



Insurance Issues for Design- Build Projects

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Outline

I. Insuring the Project

- A. Workers' Compensation/
Employer's Liability
- B. Commercial General Liability
- C. Contractors Pollution Liability
- D. Commercial Automobile
- E. Umbrella Liability
- F. Professional Liability
- G. Builders Risk
- H. Contractors Equipment
- I. Transit
- J. Liquidated Damage/Efficacy
- K. Credit Enhancement

II. Faulty Workmanship

III. Design/Build Delivery Methods

- A. Contractor-Led Issues
- B. Design Professional-Led Issues
- C. Joint Venture-Led Issues

IV. Controlled Insurance Programs versus Blanket Programs

- A. The concept of controlled insurance
programs
- B. CGL, Workers Compensation
- C. Professional
- D. Pollution



Insurance Coverages for Design-Build Projects

- A. Workers' Compensation/Employer's Liability
- B. Commercial General Liability (CGL)
 - ⊕ Legal Liability for Bodily Injury (BI) and Property Damage (PD) caused by an occurrence
- C. Contractors Pollution Liability
 - ⊕ Fills the hole in CGL for pollution caused by actions of contractor (no pre-existing conditions)
- D. Commercial Automobile



Insurance Coverages for Design-Build Projects

E. Umbrella Liability

- ⊕ Excess limits over
 - CGL
 - Auto
 - EL

F. Professional Liability

- ⊕ BI & PD
- ⊕ Economic loss
- ⊕ Caused by a wrongful act



Insurance Coverages for Design-Build Projects

G. Builders Risk - Delay in Opening

- ⊕ Physical damage to project
- ⊕ Soft costs incurred following delay

H. Contractors Equipment

I. Transit - Delay in Opening

- ⊕ Ocean Marine
- ⊕ Inland Marine

J. Liquidated Damage/Efficacy

K. Credit Enhancement



General Liability Insuring Agreement

- A. We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result. But:



General Liability Insuring Agreement (continued)

- ⊕ The amount we will pay for damages is limited as described in Section III – Limits of Insurance; and
- ⊕ Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverage A and B.



General Liability Insuring Agreement (continued)

- B. This insurance applies to “bodily injury” and “property damages” only if:
- ⊕ The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”; and
 - ⊕ The “bodily injury” or “property damage” occurs during the policy period.
- C. Damages because of “bodily injury” include damages claimed by any person or organization for care, loss of services or death resulting at any time from the “bodily injury”.



General Liability Exclusions: Damage to Property

Coverage excluded for:

J. “Property damage” to:

- ⊕ Property you own, rent, or occupy;
- ⊕ Premises you sell, give away or abandon, if the “property damage” arises out of any part of those premises;
- ⊕ Property loaned to you;
- ⊕ Personal property in the care, custody or control of the insured;
- ⊕ That particular part of the real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the “property damage” arises out of those operations; or
- ⊕ That particular part of any property that must be restored, repaired or replaced because “your work” was incorrectly performed on it.



General Liability Exclusions: Damage to Property (continued)

Coverage excluded for:

I. Damage to Your Work

- ⊕ “Property damage” to “your work” arising out of it or any part of it and included in the “products-completed operations hazard”.

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.



Professional Liability Coverage Agreements

- A. We will pay all amounts in excess of the deductible up to the limit of liability that you become legally obligated to pay as a result of:
- ⊕ a wrongful act; or
 - ⊕ a pollution incident arising out of your activities or the activities of any person or entity for whom you are liable,
- that resulting in a claim anywhere in the world, provided that on the knowledge date set forth on the Declarations of officer, director, principal, partner or insurance manager knew or could reasonably have expected that a claim would be made.



Professional Liability Coverage Agreements (continued)

- B. A claim arising out of a wrongful act or pollution incident must be first made during the policy year or any applicable extended reporting period. A claim is considered first made when you receive notice of the claim or as set forth in accordance with Section VI. Conditions, Item C., Your Rights and Duties in the Event of a Circumstance.



Professional Liability Coverage Agreements (continued)

- C. We have the right and duty to defend any claim against you seeking amounts that are payable under the terms of this Policy, even if any of the allegations of the claim are groundless, false or fraudulent. We will designate or, at our option, approve counsel to defend the claim. We are not obligated to defend any suit or pay any amounts after the applicable limit of our liability has been exhausted.



Professional Liability Coverage Agreements (continued)

- D. We will not settle any claim without your informed consent.
- E. If a claim results in a punitive, exemplary or multiplied damage award, we will pay such award, up to the applicable limit of liability, to the fullest extent permitted by law.



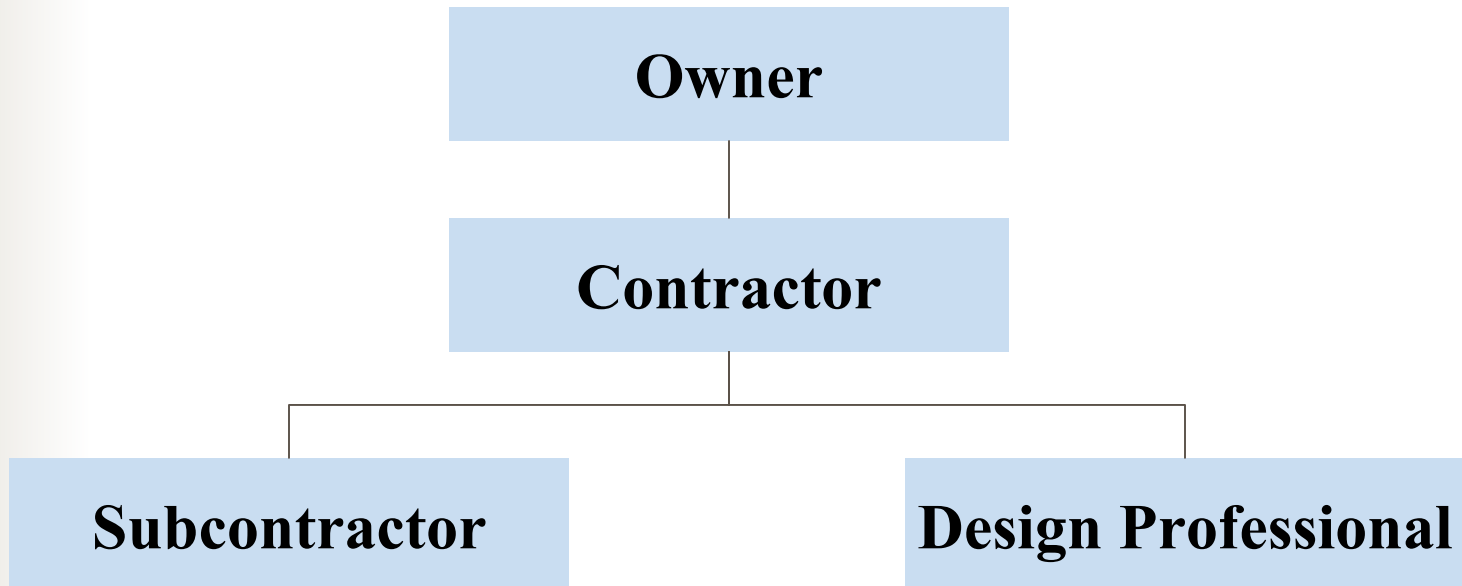
Professional Liability Exclusions: Faulty Workmanship

Coverage excluded for claims:

- C. arising out of the cost to repair or replace faulty workmanship you perform on any construction, erection, fabrication, installation, assembly, manufacture or remediation including any materials, parts or equipment furnished in connection therewith.

Design-Build Delivery Methods

Contractor-Led





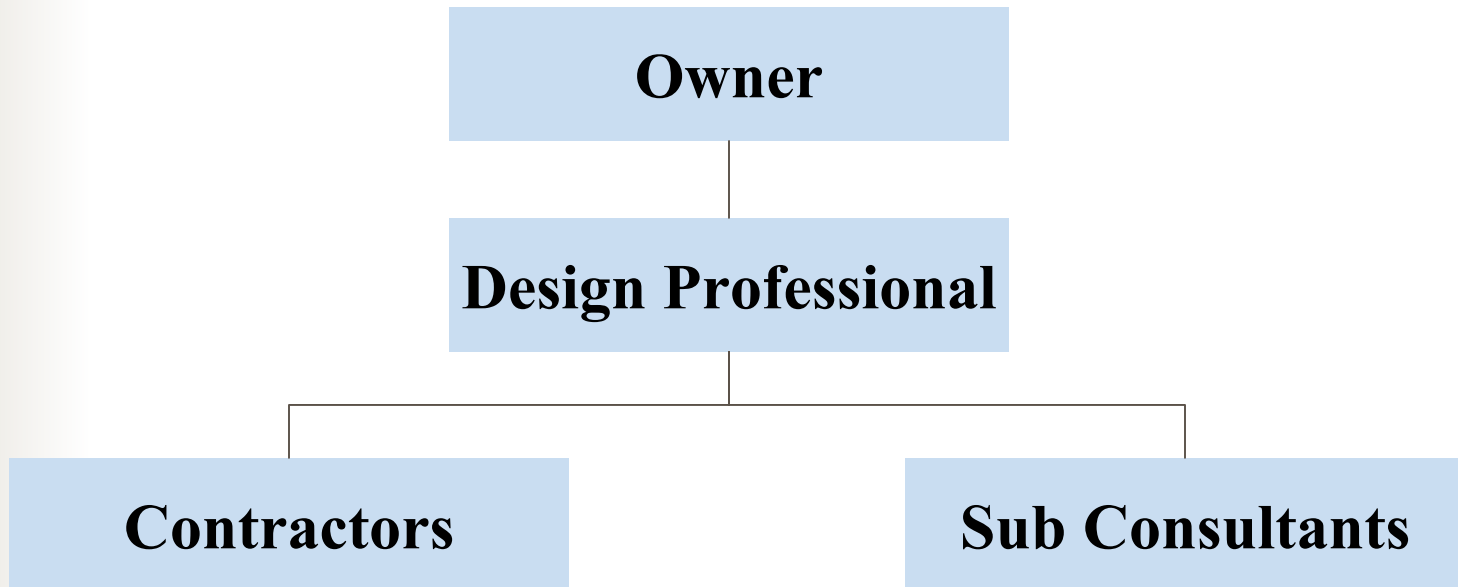
Design-Build Delivery Methods

A. Contractor-Led Issues

- ⊕ Who controls Builders Risk?
- ⊕ How to handle Professional Liability Risk
 - A/E Practice Policy or
 - A/E Project Policy
 - Contractor's E&O

Design-Build Delivery Methods

Design Professional-Led





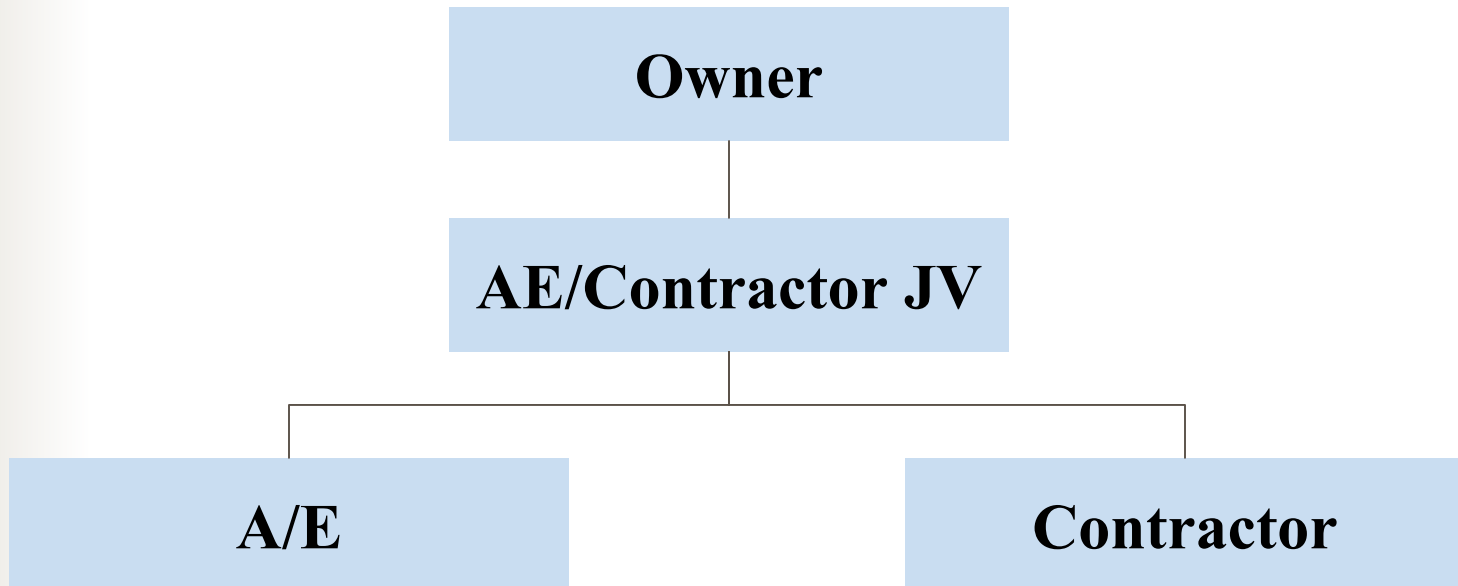
Design-Build Delivery Methods

B. Design Professional-Led Issues

- ⊕ Bonding
- ⊕ Problem with design prior to handover
- ⊕ Adequacy of subconsultant's insurance

Design-Build Delivery Methods

Joint Venture-Led





Design-Build Delivery Methods

C. Joint Venture-Led Issues

- ⊕ Allocation of liability in JV agreement
 - Fault-based
 - Without regard to fault
- ⊕ Professional Liability problems
 - No coverage for claims brought by the JV against design partner
 - No coverage for faulty design discovered prior to handover



Controlled Insurance Programs versus Blanket Programs

- A. The concept of controlled insurance programs
- B. CGL, Workers Compensation
- C. Professional
- D. Pollution



Design-Build Contracts

What do the terms and conditions of the contract mean to you?

What is the nature of the construction project?

What are the expectations of the owner of the project?

Are you comfortable with the risk?