

No Excuse Incentive Report

General Overview

Introduction

The Alabama Department of Transportation (ALDOT) received Federal Highway Administration SEP-14 approval to use a No Excuse Incentive provision 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 affected approximately 250,000 vehicles per day. The No Excuse Incentive applied to the substantial completion of this project, defined as opening all reconstructed lanes to traffic. The proposal incentivized 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 was to ensure that this project did not delay the closing of the aging elevated bridge structure and delay its proposed completion end date. The adjacent project was scheduled to be let to contract only months after letting this project. Therefore, it was imperative that this contract be completed to avoid a substantial claim with the adjacent project's Contractor. The use of this incentive demonstrated ALDOT's commitment to expediting the completion of these projects and restoring traffic flow on the I-59/20 corridor.

Scope

The project consisted 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 was let for bids in January 2016, and had a substantial completion date of August 31, 2018. The completion date of the No Excuse Incentive was August 31, 2018.

Time Extension

The only provision for a time extension was for a catastrophic event, such as a tornado, hurricane or earthquake. 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 was required to achieve Substantial Completion by the assigned completion date of August 31, 2018, to receive the lump sum incentive.

Incentive Payments and Disincentive Deductions

The contract provided for a \$10,000,000 lump sum incentive payment to the contractor for achieving substantial completion before 11:59 PM on August 31, 2018. A disincentive deduction of \$250,000 per calendar day would be applied for every calendar day or portion of a day required to achieve substantial completion after 11:59 PM on August 31, 2018.

Industry Reaction

The incentive amount did what it was intended to do – motivate the Contractor to complete the work on time. The concerns of the industry and prospective bidders, as well as some of the innovation they utilized to meet the No Excuse Incentive, include the following:

1. There was not a cap on the daily disincentive deduction. This was a large concern to the contractors considering the extensive list of potential delays outside of their control that they would have to overcome to meet Substantial Completion. Any of these delays, or a combination of them, could result in major financial losses that could be detrimental to a company's financial stability. Some of the major concerns for the prospective bidders were, but not limited to:
 - a. a very harsh/wet winter that would shutdown operations,
 - b. changed or differing site conditions,
 - c. material supply issues,
 - d. the restriction of working around the 115 kV oil-cooled transmission line and the impact of the restrictions on the project schedule.
2. One of these issues did come into play during the project was the supply of bearing pads and the ability to conform to the project schedule. The Contractor and his structural engineer submitted proposals to allow for temporary means and methods so that the construction could proceed and the bridges opened to traffic to meet the time requirement for the incentive. The permanent pads were installed afterwards with little or no impact to traffic.
3. The No Excuse Incentive resulted in contractor ingenuity by proposing and utilizing micropiles in lieu of pilot holes and piling, which expedited the bridge foundation construction.

Lessons Learned

- *Use of No Excuse Incentive Clauses* – ALDOT has continued to use No-Excuse Incentive Clauses on major projects where the chosen Maintenance of Traffic results in substantial daily user costs.
- *Time Period Before Disincentive* – The No Excuse Incentive Clause used on this project required an immediate change at 11:59 PM on August 31, 2018, from the Incentive time period to a daily Disincentive of \$250,000. ALDOT now allows a time period between the incentive and disincentive periods. Depending on the specifics of the contract, that time period could range from 1 month to 3 months.
- *Definition of Substantial Completion* – Understandably, there was a significant rush at the end to achieve Substantial Completion and earn the incentive. An inclusive definition of Substantial Completion should be developed that lists the required traffic pattern, the required items that must be fully in a permanent completion state, and any items that may be allowed to be in a temporary state. This definition will be in the Special Provision and discussed at the Pre-Bid Conference.