

STANDARD OPERATING PROCEDURE # FAC 3.028

Subject: Liquidated Damages

Procedures for the Establishment of Construction Contract Time and Liquidated Damages (LDs) for Construction Management (CM), Design Build (DB), hard bid (GC) builders, or Job Order Contract (JOC) General Contractors Performing Small/Minor Projects.

Purpose and Scope: This document provides guidelines for establishing a reasonable construction contract time and for determining liquidated damages for failure to complete a construction project on time.

Procedures:

1. Establishment of Construction Contract Time

The University Facilities office, after consulting with the Professional, shall evaluate such factors as the user's needs, project complexity, site considerations and quality requirements to determine a reasonable construction time.

2. Determination of Liquidated Damages

- a. The University Facilities office shall determine if Liquidated Damages are applicable to the project.
- b. The University Facilities office and the user of the building shall evaluate the implications of a delay in the project, considering interest costs, loss of use, loss of income, costs of equipment storage, costs to rent alternative space, additional professional fees and any other costs that are projected to be incurred as a result of the delay.
- c. When applicable, Continuing Contract Projects of less than \$25,000 will require \$250/calendar day Liquidated Damages for days in excess of the Final Completion Date.
- d. When applicable, Liquidated Damages per calendar day on projects in excess of \$25,000 will be determined by the University Facilities office.
- e. The Owner has formulas for determining liquidated damages. Other costs related to delayed completion are added to the amount generated by the formula, for a total daily liquidated damages amount. The project manager sends a note to the file which explains how the liquidated damages amount was developed.

3. Calculation (delete/ignore items not applicable)

Description	Formula / Explanation
Interest cost	Daily interest cost = (Construction cost x 0.07 / 365)
A/E fee	(Architect's construction administration phase fee) / (contract duration in number of calendar days)
Income loss	Owner's revenue loss for the duration of construction completion delay or cost of rented facility necessary to conduct scheduled events
Temporary Facilities	Owner's temporary facilities costs for the duration of construction completion delay or the cost of an extension to existing leases, including utilities costs
Storage costs	Cost for restocking and storage fees due to project completion delay
Grants & funds	Initial loss of research grants and facilities enhancement funds due to missed completion date
Other	When applicable, list other project-specific considerations; other costs related to delayed completion

4. Implementation

- a. For a project on which the University utilizes a construction management or design build delivery method, the contract time and liquidated damages for delay amount are established by the parties during contract negotiations. For CM or DB projects, calculate LDs prior to or during negotiation of pre-construction services agreement. Pending agreement by the CM or DB, enter the daily value in the applicable contract exhibit.
- b. For projects which the University procures under a competitive bidding process, the University includes the contract time and liquidated damages for delay amount in the bidding documents. Calculate LDs during the design phase and make this figure known to bidders through the solicitation and the bid documents. Enter the applicable value in the contract and finalize during negotiation of terms with low bidder (awardee).
- c. For small/minor projects which the University utilizes a General Contractor under a Campus Continuing Contract (JOC - Job Order Contract), the University Facilities office shall evaluate the implications of a delay in the project, and determine if Liquidated Damages are applicable to the project.

5. Notice to Proceed

- a. The Notice to Proceed or Purchase Order establishes the start and end dates of the project
- b. Typically the date of commencement of the Work shall be the date of the Purchase Order (as issued by the Office of Procurement Services); unless a different date is stated in the Owner/Builder Agreement or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
- c. *[Insert provisions]*
The Builder shall achieve Substantial Completion of the entire Work not later than (numeric days) (days in words) from the date of commencement [insert number of calendar days], or alternatively, a calendar date may be used when coordinated with the date of commencement.
- d. When applicable, insert any requirements for earlier Substantial Completion of certain portions of the Work.

6. Contract Provisions (for CM / DB contracts and hard bid GC contracts)

- a. There are procedural differences between the CM / DB contracts and the non CM contract with regards to the Owner's method of establishing the amount of the liquidated damages.
- b. Contracts shall include provisions as applicable.
- c. Liquidated Damages for Failure to Complete on Time (for Construction Manager and Design/Build Services Version)
 - i. As denoted, in the CM and DB contracts, the liquidated damages sum are agreed to between the Owner and the Builder prior to establishment of the accepted GMP for the Project.
 - ii. *[Insert provisions, if any, for liquidated damages relating to failure to complete on time as follows]*
The Builder shall pay to the Owner as liquidated damages for each such delay, the liquidated damages sum agreed to between Owner and Builder at the time Owner and Builder establish the accepted GMP for the Project and not as a penalty, for each and every calendar day elapsing between the date fixed for Substantial Completion in the General Conditions and the date such Substantial Completion shall have been fully accomplished.
- d. Liquidated Damages for Failure to Complete on Time (for Non-CM Version, hard bid GC)
 - i. As denoted, in the non CM contract, the Owner determines the amount of the liquidated damages for inclusion in the bidding documents prior to the selection of the Builder.
 - ii. *[Insert provisions, if any, for liquidated damages relating to failure to complete on time as follows]*
The Builder shall pay to the Owner as liquidated damages for such delay, and not as a penalty, \$___ per calendar day (insert numeric amount) (amount in words) for each and every calendar day elapsing between the date fixed for Substantial Completion in the Agreement and the date such Substantial Completion shall have been fully accomplished.

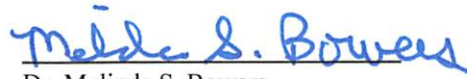
7. **Procedures for Continuing Contracts to Perform Small/Minor Projects (JOC - Job Order Contract)**
- a. Liquidated Damages for Failure to Complete on Time a small/minor project on time by the initially agreed upon final completion date, shall be identified prior to the Requisition for Purchase initiation.
 - b. Establishment of Construction Contract Time (and Date of Final Completion)
 - i. The University Facilities office, will identify a reasonable construction final completion date with the JOC General Contractor prior to the final negotiation and the initiation of the Requisition for Purchase.
 - ii. The General Contractor will provide the Facilities Project Manager a construction schedule to review and consider for approval. The schedule will be in Bar Chart format, with sufficient Division and Section detail to adequately analyze and track construction performance. The Project Manager will approve Date of Completion.
 - iii. The primary responsibility for the construction project schedule is the General Contractor.
 - c. Provisions for Identifying Liquidated Damages
 - i. University Project Managers will identify, on the Requisition for Purchase, the amount of the Liquidated Damages, if any, and also identify the Date of Final Completion.
 - ii. The Office of Procurement Services will denote the amount of Liquidated Damages on the Purchase Order as applicable and Completion Date (utilizing the amount and date(s) as identified by the University Project Manager on the Requisition for Purchase).
 - iii. Unless noted otherwise, the Purchase Order, as issued by the Office of Procurement Services, will serve as the Notice to Proceed and the issuance date of the Purchase Order will establish the date of commencement of work.
8. **Change Orders**
- a. Substantial Completion Date is subject to adjustments of the Contract Time as provided for in the Contract Documents.
 - b. During construction, each change order that affects the construction time shall provide for a realistic time extension (or reduction) of the construction contract time prior to final approval by the Owner.
 - c. Any weather related delays will be documented by the Contractor and provided to the Project Manager at 14 day intervals.

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