

Beazley Insight

Through bad times to boom times

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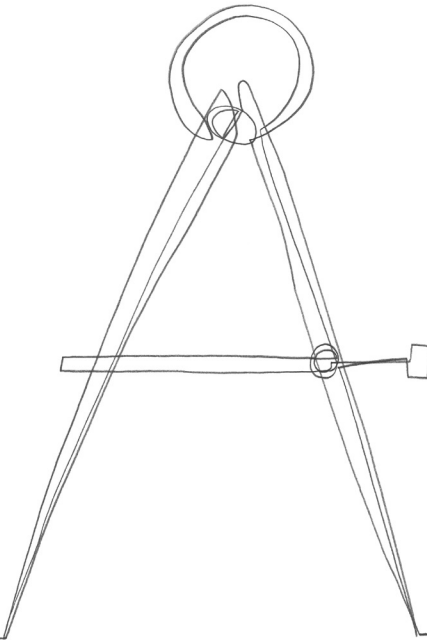
Five Risk Management Tips Design Firms Need Now

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As the difficult economy forces architects and engineering firms to focus their resources on keeping their firms afloat, risk management is taking a backseat. The following five areas are key for any design firm managing risk in trying times.

Don't cut corners on contract wording. When it comes to hammering out contracts, design firms may feel that it is the owners' way or the highway in the current environment. It may be tempting to bend on contract language, especially when competitors are, but there are some contractual areas where the stakes are just too high. Chief among these are indemnification provisions. Design firms should never acquiesce to language that leaves them with a duty to defend owners in claims. If they do, they could be obligated to defend a matter for which they had no responsibility – and have no insurance coverage. There are a myriad of free resources available from some insurance companies that extend beyond providing a policy, including contract review services.

Be cautious with contractors' costs during construction. With contractor defaults rampant, firms providing construction phase services should be especially diligent when approving contractor payments. Payment should not be approved until the design professional is able to confirm that the specified work has progressed as the contractor represented in the request for payment, and the quality of the work is what it should be. If a contractor defaults after approved payment has been made, and the owner claims the work was not done correctly, any overpayment made to the contractor can quickly become a costly problem for the design firm.



Take care when covering mergers, acquisitions, or divestitures. The recessionary environment is spurring firms to consolidate, join forces with former competitors ... even cease operations altogether. Whether a client is transitioning their firm ownership or acquiring another entity, care should be taken very early in the M&A process to ensure that sufficient insurance is in place for unidentified liabilities. Of particular note are liabilities that may emerge down the road from projects that are just now being completed or that were completed years ago. According to an internal audit of claims seen by Beazley's Architects & Engineers professional liability claims unit, a full two-thirds of claims are filed two or more years after a firm's services are rendered. Brokers should work with experienced underwriters to tailor coverage – particularly those that include extended reporting periods – to each client's particular needs.

Go green, but go prudently. Sustainable design is here to stay. Already, many jurisdictions have adapted green design concepts into their building codes. As design firms move into this promising area of opportunity, they must be cognizant of the unique risks stemming from sustainable design and ways to actively mitigate that risk. Proper contract language is critical. For example, firms must understand that they can never guarantee any particular level of LEED certification. ... or that certification will be achieved at all. Only the United States Green Building Council awards LEED certification and determines a particular facility's LEED category. Moreover, so many aspects of a building's operations that allow it to obtain and maintain LEED certification are out of the design professional's control. Obligations in sustainable design projects should focus on standard of care, and design professionals should be careful not to guarantee a specific outcome on a project in regard to certification, cost savings or efficiency level.

Expect more from your insurance. Substantial value can be found in the A&E insurance market in both broader-than-ever coverage and meaningful risk-mitigating services. Underwriters committed to this sector are helping firms keep pace with emerging risks, which means A&E professional liability policies can now cover additional exposures, such

as the costs of appearing at a regulatory proceeding for a client, or lost billable hours spent appearing in court to defend a claim. Insurer-provided risk management services are pivotal for firms stretched for risk management resources, and clients can now tap complimentary offerings like contract reviews by experienced attorneys and pre-claim consulting to help mitigate an incident that could potentially escalate into a lawsuit.

Through these tough times, design firms in tune with the risk management issues of their industry and ways to optimize both the efficiency and effectiveness of insurance and risk management services will stand in good stead when the boom times come around again.

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