

POLICY AND PROCEDURE

SUBJECT: Liquidated Damages
NUMBER: MGT-03-10
APPLICABLE TO: All DJS Employees
EFFECTIVE DATE: January 19, 2011

APPROVED: _____
Secretary

1. **POLICY**

The Department of Juvenile Services (DJS) herein establishes various administrative practices and controls in order to ensure that, for all standard payment contracts containing provisions relating to liquidated damages and when appropriate, liquidated damages are imposed promptly, efficiently, and in accordance with the applicable and governing contract provisions.

2. **AUTHORITY**

Annotated Code of Maryland, Human Services Article, §§9-202 – 203.

3. **DEFINITIONS**

Liquidated Damages are a specified sum stipulated to and agreed upon by DJS and a vendor at the time they enter into a contract and which are to be paid to DJS to compensate for injuries it suffers as the result of a vendor's failure to properly perform under the terms of the contract. See *Barrie School v. Patch*, 401 Md. 497, 507 (2007).

4. **PROCEDURES**

a. **Monitoring for Liquidated Damages**

The Program Manager of a standard payment contract containing a liquidated damages provision shall vigorously oversee the contractor's performance to ensure that the contractor meets its obligations under the terms of the contract. The Program Manager shall consult with other DJS units and personnel as appropriate for the effective administration of services, deliverables, and approval of invoices for the DJS accounting unit to process payment.

b. **General Procedures**

1. Upon determining that the contractor has failed to perform as required by the terms of the contract, and when that failure implicates the possible imposition of liquidated damages, the Program Manager shall notify the Regional Fiscal Officer. The Fiscal Officer shall, in turn, investigate the alleged failure to perform, and the Program Manager shall assist in the investigation. As part of

the investigation, the Regional Fiscal Officer shall seek a written explanation from the contractor with respect to the alleged non-performance.

2. The Regional Fiscal Officer, upon completion of the investigation, shall notify the Director of Procurement, in writing and with all supporting documentation, of the findings of the investigation and any associated recommendation that liquidated damages be imposed.
3. The Director of Procurement shall review the Regional Fiscal Officer's submission and then determine whether DJS will impose liquidated damages consistent with the terms of the contract. Prior to reaching his or her decision, the Director of Procurement may consult with whomever he or she believes may have relevant information or knowledge. Should the Director of Procurement conclude that liquidated damages should not be imposed as recommended by the Regional Fiscal Officer, the Director shall confer with the DJS Secretary or his or her designee, who may override the Director's determination if circumstances so warrant.
4. The Director of Procurement shall notify the contractor in writing that liquidated damage provisions are being imposed. The letter will include, among other things, the amount of the damages imposed and a brief description of the predicate for the assessment. The Director of Procurement will forward a copy of the written notification to the Regional Fiscal Officer, the Program Manager, and the Directors of the Audit and Accounting Units.
5. Once imposed, and so long as consistent with the terms of the contract, liquidated damages shall be deducted from the contractor's monthly invoice submitted following the notification to the vendor of the liquidated damages assessment. If the invoice does not cover sufficiently the total amount of the assessment, deductions will occur from month to month until the assessment is paid in full.
6. So long as consistent with the terms of the contract, the imposition of liquidated damages shall not relieve the contractor of responsibility to perform the contracted services, nor shall it relieve the contractor of the responsibility for bringing its operations into compliance.

5. **DIRECTIVES/POLICIES REFERENCED**

None.

6. **LOCAL IMPLEMENTING PROCEDURES REQUIRED**

None.

7. **FAILURE TO COMPLY**

Failure to comply with a Secretary's Policy and Procedure shall be grounds for disciplinary action up to and including termination of employment.