

3.6.1-6 Liquidated Damages--Subcontracting Plan (February 2003)

- (a) Failure to make a good faith effort to comply with the subcontracting plan, as used in this clause, means the lack of a good faith effort to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract titled "Small, Small Disadvantaged, Women-Owned, Veteran-Owned, and Service-Disabled Veteran Owned Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.
- (b) If, at contract completion, or in the case of a commercial product plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract titled "Small, Small Disadvantaged, Women-Owned, and Service-Disabled Veteran Owned Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal or, in the case of a commercial products plan, that portion of the dollar amount allocable to Government contracts by which the Contractor failed to achieve each subcontract goal.
- (c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.
- (d) With respect to commercial product plans; i.e., company- wide or division-wide subcontracting plans approved under paragraph (g) of the clause in this contract titled "Small, Small Disadvantaged, Women-Owned, and Service-Disabled Veteran Owned Small Business Subcontracting Plan," the Contracting Officer of the agency that originally approved the plan will exercise the functions of the Contracting Officer under this clause on behalf of all agencies that awarded contracts covered by that commercial product plan.
- (e) The Contractor shall have the right of appeal from any final decision of the Contracting Officer.
- (f) Liquidated damages shall be in addition to any other remedies that the Government may have.

(End of clause)

PRESCRIPTION

May be used in RFI/RFPs and contracts when a subcontracting plan is required and it is in the Government's best interest to assess damages for failure to perform in accordance with the subcontracting plan.