



# Construction – Design-Build Delivery Method Exposure

11.09.2017

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A design-build agreement between an owner and design-builder represents the contractual relationship between the parties of the construction project. The design-builder must first assess the risks and responsibilities outlined under the agreement and determine how to manage potential exposure. Typically, a design-builder will assume certain risks, insure others and transfer some risk to their selected design professionals and trade subcontractors.



Design-builders face both professional and non-professional exposures. Non-professional risks can result from direct damage of property, supplies and materials on the contractor's project premises or occurring for a period after substantial completion, as well as bodily injury related to the project. Non-professional liability also can arise from payment and performance guarantees related to contractual obligations of project completion within a defined schedule, according to performance specifications. Professional liability exposures surround the design services specified within the design-build agreement with the owner and, subsequently, subcontracted to design professionals. The design-builder is responsible for the safety of all employees and third parties on the project site. On-site accidents may trigger workers compensation claims as well as OSHA fines and penalties. Potential risks vary and can often be quite onerous. The design-builder concerns include geotechnical exposure, site conditions, environmental liabilities and design defects.

The contractor or design-builder should carry its own contractor's professional liability insurance coverage for the professional services to be delivered under the contract with the owner. The contractor's professional liability policy operates similar to the designer's professional liability policy. Coverage can encompass the contractor's exposure of the design-builder's operations and any design professional's services performed directly by the design-builder.

Professional liability insurance coverage options can be an annual practice policy or a project-specific program. Professional liability annual practice policies are issued by the insurance company to protect against all potential risks in the performance of professional services up to pre-determined policy limits on an annual basis. Project-specific coverage is underwritten in policy form for a specific project for the construction phase, plus an agreed-upon, extended reporting period.

Design-build agreements are increasingly becoming a preferred delivery method within the construction sector. Project complexities suggest that design-builders and design professionals allocate the underlying risks to the party most suited to manage the potential risk exposure. The entire design-build project team should be directly engaged to seek appropriate insurance solutions to protect their respective party's professional liability exposures. A dedicated risk management program can result in mitigation of conflict risks and reduce exposure to costly, tenuous project litigation.

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