# Selecting Professional Liability Coverage

## Obtaining competitive terms in a complex marketplace

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Driven by a strong economy, the easing of lending standards, and a healthy commercial real estate marketplace, construction starts are expected to total about $800 billion in the United States, according to the Dodge Data & Analytics' 2019 Construction Outlook.[1] Although this fails to capture the double-digit growth of recent years, the report confirms the likely match of funds spent on commercial construction last year.

While the industry's outlook bodes well for the near future, concerns have heightened due to an increase in the liability claims plaguing construction projects since the market's resurgence during the last eight years. In many cases, these exposures have paralleled the work of builders who have taken on new assignments without the prerequisite experience and/or failed to deliver on the sustainability demands of owners.

Other problems have emerged due to the fast-paced practices now embodied within many construction projects. This includes replacing the clear-cut roles defined by the design-bid-build project delivery methods with the customary overlapping responsibilities of design-build models. The problem is these blurred lines have not only placed a greater emphasis on expediency, but also made it increasingly difficult to pinpoint responsibility when things go wrong—a necessity for quickly and efficiently resolving claims and completing projects on time and within budget.

As a result, contractor's professional liability (CPrL) policies are becoming popular for their ability to cover damages arising from the acts, errors, and omissions of professional services performed by or on behalf of any construction firm, be it a general contractor (GC), design-builder, construction manager (at risk or agency), or specialty subcontractor. In addition to third-party liability, some CPrL programs now offer first-party coverage—protective or rectification (*i.e.* mitigation of damages).This coverage enhancement indemnifies the named insured for costs it is legally entitled to recover as a result of negligent acts, errors, or omissions committed by the design professionals under contract with the named insured. This coverage is in excess of the design firm's professional liability insurance.

Given these facts, contractors are constantly evaluating their risks and options for obtaining the most competitive CPrL terms available in the professional liability insurance marketplace. This entails exploring the steps necessary for demonstrating stable business models that compare favorably to best-in-class contractors, in addition to successfully managing risk through every project phase.

For most contractors, the process often begins with the development of a risk management policy and plan, which is essential for loss prevention, a key to financial success and establishing benchmarks and metrics. When integrated into the company's culture, the plan can have a significant impact on business performance as well as the positive management of projects and finances. This includes developing protocols with leadership and a cross-functional team of employees to:

- identify and anticipate the potential risk factors for each project;
- avoid or mitigate risk through advanced planning;
- minimize the impact and cost of risk through active project management, training, and organizational accountability;
- create contracts clearly establishing fair and balanced terms and conditions, while carefully defining accountability, responsibility, and the roles of everyone involved in the project; and
- establish and maintain sufficient contingency throughout all project phases.

Other important factors for determining favorable CPrL policy terms with insurers involve clearly detailing the construction firm's growth and success. Worth citing are the statistics and facts related to the retention of senior executives, five-year revenue averages, payment records, and percentage of repeat customers. It is advisable to also include the best practices learned and shared throughout the company's history. On a project-specific basis, the delivery method employed, key influencers surrounding the firm's quality control (QC) methods, experience building similar structures, core competencies, change order processes, and familiarity with local ordinances and governments should be noted.

Unfortunately, there are few shortcuts for ensuring both the integrity of the construction firm and the quality of the project work. Despite best efforts, challenges occur on nearly every jobsite, both big and small. It is important to note minor projects do not necessarily translate into small claims. Errors and omissions are a fact of life, especially within this rapidly evolving and changing construction landscape. Accordingly, every contractor has an obligation to instill the best possible risk management strategies into the business.

The increasing level of risk does not mean a contractor has to pay a premium for the appropriate level of professional liability coverage. A contractor can secure good rates with a best-in-class benchmarking approach to business. The results will not only protect the company from costly construction challenges, but also enable the funneling of saved funds into other growth areas. **CS**

Contractor's professional liability (CPrL) policies cover damages arising from the acts, errors, and omissions of professional services by general contractors (GCs), design-builders, construction managers, or specialty subcontractors.

### Note

[1] For more information, visit www.construction.com/analytics-store/2019-dodge-construction-outlook.html.