

# **Texas Department of Transportation**

## **Consultant Errors & Omissions Correction and Collection Procedures**

Issued: March 2008  
Revised: July 2014

## **Consultant Errors & Omissions Correction and Collection Procedures**

<b>1.0 Consultant Contract Administration.....</b>	<b>2</b>
<b>2.0 Error and Omission Identification and Communication .....</b>	<b>2</b>
<b>3.0 Error and Omission Correction.....</b>	<b>3</b>
3.1 PS&E Development .....	3
3.2 Project Construction .....	3
3.2.1 <i>PS&amp;E Revision by Consultant</i> .....	4
3.2.2 <i>PS&amp;E Revision by TxDOT</i> .....	4
<b>4.0 Change Orders .....</b>	<b>4</b>
4.1 Reason Codes.....	5
4.2 Recoverable Additional Cost.....	7
4.2.1 <i>PS&amp;E Provided by a Donor or Local Government</i> .....	7
4.2.2 <i>Actual Cost</i> .....	7
4.3 When to Identify and Finalize Additional Costs .....	7
<b>5.0 When to Request Payment.....</b>	<b>8</b>
5.1 By Change Order .....	8
5.2 Upon Project Completion.....	8
5.2.1 <i>Meeting Requested</i> .....	8
5.2.2 <i>No Meeting Requested</i> .....	9
5.3 In-kind Services .....	9
<b>6.0 Contractor Claims Following Construction .....</b>	<b>9</b>
<b>7.0 Post-Construction Design Error .....</b>	<b>9</b>
<b>8.0 Cost Recovery Procedures .....</b>	<b>9</b>
8.1 Initial Notification Letter.....	10
8.1.1 <i>Payment Received</i> .....	10
8.1.2 <i>Request for Consideration by TxDOT Administration</i> .....	10
8.1.3 <i>No Response</i> .....	11
<b>9.0 Consideration by TxDOT Administration .....</b>	<b>11</b>
9.1 Notification of Decision.....	11
9.1.1 <i>Payment Received</i> .....	11
9.1.2 <i>No Response</i> .....	11
<b>10.0 Statute of Limitations .....</b>	<b>11</b>
<b>11.0 Remission of Payment.....</b>	<b>11</b>
<b>12.0 Credit of Recovered Funds .....</b>	<b>12</b>
<b>13.0 Settlement Agreement.....</b>	<b>12</b>

<b>13.1 Review Requirements .....</b>	<b>12</b>
<b>13.2 Signature Authority .....</b>	<b>12</b>
<b>14.0 TxDOT Responsibility.....</b>	<b>13</b>

## **Consultant Errors & Omissions Correction and Collection Procedures**

On August 10, 2007 the Texas Department of Transportation (TxDOT) issued the following errors and omissions policy.

It is TxDOT's policy to enforce its contracts with engineering, architectural, and surveying consultants to ensure the delivery of quality professional services, the prudent expenditure of public funds, and the preservation of cooperative business relationships. To that end, TxDOT will devote the necessary resources to negotiating clear and fair professional services contracts. Even with the best of contracts, however, it is likely that services will sometimes contain errors or omissions. When a dispute arises under one of those contracts regarding apparent errors or omissions in the work provided to TxDOT, every effort will be made to resolve that dispute in a way ensuring that the public receives the services for which it has paid and that the consultant is treated with respect and fairness.

When an apparent error or omission is identified in work provided by a consultant, the first step must be to notify the consultant of the problem and to involve the consultant in efforts to resolve it. These efforts must include consideration of the totality of relevant facts, including the level of services provided, the consultant's overall performance, the cost to TxDOT of the services provided and of the apparent error or omission, and the value of the services provided. If these efforts do not succeed, the consultant must be given an opportunity to raise the issue with TxDOT's Administration before any effort is made by TxDOT to institute legal proceedings to collect damages.

To implement this policy, the Design Division is directed to issue procedural guidelines to the districts for handling claims arising out of apparent errors and omissions. These procedural guidelines must include instructions for coding construction change orders that will make clear when a change order results from an error or omission and when it does not; whether an error or omission resulted from work performed by a consultant, by a TxDOT employee, or from some other cause; and a process for determining the cost of an error or omission. These procedural guidelines may be updated from time to time in accordance with this policy.

This policy complies with SB 924 and Government Code §2252.905. Procedural guidelines in support of this policy, developed by the Design Division and updated by the Professional Engineering Procurement Services (PEPS) Division, are provided below. In a situation where these procedures do not seem applicable or if there is any question about the appropriate steps to take, contact the Contract Services Office (CSO) or the PEPS Division for guidance. The purpose of the procedures is to provide TxDOT employees with internal guidance and does not create any legal rights or obligations.

## **1.0 Consultant Contract Administration**

TxDOT engineering, architectural, and surveying contracts include standard provisions that address the consultant's responsibility for errors and omissions. Consultants are subject to these provisions before, during, and after construction of a project, as well as before and after contract termination.

Errors and omissions identified prior to project construction should be corrected at the consultant's expense with no additional cost to TxDOT. During and after construction, errors and omissions can result in additional costs that TxDOT would not have incurred if the construction plans had been correct. Under contract law, the resulting additional costs are considered damages that TxDOT is entitled to collect.

These procedures are written to address engineering contracts involving the development of construction plans, specifications, and estimates (PS&E), typically at the district level. They can be adapted and applied to other engineering, architectural, and surveying services where errors and omissions are an issue at the district or division level.

TxDOT staff can contact CSO or the PEPS Division regarding questions about the contract or procedures.

The phrase error and omission is used throughout to mean an error, an omission, or a combination of error and omission.

## **2.0 Error and Omission Identification and Communication**

Even with the best of contracts, it is likely that services will sometimes contain errors and omissions. A problem resulting from an error and omission may be identified during the development of the PS&E, as well as before, during, or after construction. Errors and omissions identified during PS&E development are corrected at the consultant's expenses with typically no or negligible additional cost to TxDOT. Errors and omissions identified during construction, however, can potentially result in significant additional cost to TxDOT. When an apparent error and omission is identified, TxDOT must notify the consultant and give them an opportunity to assist in addressing the problem in the event the consultant will be held responsible for additional cost over and above what TxDOT would have paid had there not been an error and omission. TxDOT should maintain documentation of any notifications to the consultant.

It should become common practice, when practical, to keep the consultant contract active through the construction phase. Also, routinely include the consultant and TxDOT Design Project Manager (PM) in the pre-construction meeting.

Appropriate TxDOT and consultant contacts should be identified prior to construction in case the need for communication arises during construction. Have and know the plan for appropriate contact and communication with the appropriate staff within TxDOT and with the consultant. If the consultant contract is no longer active, TxDOT should still contact an appropriate person at the consultant firm rather than contacting the engineer responsible for the design directly.

### **3.0 Error and Omission Correction**

Consultants are responsible for promptly correcting errors and omissions without compensation. In the situation of a dispute concerning whether or not the work is compensable, the consultant is not in a position to delay the work. The engineering contract specifically addresses disputes and should be referenced in the event of a potential delay by the consultant.

#### **3.1 PS&E Development**

During the development of the PS&E, the consultant submits plans for TxDOT review. The consultant is expected to develop the design and plan set correctly with quality control reviews conducted prior to each interim and final submittal. A certain level of mark-ups and changes are expected at each stage. Routine mark-ups and design changes identified at TxDOT's request or preference are not the result of consultant errors and omissions and should be paid for accordingly.

If an apparent error and omission is identified in the consultant submittal, such as an incorrect design or unacceptable plan sheet preparation, the TxDOT Design PM should clearly identify and communicate the error and omission to the consultant and indicate what is required to be revised at the consultant's expense. The communications should be documented for consideration in the consultant's evaluation and in case problems occur during construction. Be clear and coordinate, as appropriate, to address any questions.

#### **3.2 Project Construction**

Project construction is the responsibility of area and project offices. TxDOT Construction PMs coordinate with the construction contractors and design consultants, as needed. Every error and omission situation cannot be addressed and a specific outcome identified by procedure. There will always be steps in the process where judgment is required. To the extent possible, districts should strive for consistency among area offices in the identification and evaluation of consultant errors and omissions.

When an apparent error and omission is identified, TxDOT must notify the consultant and give them an opportunity to assist in addressing the problem. TxDOT should maintain documentation of any notifications to the consultant.

If TxDOT requires revisions to the PS&E to correct the error and omission, the TxDOT Design PM should be consulted to determine if there are other factors that should be considered in determining responsibility for the error and omission. The appropriate TxDOT staff should identify and communicate the errors and omissions to the consultant, and indicate what is required to be revised at the consultant's expense.

Adequate internal coordination and communication is important to avoid, for example, identifying a problem such as the elimination of a particular item as a consultant error and omission only to find out later that TxDOT specifically directed the consultant to eliminate the item during design.

### **3.2.1 PS&E Revision by Consultant**

In most cases, the consultant is available to make the requested revisions. Revisions requested and made unrelated to an error and omission should be paid for as construction phase services or by supplemental agreement to the engineering contract, depending on the magnitude.

### **3.2.2 PS&E Revision by TxDOT**

For a revision resulting from an error and omission, the consultant will be given the first opportunity to make the revision. If it is not possible for the consultant to make the revision or TxDOT determines it is in its best interest to make the revision, a TxDOT engineer can revise the plans. The [PS&E Preparation Manual, Ch. 2, Sect. 2](#) provides specific guidance on a one-time notification step to provide for TxDOT revision of consultant plans. If this notification was not made, then the TxDOT engineer making the revisions is responsible for following the notification requirements of the Texas Board of Professional Engineers.

## **4.0 Change Orders**

Change orders should be completed according to the guidance in the [Construction Contract Administration Manual, Ch. 7](#).

When an apparent error and omission is identified that may result in a change order, TxDOT must notify the consultant and give them an opportunity to assist in addressing the problem. TxDOT should maintain documentation of any notifications to the consultant. Necessary revisions to the PS&E should be addressed as indicated in sections 3.2.1 and 3.2.2.

Before coding a change order as consultant error and omission, such as 1B or 1E, adequate communication should occur between appropriate TxDOT staff from design and construction to make an informed initial assessment of responsibility for the change order. Examples of appropriate factors to be considered include:

- Specific direction provided by TxDOT during design
- Consultant design scope of work
- Design information provided to the consultant
- The type of project and necessity for assumptions when detailed design is not applicable
- Applicable standards and specifications in effect when the work was done
- Changes to department policy, standards, and specifications that occurred during design
- Changes in site conditions after the project was let (i.e. new development, re-development)
- The relationship of the problem to previous changes approved in the construction contract
- The decision by TxDOT or the contractor to re-design, move, extend, or change something because of field conditions that could not have been reasonably anticipated by the consultant
- The construction contractor's use of applicable plan sheets and their responsibility to comply with the construction contract and notify the department of a potential conflict or problem

- And any other design coordination issues that may have affected the development of the plans

The intent is to be reasonable by considering appropriate factors in determining distribution of responsibility for the change order among the design consultant, TxDOT, and the construction contractor and not to simply look for an out or loop-hole to remove responsibility from the consultant. There are cases where the responsibility will be shared.

The intent of this step is to make an effort to get the change order code reasonably correct if, or when, it involves consultant errors and omissions. This is not intended to be an all-consuming exercise, potentially affecting TxDOT's day-to-day management of the construction project or the contractor's schedule.

A change order should not be delayed because of a dispute or complications with the consultant associated with determining the recoverable additional cost component. These issues can be and should be addressed separately with the consultant within a reasonable time after change order execution.

#### **4.1 Reason Codes**

There are seven categories which include over 40 change order reason codes. The Error and Omission category includes five reason codes. These codes should be used only if the change results from an error and omission.

- 1A – Incorrect PS&E (TxDOT design)
- 1B – Incorrect PS&E (Consultant design)
- 1C – Other
- 1D – Design error or omission that resulted in delay, rework, or inefficiencies (TxDOT design)
- 1E – Design error or omission that resulted in delay, rework, or inefficiencies (Consultant design)

**Reason Codes 1A (TxDOT design) and 1B (consultant design)** should be used when the error and omission change order does not include additional cost to TxDOT. See section 4.2. Incorrect PS&E is generally defined as PS&E developed by TxDOT or a consultant including for example, a design error, incorrect items or quantities, missing bid item, incorrect methods of pay, incorrect elevations or references, or other forms of incorrect information. Incorrect PS&E (1A or 1B) should be used if the error and omission change order has not or will not result in a contractor delay or is not associated with rework by the contractor. [Rework means work in the field that has to be taken out in order to perform reconstruction correctly.] If the change order includes additional cost to TxDOT (see section 4.2), reason code 1E should be used, not 1B.

**Reason Codes 1D (TxDOT design) and 1E (consultant design)** should be used when the error and omission change order does include additional cost to TxDOT that would not have been incurred had the construction plans been correct. See section 4.2. This also includes incorrect PS&E developed by TxDOT or a consultant that does result in a contractor delay, rework, or inefficiencies that contribute to the additional cost. See

Section 4.2. (Rework means work in the field that has to be taken out in order to perform reconstruction correctly.)

**Reason Code 1C** should be used when there is an error and omission in the PS&E, but the other codes are not appropriate. This can occur when the PS&E was prepared by TxDOT, but the fault (all or partial) cannot be assigned to TxDOT, so Reason Codes 1A and 1D are inapplicable. It can also occur when the PS&E was prepared by a consultant under contract to TxDOT, but the fault (all or partial) cannot be assigned to the TxDOT consultant, so Reason Codes 1B and 1E are inapplicable. Finally, it can occur when the PS&E was provided to TxDOT by a third party, such as a donor or a local government (see section 4.2.1).

Assignment of fault in determining distribution of responsibility for the change order should take into consideration, for example, appropriate factors as identified under section 4.0.

The change order should not be delayed because of a dispute or complications associated with determining the recoverable additional cost component. These issues can be and should be addressed separately with the consultant within a reasonable time after change order execution.

Reason code 1C should not be used simply to avoid the process of pursuing the recovery of costs.

A change order may initially be coded and executed as something other than 1E, such as 1B or 1C. If it is determined later to include recoverable additional costs (see Section 4.2), it should be treated as a 1E change order. Currently, change order codes cannot be changed after execution. This does not, however, prohibit TxDOT from pursuing the recovery of additional costs, as appropriate.

Table 1 provides a summary of error and omission reason codes applicable to TxDOT consultant plans.

**Table 1 – Reason Codes Applicable to TxDOT Consultant Plans**

Reason Code	No Additional Cost	Recoverable Additional Cost	Responsibility cannot be identified and no basis for negotiating distribution of responsibility
1B Incorrect PS&E	X		
1E Delay/rework		X	
1C Other			X

Inconsistent or inappropriate identification of reason codes can affect statewide numbers that are subject to internal and external audits, and can affect how TxDOT is perceived in managing its work.

## **4.2 Recoverable Additional Cost**

All change order costs resulting from an error and omission are not automatically the responsibility of the consultant. Development of the change order cost may reveal two different cost categories. There can be costs that TxDOT would have incurred if the plans had been correct, and there can also be costs that TxDOT would not have incurred had the construction plans been correct, which are the additional costs to be recovered. In some cases, the entire change order may be considered additional cost.

Back-up documentation for a change order coded 1E should show the estimated additional cost to be recovered, as well as any documentation of revisions to the estimate after coordination with the consultant and taking into consideration:

- The level of services provided,
- The cost to TxDOT of the services provided and of the apparent error or omission,
- The value of the services provided,
- The consultant's overall performance,
- Other appropriate factors as referenced in 4.0, and
- Any negotiation or compromise with the consultant.

If a change order is identified as including recoverable additional cost to TxDOT (1E), the resulting additional cost must be pursued according to the procedures in section 8.0.

### ***4.2.1 PS&E Provided by a Donor or Local Government***

Sometimes PS&E is provided by a donor or local government. An error in that PS&E may result in a change order with costs to TxDOT that are in addition to the costs that would have been incurred if the PS&E had been correct. This is not a consultant contract issue because there is no direct contract between TxDOT and an engineering consultant. Rather, TxDOT's rights and responsibilities will be governed by the contract between TxDOT and the donor or local government, usually a donation, advance funding, or interlocal agreement. Therefore, if you have any questions about whether or how to proceed in recovering these additional costs, you should contact CSO.

### ***4.2.2 Actual Cost***

The additional cost to be recovered should represent actual cost to TxDOT as included in the change order. Engineering & contingency (E&C) are not to be included as a component of the amount to be recovered from the consultant.

## **4.3 When to Identify and Finalize Additional Costs**

During project construction there may be one or more change orders involving consultant errors and omissions. If additional costs are incurred, the documentation, evaluation of responsibility, and quantification of additional cost for each change order should occur while knowledgeable staff is available and accurate recollection of relevant information is possible. The TxDOT Design PM should be consulted, as needed.

Within a reasonable time after execution of each change order, the appropriate TxDOT staff should coordinate with the consultant to verify and finalize the additional cost to be recovered and complete any necessary documentation. If there is a genuine disagreement, TxDOT should look for a way to resolve the disagreement through

negotiation and compromise. Resolution may not be possible if the consultant does not agree with the identification of fault, its identified share of responsibility, or the determination of amount to be requested.

Upon agreement, refer to section 5.0 for timing considerations of the payment request. If it is determined that no agreement can be reached, TxDOT should identify a reasonable point to stop the current coordination effort and refer to section 5.0 for timing considerations of the payment request.

## **5.0 When to Request Payment**

The duration and complexity of construction projects varies considerably. The frequency and timing of possible error and omission change orders on a project also varies. The request for payment can occur by change order or after project completion. TxDOT should discuss timing with the consultant when finalizing additional costs for a change order, and consider its comments in determining when to request payment.

### **5.1 By Change Order**

At the time the additional cost is being finalized, subsequent to a change order, resolution may not be possible if the consultant does not agree with the identification of fault, its identified share of responsibility, or the determination of amount to be requested. Upon agreement or determination that no agreement can be reached, TxDOT should proceed with cost recovery procedures identified in section 8.0.

### **5.2 Upon Project Completion**

Upon completion of the construction project, the appropriate TxDOT staff should review change orders involving additional cost to be recovered. TxDOT staff should notify the consultant in writing of the project's construction completion, outline the errors and omissions, along with the additional costs as documented with the change orders. The notification should include references to any previous points of coordination and agreements (see Section 4.3). The letter should indicate the consultant has 30 calendar days to request a meeting to discuss any remaining questions or TxDOT will proceed with the formal request for payment.

#### **5.2.1 Meeting Requested**

If the consultant requests a meeting, the district should use this meeting, if appropriate, to consider any additional information or explanation that may affect the cost identified for recovery. The identified cost may or may not change, the consultant may be in agreement, or the consultant may disagree.

If there is a genuine disagreement, TxDOT should look for a way to resolve the disagreement through negotiation and compromise prior to initiating cost recovery procedures. Resolution may not be possible if the consultant does not agree with the identification of fault, its identified share of responsibility, or the determination of amount to be requested. Upon agreement or determination that no agreement can be reached, TxDOT should proceed with cost recovery procedures identified in section 8.0.

### **5.2.2 No Meeting Requested**

If no meeting is requested, TxDOT should proceed with cost recovery procedures identified in section 8.0.

### **5.3 In-kind Services**

TxDOT will not accept in-kind services as payment for additional costs owed.

## **6.0 Contractor Claims Following Construction**

After a project is constructed there is a possibility of a contractor claim that may involve a previous error and omission identified during construction. Depending on the situation, it's possible the consultant could be responsible for some or all of the cost of the contractor claim. If there is a possibility of consultant responsibility, upon notice of the contractor claim, the consultant must be notified of the situation and be given the opportunity to contribute any information to TxDOT that may be useful in addressing the contractor claim. The consultant will not be involved in any discussions or negotiations with the contractor during the claims process.

Upon settlement of all previous claims with the contractor, if additional costs are identified, TxDOT should consider the same factors as during construction in determining the consultant's level of responsibility. If additional costs are to be recovered, appropriate TxDOT staff should notify the consultant in writing of the final claims, outline the errors and omissions, along with the additional costs. The notification should include references to any previous points of coordination and preliminary agreements regarding the errors and omissions. The letter should indicate the consultant has 30 calendar days to request a meeting to discuss any remaining questions or TxDOT will proceed with the formal request for payment.

If a meeting is requested, refer to section 5.2.1. Otherwise, proceed with cost recovery procedures identified in section 8.0.

## **7.0 Post-Construction Design Error**

Sometimes a design error is not discovered until after the project is constructed and in use. The consultant remains responsible for the design after construction and after the engineering contract has terminated.

If a possible design error is identified after construction, TxDOT staff should notify CSO immediately for guidance in the event the statute of limitations may become a factor. Even if the consultant contract is still active, CSO should be contacted for guidance in these situations.

## **8.0 Cost Recovery Procedures**

If payment is being requested subsequent to a recent change order or for one or more change orders at the end of a project, coordination with the consultant should have already occurred to finalize the additional cost to be requested. For requests at the end of a project, if a related contractor claim is anticipated, refer to section 6.0. It may be preferable to postpone the request for payment of the amount identified to-date until all recoverable additional costs for the project have been determined.

The consultant may disagree with the determination of responsibility at the time of a change order, at project completion, or during the processing of a contractor claim after construction. If there is a genuine disagreement, TxDOT should look for a way to resolve the disagreement through negotiation and compromise prior to initiating cost recovery procedures. The consultant cannot request consideration by the Administration of the disagreement until after the district has sent the initial notification letter.

### **8.1 Initial Notification Letter**

The initial notification letter serves as the formal request for payment indicating the consultant's apparent liability for the identified costs. Appropriate TxDOT staff should prepare a certified letter for signature by the District Engineer or Division Director and provide a copy to the PEPS Division and CSO. The letter should include an outline of the errors and omissions, along with the additional costs, and references to any previous points of coordination and preliminary agreements. It's possible that both parties know the situation will be resolved after the first letter or that the consultant plans to disagree with a portion or all of the identified cost through the appropriate process.

The letter should also indicate the following:

- Within 30 calendar days of the date of the letter, a response is required with:
  - payment or
  - request for TxDOT Administration to consider whether TxDOT should pursue reimbursement for the identified error and omission. The request should include a detailed written explanation of disagreement. Upon receipt by my office (District Engineer or Division Director), the appropriate staff will initiate coordination with the Administration.
- If payment is not received, TxDOT will consider legal action.
- Specific instructions for how to remit payment. (See section 11.0.)

#### **8.1.1 Payment Received**

When payment is received, the payment should be processed according to the steps identified under section 11.0. If the consultant requests a Release and Settlement Agreement, refer to section 13.0.

#### **8.1.2 Request for Consideration by TxDOT Administration**

The Chief Engineer will review the disagreement as submitted through the PEPS Division Director. Upon request for the Administration's consideration, the district will contact the PEPS Division and submit a complete copy of the initial notification letter together with the consultant's written explanation of disagreement. At this time the district must also identify a district point of contact. The PEPS Division will coordinate directly with the district on any additional steps or submission of information, as requested by the PEPS Division Director.

### **8.1.3 No Response**

If a satisfactory response is not received within 30 days, contact the PEPS Division for further direction.

## **9.0 Consideration by TxDOT Administration**

Consideration by TxDOT Administration provides an opportunity for the disagreement to be reviewed outside the district. The number of steps to be taken will depend on the size and extent of the issues involved. Minor issues may be handled through the submission and review by the PEPS Division Director of information only. Others may involve a discussion of both sides by teleconference including the PEPS Division Director, district staff, and consultant staff. Larger issues may require one or more meetings with district and consultant staff. District staff will be responsible for direct coordination with the consultant.

After adequate information has been collected, the PEPS Division Director will submit a summary and recommendation to the Chief Engineer for review and decision.

### **9.1 Notification of Decision**

The PEPS Division will prepare and send a letter to the consultant with the Chief Engineer's decision. The district will be copied. If payment of a portion or the entire amount is required, the letter will also indicate the following:

- Within 30 calendar days of the date of the letter, a response is required with payment.
- If payment is not received, TxDOT will consider legal action.
- Specific instructions for how to remit payment. (See section 11.0.)

#### **9.1.1 Payment Received**

When payment is received, the payment should be processed according to the steps identified under section 11.0. If the consultant requests a Release and Settlement agreement, refer to section 13.0.

#### **9.1.2 No Response**

If a satisfactory response is not received within 30 days, contact the PEPS Division for further direction.

## **10.0 Statute of Limitations**

The statute of limitations is four years. The Attorney General's Office has four years from the time the consultant contract terminates to file suit against the consultant for recovery of costs. In a situation where timing may be a factor, CSO should be contacted for specific guidance.

## **11.0 Remittance of Payment**

Remittance of payment is to be handled in accordance with the [Revenue Accounting Manual, Ch. 2, Sect. 11, "Remittance of Payment"](#).

## **12.0 Credit of Recovered Funds**

Credit of recovered funds is to be handled in accordance with the [Revenue Accounting Manual, Ch. 2, Sect. 11, "Proper Credit of Recovered Funds"](#).

Note: Regarding the JV220 Special Instructions, if a non-federal special funding indicator "SFI" has been established by change order for the additional construction expense resulting from the error and omission, the JV220 must be posted to that SFI in order to avoid crediting the Federal Highway Administration (FHWA) for expenses in which they did not participate.

Once a consultant has paid for an error and omission, aside from the inconvenience, the additional cost to TxDOT no longer exists. Future reference to an error and omission as having cost TxDOT money is no longer correct. The consultant has paid the debt.

## **13.0 Settlement Agreement**

If not requested by the consultant, it is not necessary to execute a settlement agreement. If a consultant requests a settlement agreement, there is a standard Release and Settlement agreement that can be prepared for execution upon receipt of the payment.

The Release and Settlement agreement may be downloaded from the CSO website. (See Standard Contracts, Other Contracts.) Any questions about completing the agreement should be directed to CSO. It is TxDOT's responsibility and not the consultant's to fill out the details of the agreement.

Under the Background section, the "dispute" is the error and omission and additional cost that the consultant owes TxDOT. It is important that the dispute description be very narrowly focused so that the consultant is not released from any more liability than the specific issue being addressed. For assistance, contact CSO.

### **13.1 Review Requirements**

The Release and Settlement agreement must be reviewed by CSO before submitting to the consultant for signature. If the consultant requests any changes, they must be approved by CSO.

### **13.2 Signature Authority**

The signature authority for the Release and Settlement agreement is the same as for the contract. The consultant should sign two original agreements. The district should then forward the two original agreements to the PEPS Division with an explanatory memo confirming CSO's review, for appropriate signature.

Upon execution, the PEPS Division will keep a copy, forward one original to the district and forward one original to CSO. Upon receipt of the executed agreement by the district, they will retain a copy for their file and return the original to the consultant.

#### **14.0 TxDOT Responsibility**

It is TxDOT's responsibility to identify errors and omissions and fairly evaluate the responsibility for additional cost when applicable. There are steps where judgment is required and the exercise of good judgment is expected. TxDOT is responsible for spending large sums for engineering and construction services. This responsibility includes the recovery of appropriate costs where they are clearly due. It is the responsibility of TxDOT staff to ensure that TxDOT's business practices are professional, fair, equitable, and reasonable.