

## Section 2.22

### Liquidated Damages

Liquidated damages establish a specific contractual dollar amount that the ordering entity has determined is a reasonable estimation of the damages owed in the event of a breach of contract. Such a provision is typically only considered valid if damages are unable to be calculated or estimated by any other means. Liquidated damages are never meant to be a penalty for breach. Rather, they are an artificially created amount of damages to be awarded in the event of a breach of contract. An ordering entity should closely examine its needs for including liquidated damages. If required, the liquidated damages must be included in the specifications. Consult your entity's legal staff and/or the Office of the Attorney General's Financial Litigation Division regarding the establishment of liquidated damages because certain legal principles must be applied to render the damages valid. Liquidated damages provisions are typically difficult to enforce and equally difficult to collect upon.

**Note:** Proper contract management/development should include provisions that adequately protect the state from default.