

Development of Procedures for Consultant Errors & Omissions Correction and Collection Procedures

Design Division – Consultant Contract Office

2007 Design-Bridge Conference
Corpus Christi, Texas
August 15, 2007

Background

- ❑ Office of Inspector General (OIG) Audit - 2004
- ❑ Internal TxDOT Audit - 2006

Internal TxDOT Audit

“Consulting Engineering Contract Administration”

- Audit Focus:
 - Contract Administration Responsibilities
 - Contract Identification – Through Close-Out
- E&O Collection - One of Many Audit Topics
- Initiated – May 2005
- Final Report – August 2006
- Follow-up – Anticipated 2008

Audit Results – E&O Related

- 25 Districts
 - Inconsistency in Approach to Identification and Collection
- Design Division - Consultant Contract Office
 - Lack of Statewide Procedures

Procedures Development

- Initial Identification
- Investigation of Existing Processes
- Consideration of Those Affected
- Identification of Structure and Content
- Development and Review
- Implementation

Procedures Development

- Initial Identification
 - Purpose of the Procedures
 - Who the Procedures Are For
 - What the Procedures Should Cover
 - Level of Detail Needed
- Investigation of Existing Processes
 - Internal District Process Knowledge
 - Extent of Internal District Coordination
 - Decision-Making Responsibility
 - Extent of Variation Across Districts

Procedures Development

- Consideration of Those Affected
 - TxDOT Construction Project Managers
 - TxDOT Design Project Managers
 - Consultants
- Identification of Structure and Content
 - Sequence of Explanation
 - Areas of Emphasis
 - Identification of Responsibility
- Development and Review
- Implementation

Initial Identification

Purpose of the Procedures

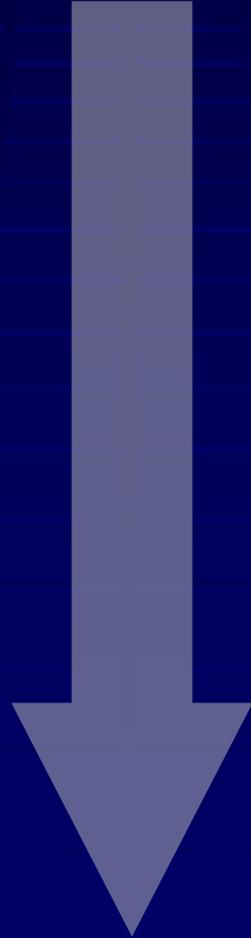
- ❑ Be Responsive to Audit Requirements
- ❑ Means of District Support
- ❑ Provide for Statewide Consistency
 - 25 Districts
 - 117 Area Offices
- ❑ Provide for Appropriate Administration of Contracts
- ❑ Define Steps for:
 - Identifying Errors and Omissions
 - Identifying Additional Cost to TxDOT
 - Collecting Reimbursement From Consultants

Target Audience

- TxDOT Construction Project Managers
- TxDOT Area Engineers
- TxDOT Consultant Project Managers
- TxDOT Contract Administrators
- District Directors of Construction, Design, Transportation Planning & Development
- Not Consultants

Procedure Coverage

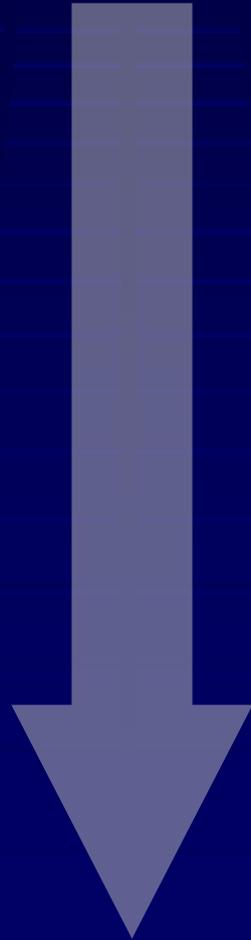
E&O Change Order



Request for Payment

Procedure Coverage

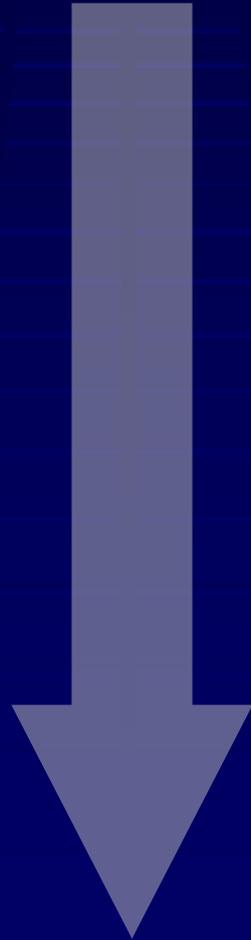
PS&E Revisions



Receipt of Payment

Procedure Coverage

Problem Identification



Credit of Recovered Funds

Level of Detail

Problem Identification

PS&E Correction

Change Orders

Identification of Additional Costs

Logistics for Requesting Payment

Receipt of Payment

Settlement Agreement

Credit of Recovered Funds

Investigation of Existing Processes

District Process Knowledge

- ❑ Consultant Contract-Based?
- ❑ Relationship of E&O With Contract Status?
- ❑ Definitions of Change Order Reason Codes?
- ❑ Differentiating Between E&O and Other Reasons?
- ❑ Understanding of Additional Cost?

District Process Knowledge

- Responsibility for Consultant Coordination?
- Importance of Timely Communication With the Consultant?
- Need for Documentation?
- Timing of Request for Payment?
- Where the Payment is Credited?

Internal Coordination

- Level of Communication Between District Design and Construction?
- How Deliberate is Consultant Transition from Design to Construction?
- Coordination Among Area Offices?
- Verification of Change Order Reason Codes?

Who Decides?

- ❑ What's an Error or Omission?
- ❑ What Reason Code is Assigned?
- ❑ Whether TxDOT or Consultant Makes Revisions?
- ❑ Consultant's Level of Responsibility?
- ❑ When to Call the Consultant?
- ❑ The Additional Cost to TxDOT?
- ❑ Whether to Pursue Cost Recovery?

Who Decides?

- ❑ Construction Project Manager?
- ❑ Design Project Manager?
- ❑ Area Engineer?
- ❑ Director of District Construction?
- ❑ Director of District Design?
- ❑ District Engineer?
- ❑ Design or Construction Division?
- ❑ TxDOT Administration?

Statewide Variation

Yes

Interviews

- District Engineers
- Deputy District Engineers
- Area Office Staff
- District Construction Staff
- District Design Project Managers
- District Contract Administrators
- District Construction Inspectors
- Office of General Counsel – Contract Lawyers
- Construction Division Staff
- Design Division Staff
- Numerous Consultants

Consideration of Those Affected

Construction Project Managers

- Coordinate Directly With the Contractor
- Develop/Code/Negotiate Change Orders
- Utilize Construction Phase Services
- Coordination With Consultants Varies
- Address E&O Issues During Construction
- Primary Focus – Get the Job Built

Design Project Managers

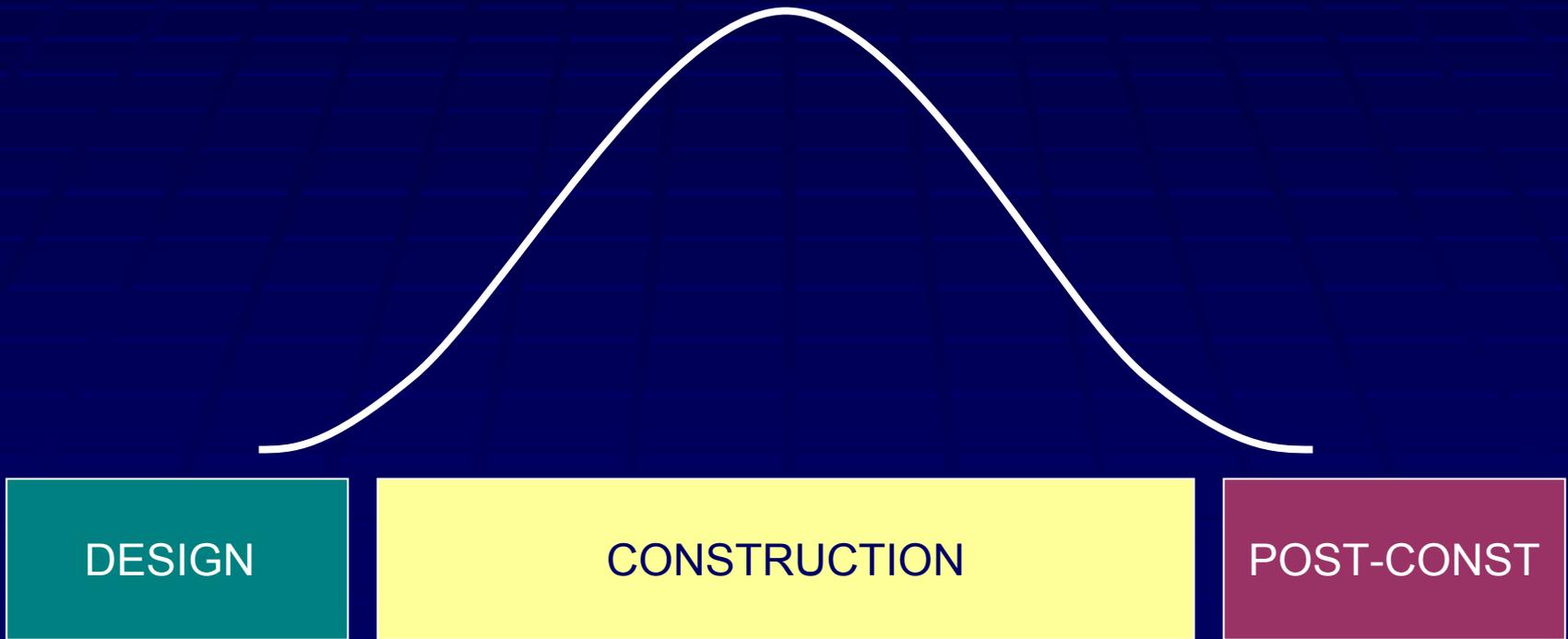
- ❑ Coordinate Directly With the Consultant
- ❑ Manage PS&E Development
- ❑ Facilitate Construction Phase Services
- ❑ Review and Approve Invoices
- ❑ Address E&O Issues During Design
- ❑ No Involvement in Change Order Development
- ❑ Responsible for Contract Administration

Consultants

- Responsive Through Design and Construction
- Receive Direction From Design Staff
 - 25 Districts
- Receive Direction From Construction Staff
 - 117 Area Offices
- Most Familiar With the Design
- Only Aware of What They're Told
- Very Concerned About E&O Identification
- Payment of Additional Costs Affects Bottom Line

Identification of Structure and Content

Discussion Focus



DESIGN

CONSTRUCTION

POST-CONST

Sequence of Explanation

- Problem Identification
 - During PS&E Development
 - Before, During, and After Construction
- Communication With Consultant
 - Upon Problem Identification
 - Opportunity to Assist
- Other Communication Suggestions
 - Pre-Construction Meeting Attendance

Sequence of Explanation

□ Error & Omission Correction

- During Design (PS&E)
- During Construction
 - Plans Revised by Consultant
 - Plans Revised by TxDOT

□ Communication

- Clearly Differentiate - E&O from Other Reasons
- Between Construction and Design PM

Sequence of Explanation

- Change Orders – Potential E&O
 - Communication With Consultant
 - Opportunity to Assist
- Change Order Coding
 - Factors to Consider
 - Internal Communication Expected
 - Definitions of the Different E&O Codes
 - E&O - Without Additional Cost (1B)
 - E&O - With Additional Cost (1E)
 - E&O - Other (1C)

Sequence of Explanation

□ Additional Cost

- Explanation of What it is
- Explanation of What it's Not
- When to Initially Determine (by Change Order)
- When to Finalize

□ Communication

- Between Construction and Design PM
- Procrastination Results in Loss of Knowledgeable Staff
- Coordinate With Consultant to Identify/Verify

Sequence of Explanation

- Payment Request
 - Timing
 - Notification Guidance
 - Opportunity for Consideration by TxDOT Administration
- Instructions for Payment Remission
- Instructions for Settlement Agreement
 - If Requested by Consultant
 - Not Required
- Instructions for Crediting Recovered Funds

Areas of Emphasis

- Communication With the Consultant
- Communication Among TxDOT Staff
- Getting the Change Order Coded Correctly
- Coordination With Consultant for Additional Cost Determination – Sooner than Later

Identification of Responsibility

- TxDOT Construction Project Manager
- TxDOT Design Project Manager
- District Management Level Review
 - Ensure Change Order Coding Accuracy
 - Ensure Change Order Coding Consistency
 - Ensure Communication With Consultant
 - Ensure Communication Among District Staff

Development and Review

Development and Review

- ❑ Design Division – Consultant Contract Office
- ❑ Other Design Division Staff
- ❑ Construction Division Director
- ❑ Other Construction Division Staff
- ❑ Multiple District Engineers
- ❑ Other District Construction and Design Staff
- ❑ Office of General Counsel
- ❑ Members of the Administration

Implementation

- Version 1 Distributed – December 15, 2006
- Version 1 Rescinded – March 30, 2007

Absence of Procedures Does Not Remove Responsibility for Identifying Errors & Omissions and Appropriate Associated Additional Costs

Implementation

- TxDOT E&O Policy Statement – August 2007
 - Compliant with SB 924
 - Supported by TxDOT Procedures
- Procedures (Version 2) Expected – Soon

SB 924 identifies eight required provisions that a rule or policy adopted by a state agency must include relating to the recovery of costs arising from an engineering or architectural error or omission by a private design professional.

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Questions?