



IDAHO TRANSPORTATION DEPARTMENT

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June 29, 2007

Mr. Peter J. Hartman
Division Administrator
Federal Highway Administration
Idaho Division
3050 Lakeharbor Lane, Suite 126
Boise, ID 83703

Projects: Gowen IC to Eisenman IC, Boise; Project No. A009(814); Key 09814
Broadway IC to Gowen IC, Boise; Project No. A010(557); Key 10557

Mr. Hartman:

Here for your review and approval is the SEP-14 Work Plan for the No Excuse Incentive clause that the GARVEE Team and Connecting Idaho Partners would like to include in the contract documents for these projects. The construction funding for these projects will be through our GARVEE program. Our intent is to combine these projects under a single contract for construction, with the hope of advertising the projects in early July of this year.

These projects are a high priority to ITD and we hope you and your staff will join us in our sense of urgency by expediting your review and approval so we can push forward with getting these projects out to bid.

Please let me know if you have any questions.

Sincerely,

DAMON L. ALLEN, P.E.
Roadway Design Engineer

DLA:JFC:09814fhwa SEP 14 work plan approval
Enclosure

SEP-14 Work Plan

Idaho Transportation Department

No Excuse Incentive

June 26, 2007

Project Name: I-84, Broadway Interchange to Gowen Interchange and Gowen Interchange to Eisenman Interchange (GARVEE Program)

County: Ada

Federal Aid Numbers: A009(814) and A010(557)

Length of Project: 6.1 Miles

Brief Description: Crack and Seat with Overlay Pavement Rehabilitation

Estimated Construction Cost: \$15,500,000 (Estimated Construction Cost w/o E & C or Incentive)

Introduction

The Idaho Transportation Department (ITD) submits this work plan for review and approval as a No Excuse Incentive (NEI) in phases to a total amount of \$800,000 for this project under the provisions of Special Experimental Project No. 14 (SEP-14) for the use of innovative contracting practices. ITD and their GARVEE Transportation Program Manager, Connecting Idaho Partners (CIP) have selected the NEI technique as potentially the most effective method to accelerate construction of this project and maximize the amount of work done before the winter shutdown.

Purpose

The purpose of the NEI contracting method is to ensure that 1) a minimum of two lifts (0.42 feet) of asphalt concrete pavement is completed and open for traffic for the section between Broadway Interchange and Gowen Interchange before this coming winter shutdown and 2) a minimum amount of two lift (0.42 feet) pavement is completed and open to traffic between the Gowen Interchange and the Eisenman Interchange before this coming winter shutdown; to replace the severely deteriorated pavement and minimize costly maintenance as quickly as possible, to minimize impacts on safety associated with an extended construction period, and to increase public convenience. Therefore, ITD and CIP believe this incentive technique to be the best available method to achieve these goals.

Scope

This work will consist of crack and seat of the existing 40 year old pavement and adding a total of 0.55-feet, in three lifts, of asphalt concrete overlay for the 6.1-mile, 4-lane divided section of I-84 from the Broadway Interchange to the Eisenman Interchange east of Boise, including shoulders, roadside slopes, and traffic control.

Schedule

This project was originally scheduled to be constructed as two projects: one (Gowen Interchange to Eisenman Interchange, 3.7-mile) in the fall of 2007 and the second (Broadway Interchange to Gowen Interchange, 2.4-mile) in the summer of 2008. The pavement in both sections is extremely deteriorated and the second section, closer to Boise, carries much more traffic. To advance construction of the Broadway to Gowen section and reduce the amount of impact on the user due to a second season of major construction and traffic control, a decision was made to combine the projects and advertise both, as a single contract, on July 16, 2007 with a bid opening date of July 31, 2007. The Completion Date for any of the No Excuse Incentives is December 22, 2007.

Evaluation

The project Special Provisions will specify the work that will be required to be complete by the NEI Completion Date(s) in order for the Contractor to qualify for the NEI payment(s). The ITD Resident Engineer will make the determination as to whether all work necessary for the NEI Completion has been satisfactorily completed.

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 contracting method on future projects.

No Excuse Incentive Special Provision Draft

[See Attached]

NO EXCUSE INCENTIVE

The Contractor will be paid a "No Excuse Incentive" in the amount of \$400,000 for segment I, \$200,000 for segment II and \$200,000 for segment III, for work completed and accepted in accordance with the Contract and the terms outlined below. The segments are as defined below:

Segment I

Segment I shall be the completion and acceptance of the lower two of the three lifts of plant mix on eastbound/westbound Broadway IC to Gowen IC (Sta 2849+50 to 2976+00) and associated pavement marking and open to traffic by December 22, 2007.

Segment II

Segment II incentive will be paid upon the completion and acceptance of the lower two of the three lifts of plant mix on the eastbound lanes of the Gowen IC to Eisenman IC (Sta 2976+00 to 3171+83) and associated pavement marking and open to traffic by December 22, 2007. No incentive will be paid for Segment II unless Segment I is completed within the time frames established for Segment I incentive. Segments II & III are interchangeable and the Contractor may choose which one follows Segment I.

Segment III

Segment III incentive will be paid upon the completion and acceptance of the lower two of the three lifts of plant mix on the westbound lanes of the Gowen IC to Eisenman IC (Sta 2976+00 to 3171+83) and associated pavement marking and open to traffic by December 22, 2007. No incentive will be paid for Segment III unless Segment I is completed within the time frames established for Segment I incentive. Segments II & III are interchangeable and the Contractor may choose which one follows Segment I.

For purposes of calculation and the determination of entitlement to the "No Excuse Incentive" stated above, the "No Excuse Incentive" completion date will not be adjusted for any reason, cause or circumstance whatsoever, regardless of fault.

The parties anticipate that delay 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, change orders, supplemental agreements, delays, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right of way issues, permitting issues, actions of Suppliers, Subcontractors or other Contractors, actions by third parties, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, suspensions of Contractor's operations, or other such events, forces or factors sometimes experienced in highway construction work. Such delays or events and their potential impacts on performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not extend the "No Excuse Incentive" completion date set forth above. Further, any and all costs or impacts whatsoever incurred by the Contractor

in accelerating the Contractor's work to overcome or absorb such delays or events in an effort to achieve the "No Excuse Incentive" completion date and receive payment under this clause, regardless of whether the Contractor successfully does so or not, shall be the sole responsibility of the Contractor in every instance.

The Contractor shall have no rights under the Contract to make any claim arising out of this "No Excuse Incentive" provision except as is expressly set forth in this provision.

As conditions precedent to the Contractor's entitlement to any "No Excuse Incentive" for each segment the Contractor must:

- 1) Actually complete the segment and obtain acceptance of such segment in writing by the Engineer.
- 2) The Contractor shall notify the Engineer in writing, within 30 days of the acceptance of the work in each segment, that the Contractor elects to be paid the "No Excuse Incentive" which the Contractor is eligible to be paid based on the actual acceptance date, and such written notice shall constitute a full and complete waiver, release and acknowledgment of satisfaction by the Contractor of any and all claims, causes of action, issues, demands, disputes, matters or controversies, of any nature or kind whatsoever, known or unknown, against the Department, its employees, officers, agents, representatives, consultants, and their respective employees, officer and representatives, the Contractor has or may have as to work performed, work deleted, change orders, supplemental agreements, delays, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right of way issues, permitting issues, actions of Suppliers, Subcontractors or other Contractors, actions by third parties, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, suspensions of Contractor's operations, extended or unabsorbed home office or jobsite overhead, lump sum maintenance of traffic adjustments, lost profits, prime mark-up on subcontractor work, accelerations costs, any and all direct and indirect costs, any other adverse impacts, events, conditions, circumstances or potential damages, on or pertaining to, or as to or arising out of the work leading up to, and including, completion of each segment including those elements of the work reasonably necessary for the safe use of the segments by the public for traffic. . This waiver, release and acknowledgment of satisfaction shall be all-inclusive and absolute, save and except any routine Department final estimating quantity adjustments.

Should the Contractor fail to actually complete a segment and obtain acceptance of that segment, or should the Contractor, having done so, fail to timely request the "No Excuses Incentive" for any reason, and including but not limited to the Contractor choosing not to fully waive, release and acknowledge satisfaction, for that segment, as set forth in 2) above, the Contractor shall have no right to any payment whatsoever under this provision and the normal Contract terms shall apply.

This provision shall in no way result in a reduction in requirements for the materials acceptance criteria stated in the contract, nor shall this provision in any way affect the QA/QC incentive/disincentive stated in the contract or the Asphalt Price Adjustment and Fuel Price Adjustment as described in these provisions.

In the event the Contractor elects to exercise the "No Excuse Incentive" payment provision, should this provision conflict with any other provision of the Contract, the Contract shall be interpreted in accordance with this provision.