

Successful Youth • Strong Leaders • Safer Communities

POLICY

SUBJECT:Liquidated DamagesNUMBER:MGT-622-14APPLICABLE TO:All staffEFFECTIVE DATE:December 22, 2014

APPROVED: /signature on original/ Sam Abed, Secretary

I. <u>POLICY</u>

It is the policy of the Department of Juvenile Services (DJS) to impose liquidated damages promptly, efficiently, and in accordance with the applicable and governing contract provisions for all standard payment contracts containing liquidated damages provisions.

II. <u>AUTHORITY</u>

A. MD. CODE ANN., HUM. SERVS., §§ 9-203, -204.

B. Barrie School v. Patch, 401 Md. 497 (2007).

III. <u>DIRECTIVES/POLICIES RESCINDED</u>

A. Liquidated Damages, MGT-03-10.

IV. FAILURE TO COMPLY

Failure to comply with the Department's Policy and Procedures shall be grounds for disciplinary action up to and including termination of employment.

V. <u>STANDARD OPERATING PROCEDURES</u>

Standard operating procedures are attached.

VI. <u>REVISION HISTORY</u>

| DESCRIPTION OF REVISION | DATE OF |
|-------------------------|---------------|
| | REVISION |
| Policy update. | November 2014 |
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PROCEDURES

| SUBJECT: | Liquidated Damages |
|------------------------|--------------------|
| NUMBER: | MGT-622-14 |
| APPLICABLE TO: | All staff |
| EFFECTIVE DATE: | December 22, 2014 |

APPROVED: _____

/signature on original/ Lynette Holmes, Deputy Secretary

I. <u>PURPOSE</u>

The purpose of these procedures is to establish administrative practices and controls to implement the Department's policy on the imposition of liquidated damages.

II. <u>DEFINITIONS</u>

Liquidated damages refers to a specified sum of money stipulated to and agreed upon by DJS and a contractor at the time they enter into a contract, 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.

III. <u>PROCEDURES</u>

A. Monitoring for Liquidated Damages

1. The Contract Monitor of a standard payment contract containing a liquidated damages provision shall oversee the contractor's performance to ensure that the contractor meets its obligations under the terms of the contract. The Contract Monitor 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 Contract Monitor shall notify the Regional Fiscal Services Chief. The Fiscal Services Chief shall, in turn, promptly investigate the alleged failure to perform, and the Contract Monitor shall assist in the

investigation. As part of the investigation, the Fiscal Services Chief shall seek a written explanation from the contractor with respect to the alleged non-performance.

- 2. The Fiscal Services Chief, 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 Fiscal Chief's submission and 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 Fiscal Services Chief, 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 contactor in writing when liquidated damage provisions are being imposed. At a minimum, the letter must include the amount of the damages imposed and a brief description of the basis for the assessment. The Director of Procurement will forward a copy of the written notification to the Fiscal Services Chief, the Contract Monitor, and the directors of the appropriate audit and accounting units.
- 5. Once imposed, and consistent with the terms of the contract, liquidated damages shall be deducted from the payment of the contractor's monthly invoice submitted following the notification to the vendor of the liquidated damages assessment. If this amount does not sufficiently cover the total amount of the assessment, this deduction shall occur monthly until the assessment is paid in full.
- 6. Unless inconsistent with the terms of the contract, the imposition of liquidated damages does not relieve the contractor of responsibility to perform the contracted services, nor does it relieve the contractor of the responsibility for remedying the circumstances that led to the assessment of liquidated damages.

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IV. <u>DIRECTIVES/POLICIES REFERENCED</u>

A. No policies referenced.

V. <u>APPENDICES</u>

None.



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DJS POLICY AND STANDARD OPERATING PROCEDURES Statement of Receipt and Acknowledgment of Review

SUBJECT:Liquidated DamagesNUMBER:MGT-622-14APPLICABLE TO:All staffEFFECTIVE DATE:December 22, 2014

I have received and reviewed a copy (electronic or paper) of the above titled policy.

I understand that failure to sign this acknowledgment form within five working days of receipt of the policy shall be grounds for disciplinary action up to and including termination of employment.

I understand that I will be held accountable for implementing this policy even if I fail to sign this acknowledgment form.

SIGNATURE

PRINTED NAME

DATE

THE ORIGINAL COPY MUST BE PLACED IN THE EMPLOYEE'S PERSONNEL FILE. PLEASE RETURN THIS FORM TO THE OFFICE OF HUMAN RESOURCES.