

# Memorandum

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

Date: October 2, 2019

From: \Originally Signed by: Connie Yew\ for  
Brian J. Fouch, PE  
Director, Office of Preconstruction,  
Construction, and Pavements

In Reply Refer To:  
HICP-20

To: Douglas Atkin  
Division Administrator  
Dover, DE

This memorandum is in response to emails sent from September 12-25, 2019 by Dan Montag of your office, which transmitted the following documents:

1. A Delaware Department of Transportation (DelDOT) Workplan proposing the use of a No Excuse Incentive (NEI) contract provision under Special Experimental Project No. 14 (SEP-14);
2. A DelDOT Project Special Notice: No Excuse Incentive/No Excuse Liquidated Damages, which defines and explains the parameters of the contract provision; and
3. A cover letter, dated September 5, sent from DelDOT to the FHWA- Delaware Division, transmitting the above documents for FHWA approval.

Under DelDOT's proposed use of the No Excuse contract provision, the contractor anticipates that impacts and delays may be caused by or arise from any number of events during the course of the contract. With the exception of a catastrophic event, delays and events will not be considered as a valid reason for a time extension.

DelDOT proposes to utilize this contract provision for the Rehabilitation of I-95, 2nd Street On-Ramp Improvements project, which is an advance break-out contract as part of the major rehabilitation project on the I-95 corridor. The work under the No Excuse contract provision will consist of Ramp B closure work in downtown Wilmington as described in the Project Special Notice. This proposal is to incentivize the construction, so that it is completed before the mainline contract begins. The project has an estimated construction cost of \$10 million.

The No Excuse contract provision includes an incentive of \$10,000 per calendar day, up to a maximum of 30 calendar days, if work described in the Project Special Notice is completed in advance of the 255th calendar day. The maximum incentive payment would be \$300,000 (30 calendar days maximum x \$10,000 per calendar day). Conversely, if the contractor is unable to complete the work by the 255th calendar day, DelDOT would assess liquidated damages in the amount of \$10,000 per calendar day that the work remains incomplete with

no maximum on the total amount of disincentive payments.

Other details are contained within the SEP-14 Workplan and Project Special Notice.

DelDOT's Workplan to use a No Excuse Incentive 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 Huyer at (720) 437-0515 or Gerald Yakowenko at (202) 366-1562.