



**Intermodal
Transportation
Division
Policy**

November 3, 2000
Effective Date

November 3, 2005
Review Date

Supersedes
ITD Policy 90-01

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MGT 00-2 ERRORS AND OMISSIONS BY CONSULTANTS

Purpose

The purpose of this policy memorandum is to develop and implement a Division Claims process for resolution of consultant errors or omissions.

Scope

The Intermodal Transportation Division will actively pursue the resolution of claims as a result of consultant errors or omissions.

Authority

This procedure applies to all consultant contracts issued through and/or administered by Engineering Consultants Section (ECS). All contracts will follow the procedures outlined in this policy.

Definitions

“Consultant” means a business concern or individual that enters into a contract with the Department to furnish professional services such as, but not limited to, project design or construction contract administration.

Background

As a result of the Intermodal Transportation Division’s extensive use of consultants, it is anticipated that contract changes during the course of a project’s construction will occasionally involve allegations of consultant errors or omissions. This policy has been developed to determine responsibility and expedite resolution.

Claims avoidance is a primary consideration throughout the duration of the project from design conception. During design, maximum emphasis should be placed on delivering a quality product. A clear, comprehensible, and complete scope of work sets the stage for a quality product. Implementation of quality control plans, complete submittals at various stages of project design and a consultant evaluation program are critical to quality products.

Field reviews are an essential part of the design process to ensure that the design product is understood and meets the needs of the Department. Operation and maintenance considerations of a project should also be emphasized during these reviews.

During the construction phase, there are a number of steps that can be utilized to avoid claims arising from errors and omissions. Daily documentation, soliciting the consultant’s input before any significant change order, and the timely processing of any potential construction claims, are examples of avoidance techniques.

The initiation of errors or omissions claims against the consultant normally begins during the construction phase of a project. At this point, steps must be taken to collect information for determining the validity of the claim, specific responsibilities, and extent of the claim. The communication between the District, Construction Contractor, the Federal Highway Administration (if applicable), Project Manager, and Consultant must be clear, open, and well documented.

When an error or omission is perceived by District, it is imperative that the Project Manager and Consultant be immediately notified of the error or omission and invited to participate in corrective action in order to mitigate the cost. If the notification is oral, it must be followed up in writing. This notification should be forwarded through the District to the Project Manager. Responsiveness by the Consultant is crucial to this process.

The Department will estimate the value of errors or omissions as they are identified. The value shall include those additional costs to ADOT above the amount that would have been expected in the contractor's bid, had the error or omission not occurred. In the event that the cumulative total value of errors or omissions exceeds five percent of the construction contractor's bid, or \$20,000 (whichever is less), the Department may pursue a claim against the Consultant. Claims filed will be for that amount which exceeds five percent of the construction contractor's bid, or \$20,000 (whichever is less).

If it is determined that a claim will be filed against the consultant, Engineering Consultant Section will issue a formal Notice of Claim to the Consultant. Three things need to be present throughout the process: a professional attitude, complete preparation, and responsive action. A professional attitude will set the stage for future negotiation. Complete preparation is a must in order to know and document the facts and circumstances. Responsive action is important to resolve differences when facts are fresh in all parties' minds.

The following steps will be utilized to facilitate the review and processing of claims:

1. Errors or omissions are identified, normally at the Project level.
2. An initial review is conducted by the Department to determine the validity, responsibility, and extent of the problem.
3. Notification is given to the consultant.
4. If the value of the errors / omissions is determined to be less than five percent of the construction contractor's bid, or \$20,000 (whichever is less), the Engineering Consultant Section will maintain the documentation for a possible future claim.
5. If the errors /omissions exceeds five percent of the construction contractor's bid, or \$20,000 (whichever is less); or if the cumulative total of claims held by the Engineering Consultant Section exceeds five percent of the construction contractor's bid, or \$20,000 (whichever is less) the Department may file a formal claim. The Project Manager and the Resident Engineer will review the data and reconcile the costs to determine if the Agency should pursue a claim.

6. The amount of the initial claim will be the cost as determined by the Department less five percent of the construction contractor's bid, or \$20,000 (whichever is less). Any future claim will not be subject to this reduction.
7. The claim will, as minimum, cover the following areas:
 - Statement of circumstances: brief description of who, what, where, when, and why;
 - ADOT's intention: dollar amount of consultant's liability for the claim
 - A copy of the construction force account and/or construction change order, and
 - An explanation of the Department's administrative review process.
8. The Consultant may pay the claim or may request an administrative review. There will be two levels of administrative review. The claim review shall not escalate to the second level without an attempt to resolve it at a lower level. The first level administrative review shall involve the Project Manager, the Resident Engineer, and the Assistant State Engineer – Construction Group, and an Assistant State Engineer from Development
9. If the claim is not resolved at a lower level, the Department will appoint a review panel, which will be chaired by the Deputy State Engineer for Development and consist of the Deputy State Engineer for Operations and a third party selected by the Chairman. The panel will review all documents and conduct such investigations and interviews as necessary to make a determination on the validity and extent of the claim. Engineering Consultants Section will provide administrative support to this process.
10. If the review process does not resolve the claim, the Department may pursue the claim through arbitration or litigation, as appropriate.
11. For all unresolved claims of \$100,000 or less, the Construction Group will file a Demand for Arbitration with the America Arbitration Association. The Arbitration will follow the guidelines set forth in the latest version of the ADOT Construction Manual at the time of contract. Unresolved claims in excess of \$100,000 will be forwarded by the Construction Group to the Office of the Attorney General.
12. When claims are resolved Engineering Consultants Section will notify all parties in writing.