JCR-49

Liquidated Damages Clause

October 1988
October 1999

Recommendations:

1. Liquidated damages should be specified only when time is of the essence. Such a clause should never be used as a penalty to the contractor.

2. Special attention should be brought to the liquidated damages clause. A good time to do this would be at a pre-bid conference, at which time prospective bidders could acknowledge or challenge the proposed construction time frame.

   Example:

   "The contractor shall commence work to be performed under this agreement on a date to be specified in a written order from the designer and shall substantially complete all work hereunder *** calendar days.

   For each day in excess of the above number of days, the contractor shall pay to the owner a sum of $***** as liquidated damages reasonably estimated in advance to cover the losses to be incurred by the owner by reason of failure of said contractor to complete the work within the time specified, such time being in the essence of this contract and a material consideration thereof."

Comments:

1. See JCR-32 for additional information to be included in the Supplementary General Conditions or Special Conditions of the project.

2. The time frame must be realistic.

3. In case of multi-prime contract the architect and project expeditors shall arbitrate the responsibility of each prime contractor causing delay.

4. Where possible, contractors should be allowed to bid number of calendar days.

End of JCR-49

This recommendation is the result of considerable discussion and deliberation by the Architect and General Contractor members of the Joint Cooperative Committee of AIA North Carolina and the Carolinas AGC. While its provisions are not binding on individual Architects or General Contractors, the committee believes that adherence to the recommendations will benefit the Owner and the Construction Industry in general.