

## CAPITAL & INFRASTRUCTURE BUILDING CONTRACT DIRECTIVE

DATE: May 2014

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### THE DEDUCTION OF LIQUIDATED DAMAGES

#### REFERENCE

See BCD 44

[Form E358](#)

#### 1. NOTIFICATION TO THE CONTRACTOR

Under JCT SBC/Q: SBC/XQ: IC:ICD contracts, before liquidated damages are deducted from payments to a contractor it is first necessary for the Architect/Contract Administrator/ Employer's Agent to issue a Non-Completion Certificate stating that the contractor has failed to complete the works by the completion date last fixed. Secondly, it is necessary for the contractor to be given written notification by the employer that liquidated damages are to be deducted. "Employer's Notification to Contractor: Damages for Non-Completion" E358 is used for this purpose.

Before a certificate of non-completion is issued it is necessary for the Architect/Contract Administrator/Employer's Agent to have given fair and reasonable consideration to extensions of time in respect of any notices of delay given by the contractor. On contracts where the division of work into sections apply a separate certificate of non-completion and employer's notification will need to be issued in respect of each section of the works identified in the contract particulars and for which separate liquidated damages apply.

In circumstances where a certificate of non-completion has been issued following the failure of the contractor to achieve completion by a particular date, and subsequently the date is further extended and again not achieved by the contractor, it is necessary for a further certificate of non-completion to be issued in respect of the later date, together with a revised employer's notification.

Whenever there is justification for certifying that the contractor has failed to achieve practical completion by a specific date, officers have a duty to the County Council to ensure that the appropriate notifications are given and liquidated damages are deducted. It is the responsibility of the Architect/Contract Administrator/Employer's Agent to keep the Capital & Infrastructure Representative informed in such circumstances.

On JCT DB contract the procedure outlined above is similar except that the Non-Completion Certificate is called a Non-Completion Notice and should be issued by the Employer.

JCT MW:MWD contracts. The issue of a certificate of non-completion and employer's notification to the contractor is not a specific requirement prior to the deduction of liquidated damages, but it is nevertheless good practice for these procedures to be followed. The contract states that if the Employer intends to deduct LADs he shall notify the Contractor not later than the date of issue of the final certificate.

#### NOTE:

*THIS DIRECTIVE IS APPLICABLE TO THE MAJORITY OF SCHEMES BUT IT WILL NOT NECESSARILY BE APPROPRIATE TO ALL WORKS AND THEREFORE ON EACH SCHEME IT WILL BE NECESSARY TO CHECK THE SPECIFIC REQUIREMENTS.*

## 2. DEDUCTION OF LIQUIDATED DAMAGES

Following the issue of the employer's notification to the contract, E358 confirming that liquidated damages are being deducted, it is necessary to arrange for the appropriate deduction to be made from the balance of monies subsequently certified for payment.

It is important to remember that in accordance with contract provisions the deduction is being made by the County Council as the Employer, and not by the Architect/Contract Administrator/Employer's Agent. The Contractor should be informed of the amount of LADs to be deducted and the deduction should be taken from the amount due on the Contractor's next invoice.

It is the duty of the Architect/Contract Administrator to advise the County Council of the amount of liquidated damages that may be deducted when it becomes apparent.

### **CONCLUSION**

[Form E163](#)