

STATE OF DELAWARE
DIVISION OF FACILITIES MANAGEMENT

Article 12

Errors and Omissions Policy

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This document includes a general discussion on errors and/or omissions occurring during project implementation, how to initiate a correction for an error or omission, and what each party's responsibilities are in making the correction. The Division intends to seek reimbursement for additional costs (defined below) associated with correcting errors and omissions during planning, design and construction, including but not limited to, multiple report rewrites, construction costs, and construction engineering.

1. INSURANCE

This article does not address the types of liability insurance a firm may need to carry. Insurance usually carried by consultants includes Comprehensive General Liability, Comprehensive Automobile Liability, Workers' Compensation and Employers' Liability, Professional Liability, and other specialty insurance required in an agreement or that a firm may consider prudent based on the scope of work. The actual agreement covering the work will specify the minimum insurance requirements.

2. ASSIGNMENT OF RESPONSIBILITY

Services procured under the auspices of this document are considered "Professional Services". This in itself infers that, no matter what the scope of work entails, there are associated, industry professional, standards which are expected to be met. For projects involving public safety, meeting these standards takes on even more significance. Firms selected through the Division's professional services procurement process are the best technically qualified, with a proven history of meeting similar contract obligations. Such designation carries with it an acknowledgement of the firm's responsibility to know the accepted standards for doing business in Delaware.

Because of the Division's review process and the involvement of internal support sections as well as other state agencies, utility companies, public groups, municipalities, and the like, acceptance of the responsibility for an error and/or omission in a professional manner will depend on good project monitoring. Complete review and comment records are to be kept by both the Consultant and the Division. It is required that an office copy of each marked or edited review submission and comments be prepared and retained for future reference. Detailed minutes of project review meetings are also required. In projects that involve existing facilities, the Division will normally compensate at Consultant to perform a "pre-design survey" of the facility to determine the existing conditions and how the proposed work will be incorporated into the design. Firms are encouraged to exercise the utmost professional care during these surveys in order to complete full and complete construction drawings and specifications.

Because of the underlying expectation that a firm will comply with established standards throughout project development, there are occasions when a Project Manager and the Construction Projects Administrator will determine that a firm may not have met this obligation. When discovered, the error and/or omission should be reported immediately to the Consultant for resolution. While invoices should annotate the time and associated costs for correcting the lapse, the Division shall not be charged to correct errors and/or omissions.

3. ERROR AND/OR OMISSION DISCOVERY

Definitions:

Errors are defined as unknown, ignorant, or unintentional deviations from accuracy or correctness. Errors may arise from mistaken judgment, misplaced confidence, incorrect belief as to the existence or effect of matters of fact, or other actions. Errors also include failure to meet established Delaware requirements, or design standards for that type of project, (i.e., ASHRAE, DNREC, DelDOT, ICC, NEC, NSPA, or other established government requirements or design standards).

Omissions are defined as missing or unmentioned detail or requirements through either failure to perform properly, neglect, or failure to use reasonable care. Omissions also include failure to identify and implement cost-effective solutions.

Additional costs refers to that portion of the project cost the consultant is responsible for which includes those expenses over and above the cost the Division would have incurred had the error or omission not been made.

During Project Development

Errors and/or omissions discovered during project development are relatively easy to resolve when identified early because the Consultant's Project Manager and the Division's Project Manager are both aware of the circumstances surrounding the problem. The major issue remaining involves arriving at a mutual agreement on whether full, partial or no compensation is due the Consultant to correct the problem. (See Resolution below.)

During Implementation or Construction

Most often it will be obvious if a Consultant error and/or omission truly occurred. Frequently, however, there is a time lapse between the completion of professional services to develop the project and actual implementation of the plan, project, or construction. Associated with this delay is the updating and modification of completed work because of changes in specifications, updated regulations, legislative initiatives, or additional valid comments for improving a project. In essence, the quality and content of a project become a shared responsibility. Changes of scope or specifications (owner requested), updated regulations, legislative initiatives, or comments for improving a project after acceptance of the final design, shall in no way be construed as an error/or omission.

Professional responsibility of the Consultant preparing the project does not terminate with acceptance of the product and/or final payment for its development. Failure to discover the error and/or omission during the design, review or implementation of the project does not relieve the Consultant of their responsibility to correct the effects of the error and/or omission. The extent of the responsibility of the consultant for payment for correcting any errors and/or omissions may be in question, but the active participation of the firm in resolving a problem upon request is mandatory. The level of the Consultant's participation shall be determined by the Division.

The procedure to initiate the correction of an error and/or omission lies with the person responsible for ensuring proper implementation of the plan, project, or construction. At the first indication of an error and/or omission, the Division's representative should notify the project Supervisor. All subordinates should be instructed to keep detailed documentation on the work being performed.

At this same time, the Division's Project Manager responsible for developing the project, if not the person identifying the error and/or omission, should be notified. Depending upon how critical a correction is to project scheduling, report preparation and review may be impractical. When such timing is critical, the Project Manager is verbally notified, and guidance is requested with emphasis on what additional data is needed to document and resolve the error and/or omission. The Division's Project Manager, in turn, should immediately advise the consultant, the supervisor, and up through the chain of command as necessary.

The Division holds the prime Consultant responsible for all work performed or not performed under an agreement including that of any subconsultants. When necessary, based on the opinion of the Division's Project Manager, Construction Project Administrator, Chief Engineer, Deputy Director, and/or Director, the prime consultant will be notified of the problem and requested to participate in a solution in cooperation with Division staff. There will be no compensation to either the prime or subconsultant for services related to the verification and correction of an error and/or omission unless as otherwise agreed. The primary objective is to keep the project on schedule by proposing a viable alternative. Records should be kept of any immediate action taken to correct the situation.

4. RESOLUTION AND APPEAL

Resolution

The Division's Project Manager shall document the error and/or omission that was identified, collect all supporting materials, review their findings with the Consultant, determine the required action to correct the error and/or omission and analyze the cost impact of the resolution (including but not limited to materials, overtime, and force account). All documentation shall be presented to the Construction Project Administrator. The prime Consultant is expected to participate at the appropriate level, from site visits to preparation of corrective documents. Much of this participation is mutually agreed to as solutions are developed.

The Construction Project Administrator (or Chief Engineer) will review the materials, discuss the resolution options with the Consultant and make a final recommendation to the Chief Engineer (or Deputy Director) for review. At the conclusion of the Deputy Director's review, the recommendation will be presented to the Director for approval.

Appeal

Should the Consultant not participate in the resolution process or disagree with the finding of financial responsibility as presented, the Consultant can schedule a review with the Deputy Director or Director. The Deputy Director or Director can modify the terms of the resolution or refer the appeal to the OMB Director per the Consultant's contract.

Default

Should the Consultant not honor the terms of the final resolution, the Division, for just and definable acts, has the option of filing a Consultant insurance claim, filing legal process for restitution, terminating all current agreements, or barring the firm from further work with the Division for up to five years, or any combination thereof.