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## Managing Risk in Construction-Led Design-Build Projects

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In the construction industry, design-build (DB) ventures have significantly [increased](#) in popularity in recent years. DB projects combine the design and construction phases of a construction project under a single contract, promising efficiency and cost savings. However, the DB method also introduces significant challenges, including the potential for uneven distribution of risks among contractors and the design professionals they subcontract with. This article endeavors to illuminate some of these challenges, outline some key risk management strategies and coverage considerations, and underscore the crucial role of construction insurance professionals in navigating the risks of DB projects.

### UNDERSTANDING THE DB APPROACH

#### What is a DB Project?

For [DB projects](#), the project owner contracts with a single entity, known as the design-builder, who is responsible for both the design and construction of the project. A DB project typically encompasses two defining points:

- + **Single-Point Responsibility:** The design-builder, typically a construction company, assumes all liability for design and construction, thus increasing their risk exposure.
- + **Subcontracting:** Typically, design work in DB projects is subcontracted by the design-builder (the construction company) to external architects or engineers, which can complicate liability issues.

### CONTRACTUAL RISK AND IMPORTANT COVERAGE CONSIDERATIONS

Contractual risk stands as the most significant risk in large DB projects as it relates to the potential financial or legal liabilities arising from the terms and conditions outlined in the contracts governing the project. In DB projects, the single-entity structure poses significant contractual risks, which can arise from ambiguous contract terms, project scope changes, and disagreements over responsibilities and liabilities.

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[Professional liability insurance](#) emerges as a vital tool in this landscape, designed to cover losses arising from professional errors, omissions, or failures to perform such professional services. This coverage is essential for everyone involved in a design-build project to protect themselves from the errors of other parties, upstream or downstream. By securing adequate professional liability coverage tailored to the unique exposures on a given project, design-builders can shield themselves against the costs of such claims.

#### Contractor's Professional Liability (CPrL) Policy

Understanding the coverage nuances of professional liability insurance is crucial. The standard CPrL policy effectively covers the design-builder's professional exposure for insuring risk on a construction project. Unlike general liability policies, CPrL extends to economic losses resulting from DB project risks like design errors, construction delays, or subcontractor performance issues. It includes protective liability coverage for excess coverage if the design team's own professional liability policy limits are insufficient, rectification expense coverage for the cost of rectifying an issue before it escalates into a claim, and contractor's pollution liability for pollution conditions resulting from the contractor's work or work performed on their behalf.

#### Project-Specific Professional Liability (PSPL) and Project-Specific Contractor's Protective Professional Insurance (CPPI) Policies

While a CPrL is typically an effective means of covering the design-builder's professional exposure, the limits of this policy are often shared across all job sites and can be depleted simultaneously. For large DB projects, it is prudent to leverage both the design-builder's practice program and an additional policy, like a PSPL or project-specific CPPI policy. The [PSPL policy](#) offers dedicated limits to the project and more control over the terms and quality of coverage, while the project-

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specific CPPI provides similar benefits at a competitive price. The only difference between the two is that while the PSPL provides coverage on a primary basis for the design team, project-specific CPPI provides coverage on a primary basis for the contractor's errors and omissions and excess coverage for the design team's errors and omissions.

Due to the single entity structure of DB projects, it is also important for project owners to ensure that the design-builder has adequate insurance for design errors, as it is the entity obligated to provide the design services to the owner and responsible for all costs arising from design errors.

#### RISK MITIGATION STRATEGIES

Effective risk management in DB projects starts from the procurement phase. The following are some proactive strategies to minimize liability claims between contractors and designers in DB projects:

- + **Clear and Comprehensive Contracts:** Clearly define the project scope, schedule, payment terms, change management procedures, dispute resolution mechanisms, and indemnification clauses. Ensure that contracts clearly define the roles, responsibilities, obligations, and expectations of all parties involved in the project and allocate risks appropriately.
- + **Thorough Due Diligence:** Conduct thorough due diligence when selecting project partners, including design professionals, subcontractors, and suppliers. Verify their qualifications, experience, financial stability, and track record of performance. In

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progressive design-build, the contractor's selection is based primarily on qualifications, and the design is collaboratively developed with the owner's participation. This approach allows for higher pricing certainty and greatly reduces the possibility of design and pricing errors.

- + **Regular Communication and Collaboration:** Foster open and transparent communication and collaboration among all project stakeholders, including the owner, design team, construction team, subcontractors, and suppliers. Establish regular meetings, progress updates, and clear channels of communication to address issues proactively and avoid misunderstandings.
- + **Legal Review and Oversight:** Engage construction law counsel to review and advise on contract terms, identify potential risks, and ensure compliance. Seek legal guidance in negotiating contracts, resolving disputes, and interpreting contractual provisions to protect your interests and mitigate legal exposure.

- + **Prompt and Proactive Claim Management:** Report claims promptly, conduct thorough investigations and documentation, and collaborate with insurers and legal counsel for resolution.

The parties involved in DB projects should also consider strategies such as a pre-bid agreement of the design subcontract terms and thorough design and constructability reviews to reduce claims between contractors and designers partnered for DB projects.

## CONCLUSION

Most importantly, contractors and designers should remember that they are part of a design-build "team," and the project's ultimate success depends on their ability to work through issues expediently and fairly. By strategically using professional liability insurance, careful contract negotiation, effective communication, and proactive claim management, they can help ensure the success and sustainability of these complex projects.

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