

Procedure: 22-6 - Errors and Omissions Cost-recovery Procedure

Section: Consultants/Service Contracts

Office/Department: Office of Design Policy/Support

Reports To: Division of Engineering

Contact: 404-631-1000

General

This document outlines the procedure, and the responsibilities of employees and offices within the Department, to recover costs following discovery of potential errors or omissions (E&O) in plan sets prepared by consultants. The procedure focuses specifically on issues discovered during the construction phase and should be read with [Policy 4020-4](#) for understanding of the Department's policy and with the [E&O Cost-Recovery Process Chart](#) in hand.

Discovery of Potential E&O

A potential E&O will, most often, be identified by the Department's Field personnel who are responsible for managing a construction project.

Immediate Action

If a problem encountered in the field requires immediate, corrective action, the Department will initiate a response notwithstanding any other section of this procedure. An immediate, corrective action is appropriate where lack of response may lead to: exposure of the public or the work force to bodily injury; damage to property or harm to the environment; severe operational impacts; or further loss. A determination that an immediate, corrective action is required shall be made at the Area Office level and approved by the District Engineer (or his representative). Following the determination, the Department will utilize its resources and authorities to provide direction to the contractor to make all necessary corrections.

Simultaneously, the Area Construction Office (ACO) will notify the Office of Program Delivery (OPD) Project Manager (PM) of the action and, in-turn, the PM will notify the Consultant. The State Design Policy Engineer and the District Engineer shall be copied on the letter; FHWA shall be copied on FOS projects. (See standard letter [NOTIFICATION LETTER - IMMEDIATE CORRECTIVE ACTION TAKEN](#)). The Consultant may be requested to prepare red-line plans showing the required design changes to document work associated with the immediate, corrective action or clarify construction detail. The process thereafter follows the procedures outlined herein.

Identification

Upon identification of a problem encountered in the field, the ACO shall make an assessment to determine if the problem is the result of an E&O and initiate the cost-recovery process. In order for the process to be initiated, the assessment must find that the problem may be attributed to gross negligence or carelessness and which will potentially create substantial impact. A problem is considered to have substantial impact if it is expected to significantly increase construction-related costs or result in significant construction delays.

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Without imputing blame, the ACO will work with the Consultant, the PM, the Contractor, the Department's Design Office staff (e.g., subject matter experts), and FHWA on FOS projects to complete the assessment. The ACO is responsible for initiating the assessment and for fully documenting the problem.

After the assessment has been completed and a solution identified, it is the ACO's responsibility to implement and track all costs associated with the solution.

Construction Resolution

The PM proceeds with expediting the necessary changes to the construction project by working with the Consultant to develop plan changes for use by the Contractor, negotiating a Supplemental Agreement (SA) - if required, and routing the SA for approval. Plan revisions required as a result of a consultant's possible E&O shall be initially made at no cost to the Department. Revisions shall be completed as quickly as possible to avoid or minimize construction delays. See Appendix H of the Plan Development Process (PDP) for plan revision procedures.

It is of highest importance the work, cost negotiations with the Contractor, participation by the Consultant, effort spent by Departmental staff, and the final agreed-upon scope is fully documented by the PM. This documentation is needed by the District Construction Estimator to make a fair assessment of the total additional costs. In addition, this documentation is needed to properly consider "betterment" in formulating an opinion on the costs attributable to gross negligence or carelessness. At the completion of the construction work, rework, or at the time a SA is executed, the District Construction Office submits this detailed history to the PM including DOT Form 357.

Early Notification

The PM initiates a Cost Recovery Process by opening the E&O file. It is the PM's responsibility to advance the E&O cost-recovery process and for maintaining the E&O file. If it is determined there is no basis for cost recovery, the E&O cost-recovery process is terminated and documented by the PM.

All decisions are made on a project-by-project basis. Recoverable costs are costs which would not have been incurred had the E&O never happened. Examples of recoverable costs include but are not limited to the following:

1. costs related to construction delays or inefficiencies;
2. resulting fines and other penalties;
3. time and resources expended by GDOT to address the problem and cost recovery;
4. rework by the contractor;
5. required supplemental engineering by a third party design firm; and/or
6. any additional costs for construction which would have been part of the original contract had the E&O not occurred.

The E&O file should include:

1. a brief timeline of E&O activities;
2. detailed documentation as to the nature of the problem and its impacts;
3. the role of others and the consultant in resolving the problem;
4. supporting material for all related costs;
5. minutes of all meetings;

6. all formal correspondence; and
7. any other information, findings or documents relevant to the E&O claim.

The documentation effort will be ongoing and shall be available to the Office of Legal Services (OLS) for periodic review.

The PM will request a meeting with the ACO and SME to review the E&O case file. This group will make a preliminary determination to continue the cost recovery process. Specifically, the group must determine if the Consultant failed to achieve the required Standard of Care and delivered a work product that shows gross negligence or carelessness which created a substantial impact on the project. Furthermore, the group should consider the role of the Department in possibly contributing to- or exacerbating the problem. The PM documents the findings of the group in the E&O file.

Immediately following a decision to continue the E&O cost-recovery process, the PM shall mail to the Consultant an early notification letter which includes the nature and scope of project design issues and request the Consultant's involvement. The State Construction Engineer, the State Design Policy Engineer, and the District Engineer shall be copied on the letter; FHWA shall be copied on FOS projects. A timeframe for response shall be included. (See standard letter [NOTIFICATION LETTER – POTENTIAL ERRORS AND OMISSIONS COST-RECOVERY CLAIM](#)).

Decision

The PM continues the E&O cost-recovery process by receiving input from the Consultant and through the continuous input of the interested parties. The PM will initiate meetings, as necessary, to provide an opportunity for all parties to express opinions. After meeting with the Consultant and receiving input from Department personnel, the PM will submit a detailed memorandum to the State Design Policy Engineer with a recommendation to proceed with- or abandon the E&O cost-recovery effort. Any decision to pursue E&O cost recovery shall be approved by the State Design Policy Engineer after consultation with OLS.

For a decision that cost recovery is warranted, the PM sends a notification letter informing the Consultant of GDOT's decision to correct project issues with the contractor, provides an assessment of estimated costs and the Consultant's financial responsibility, and requests a written response. The Director of Construction, Director of Engineering, the Department's General Counsel, the State Construction Engineer, the State Design Policy Engineer, and the District Engineer shall be copied on the letter; FHWA shall be copied on FOS projects. (See standard letter [NOTIFICATION LETTER – DECISION TO PURSUE ERRORS AND OMISSIONS COST RECOVERY](#)).

If GDOT elects not to pursue cost recovery, the decision will be noted along with a statement that GDOT reserves the right to pursue cost recovery at a later date. For a decision that cost recovery is not warranted, the PM sends a notification letter informing the Consultant that increased project costs and/or delays were determined to be caused by factors other than a deficiency in the Consultant's design. The State Construction Engineer, the State Design Policy Engineer, and the District Engineer shall be copied on the letter; FHWA shall be copied on FOS projects. (See standard letter [NOTIFICATION LETTER – DECISION NOT TO PURSUE ERRORS AND OMISSIONS COST RECOVERY](#)).

Consultant Performance Review Committee (CPRC) Review

The CPRC will be comprised of the Director of Construction, Director of Engineering, and the Department's General Counsel.

If the Consultant does not agree with a recommendation to seek cost recovery, the PM will forward the issue to the CPRC for further investigation of the claim. The CPRC will review the case to evaluate the consultant design for compliance with GDOT policies and

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procedures and determine the extent of the Consultant's responsibility. As part of the evaluation, the CPRC may request all consultant project QC documents and a copy of the Consultant's GDOT-approved QC/QA Procedures in force the time the design work was performed. The CPRC will conduct an interview with the Consultant at which time the Consultant will be given an opportunity to explain its position.

The CPRC will render an opinion on the issue and (1) confirm the recommendation to seek cost recovery or (2) instruct the PM to terminate the process. If the CPRC decides to continue with cost-recovery, it will attempt to reach a negotiated settlement with the Consultant. The CPRC will maintain detailed documentation of their work, including meeting minutes and provide the documentation to the PM for inclusion into the E&O file.

Negotiation and Settlement

The Department and the Consultant may agree to settle at any time during the process. Any negotiated settlement offer will be forwarded by OPD to the Chief Engineer for review and acceptance. GDOT may elect to accept services in-kind (i.e., in lieu of money) as restitution for damages caused by the E&O. Conversely, GDOT may choose to drop the claim if findings made during the process prompt the Department to do so.

If the Consultant and the Department are unable to negotiate a settlement, the matter shall be submitted to non-binding mediation. The Department and the consultant will agree on a mediator and shall equally share the costs and expenses of mediation. The Mediator shall be qualified by the State of Georgia Office of Dispute Resolution. The Mediator shall be required to have at least six (6) years experience in the design and/or construction process. Both parties will support the mediation effort so it proceeds expeditiously.

Upon conclusion of the mediation effort (if no settlement has been reached), the Department will consider litigation. At this point all settlement discussions shall be handled through OLS in conjunction with the Office of the Attorney General.

Documentation

Documentation of all occurrences of plan errors/omissions, including meeting minutes, correspondence, findings, and settlement terms, shall be the responsibility of the PM (unless otherwise noted). Furthermore, the PM will ensure all documentation is uploaded to SharePoint.

References:

History:

annual review: 01/29/21;

added to MAP: 08/10/07

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