

FHWA Process Review On:

Consultant Design Errors and Omissions

FDOT Response

General: The report acknowledges the review was based on the 2004 procedure for documenting and recovering costs related to errors and omissions. The department revised and adopted a new procedure on errors and omission in February 2010 which addresses some of these recommendations.

Response to the eight report recommendations provided on page 4 in the Executive Summary:

In view of these variations in the Districts' implementation of the E&O Policy, the Review Team submits the following recommendations to FDOT to adopt towards process improvement:

- Establish a better means of communication between the Construction Office and the Design Office,
Response: The current procedure establishes the appropriate method of communication to resolve E&O issues, beginning at the project level and escalating the issue as necessary. Training will reinforce these requirements, and quality assurance reviews will determine compliance. An updated flowchart has been added to explain the communication process between offices and assist with training. The District E&O Liaison is responsible to work with project personnel in the application of the procedure.
- Apply consistency in administration and oversight of the E&O Policy among the districts,
Response: The current procedure requires the District E&O Liaison to be responsible for the resolution status of E&O issues. Additionally, the Liaison is responsible to ensure communication among disciplines and a prompt response to management inquiries. Training will reinforce these requirements, and quality assurance reviews will determine compliance.
- Conduct annual training on the E&O policy and procedures in light of case studies and lessons learned from reviewed projects,
Response: The Production Support Office will provide training in the application of the procedure and companion Resolution Tracking System as necessary. Successful application of the procedure, however, requires professional judgment and project specific application. The identification of best practices and case studies will part of the quality assurance review process, and these will be integrated into training material.
- Establish a Supplemental Agreement Review Committee in each District to oversee all premium costs and design errors identified during construction.

Response: The current procedure requires the District E&O Liaison to be responsible for tracking and resolving all E&O issues identified during construction. The construction Project Administration Manual (CPAM) outlines the process for identifying and coding premium costs and indicating the potential for recovery. In the body of the report, the recommendation for this committee was compared to the Dispute Resolution Board used in resolving construction contract issues. The current procedure outline the process for involving the consultant engineer of record and provides the opportunity for additional input at the Director Group Claim Meeting described in the procedure. At this time, we do not believe a committee is necessary to oversee the process.

- Develop guidance for the District in regards to “service in-kind” (otherwise, delete items from E&O policy). FDOT’s recently updated E&O policy does clarify the use of in kind service.

Response: The current procedure provides specific guidance regarding In-Kind Services. Future training will reinforce these requirements, and quality assurance reviews will determine compliance or the need to revise the guidance.

- (The review team strongly suggests) It is highly recommended that the FDOT discourage the thresholds that have been indentified and applied in some districts since they are unwritten policies that do not fall under the E&O.

Response: The current procedure encourages the recovery of any premium costs that are the result of consultant errors and omissions. However, the extent of the Department’s recovery effort should be guided by the anticipated recovery amount and the likelihood of a successful recovery effort. Administrative costs, the expense of litigation and the consultant’s performance history may all affect the Department’s decision to pursue. The decision to pursue requires professional judgment and may vary by District and by project issue. The procedure does not dictate thresholds, a point that will be emphasized in training and quality assurance reviews.

- Produce an annual report, which includes the closed projects with Supplemental Agreements or Work Orders identifying the design errors, premium costs and the action taken by each District. The report should also include the policy and steps taken by the Department to collect the money from the design consultants, and all lessons learned from the process.

Response: We agree with the recommendation to establish some reporting requirements. There are currently no requirements to develop or produce any specific reporting on E&O issues or resolution. The Department does currently report annually to the Florida Transportation Commission on avoidable and unavoidable SA’s and focuses its efforts on identifying the reasons for the avoidable SA’s where no value was added. The performance of quality assurance reviews will result in reporting and this process may identify objectives and content of reports to monitor and track performance measures not yet established.

- FDOT Central Office should conduct Quality Assurance Review (QAR) in each district over the next years to ensure uniform implementation of the E&O Procedure.
Response: We agree with this recommendation. The Production Support Office will develop a quality assurance review plan for the program and request budget for implementing the plan in our next fiscal year.