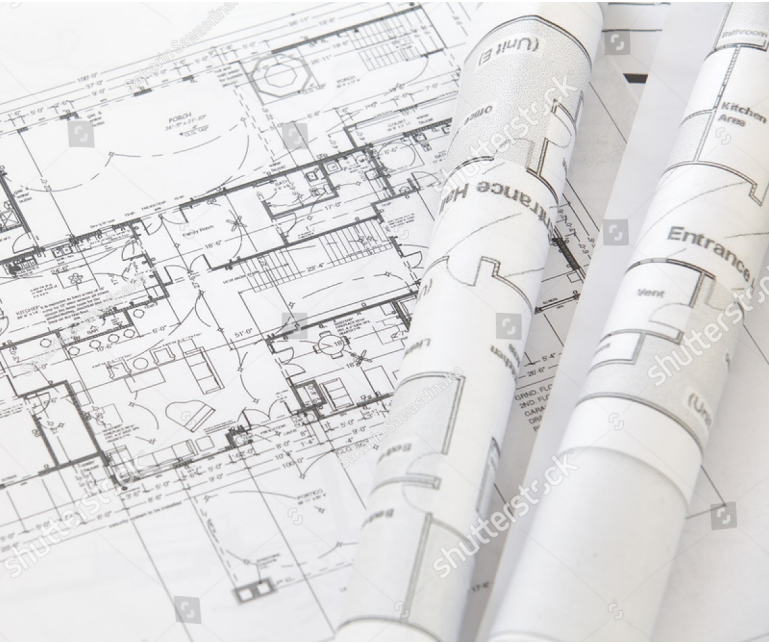




Design responsibility and liability



One of the most important issues for contractors to consider prior to signing contracts is the level of responsibility they will assume in relation to design, as under normal circumstances the roofing contractor's responsibility is to install the specified roof system in strict accordance with the designer's specification. However, principal contractors, principal designers and clients will often look to a roofing contractor to undertake design responsibility for their scope of work under the relevant terms of the contract or sub-contract documentation.

When a roofing contractor has the relevant skills, knowledge, and experience, including the relevant level of professional indemnity insurance, this may be a regular occurrence and one that they are accustomed to. Unfortunately however, there are contractors and suppliers whose skills and expertise lie outside of roof system design, and inadvertently or unknowingly agree to clauses within the contract documentation which could compromise their business or their insurance policy.

By taking on responsibility for the design, the contractor could owe a duty of care to the employer under the contract, insofar as the design of the works is comprised within the contractor's proposals and undertaken in accordance with the Employer's Requirements and Conditions (*including any further design that they are required to carry out as a result of a Change*). The contractor shall in respect of any inadequacy in such design have the **same liability to the employer, whether under statute or otherwise, as would an architect or other appropriate professional designer**.

In light of this, if your client still wants you to assume responsibility for the design (*or part thereof*) of your scope of work on a project, but there are elements you're not comfortable undertaking, then you'll likely choose to subcontract the design responsibility to someone with the right skillset. This could be your supplier if they have an in-house design team, or an external design company with the required level of insurance. You will still be responsible to the client for the level of design responsibility in accordance with the contract documents, irrespective of you having subcontracted elements to external organisations, so you should make sure that your subcontracted designer understands their design responsibilities accordingly.

Type of contract

If you're a contractor and being asked to sign a design and build contract, or your contract includes a Contractor's Design Portion, then you will be responsible to provide that design and any potential inadequacy thereof. As part of your design package, you may need to provide detailed drawings of your design, specifications including third-party certification, fire performance testing, thermal and structural calculations.

If you're not contracted to provide any design work, or the roof design is to be undertaken by others, like the roof system supplier, then this should be stipulated within the contract, spelling out the limits of this responsibility.

Scope of work

Even if you have not assumed responsibility for design via the contract, or you've not agreed to a Contractor's Design Portion of said contract, then you should take care to ensure that your scope of work, suggested changes of materials or alterations of the design doesn't then include anything that would be considered as design work or suggests you're taking responsibility for someone else's design. This could also happen if the client requests that an element of the roof system is exchanged for an alternative component than the one specified, for example, changing of the insulation from the original specification. In scenarios such as this, it is vital that you seek clarification and approval from the original designer, as these changes may have an impact on the performance of the roof system.

Check the roof system design

Care must also be taken to ensure that a contractor does not unwittingly take responsibility for an element of design liability which could occur if you have provided advice on the way that part of the works is constructed, or the materials to be used where the design provided by your client does not provide enough information. The area of common misunderstanding is where contractors rely on suppliers for the design and assume they are covered, therefore, it is important to consider the following:

Does your supplier offer a design service?

- **If yes:** request evidence of design liability cover.
Note: this is not the same as product liability.
- **If no:** seek clarification of who is providing the design service and design liability cover, and request that they provide suitable evidence.

Conclusion

Under The Building Safety Act 2022 and The Construction (*Design and Management*) Regulations 2015, design responsibility must sit somewhere in a construction project, so whichever party it has been assigned to has to make sure they understand what their responsibilities are, and that they or their subcontract designers have the knowledge and skills to deliver the design as per the terms of the contract.

The key point for contractors to take away from this is that it can be risky to sign up to any contractual obligation relating to design. We are seeing design liabilities being pushed through the supply chain, with roles and responsibilities increasingly ambiguous. Contractors should ensure they understand exactly what their company's insurance policies do and do not provide cover for, which they must bear in mind when negotiating contract terms.



Further information

Build UK have guidance on PI Insurance for Construction:

<https://builduk.org/wp-content/uploads/2021/04/PI-Insurance-for-Construction.pdf>

If you require any further information, advice or guidance regarding the topics discussed within this guidance note, contact the Helpdesk at helpdesk@nfrco.uk to speak with a member of the NFRC Technical Team.

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