

Maryland Department of Transportation  
State Highway Administration

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Approved by: andre Fittrell  
Chief Operating Officer

Date: 3-1-24

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**eMCMS Processing of Assessed Liquidated Damages  
Standard Operating Procedure (SOP)**

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Purpose

The purpose of this SOP is to outline the process for applying assessed Liquidated Damages (LDs), into the electronic Maryland Construction Management System (eMCMS), against a Contractor per the contract in which the project is being administered by.

Reference

N/A

Scope

This SOP is applicable to any SHA staff that is responsible for completing, reviewing, or approving a progress payment, whether that be a monthly, semifinal, or final progress payment, that has associated LDs.

Definitions – For eMCMS use only, not legal definitions.

- i. Progress Payment - is synonymous with Estimate for this SOP.
- ii. Negotiable LDs – LDs that have been, or are anticipated to be, assessed with the ability for the contractor to negotiate elements of the assessment. Additional Retainage is held for these types of LDs until all investigations and negotiations are resolved.
- iii. Non-Negotiable LDs – LDs with a known assessment value that is not allowed to be negotiated or that all negotiations are resolved.

Responsible Party

SHA Chief Operating Officer  
SHA Director for Office of Construction  
SHA Deputy Administrator for Hanover Offices

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**PROCEDURE**

1. A detailed and precise document package must be established for the purpose of recording the infractions that caused the contractor to be in breach of contract. It should be established that Contract Payments Division is notified via email prior to the assessment of any LD for notification purposes and aid with completing the LD package to assure proper processing within eMCMS.

2. This package must include:
  - A. Contract Number.
  - B. FMIS Number. (All AW contracts will use FMIS numbers)
  - C. F.A.P. Number. (If applicable)
  - D. Project/Task Description.
  - E. Detailed Explanation of Infraction. (i.e., Failure to Maintain until completion)
  
3. The cover letter shall include within its body:
  - A. Description of the nature of the LDs.
    1. Negotiable – Note that for LDs of this nature additional retainage will be held until negotiations are resolved.
    2. Non-Negotiable
  - B. Number of days assessed and rate of assessment.
  - C. Total Dollar amount of LDs.
  - D. Dates in which the infraction(s) occurred.
  - E. Running total of contract LDs
  - F. Signature of ADE-C / Department Head or their designee.
  - G. Cover letter shall be delivered to the Contractor at the earliest time possible.
  
4. Supporting Documentation
  - A. Copies of the sections of the contract express the language which references the LDs being assessed.
  - B. Copies of the related specifications that were enforced at the time the contract was advertised for bid.
  - C. When multiple infractions occur: Copy of the calendar noting the type of infractions and which days the infractions occurred. (infractions to be listed concurrently)
  
5. Processing the LDs: After the supporting documentation and cover letter has been completed and signed by the ADE-C or equivalent, a USPS mailed copy shall be sent via Certified Mail to the Contractor.

Note: if another department is to utilize this guidance, they will have to identify their department equivalent to the positions below i.e., the District Engineer below would be the Department's Director. It is the department's responsibility to identify organizational equivalents. All Districts will follow the below as written.

  - A. This letter shall be forwarded to:
    1. District Engineer.
    2. Area Engineer of Construction.
    3. District Sketchbook Reviewer. (District Contract Finals staff)
    4. Department in which the LDs is associated with (i.e., District Traffic, Quality Assurance Division (QAD))
    5. If the contract is active, the LDs package shall be attached to the current monthly progress payment for the LD to be processed and applied to that month's progress payment to the contractor by Contract Payments Division (CPD).

6. If contract records have been submitted to Contract Finals, the LDs package will be included with the first available Semi-Final or Final progress payment by the Field Document Reviewer (FDR).
  7. LDs shall not be processed via Change Order, as they are not modifications to a contract.
  8. LDs will be processed directly by CPD.
- B. A second email from the Project Staff/District to CPD should be utilized for advanced notification of an attached LDs package to any progress payment.
6. Special Processing Requirements for non-negotiable Erosion and Sediment Controls (ESC) LDs.
- A. When a non-compliance is documented by the Regional Environmental Coordinator (REC) utilizing the OOC61- QA-1: Independent QA ESC and SWM Field Investigation Report:
1. Contractor must make the necessary corrections to return the project to a compliant state.
  2. Follow-up QA-1 will be completed, when it is reported to the REC that all corrective measures have been implemented, documenting the corrected issues and clearly defines the time frame in which the corrections were completed, for the District to use in the LDs package.
    - i. This second report will be the trigger to start the 30-day period to assess the LDs.
    - ii. Both QA-1 reports identifying the Infraction and then the timeframe for corrections shall be included in the LDs package for attachment to the current Progress Payment.
  3. The District/Department shall prepare the LDs package as described in Step (2), above.
    - i. The completed LDs package shall be attached to the current progress payment, whether it be monthly, semi-final, or final.
    - ii. An email from the Project Staff/District to CPD and the QAD Division Chief should be utilized for advanced notification of an attached LDs package to a progress payment.
  4. When the LDs have been processed by CPD and the Voucher has been produced for that progress payment the QAD Division Chief must be notified.
    - i. The LDs package and the associated voucher indicating the amount of the LDs processed on shall be uploaded to the MDOT Quality Assurance Toolkit: <https://apps.roads.maryland.gov/epd.qatoolkit>, by the District/Department.
    - ii. The Project Engineer shall monitor the progress of the Progress Payment with the attached package for the upload of the LDs package and payment voucher to be performed in a timely manner for QAD to properly report to MDE.
    - iii. The Date of LDs Final Assessment shall be the Date of the Payment Voucher.

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**ADDITIONAL AUTHORIZED DOCUMENTS**

SHA OOC61 QA-1 Independent ESC and SWM Field Inspection Report  
SHA OOC75 Inspector Daily Report; or eMCMS equivalent  
SHA OOC122 Liquidated Damages Package Cover Letter

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**ADDITIONAL INFORMATION**

**Other Divisions Impacted**

Varies, please refer to individual SOP.

**Contact Information**

Office of Construction Director, SHA