

52.219-16 Liquidated Damages-Subcontracting Plan.

As prescribed in [19.708\(b\)\(2\)](#), insert the following clause:

Liquidated Damages-Subcontracting Plan (Sep 2021)

(a) "Failure to make a good faith effort to comply with the subcontracting plan," as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) Performance *shall* be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial 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 (see 19.705-7), established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor *shall* pay the Government liquidated damages in an amount stated. The amount of probable 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.

(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 and to discuss the matter. 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 plans, the *Contracting Officer* who approved the plan will perform the functions of the *Contracting Officer* under this clause on behalf of all agencies with contracts covered by the commercial plan.

(e) The Contractor *shall* have the right of appeal, under the clause in this contract entitled, Disputes, 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)

Parent topic: [52.219 \[Reserved\]](#)