

Section 4.2

CONSULTANT CEI ACCOUNTABILITY

4.2.1 Purpose

To establish procedures for the assignment of responsibilities when a Consultant Construction Engineering and Inspection (CCEI) has been determined to have performed work for the Department that has been identified as having errors, omissions, or contractual breaches. This procedure is for use by the Department to document the deficiency and the additional costs and damages sustained and establish the requirement for a recommendation for action against the Consultant.

The identification of errors and/or omissions as a result of incorrect final estimate shall be in accordance with *the Review and Administration Manual*, [Procedure No. 700-050-005](#).

4.2.2 Authority

[Sections 334.048\(3\), Florida Statutes](#)
[Section 20.23\(3\)\(a\), Florida Statutes](#)

4.2.3 References

[Section 337.015, Florida Statutes](#)

4.2.4 Background

Throughout the construction phase of the Department's construction contract under the management of a Consultant CEI, quality assurance reviews are performed. Reviews performed by both the District Construction Engineer's staff and the State Construction Office staff, as well as reviews performed by the FHWA, are intended to determine whether the work performed on the project is of an acceptable level of quality as established in the contract documents for the project.

There have been instances in the past whereby Consultant CEI firms have not performed in full conformity with the Consultant Contract. These instances have at times cost the Department, either through additional work paid to the construction Contractor or through remedial costs to correct defective work in the contract administration or documentation.

This procedure outlines the assessment of responsibility that the Department's Construction Project Manager in charge of the Consultant CEI Contract must complete after reviewing the project performance.

4.2.5 Identification of Errors, Omissions, or Contractual Breaches

4.2.5.1 Resident Level Responsibilities

The initial identification of the errors, omissions, or contractual breaches is the responsibility of the Construction Project Manager. This is accomplished through routine project and quality assurance (Q.A.) reviews of the Consultant's work product, records, and performance grades. Reviews should be made on a continual basis and will be documented during the Consultant's quarterly performance evaluation.

If the Consultant CEI contractual performance, staffing, equipment, or contract administration is found unacceptable and not in agreement with Department historical decisions during a Department QA review, the deficiency shall be clearly defined in writing, and the authority (contract section, article, page, etc.) cited. The Construction Project Manager shall prepare appropriate correspondence for the District Construction Engineer's (or designee) signature outlining the deficiency and identifying a reasonable time frame for Consultant corrective action.

If the noted deficiencies are directly attributable to the Project Administrator or the inspectors, corrective action shall first be directed in writing to the Consultant Senior Project Engineer, and/or the Consultant Principal-in-Charge, with copies to the District Construction Consultant Manager, and the District General Counsel. If no apparent action is taken within 30 days, the concerns shall be clearly conveyed directly to the Consultant Principal-in-Charge, with a copy to the Consultant Senior Project Engineer, the District Construction Consultant Manager, and the District General Counsel.

If the issues are directly attributable to the Consultant Senior Project Engineer, the concerns shall be conveyed to the Consultant Principal-in-Charge and a copy to the District Construction Consultant Manager and the District General Counsel. During the period of correction, the Consultant's actions and progress shall be closely monitored. The relationship involved here is contractual, and the Department must allow the Consultant sufficient and reasonable time to correct noted deficiencies with their contract performance, as appropriate under the circumstances.

If appropriate action is not taken to correct the deficiencies, the District Construction Engineer (or designee) will direct the Consultant in writing to provide a written response to the deficiencies addressing the reasons why the issues have not been addressed and a

plan outlining the time frame within which all issues will be addressed. If the response is acceptable to the Department, corrective actions and a time frame for corrective action shall be approved in writing. Continued monitoring by District staff will be required. A follow-up at the end of the specified correction period will be prepared based on the staff's investigation at that time. A copy of the report should be sent to the District General Counsel, the District Director of Transportation Operations, and the District Professional Service Administrator.

The District Construction Engineer, through his staff and with the advice of the District General Counsel, shall perform a comprehensive review after-the-fact to determine if the Department or the Contractor suffered any damages during this period. If damages were sustained, the recovery of any identified costs and damages shall be in accordance with the procedure for ***Errors, Omissions, and Contractual Breaches by Professional Engineers On Department Contracts***, [Procedure No. 375-020-010](#).

4.2.6 Consultant Contract Termination

If the Consultant CEI does not follow through with the corrective action or the action taken is unsuccessful, the District Construction Engineer will summarize the findings and provide a recommendation for termination to a committee comprised of the District Secretary, the District Director of Transportation Operations, and the State Construction Engineer (or designee). The Chief Construction Litigation Attorney (or designee) shall be a non-voting legal advisor to the committee. The FHWA shall be given a copy of the written findings from the committee on all Federal Aid projects.

If the committee concurs with the recommendation, the District Construction Engineer will forward a copy of the findings, with a recommendation for execution of a Termination Agreement (or, in the event the Consultant refuses to agree to termination, a unilateral termination) to the District Professional Services Administrator. The contract shall then be terminated for cause. The District will then be responsible for completing the CEI on the project, either through another CCEI Contract or with in-house personnel.

- (A) If this action is followed through to termination, the District Construction Engineer will need to ensure the following become the possession of the Department:
- (1) All files, records, and documents given to the Consultant, or kept by the Consultant as part of his contractual obligation;
 - (2) All record books (piling, density log, etc.);
 - (3) All equipment supplied by the Department;

- (4) All files, records, and documents kept by subconsultants, as well as certification of payment;
 - (5) All personal logs or diaries pertaining to the construction or CEI contracts kept by the Senior Project Engineer, Project Administrator, or Inspectors.
- (B) The District Construction Engineer will immediately notify the construction Contractor that the termination of the Consultant CEI has taken place. The Contractor will then be notified who will be assigned the CEI responsibilities. As soon as possible, the District Construction Engineer shall arrange for a meeting between the Contractor and the newly appointed Resident Engineer or the Senior Project Engineer in case of a Consultant CEI.
- (C) The Construction Project Manager will notify the District Office of Information Systems of the termination. A list of all Consultant personnel associated with the project who have computer access authority will be provided so that the access privileges will be revoked immediately.
- (D) Upon securing the records and reassigning the responsibilities of the construction project management, the District Construction Engineer shall perform a comprehensive investigation of all costs incurred by the Department or its Contractor due to this termination and/or the actions (or inactions) of the Consultant leading up to the termination. This shall include all administrative, construction, or legal costs incurred. If damages were sustained, the recovery of any identified costs and damages shall be in accordance with the procedure for ***Errors, Omissions and Contractual Breaches by Professional Engineers on Department Contracts***, [Procedure No. 375-020-010](#).
- (E) The District Professional Services Administrator will process a final ***Consultant CEI Work Performance Evaluation*** completed by the Construction Project Manager in accordance with ***Professional Services Consultant Work Performance Evaluation***, [Procedure No. 375-030-007](#). This information shall be considered in selection of future CEI Consultants throughout the State.