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Los Angeles County
Metropolitan
Transportation
Authority

TO : BOARD OF DIRECTORS

FROM: STANLEY G. PHERNAMBUCQ
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SUBJECT: METRO RAIL PROJECTS
STATUS OF CURRENT ERRORS AND OMISSIONS CLAIMS

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At the March 21, 1996 MTA Construction Committee, Alternate Director Vivien Bonzo requested staff provide information relative to past and current errors and omissions claims relative to construction programs.

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BACKGROUND

The MTA Board has requested information relative to resolved and outstanding Errors and Omissions Claims on Metro Rail Projects. Specifically, the following questions have been raised.

- 1) What Errors and Omissions Claims are currently in negotiation for Metro Red Line Segment 1?
- 2) What is the current status of Errors and Omissions Claims for Metro Red Line Segment 2?

In response to the above stated questions, the following information is provided for your review:

- A1) Metro Red Line Segment 1 currently has approximately 57 claims filed against the designer of record. This is a very aggressive number taking into account all possible claims. Currently the MTA is negotiating with the Designer to resolve the claims, but most likely the final number of claims will be substantially less than 57.
- A2) Metro Red Line Segment 2 currently has approximately 265 potential Errors and Omissions Claims. These are change orders which have been labeled as potential Errors and Omissions claims. A decision has not yet been made as to whether these change orders should be pursued for errors and omissions recoveries.

In total there are currently over 490 (Attachment 1) Change Notices which have been tagged for potential cost recovery due to consultant errors or omissions on all Metro Rail projects excluding Blue Line (Long Beach) and Metro Red Line Segment 1. These Change Notices are currently being evaluated to determine if they should be reclassified from "potential" to "actual."

The MTA has developed an Errors and Omissions Review Board (EORB) (Attachment 2) which will identify whether the 490 possible Change Notices are, in fact, an error or omission. Once the EORB determines that an error or omission exists, the value of that claim will be determined, and the claim will be filed against the Professional Liability Insurance Policy.

The MTA will then try to recover all damages caused by the consultant's errors, omissions, or negligent acts in the performance of their contract, subject to the terms of the contract.

Prepared by:

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METRO RAIL PROJECTS
ERRORS AND OMISSIONS
ATTACHMENT 1

<u>PROJECT #</u>	<u>PROJECT TITLE</u>	<u>NUMBER OF CN'S</u>
R05	PASADENA BLUE LINE	7
R23	METRO GREEN LINE	216
R81	METRO RED LINE SEG 2	265
R82	METRO RED LINE SEG 3	<u>5</u>
TOTAL		493

**ERRORS AND OMISSIONS REVIEW BOARD
(EORB)**

OBJECTIVE:

The objective of the Errors and Omissions Review Board (EORB) is to represent the AUTHORITY in the verification of possible design errors and omissions. The EORB will be responsible for the review and determination of actions by the AUTHORITY's design, construction management, and environmental consultants relative to negligent acts, errors, or omissions on the following lines:

Metro Red Line - Segment 2
Metro Red Line - Segment 3
Metro Pasadena Line
Metro Green Line

MEMBERSHIP:

The EORB shall have permanent members composed of the Manager of Contracts, Claims; Deputy Executive Officer of Engineering; Configuration Management; Legal and one member from Construction. As required per claim, a person from legal, safety, or other appropriate departments will be added to the panel.

The Chairperson of the EORB shall be the Manager of Contracts, Claims.

The EORB Secretary shall be the representative from Configuration Management.

MEETINGS:

Meetings will be held bi-weekly at a minimum, but at a frequency so as not to delay any claim. Meeting dates will be scheduled in advance, with the schedule provided by the Chairperson to all concerned parties.

The agenda of an individual meeting will be published in advance listing the particular errors and omissions to be reviewed.

The affected Consultant will be required to make a brief presentation to the EORB in order to clarify any issues. The Consultant will be notified sufficiently in advance of the items so they may be prepared to present their respective reasoning.

PROCESS:

It is the purpose of the EORB to disposition errors and omissions in a timely manner, and determine if an actual error or omission exists.

A potential error or omission is first brought to the attention of the AUTHORITY thru the construction change notice (CN) process. Once a CN has been flagged as containing a consultant error or omission, that CN will be reviewed by the EORB.

The EORB will determine if an actual error or omission exists, and if they find that no evidence exists to continue the pursuit of an error or omission claim, the claim will be dropped and will no longer be tracked through the Construction Change System (CCS).

If the EORB finds that enough evidence exists to determine that there is a consultant error or omission, the Manager of Contracts, Claims, will report the error or omission to the consultant's insurance carrier, and begin the process to resolve the claim.

If the EORB cannot determine that an error or omission exists, then the EORB will request additional information or seek expert help in determining the potential error or omission. If the EORB cannot determine if an error or omission exists after this process, the claim will be reported to the insurance carrier and the process to resolve the claim will be followed.

FINDING:

If the EORB finds that an error or omission exists, the EORB will prepare a Findings of Fact report and transmit it to the Consultant's insurance carrier, as well as the Consultant, in order to begin the resolution process.

The appropriate contract administrator will be required to update the CCS to delete the potential E/O from the system.

If the Authority obtains resolution by means of either negotiation or litigation, the results of that resolution shall be provided to the appropriate contract administrator, who shall update the CCS.

If the EORB finds that an error or omission does not exist, the EORB will prepare a Findings of Fact report and transmit it to the appropriate contact administrator to ensure that it will no longer be tracked as a possible error or omission on CCS.