

# Errors & Omissions

**2022 PEPS Conference** 

Jason Duncan, P.E.

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#### **Topics**

- Background
  - Change Orders
- Getting the Consultant Involved
- Process for Errors and Omissions
  - PEPS Contracting: Contract Management for the Project Manager Manual
- Workflow Diagram
  - E&O Letter Templates
    - Coordination with FIN
  - Appeals Process
  - Database and Dashboard

## **Background**

#### **Background**



#### **MEMORANDUM**

**DATE:** August 10, 2007

TO:

District Engineers
Division Directors
Office Directors
Directors of TP&D
Janice Mullenix, OGC-CSS
Lea Burnett, OGC-CSS

FROM: Michael W. Behrens, P.E. M. D. B

SUBJECT: Errors and Omissions Policy Statement

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

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

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

This policy is in compliance with Senate Bill 924. Procedural guidelines, developed by the Design Division in support of this policy, will be forthcoming.

If you have any questions concerning this policy, contact Mark A. Marek at (512) 416-2576 or Camille Thomason at (512) 416-2263.

Mark A. Marek, P.E., DES Camille Thomason, P.E., DES TxDOT policy issued regarding errors and omissions on August 10, 2007

Policy references S.B. 924, 80st Leg., effective Sept 7, 2007

Codified in Tex Gov Code Chapter, 2252, Section 2252.905



What?

Why?

When?

# Standardization of the errors and omissions process



Includes partnership with Construction, PEPS, and Finance



Goal to address identified deficiencies and improve the efficiency and effectiveness of the E&O process

## What?

# Compliance Monitoring Review: Change Orders Related to PS&E



Compliance Division



Sept 2021

Why?

# Why?

### **MAPS**

- CST & PEPS will re-evaluate E&O cost recovery procedures and identify areas to be strengthened and improved
- CST, FIN, and PEPS will develop additional training and guidance on federal participation in changes orders and correct coding
- PEPS and CST will develop a Tableau
   Dashboard to capture 1E change orders, associated costs of the E&O, resolution, and the collection of funds

## When?

# New processes started on September 1, 2022

- Addressed deficiencies identified during the compliance review
  - Workgroup revised the existing process.
     Guidance released in October
  - Workflow diagram published in September
- New tools to improve efficiency and effectiveness of the process
  - New E&O tracking system in PS-CAMS
  - Dashboard following a few months later

# **Change Orders**

#### **Change Orders**

**\*** 

- Follow standard procedures for completing COs
- 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	X		
Incorrect PS&E			
1E		X	
Delay/rework			
1C			X
Other			

#### **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.

## **Getting the Consultant Involved**

#### 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

This is both a requirement and a best practice





# 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 lead to the error or omission

## **Process for Errors and Omissions**

#### **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

# PEPS Contracting: Contract Management for the Project Manager Manual

#### Chapter 9 Errors and Omissions











TxDOT
Errors and
Omissions
Policy

Errors and Omissions Procedure Appeals Process

Collection
Procedure
and
Settlement
Agreement

Division Contact Information

# Where to find the Errors and Omissions Guidance External Webpage

- PEPS Landing Page on TxDOT
   Website:
   <a href="https://www.txdot.gov/business/peps.html">https://www.txdot.gov/business/peps.html</a>
- Resources Page: <u>https://www.txdot.gov/business/peps/resources.html</u>
- Errors and Omissions Guidance: <u>https://ftp.txdot.gov/pub/txdot/ppd/errors-omissions.pdf</u>

#### Errors and Omissions

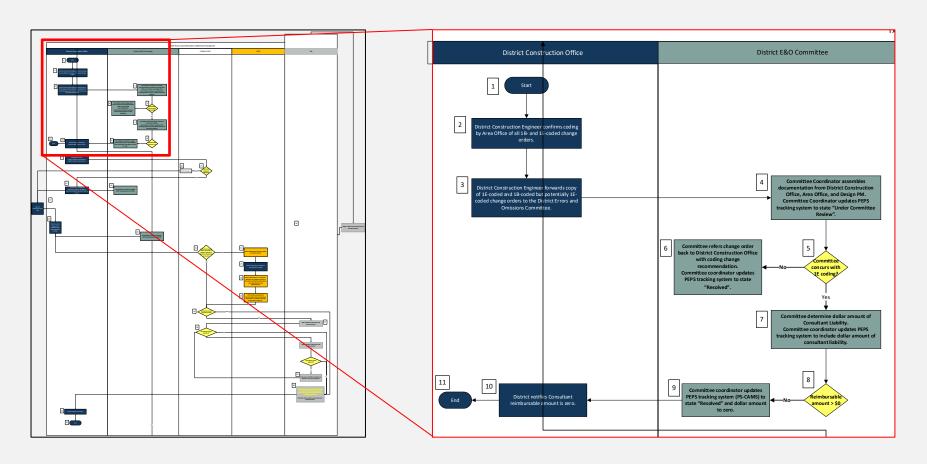
#### Contents

Errors and Omissions 1. Policy 2. Consultant Contract Administration 3. Error and Omission Identification and Communication 4. Error and Omission Correction PS&E Development Project Construction PS&E Revision by the Provider	
PS&E Revision by TxDOT	
5. Change Orders	
Reason Code 1C	
Recoverable Additional Cost	
Actual Cost	
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When to Request Payment	
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No Response	. 1
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# **Workflow Diagram**

#### **Workflow Diagram**



# **E&O Letter Templates**

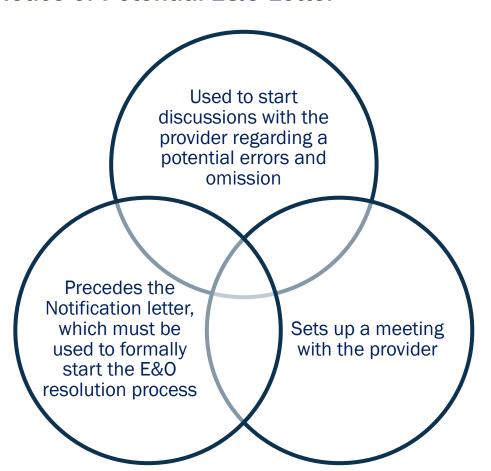
#### **E&O Letter Templates**

Request for Payment



# Notice of Potential E&O **Issues Resolved** Notification of E&O

#### **Notice of Potential E&O Letter**





125 EAST 11TH STREET, AUSTIN, TEXAS 78701-2483 | 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 <a href="Date">Date</a> concerning the discovery of a problem that may be a result of an error or omission on the project developed under the referenced contract.

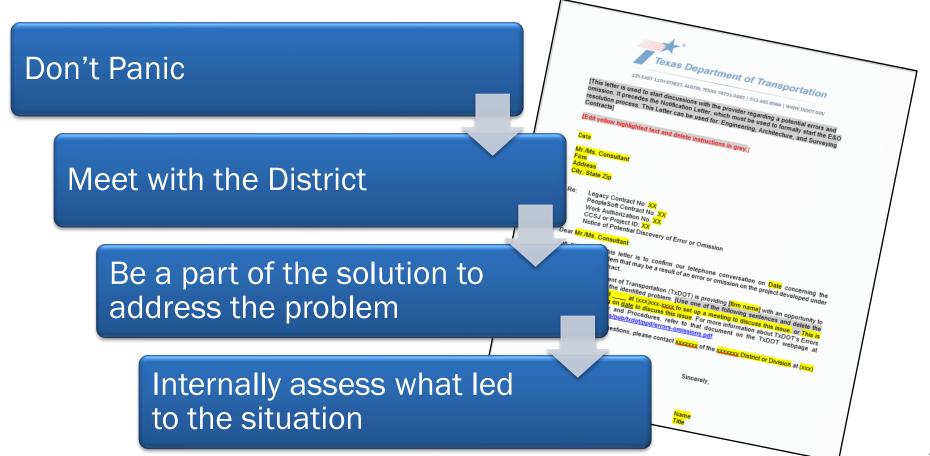
The Texas Department of Transportation (TxOOT) is providing firm name with an opportunity to assist in addressing the identified problem. [Use one of the following sentences and delete the other.] Please contact \_\_\_\_\_ at (xxx)xxxxxxxxx to set up a meeting to discuss this issue. or This is to confirm 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://ttp.dot.state.tx.us/pub/txdot/ppd/errors-omissions.pdf.

Should you have any questions, please contact xxxxxxxx of the xxxxxxxx District or Division at (xxx)

Sincerely,



#### **Notice of Potential E&O Letter – Consultant Perspective**



#### **Issues 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



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

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

Dete

Mr./Ms. Consultant Firm Address (not a PO Box) City. State Zip

Re: Legacy Contract No. XX
PeopleSoft Contract No. XX
Work Authorization No. XX
CCSJ or Project ID: XX
Issues Resolved Letter

#### Dear Mr./Ms. Consultant

On date the <u>District or Division</u> notified X/YZ 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.] Since that notification, we have been able to meet and discuss the problem as well as solutions to address the issue.

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 \$\frac{\text{xxxxxx}\text{ District or Division}}{\text{Errors}}\$ 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.

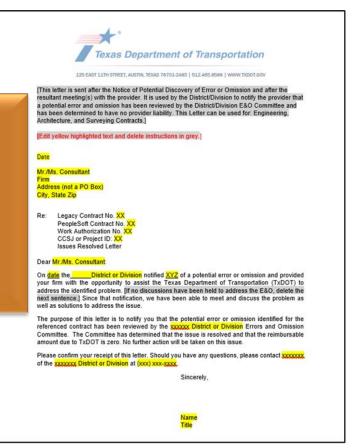
Please confirm your receipt of this letter. Should you have any questions, please contact xxxxxxxx of the xxxxxxxx District or Division at (xxxx) xxxx-xxxxx

Sincerely.

Name Title

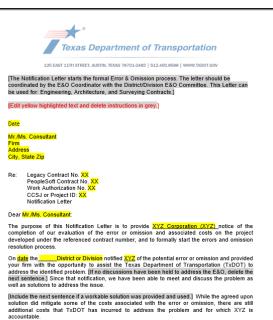
#### Issues Resolved Letter - Consultant Perspective

- 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



#### **Notification Letter**





The following is a summary of the error or omission and the associated additional costs: [outline the following is a summary of the additional costs associated with the change order!

Prior to formally requesting payment for these costs. TxDOT is providing XYZ with the opportunity

to meet to address any questions about the costs or questions about next steps in the errors and omissions resolution process. Within the next 30 days, please contact our E&O <u>Conditionant</u>. Xx at <u>loox took your</u> to set up a meeting to discuss this issue. If a meeting is not requested within

Enter name of Recipient

Should you have any questions, please contact 2000000 of the 2000000 District or Division at 2000 1000 District or Division at 2000 District or Division at 2000 District or Division at 2000 District or Division District Engineer, or Division Director of Construction, District Engineer, or Division Director of Construction, District Engineer, or Division Director Division Director, PEPS Division Director, Division Division Director, Division Division Division Division Division Amanda Landry, Director, Financial Management Division PEPS Service Center Manager name and title

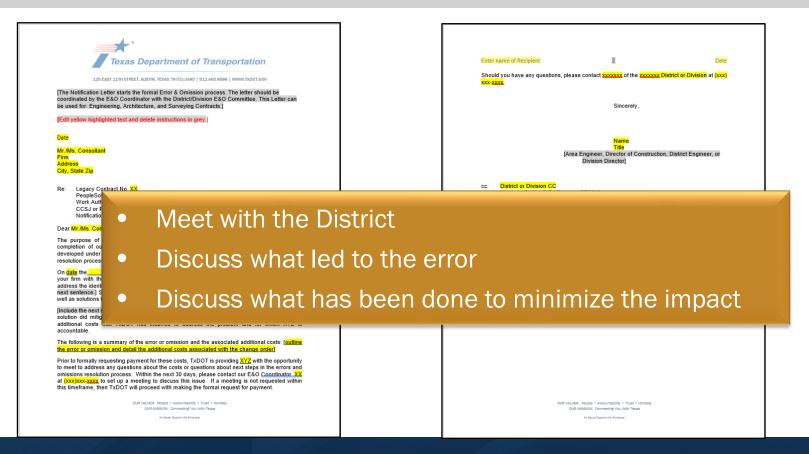
- Starts the formal E&O process
- Coordinated by the E&O Coordinator and the D/D E&O Committee
- Summarizes E&O and gives the provider 30 days to respond

this timeframe, then TXDOT will proceed with making the formal request for payment.

Out WALKEE People - Accountability - Tradt - Honesty
Out Millionic Connecting that with Trade

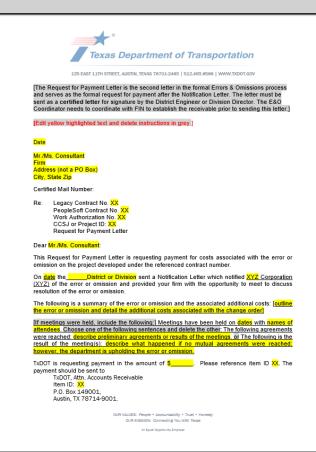
#### **Notification Letter – Consultant Perspective**





#### **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

#### Request for Payment Letter – Consultant Perspective





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The Request for Payment Letter is the second letter in the formal Errors & Omissions process and serves as the formal request for payment after the Notification Letter. The letter must be sent as a certified letter for signature by the District Engineer or Division Director. The E&O Coordinator needs to coordinate with FIN to establish the receivable prior to sending this letter.]

[Edit vellow highlighted text and delete instructions in grev.]

#### Date

Mr./Ms. Consultant Firm Address (not a PO Box)

City, State Zip

Certified Mail Number:

Re: Legacy Contract No. XX
PeopleSoft Contract No. XX
Work Authorization No. XX
CCSJ or Project ID: XX
Request for Payment Letter

#### Dear Mr./Ms. Consultant:

This Request for Payment Letter is requesting payment for costs associated with the error or omission on the project developed under the referenced contract number.

On <u>date</u> the <u>District or Division</u> sent a Notification Letter which notified <u>XYZ Corporation</u> (<u>XYZ</u>) of the error or omission and provided your firm with the opportunity to meet to discuss resolution of the error or omission.

The following is a summary of the error or omission and the associated additional costs: [outline the error or omission and detail the additional costs associated with the change order]

If meetings were held, include the following: I Meetings have been held on dates with names of attendees. Choose one of the following sentences and delete the other. The following agreements were reached; describe preliminary agreements or results of the meetings, of The following is the result of the meeting(s); describe what happened if no mutual agreements were reached; however, the department is uphodding the error or omission.

TxDOT, Attn. Accounts Receivable Item ID: XX
P.O. Box 149001.

Austin, TX 78714-9001.

OUR VALUES: People \* Accountability \* Trust \* Hon-OUR MISSION: Connecting You With Texas

An Equal Opportunity Employer

- Payment
- Make a request for consideration in the appeals process

#### Where can the E&O Letter Templates be Found?



Errors and Omissions Procedures			
		Back to To	
Revision History (click on date)		Title	
10-19-22	E&O Guidance - Updated		
08-22-22	TxDOT E&O Collection Process - NEW		
	Errors and Omissions Standardization Process Workshop - NEW		
	FIN E&O Receivables Form Portal		
Error of Ominion Letter Tomplet			
08-19-22	Notice of Potential Errors and Omissions - <b>Updated</b>		
08-19-22	Errors and Omissions Notification - NEW		
08-19-22	Errors and Omissions Request for Payment - NEW		
08-19-22	Errors and Omissions Issues Resolved - NEW		

Crossroads > PEPS > Management & Administration > <u>Errors and Omissions Procedures section</u>

## **Coordination with FIN**

#### **Errors and Omissions Receivable Request**





#### **Required Information**

The required data below is needed to create the receivable in our financial records:

- DD-Code District/Division Name
- District/Division Contact
- Contact Email
- Primary CSJ/Project ID#
- Provider TX Identification Number (TIN)#
- Provider Name
- Provider Contact Name
- Provider Contact Number
- Provider Contact Email
- Street Address
- City
- State
- Zip Code
- Receivable Amount
- Attach supporting documentation to accompany the invoice i.e. the signed DD request for payment letter



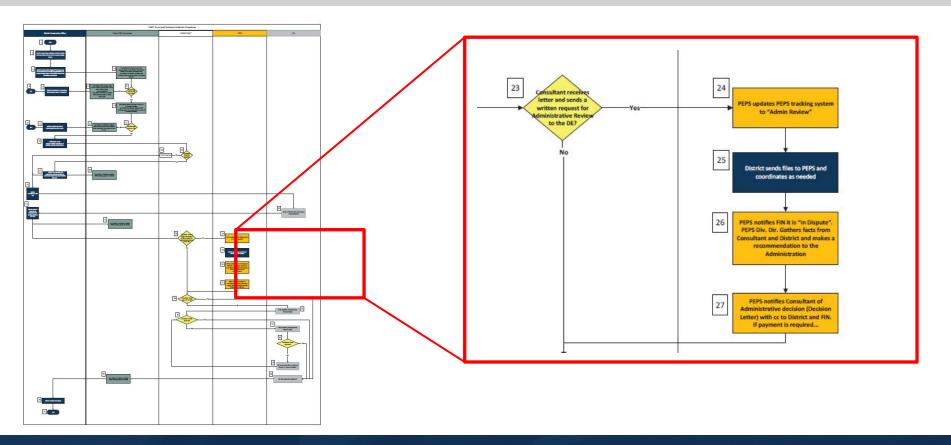
#### Where can the FIN E&O Receivables Form Portal be Found?

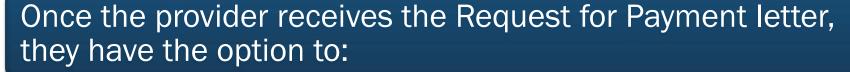


Errors and Omissions Procedures	
B	Back to Top
Title	
E&O Guidance - Updated	
TxDOT E&O Collection Process - NEW	
Errors and Omissions Standardization Process Workshop - NEW	
FIN E&O Receivables Form Portal	
es de la companya de	
Notice of Potential Errors and Omissions - Updated	
Errors and Omissions Notification - NEW	
Errors and Omissions Request for Payment - NEW	
Errors and Omissions Issues Resolved - NEW	
	Title  E&O Guidance - Updated  TXDOT E&O Collection Process - NEW  Errors and Omissions Standardization Process Workshop - NEW  FIN E&O Receivables Form Portal  ES  Notice of Potential Errors and Omissions - Updated  Errors and Omissions Notification - NEW  Errors and Omissions Request for Payment - NEW

Crossroads > PEPS > Management & Administration > Errors and Omissions Procedures section > FIN E&O Receivable Form Portal







- 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.





The PEPS Division will coordinate directly with the D/D for any additional information needed during the appeal

The PEPS Division will notify FIN that an appeal has been filed

The PEPS Division Director will review the submitted information.

- Minor issues may be handled through the review of the submitted information
- Larger issues may involve meetings with the D/D and the provider.

The PEPS Division Director will submit a summary and recommendation to the Chief Engineer for review and decision.





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.

# **Database and Dashboard**

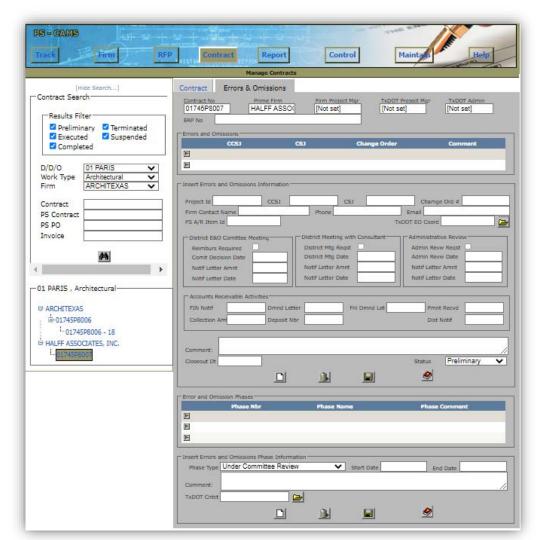
#### **PS-CAMS** Database

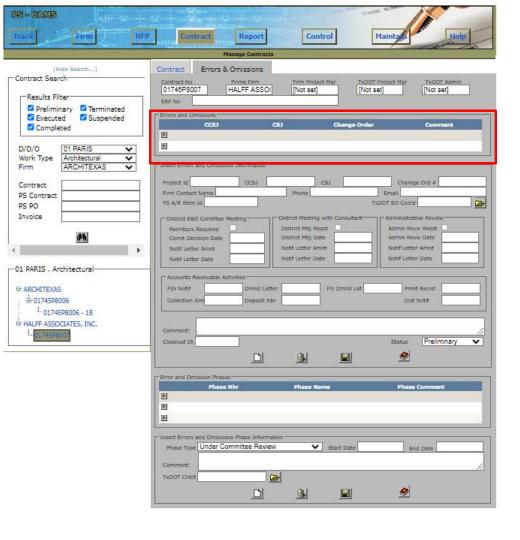
PEPS, CST, and FIN are working together to provide a database to assist the Districts and Division to track and report the 1E change orders through to resolution.

These change orders will be tracked in a new module in the PEPS PS-CAMS system in an Errors & Omissions Module.

The purpose is to track all 1E change orders that are identified on or after 9/1/2022.

PS-CAMS Errors & Omissions
Database Screen

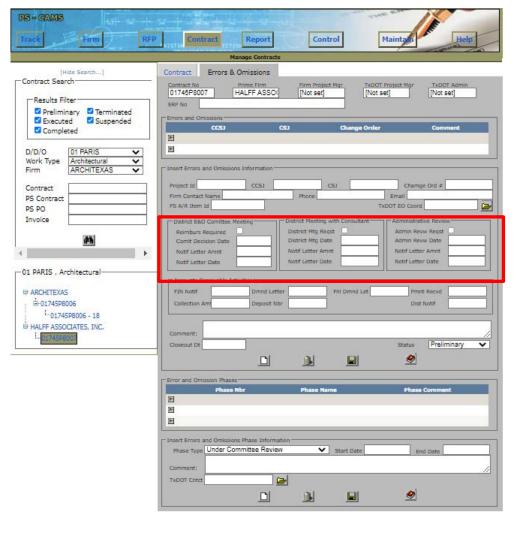




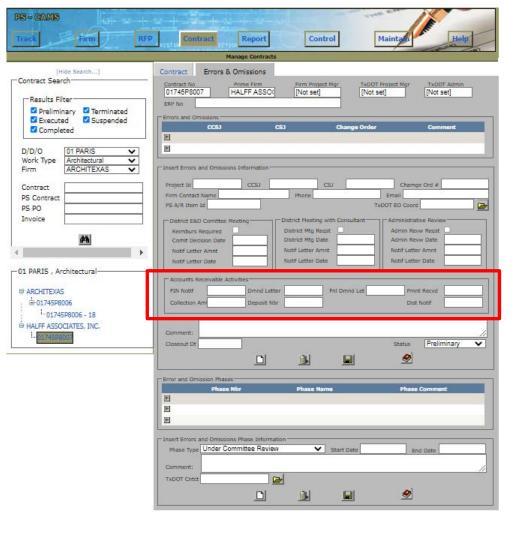
# Change Order E&O Viewing Pane

PS - GAMS		
Track Firm RFP	Control Maintage Help	
Manage Contracts		
Contract Search]  Contract Search  Results Filter  Preliminary Terminated Executed Suspended Completed	Contract No	
	CCSJ CSJ Change Order Comment	
D/D/O 01 PARIS  Work Type Architectural  ARCHITEXAS		
Contract PS Contract PS PO Invoice	Project Id	
4	Reimburs Required District Mtg Reqst Admin Revw Reqst Comit Decision Date District Mtg Date Admin Revw Date Notif Letter Armit Notif Letter Date Notif Letter Date Notif Letter Date Notif Letter Date	
□ PARIS , Architectural □ ARCHITEXAS □ 01745P8006 □ -01745P8006 - 18 □ HALFF ASSOCIATES, INC. □ 1745P8007	Accounts Receivable Activities  FIN Notif Dmnd Letter Fnl Dmnd Let  Collection Am Deposit Nbr Dist Notif	
	Comment: Closeout Dt Status Preliminary	
	Fror and Omission Phases  Phase Nor Phase Name Phase Comment  F  E	
	Tinsert Errors and Omissions Phase Information  Phase Type Under Committee Review ✓ Start Date End Date  Comment:  TXDOT Cricts	

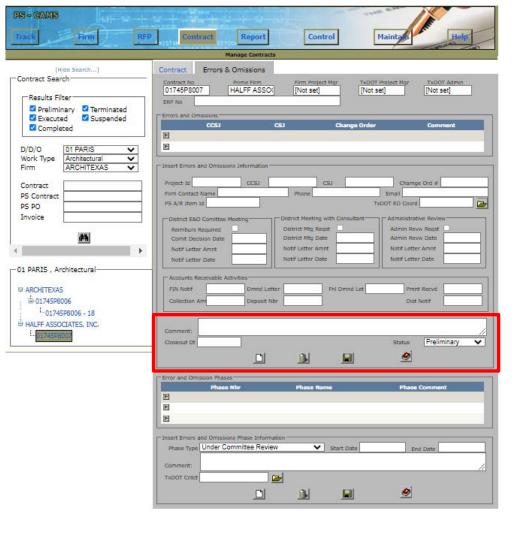
# Identification of the change order and the E&O Contact



#### Documenting Meetings, Letters, or Appeals Review



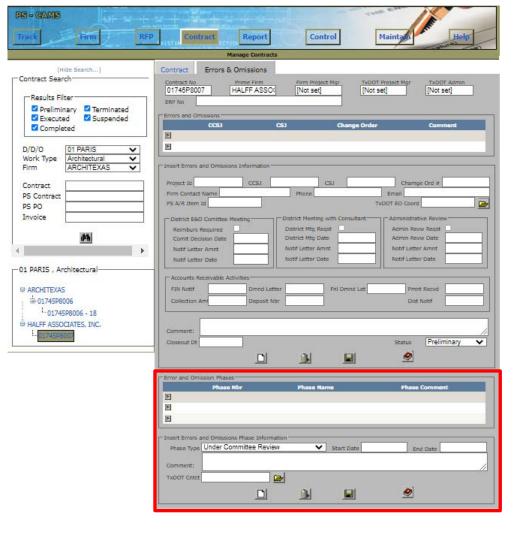
Invoicing of the E&O Cost, Collections, and Payment Information



#### Status:

- 1. Preliminary
- 2. In Process
- 3. Complete

Comments, Record Status, and Function Buttons



#### Phases:

- 1. Under Committee Review
- 2. Resolved No Reimbursement Required
- 3. Notification Letter Sent
- 4. Request for Payment Sent
- 5. Administrative Review Requested
- 6. In Collection
- 7. Resolved Payment Received

Phases Pane and Phase Information Input

#### **Errors & Omissions Tableau Dashboard**







**Questions and Answer Discussion** 

# **Contact Information**

### Jason Duncan, P.E.

**CST Deputy Division Director** 



Jason.Duncan@txdot.gov



254-749-1925

## Dan Neal, P.E.

PEPS COE Section Director



Dan.Neal@txdot.gov



512-416-2667

# Send questions to:

PEPS\_COE\_Process@txdot.gov

FIN\_ACCTREC@txdot.gov

CS\_Contract\_Review@txdot.gov