

VOLUME 5, PART II
CHAPTER 5
CONTRACTOR PAYMENTS

INTRODUCTION

The Facility is responsible for making prompt payments to the contractor for work performed. This chapter discusses payments from application by the contractor to actual payment by the Facility after consideration of retention, stop notices, and liquidated damages.

5.1 COST BREAKDOWN

References:

- Long Form, General Conditions, Paragraph 9.1, Revision 3.1, January 2, 1996 (see FM4[II]).

Within 10 days after receipt of the Notice of Selection as the Apparent Lowest Responsible Bidder, the contractor is required to submit to the University a breakdown of all costs that constitute the contract sum. This cost breakdown must itemize as separate line items the cost of each work activity and all associated costs, including but not limited to warranties, as-built documents, overhead expenses, and the total allowance for profit. Insurance and bonds shall each be listed as separate line items. The Cost Breakdown form is Schedule 1 of the contractor's Application for Payment (see Exhibits, FM4[II]), which is submitted monthly.

The costs listed for each activity on the Cost Breakdown form do not change during the course of construction; they are the basis for determining the amount due the contractor each month. Each work activity is compared to the percentage of completion for that line item. The sum of those amounts, minus the amount previously paid, minus retention (see [III]:5.5) and other deductions, equals the amount due.

5.2 PROGRESS PAYMENTS

References:

- Long Form, General Conditions, Paragraph 9.2, Revision 3.1, January 2, 1996 (see FM4[II]).

The University will pay the contractor monthly an amount equal to 95 percent of the cost of the work in place; the remaining 5 percent is held as retention (see [III]:5.5).

5.3 APPLICATION FOR PAYMENT

References:

- Long Form, General Conditions, Paragraph 9.3, Revision 3.1, January 2, 1996 (see FM4[II]).

The contractor starts the monthly payment process by preparing an Application for Payment on the University-approved form (see Exhibits, FM4[II]). The contractor must itemize the application using the Cost Breakdown submitted with the construction Agreement (see [III]:5.1),

as modified by fully executed change orders. The University's Representative participates in the preparation of the application by holding a monthly progress payment meeting where agreement is reached on the percentage of work completed.

When the work is found to be complete, the contractor makes a final Application for Payment (see [\[III\]:8.6](#)).

5.4 CERTIFICATE FOR PAYMENT

References:

- Long Form, General Conditions, Paragraph 9.4, Revision 3.1, January 2, 1996 (see FM4[II]).

The Certificate for Payment (see [RD2.27](#)) is a document prepared by the University's Representative that authorizes payment to the contractor. The University's Representative must certify that the application is correct and must check the accuracy of the following:

Percentage of work complete for each line item. Arithmetic for the entire form including the cost breakdown of the contract sum (see [\[III\]:5.1](#)).

The University's Representative must also verify that the items listed in General Conditions, Subparagraph 9.4.2, have been accounted for in the preparation of the certificate. The certificate is prepared on the University-approved form and submitted to the appropriate Facility office for signature and processing.

The University's Representative must be made aware that time restrictions are specified in General Conditions, Subparagraph 9.4.1, to ensure that the payment is processed in a timely manner.

5.5 RETENTION

References:

- Long Form, General Conditions, Paragraph 9.2 and Subparagraph 9.4.2, Revision 3.1, January 2, 1996 (see FM4[II]).

Retention a portion of the cost of work in place is held by the University as leverage to assure that the work is completed and also as protection should the contractor fail to pay subcontractors or suppliers. Retention differs from the withholding of funds due to incomplete or defective work or other similar conditions listed in General Conditions, Subparagraph 9.4.2.

5.5.1 Normal Retention

University withholds 5 percent of the monthly progress payment due the contractor and retains those funds in the construction account, or an escrow account as noted below. (See [FM4\[III\]:9.5](#) for exception.)

5.5.2 Securities In Lieu of Retention and Deposit of Retention Into Escrow

References:

- Long Form, General Conditions, Paragraph 9.5, Revision 3.1, January 2, 1996 (see FM4[II]).

Instead of withholding a percentage of the contractor's progress payment, the contractor may

deposit into an escrow account securities in the amount of required retention. If the contractor chooses this procedure, the contractor is required to comply with the requirements of General Conditions, Paragraph 9.5, and the Escrow Agreement (see Exhibits, FM4[II]). The terms of the Escrow Agreement may not be changed without approval of the Office of the President and Office of the General Counsel.

A letter of credit is not appropriate collateral and cannot be accepted as an item of security to deposit in lieu of retention.

At the request and expense of the contractor, the University will deposit retention held in the normal manner (see [III]:5.5.1) directly with an escrow agent. The contractor may direct the investment of such deposited retention into interest-bearing accounts or securities. (See RD1.9, Flow Chart: Deposit of Securities in Lieu of Retention and Deposit of Retention Into Escrow.)

5.5.3 Release of Retention

- Long Form, General Conditions, Subparagraph 9.2.2, Revision 3.1, January 2, 1996 (see FM4[II]).

The final Certificate for Payment (see [III]:8.6) is used to detail the amount of retention to be released with the contractor's final payment.

5.6 LIQUIDATED DAMAGES

References:

- Long Form, Agreement, Article 4, Revision 1, January 1, 1996 (see FM4[II]). - Long Form, General Conditions, Subparagraph 9.4.2.12, Revision 1, January 1, 1996 (see FM4[II]). - Long Form, Supplementary Instructions to Bidders, Article 6, Revision 1, January 1, 1996 (see FM4[II]). - University policy: "Liquidated Damages for Construction Contracts" (see FM4[I]:4).

If the contractor fails to complete the work within the contract time, the contractor is assessed as "liquidated damages" and not as a penalty a sum specified in the Agreement for each day the work remains incomplete beyond the expiration of the contract time. After Substantial Completion the rate will be reduced to the figure specified in the Agreement. (see FM4[II]:4). Liquidated damages are assessed by making a deduction on the Certificate for Payment (see [III]:5.4). The amount deducted is itemized on the certificate. Liquidated damages must be automatically withheld from the progress payment for each day the project is beyond the contract time.

The following procedures should be used for assessing liquidated damages:

1. Inform the contractor during payment determination that liquidated damages will be assessed (a letter is not required).
2. Reduce the amount of payment certified by deducting liquidated damages on the Certificate for Payment.
3. Assess the liquidated damages through the Facility's accounting office. This office will pay the reduced amount on the Certificate for Payment.

A change order is not required to change the contract sum because the mechanics for assessing liquidated damages are already established in the Agreement and the General Conditions.

Revision February 1, 2007 (Change No. 07-080-P)



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