

| | | | |
|---------------------------------------|---|--|----------------|
| SUBJECT: Liquidated Damages | Effective Date: 9/28/16 | Procedure Number: FS 2016 FS0020 | |
| | Supersedes: | Page 1 | Of 4 |
| | Responsible Authority: Associate Vice President, Administration and Finance (Facilities & Safety) | | |

APPLICABILITY/ACCOUNTABILITY:

This procedure applies to all Facilities & Safety personnel.

PROCEDURE STATEMENT:

This procedure describes the steps required in claiming Liquidated Damages on Major and Minor Projects.

DEFINITIONS:

Certificate of Completion: a document that serves as proof that a structure or system is complete, and for certain types of permits is released for use, and may be connected to a utility system. This certificate does not grant authority to occupy a building prior to the issuance of a Certificate of Occupancy. It is signed by the Building Code Official (BCO) and states that a project is complete and can be occupied for its intended use. It is typically used on smaller minor projects where there is no change of occupancy, and the Substantial Completion process is not required.

Certificate of Occupancy: a document issued by the BCO following a building or structure inspection in which no violations of the provisions of the Florida Building Code, or other laws that are enforced by the Building Code Office, were found. The Certificate of Occupancy states that a project is complete and can be occupied for its intended use. It is typically required on larger minor projects and all major projects where there is a change of occupancy, and the Substantial and Final Completion processes are required.

Contract: a written agreement creating obligations enforceable by law; in this case, the agreement between UCF and the contractor, under which a project is operating, i.e., a continuing service contract, a stand-alone major project contract, or other agreement.

Final Completion: the state of a project that has been fully completed according to the terms and conditions set forth in the contract; the project milestone when a project is complete in every aspect (punch list, accounting, project documentation, etc.)

Liquidated Damages: a dollar amount specified in a construction contract to cover damages incurred by the Owner as a result of the contractor's failure to perform the work within the time

frame set forth in the contract; either a set dollar figure per day or a formula-based dollar figure per day, typically either at Substantial Completion, Final Completion, or both

Substantial Completion: the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use

PROCEDURES:

A. Establishing and Tracking the Project Management Schedule

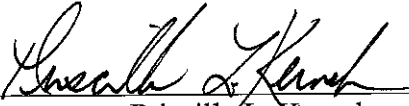
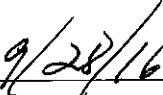
1. The Project Manager (PM) shall include a project schedule in the scope of work for each project, outlining, at a minimum, the start date and the dates of Substantial and Final Completion. Where possible, intermediate critical path milestones should be identified to track the project's progress.
2. The PM will communicate the following items to the contractor in writing:
 - a. The Notice to Proceed or Purchase Order establishes the start and end dates of the project; and
 - b. The contractor is responsible for providing regular updates (weekly, at a minimum) to the PM, confirming that the project is on schedule.
3. If the contractor runs into issues beyond the contractor's control, the contractor must immediately notify the PM. If the issues cannot be resolved and will result in project delays, the contractor must immediately submit a change order to the PM, requesting a time extension. The contractor is not permitted to submit for time extensions significantly past the time of actual delay, as this results in accumulated delays, which are not easily proven or explained to end users.
4. If project delays are experienced that are within the contractor's control, the PM must send an official email to the contractor, requesting a recovery schedule that will illustrate how the contractor plans to get back on schedule. The PM's email shall reference the liquidated damages section of the contract.
5. If an acceptable recovery schedule is received, the PM will closely monitor the project to ensure that the updated schedule is followed. The contractor must continue to submit regular updates (weekly, at a minimum) to the PM.
6. If the project schedule remains behind, and the contractor has not taken appropriate action to improve the schedule as to meet the original completion date, the PM will use the procedure below to evaluate and initiate a potential claim for liquidated damages.

B. Liquidated Damages

1. The PM will brief the FP&C director and associate directors on the scope of work (schedule start and end dates), project history, attempts to correct the schedule, and the contractor's response.
2. The FP&C team will review the applicable contract(s) and scope of work to confirm the terms, conditions, and potential amount of liquidated damages.
3. The FP&C team will schedule a meeting with the Associate Vice President (AVP), Administration and Finance (Facilities & Safety) to discuss the delays.
4. If the AVP agrees that liquidated damages may be warranted, the FP&C director will send official notice to the contractor, stating that, if the contractor does not meet the Substantial and/or Final Completion dates, UCF may claim liquidated damages on the project.
5. If the project does not meet its Substantial and/or Final Completion dates, a meeting will be held with the FP&C team and the AVP to discuss the potential liquidated damages claim. If it is determined that the claim is valid and should be pursued, the AVP will discuss the matter with the Vice President of Administration and Finance (VP) and Office of General Counsel (OGC) to obtain approval on asserting a claim for liquidated damages against the contractor.
6. The FP&C director will email the AVP a summary of the discussion and outcome. The AVP will forward the email to the VP and OGC. The VP will either approve or deny the claim after consultation with the OGC.
7. Upon written approval, the AVP will notify the contractor that UCF intends to claim liquidated damages. This notification shall be on UCF letterhead and shall include references to the schedule dates, the attempts to remedy the delays, and the relevant contract provision on liquidated damages.
8. The FP&C director will inform the FP&C team and the Facilities & Safety Business Office to hold payment on all remaining work, and F&S will continue to work with OGC on recovering the liquidated damages from the contractor.
9. Only when work is complete to the satisfaction of UCF will any additional project funds be released.

RELATED DOCUMENTS

Florida Building Code, Fifth Edition (2014), Sections 111.2 and 111.5:
http://www2.iccsafe.org/states/florida_codes/.

| | |
|---|--|
| Approved By: | Date Approved: |
|  Priscilla L. Kernek Associate Vice President Administration and Finance Facilities and Safety |  |