feasibility Study – Marquette Interchange Project* and *Marquette Interchange Stewardship, January 18, 2007*, are the most important sources of these assumptions. The result of this analysis is more illustrative or hypothetical than empirical.

It should also be noted that the potential cost savings of an OCIP over traditional insurance programs may only be realized when contractors and subcontractors remove insurance costs from their bids. Therefore, it is important to educate contractors regarding how to carve out the insurance costs from their bids.

E. Future WisDOT Projects and Recommendations

1. Future WisDOT Projects - WisDOT Representatives/Consultants for Future Mega-Corridor Construction Projects

The Marquette Interchange OCIP review team also consulted with WisDOT representatives and design professionals involved in the U.S. Highway 41 and U.S. Interstate 94 projects, scheduled to commence work in 2010 and 2012 respectively. Both projects are more linear in nature than the Marquette Interchange project, which only involved a project radius of a couple of miles from the center of the interchange. The Highway 41 and the Interstate 94 project will each span approximately 30-35 miles of freeway. Further, the work on these projects will differ from the Marquette Interchange in that they will involve more traditional road construction work, and widening of lanes, rather than the tearing down and reconstruction of high bridges, which pose greater safety hazards. They will also be composed of over 20 smaller construction contracts, and will not contain larger contracts similar to the Marquette Interchange.

Moreover, both projects will interrupt significantly lighter traffic flows, with the most traveled portion of Hwy. 41 experiencing less than 100,000 cars a day, while Interstate 94 at the Mitchell Interchange experiences up to 200,000 cars a day. The Marquette Interchange experiences 300,000 cars a day. The I-94 and Hwy. 41 projects are believed to be less labor intensive and to involve a greater number of large trucks and highway equipment than the Marquette Interchange. Both the Hwy. 41 and I-94 projects will span time periods of 6-8 years, whereas the Marquette Interchange was predicted to have a four year duration. The future mega-corridor projects also maintain more flexible construction schedules in comparison to the Marquette Interchange.

Highway 41 is valued at construction costs of \$750 million dollars, while I-94 is valued at over \$1.4 billion dollars in construction costs. Even if divided into smaller OCIP programs, they are each large enough to sustain and apply for an OCIP based upon Department of Workforce Development standards. Public relations are very important to WisDOT for future projects. This is especially true for the I-94 project, due to the large number of homes and businesses in close proximity to the project site and due to the large quantity of vehicles traveling through the Mitchell Interchange on a daily basis. One of the design professionals for the I-94 project expressed his desire to be included in an OCIP program if one was created for the I-94 project.

Deciding where to place the safety and paramedic trailers on projects similar to these linear highway projects will be difficult. Further, the WisDOT representatives interviewed were concerned with who would be handling the OCIP programs in place on these projects. None of the WisDOT project managers presently working on the two future projects have prior experience with OCIP programs. They expressed concern with being asked to oversee such a program in the future. However, based upon our cursory analysis, OCIP programs are feasible for such projects.

2. Elaboration upon Recommendations in Moving Forward

The OCIP program seemed to produce positive results for WisDOT, especially with regard to the overall safety for the Marquette Interchange project and the positive public relations it was able to sustain, despite the magnitude of the project. The safety program in place, the excellent and affordable insurance coverage, the DWD favorable approach to and evaluation of OCIPs, the positive public relations associated with the project, and the general positive feedback we received from various parties associated with the Marquette Interchange project all contribute to our recommendation for WisDOT to consider utilizing OCIP insurance programs in the future.

Admittedly, the prime contractors and various subcontractors were not pleased with many aspects of the OCIP program. However, the University of Wisconsin MBA OCIP team feels that many of these problems could be addressed for future WisDOT projects, and that WisDOT would benefit from an OCIP insurance structure to those and other future projects.

a. Coverage Recommendations

i. Review Coverage Limitation Imposed on CGL and WC Policy (refer to “Covered Location” for the details under the Coverage Analysis Section):

In CGL and WC policies, coverage is limited to 10 miles from the job site with certain exceptions. It is recommended to review the legal implications of this endorsement and its loss potential, and to consider deleting the endorsement from future OCIP programs. The OCIP team possessed concerns regarding potential incidents in which a contractor may not carry worker’s compensation or liability coverage for OCIP project workers working outside the 10 mile limitation, even though they should maintain such coverage.

ii. Consider PML Analysis to Set Adequate Insurance Limits (Refer to “Insurance Limits” for the details under the Coverage Analysis Section):

Having sufficient, but not excessive insurance limits could be better achieved through the purchase of insurance up to the expected amount of losses based upon a Probable Maximum Loss (PML) scenario for both property and liability insurance. Depending on the size of the insurance contracts, WisDOT may obtain free PML analysis services from brokers or carriers.

b. Administrative Recommendations

i. Consider Benefit/Loss Sharing in Retrospective Plan with Contractors and Subcontractors to Promote Safety Control

The current Marquette Interchange Project has only \$10,000 in “Obligations” for CGL and Builder’s Risk losses. This may be seen as a means to promote contractor participation in active safety control. However, WisDOT may wish to consider a more progressive way to build a partnership with contractors by inviting them to share in the losses as well as the

profits/benefits of the OCIP program. WisDOT may consider designing a retrospective program to enable all prime contractors or even some major subcontractors to join such a program. By sharing the losses and profits with contractors, WisDOT may align strategic goals with its partners, thereby improving overall safety and cost savings.

ii. Consider Different CGL/Builder's Risk Obligations According to Size or Contract Value, or Type of or Cause of the Loss.

The current \$10,000 "Obligations" apply to all contractors and subcontractors for all losses. This may cause some inequitable situations depending on the size of the contractor, the contract values or the cause of the loss. WisDOT may want to research whether it can impose different amounts of "Obligations" based on the size of the contractor or the contract values. It may also consider even deleting "Obligations" for certain causes of losses that contractors cannot control or mitigate.

iii. Improve Communication and Education

First, communication was a key criticism from all persons involved with the project. Although it improved tremendously as the project progressed, it could be further improved for future projects. If possible, all contractors, including subcontractors, should be provided with a quarterly report regarding the status of the claims against them. The contractors should also be notified when any claims that may affect their MODs are reported to the NCCI, and should be provided with a means to challenge those claims.

If possible, a WisDOT communications officer should be present on or working close to the work site to handle any claims or other problems which may arise. This officer should act as a mediator/negotiator between parties on the job site. This officer could also serve as a liaison between the contractors and the WisDOT Risk Manager, and communicate any issues to the WisDOT Risk Manager. This position will be especially important after Kevin Gehrman, the present WisDOT Risk Manager, retires in the next couple of years. Moreover, Mr. Gehrman's replacement should possess knowledge and/or experience in managing complex insurance plans such as OCIPs, although it is our understanding that WisDOT is seeking an individual with such qualifications.

More prior communication and education to the contractors regarding how to carve out the insurance costs of their bids would also be a valuable tool to offer. Contractors commonly disregarded many written communications, such as the AON OCIP bid computation form, due to a lack of understanding. If such forms and processes could be explained in a mandatory pre-bid meeting, or face to face, it is likely that WisDOT would receive a greater understanding of what is expected of them under an OCIP program. If the amount of paperwork could be decreased on future projects, this would also address a main complaint voiced by the contractors. Understandably, WisDOT cannot force contractors to read all the paperwork and manuals associated with every project, nor to attend educational meetings pertaining to the bid process or project in general. However, any improvement in these areas, whether through greater one on one communication, mandatory meetings, or forms which must be signed and returned to WisDOT, could possibly assist in the WisDOT/contractor communication process on future mega projects for which OCIP programs are considered.

iv. Request Bids With and Without Insurance

Any actual monetary cost savings to WisDOT has been impossible to estimate, considering the contractors' inability to describe and relay what, if any, costs were carved out of their bids. In the future, WisDOT should request that the contractors submit bids with and without insurance costs, stating that they are considering an OCIP program and desire to weigh its options. It is very important for WisDOT to verify that insurance costs have been actually deducted from the contractors' bids. Otherwise, WisDOT could be paying for duplicate insurance costs and would have to audit the contractors after the project's completion to obtain reimbursement. If contractors are required to provide bids with and without insurance costs, WisDOT can compare the bids to determine the insurance components being removed. Moreover, this requirement may also persuade contractors to give more thought to the calculation of insurance costs to carve out and what costs should be deducted from their bids. However, this strategy could only be employed for the initial project within a corridor. After the decision is made to utilize an OCIP, all future projects would have to be part of the OCIP.

However, there may be some drawbacks to ask for bids both with and without insurance. It may add more paperwork for contractors, an issue regarding which they have already complained. It may also discourage some contractors from bidding on the project. Another drawback is additional administrative work for the WisDOT administrator, as there will be two bids to review for each bidder. Further, as the DWD mentioned, if WisDOT decides to use another OCIP program based in part upon this information, it may only consider and accept the ex-insurance bids for an OCIP project.

v. Tailor OCIP Programs for Future Projects

Based upon conversations with AON, OCIP programs are feasible and cost effective only for projects with construction costs of \$100 million or more, otherwise referred to as mega projects. For future mega projects, WisDOT will need to carefully consider the nature of the projects and the workforce in designing OCIP programs. Additional feasibility studies may provide valuable information regarding whether such projects are ideal for an OCIP program, and if so, how to modify the programs for each project. Due to the linear nature of the upcoming mega projects, the safety and paramedic trailers should be mobile, and possess the ability to move with the projects as they progress. Moreover, the location of a convenient PPO may be difficult, due to the long stretch of construction WisDOT anticipates for these projects. However, the PPO provided a valuable benefit and was thought to have supplied a source of cost savings for the Marquette Interchange OCIP program. If feasible, PPO's should be considered with potential future OCIP programs. WisDOT communication with the contractors and design personnel will also factor into these projects, as the WisDOT on site managers in charge of these future mega projects have never worked on OCIP projects before.

vi. Improve Relations Between Safety Team and Contractors

The safety personnel, whether through a broker or WisDOT, should also attempt to relate to the contractors and work with the contractors. Recently, we believe Steve Lafkis and the AON staff have been doing just that, but early on, friction and discourse existed throughout the footprint of the project as a result of strict rules and abundant fines. To ensure DWD's "safety umbrella" concept is maintained for an OCIP project, WisDOT should attempt to create a team

atmosphere with everyone on the same page, especially with regard to safety. If the safety team works more closely with the contractors' safety personnel and if the contractors' safety personnel feel they possess more authority, the contractors will likely feel more involved in the OCIP's safety program and may feel that the OCIP safety team is worth the duplication of safety personnel. WisDOT may also contemplate providing the prime contractor's head safety personnel with the authority to fine subcontractors should a fine system be utilized for future OCIP programs.

Appendix A: Insurance Policy Summary

A. Worker's Compensation & Employers Liability Policy

1. Type of Insurance Worker's Compensation & Employers Liability Policy
2. Insurer ACE American Insurance
3. Policy Form NCCI Form
4. Covered Risks WC/EL
5. Trigger Occurrence
6. Policy Period 05/01/2006 ~ 05/01/2007
7. Limits of Liability \$2,000,000 (Each Accident, Disease & Employee) for EL
8. Major Terms, Conditions and Endorsements
 - A. LHWC Act Coverage Endorsement
 - B. Marine Coverage Endorsement
 - C. Voluntary Compensation Maritime Coverage Endorsement
 - D. Alternate Employer Endorsement
 - E. Designated Workplaces Exclusion Endorsement
 - F. Voluntary Compensation and Employers Liability Coverage Endorsement
 - G. Employers Liability Endorsement (Stop Gap Coverage)

B. General Liability Policy

1. Type of Insurance General Liability Policy
2. Insurer ACE American Insurance
3. Policy Form ISO Form
4. Covered Risks CGL
5. Trigger Occurrence
6. Policy Period 05/01/2004 ~ 09/01/2009
7. Limits of Liability \$2,000,000 (Each Occurrence)
\$1,000,000 Damage to Premises Rented to You
\$4,000,000 (Aggregate)
 - A. Major Terms, Conditions and Endorsements
 - B. Limitation of Coverage to Designated Premises or Project
 - C. Fellow Employee Coverage
 - D. Contractors Professional Liability Exclusion
 - E. Employment Related Practices Exclusion

C. Umbrella Liability Policy

1. Type of Insurance Umbrella Liability Policy
2. Insurer American Home Assurance
3. Policy Form ISO Form (Not following form but broader coverage)
4. Covered Risks CGL, EL and Marine Liability
5. Trigger Occurrence
6. Policy Period 05/01/2004 ~ 09/01/2009
7. Limits of Liability \$25,000,000 (Each Occurrence/Aggregate)
XS Underlying Insurance Limits of \$2,000,000
(Each Occurrence), \$4,000,000 (Aggregate for CGL Only)

8. Self Insured Retention and Self Insured Retention
\$10,000 (Each Occurrence)

D. Excess Liability Policy I

1. Type of Insurance Excess Liability Policy
 2. Insurer RSUI Indemnity Company
 3. Policy Form Following Form
 4. Covered Risks CGL and EL
 5. Trigger Occurrence
 6. Policy Period 05/01/2004 ~ 09/01/2009
 7. Limits of Liability \$25,000,000 (Each Occurrence/Aggregate)
 XS Underlying Insurance Limits of \$25,000,000
 (Each Occurrence/Aggregate/SIR)

E. Excess Liability Policy II

1. Type of Insurance Excess Liability Policy
 2. Insurer Starr Excess Liability Insurance
 3. Policy Form Following Form
 4. Covered Risks CGL and EL,
 5. Trigger Occurrence Basis
 6. Policy Period 05/01/2004 ~ 09/01/2009
 7. Limits of Liability \$50,000,000 (Each Occurrence/Aggregate)
 XS Underlying Insurance Limits of \$50,000,000
 (Each Occurrence/Aggregate/SIR)

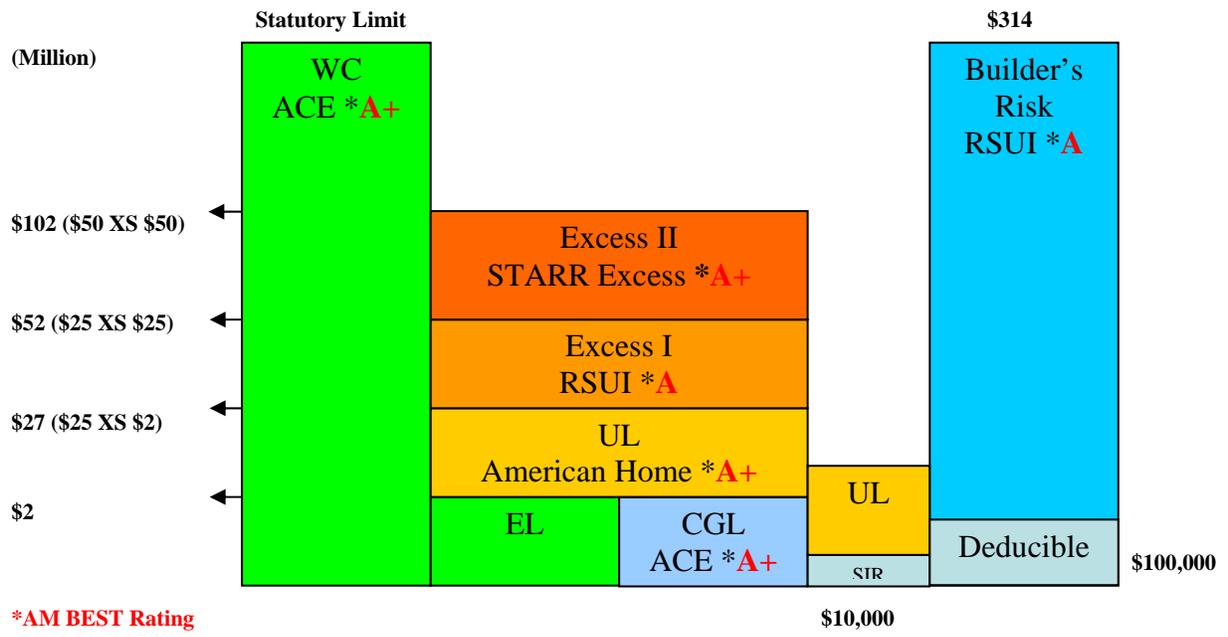
F. Builder's Risk Policy

1. Type of Insurance Builder's Risk Policy
 2. Insurer RSUI Indemnity Company
 3. Policy Form Manuscript Policy
 4. Policy Period 09/01/2004 ~ 12/31/2008
 5. Limits of Liability \$314,000,000 (Per Occurrence) with *Sub-limits*
 \$25,000,000 for Delay in Completion (12 Months)
 6. Deductibles \$100,000 (Per Occurrence)
 30 Days Waiting Period for Delay in Completion
 7. Estimated Sum Insured \$314,000,000
 8. Terms & Conditions
 A. Debris Removal(Within the Policy Limit)
 B. Demolition & Increased Cost of Construction
 C. Fire Brigade Charges and Extinguishing Expenses
 D. Plans, Blueprints, Drawings, Renderings, Specifications or Others
 E. Architectures, Surveyors, Consulting Engineers or Other Legal or Prof. Fees
 F. LOL is not reduced by the Sum Paid Except Flood & EQ
 G. No Coinsurance

H. Sub-Limits

✓ Flood & EQ	\$50,000,000 (Any One Policy Year)
✓ Transit	\$10,000,000 (Per Occurrence)
✓ Temporary Site	\$10,000,000 (Per Occurrence)
✓ Ingress/Egress	\$10,000,000 (Per Occurrence)
✓ Civil/Military Authority	\$10,000,000 (Per Occurrence)
Interruption	
✓ Extra Expenses	\$40,000,000 (Per Occurrence)
✓ Debris Removal	\$10,000,000 or 25% of the Loss (The Greater)
✓ Fire Brigade Service	\$250,000 (Per Occurrence)
✓ Pollutant Cleanup/Removal	\$250,000 (Annual Aggregate)

Appendix B: Insurance Limits of Marquette Interchange OCIP



Appendix C: Insurance Limits of Other OCIP Projects

Project	Project Size (\$ millions)	Each Occurrence (\$ millions)	Annual Aggregate (\$ millions)	Products/Completed Operations Annual (\$ millions)	Included
CA/T (Mass.)	14,500	400	400		
Southeast Corridor (Colo.)	1,670	100	100		4
I-15 (Utah)	1,600	100	100		100
US Route 220/I-99 (Pa.)	414	20	20		20
Airport Expansion (Alaska)	350	50	50		50
Ft. Washington Way (Ohio)	330	50	50		50
Corridor 44 (N. Mexico)	250	50	50		50
Suncoast Parkway (Fla.)	221	4	8		8
Superstition Freeway (Ariz.)	184	100	100		100
Blue Water Bridge (Mich.)	110	45	45		-

*Source: OCIP Excess/Liability Insurance from NCHRP Synthesis 308 Owner Controlled Insurance Programs, A Synthesis of Highway Practice.

References

- *A Feasibility Study for A Wrap-Up Insurance Program on The Marquette Interchange Project - AON*
- *Transportation Infrastructure Advantages and Disadvantages of Wrap-Up Insurance for Large Construction Projects - U.S. General Accounting Office*
- *National Cooperative Highway Research Program Synthesis 308, Owner Controlled Insurance Program: A Synthesis of Highway Practice - Transportation Research Board of the National Academies.*
- *Marquette Interchange Project Policies*
- *Marquette Interchange Stewardship (AON's Quarterly Report) January 2007 – AON*
- *Southeast Corridor PCIP and Transportation Expansion Project Insurance Manual - T-REX Project PCIP Administrator*
- *Marquette Interchange OCIP Insurance Manual – WisDOT*
- *Marquette Interchange OCIP Program Proposal – AON*
- *Safety And Health Program – Marquette Safety Manual – AON*
- *Notes from Interviews with WisDOT, AON, ESIS, DWD, design professionals, prime contractors and subcontractors, attached hereto – Anne Rappold*
- *Survey responses received from subcontractors, attached hereto.*



The Construction and Materials Support Center (CMSC) is housed in the Department of Civil and Environmental Engineering on the University of Wisconsin-Madison campus. The CMSC was formed in partnership with the Wisconsin Department of Transportation (WisDOT) to focus on implementing research findings within the department and other local, state, and federal transportation agencies. In addition, the CMSC functions as a service and applied research group to deliver timely solutions to construction management and materials engineering problems for a variety of organizations. The mission of the Center is to develop research implementation strategies and tools to help WisDOT, public agencies, and industry rapidly implement new and relevant technologies throughout the project development process. The Center draws upon university expertise to collaborate with department personnel and the private sector to find solutions to problems, minimize delays to construction, and improve the quality and efficiency in which materials are used throughout the construction process. Emphases areas for the Center are:

- Accelerated construction techniques
- Construction project management
- Innovative project delivery processes
- Materials performance and production

The Center is staffed to conduct research, develop tools and techniques to enhance project cost-control and minimize scheduling delays in project construction, identify methods and processes to accelerate project delivery and construction activities, create strategies for departments of transportation and others to implement new techniques and technologies, assess new construction materials and create project specifications.

Services include training staff on new techniques and processes, developing application guidance tools for inclusion in manuals, and holding workshops and seminars. Academic staff incorporate the field applications and lessons learned into undergraduate and graduate level engineering courses taught at the UW-Madison.

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