

DATE: January 20, 2009

TO: Region Engineers
Region Delivery Engineers
TSC Managers
Resident/Project Engineers
Region Construction Engineers

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SUBJECT: Bureau of Highway Instructional Memorandum 2009-02
Local Agency Cost Reimbursement for Liquidated Damages

The purpose of this memorandum is to describe the process a local agency may use to request cost reimbursement for liquidated damages (LDs) assessed to the contractor.

If LDs are assessed on a project for items covered under Section 108.11.C of the *2003 Standard Specifications for Construction* and the local agency is not going to pursue reimbursement for the items, nothing further needs to be done; process the contract modification as usual.

As per BOH IM 2006-10, *Region Oversight of Local Agency Construction Projects*, the following definitions apply:

- LPE local agency project engineer
- DR MDOT's designated representative

If the local agency is going to pursue reimbursement for the items, complete the following steps after the contractor signs the contract modification, or in the case that they refuse to sign, once the required wait period is over:

1. The LPE will prepare a letter to MDOT's Local Agency Programs office indicating they are requesting compensation for items covered under Section 108.11.C of the *2003 Standard Specifications for Construction*. The LPE will attach the letter to the contract modification for LDs and submit it to the DR for approval. Once approved by the DR and LPE, the LPE will forward a copy of the contract modification and letter to the Local Agency Programs office. Local Agency Programs staff will authorize local agency construction engineering on the project up to the amount of the contract modification for LDs, and forward the contract modification and letter to the Financial Operations Division.
2. Document the costs for which the local agency is requesting reimbursement on Form 802P, *Local Agency Request for Reimbursement*. The maximum amount the local agency can be

reimbursed will be what is assessed in LDs to the contractor on the project. The local agency will also certify the following on Form 802P or an attached letter:

- The charges included are justified.
- The charges occurred during the period of the LDs, or directly related as a result of the LDs.
- The LDs were assessed to the contractor.

Documentation shall be attached to the form. A request for reimbursement must be received by the Financial Operations Division's Project Accounting Section within 90 days of the date of the most recent local agency authorization for construction engineering, or 90 days from the approved contract modification for LDs.

3. The Project Accounting Section staff will review and record the costs incurred by the local agency. At the time of the final project accounting, the local agency will be reimbursed the lesser of:
 - a. total local costs incurred, or
 - b. total LDs assessed to the contractor.

Prior to completing this task, the Project Accounting Section staff will check with the DR to be sure there are no outstanding claims or other project items that may change the LDs assessed on the project. Local reimbursement is netted against any outstanding local share of total project costs. Requests to process reimbursement prior to final accounting will be done on a hardship basis only.

4. If the amount of LDs is more than the amount for which the local agency is seeking reimbursement, a proportional share of the excess will be deducted from the federally participating contract construction costs before determining the final federal or state share. This step will be completed by the Project Accounting Section staff.

Delivery/project engineers are requested to share this instructional memorandum with local government and consultant engineers within their jurisdiction. This procedure will be incorporated in the *Construction Manual* when updated.

If you have any questions, please contact Dale Spencley, Construction Contracts Engineer, at 517-322-6630 or spencleyd@michigan.gov.

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