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Department of Transportation

RESOLUTION OF ERRORS, OMISSIONS, AND CONTRACTUAL BREACHES BY PROFESSIONAL ENGINEERS ON DEPARTMENT CONTRACTS

AUTHORITY:

Sections 20.23 (3)(a), and 334.048(3), Florida Statutes (F.S.)

REFERENCES:

Procedure No. 350-060-303: Accounts Receivable

Procedure No. 350-080-300: Receipt Processing

Procedure No. 700-000-000: Construction Project Administration Manual (CPAM)

Section 95.11(4)(a), 287.055, Subsections 20.23(3)(a), 287.057, 334.048(3), 337.015(3), and 471.033(1)(g), Florida Statutes (F.S.).

Rule 61G15-18.011(1), Definitions. Rule 61G15-19.001(4), Grounds for Disciplinary Proceedings. Rule 61G15-30.002 (1), Definitions Common to All Engineer's Responsibility Rules, Florida Administrative Code.

Federal Aid Policy Guide 23, Section 635.120, Code of Federal Regulations.

STATEMENT OF POLICY:

To establish a procedure to identify, investigate, and document errors, omissions, and contractual breaches in consultant-prepared construction plans and contract documents, or in the performance of consultant construction engineering and inspection services on Department contracts; to determine and document the extent of consultant responsibility

for the cost of plan revisions and certain added construction costs or claims resulting from errors, omissions, and contractual breaches; and to establish a process to pursue recovery of certain added project costs.

SCOPE:

The Department's Director of Transportation Development (DTD), Director of Transportation Operations (DTO), District Consultant Project Management Engineer (DCPME), District Design Engineer (DDE), Design Project Manager (DPM), Errors and Omissions Liaison; District Construction Engineer (DCE), Construction Project Manager (CPM), Construction Engineering and Inspection (CEI) Personnel; and the Office of Comptroller-General Accounting Office (OOC-GAO), and Office of General Counsel (OGC) Legal Counsel are the principal users of this procedure.

DEFINITIONS:

Avoidability Code: Construction changes are designated as Unavoidable and Avoidable. This procedure applies only to changes designated Avoidable 1 – Production Consultant, (i.e. Design (Engineer of Record) Consultant), and Avoidable 3 – Construction Engineering and Inspection Consultant.

Chief Engineer: The Department Central Office employee whose duties include overseeing Engineering operations.

Construction Change Tracking System (CCTS): A function within the SiteManager Construction Management System that contains information on all contract changes such as type of change (Supplemental Agreements (SA), Work Orders (WO), Time Extensions) cost of change, responsible party and premium cost.

Construction Engineering and Inspection (CEI): Personnel, whether consultant or Department employees, providing construction engineering and inspection services.

Construction Plans and Contract Documents: Consultant-prepared plans and contract documents as contracted by the Department and defined in the professional services agreement.

Construction Project Manager (CPM): The Department employee whose duties include managing consultant CEI contracts.

Consultant: Engineering entity (Either the EOR or CCEI) under contract with the Department to provide engineering services.

Consultant CEI (CCEI): A consulting engineering firm, holding a certificate of qualification, and retained by the Department to perform construction engineering and

inspection services on a project or a series of projects. For this procedure only, all references to CCEI include the appropriate coordination with the CPM.

Consultant Project Administrator: The Consultant's administrator in charge of more than one aspect of the construction or administration of the project CCEI.

Contractual Breach: The failure of the EOR or CCEI to perform or comply with one or more aspects of its contractual obligations.

Contract Documents: The term "Contract Documents" includes: Advertisement for Proposal, Proposal, Certification as to Publication and Notice of Advertisement for Proposal, Appointment of Agent by Nonresident Contractors, Noncollusion Affidavit, Warranty Concerning Solicitation of the Contract by Others, Resolution of Award of Contract, Executed Form of Contract, Performance Bond and Payment Bond, Standard Specifications, Supplemental Specifications, Special Provisions, plans, Addenda, or other information mailed or otherwise transmitted to the prospective bidders prior to the receipt of bids, Work Orders, and Supplemental Agreements, all of which are to be treated as one instrument whether or not set forth at length in the form of contract.

Contractual Obligation: The legal responsibility to satisfy the terms and conditions of the professional consultant contract.

Department CEI: The Department employees who perform construction engineering and inspection services.

Design Project Manager (DPM): The Department employee whose duties include managing consultant design contracts.

Director of Transportation Development (DTD): The Department employee whose duties include direction of major functional responsibilities for Transportation Development within a District.

Director of Transportation Operations (DTO): The Department employee whose duties include direction of major functional responsibilities for Operations within a District.

Director Group: The group of people who meet to discuss resolution of Department claims against consultants. Refer to Sections 12.4 and 23.4 for more information.

District Construction Engineer (DCE): The Department employee whose duties include direction of major functional responsibilities within the District Office of Construction.

District Consultant Project Management Engineer (DCPME) The Department employee who is a professional engineer with direct supervisory responsibility for the DPM managing consultant-designed projects.

District Design Engineer (DDE): The Department employee whose duties include direction of major functional responsibilities within the District Office of Design.

Early Notification Letter: A document which initiates the Errors and Omissions resolution process. It notifies the consultant of a design issue or CEI issue, and it advises the consultant to keep track of time for potential compensation.

Engineer of Record (EOR): As defined in *Rule 61G15-30.002 (1), Florida Administrative Code*: “A Florida professional engineer who is in responsible charge for the preparation, signing, dating, sealing and issuing of any engineering document(s) for any engineering service or creative work.” For this procedure only, the EOR is a professional consulting engineer retained by the Department to provide said services. In the Resolution Tracking Module, the EOR is referred to as the Production Consultant.

Engineer’s Estimate: The estimate of the actual cost and time impacts to the Contractor caused by a contract change without regard to whose fault the contract change is or the percentage of those cost and time impacts the Contractor may be entitled to recover. For each contract change issue, the *Engineer’s Estimate* will show the pay items involved along with quantities, unit prices, any time impacts, and the basis for the estimate.

Entitlement Analysis: A document, signed and dated by the preparing Project Administrator or Engineer, containing statements as to each issue of a contract change, detailing the reasons (using specific contract references when appropriate) why the Contractor is, or is not, entitled to recover the time and cost impacts calculated for that contract change issue in the *Engineer’s Estimate*. If some of the time or cost impacts determined in the *Engineer’s Estimate* are the responsibility of the contractor, the *Entitlement Analysis* for each issue should also include a numeric percentage of those cost and time impacts for which the reasons previously detailed justify the Contractor’s entitlement. Each contract change issue should include all the pay items associated with that issue.

Errors and Omissions (E&O): Acts of negligence committed by the EOR in the performance of engineering design service or creative work, and acts of negligence committed by CCEI in the performance of construction engineering inspection services.

Errors and Omissions Liaison: The appointed District employee who is responsible for monitoring status of the recovery effort for all District E&O issues.

Errors and Omissions Notification Letter: A document which advises the consultant of the Department’s intent to correct project issues by Supplemental Agreement/Work Order (SA/WO) with the construction contractor. The letter shall state the Department’s initial assessment of the project issues (premium costs, contract time and/or money, EOR responsibility).

Negligence: As defined in *Rule 61G15-19.001(4), Florida Administrative Code*: “A professional engineer shall not be negligent in the practice of engineering. The term negligence set forth in *Section 471.033(1) (g), F.S.*, is herein defined as the failure by a

professional engineer to utilize due care in performing in an engineering capacity or failing to have due regard for acceptable standards of engineering principles.”

Office of the General Counsel (OGC): Department legal office.

Office of the Comptroller (OOC-GAO)-General Accounting Office: The Department’s General Accounting Office within the Office of the Comptroller.

Premium Costs: The additional cost of a contract change that would not have been incurred if the work had been included in the original contract. More specifically, premium costs are dollar amounts paid for non-value added work. Delays, inefficiencies, rework, or extra work as shown below, other than those caused by the contractor and/or the subcontractors or suppliers, will be considered as non-value added work. Non-value added work can occur in three distinct situations:

- 1 Work delays or inefficiencies. In this situation, the premium costs are the total delay/inefficiency damages paid to the contractor.
- 2 Rework. The premium costs are the dollar amount of the original items of work that have to be removed and the costs to remove these items.
- 3 Extra work. In this situation, the premium costs are computed as the net difference between the final agreed prices paid to the contractor and the Engineer’s Estimate—what the cost would have been had the extra work been included in the original bid at letting.

Premium costs associated with EOR and CCEI Errors and Omissions shall be Federal-aid Non-Participating.

Premium Costs Demand Letter: A letter to the EOR or CCEI demanding payment of E&O premium costs.

Project Suite Enterprise Edition (PSEE): A web-based Enterprise Application developed for project management.

Resolution Tracking Module (RTM): A module of PSEE which provides auditable process information about the resolution of project E&O issues.

Responsible Charge: As defined in *Rule 61G15-18.011(1), Florida Administrative Code*: “Responsible Charge” shall mean that degree of control an engineer is required to maintain over engineering decisions made personally or by others over which the engineer exercises supervisory direction and control authority.”

Services In Kind: Services provided by a consultant, in lieu of money, as restitution for damages caused by Errors and Omissions.

Value-Added Work: All work that adds value to the project.

GENERAL:

The Department employs professional consulting engineers to provide design engineering and construction engineering and inspection services. While consultants are accountable for the technical accuracy and quality of their work, mistakes may occur that result in substandard work products as defined in **Section 337.015(3), F.S.**, resulting in a claim against the consultant. Consultant-prepared construction plans and contract documents may contain errors or omissions; as a result, cost and time overruns may occur on a construction project. Cost and time overruns may also occur on a construction project because of a breach of the consultant CEI contract.

When consultant errors or omissions, or contractual breaches cause added project costs the Department shall evaluate whether to prosecute recovery of these added project costs. At an appropriate time the Department may utilize the Office of the General Counsel to assist with prosecuting the recovery of these costs. For the purpose of this procedure only, "errors, omissions, and contractual breaches" shall be collectively referred to as "Errors and Omissions."

To ensure compliance with 337.015(3), F.S, the Department shall vigorously pursue recovery of incurred construction Premium Costs which are considered to be due to consultant E&O. Recovery of undisputed E&O Premium Costs shall be pursued regardless of dollar amount. The decision to pursue recovery of debatable E&O Premium Costs shall be based on a Benefit/Cost (B/C) analysis. [**Errors and Omissions – Benefit/Cost Analysis Evaluation Guidelines**](#) have been developed for use in these cases.

The Project Manager (DPM for EOR E&O, and CPM for CCEI E&O) shall establish and maintain a project file to record all information related to the project E&O.

Federal-aid participation in all changes to the Department's construction contracts shall be determined as required by the **Federal Aid Policy Guide 23, Section 635.120, Code of Federal Regulations**.

TRAINING:

The Production Support Office, with assistance from the State Construction Office and the Office of General Counsel, shall prepare and deliver training in the use of this procedure on an as-needed basis. The Department will include the consultant community in the target audience.

FORMS:

This procedure requires use of the following forms:

- APPENDIX C1: Early Notification Letter - Design
- APPENDIX C2: Early Notification Letter - CCEI

- APPENDIX D1: Errors and Omissions Notification Letter - Design
- APPENDIX D2: Errors and Omissions Notification Letter - CCEI

- APPENDIX E1: Premium Costs Demand Letter - Design
- APPENDIX E2: Premium Costs Demand Letter - CCEI

- APPENDIX F: Notice of Attendance at Claim Meeting and Acknowledgement of Privileged Discussion

- APPENDIX G: Reporting, Collection, and Cash Received (Sending Funds to the Cashier's Office)

- APPENDIX H: Reporting, Collection, and Cash Received (Request for assistance to recover funds)

- APPENDIX I: Reporting, Collection, and Cash Received (Request for assistance to recover/track a series of payments)

- APPENDIX J: Reporting, Collection, and Cash Received (Services In Kind)

DESIGN CONSULTANT ERRORS AND OMISSIONS

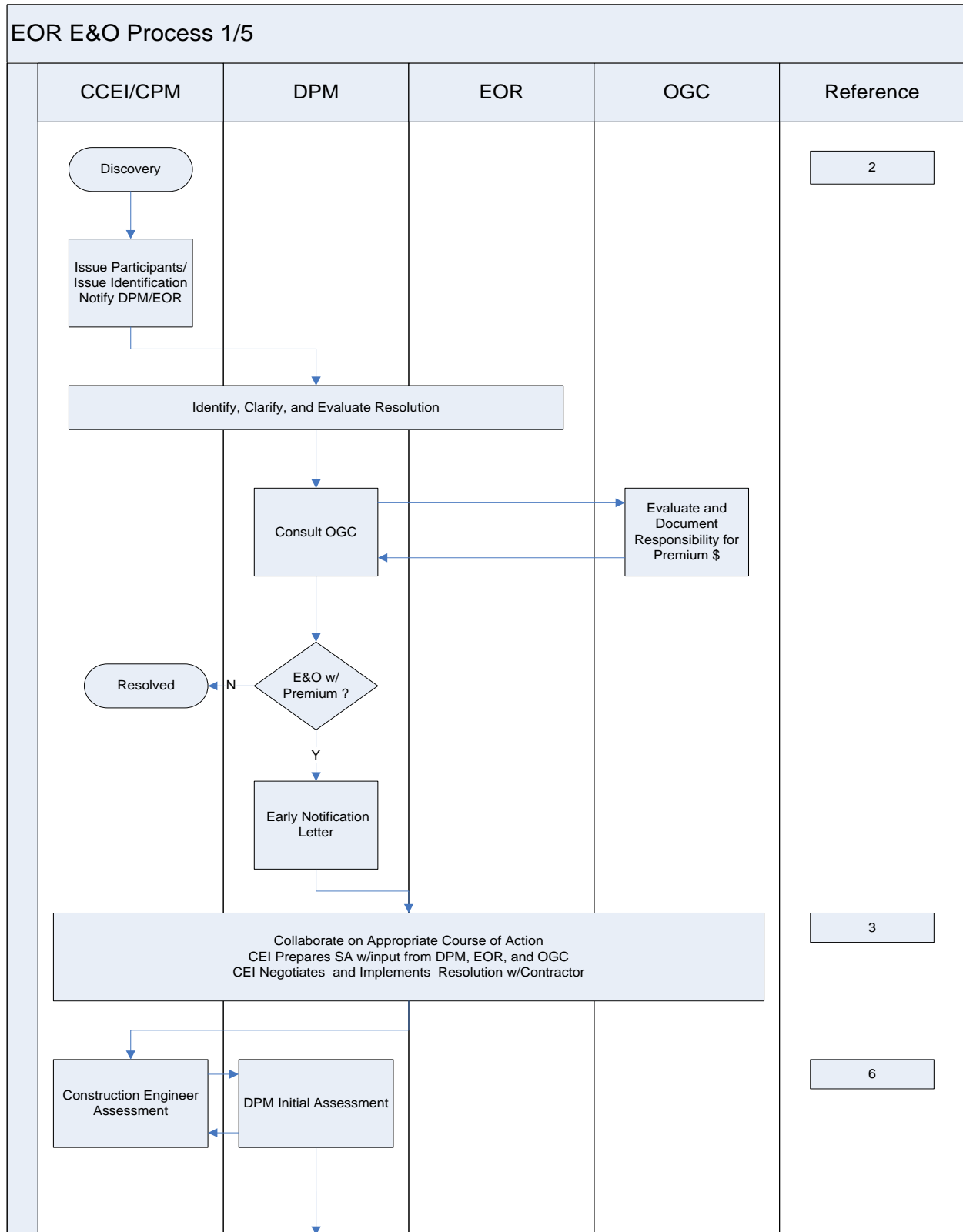
1. DESIGN ISSUE OCCURRENCE

During the construction phase of a project, issues may occur that require clarification or evaluation of the construction plans and contract documents. Such issues are generally resolved/clarified through a ***Request for Information (RFI)***. However, evaluation may indicate that such project issues require design revisions and/or contract modification as a result of the performance of the EOR. As partners in the project, the CPM, DPM, and EOR must work together to resolve these issues as quickly as possible in order to minimize construction interruptions.

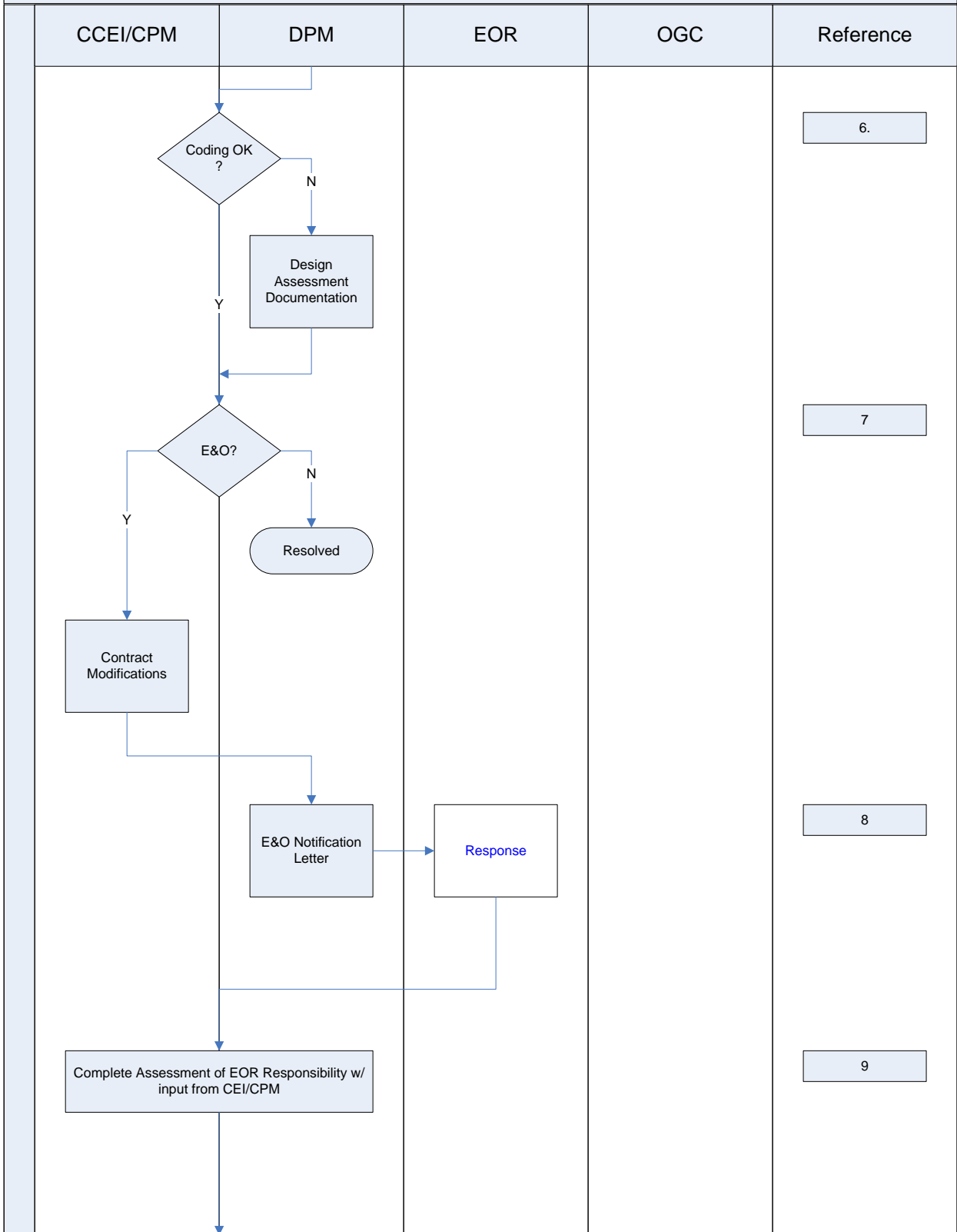
The DPM is responsible for documenting Design E&O issue management in RTM. This may be accomplished through the E&O Liaison.

The following flowchart lays out the process for addressing Design Consultant E&O issues. Sections 2 – 12 of this procedure detail the various stages of this process.

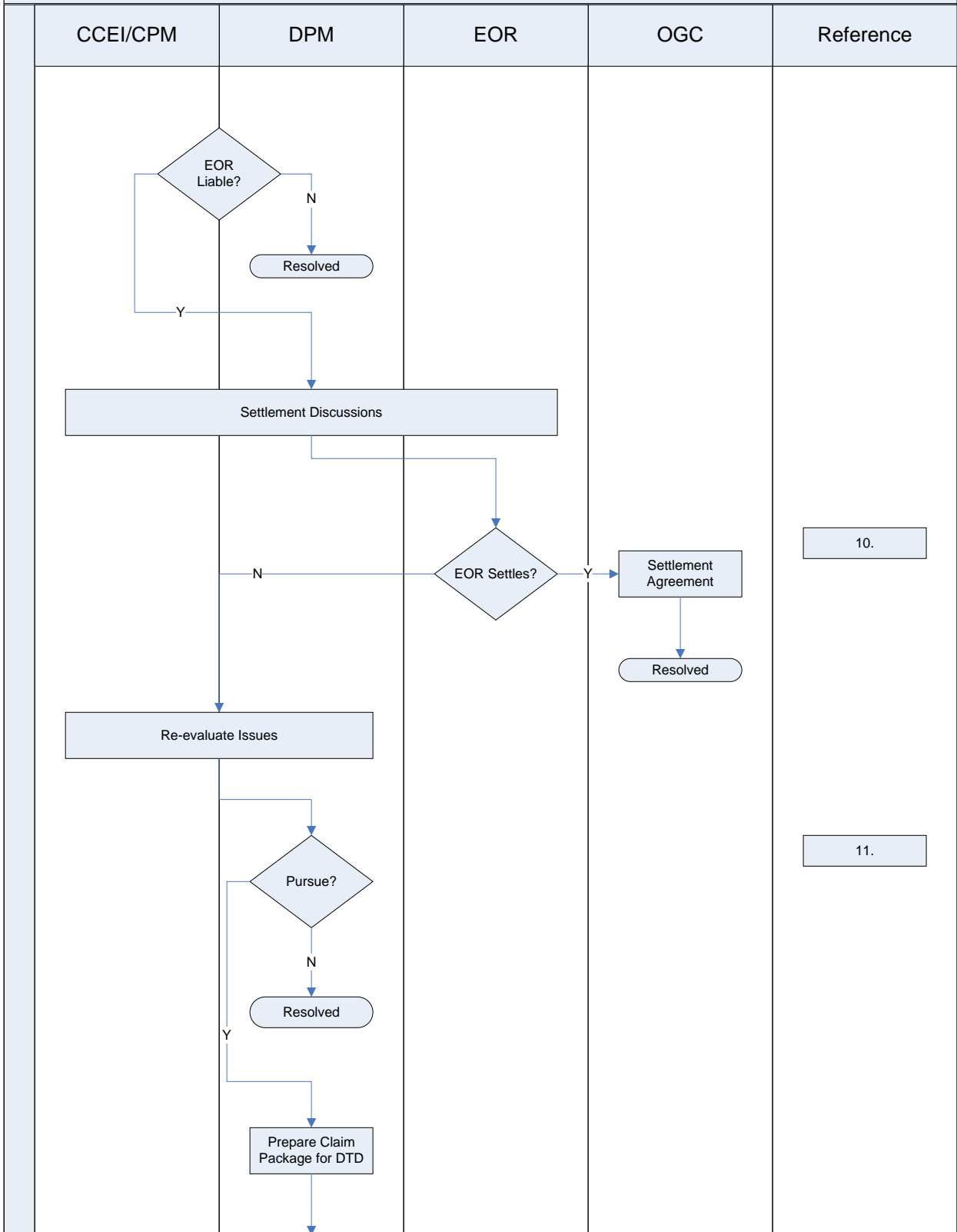
DESIGN E&O PROCESS FLOWCHART

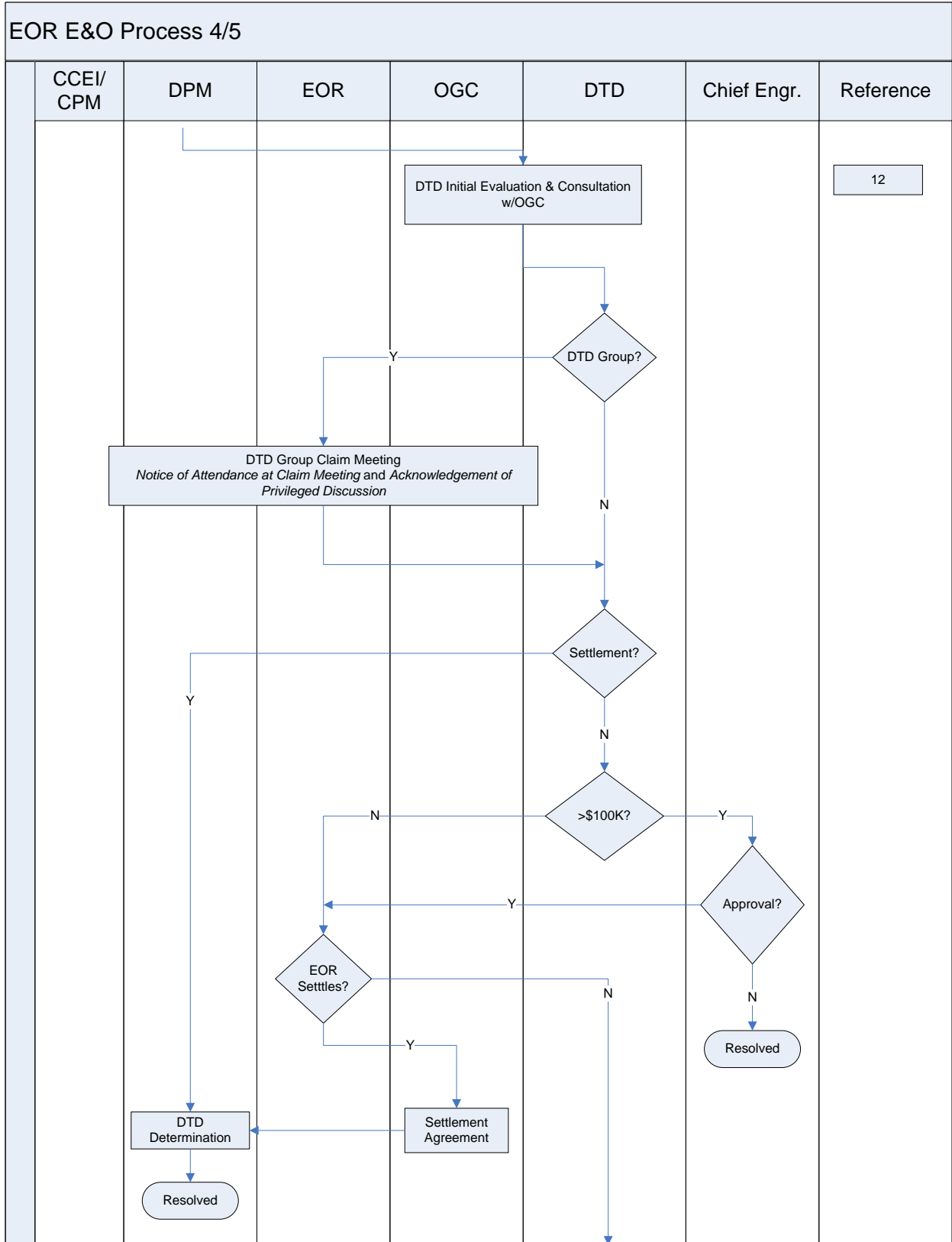


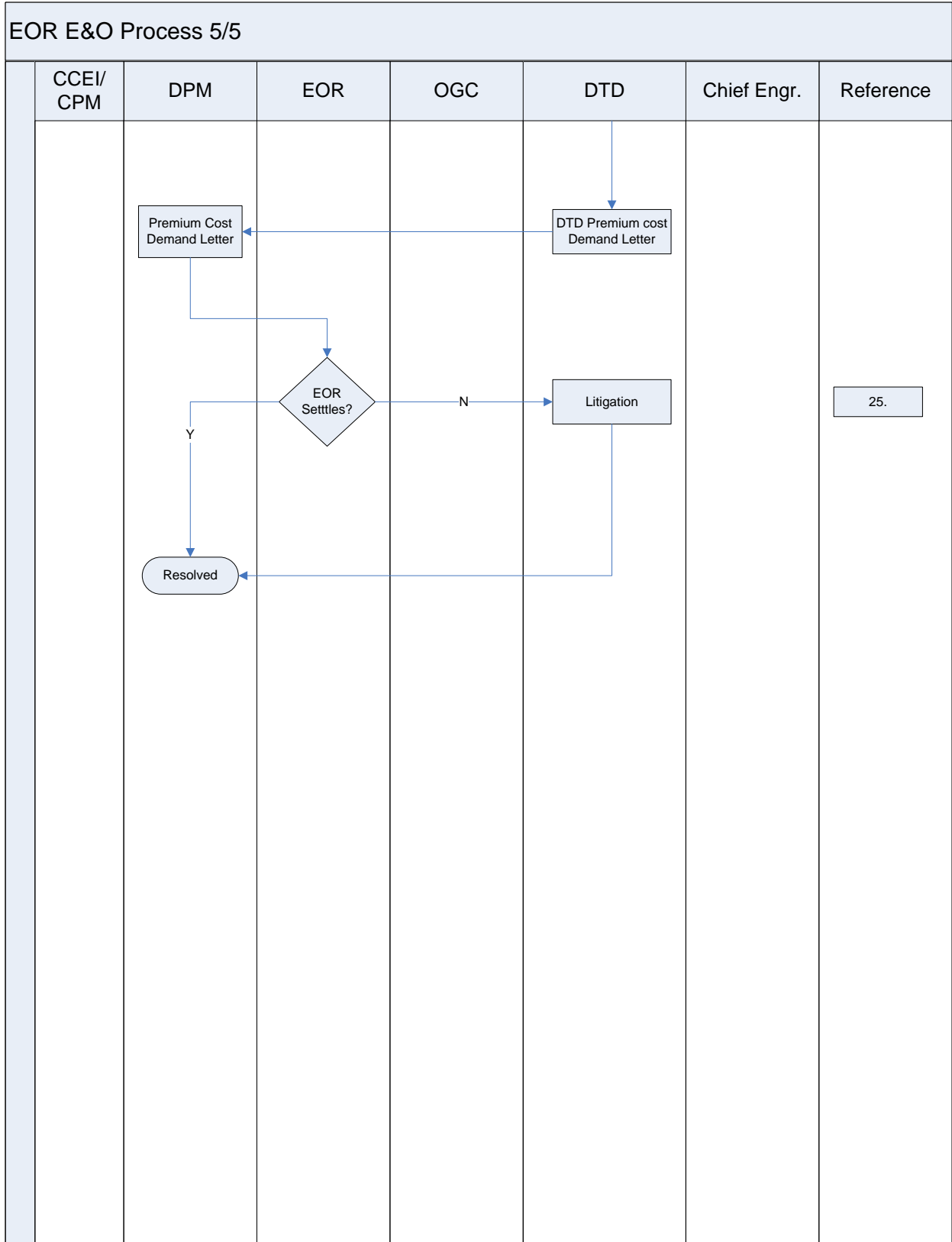
EOR E&O Process 2/5



EOR E&O Process 3/5







2. DESIGN ISSUE DISCOVERY, EVALUATION, AND EARLY NOTIFICATION

2.1 Discovery

This stage of the business process is **Discovery**. Discovery by Construction starts the E&O management process.

Upon discovery of the design issue, the CEI or other knowledgeable or responsible person shall promptly advise the CPM who, **within one business day**, shall notify the DPM of any project design issues which may require design revisions and contract modifications resulting in added project costs. Initial advisement may be by verbal communication, which must be followed promptly by e-mail or other written documentation. The DPM shall promptly notify the EOR of the issues. Early discovery and notification provides the EOR an opportunity to minimize and mitigate any added project costs. In addition, such discovery and notification may prevent or minimize contractor claims against the Department.

2.2 Notification

It may initially be unclear whether a design issue is an E&O issue. If the project issues appear to have been caused by EOR E&O, the DPM has the responsibility of providing the EOR formal written notification of the nature and scope of the design issues and, if known, the resulting premium costs and contract time (**Appendix C1 – Early Notification Letter – Design**). This shall take place **within five business days** of the DPM being notified of an issue's discovery. Notification also advises the EOR to track their time expended on the issue for potential reimbursement if the issue is later determined to not be an E&O issue.

When E&O issues are not clear, i.e. **debatable**, the DPM shall seek the advice of OGC Legal Counsel. OGC Legal Counsel shall provide assistance with the determination of consultant negligence and with evaluating and documenting the EOR's responsibility for premium costs. In addition, the DPM shall perform a Benefit/Cost Analysis. **Benefit/Cost Analysis Guidelines** are available at a link provided in the **GENERAL** section. If it is determined that the EOR has potential liability for any portion of premium costs incurred on the project, the DPM shall issue the **Early Notification Letter** to the EOR.

The DPM is responsible to document this **Early Notification** stage of the business process in RTM.

2.3 Evaluation

The CEI, CPM, DPM, and EOR shall work together to identify, clarify, and evaluate a resolution of the project design issues. The DPM shall work with the EOR to clarify the project issues by reviewing the plans and specifications, the EOR's original scope of services, and any specific requirements the Department imposed on the EOR. Project issues may initially appear to be the result of E&O, but may subsequently be determined to be beyond the EOR's contractual scope of services. Accordingly, the DPM shall review the consultant's scope of services, the professional engineering standards in effect when the contract was executed, project-specific information provided to the consultant, and any

other Department instructions, to determine the consultant's responsibility for the project issues. If the DPM is not a professional engineer, the review shall be performed by the professional engineer in responsible charge of the DPM.

3. RESOLUTION DEVELOPMENT

The CEI, CPM, DPM, and EOR shall work collaboratively to determine an appropriate course of action for resolution of the design issues.

3.1 The EOR may provide revised drawings, calculations, and specification changes to resolve the design project issues.

3.2 With the approval of the CPM/DDE/DPM, the EOR may work directly with the construction contractor to resolve design project issues, provided the Department incurs no premium economic or time costs as a result.

3.3 Post-design services may be utilized to compensate the EOR for such involvement during construction (site visits and design changes) to resolve the design issue. However, the costs for site visits and additional engineering services are not billable as post-design services when the issue was caused by EOR E&O during design. The EOR shall track such costs separately for potential compensation.

3.4 The CEI shall calculate the premium cost impact for the E&O issue.

3.5 To ensure an accurate assessment of premium costs, the CCEI shall prepare the SAWO with input from the CPM, OGC Legal Counsel, and the Construction Contractor.

4. NEGOTIATE AND IMPLEMENT RESOLUTION WITH CONSTRUCTION CONTRACTOR

The CEI shall negotiate any additional cost and time required to implement the proposed resolution with the construction contractor. The CCEI shall document the time and cost of a resolution with the construction contractor by a Work Order, Supplemental Agreement or Unilateral Payment document.

4.1 Resolving project design issues typically requires a change to the original construction contract through a supplemental agreement/work order (SA/WO). **Topic No. 700-000-000, Construction Project Administration Manual (CPAM), Section 7.3**, defines the Department's method to initiate, document, and execute Work Orders, Supplemental Agreements, and Unilateral Payment documents.

4.2 The CEI shall perform an **Entitlement Analysis** on every SA/WO.

5. INITIAL ASSESSMENT

This stage of the business process is **Initial Assessment**.

Successful recovery of damages caused by E&O is highly dependent on the initial assessment of the project issues addressed in the SA/WO document.

5.1 The CCEI shall assign initial SA/WO coding in CCTS. **CPAM** – Attachment for **Section 7.3** defines the method for coding contract modification. The coding identifies the party responsible for causing the need for contract modification. It also indicates the Department's intention to recover premium costs. To ensure accuracy, the CCEI shall prepare the SA/WO coding with input from the CPM, DPM, and EOR.

5.2 The CPM and DPM shall assess EOR E&O responsibility for premium cost impact with legal advice from the OGC. The reasonable administrative costs the Department incurs to process an SA/WO, and to resolve changes in contract documents, together with additional construction engineering and inspection costs, may be considered when determining premium costs.

The DPM shall review the CCEI's initial assessment and is responsible to update RTM for this stage of the business process: DPM Initial Assessment.

6. DPM DOCUMENTATION OF PREMIUM COSTS AND CODING

This stage of the business process is **Design Assessment Documentation**.

An SA/WO that is the result of E&O will also require a review of the Entitlement Analysis. Without interruption to the administration of the construction project, the CPM and DPM shall discuss the contract modification coding and premium cost calculations.

Does DPM agree with coding and premium costs?

Decision:

NO: ***The DPM shall not change the Avoidable Code to a different Avoidable code in RTM.*** Instead, if it should be decided EOR responsibility is partial or none, the DPM shall document this in RTM under "Comments", then proceed with evaluation of liability for Premium Costs.

YES: Proceed with evaluation of liability for Premium Costs.

7. DPM EVALUATION OF E&O

The DPM shall evaluate the issue further to determine if the premium costs were the result of the EOR E&O.

Were there Errors & Omissions resulting in premium costs?

Decision:

NO: The matter is resolved and no further action will be taken to prosecute recovery of any Premium costs. The DPM shall document the basis for the decision in RTM.

YES: DPM sends ***Errors and Omissions Notification Letter (Appendix D1)***.

8. E&O NOTIFICATION LETTER (APPENDIX D1)

8.1 The DPM shall notify the EOR in writing of the Department's intent to correct project issues by SAWO with the construction contractor (***Appendix D1 – Errors and Omissions Notification Letter – Design***). The notification letter shall state the Department's initial assessment of the project issues (premium costs, contract time and/or money, EOR responsibility) and request a written response from the consultant. The DPM shall also notify the EOR—as follow-up to the ***Early Notification Letter (Appendix C1)***—if there appears to be no consultant responsibility for the project issues. The DPM shall include copies of all such correspondence in the project E&O file.

8.2 The EOR may respond to the ***E&O Notification Letter*** and Department's initial assessment of the project issues, providing comment and documentation. The CEI, CPM and DPM or their representatives may conduct meetings with the EOR to evaluate their response.

9. EOR LIABILITY FOR PREMIUM COSTS

The CPM and DPM shall evaluate the EOR's response to the ***E&O Notification Letter*** to complete the assessment of EOR responsibility. The initial determination of EOR responsibility shall be vested with the DPM. The CPM acts in an advisory capacity.

Is the EOR liable for any portion of the Premium Costs?

Decision:

NO: The matter is resolved and no further action will be taken to recover Premium Costs.

YES: The Department will undertake settlement discussions with the EOR.

If the Department determines that the consultant is only partially responsible for E&O, the DPM shall determine a lower amount which will be the basis for negotiation with the EOR. If the Department determines that the consultant is not responsible for E&O, the DPM shall

promptly notify the EOR of the results, and all reasonable costs incurred by the EOR during this process shall be billable as post-design services.

10. PREMIUM COSTS CLAIM SETTLEMENT

Does the Department settle claim with EOR for Premium Costs?

Decision:

NO: The CPM and DPM re-evaluate issues and DPM again makes decision whether to continue prosecution of recovery of Premium Costs, with input from DDE/DCPME.

YES: The matter is resolved. Legal counsel prepares settlement agreement/release and oversees execution of agreement/release and payment of funds.

11. CONTINUE PROSECUTION OF THE CLAIM FOR PREMIUM COSTS

Shall the Department continue prosecution of the claim for Premium Costs against the EOR?

Decision:

NO: The DPM shall document basis for Department's decision to not prosecute claim for Premium Costs in RTM and include a Benefit/Cost Analysis. Case is resolved.

YES: The DPM, for further analysis, shall prepare a claim package regarding the Premium Costs and submit to the **DIRECTOR GROUP** for evaluation.

12. DIRECTOR GROUP CLAIM MEETING

This stage of the business process is **DTD Determination**.

12.1 The Director of Transportation Development (DTD) shall determine if the claim for Errors and Omissions against the EOR warrants further action.

12.2 The DTD or its designee(s) shall conduct an initial evaluation of premium costs incurred by the district as a result of the EOR's potential Errors and Omissions and advise the DTD (in the event that a designee does the evaluation). The DTD shall consult with OGC Legal Counsel on issues regarding the liability of the EOR for the premium costs.

12.3 If the district is unable to resolve its claim for premium costs with the EOR the DTD shall make a determination if the EOR is potentially liable for all or a portion of the estimated premium costs (Cost Claim). In order to make this determination the DTD may convene a group of advisors (DTD Group) to assist in the conduct of a meeting to discuss the potential liability of the EOR.

12.4 The DTD may schedule the DTD Group Claim Meeting between the DTD Group and the EOR to discuss resolution of the Errors and Omissions claim. The Department representatives in the DTD Group may include the DTD, the DPM, the CPM, OGC Legal

Counsel and other designated Department representatives as deemed necessary by the DTD. The EOR may include personnel, attorneys, consultants and experts it deems necessary to represent its interests at the Claim Meeting. The Department, EOR and their representatives at the Claim Meeting must agree that all discussions, representations, and documents made and utilized in the Claim Meeting are deemed settlement discussions and therefore subject to applicable privileges set forth by law. See **Appendix F - Notice of Attendance at Claim Meeting and Acknowledgement of Privileged Discussions**.

12.5 Notwithstanding the presence and assistance of the foregoing persons on behalf of the Department the DTD shall have sole authority for the decision on the resolution of all pending issues arising from the Errors and Omissions claim. Any proposed resolution of issues shall be in writing, reviewed by OGC Legal counsel and signed by authorized representatives (identified during the meeting) of the Department and the EOR. The proposed resolution should resolve all pending issues and provide for a full release by both parties. Each party must bear its own attorney's fees and costs related to the pending issues.

12.6 If the EOR declines to attend or participate in the DTD Group Claim Meeting then the DTD may conduct a claim meeting without the EOR and proceed with its evaluation.

12.7 If as a result of the DTD Group Claim Meeting the Department and the EOR are able to reach a resolution of the cost claim a written agreement and release shall be drafted by OGC Legal Counsel for execution by all parties.

12.8 If the resolution of the Cost Claim is \$100,000 (Premium) or less the DTD has final authority for the decision on the resolution of all pending issues with the EOR. If the resolution of the Cost Claim is greater than \$100,000 the DTD has initial authority to approve the proposed resolution of the pending issues, which is subject to final approval by the Chief Engineer. The decision of the Chief Engineer is final.

12.9 If the DTD determines as a result of information provided that it is in the best interest of the Department not to prosecute the Cost Claim the Department will notify the EOR of its decision.

12.10 If the DTD determines as a result of information provided to him that it is in the best interest of the Department to prosecute the Cost Claim and the EOR does not participate in the Director's Claim Meeting or does not reach a settlement with the Department as a result of the meeting, the DTD will notify the EOR of the Department's decision to pursue recovery, **Appendix E1 – Premium Costs Demand Letter**. The letter shall summarize the project issues, the Premium Costs and any additional terms for settlement, and advise the EOR of the Department's intent to pursue recovery through litigation. The EOR may resolve the Claim by written acceptance of the terms of the **Premium Costs Demand Letter** within 15 calendar days of the date of the letter. After the 15 days the offer expires. The decision of the DTD is final. Final settlement authority may vest with the Chief Engineer in accordance with the foregoing.

CONSULTANT CEI (CCEI) ERRORS AND OMISSIONS

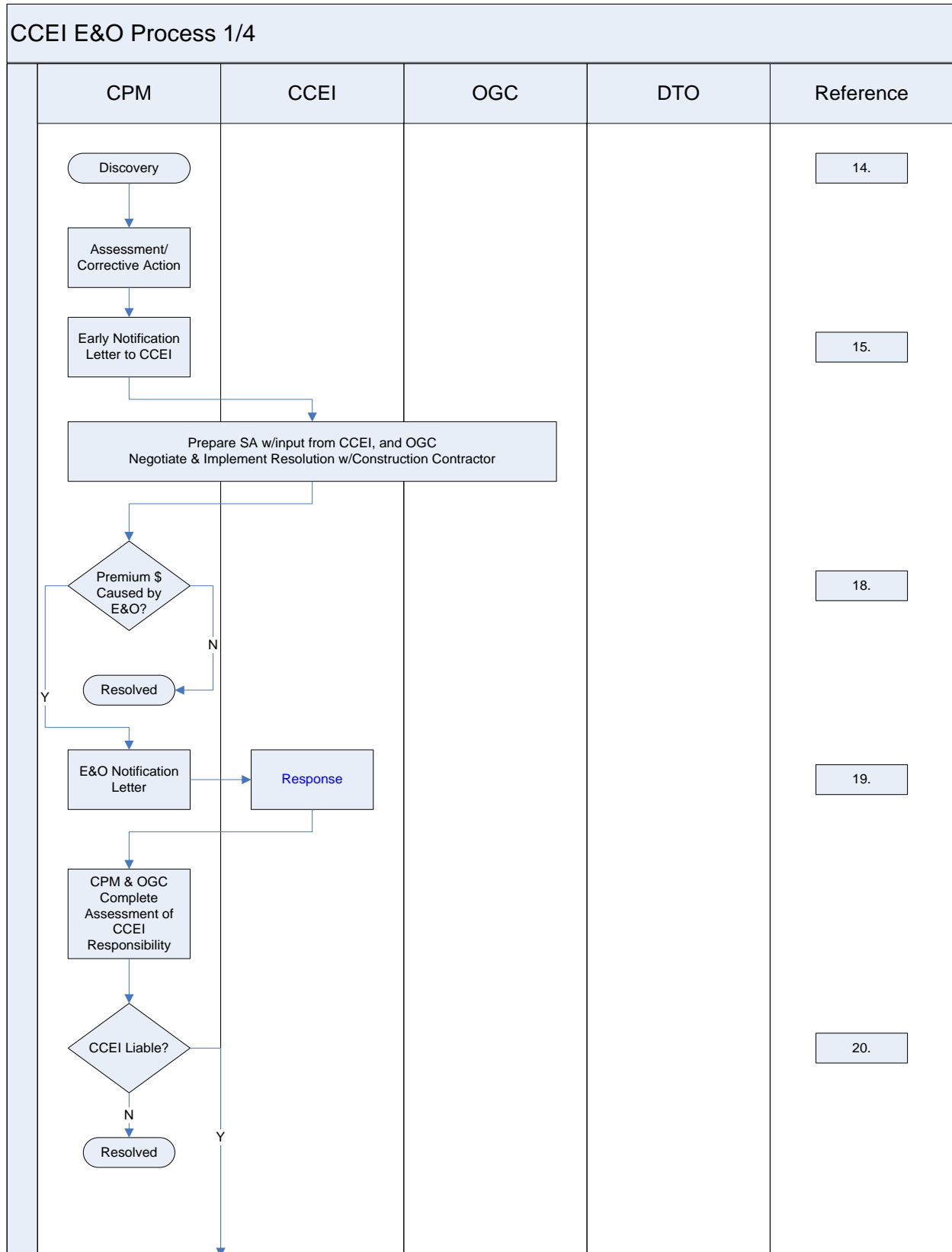
13. CCEI ISSUE OCCURRENCE

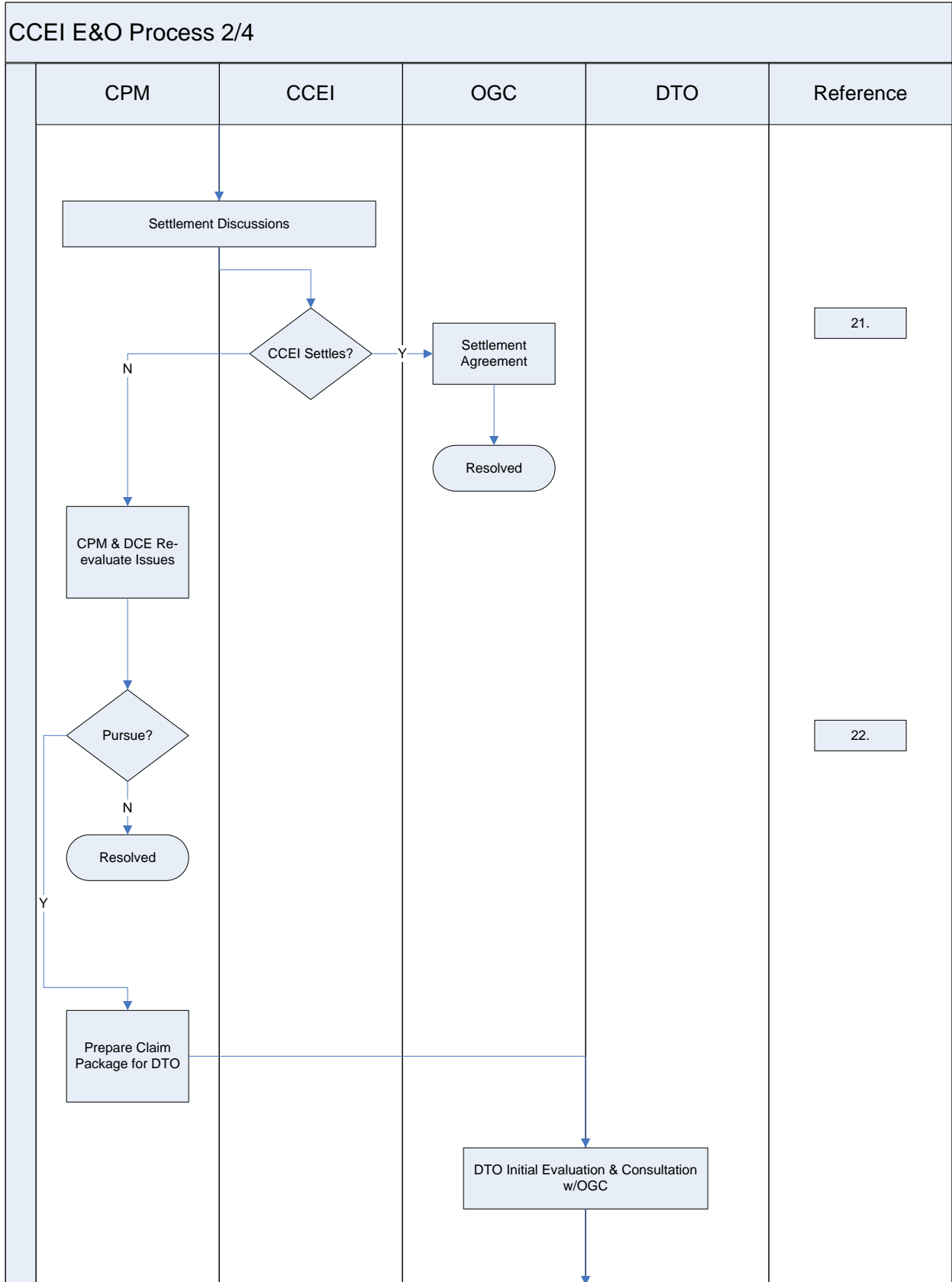
Project issues may also arise as a result of CCEI contract administration. Discovery typically occurs during periodic reviews of the CCEI's work product, Supplemental Agreements, time extensions, staffing, equipment, and project records. The Department's CPM is responsible to identify Errors and Omissions that are the result of CCEI contract administration.

The CPM is responsible for documenting CCEI E&O issue management in RTM. This may be accomplished through the E&O Liaison.

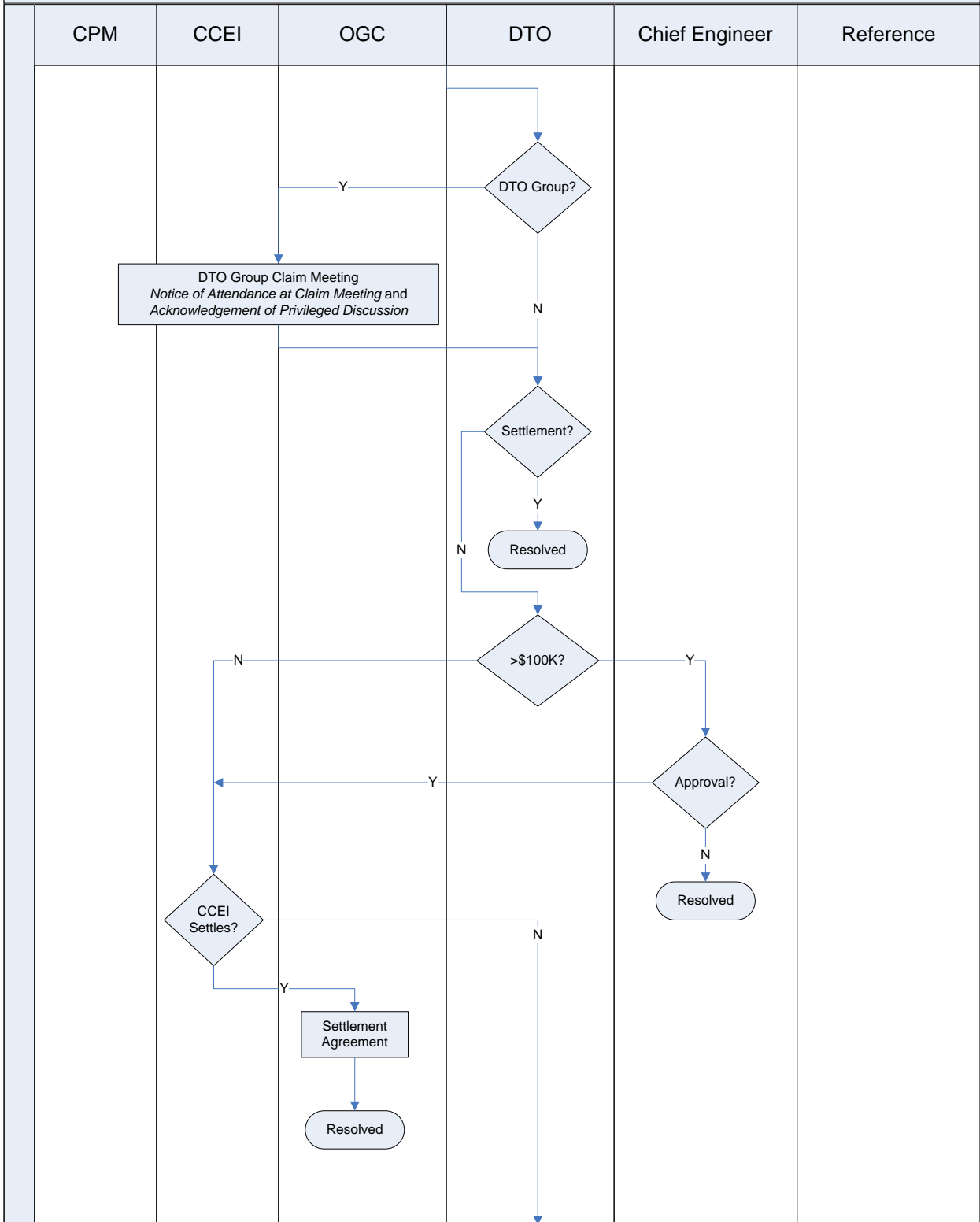
The following flowchart lays out the process for addressing CCEI E&O issues. Sections 14 – 23 of this procedure detail the various stages of this process.

CCEI E&O PROCESS FLOWCHART





CCEI E&O Process 3/4



14. CCEI ISSUE DISCOVERY, EVALUATION, AND EARLY NOTIFICATION

The CPM shall prepare a written assessment of the project issues, determine the appropriate corrective action, and establish a reasonable time frame to implement the solution. The CPM shall promptly notify the CCEI in writing of project issues that may result in premium costs and contract time (**Appendix C2– Early Notification Letter – CCEI**). If the Department determines that the CCEI is not responsible for Errors and Omissions, the DCE’s delegate shall promptly notify the CCEI of the results, and all reasonable costs incurred by the CCEI during this process shall be billable. The CCEI shall track such costs separately for potential compensation.

When E&O issues are not clear, i.e. **debatable**, the CPM shall seek OGC advice. OGC shall provide assistance with the determination of consultant negligence, and evaluating and documenting the CCEI’s responsibility for premium costs. In addition, the CPM shall perform a Benefit/Cost Analysis. **Benefit/Cost Analysis Guidelines** are available at a link provided in the **GENERAL** section.

15. RESOLUTION DEVELOPMENT

Before and after the issuance of the **Early Notification Letter** the CPM shall determine an appropriate course of action for resolution of the project issues.

15.1 With the approval of the DCE/CPM the CCEI may work directly with the construction contractor to resolve project issues, provided the Department incurs no premium economic or time costs as a result.

15.2 CPM shall calculate the premium cost impact for Errors and Omissions.

15.3 To ensure an accurate assessment of premium costs, the CPM shall prepare the SA/WO with input from the CCEI, OGC, and the Construction Contractor.

16. NEGOTIATE AND IMPLEMENT RESOLUTION WITH CONSTRUCTION CONTRACTOR

16.1 The CEI will negotiate any additional cost and time required to implement the proposed resolution with the construction contractor. The CEI shall document the time and cost of a resolution with the construction contractor by a Work Order, Supplemental Agreement, or Unilateral Payment document.

16.2 Resolving project issues typically requires a change to the original construction contract through a SA/WO. **Procedure No. 700-000-000, Construction Project**

Administration Manual (CPAM), Section 7.3, defines the Department's method to initiate, document, and execute SA, WO or Unilateral Payment documents.

17. ASSESSMENT OF PREMIUM COSTS AND CODING

Successful recovery of damages caused by Errors and Omissions is highly dependent on the initial assessment of the project issues addressed in the SA, WO, or Unilateral Payment document.

17.1 The CPM shall prepare the proposed SA coding. The CPM shall assess CCEI responsibility for premium cost impact for E&O with legal advice from the OGC. The reasonable administrative costs the Department incurs to process a SA/WO, and to resolve changes in contract documents, together with additional construction engineering and inspection costs may be considered when determining premium costs.

18. CPM EVALUATION OF E&O

Were there Errors & Omissions resulting in premium costs?

Decision:

NO: The matter is resolved and no further action will be taken to prosecute recovery of any Premium costs. The CPM shall document the basis for the decision.

YES: CPM shall send **Errors and Omissions Notification Letter (Appendix D2)** to CCEI

19. E&O NOTIFICATION LETTER (APPENDIX D2)

19.1 The CPM shall notify the CCEI in writing of the Department's intent to correct project issues by SA/WO with the construction contractor (**Appendix D2 – Errors and Omissions Notification Letter – CCEI**). The notification letter shall state the Department's initial assessment of the project issues (premium costs, contract time and/or money, CCEI responsibility) and request a written response from the consultant. The CPM shall also notify the CCEI—as follow-up to **Early Notification (Appendix C2)**—if there appears to be no consultant responsibility for the project issues. The CPM shall include copies of all such correspondence in the project E&O file.

19.2 The CCEI may respond to the E&O Notification Letter and Department's initial assessment of the project issues, providing comment and documentation. The CPM and DCE or their representatives may conduct meetings with the CCEI to evaluate the response. The CPM and DCE shall evaluate the CCEI's response to the **CCEI Notification Letter** to complete the assessment of CCEI responsibility. The initial

determination of CCEI responsibility shall be vested with the DCE. The CPM acts in an advisory capacity.

20. CCEI LIABLE FOR PREMIUM COSTS

Is the CCEI liable for any portion of the Premium Costs?

Decision:

NO: The matter is resolved and no further action will be taken to recover Premium Costs.

YES: The Department will undertake settlement discussions with the CCEI.

If the Department determines that the consultant is only partially responsible for E&O, the CPM shall determine a lower amount which will be the basis for negotiation with the CCEI. If the Department determines that the consultant is not responsible for E&O, the CPM shall promptly notify the CCEI of the results, and all reasonable costs incurred by the CCEI during this process shall be billable as consultant services.

21. DEPARTMENT SETTLES CLAIM WITH CCEI FOR PREMIUM COSTS

Does the Department settle claim with CCEI for Premium Costs?

Decision:

NO: CPM and DCE re-evaluate issues and DCE again makes decision whether to continue prosecution of recovery of Premium Costs.

YES: The matter is resolved. OGC Legal Counsel prepares settlement agreement/release and oversees execution of agreement/release and payment of funds.

22. PROSECUTION OF THE CLAIM FOR PREMIUM COSTS

Shall the Department continue prosecution of the claim for Premium Costs against the CCEI?

Decision:

NO: The CPM shall document basis for Department's decision to not prosecute claim for Premium Costs, and include a Benefit/Cost Analysis. Case is resolved.

YES: The CPM, for further analysis, shall prepare a claim package regarding the Premium Costs and submit to the Director's Group for evaluation.

23. DIRECTOR GROUP CLAIM MEETING

23.1 The Director of Transportation Operations (DTO) shall determine if the claim for Errors and Omissions against the CCEI warrants further action.

23.2 The DTO or designee(s) shall conduct an initial evaluation of premium costs incurred by the district as a result of the CCEI's potential Errors and Omissions. The DTO shall consult with OGC Legal Counsel on issues regarding the liability of the CCEI for the premium costs.

23.3 If the district is unable to resolve its claim for premium costs with the CCEI the DTO shall make a determination if the CCEI is potentially liable for all or a portion of the estimated premium costs (Cost Claim). In order to make this determination the DTO shall convene a group of advisors (DTO Group) to assist in the conduct of a meeting to discuss the potential liability of the CCEI.

23.4 The DTO may schedule the DTO Group Claim Meeting between the DTO Group and the CCEI to discuss resolution of the Errors and Omissions claim. The Department representatives in the DTO Group may include the DTO, the DCE, the CPM, the OGC Legal Counsel and other designated Department representatives as deemed necessary by the DTO. The CCEI may include personnel, attorneys, consultants and experts it deems necessary to represent its interests at the Claim Meeting. The Department, CCEI and their representatives at the Claim Meeting must agree that all discussions, representations, and documents made and utilized in the Claim Meeting are deemed settlement discussions and therefore subject to applicable privileges set forth by law. See ***Appendix F-Notice of Attendance at Claim Meeting and Acknowledgement of Privileged Discussions.***

23.5 Notwithstanding the presence and assistance of the foregoing persons on behalf of the Department the DTO shall have sole authority for the decision on the resolution of all pending issues arising from the Errors and Omissions claim. Any proposed resolution of issues shall be in writing, reviewed by OGC Legal counsel and signed by authorized representatives of the Department and the CCEI. The proposed resolution should resolve all pending issues and provide for a full release by both parties. Each party must bear their own attorney's fees and costs related to the pending issues.

23.6 If the CCEI declines to attend or participate in the DTO Group Claim Meeting then the DTO may conduct a claim meeting without the CCEI and proceed with its evaluation of the Cost Claim.

23.7 If as a result of the DTO Group Claim Meeting the Department and the CCEI are able to reach a resolution of the cost claim a written agreement and release shall be drafted by Department legal counsel for execution by all parties.

23.8 If the resolution of the Cost Claim is \$100,000 (Premium) or less the DTO has final authority for the decision on the resolution of all pending issues with the CCEI. If the

resolution of the Cost Claim is greater than \$100,000 the DTO has initial authority to approve the proposed resolution of the pending issues, which is subject to final approval by the Chief Engineer. The decision of the Chief Engineer is final.

23.9 If the DTO determines as a result of information provided to him that it is in the best interest of the Department not to prosecute the Cost Claim the Department will notify the CCEI of its decision.

23.10 If the DTO determines as a result of information provided to him that it is in the best interest of the Department to prosecute the Cost Claim and the CCEI does not participate in the Director's Claim Meeting or does not reach a settlement with the Department as a result of the Meeting, the DTO will notify the CCEI of the Department's decision to pursue recovery, **Appendix E2 –Premium Costs Demand Letter**. The letter shall summarize the project issues, the Premium Costs and any additional terms for settlement, and advise the CCEI of the Department's intent to pursue recovery through litigation. The CCEI may resolve the Claim by written acceptance of the terms of the **Premium Costs Demand Letter** within 15 calendar days of the date of the letter. After the 15 days the offer expires. The decision of the DTO is final. Final settlement authority may vest with the Chief Engineer in accordance with the foregoing.

RECOVERY, LITIGATION AND TRACKING

24. RECOVERY

Note: *This section applies to the EOR and CCEI.*

The Department should pursue the recovery of any premium costs that are the result of consultant Errors and Omissions. However, the extent of the Department's recovery effort should be guided by the anticipated recovery amount and the likelihood of a successful recovery effort. Administrative costs, the expense of litigation, and the consultant's performance history may all affect the Department's decision to pursue recovery. If at any point in the process, the Department decides not to pursue recovery, the appropriate project manager shall justify and document the decision in the project file and notify the EOR or CCEI.

The consultant may, as a result of early notification, accept responsibility for Errors and Omissions and offer to settle with the Department. In these instances, the OGC Legal Counsel, in consultation with the DDE (for EOR issues) or DCE (for CCEI issues), shall prepare and execute the settlement agreement.

With the approval of the DDE/DPM and DCE/CPM, the consultant may work directly with the construction contractor to resolve the issue provided the Department incurs no premium economic or time costs from the issue. Such resolution shall be documented through a **Supplemental Agreement** with the construction contractor.

The consultant may also have valid reasons to dispute the Department's assessment of Errors and Omissions issues. When such disputes cannot be resolved at the project level, the Director of Transportation Development (EOR) or Director of Transportation Operations (CCEI) shall make the final determination regarding further recovery efforts as set forth herein.

25. LITIGATION

Note: *This section applies to the EOR and CCEI.*

Although legal action may be required to effect recovery if the consultant does not settle with the Department, legal assistance should be sought at the early stages of the Errors and Omissions proceedings. OGC will provide legal counsel as necessary and appropriate throughout the proceedings. During the course of proceedings in accordance with this procedure the appropriate Department DPM (for EOR E&O) or CPM (for CCEI E&O) shall seek assistance from the OGC to assist in these proceedings and the prosecution of recovery of documented premium costs, if not otherwise resolved.

When legal assistance is sought with regard to the E&O procedures, the OGC shall be consulted and assist with the continuing determination of recoverability of the Premium Costs throughout the proceedings. Legal assistance should be sought at an early stage of

the procedure to insure that all conditions for recovery of the Premium Costs are being complied with.

Once litigation is initiated all settlement discussions should be handled through the OGC. The district will designate its representative with authority to settle all pending matters.

26. DOCUMENTATION OF THE ERRORS AND OMISSIONS PROCEDURE

In view of the anticipation of litigation resulting from the E&O procedure the DPM (for EOR issues) or CPM (for CCEI issues) shall prepare and maintain a file containing all documentation regarding the Errors and Omissions procedure pertaining to each claim for periodic OGC review. The file labels shall include the Consulting Firm Name, the Financial Project Identification Number, the Construction Contract Number, and the title "Errors and Omissions Recovery."

27. RECOVERED AMOUNTS

OGC shall advise the DPM (for EOR issues) / (CPM for CCEI issues) of the amounts recovered through litigation. The DPM (for EOR issues) / (CPM for CCEI issues) shall provide this information to the Office of Comptroller-General Accounting Office (OOC-GAO), Accounts Receivable Section and Cashier's Office using the format described in **Section 28** of this procedure.

For EOR issues, the DPM is responsible to update RTM. For CCEI issues the CPM shall work with the E&O Liaison to update RTM.

28. REPORTING, COLLECTION, AND FUNDS RECEIVED

***Note:** This section applies to the EOR and CCEI.*

***Note:** The project manager shall include the District E&O Liaison in all correspondence with the OOC-GAO.*

The Department shall collect moneys from consultants in accordance with the following procedures:

- Procedure No. 350-060-303, Accounts Receivable
- Procedure No. 350-080-300, Receipt Processing
- Federal Aid Policy Guide 23, C.F.R.

28.1 Reporting and Collection

The DPM (CPM for CCEI issues) shall provide documentation to the OOC-GAO, Accounts Receivable Section for all funds to be recovered. The OOC-GAO, Accounts Receivable Section shall maintain a system to document and track recovery of all funds received from consultants for Errors and Omissions. Reimbursement may be received in a lump sum or through a series of payments, when approved by the Comptroller (or delegate). For lump-sum payments, initial recovery efforts shall be handled at the District level. If payment is not timely, the DPM (CPM for CCEI issues) shall notify the OOC-GAO, Accounts Receivable Section who shall then continue the collection effort. If further collection efforts are not successful, the account may be turned over to the State's contracted collection agency. OOC-GAO, Accounts Receivable Section shall coordinate and collect any approved series of payments for reimbursement. Please refer to **Procedure No. 350-060-303, Accounts Receivable** for detailed information.

28.2 Cash Received

The DPM (CPM for CCEI issues) shall submit all funds recovered by application of this procedure to the OOC-GAO, Cashier's Office in accordance with **Procedure No. 350-080-300, Receipt Processing**. Correspondence shall include the following information:

- Financial Project No.
- Federal Aid Project No.
- Project Description
- Name of Consultant Firm
- Department Project Manager (DPM/CPM)
- Amount of Recovery
- Date of Recovery
- Funds Transmittal No.
- Object Code

In July of each year, the OOC-GAO, Cashier's Office shall report the amount collected for Errors and Omissions in the previous fiscal year, by District, to the Program and Resource Allocation Office. In mid-September, the Program and Resource Allocation Office shall allocate in Schedule A the collected amount back to each respective District and statewide program, as appropriate.

28.3 Services In Kind

The Department may accept services in kind from a consultant, in lieu of money, as restitution for damages caused by Errors and Omissions. Such services shall be equivalent to the value of the damages incurred by the Department and stipulated in a settlement agreement prepared by the OGC.

The DDE (for EOR issues) and DCE (for CCEI issues) shall determine the scope of equivalent services that will satisfy the consultant's obligation to reimburse the Department

in accordance with settlement authority set forth herein. Additionally, the DDE and DCE shall determine the appropriate consultant personnel (number, level, compensation rate) to accomplish the scope of equivalent services.

Services in kind may not be used to circumvent the **Consultants' Competitive Negotiation Act (CCNA) (Section 287.055, F.S.)** or to provide an advantage to the consultant in **CCNA** selection for services on future projects.

The DPM (for EOR issues) and CPM (for CCEI issues) shall monitor and document the receipt of services in kind and provide quarterly updates to the OOC-GAO, Accounts Receivable Section. When the consultant's obligation to provide services has been satisfied, the DPM and CPM shall notify the EOR and the OOC-GAO.

29. TRACKING

To ensure communication among disciplines and provide prompt response to management inquiries, each DDE shall establish a central point of contact – the District E&O Liaison – to be responsible for the resolution status of E&O issues. Each District E&O Liaison shall ensure that such issues are entered, updated, and resolved in RTM.

Appendix A – Statutes of Limitation

There is a 2 (two) year time period to bring a lawsuit for errors and omissions by Professional Engineers on Department Contracts. **Section 95.11(4)(a), F.S.**, provides that the two (2) year statute of limitation period for professional negligence begins to run “from the time the cause of action is discovered or should have been discovered.” Given this short time period, it is imperative that the Chief of Litigation, Office of the General Counsel (OGC), be consulted as soon as possible to provide an opinion of the applicable limitation period and when a lawsuit must be filed. The Chief of Litigation can be reached at the OGC (850-414-5265).

Appendix B - Guidelines for Accepting Services In Kind In Lieu of Payment for Claims against Consultants

When the Department decides to pursue a claim for damages against a consultant in accordance with **Procedure No. 375-020-010, “Identifying and Assigning Responsibility for Errors, Omissions, and Contractual Breaches by Professional Engineers,”** the Department may accept services from the consultant equivalent to the value of the damages as stipulated in a settlement agreement. This method of restitution should only be considered when requested by the consultant. Acceptance of in-kind services is completely at the discretion of the Department, and several factors must be considered before agreeing to accept services in lieu of payment.

1. If the amount of damages exceeds the threshold for advertisement and competitive selection required by statute, currently \$25,000, the competitive selection processes required by **Chapter 287.055, F.S.**, or **287.057, F. S.**, as applicable, may not be circumvented. The option to accept in-kind-services in lieu of payment should only be considered if the consultant has an existing contract in place in the district that still has sufficient work to be performed to accommodate the amount of the claim. The contract selected for in-kind services can be for any work type, e.g. PD&E, Design, CE&I, but the selected contract must be with the same legal entity as the design contract on which the error or omission occurred.
2. The Department shall not agree to accept services in kind on a future contract based on the assumption that the consultant will be selected. Not only does this delay the final resolution of the claim unnecessarily, it can give the appearance of an unfair advantage for the consultant in future selections.
3. If an appropriate contract is in place with the consultant and in-kind services are accepted in lieu of payment, provision must be made for a detailed accounting of the cost of the services provided. The contract will have to be amended to either reduce the dollar amount of the contract without reducing the services to be performed or add work to be performed within the intent and purpose of the original scope of services.
 - a. If the contract is a lump sum contract, an amendment must be executed reducing the dollar amount of the contract by the amount stipulated in the settlement agreement, with no reduction in the services to be performed or in the deliverables to be provided.
 - b. If a lump sum supplemental amendment expanding the services to be provided or a new Task Work Order (TWO) is to be issued for a lump sum amount, negotiations for the compensation for the additional services will be

conducted in the normal manner and should include reasonable operating margin. Detailed documentation of the negotiations demonstrating how the lump sum amount was determined must be maintained in the project files. The additional services to be provided must be within the intent of the original scope of services.

- c. If the contract is a limiting amount, an amendment must be executed reducing the original limiting amount by the amount due with no reduction in the scope of services to be provided. Invoices must be identified for non-payment and they must be submitted manually, outside CITS. Complete documentation of the invoiced amounts - including time sheets, certified wage rates and expense receipts - must be provided by the consultant and reviewed and approved by the Department's Project Manager and be retained for audit purposes in the project files.
- d. If a limiting amount supplemental amendment or TWO is issued, negotiations for the compensation for the additional services will be conducted in the normal manner and should include a reasonable operating margin. Invoices must be identified for non-payment and they must be submitted manually, outside the Consultants' Invoice Transmittal System (CITS). Complete documentation of the invoiced amounts - including time sheets, certified wage rates and expense receipts - must be provided by the consultant and reviewed and approved by the Department's Project Manager and be retained for audit purposes in the project files.

In all cases, the executed amendment or TWO must be forwarded to the Office of the Comptroller's General Accounting Office (OOC-GAO) to establish the receivable account. Quarterly updates of the equivalent dollar value of the services received must be forwarded to OOC-GAO for adjustment of the accounts receivable. Upon completion of the work, final notification that the obligation is satisfied must be forwarded to OOC-GAO to close the account.

In summary, services in kind should only be considered in lieu of payment when the district has an appropriate contract already in place with the consultant. A complete accounting of the costs of the services must be maintained, including negotiated and invoiced amounts. Because of the effort involved in identifying an appropriate contract, negotiating the work effort required to satisfy the claim, compiling and maintaining the documentation necessary to support manual invoices and verify the process, it is usually preferable to insist on monetary reimbursement.

Appendix C1 – Early Notification Letter – Design

(insert date)

Note: Notification Letters shall be Certified Mail and addressed to an Officer in the company.

Design Consultants, Inc.
1234 Long Street
Rural City, FL 33333

Re: **Project Description...**
Financial Project ID 123456-1-52-01
Contract No. 12345 (FY)

Dear Design Consultants:

Project Issues have been identified in the referenced contract that require immediate attention. (Make reference to verbal/written communication as per **Section 1**). The Department respectfully requests your assistance to fully evaluate the following issue(s) and determine the appropriate course of action:

(brief description of project issues)

Issues of this nature may impact project costs and contract time; please give them your immediate and full consideration. Compensation for on-site participation—and any additional engineering services—may be billed as post-design services, unless the project issues are caused by your Errors and Omissions. Please track all additional services separately for potential compensation. Thank you for your attention to these matters and response by ***(insert date)***.

Sincerely,

FDOT Design Project Manager

Appendix C2 – Early Notification Letter – CCEI

(insert date)

Note: Notification Letters shall be Certified Mail and addressed to an Officer in the company.

CCEI Consultants, Inc.
1234 Long Street
Rural City, FL 33333

Re: **Project Description...**
Financial Project ID 123456-1-52-01
Contract No. 12345 (FY)

Dear CCEI Consultants:

Project Issues have been identified in the referenced contract that require immediate attention. (make reference to verbal/written communication as per **Section 1**). The Department respectfully requests your assistance to fully evaluate the following issue(s) and determine the appropriate course of action:

(brief description of project issues)

Issues of this nature may impact project costs and contract time; please give them your immediate and full consideration. All reasonable costs you may incur during this process shall be billable, unless the project issues are the result of your Errors and Omissions. Please track these costs separately for potential compensation. Thank you for your attention to these matters and response by ***(insert date)***.

Sincerely,

FDOT Construction Project Manager

Appendix D1 – Errors and Omissions Notification Letter – Design

(insert date)

Note: Notification Letters shall be Certified Mail and addressed to an Officer in the company.

Design Consultants, Inc.
1234 Long Street
Rural City, FL 33333

Re: **Project Description...**
Financial Project ID 123456-1-52-01
Contract No. 12345 (FY)
Supplemental Agreement No. 1

Dear Design Consultants:

(If the EOR did not respond to the Early Notification Letter, so note here.)

In preparing the referenced Supplemental Agreement, the Department determined that premium costs, as a result of your Errors and Omissions in the construction plans and contract documents, exist in the amount of \$_____. These premium costs do not add value to the project and should have been avoided. Further, the Department **intends to** pursue recovery of these costs.

Please respond to this letter within 15 calendar days and state your position on the Department's assessment of costs and responsibility for the following:

(Description of errors and omissions...attachments as necessary)

Sincerely,

FDOT Design Project Manager

Appendix D2 – Errors and Omissions Notification Letter – CCEI

(insert date)

Note: Notification Letters shall be Certified Mail and addressed to an Officer in the company.

CCEI Consultants, Inc.
1234 Long Street
Rural City, FL 33333

Re: **Project Description...**
Financial Project ID 123456-1-52-01
Contract No. 12345 (FY)
Supplemental Agreement No. 1

Dear CCEI Consultants:

(If the CCEI did not respond to the Early Notification Letter, so note here.)

In preparing the referenced Supplemental Agreement, the Department determined that premium costs, as a result of your Errors and Omissions in the administration of the project, exist in the amount of \$_____. These premium costs do not add value to the project and should have been avoided. Further, the Department **intends to** pursue recovery of these costs.

Please respond to this letter within 15 calendar days and state your position on the Department's assessment of costs and responsibility for the following:

(Description of errors and omissions...attachments as necessary)

Sincerely,

DOT Construction Project Manager

Appendix E1 – Premium Costs Demand Letter – Design

(insert date)

Note: Notification Letters shall be Certified Mail and addressed to an Officer in the company.

Design Consultants, Inc.
1234 Long Street
Rural City, FL 33333

Re: **Project Description...**
Financial Project ID 123456-1-52-01
Contract No. 12345 (FY)
Supplemental Agreement No. 1

Dear Design Consultants:

Previously, the Department advised you of damages incurred on the referenced contract in the amount of \$_____. These additional project costs are the result of your Errors and Omissions and should have been avoided. The Department's Director's Group recently convened and determined that the assessment of premium costs against your company was appropriate and recommended that the Department pursue recovery.

You may accept this determination and settle this claim for the amount set forth above by having an authorized representative of your company accept this offer by executing this letter at the bottom and returning it to the Department within 15 calendar days of the receipt of this letter. Upon payment of the premium costs the Department will provide an appropriate release. If you elect not to accept this offer within the designated time period, the Department will initiate legal action to recover these damages.

Sincerely,

Director of Transportation Development

ACCEPTANCE OFFER:

_____ accepts the offer of the Department to settle all claims for premium costs in the amount of \$_____ as a result of its alleged conduct in the above referenced project/contract and agrees to make payment of such sum to the Department within 30 days of the date of this Acceptance.

Designated Representative of Consultant

Dated: _____

Appendix E2 – Premium Costs Demand Letter – CCEI

(insert date)

Note: Notification Letters shall be Certified Mail and addressed to an Officer in the company.

CCEI Consultants, Inc.
1234 Long Street
Rural City, FL 33333

Re: **Project Description...**
Financial Project ID 123456-1-52-01
Contract No. 12345 (FY)
Supplemental Agreement No. 1

Dear CCEI Consultants:

Previously, the Department advised you of damages incurred on the referenced contract in the amount of \$_____. These additional project costs are the result of your Errors and Omissions and should have been avoided. The Department's Director's Group recently convened and determined that the assessment of premium costs against your company was appropriate and recommended that the Department pursue recovery.

You may accept this determination and settle this claim for the amount set forth above by having an authorized representative of your company accept this offer by executing this letter at the bottom and returning it to the Department within 15 calendar days of the receipt of this letter. Upon payment of the premium costs the Department will provide an appropriate release. If you elect not to accept this offer within the designated time period the Department will initiate legal action to recover these damages.

Sincerely,

Director of Transportation Operations

ACCEPTANCE OFFER:

_____ accepts the offer of the Department to settle all claims for premium costs in the amount of \$_____ as a result of its alleged conduct in the above referenced project/contract and agrees to make payment of such sum to the Department within 30 business days of this Acceptance.

Designated Representative of Consultant

Dated: _____

Appendix F – Notice of Attendance at Claim Meeting and Acknowledgement of Privileged Discussion

Re: ***Project Description...***
Financial Project ID 123456-1-52-01
Contract No. 12345 (FY)
Supplemental Agreement No. 1

Date and Location of Director's Meeting: _____

The undersigned persons and entities acknowledge and agree, in their individual and representative capacities, that the discussions held in the above referenced Director's Meeting regarding the referenced matter (and any subsequent related settlement discussions) are for the purpose of settlement of certain claims and disputes between the Department and Consultant and are subject to certain settlement privileges in accordance with Florida law. They further acknowledge that they are represented by legal counsel or have had the opportunity to obtain legal counsel and advice for this Director's Meeting.

| <u>Name (Print)</u> | <u>Company</u> | <u>Title</u> | <u>Signature</u> |
|---------------------|----------------|--------------|------------------|
|---------------------|----------------|--------------|------------------|

**Appendix G – Reporting, Collection, and Cash Received
(Sending Funds to the Cashier’s Office)**

(insert date)

Office of Comptroller, General Accounting Office,
Cashier’s Office
Florida Department of Transportation
605 Suwannee Street, MS 42 B
Tallahassee, FL 32399

Re: ***Project Description...***
Financial Management No. 123456-1-52-01
Federal Aid Project No.
Contract No. 12345 (FY)

Dear Cashier:

The District has received funds as restitution for Errors and Omissions on the referenced project, as stipulated in the attached settlement agreement. Please report the following information to the Program Development Office, so that the funds may be re-allocated to the District:

Name of Consultant Firm:
Amount of Recovery:
Date of Recovery:
Funds Transmittal No.:
Object Code: 018051

Thank you for your assistance.

Sincerely,

DPM/CPM

cc: Accounts Receivable Section

**Appendix H - Reporting, Collection, and Cash Received
(Request for assistance to recover funds)**

(insert date)

Accounts Receivable Administrator
OOC - General Accounting Office,
Florida Department of Transportation
605 Suwannee Street, MS 42 B
Tallahassee, FL 32399

Re: ***Project Description...***
Financial Management No. 123456-1-52-01
Federal Aid Project No.
Contract No. 12345 (FY)

Dear Accounts Receivable Administrator:

The District has not yet received funds as restitution for Errors and Omissions on the referenced project, as stipulated in the attached settlement agreement. Please invoice the firm and then send to a collection agency if you are unable to recover the funds. We also request that you work with the Cashier's Office, so they may annually report the recovered amount to the Program Development Office, and thus ensure that the funds will be reallocated to the District.

Name of Consultant Firm:
Amount to be recovered:
Scheduled Date for recovery:
Funds Transmittal No.:
Object Code: 018051

Thank you for your assistance.

Sincerely,

DPM/CPM

Attachment: (settlement agreement)

**Appendix I - Reporting, Collection, and Cash Received
(Request for assistance to recover/track a series of payments)**

(insert date)

Deputy Comptroller
OOC - General Accounting Office,
Florida Department of Transportation
605 Suwannee Street, MS 42 B
Tallahassee, FL 32399

Re: ***Project Description...***
Financial Management No. 123456-1-52-01
Federal Aid Project No.
Contract No. 12345 (FY)

Dear Deputy Comptroller, GAO:

The District requests your approval of the recovery schedule attached as restitution for Errors and Omissions on the referenced project. If you do not approve this schedule, please suggest another one. We also ask that you track the payment of these funds and annually report the successful recovery to the Office of Financial Development, Program and Resource Allocation Office, so that the funds may be reallocated to the District.

Name of Consultant Firm:
Amount of Recovery Payment:
Dates of Recovery Payments:
Funds Transmittal No.:
Object Code: 018051

Thank you for your assistance.

Sincerely,

DPM/CPM

cc: Accounts Receivable Section

**Appendix J - Reporting, Collection, and Cash Received
(Services In Kind)**

(insert date)

Deputy Comptroller
OOC - General Accounting Office,
Florida Department of Transportation
605 Suwannee Street, MS 42 B
Tallahassee, FL 32399

Re: ***Project Description...***
Financial Management No.123456-1-52-01
Federal Aid Project No.
Contract No. 12345 (FY)

Dear Deputy Comptroller:

The District has agreed to accept services in kind as restitution for Errors and Omissions on the referenced project. The attached settlement agreement describes the services to be provided, including the proposed consultant personnel and their compensation rates. The District provides the following information in fulfillment of the settlement agreement:

Name of Consultant Firm:
Date(s) Services Provided:
Original Balance:
Previously Received Services:
Current Services Provided:
Balance:

Thank you for your assistance.

Sincerely,

DPM/CPM

Attachment: (settlement agreement)