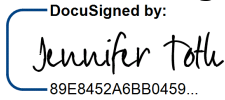




# Maricopa County

Department of Transportation

<b>Title:</b> Errors and Omissions by Design Consultants on Projects	<b>Procedure No.:</b> P5305
<b>Purpose:</b> To provide uniform, procedural guidance on implementing a claims process for resolution of design consultant errors or omissions	<b>Division:</b> Engineering
<b>Authorized Signature:</b>  DocuSigned by: Jennifer Toth 89E8452A6BB0459... <hr/> <b>Jennifer Toth, P.E.</b> <b>Transportation Director</b>	<b>Effective Date:</b> 5/14/2021

## A. Background:

As a result of Maricopa County Department of Transportation's (**MCDOT**) extensive use of design consultants, it is anticipated that contract changes during the course of a project's construction may lead to allegations of consultant errors or omissions (**E&O**). This procedure (**Procedure**) has been developed to determine responsibility, expedite resolution, and to establish recommendations for resolution with the consultant design company or recommendations for settlement to the MCDOT Director.

## B. Policy Statement:

MCDOT expects engineering consultants preparing construction documents on transportation projects to exercise an appropriate standard of care and provide quality services.

Claims avoidance is a primary consideration throughout the duration of the project, from design to construction. Delivering a high-quality design product is MCDOT's highest priority. A clear, comprehensive and complete scope of work sets the stage for a quality end product. Implementation of quality control processes, complete submittals at various stages of project design, and a consultant evaluation program are critical to quality products.

MCDOT will take action to recover costs for errors and omissions attributed to the negligence of a consultant in accordance with the procedures outlined in this document. This Procedure describes the steps to determine financial responsibility for change orders or claims resulting from design errors and omissions.

This Procedure is separate and does not supersede Section V Dispute Escalation and Section VI Arbitration of the contract.

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

- a. MCDOT Engineering Division Manager as chair;
- b. MCDOT Transportation Systems Management (**TSM**) Division Manager;
- c. MCDOT Permitting, Construction & Inspections (**PCI**) Division Manager
- d. Office of Procurement Services representative;
- e. American Council of Engineering Companies (**ACEC**) representative as determined jointly by MCDOT Project Management Branch and ACEC. The ACEC representative cannot be affiliated with the Consultant Firm (or any sub-consultant) involved in the design of the project.

Consultants shall track hours and dollars expended on error and omissions issues with separate task/work codes. Consultants shall include these hours and direct expenses on their monthly post design invoices and indicate that these charges are not reimbursable.

The Director and/or the Review Board may seek legal advice at any time during this procedure.

### C. **Definitions:**

- **Consultant**  
A professional retained by the Department to provide design services.
- **Error**  
An incorrect, conflicting, insufficient, or ambiguous plan and/or specification; use of an inappropriate design criteria or standard.
- **Omission**  
A failure to include an element, feature, system, or equipment necessary for the complete function of a project; a failure to perform.
- **Standard of Care**  
The degree of skill, attentiveness, caution, and care ordinarily exercised by competent practitioners of the same professional discipline under similar circumstances.
- **Negligence**  
Failure of a professional to meet the standard of care in the performance of professional services.
- **Premium Cost**  
Costs associated with E&O items that are higher than the line item bid costs, due to the occurrence of E&O item. Examples of premium cost are included in the following:

Example No. 1: A pipe quantity was calculated incorrectly due to an error on the plans requiring an increase in the amount of pipe for the project. The contractor can provide the additional quantity at the bid item price. Since this was a project

requirement that otherwise would have been included in the project documents and can be provided at the bid item price, this betterment and increase in cost shall not be borne by the Designer of Record.

Example No. 2: The embankment quantity was incorrectly calculated at 400,000 CY of borrow instead of 500,000 CY needed per the original bid plans. The borrow bid item price was \$5/CY. The change order price for the additional borrow was \$8/CY because the original source pit was exhausted and the new pit was 20 miles further. Since the Designer of Record failed to adhere to the standard of care, the Designer of Record is responsible for the additional borrow premium cost (100,000 @ \$3/CY) required for the project – not 100,000 @ \$8/CY.

#### **D. Responsibilities:**

MCDOT Project Management, Engineering, Procurement and Construction personnel will coordinate with their respective Consultants regarding any claims to investigate any alleged error and/or omission. MCDOT will make every reasonable effort to recover the associated costs from the Consultant, when due diligence or standard of care by the design professional results in a defective design. However, MCDOT's goal, internally and externally, is to develop engineering documents that are current, accurate, complete and of the highest quality, while meeting MCDOT's engineering standards.

MCDOT also recognizes the unique characteristics of each project and the latitude sometimes needed for the application of professional skill and experience to each project. The MCDOT PM will partner with the Consultant or in-house design team in an effort to resolve the issue at the lowest level possible. MCDOT will make available all MCDOT manuals, specifications, drawings, guidelines and procedures needed to support the Consultant under contract.

#### **E. Procedure:**

The following procedure components isolate areas of responsibility and are not necessarily in order of importance:

1. The Resident Engineer (**RE**) notifies the Project Manager (**PM**) in writing of a potential design conflict/project issue.
2. The RE and PM will coordinate regarding the design conflict, problem, or potential error and omission issue, taking into account all information and documentation, as appropriate.
3. The RE and PM will determine the extent of the issue. This step should occur within 5 working days from the identification of the issue.
4. The PM will engage the Consultant to participate in developing solutions to address the issue. The PM will coordinate with the Consultant and RE to resolve the design issue within 10 working days. All information and documentation shall be provided in writing.

5. If the PM and RE concludes that the Consultant has financial responsibility, the PM shall advise the Consultant within 3 working days.
6. The Consultant shall notify the PM within 5 working days 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. The level of financial responsibility could be partial or complete responsibility depending on the issue, OR
  - b. Not accept responsibility for the issue.
7. If an escalation is requested by the Consultant, the PM and RE will escalate to the MCDOT Chief Construction Engineer and Project Management Branch Manager.
8. Irrespective of the ongoing process, the Chief Construction Engineer and Project Management Branch Manager will determine if immediate corrective action is required, and will direct the Consultant to provide corrective action based on the need of the project.
9. The Chief Construction Engineer and Project Management Branch Manager shall facilitate resolution of the issue by sending a formal notification of claim if resolution is unsuccessful. The Chief Construction Engineer and Project Management Branch Manager will request the Errors and Omissions Claims Review Board (**Review Board**) be convened. This step will be completed within 5 working days after step 7.
10. The Review Board shall schedule a meeting within 10 working days and invite the PM, RE, Consultant, and others as appropriate, to attend the informal review. All supporting documentation regarding the claim shall be submitted to the Review Board in writing 5 working days prior to the hearing.
11. The Review Board shall hear the MCDOT claim and the Consultant's response, and then determine a recommendation for resolution of the claim in a separate meeting. Such recommendation shall be submitted to the MCDOT Director, or designee, within 10 working days of the claim hearing. The Recommendation is not binding on the Director.
12. The Director shall promptly notify the Consultant, PM and RE of the Director's decision.
13. Nothing in this procedure prohibits MCDOT and Consultant agreeing to a resolution at any time.