



Memorandum

U.S. Department
of Transportation

**Federal Highway
Administration**

Subject: **ACTION:** No Excuse Incentive Provision under
Special Experimental Project No. 14 (SEP-14)

Date: December 10, 2015

From: /s/ Thomas D. Everett
Director, Office of Program Administration

Reply to
Attn. of: HIPA-30

To: Mark Bartlett
Division Administrator
Montgomery, AL

This is in reference to Brian Hogge's December 7th email that transmitted the Alabama Department of Transportation's (ALDOT) SEP-14 workplan for the use of a no excuse incentive clause for the reconstruction of the I-59/I-20 interchange in downtown Birmingham.

The purpose of the no excuse incentive contract provision is to provide the successful contractor with significant incentives and disincentives to plan, schedule and complete all work so that adjacent critical project is not delayed.

Under the no excuse incentive provision, the contractor will assume the schedule risk for any potential delays that may arise from any number of events 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.

ADOT is keeping the schedule risk associated with catastrophic events (i.e., hurricane, tornado, earthquake, or a declared state of emergency) that directly and substantially affects the contractor's operations.

The proposed concept for an initial/final evaluation report is satisfactory. It should address industry reactions to the use of this concept, the effectiveness of this contract provision and specifically identify administrative or legal issues related to interpretation of existing contract schedule provisions or FHWA's contract requirements in 23 CFR Part 635.

The ALDOT's workplan and evaluation schedule are satisfactory. You may consider this project approved for evaluation under SEP-14. Thank you for the opportunity to review and comment on

this SEP-14 request. Should you have any questions, please contact Gerald Yakowenko at (202) 366-1562.