



U.S. Department
of Transportation

**Federal Highway
Administration**

Memorandum

Subject: **ACTION:** Colorado No Excuse Bonus (NEB)
under Special Experimental Project No. 14
(SEP-14)

Date: March 12, 2019

From: **/S/** Gina M. Ahlstrom for Brian J. Fouch
Director, Office of Preconstruction,
Construction, and Pavements

In Reply Refer To:
HICP-20

To: John M. Cater
Division Administrator
Lakewood, CO

This memorandum is in response to emails dated February 25 and March 5, 2019 from Kelly Galardi of your office, which endorsed and transmitted the following documents:

1. A Colorado Department of Transportation (CDOT) workplan, dated February 19, 2019 for the use of a No Excuse Bonus (NEB) under SEP-14, including a No Excuse Incentive Special Provision. The workplan would only apply for Project No. 21893 I-70 Westbound Peak Period Shoulder Lane, slated for a March 2019 letting; and
2. A February 19, 2019 cover letter from CDOT to the FHWA Colorado Division Office, transmitting and requesting approval of the SEP-14 workplan for a NEB.

The purpose of using an NEB provision is to ensure that construction of this project does not affect the I-70 Mountain Corridor stakeholders and traveling public for more than one winter season. To that end, CDOT will pay the contractor a lump sum incentive of \$500,000, if the work specified is completed on or before November 25, 2020.

The NEB payment and deadline will 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 CDOT, the contractor acknowledges and agrees that delays may be caused by, or arise from any number of events, during the course of the contract.

The contractor reserves the right to submit claims for additional compensation or for time extensions; however, the contractor will not make a claim for any acceleration costs to meet the NEB deadline.

If the contractor completes the work by the NEB deadline, 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

If the contractor elects to accept the NEB payment, the following shall apply:

- 1) 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.
- 2) The contractor releases and covenants not to sue CDOT 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.

Additional details may be found in the SEP-14 workplan.

CDOT's SEP-14 workplan for the use of a NEB contract provision is 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 John Hoyer at (720)437-0515 or Gerald Yakowenko at (202) 366-1562.