



Errors and Omissions

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Topics

- Overview
- Resolved Issues
- Unresolved Issues
- PSEE-RTM

Overview

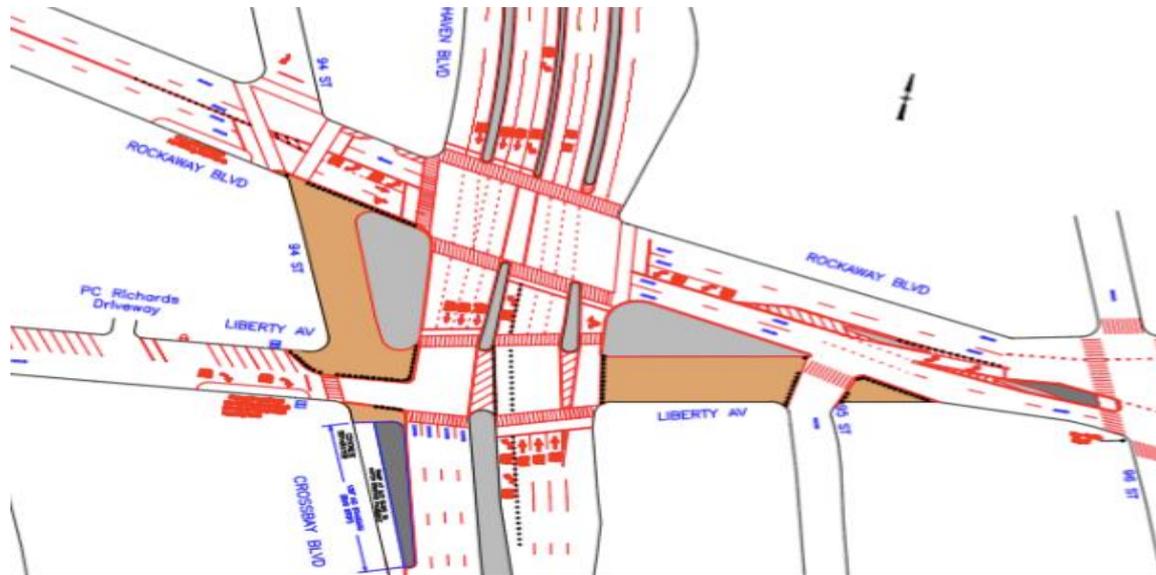
- Error / Omission
- Statute
- Procedure

Error / Omission

- The department employs professional consulting engineers to provide engineering services. While consultants are accountable for the technical accuracy and quality of their work, mistakes may occur that result in substandard work products, resulting in a claim against the consultant.

Design Error / Omission

- Consultant-prepared construction plans and contract documents may contain errors or omissions which may result in cost and time overruns on a construction project.



CCEI Error / Omission

- A breach of a Consultant CEI (CCEI) contract on a construction project may result in Cost and time overruns.



Statute

337.015(3)

...department shall vigorously pursue claims...

- Design / Engineer of Record (EOR)
- Construction Engineering and Inspection (CEI)



Statutes of Limitations

95.11

Two subsections regarding statute of limitation periods may be applicable to claims for premium costs against a designer for professional malpractice, negligence, or breach of contract. Each section provides that the statute of limitations period “shall run from the time the cause of action/defect is discovered or should have been discovered with the exercise of due diligence”:

- (3)(a)(c) four years
- (4)(a) two years

95.11(3) - four years

(a) An action founded on negligence.

(c) An action founded on the design, planning, or construction of an improvement to real property, with the time running from the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest; except that, when the action involves a latent defect, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence... **.. THERE IS MORE IF YOU ARE CURIOUS.**

95.11(4) - two years

(a) An action for professional malpractice, other than medical malpractice, whether founded on contract or tort; provided that the period of limitations shall run from the time the cause of action is discovered or should have been discovered with the exercise of due diligence. However, the limitation of actions herein for professional malpractice shall be limited to persons in privity with the professional.

Procedure 375-020-010

- E&O Damages
 - EOR Consultant
 - CEI Consultant

Avoidable

- **Avoidable-1, EOR E&O**
 - Contractor notifies CEI
 - CEI initially assesses and advises CPM (Project Administrator)
 - CPM advises DPM
 - DPM with EOR input confirms E&O
 - DPM resolves
- **Avoidable-3, CEI E&O**
 - CPM with CCEI input confirms E&O
 - CPM resolves

Premium Cost (CPAM)

Non-value adding

(1) **Work delays or inefficiencies** - In this situation, the premium costs are the total delay/inefficiency damages paid to the Contractor.

(2) **Rework** - The premium costs are the dollar amount of the original items of work that have to be removed and the costs to remove these items.

(3) **Extra Work** - In this situation, the premium costs are computed as the net difference between the final agreed prices paid to the Contractor and what the cost would have been had the extra work been included in the original bid at letting.

Work Delays or Inefficiencies

- **Delay**: Contractor discovers bust in drainage plans. Construction is delayed while waiting for design revision.
- **Inefficiency**: Designer prepares plans depicting drainage work, which contractor bids accordingly. Designer updates plans show same work, modified to accommodate an unforeseen condition. Contractor has to modify initial work for change.

Rework

- Work depicted in plans must be removed and reinstalled:
 - While current construction is underway
 - After construction completion

Extra Work

- Plans depicted installing 1000 feet of new guardrail, but failed to show existing subsurface conditions sufficiently for contractor to anticipate coordination. Contractor incurred extra cost to adjust installation.

PSEE-RTM

???

- RTM - Overview
- RTM - Purpose

RTM - Overview

- Project Suite Enterprise Edition (PSEE) module
- Replaced Resolution Tracking System (RTS)

RTM - Purpose

Track resolution of E&O Issues

- Avoidable 1 (EOR)
- Avoidable 3 (CCEI)
- Premium Cost > \$0.00

RTM E&O Issues

- Total Issues (3/31/16)
- Avoidable 1 (EOR): 755
- Avoidable 3 (CCEI): 11
- Premium Cost:
 - Max: \$2,499,000
 - Min: \$24.32

RTM All E&O Issues

District (All) ▼							
Avoidable Code 1 ▼							
RFI No ▼							
Status (Multiple Items) ▼							
Passed FiscalYear (All) ▼							
		Sum of				Sum of Total	Sum of Total
		Sum of	Premium Cost	Sum of Premium		Sum of Total	Sum of Total
		Premium Cost	Responsibility	Cost not yet	Sum of Premium	Amount	not yet
Row Labels ▼	Count of Project Number	Initial	Negotiated Out	Negotiated	Cost Final	Recovered	Recovered
+ DFY 2007	3	\$2,751,279	\$251,280	\$0	\$2,499,999	\$2,499,999	\$0
+ DFY 2009	4	\$1,008,185	\$738,471	\$0	\$269,714	\$269,714	\$0
+ DFY 2010	24	\$1,887,483	\$745,301	\$248,225	\$893,957	\$885,122	\$8,835
+ DFY 2011	25	\$2,668,655	\$4,536	\$2,643,704	\$20,415	\$19,699	\$716
+ DFY 2012	54	\$578,766	\$317,799	\$191,249	\$69,718	\$61,205	\$8,513
+ DFY 2013	134	\$3,078,091	\$1,154,638	\$1,552,860	\$370,593	\$367,485	\$3,108
+ DFY 2014	140	\$3,310,815	\$1,101,083	\$2,100,824	\$108,908	\$105,720	\$3,188
+ DFY 2015	126	\$3,330,295	\$463,605	\$2,800,048	\$66,642	\$54,549	\$12,093
+ DFY 2016	41	\$959,015	\$778,021	\$174,354	\$6,640	\$6,640	\$0
Grand Total	551	\$19,572,584	\$5,554,734	\$9,711,264	\$4,306,586	\$4,270,133	\$36,453

RTM Resolved E&O Issues

District		(All)						
Avoidable Code		1						
RFI		No						
Status		RESOLVED						
Passed FiscalYear		(Multiple Items)						
Row Labels		Count of Project Number	Sum of Premium Cost Initial	Premium Cost Responsibility Negotiated Out	Sum of Premium Cost not yet Negotiated	Sum of Premium Cost Final	Sum of Total Amount Recovered	Sum of Total not yet Recovered
⊕ DFY 2007		3	\$2,751,279	\$251,280	\$0	\$2,499,999	\$2,499,999	\$0
⊕ DFY 2009		4	\$1,008,185	\$738,471	\$0	\$269,714	\$269,714	\$0
⊕ DFY 2010		10	\$72,062	\$16,940	\$0	\$55,122	\$55,122	\$0
⊕ DFY 2011		13	\$24,235	\$4,536	\$0	\$19,699	\$19,699	\$0
⊕ DFY 2012		25	\$339,078	\$277,900	\$0	\$61,178	\$61,205	-\$27
⊕ DFY 2013		32	\$1,437,131	\$1,076,545	\$0	\$360,586	\$360,551	\$35
⊕ DFY 2014		38	\$1,147,497	\$1,051,035	\$0	\$96,462	\$96,460	\$2
⊕ DFY 2015		27	\$306,637	\$262,966	\$0	\$43,671	\$43,671	\$0
⊕ DFY 2016		6	\$41,555	\$34,915	\$0	\$6,640	\$6,640	\$0
Grand Total		158	\$7,127,659	\$3,714,588	\$0	\$3,413,071	\$3,413,061	\$10

RTM Current E&O Issues

Project Number	District	Consultant Contract	Avoidable Code	RFI	Discovery Date	Resolution Date	Premium Cost Initi	Premium Cost Fin	Total Amount Recover	Method Of Recover	Status
432350-1	District 4		1 - AVOIDAE	No			\$32,473				NEW
230724-1	District 4		1 - AVOIDAE	No			\$817				NEW
420809-3	District 4		1 - AVOIDAE	Yes	8/1/2011						IN REVIEW
420809-3	District 4		1 - AVOIDAE	Yes	11/8/2012						IN REVIEW
420809-3	District 4		1 - AVOIDAE	Yes	2/1/2012						IN REVIEW
420809-3	District 4		1 - AVOIDAE	Yes	2/21/2012						IN REVIEW

Project E&O - D1

- Project: 11111-1
- Discovery Date: 09/13/13
- Premium Cost: \$19,800
- Avoidable: 1-EOR
- Negotiated Premium Cost: \$6500
- Recovered amount: \$6500
- Recovery Date: 2/17/16

Project E&O – D2

- Project: 222222-2
- Discovery Date: 4/1/14, 8/25/14 & 8/26/14 (3 issues)
- Premium Cost: N/A
- Avoidable: 1-EOR
- Negotiated Premium Cost: N/A
- Recovered amount: \$13,400 post-design fees
- Recovery Date: 3/24/16

Project E&O – D5

- Project: 555555-5
- Discovery Date: **03/04/15**
- Premium Cost: **\$0**
- Avoidable: 1-EOR
- Negotiated Premium Cost: **N/A**
- Recovered amount: **in negotiation**
 - **Post-design**
 - **Construction rework costs**
- Recovery Date: **TBD**

Problems?

Design E&O

- **Before communicating with DPM, Construction unilaterally codes into CCTS as Avoidable 1.**
 - Avoidable 1 issue with Premium Cost > \$0 is imported into RTM as an auto-created issue.
 - DPM first learns when E&O issue appears in RTM.
 - Auto-created issue cannot be removed from RTM.

What can improve process?

Design E&O

- DPM and CPM must establish communication as early as possible.
- Per the procedure, upon discovery, DPM must be promptly advised.

Recap

- Overview
- Resolved Issues
- Unresolved Issues
- PSEE-RTM

Questions?

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Initial Premium Cost Range	Issues	Amount
\$0-\$5K	310	\$604,778
\$5K-\$10K	88	\$626,124
\$10K-\$15K	42	\$515,564
\$15K-\$25K	35	\$684,655
\$25K-\$50K	29	\$962,236
\$50K-\$100K	23	\$1,674,631
\$100K-\$150K	4	\$447,825
> \$150K	16	\$11,743,437
All	547	\$17,259,250

Initial Premium Cost (June 2015)

