As more and more cities are faced with budget crunches, the more attractive the use of inmate labor may become. On the surface, using inmates to perform everyday tasks, particularly in the area of public works, seems to be a good idea. But is it? This is a question you have to decide, but you should be full aware of the costs and potential risks involved with using inmate labor.

As a result of recent legislative action, SCMIT covers the use of inmate labor under workers' compensation. However, there is a process that has to be followed in order to secure this coverage, as it is not available automatically. (For more information on this process, please call Jeff Thompson, Asst. Director of Risk Management Services at 803.933.1216.)

There are several types of inmate laborers that we have seen cities use. The way they are handled differs from type to type. However, all types of inmate labor require that you be careful with the type of work they are assigned. Why? Inmates aren't employees in the typical sense. Unlike most of your employees, they aren't generally concerned with what might be in the city's best interests. Further, recent issues have surfaced which raise questions as to how they should be treated legally in the event of an injury, which could give your entity a tremendous liability burden. Basically, to put them in harm's way, particularly if they are exposed to the public, generates huge potential liability implications.

That's not all, either. If the inmates you use come from an outside agency, there are contractual issues that enter into play. Close examination of the contract is essential, as many of the contracts we've reviewed from counties, and particularly the Department of Corrections, are heavily weighted in favor of the entity issuing the contract. In other words, if you are using inmate labor from other institutions, you are assuming considerably more risk than you would had there been no contract in place.

Consider the following types of inmates.

(1) Trusty Inmates
A “Trusty” is defined as an inmate from the S.C. Department of Corrections working for the municipality, full-time on a contractual basis with the Department of Corrections, and housed at a designated site within the municipality. They are typically extremely low flight risks, and have shown that they can be trusted in independent work situations.

(2) Community Service Workers
A community service worker is someone who has been assigned by a court (municipal or county) to a specific number of hours of community service work in lieu of having to spend time in jail. Community service workers are not inmates, per se, and should be considered separately. Many of the same tenets to managing an inmate labor pool apply here, however. Under no circumstances should community service workers be used in any project where there is even a slight potential risk of injury. This includes any roadside work, or any other public works function. Major issues include training and supervision. Generally, community service workers are sentenced to very short sentences, and by the time training is completed, so is their sentence. Please note that community service workers are not covered by the worker’s compensation system in South Carolina. If a community service worker is injured while “working” for the City, the worker will retain the right to pursue a claim under your municipality’s liability insurance.

(3) City Inmates
A city inmate is one that is housed within a city jail. The treatment of city inmates on work detail is very similar to the treatment of trustees, with the exception that city inmates must be more closely supervised.

(4) County Inmates
A county inmate is one that is housed in a county jail. Treatment of a county inmate is very similar to that of a city inmate, with close supervision required. Contractual issues between the City and County may come into play, which is why it is important that all contracts be carefully reviewed to determine who is responsible in the event of injuries, property damage, etc.

(5) Department of Corrections Inmates
Many municipalities have entered into contracts with the Department of Corrections that put the municipality at considerable risk. Normally, municipalities are responsible for immediate medical care (i.e. emergency room or office / clinic costs) of an injured inmate and the transportation of an inmate, whether by municipal vehicle or ambulance. The Department of Corrections is responsible for all other medical expenses (hospitalization, scheduled and unscheduled follow-up visits, medication, etc.). However, the Department of Corrections, in its sole discretion, may determine that unsafe conditions and/or improper supervision is the proximate cause of the injury and the municipality will be solely responsible for all medical care attendant to the injury.
Loss Control Recommendations

a. Utilizing inmates and probationers for local public service projects may be feasible as long as the city is providing adequate supervision reasonably calculated to secure the safety of the general public and prevent the escape of the inmates or probationers. The high-risk area of exposure from these programs would be liability arising from inadequate supervision. The city must provide constant supervision for inmates and probationers working in these projects. Persons supervising the inmates and/or probationers in these programs should be given adequate training and guidance regarding appropriate techniques and methods in supervising and controlling inmates. This training and instruction should be documented and retained on file.

b. The city must develop a written policy regarding the use and supervision of inmates or probationers for public service projects. This policy should include, as a minimum: the title of the city supervisor responsible for the program; the types of projects and work the inmates may assist with; procedures for the supervisors of the inmates (or probationers) to follow with regard to directing the laborers; the safety measures that are implemented for this program including the required personal protective equipment dictated by the type of work being performed; procedures to follow in emergency situations and in escape situations, etc. If juveniles are to be used as part of the city’s program, the policy must state that any work performed would comply with federal and state child labor laws.

NOTE: In developing the city’s policy dealing with escapes and/or escape attempts, the city must consider how to supervise and control the remaining inmates or probationers while notification is given to prison or jail officials, a search begins, or other appropriate apprehension procedures are being implemented.

c. Each inmate or probationer participating in this program for the city must be given a training orientation session outlining the proper methods of performing the job assigned and the appropriate safety guidelines that must be followed.

d. All training, education, and instruction given city employees, city supervisors, and the inmates must be documented and retained on file. This documentation should include: (1) the date of the training; (2) the name of the person conducting the session; (3) the topics and nature of the instruction given; and (4) the names of the persons in attendance at the training.

e. The city supervisor should examine each work project before work begins in an effort to identify and address unsafe conditions that may exist. This examination/inspection should be documented and retained on file.

f. The inmates or probationers should not be allowed to operate motor vehicles or motorized equipment of any size. (This would include having a city employee
drive a piece of equipment to a particular site, and then allowing the inmate to operate the equipment “on-site only.”) Powered equipment use should be restricted to push mowers or weed trimmers. Equipment use may be further restricted by policy of the Department of Corrections, or by the written policy of the city.

g. The city should not utilize any convicted murderers, rapists, other sex offenders, or other high-risk convicts (as determined by internal policy) in this work program.

h. While serving their debt to society, inmate laborers should not be subject to any less desirable working conditions than a payroll employee. Inmate laborers should not be asked to do anything that a normal employee would not be asked to do.

i. Every reasonable effort should be made to provide for the safety of the inmates or probationers. Subjects working in or near the right-of-way must be provided with and required to wear an appropriate orange safety vest. All other personal protective equipment will be dictated by the type of work being performed, but may include hard hats, goggles or other eye protection, hearing protection, gloves, etc. The inmates or probationers must be instructed on the use of the appropriate equipment, and its use must be enforced. Furthermore, adequate precautions should be made to prevent overexposure to heat or cold stress. Workers should be provided with adequate rest breaks, fluids, insulated clothing (in cold weather), etc.

j. Since the inmate labor pool is likely to vary from day to day, supervisors should remain vigilant for potential conflicts that may arise between inmate crews. Each group has a different dynamic, and the city is generally not privy to the group dynamic that may develop while in the custody of the incarcerating institution.

k. When participating in a work program with state prisoners, the city should ensure that all parties are in agreement that the prisoners are still "state inmates" for the purposes of medical attention for any possible injury, and that this medical attention will be provided by the state prison or Department of Corrections. Again, the prison workers and other inmates/probationers are not employees of the city and are not covered by workers’ compensation benefits for injuries that may occur.

l. The city should check the motor vehicle record (through the South Carolina Department of Public Safety) of any employee who may be transporting the inmates or probationers to a work site. Any employee having an adverse driver record should be prohibited from transporting the workers. Additionally, when they are being transported, the workers should not be allowed to ride in the back of a vehicle (or bed of truck).

m. To follow up on an earlier policy recommendation, it must be clear that, if juveniles are to be used for public service work projects, all federal and state child labor
laws must be followed. The use of juvenile inmates in this capacity is highly discouraged.

n. A complete incident/accident report must be filed by the program supervisor following any accident or injury to a program participant or a member of the general public occurring during the course of prisoner participation in a public workers project. This documentation should include: (1) the date of accident/injury; (2) the time of day; (3) the injured person's name, address, and phone number(s); (4) the name of the injured person's parent or guardian, if a minor child; (5) the names and phone number(s) of any witnesses; and (6) a complete description of the events and circumstances surrounding the accident or injury. Note: Injury means bodily injury and/or property damage. These incident reports should be retained on file.

Any additional requirements made by federal, state, and/or local regulations that place further restrictions or guidelines upon the supervision and utilization of inmates or probationers for public works projects must be followed.

While there may be an increased risk exposure associated with utilizing inmates or probationers for public service projects, much of the risk can be reduced through proper supervision, documentation, and operating procedures.

SCMIT and SCMIRF do not represent that these recommendations identify and address all of the unsafe or hazardous conditions associated with the utilization of inmates or probationers for public works projects, nor do we represent that implementing our recommendations is the best possible solution and that no injury or financial loss will occur if they are followed. It is our opinion that implementing the recommendations should reduce the potential for accidents and/or financial loss.