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ROBERT BENTLEY
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December 4, 2015

JOHN R. COOPER
TRANSPORTATION
DIRECTOR

Mr. Mark D. Bartlett, P.E.
Division Administrator
Federal Highway Administration
9500 Wynlakes Place
Montgomery, Al. 36117

Re: Project No. ACIMF-IO59(383)
Jefferson County

Mr. Bartlett,

Here for your review and approval is the SEP-14 Work Plan for the No Excuse Incentive clause that ADLOT would like to include in the contract documents for the above referenced project. The construction funding for this project will be through bonds and future Federal funds. This project is currently scheduled for a January, 2016 letting.

This project is a high priority to ALDOT and we ask you and your staff to join us in the sense of urgency by expediting your review and approval so we can keep this project on the current schedule.

Thanks for any assistance that you may provide.

Sincerely,

Curtis W. Vincent, P.E.
State Construction Engineer

CWW

c. Mr. Ronnie Baldwin, P.E.
Mr. Clay McBrien, P.E.

SEP-14 Work Plan

Alabama Department of Transportation

No Excuse Incentive

Project No. ACIMF-I059(383), Jefferson County

December 4, 2015

Introduction

The Alabama Department of Transportation (ALDOT) proposes to use a No Excuse Incentive on a major interstate reconstruction project on I-59/20 in Downtown Birmingham. This segment of I-59/20 is located between the Arkadelphia Road interchange and east of the I-65 interchange, including all entrance and exit ramps. The reconstruction of this interchange will effect approximately 250,000 vehicles per day. The No Excuse Incentive will be applied to the substantial completion of this project, defined as opening all reconstructed lanes to traffic. This proposal is to incentivize the expedited construction of this project for the purpose of beginning construction on an adjacent future project to replace the aging elevated bridge structure through the Birmingham Central Business District (CBD).

Purpose

The purpose of using a No Excuse Incentive is to ensure that this project does not delay the closing of the aging elevated bridge structure and delay its proposed completion end date. The adjacent project is scheduled to be let to contract only months after letting this project. Therefore, it is imperative that this contract be completed to avoid a substantial claim with the adjacent project's Contractor. The use of this incentive demonstrates ALDOT's commitment to expediting the completion of these projects and restoring traffic flow on the I-59/20 corridor.

Scope

The work will consist of interchange modifications on I-59/20 at I-65 including the Grade, Drain, Base, Pave, Striping, Signing, Signals, Lighting, Bridge, Bridge Widening, Bridge Removal, and Retaining Walls for a distance of 1.682 miles.

Schedule

The project is anticipated to be let for bids in January, 2016, and has a substantial completion date of August 31, 2018. The completion date of the No Excuse Incentive is August 31, 2018.

Evaluation

The project Special Provision will specify the work that will be required to be complete by the Substantial Completion Date in order for the Contractor to qualify for the No Excuse Incentive. ALDOT will make the determination as to whether all work necessary for Substantial Completion has been satisfactorily completed.

Reporting

An initial/final report will be submitted to FHWA after the completion of the project. The report will include an evaluation of the technique used, the industry and Agency reactions and issues, and a recommendation as to whether or not to use this construction method on future projects.

No Excuse Incentive Special Provision

SECTION 101 DEFINITION OF TERMS

101.01 Definitions.

(b) Terms.

Subarticle 101.01(b) shall be amended by adding the following definitions:

Incentive Payments and Disincentive Deductions. A contract provision in which is given the means by which:

- The Contractor is compensated a certain amount of money for achieving Substantial Completion before the expiration of the assigned completion date.
- The Contractor is assessed a deduction for each full calendar day and any final portion of a calendar day required to achieve Substantial Completion after the expiration of the assigned completion date. ;

The Incentive/Disincentive provision is intended to motivate the Contractor so that work will be completed on or ahead of schedule on critical projects where traffic inconveniences and delays to subsequent critical projects must be minimized.

Substantial Completion. The completion of required work in the project to the point such that all traffic is operating in its permanent location as shown in Phase 5 of the Sequence of Construction and all contract items are complete, with the exception of punch list items.

SECTION 108 PROSECUTION AND PROGRESS

108.07 Temporary Suspension of Work.

(c) Automatic Time Suspension.

Subarticle 108.07(c) shall be replaced with the following:

(c) Blank.

108.08 Determination of Contract Time.

(a) General.

Subarticle (108.08(a)) shall be replaced by the following:

(a) Assignment of Time.

Time periods given in Article 108.10 have been assigned for the Substantial Completion of all of the work.

Incentive Payments and Disincentive Deductions shall apply as outlined in Article 108.10.

(c) Days Work not Permitted.

Subarticle 108.08(c) shall be replaced with the following:

(c) Blank.

108.09 Extension of Contract Time.

Article 108.09 shall be replaced with the following:

108.09 Extension of Contract Time.

The Contractor should anticipate that delays may be caused by or arise from any number of events during the course of the work, including, but not limited to, quantity overruns, extra work, claims, changed or differing site conditions, alteration of plans or character of work, utility conflicts, design changes, right of way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, strikes, inclement weather, recovery, weekends, holidays, ozone alert days, events at the Birmingham Jefferson Civic Center, or other such events, forces, factors, delays, and disruptions that are common and reasonably expected in highway construction work. Such delays or events and their impacts upon performance by the Contractor are specifically contemplated and acknowledged by the Contractor upon entering into this contract, and shall not be used by the Contractor as the basis for a time extension, and will not be allowed or considered by the Engineer as valid reasons for a time extension. Any and all costs or impacts whatsoever incurred by the Contractor in accelerating the work to overcome or absorb such delays or events in an effort to complete the contract within the time allowed, regardless of whether the Contractor successfully does so or not, shall be the sole responsibility of the Contractor.

In the event that a catastrophic occurrence (i.e., hurricane, tornado, earthquake, or a declared state of emergency) directly and substantially affects the Contractor's operations to the extent that the delay exceeds the total float along the project's critical paths within the current approved schedule, and the Engineer finds that the work was delayed because of conditions beyond the control and without the fault of the Contractor, the Engineer may extend the time for completion by an amount justified by such delay. The extended time for completion shall then be in full force and effect the same as though it were the original time for completion.

If the Contractor disagrees with the decision of the Construction Engineer, he may appeal in writing to the Director. The Director shall have final authority to approve or disapprove the request for an extension of time, or the Director may, at his discretion, refer the appeal to the Claims Committee for a recommendation before making his decision. Time extension requests will not be referred to the Claims Appeal Board.

Any approved time extension would serve only to delay the assessment of disincentive deductions, but would not affect the time allowed to earn the lump sum incentive. The Contractor must achieve Substantial Completion by the assigned completion date of August 31, 2018 to receive the lump sum incentive.

108.10 Failure to Complete Work within Contract Time.

Article 108.10 shall be replaced by the following:

108.10 Incentive Payments and Disincentive Deductions (I/D)

(a) Time.

Time is of the essence in completing the contract work. It is in the interest of the public and the State to have the work completed as quickly as possible. Any delay in completing this work will inconvenience the traveling public, interfere with business and commerce, and delay subsequent critical projects. Furthermore, during each day that the work is under construction, the users of the highway will incur costs as a result of delays caused by construction.

(b) Incentive Payments and Disincentive Deductions.

1. A lump sum incentive payment of \$10,000,000 will be made to the Contractor for achieving Substantial Completion of the project before 11:59 pm on August 31, 2018.
2. A disincentive deduction of \$250,000 per calendar day will be made from the payment due the Contractor for each full calendar day, and any final portion of a calendar day that is required to achieve Substantial Completion of the project after 11:59 on August 31, 2018.

(c) Time Extensions.

Time extensions will be considered in accordance with Article 108.09.

(d) Purpose of Disincentive Deductions.

The Contractor and the State agree that the injury caused by a breach of this contract is difficult to accurately estimate, and that the dollar amounts of disincentive deductions per calendar day are intended to offset damages rather than serve as a penalty. The Contractor agrees that the dollar amounts of disincentive deduction per calendar day represent reasonable pre-breach estimates of the probable loss to the public and compensation to the State for increased time in administering the contract, supervision, inspection, and engineering for the Contractor's failure to achieve Substantial Completion within the allotted time.

108.11 Schedule of Liquidated Damages.

Article 108.11 shall be replaced by the following:

108.11 Schedule of Liquidated Damages.

A Schedule of Liquidated Damages is not required for this contract.

108.12 Default of Contract.

Article 108.12 shall be amended by replacing the third paragraph with the following:

The cost of completing the work under contract will be deducted from any money due or which may become due the Contractor. If such expense exceeds the sum which would have been payable under the contract, then the Contractor and the Surety shall be liable and shall pay to the Department the amount of such excess.