

EXHIBIT I – ERRORS & OMISSIONS (E&O) CLAIMS PROCESS (May 2007)

E&O Claims Process

The goals of the E&O claims process are to:

- Identify E&O issues and associated costs early
- Require timely notification to the Consultant of problem issues
- Establish a requirement to work together to correct, mitigate, or minimize the effects on the construction project's quality, schedule and budget and
- To identify associated costs when the standard of care has not been met and provide resolution of responsibility for "Premium" Costs incurred.

The process is focused on resolving issues at the lowest possible administrative levels in a spirit of collaboration. If the Agency CA cannot reach resolution with the Consultant regarding E&O issues, however, the Agency CA may request a standard of care determination from the Chief Engineer.

Procedure for resolution of disagreements

General

When either Party discovers or determines actions, omissions, or deliverables by the other Party to be incorrect or outside the terms of the contract, the following steps shall be followed:

- Provide oral and written notice of the issue (email, fax, or hard copy) to the other Party,
- Consultant shall provide Agency Contract Administrator (CA) requested records and documents pertaining to the issue and will participate in a technical review committee to determine if standard of care was met, at the request of the Chief Engineer.
- Work together to correct, mitigate or minimize the effects of the issue
- When the standard of care has not been met, work together to determine responsibility for any Premium Costs incurred as a result of the issue

Initial verbal notice and written Letter of Concern

When either Party discovers or determines actions, omissions, or work products by either Party to be incorrect or outside the terms of the Contract, the discovering Party shall give timely oral notice and a written Letter of Concern to the other Party.

If the Consultant disagrees with any written or oral order of the Agency that in the opinion of the Consultant would entitle the Consultant to additional compensation, the Consultant shall provide oral notice and written Letter of Concern to the Agency CA within 7 days of receiving the order from the Agency. The Letter of Concern must include an explanation of why the Consultant believes the requirements of the oral or written order are outside of the agreed scope of services. The Agency CA shall acknowledge in writing receipt of the Consultant Letter of Concern.

If the Agency believes the Consultant has not performed with the required Standard of Care, the Agency shall provide the Consultant oral notice and written Letter of Concern. The Consultant shall acknowledge in writing receipt of the Agency's Letter of Concern and provide to the Agency all project related requested information.

Information Exchange and Resolution Meeting

The Consultant and Agency CA shall meet within 7 calendar days of sending or receiving a Letter of Concern, or at a mutually agreed to date, to discuss the issue of concern and provide to the Agency CA all requested information pertaining to the issue.

The primary purpose of this meeting is to determine how, at the Agency's sole discretion, to correct, mitigate, or minimize the effects of the issue, including impacts of the issue on the construction project's work quality, schedule, and costs.

Following the Agency's determination of the appropriate corrective action, the Consultant and the Agency CA shall work together to resolve responsibility and corresponding Premium Costs related to the issue.

If the Agency CA is unable to reach satisfactory resolution of responsibility and corresponding Premium Costs with the Consultant, the Agency CA will request the Chief Engineer to initiate an internal review.

Claims Procedure

The Agency, upon request of the Agency CA and at the discretion and direction of the Chief Engineer will undertake an internal review for the purpose of determining if the standard of care was met. The Consultant will cooperate with the internal review as requested.

If the Chief Engineer determines that standard of care has been met, then all parties are to continue to work together to correct, minimize or mitigate effects of the issue and it is the Agency's responsibility to cover Premium Costs.

If the Chief Engineer determines that standard of care has not been met, then Cost Evaluation and Recovery will be pursued.

The Agency may, at any time during the course of this Contract, and up to the time allowable by law following the final payment for any work on the contract, present the Consultant with a Claim for actual damages incurred due to any disagreement concerning standard of care issues and all subsequent damages suffered by the Agency arising from such issues.

Cost Evaluation and Recovery

The Premium Costs incurred by the Agency and/or construction project resulting from the Consultant's failure to meet the standard of care will be evaluated and quantified. Any extenuating or mitigating factors in relation to cost recovery, such as limitations on fee and scope of services, time constraints for performance of services, unforeseen or changed conditions, third party requirements, responsibility and comparative fault of other parties, or other circumstances or constraints affecting the Consultant's performance will be considered.

Utilizing cost information generated by the Agency's internal investigation, the Agency CA will meet with the Consultant in an attempt to reach agreement for resolution of responsibility and corresponding Premium Costs. If resolution is not reached, then the Chief Engineer or designee will meet with the Consultant and pursue one of all of the following actions:

- Negotiate a resolution with the Consultant
- Agree with the Consultant to share equally the cost to jointly present the issue to a creditable, neutral third party panel to obtain a non-binding recommendation
- Pursue other Alternate Dispute Resolution methods as agreed to with the Consultant, or
- Escalate the issue to litigation.

Alternate Methods of Recovery

When the parties reach agreement on cost recovery for a failure to meet the standard of care determination, the Consultant may make restitution to the Agency in the following methods as agreed to by both Parties:

- Making direct payments to the Agency
- Correcting the deficient services
- Re-performing the deficient services
- Forfeiting payments for other services on other Agency Contracts
- Providing in-kind services at no cost to Agency
- Utilizing other methods acceptable to both parties

Documentation

The Agency CA or designee shall document the contract file with all correspondence, notices, meeting notes and Letters of Concern related to E&O issues, claims, or potential claims. The file must include a written statement summarizing the findings of the claims process and the outcome, including:

- The determination of whether or not the Consultant met Contract requirements and met the standard of care;
- The determination of responsibility and whether there were mitigating circumstances beyond the reasonable control of the Consultant;
- The determination of whether or not the work requested by the Agency was within the scope of services of the Contract;
- If the Consultant was not required to correct deficiencies at no cost to the Agency, provide the reasons for that decision.
- A record of negotiation for any negotiated settlement subject to the rules regarding confidentiality of mediations in OAR 731 division 001.

DEFINITIONS

Agency – Oregon Department of Transportation (ODOT)

Agency CA – Agency Consultant Contract Administrator overseeing the consultant contract and deliverables. This would be a Consultant Project Manager (CPM) on a full service Consultant Contract or a Technical Discipline Leader in a Region Technical Center overseeing Technical Discipline Specific Consultant Contracts.

Agency TI – Agency Technical Investigator. An Agency manager familiar with the technical discipline at issue who independently reviews records and interviews personnel pertinent to the claim to determine if the standard of care was met.

Consultant – Private Sector entity, which has entered into a Contract with the Agency to provide Architectural or Engineering services and which employs, or engages the services of, the Professional of Record.

Contract—Price Agreement, Work Order Contract (WOC), or project specific Contract between Agency and Consultant.

Error – Plan or specification details or contract administration actions which are incorrect, conflicting, insufficient or ambiguous

E&O – Errors and Omissions

Omission – The plans or specifications or contract administration actions are silent on an issue that should otherwise be addressed in the documents

Parties – Refers to Agency and Consultant collectively

Party – Refers to Agency and Consultant separately

Premium Costs – The additional costs incurred by the agency and/or a construction project which result from the Consultant's failure to meet the Standard of Care. Premium Costs are dollar amounts paid for non-value added work. Premium costs are not reimbursed by the federal government on federal aid projects. Delays, inefficiencies, rework, or extra work as shown below, caused by the Consultant's failure to meet the standard of care, will be considered as non-value added work. Non-value added work can occur in three distinct situations:

- Work delays or inefficiencies.
The Premium Costs are the total delay/inefficiency damages paid to the construction contractor.
- 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.
- Extra work
The Premium Costs are computed as the net difference between the final agreed prices paid to the construction contractor and what the cost would have been had the extra work been included in the original bid at letting.

Standard of Care – For the standard of care that applies to your project, refer to the standard of care language included in the Contract for the project.

TRC – Technical Review Committee. A committee convened by the Agency Chief Engineer, chaired by the Agency TI and staffed by at least 3 technical experts chosen by the Agency TI from a list of Agency, ACEC and other technical experts. The committee is charged with reviewing records and interviewing personnel pertinent to the claim to determine if standard of care was met.