

Professional Indemnity for Contractors

"Why do I need Professional Indemnity Insurance?" - an often heard question from contractors with no in-house design teams and who may never employ consultants, building solely to the designs and supervision of others. MUM's Richard Webb explains why such a contractor can find itself being asked to purchase Professional Indemnity Insurance cover even though it undertakes no professional work itself

■ Why should a contractor buy a professional indemnity policy? Some contractors have always had design departments that required Professional Indemnity Insurance, but the last 25 years has seen an increase in the Design & Build contract. This is popular with the employer, who can wrap all the design and building contract terms into just one document with one party, who takes responsibility for all design and building. This type of contract is used on all sizes of projects from housing to major civil construction.

The downside of a Design & Build contract is that the employer, being once removed from the design sub-consultants, might find that they have less input to the design process, leading to unfulfilled expectations where a contractor might focus more on cost than design.

A contractor that takes on design liability - whether the design is undertaken internally or sub-contracted to outside consultants - has a need for Professional Indemnity Insurance. The employer normally insists on Professional Indemnity Insurance being carried, as well as an array of collateral warranty agreements creating a direct contractual link between sub-consultants and the employer, facilitating litigation in the event of things going wrong.

In this way, a contractor might find themselves being asked to purchase Professional Indemnity cover even though they undertake no professional work themselves.

These design exposures can be encountered by any type of contractor, from the major household names and general building firms through to specialist sub-contractors such as piling, roofers, cladding and glazing, building services contractors etc. Unused to buying Professional Indemnity Insurance, contractors can face unpleasant cost surprises when arranging the cover.

Liability example

A contractor won a tender to build a commercial building. It sub-contracted out the design work to a firm of architects and structural engineers. Incorrect design led to the foundations being laid out incorrectly. As a result, the work had to be redone which led to increased costs and a delay in the project.

If the client brought a claim in this situation, the contractor would look to the professional firm to provide an indemnity. But what happens if the professional firms' Professional Indemnity policy doesn't respond or is inadequate? It might have lapsed, or cover might have been refused due to policy issues.

The contractor is left fully exposed as the client will look to them to resolve the matter. After all, the contractor took on the design responsibility when winning the contract.

A good example of how liability can arise appears in the adjacent panel. Such a claim situation is not uncommon. The Professional Indemnity Insurance market normally calls a policy purchased by a building or engineering contractor a 'D&C policy', or Design & Construct. Such a policy should protect the contractor, as well as where the contractor keeps the design in-house.

" Contractors need PI even if they carry out no professional work themselves "

Professional Indemnity insurers charge less where contractors sub-contract out the design work, for example where the design exposure is contingent. Of course, they rely on the contractor to ensure that the design sub-consultants carry adequate Professional Indemnity Insurance themselves.

Contractors may also incur design exposures when they have no contractual responsibility for design, in the sense that they may have input to design consultants' work or, more likely, design changes as construction progresses, following problems encountered on-site.

Contractors have a vast amount of practical on-site experience which professionals do not always enjoy. But contractors are not design professionals, so it is at this interface of practical experience with professional knowledge that things can go wrong.

Professional designers are not unknown to design something that cannot be built! And the contractor's input might not achieve everything intended. If it goes wrong, everybody will get sucked into the claim. So, contractors can encounter design liability, not only by undertaking in-house design but through a Design & Build contract as well as through non-contractual design input. This liability needs to be protected through a D&C policy.



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