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With the desire for more advanced and innovative construction project delivery methods, industry initiatives like integrated project delivery, LEEDS, BIM, PPP and other similar movements, and the increasing demand that owners require of contractors to deliver a project faster and cheaper, contractors of all types, shapes and sizes face professional liability exposure. These exposures range from vicarious liability from design or architectural/engineering services to scheduling/sequencing errors to mismanagement of subcontractors or the construction process. These exposures can easily cripple a construction firm and create unwanted liability with devastating results.

Some construction firms still do not recognize such risk exists. Fortunately, there are many firms that do understand the risk, manage it effectively, and properly insure themselves to mitigate the financial impact it can have on an organization. Many have purchased what is called Contractor's Professional Liability or CPrL insurance. CPrL provides coverage for third party liability arising out of negligent acts, errors, or omissions in professional services performed by or on behalf of the construction firm or named insured. These policies now specifically address the professional liability exposures associated with LEED and other sustainable initiatives as well as building information modeling.

When it comes to LEED projects, there is a heightened concern with not attaining the desired LEED level for the owner. In the event that a structure does not achieve the contractually agreed to LEED level, the contractor can be held liable to the owner for resulting damages. The CPrL will address this risk, only if the damages occurred as a result of negligent acts, errors, or omissions in performing or failing to perform professional services (including design.) We recommend that regardless of insurance it is not prudent for firms to be agreeing to contracts that guarantee or certify a certain LEED level or level of efficiency. Contractors could find themselves without coverage under a CPrL policy for claims from owners alleging financial damage as a result of a lower level of building certification than agreed to.

Another area of concern is warranties and guarantees. A large number of Professional Liability policies contain exclusions eliminating coverage for warranties a contractor may have guaranteed, implied or otherwise. Just recently, have insurance carriers that offer CPrL programs created exceptions to the policy that ensure warranty/guarantee exclusions do not interfere with the true intent of the CPrL form - to provide coverage for negligent acts, errors and omissions in the rendering of professional services, regardless of a contractual warranty/guaranty.

Contractors Protective Professional Indemnity Insurance- (CPPI)

Provided as a separate coverage part under a typical CPrL policy, protective coverage is a first party coverage that indemnifies the named insured (contractor) for costs it incurs, excess of the design professional's professional liability insurance, that the contractor is legally entitled to recover as a result of negligent acts, errors, or omissions committed by design professionals under contract. In addition, it also affords difference in coverage (DIC) above the underlying design professional's professional liability policy in the event the underlying policy is deficient. In addition to insufficient limits, other deficiencies may include exclusionary language for mold or other pollution conditions, habitational exclusions, cost overrun exclusions, or quantity estimating exclusions. These exclusions are commonly found in design professional's (DP) practice programs. Essentially, the CPPI supplements the design professional's professional liability insurance program by providing direct benefits to the Contractor, helping to protect the balance sheet. This insurance should be a strong consideration for any contractor who could be responsible to the owner in a design/build situation.



Mitigation of Loss Coverage

Whereas contractor's protective coverage supplements the DP's professional liability insurance, mitigation of loss (MOL) essentially replaces the DP's insurance solely in respect to the costs incurred by the named insured (contractor) to rectify design issues discovered during the course of construction that would otherwise result in professional liability claims if not corrected. In addition, while CPPI is an excess coverage, MOL is primary coverage subject to a self-insured retention MOL coverage differs between insurance carriers so it is recommended that a review be completed in order to understand how each coverage applies.

In conclusion, both CPPI and MOL coverage parts can be added inclusive of the policy limits of liability or in addition to the limits of liability. In addition, both can be offered on a project specific basis in conjunction with the base CPrL product. However, most carriers will require contractors to purchase a practice program (corporate program for all work/ services) before they will offer project coverage, otherwise the cost of project insurance may rise substantially.

The risks involved with Design-Build Construction continue to evolve as do insurance products designed to address these risks. Contractors must first come to grips with the fact that such exposures exists and work toward creating risk profiles to assist in understanding the risk they face on each project. To think otherwise is a very serious mistake that can have a lasting impact on a firm's financial health. It is imperative to have an educated and experienced risk management team when navigating the perilous world of Contractor's Professional Liability.