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he design-build construction delivery system continues to grow in both the public and private sectors because it minimizes the project risk for an owner and reduces the schedule by overlapping a project’s design and construction phases. In fact, a recent study by the Federal Highway Administration found the duration of design-build projects was 14 percent shorter than the design-bid-build approach.

While the design-build approach is advantageous for the project’s owner, it forces a contractor to assume the responsibility for the design contract. As a result, contractors must question whether their insurance program will protect this additional responsibility.

The design-related exposure can be insured in various ways.

DESIGNER’S PROFESSIONAL LIABILITY POLICY
Many contractors subcontract the design to a design professional. If using this approach, remember:
- The designer’s professional liability policy only protects the designer. It does not provide a contractor with additional insured coverage or contractual liability coverage if sued. Contractors require an insurance policy to protect them for their responsibility in the design contract.
- The limit of the design professional’s policy is shared across all its jobs. A claim from another job could exhaust the limit, resulting in inadequate claims coverage.

CONTRACTOR’S GENERAL AND UMBRELLA LIABILITY POLICIES
A contractor’s general and umbrella liability policies typically have an exclusion for professional liability. The most common exclusion excludes liability arising out of engineering, architectural or surveying services provided by the firm or a subcontractor. This likely excludes a contractor’s responsibility for the design contract (whether it is performed in-house or subcontracted to a design professional).
CONTRACTOR'S PROFESSIONAL LIABILITY POLICY
A professional liability policy typically has a definition of covered professional services. If this definition focuses only on contracting activities, it may not extend coverage for the design contract (whether it is performed in-house or subcontracted to a design professional). The definition of covered professional services should be reviewed carefully to ensure design-build exposure is properly protected. In addition, because umbrella policy limits typically do not provide excess professional liability limits, the current professional liability limit should be evaluated to determine if it is adequate to provide protection for any additional design exposure.

CONTRACTOR'S PROTECTIVE PROFESSIONAL COVERAGE
This first-party coverage indemnifies the contractor for any loss. Coverage applies in excess of the design professional's professional liability insurance for costs incurred that are legally recoverable as a result of negligent acts, errors and omissions by design professionals under contract. Contractors don't often carry this coverage, but there are several reasons to consider it:

• It provides coverage for costs the contractor incurs as a result of the acts/omissions of the design professional. However, it does not provide protection for suits brought by third parties for the contractor's vicarious liability for hiring the design professional. For example, if the design professional designs the project with improperly sized rebar and it is not discovered until the job is nearly completed, the contractor could incur substantial rework costs and schedule delays that may not be insured by the design professional's policy.

• The coverage applies "excess and difference in condition" of the design professional's coverage. This protects the contractor if the design professional's coverage is exhausted or determined not to apply. This often happens because the design professional's policy limit is shared across all of its other jobs, and a claim from another job could exhaust its limit.

• This coverage basically operates like automobile uninsured/underinsured coverage. If the design professional is not properly insured and the contractor sustains a loss from its negligent design, this policy provides protection for the loss.

Prior to bidding, it is critical to ensure a contractor's insurance program provides protection for added design responsibility. Reviewing the program with an insurance broker is essential to avoiding an uninsured professional liability claim.

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