

# Errors and Omissions on Projects

Effective: May 24, 2010

**UDOT 08-07**

Revised: July 18, 2013

## Purpose

To establish the policy, procedure, and responsibility for the Utah Department of Transportation (Department) for processing errors and omissions on consultant projects found during design, advertising, or construction and to make recommendations for resolution with the consultant design company or recommendations for settlement to the Department's Deputy Director.

## Policy

The Department expects engineering consultants designing transportation projects to exercise an appropriate standard of care and to provide quality services to the Department. The Department will provide or make available in hard copy or through the Department's Web site all Department manuals, specifications, drawings, and policies and procedures needed in support of the consultant contract. Additionally the Department will develop and maintain a Quality Control/Quality Assurance (QC/QA) program and checklist that provides for the review of plans and specifications throughout the Design Process.

The Department will take steps to address the defective designs, plans, or specifications, identify corrective action, and resolve the consequences. The Project Manager will take appropriate steps once notified of an alleged error or omission to decide if the error or omission is the result of negligence or gross negligence. The Project Manager will partner with the consultant team in order to resolve the issue at the lowest level possible and in the best interests of all concerned parties in the shortest and least costly method possible.

The Department will take action to recover costs for errors and omissions attributed to the negligence or gross negligence of a consultant in accordance with the procedures outlined in this policy.

The Errors and Omissions Claims Review Board made up of the following will convene when required:

- a. Project Development Director as chair
- b. Risk Management Representative
- c. American Council of Engineering Companies (ACEC) representative as determined by Consultant Services Manager (ACEC representative can not be associated with the Consultant Firm involved in this review.)
- d. Engineer for Preconstruction (Secretary, non-voting)

## **Background**

On occasion, errors and omissions are the result of negligence or gross negligence. Errors and omissions are normally identified during construction, but could also be identified during the design and advertising phases.

The discovery of an error or omission triggers the gathering of information on the scope of the problem, actions and responsibilities of the various parties, and the potential validity and extent of any claims that may arise.

“The Federal Highway Administration’s (FHWA) general policy is that each error-and-omissions issue should be considered on its own merits. In general, a consultant should not be held responsible for additional construction costs resulting from such errors, so long as they are not the result of gross negligence or carelessness. Unless the agency-consultant agreement holds otherwise, ‘federal-aid participation may be justified for the type of consultant errors that might occasionally occur despite the exercise of normal diligence’ if: 1) The error is not due to gross negligence or carelessness; and 2) Carelessness, negligence, incompetence, or understaffing by the state agency are not contributing factors.” (Best Practices in the Management of Design Errors and Omission, Chapter 2, Federal Highway Administration Policy and Data, Philosophy and Policy Guidance as prepared by Michael J. Markow, P.E., Consultant, Teaticket, MA, March 2009.)

Title 23 of the Code of Federal Regulations requires State DOTs to have written procedures “in determining the extent to which the consultant, who is responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors or deficiencies in design furnished under its contract.” (§23 CFR 172.9(a)(6))

## **Definitions**

### **Consultant**

A professional retained by the Department to provide services.

### **Error**

An incorrect or insufficient design detail; a mistake in judgment.

### **Gross Negligence**

A conscious and voluntary failure to meet the standard of care, which is likely to cause foreseeable grave injury or harm to persons, property, or both.

### **Negligence**

Failure of a professional to meet the standard of care in the performance of professional services.

**Omission**

A failure to include an element, feature, system, or equipment necessary to the complete function of a project; a failure to perform.

**Standard of Care**

The degree of attentiveness, caution, and prudence that a reasonable professional would exercise in the circumstances.

## **Procedures**

### **Discovery, Mitigation, and Resolution of Errors and Omissions in Consultant Projects**

**UDOT 08-07.1**

**Responsibility:** Department, Consultant, or Contractor Personnel

#### **Actions**

1. Notify the Department Project Manager (PM) of a design conflict, problem, or alleged error or omission if discovered in the Design Phase or post-construction.  
  
or
2. Notify Department Resident Engineer (RE) of a design conflict, problem, or alleged error or omission if in the Advertising or Construction Phase.
3. Provide as much supporting information and documentation as appropriate.

**Responsibility:** PM or RE

4. PM and RE coordinate regarding the design conflict, problem, or alleged error and omission issue taking into account all information and documentation available.
5. Determine the magnitude of the issue and whether engaging the Consultant in the resolution of the issue is required.

**Responsibility:** PM

6. Notify the Consultant of the issue and provide all information and documentation received in writing.
7. Work with Consultant to resolve design problems.
8. Discuss financial responsibility with the Consultant.

**Responsibility:** Consultant

9. Determine if the issue will be corrected or escalated for resolution and notify the PM that the Consultant will:
  - a. Take actions to correct the issue and will negotiate financial responsibility with the PM.
  - or
  - b. Not accept responsibility for the issue.

**Responsibility:** PM

10. Discuss the issue with Consultant and resolve.
11. Escalate to the Region Director.

**Responsibility:** Region Director

12. Determine urgency of the issue and whether to fix regardless of responsibility.
13. Facilitate resolution of the issue.
14. Send formal notification of claim if resolution unsuccessful.
15. Contact Engineer for Preconstruction and request the Errors and Omissions Claims Review Board be convened.

**Responsibility:** Errors and Omissions Claims Review Board

16. Schedule meeting and invite PM and Consultant and others as appropriate, to attend the informal review.
17. Hear the Department's claim and the Consultant's response. Present all supporting documentation regarding the claim to the Board in writing on the day of the hearing.
18. Determine recommendation for resolution of the claim in a separate meeting and submit to the Deputy Director of Transportation within 30 calendar days of the claim hearing.

**Responsibility:** Department Deputy Director

19. Notify Consultant of the decision of the Department within 15 calendar days of the Errors and Omissions Claim Review Board decision.
20. Notify internal parties and determine if legal action required if issue not resolved.

# Attachment - Errors and Omissions Process

