

NTTA Projects	Original Issue Date: 06/05/2008	FD-11
Resource: Final Design	Revision: 4 Issue Date: 10/24/2014	Page: 1 of 6
Title: Errors and Omissions		

1.0 PURPOSE:

To document steps to identify, evaluate, and deal with possible Consultant errors and omissions in the provision of services to the NTTA.

2.0 RESPONSIBILITIES:

AEDI: Assistant Executive Director of Infrastructure shall be responsible to review and determine if a consultant is responsible for errors and omissions resulting in premium costs to the NTTA.

E&O Review Committee (the committee): The committee that collects and assess the responsibility of a consultant for, and potential consequences of, estimated premium costs resulting from consultant generated errors and omissions.

Consultant: Review and respond to inquiries regarding possible errors and omissions as determined by the NTTA.

NTTA Legal: Act in an advisory capacity regarding inquiries to possible consultant generated errors and omissions, preparation of Settlement Documentation and, when determined by the AEDI, engage in litigation to recover premium costs from a consultant when a satisfactory agreement to the NTTA cannot be agreed by other methods.

3.0 SCOPE/APPLICABILITY:

This procedure shall apply to all NTTA corridor and projects.

4.0 DEFINITIONS AND ACRONYMS:

AEDI: Assistant Executive Director of Infrastructure; provided, that any or all duties of the AEDI under this process may be delegated by the AEDI to another NTTA employee.

E&O Review Committee (the Committee): The committee that reviews change order requests for contracts administered by the NTTA's Project Delivery department. Unless otherwise specified by the AEDI, the NTTA Manager of Design and the C5 Committee shall perform the duties of the E&O Review Committee for Project Delivery.

Consultant: A firm or individual with whom the NTTA contracts for engineering and related services, including, but not limited to, the preparation of plans, specifications, and estimates for construction projects, or the management and review of engineering services or the inspection of ongoing construction, or material testing; the term "consultant" also includes any sub-consultant providing services to the NTTA as part of a prime consultant's services.

Contract: The agreement between the NTTA and the consultant for the provision of the consultant's services.

Errors and Omissions: A failure by the consultant to perform its obligations under the contract in accordance with the standard of care specified in the contract, or if no such standard of care is specified, the consultant's performance of its obligations in a manner that constitutes negligent performance under applicable law.

Premium costs: Costs or losses that the NTTA would not have incurred but for the consultant's errors and omissions. Premium costs include, but are not limited to, costs or losses resulting from increased fees, increased unit prices, delays, inefficiencies, rework, or extra work that would not have been incurred but for the consultant's failure to perform in accordance with the contract. By way of example only, and without limiting premium costs, premium costs may be incurred in the following situations:

- Delays or inefficiencies. Premium costs include delay damages paid to the general contractor that would not have been incurred if the consultant's work had not been subject to errors and omissions.
- Rework. If either (a) work performed by contractors or other persons pursuant to plans, specifications, or other work-product prepared by the consultant, or (b) work performed by the consultant itself, must be removed, replaced, or redone due to the consultant's errors and omissions, the costs the NTTA incurs to remove, replace, and/or redo such work are premium costs to the extent they would not have been incurred but for the consultant's errors and omissions.

NTTA Projects	Original Issue Date: 06/05/2008	FD-11
Resource: Final Design	Revision: 4 Issue Date: 10/24/2014	Page: 2 of 6
Title: Errors and Omissions		

- Extra work. If due to the consultant's errors and omissions, work required for a project is not included in a general contractor's bid at letting, premium costs are the added costs to obtain such extra work over and above what the cost for such work would have been if it had been included in the general contractor's bid.
- Plan revisions that cause a negotiated item to be created or to replace a bid item that is typically at a higher cost. If actual costs are not known, 15% of total cost is estimated as a premium cost by the committee in its evaluation process.

Services in Kind:

- Services provided by a consultant in lieu of money as restitution for premium costs chargeable to the consultant.

5.0 PROCEDURE:

5.1 General:

This procedure shall not relieve a consultant from responsibility to provide services in accordance with the requirements of the contract, applicable professional standards, and applicable law; nor shall this procedure relieve the consultant from verifying that its performance satisfies such requirements, standards, and laws.

5.2 Design Errors discovered during construction resulting in NTTA Change Orders:

- 5.2.1 The Construction Manager / Resident Engineer shall notify the NTTA Manager of Construction and C5 that a potential change order will be classified as a Design Deficiency on the change order.
- 5.2.2 The NTTA Manager of Construction shall notify the NTTA Manager of Design about the potential Design Deficiency change order.
- 5.2.3 The NTTA Manager of Design may as discussed with the NTTA Manager of Construction notify the contact individual for the responsible firm representing the Engineer of Record and request assistance to resolve the matter to get the best possible solution for the NTTA.

5.3 E&O Review Committee Evaluation:

- 5.3.1 The Committee shall at the direction of the AEDI collect information regarding the possible errors and omissions and review them per contract at the conclusion of all construction activities and when all change orders have been developed or may for large issues proceed to evaluate that item once an NTTA signed change order has established the premium costs involved in that issue. The Committee may confer with any person having knowledge of the possible errors and omissions and/or their consequences.
- 5.3.2 In consultation with appropriate personnel representing the NTTA, the Committee shall attempt to assess the responsibility of the consultant for, and potential consequences of, possible errors and omissions, including estimated premium costs resulting from the consultant's errors and omissions from known information before directly contacting the consultant for additional information.
- 5.3.3 The chair of the Committee may confer with NTTA legal counsel regarding the possible errors and omissions and the NTTA's possible courses of action.
- 5.3.4 Unless otherwise advised by NTTA legal counsel or the AEDI, the Committee Chair may advise the consultant in writing that the possible errors and omissions have been referred to the Committee for review and evaluation.
(Form FD-11-F1 provides a template for this notice)
- 5.3.5 The E&O Log (form FD-11-F4) shall be used by the committee to record and track the status of information regarding the specific errors and omissions issue.
- 5.3.6 The Committee shall report to the AEDI regarding its review of the consultant's possible errors and omissions.

NTTA Projects	Original Issue Date: 06/05/2008	FD-11
Resource: Final Design	Revision: 4 Issue Date: 10/24/2014	Page: 3 of 6
Title: Errors and Omissions		

5.4 Assistant Executive Director Review

- 5.4.1 The AEDI shall evaluate the committee's report regarding potential consultant generated errors and omissions.
- 5.4.2 The NTTA generally shall make demand to recover for errors and omissions that the AEDI reasonably determines result or may result in more than minimal premium costs to the NTTA when considered in light of the total project cost, the total amount payable under the consultant's contract, and any other factors the AEDI considers relevant. However, the AEDI's decision to seek recovery shall be guided by the anticipated recovery amount, the likelihood of a successful recovery effort, foreseeable administrative costs, the expense of litigation, and the consultant's performance history.
- 5.4.3 If the AEDI determines that the consultant is responsible for errors and omissions that have resulted, or are reasonably likely to result, in premium costs to the NTTA, the AEDI, in consultation with NTTA legal counsel and such other NTTA staff and/or personnel representing the NTTA as the AEDI deems advisable, shall determine whether the NTTA shall make formal claim on the consultant to recover those premium costs.
- 5.4.4 If the NTTA intends to make formal claim on the consultant, the AEDI shall notify the Consultant in writing of the amount of the NTTA's claim, summarize the issues supporting the claim, and request the consultant satisfy the claim and/or confer with the AEDI regarding the consultant's response to the claim. The AEDI shall confer with NTTA legal counsel regarding the notice to the consultant.
(Form FD-11-F2 provides a template for this notice)
- 5.4.5 If the AEDI determines that it is in the NTTA's best interest not to pursue recovery of premium costs from the consultant, the AEDI shall advise NTTA Executive Director in writing of the rationale for that determination.
- A decision not to pursue premium costs that are reasonably estimated to exceed \$25,000 shall require approval by the NTTA Executive Director. This amount shall be calculated as cumulative premiums costs for all errors and omissions under the Contract.
- 5.4.6 If the consultant does not respond to the AEDI's notice in a manner satisfactory to the NTTA, the AEDI shall instruct NTTA legal counsel to make formal demand to the consultant for payment of the NTTA's claim and advise the consultant that the NTTA intends to pursue all available remedies it has against the consultant.
(Form FD-11-F3 provides a template for this notice)

5.5 Consultant Review and NTTA Response:

- 5.5.1 If the consultant agrees to pay all sums required by the NTTA and otherwise comply with the NTTA's terms regarding the claim (as those sums and requirements may be modified through negotiation with the consultant), the AEDI shall request NTTA legal counsel to prepare a settlement agreement or other appropriate documentation setting forth the consultant's and NTTA's agreements.
- At the NTTA's sole discretion, a settlement with the consultant may include the NTTA's receipt of services in kind from the consultant.
- 5.5.2 At any time, the AEDI may terminate negotiations with the consultant and either proceed toward litigation in accordance with Section 5.6 or elect not to pursue recovery in accordance with paragraph 5.4.5.

5.6 Litigation

- 5.6.1 If a satisfactory resolution cannot be reached between the NTTA and the consultant, the AEDI may authorize litigation to recover premium costs from the consultant.
- Litigation to recover premium costs that are reasonably estimated to exceed \$300,000 shall require approval by the NTTA Executive Director.

NTTA Projects	Original Issue Date: 06/05/2008	FD-11
Resource: Final Design	Revision: 4 Issue Date: 10/24/2014	Page: 4 of 6
Title: Errors and Omissions		

- 5.6.2 NTTA legal counsel shall review the report of the Committee and all other available documentation and other information concerning the NTTA's claim, and shall advise the AEDI concerning litigation issues, possible outcomes, and other possible courses of action.
- 5.6.3 The AEDI shall support NTTA legal counsel to promptly identify, obtain, or generate documentation and information requested by NTTA legal counsel, and the NTTA shall otherwise cooperate with NTTA legal counsel in connection with the legal action regarding the claim against the consultant.
- 5.6.4 NTTA legal counsel shall keep the AEDI informed of the status of the claim.
- 5.6.5 If NTTA legal counsel believes recovery is unlikely, it shall so advise the AEDI.
- 5.6.6 At any time, the AEDI may direct NTTA legal counsel to terminate or suspend attempts to recover premium costs through litigation.
 - A decision not to pursue premium costs against the consultant must comply with paragraph 5.4.5.
- 5.6.7 Nothing in this procedure shall prohibit the NTTA from attempting to reach a settlement with the consultant that is satisfactory to the NTTA, regardless of whether litigation regarding the errors and omissions is ongoing.

6.0 REGULATORY REQUIREMENTS:

- N/A

7.0 RELATED BOARD POLICY:

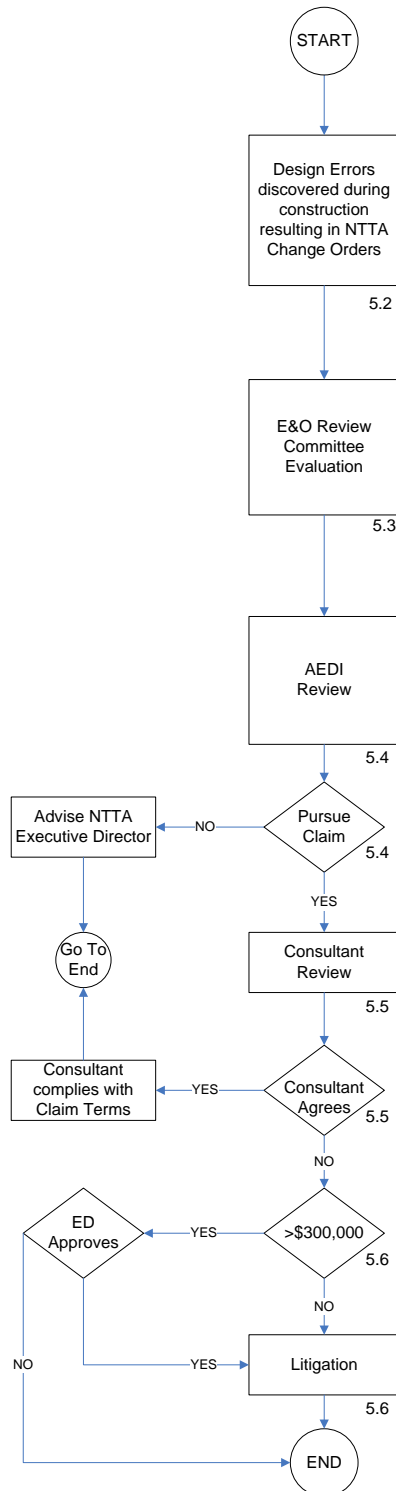
- BD 6.9 A: Recovery of Damages Related to Consultant Errors & Omissions

8.0 COMPONENT DOCUMENTS:

- [FD-11-F1](#) Referral Letter - Template
- [FD-11-F2](#) Claim Letter - Template
- [FD-11-F3](#) Demand Letter – Template
- [FD-11-F4](#) Errors and Omissions Log
- [FD-11-F5](#) Errors and Omissions Analysis Summary Worksheet - Template

NTTA Projects	Original Issue Date: 06/05/2008	FD-11
Resource: Final Design	Revision: 4 Issue Date: 10/24/2014	Page: 5 of 6
Title: Errors and Omissions		

9.0 FLOWCHART:



Construction Manager / Resident Engineer:

- Notifies NTTA Manager of Construction a potential change order may possibly be Design Deficiency.

Manager of Construction:

- Notifies NTTA Manager of Design of Design Deficiency.

Manager of Design:

- May request the contact individual for the responsible firm representing the Engineer of Record to assist in resolving the matter.

E&O Review Committee:

- Collects, reviews, assess the responsibility of the consultant, determines and estimates the amount of premium costs resulting from the consultant's errors and omissions.

- The Committee chair may notify the consultant in writing using form FD-11-F1.

- Utilize the E & O Log (form FD 11-F4) and the E & O Analysis Summary Worksheet (Form FD-11-F5) to generate an E&O Report to the AEDI.

Assistant Executive Director of Infrastructure:

- Reviews E&O Committee report regarding the consultant's possible errors and omissions

- Determines if the consultant is responsible for errors and omissions and advises the consultant in writing using form FD-11-F2

- Advises the NTTA Executive Director of the rationale not to pursue if premium cost are estimated to exceed \$25,000

- If the consultant does not respond to the AEDI's initial notice in a satisfactory manner, generates second notice using form FD-11-F3

Consultant:

- Consultant reviews claim and agrees to comply with the NTTA terms or determines to proceed with litigation

Assistant Executive Director of Infrastructure:

- If the consultant agrees with the NTTA's assessment, the AEDI requests NTTA Legal to prepare a Settlement Letter

- If the consultant does not agree, the AEDI authorizes litigation to recover premium costs

- If litigation to recover premium costs is estimated to exceed \$300,000 dollars, approval by the NTTA Executive Director is required

Legal Counsel:

- Pursue litigation to recover premium costs from the consultant

NTTA Projects	Original Issue Date: 06/05/2008	FD-11
Resource: Final Design	Revision: 4 Issue Date: 10/24/2014	Page: 6 of 6
Title: Errors and Omissions		

10.0 REVISION HISTORY:

Revision	Revised by:	Date Issued	DRN Number	Reason for Revision
0	Micki Ellis	06/05/2008		Original Issue
1	Floyd Martinez	09/18/2008		Minor clarifications throughout document
2	Peter Claypool	07/13/2009	10015	Major rewrite to coordinate with new NTTA Administrative Procedure Number 3.12 for Errors and Omissions
3	David Kastendick	08/26/2013	10506	Revised to closely model current practice as desired by the AEDI. Revised FD-11-F5 to move format from 8.5X11 to 11X17.
4	Elizabeth Mow	10/24/2014	10545	Corrected section 5.4.5 to match Board Policy.