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Ethics Role in Risk Management

2024 PEPS Conference

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Presentation Topics

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Risk Management and Behavior

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TxDOT's E&O Process - District Perspectives

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Turning a **Negative** Into a **Positive**:
A Case Study

Risk Management and Behavior



Odd Couple

- Ethics
- People/Roles
- Stewardship
- Risk Management
- Protect the General Public

What is the number one risk to our projects?

People | Communication | Conflict



PEOPLE COMMUNICATION CONFLICT

is the number one risk to our project success.

CONFLICT in the workplace costs billions each year in the US

2.8 hours per week

\$37,300 → **\$56,900**

base salary in 2008

base salary in 2024

\$356B → **\$548B**

2008

2024

People Are Difficult

**GREAT
WITH
VISION.**

Terrible with
patience.

Hard on
people.

**GREAT
WITH
TECHNICAL.**

Terrible with
sharing.

Don't need
people.

**GREAT
WITH
PEOPLE.**

Terrible with
details.

Hard to
focus.

**GREAT
WITH
DETAIL.**

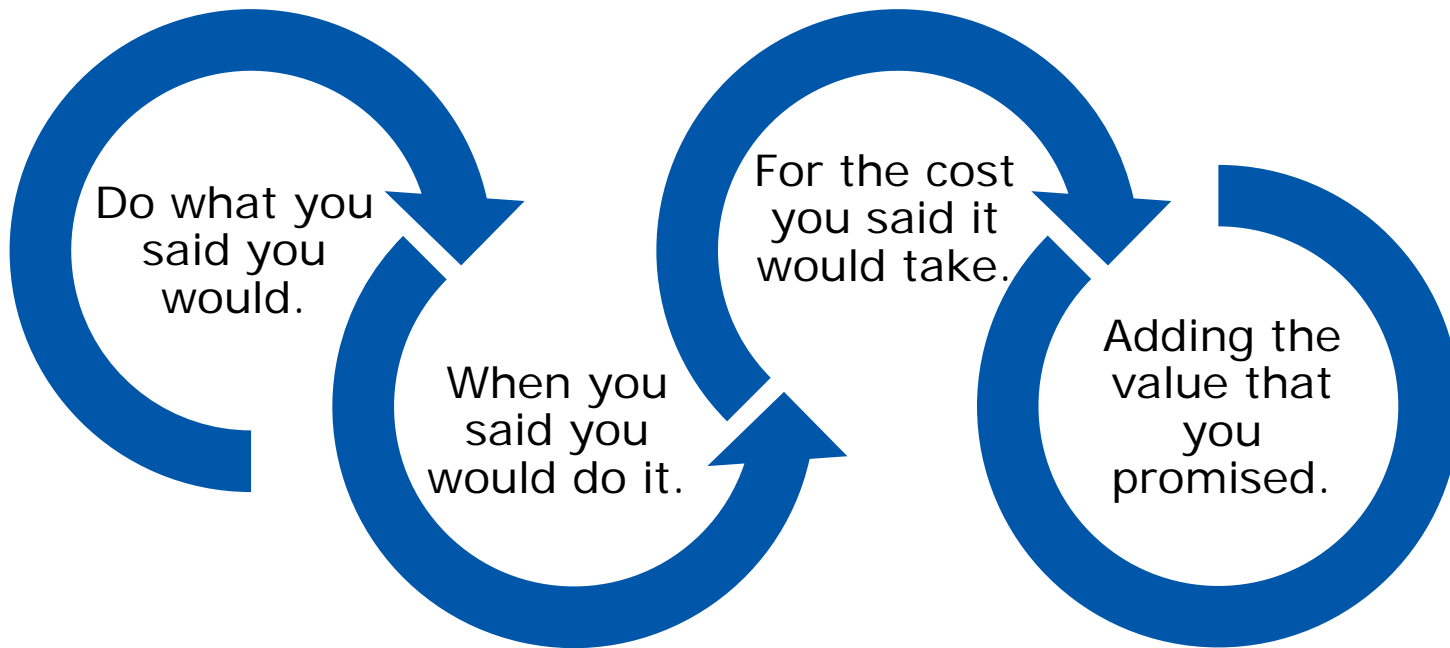
Terrible with
risk/growth.

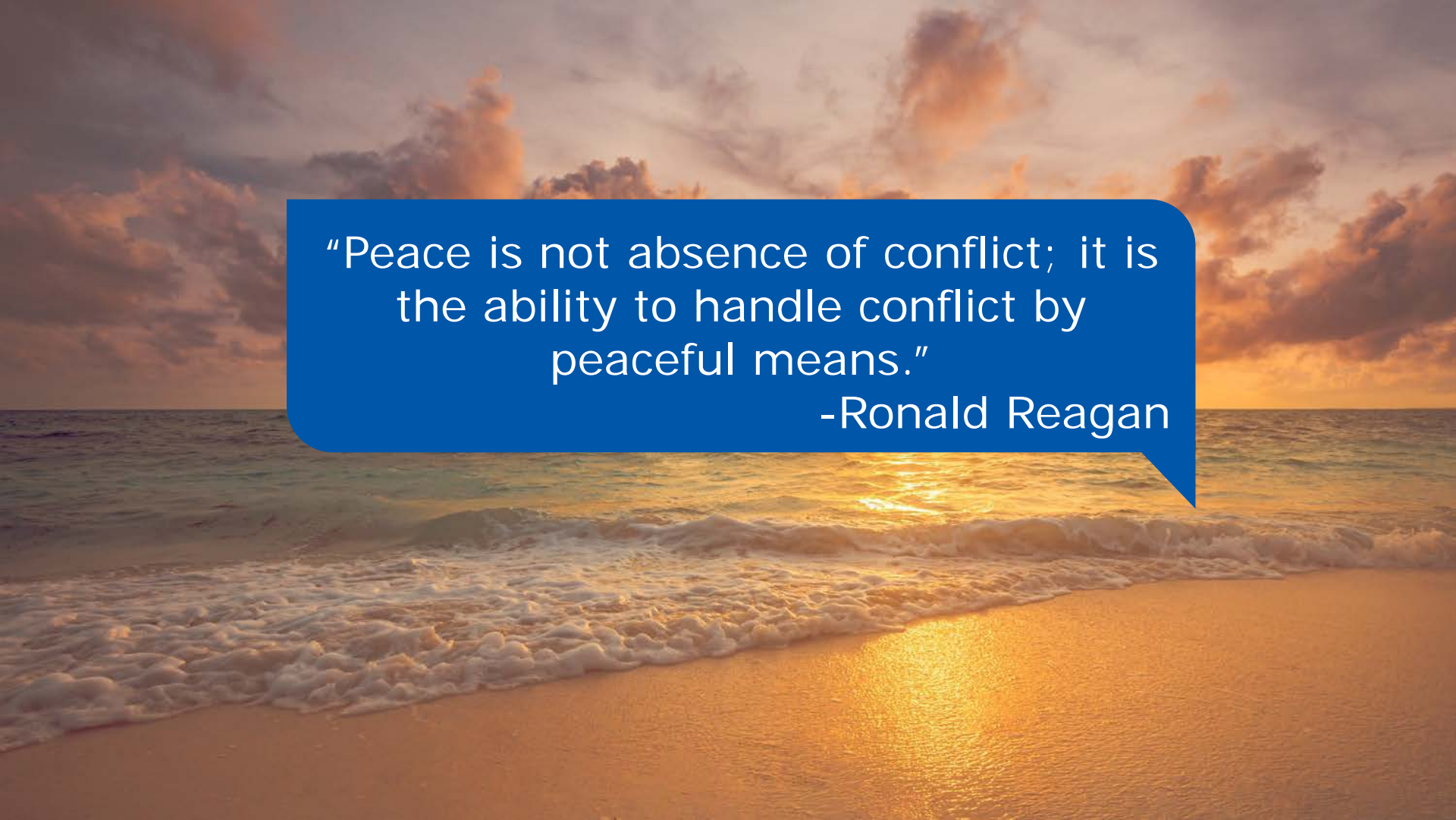
Hard to
move.

What does stewardship of resources look like in our daily work?



A Simple Stewardship Summary



A sunset over the ocean with a blue speech bubble containing a quote. The sky is filled with orange and yellow clouds, and the sun is low on the horizon, reflecting on the water. The waves are breaking on a sandy beach.

“Peace is not absence of conflict; it is
the ability to handle conflict by
peaceful means.”

-Ronald Reagan

Risk Management

RISK DEFINITION:

Threats to business continuity, purpose or outcome.

Top Risks

- Communication – People
- Scope – Understanding between people
- Schedule – Time commitment between people
- Fee – Value exchange between people

Risk Management is a process to:

- Understand risk
- Isolate risk
- Manage/control risk

Ethics Impact Risk Management

EARLY

From Lead to Interview

- Client terms
- Objective – Scope



Municipal
Building Rehab

MIDDLE

From Negotiations to Kickoff

- Contract terms
- Schedule, scope and fee



UPRR Utility
Contract

END


From Negotiations to Kickoff

- Project Work Plan
- QC/QA – Continuous Quality Improvement



Unrealistic
Schedule

You will have to discuss the hard things at some point on a project.

A man with a beard, wearing a dark blue suit jacket over a light blue shirt, is sitting at a white desk. He is looking down at a black smartphone in his hands with a stressed expression, his right hand resting on his forehead. To his right is an open silver laptop. In front of him on the desk are some papers and a pen. The background shows a modern office environment with large windows and glass partitions.

“Clear is kind.
Unclear is unkind.”
-Brené Brown

TxDOT's E&O Process - District Perspectives

Change Orders

- Follow standard procedures for completing Change Orders
- When an apparent error and omission is identified that may result in a change order notify, the provider and give them an opportunity to assist in addressing the problem
- Before selecting a change order code, such as **1B or 1E**, consider all appropriate factors

Table 9-1: Reason Codes Applicable to TxDOT Provider 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

Recoverable Additional Costs

Change order costs resulting from an error and omission are not automatically the responsibility of the provider

Development of the change order cost may reveal two different cost categories:

- Costs TxDOT would have incurred if plans had been correct
- Costs TxDOT would not have incurred had construction plans been correct

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



Solving the Problem

- TxDOT must:
 - Notify consultant of the problem
 - Allow consultant to be part of the process
- Start when the problem occurs, not at Change Order stage

Including the consultant is a requirement in problem-solving.

Consultant should have the opportunity to:

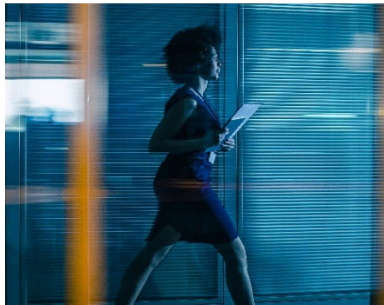
Understand
what the error
or omission is

Assist in
addressing
the problem

Address the
issue

Share their
perspective on
what led to
the error or
omission

E&O Coordinators



Each District is required to have an E&O Coordinator



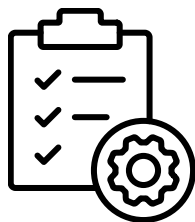
Duties include:

- Updating PEPS tracking system
- Coordinating with Finance Division and PEPS
- Assembling documentation from District Construction Office, Area Office, and Design PM
- Assuring the District notifies the Consultant of the Final Resolution

Chapter 9 Errors and Omissions



TxDOT
Errors and
Omissions
Policy



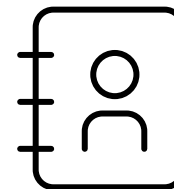
Errors and
Omissions
Procedure



Appeals
Process



Collection
Procedure
and
Settlement
Agreement



Division
Contact
Information

Errors and Omissions Guidance External Webpage

- PEPS Landing Page on TxDOT Website:
<https://www.txdot.gov/business/peps.html>
- Resources Page:
<https://www.txdot.gov/business/peps/resources.html>
- Errors and Omissions Guidance:
<https://www.txdot.gov/content/dam/docs/business/peps/resources/errors-omissions.pdf>

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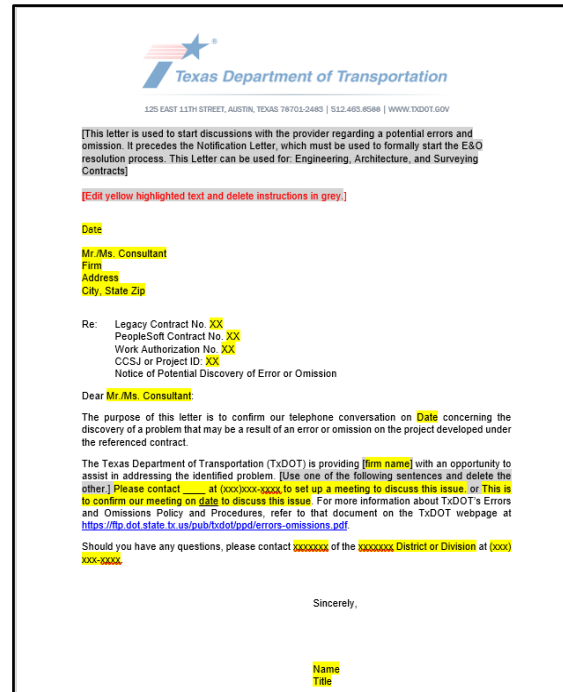
E&O Letter Templates


Notice of Potential E&O

Issues Resolved

Notification of E&O

Request for Payment



 Texas Department of Transportation

1205 EAST 11TH STREET, AUSTIN, TEXAS 78701-2443 | 512.463.8588 | WWW.TxDOT.GOV

[This letter is used to start discussions with the provider regarding a potential errors and omission. It precedes the Notification Letter, which must be used to formally start the E&O resolution process. This Letter can be used for: Engineering, Architecture, and Surveying Contracts]

[Edit yellow highlighted text and delete instructions in grey.]

Date

Mr./Ms. Consultant

Firm

Address

City, State Zip

Re: Legacy Contract No. XX
PeopleSoft Contract No. XX
Work Authorization No. XX
CCSJ or Project ID: XX
Notice of Potential Discovery of Error or Omission

Dear Mr./Ms. Consultant:

The purpose of this letter is to confirm our telephone conversation on Date concerning the discovery of a problem that may be a result of an error or omission on the project developed under the referenced contract.

The Texas Department of Transportation (TxDOT) is providing [firm name] with an opportunity to assist in addressing the identified problem. [Use one of the following sentences and delete the other.] Please contact [] at (xxx)xxx-xxxx to set up a meeting to discuss this issue. or This is to confirm our meeting on date to discuss this issue. For more information about TxDOT's Errors and Omissions Policy and Procedures, refer to that document on the TxDOT webpage at <https://ftp.dot.state.tx.us/pub/txdot/ppd/errors-omissions.pdf>.

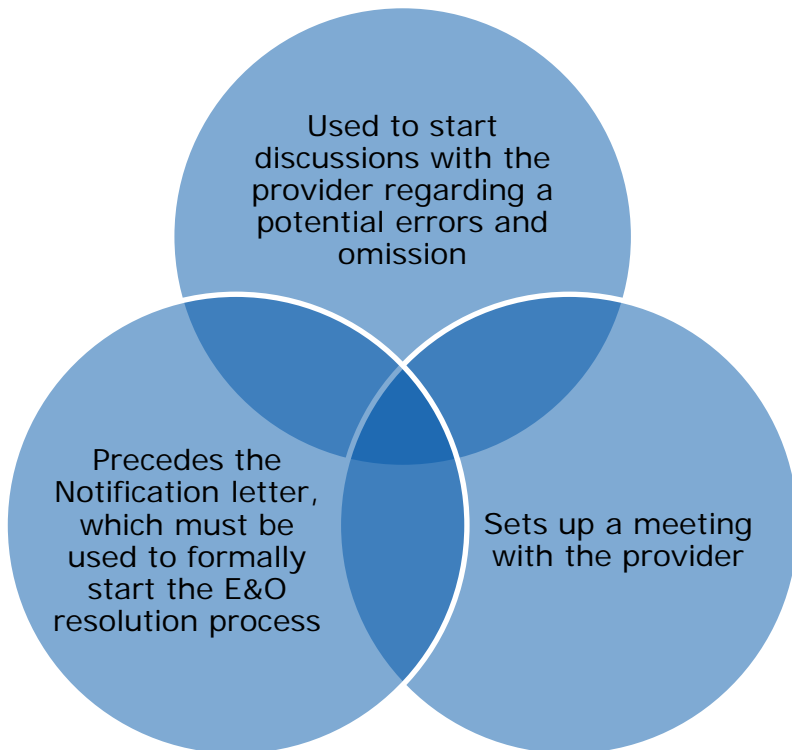
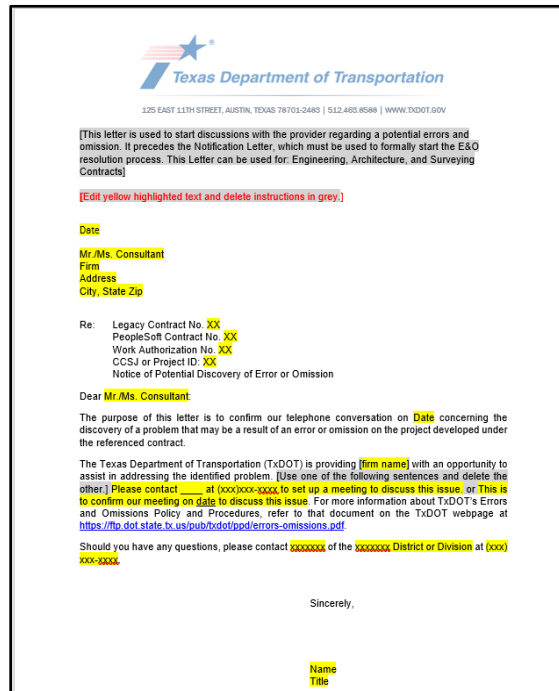
Should you have any questions, please contact xxxxxx of the xxxxxx District or Division at (xxx) xxx-xxxx.


Sincerely,

Name

Title

Notice of Potential E&O Letter

 Texas Department of Transportation

125 EAST 11TH STREET, AUSTIN, TEXAS 78701-2485 | 512.465.8588 | WWW.TxDOT.GOV

[This letter is used to start discussions with the provider regarding a potential errors and omission. It precedes the Notification Letter, which must be used to formally start the E&O resolution process. This Letter can be used for: Engineering, Architecture, and Surveying Contracts]

[Edit yellow highlighted text and delete instructions in grey.]

Date

Mr./Ms. Consultant
Firm
Address
City, State Zip

Re: Legacy Contract No. XX
PeopleSoft Contract No. XX
Work Authorization No. XX
CCSJ or Project ID: XX
Notice of Potential Discovery of Error or Omission

Dear Mr./Ms. Consultant:

The purpose of this letter is to confirm our telephone conversation on **Date** concerning the discovery of a problem that may be a result of an error or omission on the project developed under the referenced contract.

The Texas Department of Transportation (TxDOT) is providing **[firm name]** with an opportunity to assist in addressing the identified problem. [Use one of the following sentences and delete the other.] Please contact **_____** at **(xxx)xxx-xxxx**, to set up a meeting to discuss this issue, or This is to confirm our meeting on **date** to discuss this issue. For more information about TxDOT's Errors and Omissions Policy and Procedures, refer to that document on the TxDOT webpage at <https://ftp.dot.state.tx.us/pub/txdot/ippd/errors-omissions.pdf>.

Should you have any questions, please contact **xxxxxxx** of the **xxxxxxx** District or Division at **(xxx) xxx-xxxx**.

Sincerely,

Name
Title

Issue Resolved Letter




Sent after the Notice of Potential E&O Letter and after meeting with provider



Used to notify the provider that the E&O has been reviewed by the D/D E&O committee and the issue is resolved with no payment due

- The discussions of the issues have occurred
- The error may have been resolved with minimal or no cost
- The error may have been a shared issue
- No further action will be taken on the issue


125 EAST 11TH STREET, AUSTIN, TEXAS 78701-2485 | 512.465.8548 | WWW.TXDOT.GOV

[This letter is sent after the Notice of Potential Discovery of Error or Omission and after the consultant meeting with the provider. It is used by the District/Division to notify the provider that a potential error or omission has been reviewed by the District/Division E&O Committee. It has been determined to have no provider liability. This Letter can be used for: Engineering, Architecture, and Surveying Contracts.]

On date, Mr./Ms. Consultant notified XXXXXX District or Division of a potential error or omission and provided your firm with the opportunity to assist the Texas Department of Transportation (TxDOT) to address the identified problem. If no discussions have been held to address the E&O, delete the next sentence. If discussions have been held to address the E&O, delete the next sentence. If discussions have been held to address the E&O, delete the next sentence. If discussions have been held to address the E&O, delete the next sentence.

The purpose of this letter is to notify you that the potential error or omission identified for the referenced contract has been reviewed by the XXXXXX District or Division Errors and Omission Committee. The Committee has determined that the issue is resolved and that the reimbursable amount due to TxDOT is zero. No further action will be taken on this issue.

Please confirm your receipt of this letter. Should you have any questions, please contact XXXXXX of the XXXXXX District or Division at (xxx) xxx-xxxx.

Sincerely,

Name
Title

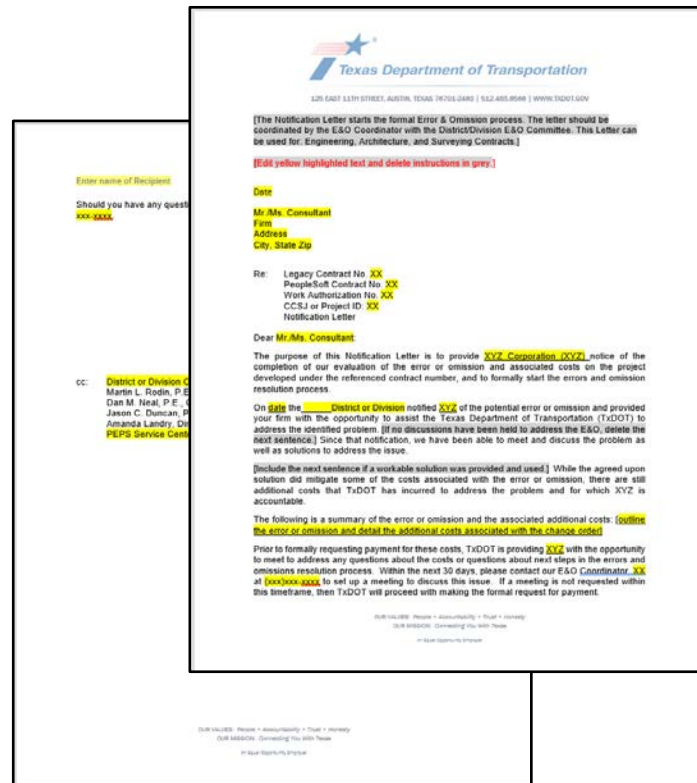


Notification Letter

- Starts the formal E&O process
- Coordinated by the E&O Coordinator and the D/D E&O Committee
- Summarizes E&O and gives the provider 30 days to respond

Consultant Perspective

- Meet with the District
- Discuss what led to the error
- Discuss what has been done to minimize the impact



Request for Payment Letter

- Formal request for payment after Notification Letter and any meetings with provider
- Summarizes E&O and request \$ payment
- Provides process for appeal
- Signed by DE or DD
- Payment timeline

Errors and Omissions Procedures

Once a 1E Error and Omission has been coded, the following steps below should be taken to collect the amount owed by the contractor/consultant. Once the reimbursement is received, the expenditures are credited according to the Form 1234 (JV220) and will be posted to the budget and project referenced on the form. When working with your FIN AP SiteMgr contact please reference that these are not overpayments and therefore do not need to be entered into SiteMgr.

District Functions

- 1) Review with and gain agreement from the contractor/consultant for the amount to be repaid.
- 2) Work with FIN Accounts Payable (Central) SiteMgr contacts and then submit the **completed and signed** Form 1234 (JV220) to FIN-Revenue Management at FIN_ACCTREC@txdot.gov. FIN Accounts Receivable will setup a receivable and return to you a receivable number (Item ID) to be referenced on any collection letters sent. Then contractor/consultant should also reference the receivable number on any payment submitted.
- 3) Send a letter or invoice notifying the Contractor/Consultant to pay the balance owed to the Department within 30 days.
- 4) After the 30th day of the initial notification, send a Demand letter stating to make payment within 30 days.
- 5) After the 60th day of the initial notification send a Final Demand letter notifying the contractor/consultant to respond and send payment within 10 days.
- 6) If there is no response to the final demand letter, send the notification, demand letters, and supporting documentation to FIN_ACCTREC@txdot.gov. FIN will coordinate with the OAG for further collection effort.

Verify correct address before mailing. Send all letters via certified mail requesting address correction. FIN-Revenue Management has template letters available upon request and are posted on the FIN Crossroads page under instructions and reference.

Appeals Process

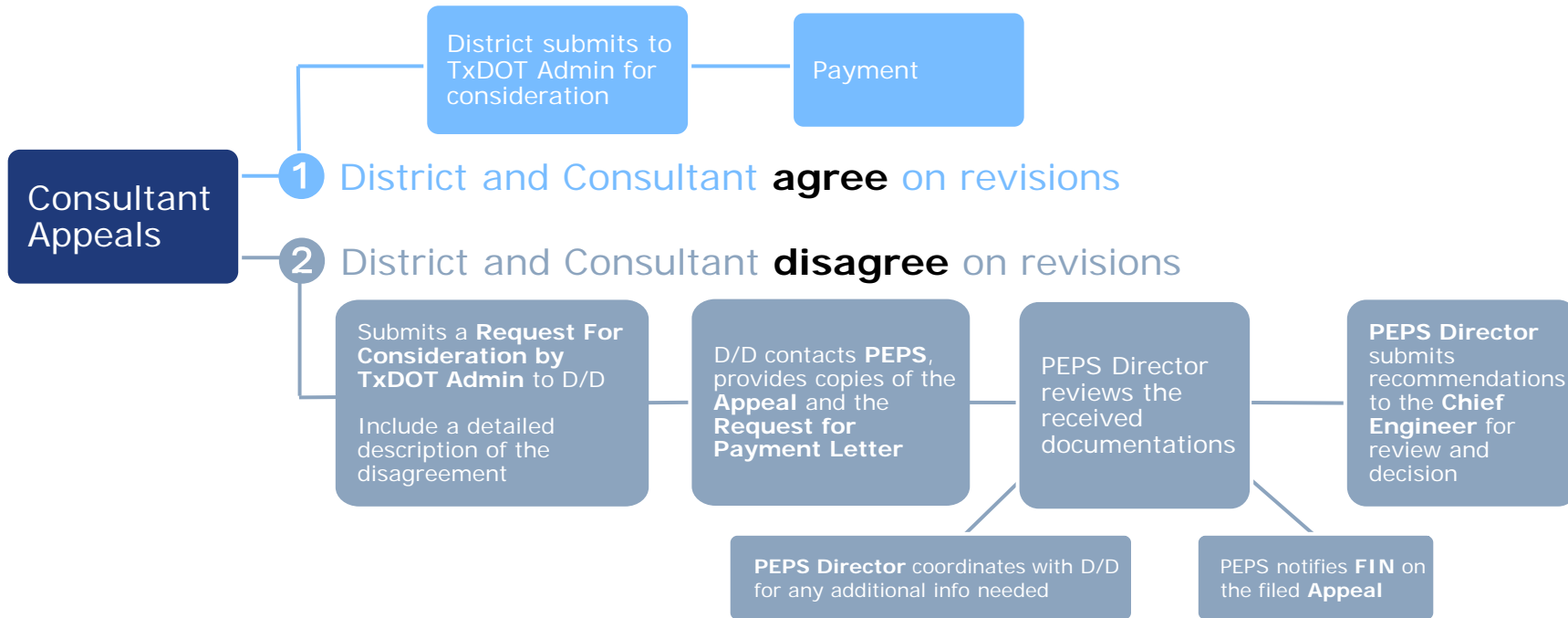
Once the provider receives the Request for Payment letter, they have the option to:

- Pay the requested amount for the error or omission, or
- Submit a written request for consideration by TxDOT Administration to the District Engineer or Division Director.

The written request must include a detailed explanation of the disagreement.

The District/Division must contact the PEPS Division, provide a copy of the Appeal, and the Request for Payment letter.

Appeals Process



Appeals Process



With Chief Engineer approval, the PEPS Division will prepare and send a Decision Letter to the provider, D/D, and FIN.



If payment is required, the letter will include:

- Specific instructions for how to remit payment, within 30 calendar days of the Decision Letter
- If payment is not received, TxDOT will consider legal action.

Payment and Agreements

- Payment remitted to:

*TxDOT, Attn. Accounts Receivable
Item ID: XX
P.O. Box 149001,
Austin, TX 78714-9001*

- Once payment received:
 - The E&O is settled
 - The FIN ensures funds are directed to the project
- Release and Settlement Agreements
 - are not mandatory but will be executed if the consultant requests it
 - Contracts Services Division (CSD) assists in the development of release and settlement agreements

BEST PRACTICE

The release for the E&O must be narrowly focused to that the consultant is not released from any more liability than the specific dispute being addressed.



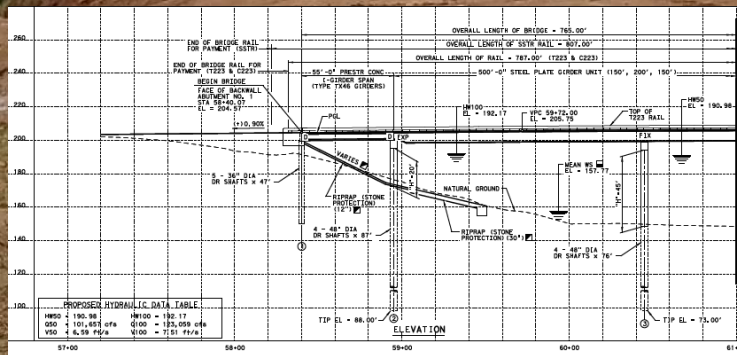
E&O Case Study

US 90



US 90 Project Info

- US 90 at the Colorado River, Colorado County
- Construction Completed 2023
- 765' long, 6-span Structure
 - Concrete i-girders
 - 500', 3-span steel span over main channel





Approach to E&O Process (Ethical & Professional)

Understand the State's E&O Process & Policy

- Own – Ethical Responsibility
- Resolve
- Open communication
 - Internally (team, leadership, insurance)
 - Externally between parties
- Manage Costs/Revisions
- Fair Negotiation of Placement of Responsibility

US 90 Case Study

Notification Phase

Investigative Phase

Decision Phase

Claim Phase

- E-mail
- Phone call
- Meeting
- Notification of Potential E&O Letter

Consultant Perspective

• Don't Panic

• Promote effective, open communication.

• Meet with the District

• Be a part of the solution

US 90 Case Study

Notification Phase

Investigative Phase

Decision Phase

Claim Phase

Notification of Potential E&O Best Practices

Consultant Perspective

- Separate engineering from formal claim process
- PM & design team handled the initial phase
 - Clear identification of problem/issue
 - Open dialogue with team and state
 - No assignment of blame
 - Concentrate on corrective action first
- Senior Leadership supports the process
- Professional liability insurance

TxDOT Perspective

- Follow chain of command
 - PM, AE's, Directors
- Follow District established protocols
- State and Consultant working hand-in-hand

US 90 Case Study

Notification Phase

Investigative Phase

Decision Phase

Claim Phase

Speed is Key

- Days matter
- Delays for the contractor can be costly
- Ask about construction activities and schedule. The more you know the better.

Involve the Right People

- Original designers
- Experienced staff

**Design details
resulted in steel
girder fabrication
issue.**

US 90 Case Study

Notification Phase

Investigative Phase

Decision Phase

Claim Phase

Alternative Development & Review

- Identified 4 **viable** options for path forward
- Coordinated with 3rd party firms/experts
- Sought contractor input
- Options Outlined in an Engineering Technical Memo
- Provided appropriate amount of info for state to make an informed decision
- Key components: schedule, costs, advantages/disadvantages

LESSONS LEARNED

Consultant must be responsive with viable solutions.

Districts should be "open" to options to achieve the right resolution.

US 90 Case Study

Notification Phase

Investigative Phase

Decision Phase

Claim Phase

Plan Updates

- Virtual meeting with key staff to discuss options
- TxDOT makes the ultimate decision on path forward
- Plans modified by Design Team
- Expedited QA/QC process and State review
- Change order drafted by Contractor and TxDOT
- Consultant reviews Change Order including pricing
- Additional changes as necessary

US 90 Case Study

Notification Phase

Investigative Phase

Decision Phase

Claim Phase

Request for Payment Letter

- Often occurs well after problem
- For US 90 received on 11/2021 towards end of construction
- 30-day appeal

US 90 Case Study

Notification Phase

Investigative Phase

Decision Phase

Claim Phase

Fair Negotiation of Placement of Responsibility

- Include the Right People – Decision Makers
- Insurance / Legal Involvement
- Our Philosophy:
*It's **OK** to own your mistakes*
- Know the E&O Process & Procedures
 - Both STV and YKM received guidance from others
- Settlement of Shared Responsibility
 - No written formula on how to do this.
 - **Preparation** is key
- Coordination w/ Administration
- Revised Request for Payment Letter
- Release and Payment



US 90 Case Study Summary

Turning a **Negative**
Into a **Positive**