



Standard Operating Procedure (SOP)
Compensation for Errors and Omissions

Table with 4 columns: SOP No., Department, Dept. Head Approval, Director Approval. Includes handwritten signatures and dates like 8/26/08 and 8/26/08.

Purpose

To define the process for evaluating if WVU (the owner) should seek compensation from an architect, engineer, or other design professional resulting from damages associated with design errors and omissions (E&O).

Responsibility

- 1. The following people are responsible for following this procedure.
1.A. Manager or Construction Services
1.B. Project Managers (PM)
1.C. WVU Purchasing, Payment, and Contracts (Purchasing)
1.D. Design Professionals—architects, engineers, and other specialty consultants

Definitions

- 1. Damage: As defined in the legal sense. The loss caused by one person to another, or to his property, either with the design of injuring him with negligence and carelessness or by inevitable accident.

Procedure

- 1. Evaluation of damages associated with E&O should be done on a case by case basis, considering the unique factors of a given project. The provisions of the contract under which the design services are being procured and executed must also be considered. The following considerations should be used in evaluating damages associated with E&O:
1.A. WVU recognizes that it is not realistic to expect perfect design documents, completely free of E&O.
1.B. WVU does expect contracted design professionals to execute their work in a responsible manner, using an appropriate "standard of care" or "reasonable

and ordinary care and diligence” consistent with the practice of the profession to avoid needless E&O.

2. The following two conditions must be met for WVU to consider seeking compensation from the design professional:
  - 2.A. The owner must suffer a damage or loss for the owner to seek reimbursement of damages.
    - 2.A.1. The damage or loss must be quantifiable and directly related to the error or omission.
    - 2.A.2. Costs related to omissions may not be considered damages if the Owner receives value for the additional work. For example, if work was not omitted in the original design, the owner would have had to pay it. Seeking damages in this case would result in “enrichment” to the owner. This does not preclude the owner for seeking premium costs for omissions if they can be quantified.
  - 2.B. The error or omission must be the result of negligence or failure to use an appropriate “standard of care” or “reasonable and ordinary care and diligence” consistent with the practice of the profession in preparing design documents.
3. If the two previous conditions are met, the owner should consider pursuing compensation for damages from the design professional.
  - 3.A. The owner should promptly notify the design professional in writing of its intention to seek reimbursement for damages.
  - 3.B. If the design professional does not accept full responsibility or does not agree to reimburse the owner, further negotiations should occur.
  - 3.C. While under negotiation, the owner may withhold payment from the design professional for the amount of the damage as allowed by the contract.
  - 3.D. If negotiations fail, the owner must determine if legal action is appropriate. This decision is made in consultation with WVU General Counsel, Purchasing, and WVU Administration.