Errors and Omissions
Sid Kamath. P.E.
Thursday, June 11, 2015

What Will Be Presented

- Errors and Omissions (E&O) – Background
- E&O Resolution Process
- E&O – Facts
Objectives

- Understand why FDOT pursues recovery of Errors and Omissions (E&O)
- Understand process to identify E&O, assess responsibility, and recover E&O cost
- Understand importance of communication

Background

Authority: Florida Statute, Section 337.015 (3):

*To protect the public interest, the department shall vigorously pursue claims against contractors and consultants for time overruns and substandard work products.*
Statutes of Limitation

*Florida Statute 95.11* subsections regarding statute of limitation periods of two (2) years - *FS 95.11(4)(a)* -, and four (4) years - *FS 95.11 (3)(a)(c)* - may be applicable to claims for premium costs against a designer for professional malpractice, negligence, or breach of contract.

The statute of limitations period “shall run from the time the cause of action/defect was discovered or should have been discovered with the exercise of due diligence.”

Glossary

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Definition</th>
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</thead>
<tbody>
<tr>
<td>CO</td>
<td>Change Order</td>
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<tr>
<td>E&amp;O</td>
<td>Error / Omission</td>
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<tr>
<td>EOR</td>
<td>Engineer of Record (Consultant Design Engineer)</td>
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<tr>
<td>CPM</td>
<td>Construction Project Manager</td>
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<tr>
<td>CEI</td>
<td>Construction Engineer and Inspector</td>
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<tr>
<td>CCEI</td>
<td>Consultant CEI</td>
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<tr>
<td>DPM</td>
<td>Design Project Manager</td>
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<td>OGC</td>
<td>Office of General Counsel</td>
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<tr>
<td>RFI</td>
<td>Request for Information</td>
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<tr>
<td>RTM</td>
<td>Resolution Tracking Module</td>
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<td>SA</td>
<td>Supplemental Agreement</td>
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Definitions

Error / Omission:
• Acts of negligence committed in performance of engineering design service
• Acts of negligence committed in performance of construction engineering and inspection services

Breach: Failure to fulfill contractual requirements

Definitions

Engineer of Record (EOR):”A Florida professional engineer who is in responsible charge for the preparation, signing, dating, sealing and issuing of any engineering document(s) for any engineering service or creative work.” For this procedure only, the EOR is a professional DESIGN consulting engineer retained by the Department to provide said services.
Definitions

Negligence:
As defined in Rule 61G15-19.001(4), Florida Administrative Code: “A professional engineer shall not be negligent in the practice of engineering. The term negligence set forth in Section 471.033(1) (g), F.S., is herein defined as the failure by a professional engineer to utilize due care in performing in an engineering capacity or failing to have due regard for acceptable standards of engineering principles.”

Definitions

Premium Cost:
Additional cost of a contract change that would not have been incurred if the work had been included in the original construction contract.
Definitions

Project Suite Enterprise Edition
- RTM: Module used to track E&O Issues resolution

Premise:
Department contracts with consultant:
- **Design Consultant**: Deliver to Department a constructible set of Plans and Specifications.
- **Construction Engineering and Inspection Consultant**: Oversee construction of project in accordance with Plans and Specifications.
Situation

Construction Plans omit power source location and connection details for a new signal. Contractor requests instruction. CEI documents that contractor is delayed 18 days while waiting on direction from the EOR. Contractor files a claim for delay damages and is paid.

Best Practice #1

Communicate
- CEI; CPM; DPM; EOR/CCEI; OCG
- Methods
  - Person-to-Person
  - Telephone
  - Written / E-mail
  - Team Meetings
Time is of Essence

Due to a relatively short statute of limitations period from “when a cause of action/defect should have been discovered” it is imperative that OGC be consulted as soon as possible to provide an analysis/opinion of the applicable limitation period, and when a lawsuit must be filed to comply with the statute in order to preserve claims for premium costs.

Best Practice #2

RFI

- Initiate Issue in RTM as an RFI.
- Assess Premium Cost and Avoidability.
- Escalate to E&O when appropriate.
- Manage E&O Issue resolution.
Resolution Process

Document in RTM:

- Discovery
- Assessment of Premium Cost, Avoidability and Responsibility
- Recovery of Premium Cost

Topic No.: 375-020-010 Errors, Omissions, and Contractual Breaches by Professional Engineers on Department Contracts

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Design E&O

- Focus on the Fix
  - Minimize interruptions to construction contract.
  - Involve legal to establish E&O.
- Establish partnership
  - Construction (CEI/CPM)
  - Design Project Manager (DPM)
  - EOR
**Design E&O**

DPM is responsible for resolution.

**Discovery**
- CEI/CPM: Promptly notify DPM.
- DPM: Promptly notify EOR.
  - Telephone call; Written confirmation (e-mail)
  - Issue Early Notification Letter.
  - Initiate Post-Design Services.
- Evaluate issue.

**Design E&O**

**CEI Actions**
- Initial Assessment; Engineer’s Estimate
- Assess Schedule Impacts and Cost
- Entitlement Analysis
- Premium Cost Analysis
- Prepare Contract Modification
Design E&O
Coordination and Communication
- CEI prepares CO with input from DPM & EOR.
- DPM reviews CEI assessment of responsibility and premium costs, and investigates EOR liability.
- DPM seeks advice from OGC regarding determination of EOR negligence.
- Parties (FDOT and EOR) agree on EOR liability for premium costs.
- E&O Notification Letter

Design E&O
E&O – EOR Liable
- Solve Problem.
- Fix Plans.
**CCEI E&O**

**CPM** is responsible for resolution.

- Focus on the Fix
- CPM issues Notification Letters to CCEI

- Participation – CPM OGC & CCEI
  - Solve Problem
  - Assess Responsibility
  - Assess Premium Cost
  - Agree on Resolution

**Recovery**

- **Premium Cost - No Threshold**
- **Professional Judgment**
  - Negligence
  - Business Decision
- **Escalation**
  - Project Level – Desirable
  - Litigation – Last resort
Collecting and Tracking

➢ Recovery
  • Funds - returned to Districts
  • “In Kind” Services
➢ Tracking
  • Project Suite Resolution Tracking Module

Errors and Omissions – Historical Data

➢ Issues Resolutions: tracked since 2003
➢ Number of Issues: over 1900
➢ Majority: Design
➢ Minimum recovery: $12.38
➢ Maximum recovery pursued: $2.49M
➢ Average Recovery: $13,000 (estimate)
Statistics

Resolved Issues [FY12/13-FY 14/15(Q3)]

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<tr>
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<tbody>
<tr>
<td>District</td>
<td>Premium Cost</td>
<td>Recovery</td>
<td>Premium Cost</td>
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<tr>
<td>Total</td>
<td>$542,653</td>
<td>$30,064</td>
<td>$363,951</td>
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Summary

- E&O Resolution - statutory requirement
- E&O Costs - Resolution and Recovery
- Communication - Importance in Process
- E&O Resolution – Tracking and Documentation

District E&O Liaisons

Central Office – Sid Kamath

D1 – Kevin Ingle       D5 – Jeffrey Cicerello
D2 – Bobbi Goss       D6 – Teresita Alvarez
D3 – Ray Hodges       D7 – Mary Lou Godfrey
D4 – Tim Brock       TP – Stephen Nichols
Questions?

THANK YOU!

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