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United States General Accounting Office
Washington, DC 20548

B-290162

October 22, 2002

Mr. Alan M. Hantman
Architect of the Capitol

Subject: Wrap-Up Insurance for the Capitol Visitor Center

Dear Mr. Hantman:

This responds to your letter requesting our opinion on questions related to the purchase of wrap-up insurance for the Capitol Visitor Center (CVC).¹ In general terms, wrap-up insurance consolidates all major insurance coverages for various entities into one insurance policy. Specifically, you asked whether your office is authorized to use appropriated funds to procure wrap-up insurance that would cover (1) the government's risks and (2) the risks of contractors, designers, and consultants in constructing the CVC. Because you did not submit for consideration any particular insurance policy or a justification based on a cost-benefit analysis, we can only answer your questions in general terms.

The general rule is that the federal government self-insures its own risk of loss. 21 Comp. Gen. 928, 929 (1942); B-237654, Feb. 21, 1991. The rationale underlying the rule is that the magnitude of the government's resources makes it more economical and advantageous for the government to carry its own risks than to have them assumed by private insurers. 19 Comp. Gen. 211, 214 (1939). For the reasons stated below, if you determine that purchasing wrap-up insurance is reasonably necessary or incident to the accomplishment of the construction of the CVC and demonstrate that the rule's rationale does not apply to your situation, we would not object to the use of appropriated funds to purchase wrap-up insurance covering both the government's risks and the contractors' risks for the CVC project. To meet this burden, you could demonstrate that the use of wrap-up insurance would result in a

¹ Due to postal irradiation procedures, our Office received your letter on March 25, 2002. GAO staff discussed your questions with your General Counsel in March and provided summary advice as detailed herein. Your General Counsel later determined that there was still a need for a written opinion but acknowledged that there was no longer a need for an expedited one.

savings or that a benefit, not otherwise obtainable, would be gained through the use of wrap-up insurance.

BACKGROUND

Insurance is a major cost component in construction contracts.² Construction insurance has experienced large rate increases over the past two decades partly due to general market forces and the adversarial nature of the construction industry.³ The terrorist attacks of September 11th compound the problem.⁴ In traditional insurance programs, project owners, contractors, and subcontractors independently purchase their own insurance to protect themselves from financial loss. There are alternative insurance programs that offer potential savings to owners of large construction projects. One such alternative is commonly known in the insurance and construction industries as wrap-up insurance.

Wrap-up insurance, in contrast to traditional insurance, is when the project owner purchases one policy and “wraps-up” the multiple insurance coverages for various entities into the one policy.⁵ The objective of wrap-up insurance is usually to reduce project costs. While project costs may be reduced, the owner of the wrap-up policy incurs risks and management costs previously borne by the contractor.

GSA reports that coverage normally provided under wrap-up insurance includes workers’ compensation, commercial general liability, excess indemnity (umbrella), and builder’s risk property insurance.⁶ Coverage sometimes provided under wrap-up insurance includes asbestos abatement, environmental and professional (errors and omissions coverage) liability.⁷ Coverage not normally provided under wrap-up insurance includes automobile insurance, construction equipment, tools and personal property, and on-site offices and temporary facilities.⁸ Your submission does not describe what coverages you anticipate including in your wrap-up insurance program.

² Wrap-Up Insurance Study, General Services Administration, Dec., 1997.

³ Id. at 1.

⁴ See, e.g., Terrorism Insurance, Rising Uninsured Exposure to Attacks Heightens Potential Economic Vulnerabilities, GAO-02-472T, Feb. 27, 2002.

⁵ GAO, Transportation Infrastructure, Advantages and Disadvantages of Wrap-Up Insurance for Large Construction Projects, GAO/RCED-99-155, June, 1999.

⁶ GSA, Construction Insurance Analysis, Slides and Data Sheets, December 1, 1999, slide 6.

⁷ Id. at slide 7.

⁸ Id. at slide 8.

There are advantages and disadvantages to having one wrap-up insurance program administered by a single insurance carrier. Major advantages include savings from buying insurance in volume, eliminating duplication in coverage, handling claims more efficiently, reducing potential litigation, and enhancing workplace safety.⁹ Disadvantages include requiring project owners to invest more time and resources in administration and possibly paying large premiums at the beginning of the project.¹⁰ Each project must be analyzed for its suitability, and that will depend on potential risks (real and perceived) and the ability to control losses. Size is an important prerequisite and dominant factor in determining a project's suitability for wrap-up insurance.¹¹ For example, a project must be sufficiently large, or at least contain significant labor costs, to make wrap-up insurance financially viable.¹² Your submission states that the CVC team is in the process of preparing a cost/benefit analysis and providing the advantages and disadvantages of using wrap-up insurance.

DISCUSSION

It is important to recognize that the government's general practice of self-insuring its own risks of loss is one of policy and not mandated by statute. 55 Comp. Gen. 1321 (1976). The government has long maintained this policy on the theory that the magnitude of the government's resources makes it more economical and advantageous for the government to carry its own risks than to have them assumed by private insurers. 19 Comp. Gen. 211, 214 (1939). By self-insuring, the government saves those items of cost and profit that would be included in the premiums charged by private insurers. B-168106, July 3, 1974; 21 Comp. Gen. 928, 929 (1942).

Our Office has consistently applied the general rule and held that appropriated moneys are not available for the payment of insurance premiums to cover loss or damage to government-owned property or the liability of government employees in the absence of specific statutory authority. B-237654, Feb. 21, 1991; 21 Comp. Gen. 928, 929 (1942). Nevertheless, because the rule is not mandated by statute but rather has evolved administratively from policy considerations, we have not objected in those limited cases when the underlying policy considerations do not apply to the particular circumstances before us. Specifically, we have not raised objections to an agency's decision to purchase insurance when the economy sought to be obtained under the rule would be defeated, when sound business practice indicates that a

⁹ GAO, Transportation Infrastructure, Advantages and Disadvantages of Wrap-Up Insurance for Large Construction Projects, GAO/RCED-99-155, June, 1999.

¹⁰ Id. at 2.

¹¹ Wrap-Up Insurance Study, General Services Administration, Dec., 1997, at 37.

¹² Id.

savings can be effected, or when services or benefits not otherwise available can be obtained by purchasing insurance. See B-151876, Apr. 24, 1964; B-244473.2, May 13, 1993. For example, we did not object when the Federal Home Loan Bank (FHLB) Board's proposal to purchase insurance covering the risk of loss to a new building. Under the circumstances presented, FHLB would not realize the economies sought under the general rule because the general funds of the Treasury would not be available to replace or repair the structure for the benefit of the FHLB Board. 55 Comp. Gen. 1321 (1976). Also, we did not disagree with the Civil Aeronautics Administration's proposal to purchase airplane hull insurance. In that case, the Administration did not have in its employ, and was unable at the time to recruit, the qualified personnel needed to appraise damage and arrange for repairs in connection with the War Training Service; hence, purchase of commercial insurance coverage that would provide such services provided a benefit not otherwise obtainable. B-35379, July 17, 1943.

Generally, an agency requesting a non-statutory exception has the burden of demonstrating that the policy considerations underlying the general rule do not apply. Stated differently, you would need to determine that the use of wrap-up insurance would produce a savings for the government or provide benefits not obtained from self-insurance and traditional insurance programs. See also B-151876, Apr. 24, 1964; B-244473.2, May 13, 1993.

To meet the burden, a cost-benefit analysis should address whether wrap-up insurance is justified with regard to cost. This would include a comparison between traditional and wrap-up insurance programs as well as a comparison between having the government self-insure versus the government purchasing insurance. With regard to comparing traditional and wrap-up insurance programs, factors include size of the project, estimated labor costs, participation of multiple contractors and subcontractors, premium rates, job duration, location, and general business considerations.¹³ Assuming your cost-benefit analysis concludes that use of a wrap-up insurance program would result in savings to the government, the next step is a cost and risk comparison between the government insuring the project's risks through its resources versus having a private insurance carrier insure the risks. This comparison should assist in determining if the use of wrap-up insurance would produce a savings for the government and provide benefits not obtained by using traditional insurance programs.

Although not meant to be exclusive, with regard to a comparison between having the government self-insure versus the government purchasing insurance, factors would at a minimum include the savings obtained, increased safety program, meeting time frames of scheduled dates, risk of insurance gaps, and risk after completion. The savings obtained could include (1) the potential for reduced litigation costs due to the

¹³ Wrap-Up Insurance Study, General Services Administration, Dec., 1997, at 38.

wrap-up insurance policy feature of one primary insurance carrier, (2) any refunds of the insurance premium to the government for reduced losses on the project, and (3) the cost difference between traditional and wrap-up insurance programs. A policy feature of wrap-up insurance is centralizing loss control through a safety program planned, implemented and monitored by the owner of the insurance policy.¹⁴ Two more policy features of wrap-up insurance that help reduce loss and meet scheduled time frames is providing consistent coverage to all parties and having centralized claims management.¹⁵ Because a traditional insurance program has multiple insurance carriers with different coverages, there is a greater risk for disputes in coverage and liability, which increase the cost and time to complete the project. Under wrap-up insurance, the adversarial relationship and the shifting of blame between contractors are virtually eliminated because the policy owner's insurance carrier is responsible for all claims.

There are also risks associated with wrap-up insurance. One risk is an insurance gap.¹⁶ The magnitude of this risk depends on the coverage you decide to include in the wrap-up policy and the ability of contractors to place the remainder of their insurance needs outside of the project.¹⁷ For example, automobile insurance is usually not included in wrap-up insurance policies. There could be a question concerning coverage of accidents relating to vehicle loading or unloading which could be further complicated if the contractor(s) could not obtain just auto liability coverage.¹⁸ Another risk with wrap-up insurance is the uncertainty of liability after completion of the project. For example, retrospective premium adjustments will no doubt extend beyond the construction closeout date for the project and future claims could be troublesome if occurring after coverage for the project has expired.¹⁹ The above potential risks would need to be weighed against any potential savings and benefits not obtained with traditional insurance programs.

CONCLUSION

We are not aware of any statutory provision specifically prohibiting or authorizing the purchase of wrap-up insurance for the CVC. Although the question of using appropriated funds to purchase "wrap-up insurance" is one of first impression for this

¹⁴ Wrap-Up Insurance Study, General Services Administration, Dec., 1997, at 31-35.

¹⁵ Id.

¹⁶ Alfred K. Potter II, Senior Vice President, Gilbane, *"Wrap-Up Insurance", Owner Controlled and Contractor Controlled Insurance Programs*, February, 2000.

¹⁷ Id. at 4.

¹⁸ Id.

¹⁹ Id.

Office, we have previously discussed the issues of allowing the government to purchase insurance commercially to insure its own risks, see, e.g., B-151876, Apr. 24, 1964; 55 Comp. Gen. 1321, 1323 (1976); B-244473.2, May 13, 1993, and the government assuming the contractor's risk of its property, see, e.g., 22 Comp. Gen. 892 (1943); 54 Comp. Gen. 824 (1975). Assuming your Office determines that purchasing wrap-up insurance is reasonably necessary or incident to the accomplishment of the construction of the CVC and demonstrates that the rule's rationale does not apply to your situation, we would not object to the use of appropriated funds for purchasing wrap-up insurance covering both the government's risks and the contractors' risks for the CVC project. The burden could be met by demonstrating that a savings would be realized or a benefit, not otherwise obtainable, would be gained through the use of wrap-up insurance.

You also asked about the policy implications of using wrap-up insurance for the CVC because of your assertion that it could "skewer fair and open competition." GAO has no basis to address the policy implications or the advisability of using wrap-up insurance since the question involves numerous policy and economic considerations that must be weighed first by the AOC. However, there are situations in which the procurement laws take no notice of existing unequal competitive situations and do not attempt to equalize financial disadvantages. See, e.g., B-190142, Feb. 22, 1978. If these factors were to be given weight in the bid evaluation process so as to equalize the competitive position of bidders, that process would be fraught with speculation, confusion, and suspicion. Id. Finally, to the extent that using wrap-up insurance would tend to increase competition,²⁰ this would be broadly consistent with the overriding mandate of the Competition in Contracting Act, 41 U.S.C. § 253 et seq. (2000), for full and open competition. We might suggest contacting GSA for their views on the matter given their experience in managing large construction projects

I hope the above is responsive to your needs. If you should have any additional questions, you can contact me at (202) 512-5400 or Jeffrey Jacobson, Assistant General Counsel, at (202) 512-8261.

Sincerely yours,

/signed/

Anthony H. Gamboa
General Counsel

²⁰ Wrap-up programs enable smaller contractors, especially women and minority owned businesses, to enjoy the higher liability limits and significantly better coverage than would otherwise be available to them. See Wrap-Up Insurance Study, General Services Administration, Dec., 1997, at 46.