



TRANSPORTATION CABINET

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Construction Memo No. 01-07

MEMO TO: District Executive Directors
TEBMs for Construction
District Construction Engineers
Resident Engineers

FROM: Greta Smith, P. E.
Director
Division of Construction 

DATE: February 14, 2007

SUBJECT: Project Completion and Liquidated Damages

During the past year there has been significant turnover in our Resident Engineers and their crews due to retirements and attrition. This has led to a number of new faces having to deal with ongoing work, the change order process, and the transition to Site Manager. It is critical that we strive to have a uniform interpretation, based upon the Specifications, of when to call a project complete and how liquidated damages are assessed.

Project completion is defined by Specification 101.03 as the *satisfactory completion of all work relating to both Contract Bid Proposal items and items added by supplemental agreement*. There is no wording which would allow a project to be called 'substantially complete' in the specifications. According to the contract (which binds the Cabinet to a project as well as the contractor), the contractor shall finish all bid items and change order items in the time frame established. Satisfactory is additionally defined as completing the work to the quality demanded of the specifications and the plans. Additionally, by 104.05, all final cleanup must be completed and per 105.12, all items that the Resident Engineer has placed on his punch list must be corrected.

When the District calls a contract complete, the only items on a final inspection 'punch list' should be those corrective work items found in the Central Office or FHWA final inspection. There should not be bid items left for completion at that time.

Liquidated damages (LDs) are defined by Specification 108.09 (to paraphrase) as *'daily charges as agreed for each calendar day without regard to inclement weather or temperature restrictions except during the months of December through March when the Contractor has failed to complete the work as the contract time allows'*. The proposal, if not the plans, should spell out the nature of the LDs in time and dollar amount. LDs are intended to either compensate the Cabinet for extra expenses associated with a project being extended unreasonably or to bring to bear on the Contractor the cost his operation is inflicting on the traveling public by working non-contract hours/days. If there is a reasonable explanation for a time

extension, a change order should be processed. Without a signed change order to add time to the contract, LDs shall be charged according to the contract and specification.

As stressed above, LD's are to be charged per the contract with no reductions or quantifications. As an exception, the Specifications allow a 50% reduction of LD's when a road, *which has been closed*, is opened to traffic. Additionally if the traveling public did not have use of the roadway at all during construction and the contractor, by progressing the work, has opened the road a reduction is deserved.

By consistently enforcing the specification requirements for project completion and liquidated damages, we provide fairness to the contracting community. When the specifications are selectively enforced the contractor is often unable to predict the response from the Cabinet. Selective enforcement also leaves the Cabinet open to argument on these items for claims and lawsuits.

Please contact this office if you have any questions or if we can be of assistance.

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 KAHC