

## **SEP-14 Work Plan**

### **Colorado Department of Transportation**

#### **No Excuse Bonus**

#### **Project No. 21893 I-70 Westbound Peak Period Shoulder Lane**

**February 19, 2019**

#### **Introduction**

The Colorado Department of Transportation (CDOT) proposes to use a No Excuse Bonus on a major interstate reconstruction project on the I-70 Mountain Corridor. This segment of I-70 is located between the Veterans Memorial Tunnels and the Empire Junction interchange area. The construction of this shoulder lane will affect the I-70 Mountain Corridor for the next two years. The No Excuse Bonus will be applied to the completion of civil construction for this project, defined as completion of all civil construction pay items and turnover to HPTE for toll equipment testing. This proposal is to incentivize the expedited construction of this project for minimizing the impact to local stakeholders and the impacts to the traveling public through the corridor.

#### **Purpose**

The purpose of using a No Excuse Bonus is to ensure that this project does not affect the corridor stakeholders and travelling public for more than one winter season. The number of projects recently in the corridor have left the stakeholders and highway travelers fatigued with construction and the No Excuse Bonus would incentivize a contractor to complete the project before the next major traffic season. The use of this incentive demonstrates CDOT's commitment to expediting the completion of these projects and restoring traffic flow on the I-70 corridor.

#### **Scope**

The work will consist of median retaining wall construction, pavement resurfacing, and installation of ITS Tolling Equipment over 12 miles of I-70.

#### **Schedule**

The project is anticipated to be advertised for bids in March 2019 and has a completion date of June 30, 2021. The milestone for completion of civil construction items is February 1, 2021 and the completion date of the No Excuse Bonus is November 25, 2020.

## **Evaluation**

The project Special Provision will specify the work that will be required to be complete by the No Excuse Bonus Deadline in order for the Contractor to qualify for the No Excuse Bonus. CDOT will make the determination as to whether all work necessary for Acceptance has been satisfactorily completed.

The following items will be evaluated:

1. Was the No Excuse Bonus effective in motivating the Contractor to complete Milestone #1?
2. Did the No Excuse Bonus allow CDOT to achieve project goals?
3. What was the reaction of the Contractor to the No Excuse Bonus?
4. What was the reaction of Industry to the No Excuse Bonus?
5. Did any administrative or legal issues arise from the use of the No Excuse Bonus?

## **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**

Subsection 108.05 shall include the following:

The Contractor shall complete the following discrete portions of the work (milestones) by the dates specified. Liquidated Damages will be assessed for failure to complete the work for each milestone by the specified completion date.

### **Milestone No. 1: Completion of Civil Construction Contract Pay Items**

Completion Date: February 1, 2021

Description: The Civil Construction Contract Pay Items will be considered complete when all of the Pay Items defined in the Plans and Specifications, including any additional work added through Contract Modification Orders, have been completed and accepted by the Project Engineer with the following exceptions:

1. The Electronic Toll Collection System testing as described in Milestones No. 2 and 3.
2. Traffic Control Items and any coordination necessary to complete all work for Item 1 above.

A "No Excuse Bonus (NEB)" 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 (hereinafter the "NEB payment") if the work specified above in this Milestone is completed on or before November 25, 2020 (hereinafter the "NEB deadline").
2. The NEB payment and NEB deadline 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 the Department, the 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 NEB payment or NEB deadline 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 NEB deadline, regardless of whether the Contractor successfully meets the NEB deadline or not, shall be the sole responsibility of the Contractor in every instance.
3. The Contractor reserves the right to submit claims for additional compensation in accordance with SS104.02, SS105.22, SS105.23, SS105.24, and SS109.04, or for time extensions in accordance with SS108.08. However, the Contractor shall not make a claim for any acceleration costs associated with attempting to meet the NEB deadline. If the Contractor elects to accept the NEB payment, the processing of these claims shall follow Section 6.
4. The Contractor shall provide proper notification of all claims in accordance with SS104.02, SS105.22, SS105.23, SS105.24, and SS109.04 to allow the Department the option of mitigating or documenting the extra costs, excluding acceleration costs.
5. If the Contractor completes the work by the NEB deadline, 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 NEB deadline. The Contractor shall request this verification from the Engineer in writing on or before the NEB deadline.

- b. The Contractor shall elect to either:
    - 1) Accept payment of the NEB payment; or
    - 2) Reject the NEB payment 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 NEB deadline).
  - c. The Contractor must provide written notice to the Engineer of its election to either accept or decline the NEB payment within 30 days of receiving the Engineer's verification that work was completed by the NEB deadline. 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 NEB payment, and shall retain the right to submit claims as specified above.
6. If the Contractor elects to accept the NEB payment, the following shall apply:
- a. The Contractor agrees that the NEB 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 NEB deadline. 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 Department based upon any claims, demands, charges or causes of action, accruing to the Contractor (including its subcontractors and suppliers) up to and including the NEB deadline. 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 NEB payment shall be made on the first estimate processed after the Engineer receives the Contractor's written request to accept the NEB payment.

Payment of the NEB payment 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.