

March 18, 2021

Mr. Bill Lohr
Field Operations Team Lead
FHWA – Minnesota Division
180 East Fifth Street, Suite 930
St Paul, MN 55101

RE: **Special Experimental Project 14**
Locked Incentive Date (LID)
Request for SP 6283-247

Dear Mr. Lohr:

Please accept this correspondence for the Special Experimental Project 14 – Locked Incentive Date (LID) request for use on SP 6283-247. The Department is requesting permission through the Minnesota Division Office to continue its cautious use of the LID specification.

Previous projects have shown that LIDs can be an effective tool to aid in accelerating completion of critical projects. The use of the LID specification does not ensure that acceleration will be successful nor even strived for by the Contractor.

Based on the information provided this attachment and findings in the previous reports the Department requests SEP-14 approval to use the LID specification on this project. The Office of Construction and Innovative Contracting will continue to oversee the implementation of this specification.

This project has a currently assigned Letting date of April 26, 2021. We look forward to hearing from you on our request.

If you have any questions, please contact Kevin Kosobud (218-310-3677) or myself at 651- 366-4228.

Sincerely,

Paul Johns Digitally signed by Paul Johns Date: 2021.03.17 14:19:35 05'00'

Tom Ravn, PE
State Construction Engineer

CC: Kim Zlimen Metro District
Eric Embacher Metro District
Kevin Kosobud

Equal Opportunity Employer

State of Minnesota
Department of Transportation

S.P. 6283-247

I-94/I-35E

Concrete Pavement Rehab

A—INTRODUCTION

Purpose. The Minnesota Department of Transportation (Mn/DOT) hereby submits this work plan of the proposed reconstruction of the Concrete Pavement Repair Project in the City of St. Paul, County of Ramsey, State of Minnesota, for review and approval by the U. S. Department of Transportation (USDOT) as a project under the provisions of Special Experimental Project No. 14 (SEP 14). Approval is requested to use an innovative contracting practice Locked-Incentive Date (LID).

Mn/DOT is the governmental entity responsible for the design, construction, and maintenance of trunk highways throughout the State of Minnesota. As an integral part of that responsibility, Mn/DOT is continually seeking improved processes and procedures for efficiently and cost-effectively delivering on-time, high-quality highway projects to the citizens of the State of Minnesota.

Mn/DOT has used a LID on several state and federally funded projects, dating back almost 15 years. This includes of TH 36 Highways for Life project and the I-35W St. Anthony Falls Bridge over the Mississippi River. Mn/DOT has had great success on the projects that have used this clause and is confident that the LID clause will be successful on this project also.

Existing Conditions. SP 6283-247 is a pavement preservation project on Interstates 94 and 35E in downtown St. Paul. Project limits are from west of Western Avenue to Mounds Boulevard on I-94, and from 10th Street to University Avenue on I-35E. The project limits were established based on the pavement conditions and limits of other adjacent pavement preservation projects. I-94 was constructed starting in 1956 and opened in 1968. The existing concrete on I-94 is from 1990. This segment of I-35E was constructed in the late 1960s. The existing concrete on I-35E is from 1990 and 1992. The highways incorporate an urban drainage system consisting of curb and gutter, catch basins and storm sewer. These sections of I-94 and I-35E consist of two and three travel lanes in both directions separated by concrete barrier. The annual average daily traffic is between 144,000 and 159,000 on I-94 and between 71,000 and 150,000 on I-35E.

Project Description. The primary need for the project is deteriorated pavement on I-94 and I-35E. MnDOT uses four indices to report pavement conditions, rank existing pavement sections, and predict the need for future maintenance and rehabilitation. The ride quality index (RQI) of this section of I-94 within the project area places it in the poor to fair category. A minor CPR was completed on I-94 in 2006 and bituminous patching done in 2016. The pavement area in poorest condition is westbound I-94 from Marion St to Robert St, a portion of which will require a CX pavement repair two lanes wide. The present RQI of the section of I-35E places it in the fair category. Pavement on both highways has deteriorated with scattered blow ups, shallow pop outs, some failed joints, and increasing panel cracks. The high traffic flow on both highways exacerbates the deterioration. Another primary need is the condition of several bridges within the project area. MnDOT bridges undergo annual inspections. Recent inspections of bridges identified issues with decks, superstructures, substructures and approach panels. Secondary project needs include infrastructure impacted by the primary needs including repair/replacement of catch basins, lining of storm sewer pipes, and limited curb and gutter replacement. The project will also include installation of a dual-drainage system to address seepage issues which cause icy conditions in some areas of I-94 and I-35E.

B—PURPOSE

The purpose of the project is to restore the pavement condition in anticipation of a more extensive reconstruction project in 15-20 years, and to repair the existing bridges and extend the serviceable life of the structures.

The LID is proposed to expedite the project and allow the project to be completed in two construction seasons and reduce the concern of extending to a third season because of potential project quantity overruns that are an issue with concrete pavement rehab projects. A secondary reason is upcoming projects in the 2023 season which include, I-94 unbonded overlay from TH 120 to Wisconsin border, Met Council Gold Line Bus Rapid Transit and City of St. Paul replacement of Kellogg Ave Bridge over I-94.

Due to the location in downtown St. Paul, the project will have both local impacts and far-reaching commuter impacts stretching across the Twin Cities and into Wisconsin. A broad range of travelers use this corridor and will be impacted by construction including local residents, downtown businesses, hospitals, emergency services, visitors to downtown, commuters through St. Paul, elected officials, and many more. The special provisions reflect conditions which must be met for access and staging with or without the LID.

Approval of Innovations. Mn/DOT requests that FHWA approve this following innovation:

- A locked-incentive date early completion clause.

Expected Benefits. We expect the with locked incentive date approach to produce the following benefits:

- Completed in two construction seasons.
- Anticipated lower bid prices.
- Reduced traffic impact, less impact to businesses, commuters and freight.

C—SCOPE

The scope of this SEP 14 request is to reduce the need for a third construction season and therefore reduce the duration of traffic impacts and the cost of the extensive traffic control required for the work. The construction will impact a several access ramps, converging of the two interstates though the I94/35E commons section, and high traffic volumes, providing and maintaining access and capacity during construction will be very challenging. Acceleration of this project will greatly reduce impacts to business, shipping and reduce commuter delays.

The incentive amount is based on approximately 2% of the anticipated contract bid price. This amount was agreed to by all project partners as a reasonable incentive and an attractive incentive for the contractor. The incentive is below the estimated impact costs to motorists and businesses.

D—SCHEDULE

Mn/DOT's goal is to complete major traffic impacting work on this project (except for miscellaneous cleanup) by Late Fall 2022. The Contractor must provide written notice to the Engineer of its election to either accept or decline the LID incentive payment within 30 days after verification from the Engineer, that they have completed the work required by the LID. If they intend to pursue the LID, they must submit a Progress Controlling Schedule, reflecting the accelerated schedule, for approval by Mn/DOT.

If the LID is not pursued, the Contractor must complete all Work to meet the requirements of MnDOT 1516.2 "Project Acceptance" under this contract before May 20, 2023.

E—EVALUATION MEASURES

After completion, the project will evaluate the effectiveness of the locked incentive date clause. This evaluation will examine the reasons why the incentive was met or not met, evaluate the effective of the LID modification, contractor's impression and make any recommendations for using the LID on future projects.

F—REPORTING

Mn/DOT anticipates that it will file with the FHWA a summary report for the project.

Summary Report. A summary report will be submitted within 90 days following final contract acceptance of the project. This report will:

- Evaluate the completed project against the same factors described in Section E;
- Describe lessons learned, pitfalls to avoid, and suggestions for improvements on future innovative procurements.
- Document contract complications encountered and claims made during construction;

Mn/DOT believes the procedures described herein will result in very successful project. Mn/DOT looks forward to working with the FHWA as the project progresses and to providing FHWA and others with the benefits of Mn/DOT's experience with a design-build project.

Exhibit A

PROPOSED LOCKED INCENTIVE DATE CONTRACT LANGUAGE

S-6.7 In addition to the other Contract Time requirements, if the Contractor completes all work required per S-6.5

A "Locked Incentive Date (LID)" Payment is made available to the Contractor under the following conditions:

1. Subject to the conditions set forth below, the Department shall pay the Contractor a lump sum incentive of \$500,000.00 if the work specified above in this Section is completed on or before September 24, 2022 (hereinafter the "Locked Incentive Date" or "LID").

2. The LID shall not be adjusted for any reason, cause or circumstance whatsoever, regardless of the cause of the delay, and even though it may have been caused by Mn/DOT, Contractor acknowledges and agrees that delays may be caused by or arise from any number of events during the course of the Contract. Such delays or events and their potential impacts on the performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract and shall not result in an extension of the LID set forth above. Any and all costs or impacts incurred by the Contractor in accelerating the Contractor's work to overcome or absorb such delays in an effort to complete the work by the LID, regardless of whether the Contractor successfully meets the LID or not, shall be the sole responsibility of the Contractor in every instance.

3. If the Contractor fails to complete the work by the LID, the Contractor reserves the right to submit claims for additional compensation in accordance with Mn/DOT 1517, or for time extensions in accordance with Mn/DOT 1806, for work performed prior to the LID. The Contractor shall not, however, make a claim for any acceleration costs associated with attempting to meet the LID date.

4. The Contractor shall provide proper notification of all claims in accordance with MN/DOT 1517 to allow Mn/DOT the option of mitigating or documenting the extra costs, excluding acceleration costs.

5. If the Contractor completes the work by the LID, the following shall apply:

A. The Contractor must promptly request written verification from the Engineer that the required work was completed on or before the LID. The Contractor shall request this verification from the Engineer in writing on or before the LID.

B. The Contractor shall elect to either:

1) Accept payment of the LID incentive; or

2) Reject payment of the LID incentive and instead reserve the right to submit claims for additional compensation or time extensions (in which the Contractor shall not have the right to make a claim for any acceleration costs associated with attempting to complete Work on or before the Locked Incentive Date).

C. The Contractor must provide written notice to the Engineer of its election to either accept or decline the LID incentive payment within 30 days of receiving the Engineer's verification that work was completed by the LID. If the Contractor does not notify the Engineer of its election within 30 days, the Contractor shall be deemed to have waived its right to accept the incentive, and shall retain the right to submit claims as specified above.

6. If the Contractor elects to accept the LID incentive payment, the following shall apply:

A. The Contractor agrees that the incentive payment shall constitute full and final settlement of all claims for additional compensation or time extensions that the Contractor has submitted, could have submitted, or might otherwise hereafter submit, on behalf of itself or any subcontractor or supplier, for work performed up to and including the Locked Incentive Date. This includes all claims that may already be pending with the Department, or in any alternative dispute resolution process such as mediation or arbitration, or before a Dispute Review Board.

B. The Contractor releases and covenants not to sue the State based upon any claims, demands, charges or causes of action, accruing to the Contractor (including its subcontractors and suppliers) up to and including the Locked Incentive Date. This waiver of claims covers all known or unknown damages, losses, charges, expenses, delays or compensation of whatever nature or kind based upon or in any way arising out of any work performed or materials provided by the Contractor (including its subcontractors and suppliers) for this Project.

C. Payment of the incentive shall be made on the first partial estimate voucher processed after the Engineer receives the Contractors written request to accept the incentive.

7. Payment of the LID incentive is intended to ensure to the Department and the public the benefits of early completion of the specified work and to eliminate claims disputes. Should this provision conflict with any other provision of the Contract, this provision shall prevail, and the Contract shall be interpreted in accordance with it.