



## GUEST ESSAYS

### **Contractor's Professional Liability Coverage**

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This article by Mr. Collinsworth appeared in the Fall 2002 issue of the *South East Florida Constructor* and is posted on the a/e ProNet website with permission of the South East Florida Constructor and the author.

While Mr. Collinsworth's article presents this information from the Contractor's vantage point, it nonetheless provides valuable information for any design professional or firm seeking to gain greater knowledge and information of the risk management concerns that apply to a design/build project led by a construction firm. Knowing these concerns and how contractor's are advised to protect themselves can minimize liability exposures and be helpful in developing negotiation strategies for any design firm entering into an agreement to provide design services to a construction firm undertaking a design/build project for an owner. Mr. Collinsworth presents powerful arguments why contractors need this insurance to protect themselves and enhance their relationship with their bonding company. As a design professional, you need the advantages of this information to convince any potential contractor seeking to hire you for design services, to purchase this coverage for their own protection, and not to rely solely on attempts to shift responsibility to you by hold harmless provisions that may be beyond your responsibility at common law and not be honored by your insurance carrier..

"We wanted to give AGC readers some more information regarding **Contractor's Professional Liability** as it an important when a Contractor is considering doing a design/build construction project... especially when it's a bonded contractor who is acting as the Prime Contractor. This means the contractor who signs the design/build contract with the owner and then sub-contracts the required professional services/exposures to qualified design professionals.

Please note-The Professional Liability exposure is present even though the professional services are subbed to qualified and insured design professionals. The Contractor's Professional Liability policy would respond in the event the General Contractor had an in-house design staff or if they sub out all the professional services/exposures to design professionals or if they perform this project as a joint venture partner with the design firm.

The General Contractor will most likely be insured with the standard commercial General Liability policy... and it will most likely have the following exclusions:

- A damage to work exclusion
- A damage to the product exclusion
- An impaired property exclusion
- Absolute pollution exclusion

These exclusions basically eliminate any protection for the Design/Build contractor utilizing this unique delivery system:

- A specific Professional Liability exclusion
- These policies only respond to bodily injury, property damage and personal injury claims as defined in that policy for claims, which result from the General Contractor's negligence.

The reason this coverage is needed is that the contract with the owner will normally require that the contractor be their single point of responsibility. As a result of the contract documents, you can be assured that the GC will assume not only the responsibility for the construction means, methods, procedures, sequences, safety, etc. but quite possibly the responsibility for the professional liability exposures. The specific contract documents will determine whether this is a fact or not.

Another advantage to the Contractor's Professional Liability policy is that it responds to negligent acts, errors or omissions, which is not the case with the Commercial General Liability policy. The Contractor's Professional Liability coverage addresses the obvious gaps which are a part of the Contractor's Standard Commercial General Liability policy. The Contractor's Professional Liability policy also insures the subjective "standard of care" that professionals are required to provide versus the objective standards that contractors are usually required to provide as a contractor.

To recap... the professional exposures are created in the following ways:

- The language contained in the owner's contract with the contractor,
- Contractor's direct liability for the in-house professional services rendered,
- Contractor's vicarious responsibility for services subcontracted to design professionals:

This coverage will really assist the bonded contractor who in entering into a design/build contract... this specific coverage would obviate most of the obvious gaps that are a part of their Commercial General Liability policy.

With this coverage, the contractor's surety (bonding) company should also be much happier! It removes them even further from the possibility of an owner or other third party claimant, assuming that the construction bond will take care of the uninsured professional liability exposure which exists because of the design/build process. As you know, bonding does not provide protection for these exposures but this specific coverage does mitigate the surety from being sued and having to incur tremendous defense costs before they are dismissed from a suit. In addition... any costs/expenses incurred by surety arising out of the bonding process which relate to the design/build process will fall back on the bonded contractor... As a result of the property damage and economic type loss exclusions... it is estimated that 60-75% of all CGL Property Damage type claims are not covered!

Please remember, claims-made policies-respond to allegations resulting from negligent acts, errors or omissions arising out of professional services rendered and claims made against the insured or their sub-contractors... but subject to the usual terms conditions, definitions, limitations and exclusions. But... There is no standard Policy form!

Whereas again... the non-professional liability policies respond to claims which arise out of allegations of negligence which cause bodily injury, property damage and/or personal injury."

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*NOTE: This article is intended for general discussion of the subject, and should not be mistaken for legal advice. Readers are cautioned to consult appropriate advisors for advice applicable to their individual circumstances.*