

# **SEP-14 Work Plan – No Excuse Incentive Delaware Department of Transportation**

**Contract T201907402:  
Rehabilitation of I-95, 2nd Street On-Ramp Improvements**

**September 5, 2019**

## **Introduction**

The Delaware Department of Transportation (DelDOT) proposes to use a No Excuse Incentive contract provision on an advance break-out contract as part of the major rehabilitation project on the I-95 corridor. This segment of I-95 is located within the City of Wilmington and carries over 110,000 vpd. This contract involves the reconstruction and reconfiguration of the on-ramp from 2nd Street to Southbound I-95, and constructing this contract in advance allows the work to be taken off the critical path of the mainline contract, which has stringent maintenance of traffic constraints. The No Excuse Incentive will be applied to the opening of the ramp, which has a lengthy detour and a significant impact on city access to the interstate. This proposal is to incentivize the expedited construction of this work so that it is completed before the mainline contract begins.

See the attached “Project Special Notice: No Excuse Incentive/ No Excuse Liquidated Damages” for additional information.

## **Purpose**

The purpose of using a No Excuse Incentive is to ensure that this contract is complete prior to the start of the mainline I-95 rehabilitation contract. The mainline contract will have I-95 reduced by one lane in each direction for up to two years. Completing this advance contract allows the ramp reconstruction to be taken off the critical path of the mainline contract and provides the city with additional access to southbound I-95 during the mainline contract. The use of this incentive demonstrates DelDOT’s commitment to minimizing the impact of the I-95 rehabilitation project on the City of Wilmington.

## **Scope**

The work will consist of reconfiguring the on-ramp to Southbound I-95 by realigning the ramp from 2<sup>nd</sup> Street and removing the ramp and subsequent merge from Jackson Street, as well as the addition of turn lanes on the adjacent city streets to improve efficiency of the nearby intersections.

## **Schedule**

The contract is anticipated to be advertised in September 2019 with the bid opening in October 2019. Construction is expected to start in January 2020, with an expected completion date of late February 2021. The No Excuse Incentive limits the 2<sup>nd</sup> Street Ramp closure to 255 calendar days within that construction duration. If this work is not completed within 255 calendar days, the contractor will be assessed No Excuse Liquidated Damages in accordance with the Project Special Notice.

**Evaluation**

The project Special Notice (attached) will specify the work that will be required to be complete within the No Excuse Incentive timeframe of 255 Calendar Days for closure of the ramp. DeIDOT will make the determination as to whether all work necessary for reopening the ramp has been satisfactorily completed.

The following items will be evaluated:

1. Was the No Excuse Incentive effective in motivating the Contractor to complete the work within the 255 Calendar Day timeframe?
2. Did the No Excuse Incentive allow DeIDOT to achieve the contract goals?
3. What was the reaction of the Contractor to the No Excuse Incentive?
4. What was the reaction of Industry to the No Excuse Incentive?
5. Did any administrative or legal issues arise from the use of the No Excuse Incentive?

**Reporting**

A final report will be submitted to FHWA after completion of the project. The report will include an evaluation of the technique used; reactions of the Industry, Contractor, and DeIDOT; and a recommendation as to whether or not to use this technique on future projects.

## **Project Special Notice: No Excuse Incentive/ No Excuse Liquidated Damages**

Time is an essential element of this Contract. Several temporary traffic conditions shown on the Plans and listed below will result in significant congestion, delay, and/or operational constraints to the traveling public. Incentive or disincentive payments will be awarded or assessed based solely on whether or not the Contractor completes the work described below for the Ramp B Closure work within 255 Calendar Days.

The Contractor shall anticipate that impacts and delays may be caused by or arise from any number of events during the course of the Contract, including, but not limited to, work performed, work deleted, quantity overruns, change orders, supplemental agreements, Extra Work, delays, disruptions, differing site conditions, alterations of plans for character of work, utility conflicts, design changes, design defects or omissions, time extensions, right of way issues, permitting issues, actions of suppliers, actions of subcontractors or other contractors, actions of third parties, strikes, shop or working drawing approval, approval process delays, maintenance of traffic changes, expansion of physical limits of the project to make it functional, weather, weekends, holidays, suspension of the Contractor's operations, or other such events, forces or factors experienced in bridge and highway construction work. Such delays and events and their potential impact on performance by the Contractor are to be specifically contemplated and acknowledged by the parties entering into this Contract, and shall not be considered as a reason to extend the 255 Calendar-Day time period in which the Ramp B Closure work must be completed by the Contractor. Provided, however, that if a Catastrophic Event occurs, the schedule may be extended as set forth herein.

Regardless of whether or not the Contractor earns the No Excuse Incentive payment or is required to pay the No Excuse Liquidated Damages amount, any and all impacts and delays, including but not limited to, those identified above, shall be the sole responsibility of the Contractor, and the Contractor shall not be permitted to file a claim against the Department for any costs related to any impacts and delays, including, but not limited to, those identified above. Regardless of the amount earned by the Contractor in the calculation of the No Excuse Incentive Payment (including, but not limited to an amount of \$0.00), or if the Contractor is charged the No Excuse Liquidated Damages Amount, all costs whatsoever incurred by the Contractor to accelerate its work to overcome or absorb such impacts and delays in an effort to complete the Ramp B Closure work prior to the expiration of the 255-Calendar-Day time period, regardless of whether the Contractor successfully does so or not, are the sole responsibility of the Contractor in every instance.

### **Ramp B Closure Work.**

Beginning on the Calendar Day that the Contractor closes Ramp B, the Contractor must complete the Ramp B Closure work as defined below within 255 Calendar Days. The "Ramp B Closure" work consists of all the following work items:

1. Demolishing Ramp B.
2. Completion of all work on the plans indicated to be completed during Phase 2 associated with Ramp D including the associated widening of Bridge No 1-748S. This work also includes installation of all bridge expansion joint strip seals and bridge drainage system including scuppers and downspout piping.

3. Performance of all profiling, necessary corrective work, grooving, texturing, and application of sealants on all concrete bridge decks and concrete pavement sections.
4. Completion of all work on the plans indicated to be completed during Phases 1 and 2 associated with Lancaster Avenue, Martin Luther King Jr. Blvd, Adams Street, 2nd Street, and Jackson Street (the "City" streets).
5. Installed and fully operational permanent traffic signal equipment as shown on the Plans on the City street intersections.
6. Installation of permanent pavement markings as shown on the Plans on the ramp, approach roadways, and mainline.
7. Installation of permanent signs and sign structures as shown on the Plans on the ramp, approach roadways, and mainline.
8. Installed and fully operational roadway lighting as shown on the Plans on the ramp, approach roadways, and mainline.
9. Removal of all temporary traffic control devices.
10. Ramp D is fully open to traffic and operating in the proposed final condition. Temporary lane closures may be considered after Ramp D is fully reopened only for punchlist items.

The Ramp B Closure work will not be considered complete until the permanent parapets on the bridges, permanent retaining walls, and permanent traffic barriers are in place, properly cured, and functioning. The use of temporary bolted down barrier or other temporary traffic barrier in lieu of permanent parapets on the bridges, retaining walls and permanent traffic barriers is not permitted.

**Definitions:**

***No Excuse Incentive.*** For every Calendar Day, up to thirty (30) Calendar Days, that the Ramp B Closure work described above is complete before the 255<sup>th</sup> Calendar Day, the Contractor will receive an incentive payment of Ten Thousand Dollars (\$10,000.00) per Calendar Day. The maximum incentive payment will not exceed Three Hundred Thousand Dollars (\$300,000.00).

***No Excuse Liquidated Damages.*** If the Ramp B Closure work is not completed at the end of the 255<sup>th</sup> Calendar Day, the Contractor will be required to make a disincentive payment to the Department in the amount of Ten Thousand Dollars (\$10,000.00) per Calendar Day that the Ramp B Closure work is not complete and continuing for each Calendar Day that the Ramp B Closure work remains not complete with no maximum on the total amount of disincentive payments that the Contractor shall be required to remit. The amount of the disincentive payment shall be deducted from any monies due the Contractor, not as a penalty, but as a liquidated damage assessed to recover the cost of inconvenience to the public, the added cost of engineering and supervision, and the other extra expenditures of public funds due to the Contractor's failure to complete the Ramp B Closure work in 255 Calendar Days. Any disincentive amount in excess of any monies due or retained percentage shall be paid to the Department by the Contractor. The disincentive payment described above may be assessed in addition to any other liquidated damages assessed as part of this contract.

***Catastrophic Event.*** In the event that a catastrophic event results in a declared state of emergency by the state of Delaware, that directly and substantially affects the Contractor's operations on this Contract, the Contractor and the Department shall agree on the number of Calendar Days to extend the 255-Calendar-

Day time period. In the event that the Contractor and Department cannot agree on the number of Calendar Days to extend the 255-Calendar-Day time period, the Department shall unilaterally determine the number of Calendar Days to extend the 255-Calendar-Day time period due solely to the impact of the catastrophic event. The Contractor shall have no right whatsoever to contest such determination, save and except the Contractor establishes that the number of Calendar Days determined by the Department were arbitrary or without any reasonable basis. Any and all disputes as to the number of Calendar days added in the event of a Catastrophic Event shall be decided by the Secretary of Transportation, or his or her designee, and such determination shall be final with no right of appeal.