

0081000 PROSECUTION AND PROGRESS – AMOUNT OF LIQUIDATED DAMAGES
INTERNAL/INDUSTRY REVIEW COMMENTS

Christian Rojas, PE
I-95 Express Construction Project Manager
FDOT District 4 Construction
2200 N. Commerce Parkway, Suite 300
Weston, FL 33326
Cell: (954) 931-6182

Comments: (11-2-16)

The 8-10.3 Spec. provides determination that we will count default days in calendar days regardless if the contract time is in calendar days or working days. We may need something in this Lost Toll Revenue language to define that similar to the 8-10.2 section (See highlighted addition below) 8-10.8 Recovery of Lost Toll Revenue: The Department intends to recover, from the Contractor, projected lost toll revenues due to failure to timely open the project to revenue producing traffic. For this Contract, a daily rate of \$_____ per Calendar Day will be assessed as projected lost toll revenues due to failure to complete the Work within the Contract Time. The amount of projected lost toll revenues will be in addition to the amount established in the schedule included in 8-10.2.

Response: (From Dan Hurtado) The phrase “per Calendar Day” will be added after the dollar amount field.

Demetrio Arencibia
(813) 975-6434
demetrio.arencibia@dot.state.fl.us

Comments: (12/1/16)

Will this new spec only be required when there is a Lost Toll Revenue spec included? Otherwise it will not be needed for non-toll road projects... we'll have a choice from the Specs on the Web pick list

Response: (From Dan Hurtado) This will be a Special Provision with a Usage Note governing its use

Art Burger
CO Legal

Comments: (11/30/16)

PROSECUTION AND PROGRESS – AMOUNT OF LIQUIDATED DAMAGES.
(REV 11-3-16/11-30-16)

SUBARTICLE 8-10.1 and 8-10.2 are deleted and the following substituted:

8-10 Liquidated Damages for Failure to Complete the Work.

8-10.1 Highway Code Requirements Pertaining to Liquidated Damages:

Section 337.18, paragraph (2) of the Florida Statutes, requires that the Department adopt regulations for the determination of default and provides that the Contractor pay liquidated damages to the Department for any failure of the Contractor to complete the Contract work within the Contract Time. These Code requirements govern, and are herewith made a part of the Contract.

Liquidated damages for this Contract will be a summation of the damages ~~described~~ ^{referenced} above and projected lost toll revenues due to failure to timely open the project to revenue producing traffic.

8-10.2 Amount of Liquidated Damages: Applicable liquidated damages are the sum of the daily rate of \$ [redacted] assessed as projected lost toll revenues for failure to complete the Work within the Contract Time plus the amounts established in the following schedule:

| Original Contract Amount | Daily Charge Per Calendar Day |
|--|--|
| \$50,000 and under..... | \$763 |
| Over \$50,000 but less than \$250,000..... | \$958 |
| \$250,000 but less than \$500,000..... | \$1,099 |
| \$500,000 but less than \$2,500,000..... | \$1,584 |
| \$2,500,000 but less than \$5,000,000..... | \$2,811 |
| \$5,000,000 but less than \$10,000,000..... | \$3,645 |
| \$10,000,000 but less than \$15,000,000..... | \$4,217 |
| \$15,000,000 but less than \$20,000,000..... | \$4,698 |
| \$20,000,000 and over..... | \$6,323 plus 0.00005 of any amount over \$20 million (Round to nearest whole dollar) |

- (1) In the statute, "revenue-producing" is hyphenated. Should 8-10.1 be consistent?
- (2) "referenced" is better than "described" because the table of liquidated damages is below.
- (3) To distinguish the Department's liquidated damages from those used in the private sector and for which the courts have a test for enforcement, I recommend that the Department refer to the above liquidated damages as "statutory liquidated damages." This reference, in my opinion, only needs to be in a few places. See above.

Art Berge

Response: (From Dan Hurtado)

- 1) "Revenue-producing" will be hyphenated
- 2) "described" will be changed to "referenced".
- 3) No change made
