

MINIMUM STANDARD Z/14 – LIQUIDATED DAMAGES

1. ASSESSMENT OF LIQUIDATED DAMAGES

The Consultant shall carry out a separate pre-assessment of liquidated damages for each physical works contract, or Separable Portions thereof as appropriate, and each pre-assessment shall be documented on a separate form PSF/6a. The Consultant must provide the Client with a completed and matching liquidated damages pre-assessment form PSF/6a for each sum stated as liquidated damages in the Special Conditions of Contract for each physical works contract.

1.1 Inclusion of Costs

In assessing the value of liquidated damages the Consultant shall consider the following items:

- Actual Client direct costs, including the Project Manager's time and other direct costs such as travel, accommodation and computer time;
- Additional fees payable to Consultant as a result of supervision beyond the Due Date for Completion (including supervision, Engineer to the Contract, Administration, vehicle running costs, computer costs and accommodation). The Consultant shall identify the positions of the people involved, estimate hours of involvement and multiply by the appropriate rate in the Additional Services Schedule;
- Contract price escalation (professional services and physical works);
- Loss of use of monies (government stock rate (or forecast of this %) multiplied by the value of the Contract estimate (or a portion of this amount), divided by 365 days);
- Interest on the cost of equipment (purchased outside the contract) to be installed (% of the estimated or actual purchase price);
- Storage charges on supplied items;
- Loss of direct revenue, for example from tolls or rents;
- Rental of temporary or additional accommodation;
- Servicing existing temporary facilities (for example consumables, power, or courier services);
- Additional actual costs of providing or maintaining existing or temporary roads;
- Additional costs of rental of materials from the Transport Agency or other sources (for example barriers, bailey bridges or temporary traffic signals); and
- Any local authority charges incurred, especially for maintenance of temporary diversions.

The above list is not exhaustive or exclusive, and the Consultant shall also consider all project specific issues that may be relevant.

In determining the amount of liquidated damages to apply, the Consultant must ensure that the liquidated damages are not set at a level likely to inflate tender prices, without any reciprocal benefit to the Client. If this situation is likely to occur, then a proportion of the figure calculated should be used in determining the rate for liquidated damages, as long as this lower figure may still properly compensate the Client in the event of a delay. The Consultant shall obtain the Client's written approval for the reduced sum for liquidated damages to be included in the Special Conditions of Contract.

1.2 Exclusion of Costs

The following matters are not to be considered by the Consultant in assessing the value of liquidated damages to be applied to the physical works contract:

- Additional road user costs due to late completion;
- Intangible costs, such as vehicle operating costs;
- Lost benefit to the road user (as used in calculating the BCR of the project);
- Cost of financing the asset which is unable to be used; and
- Goods and Services Tax.

2. APPLICATION OF LIQUIDATED DAMAGES

The General Conditions of Contract for any physical works contract does not give the Consultant discretion to deduct liquidated damages from monies owed to the Contractor. The Consultant shall seek the Client's approval to include the deduction of liquidated damages on any payment voucher and shall not do so without that approval. The Consultant shall ensure that the approval is sought with sufficient time to include the deduction of liquidated damages on the first payment voucher after the Due Date of Completion of the Contract Works. Once the Client's approval has been given, the Consultant shall include the full amount of liquidated damages due to the Client on all subsequent payment vouchers. The Consultant shall not vary or reduce the amount of liquidated damages, from the sum stated in the Special Conditions of Contract for the physical works contract, on the payment voucher, except by changing the Due Date of Completion of the physical works by awarding an appropriate extension of time or with the specific approval of the Client.

The Consultant shall include a recommendation on the withholding or remittance, of any or all of the liquidated damages held, in the Final Construction Report.