

Larry Hogan, *Governor*
Boyd K. Rutherford, *Lt. Governor*



Pete K. Rahn, *Secretary*
Gregory C. Johnson, P.E., *Administrator*

November 18, 2015

Mr. Gregory Murrill
Division Administrator
Federal Highway Administration
City Crescent Building
10 South Howard Street, Suite 2450
Baltimore MD 21201

Attention: Mr. Dan Montag

Dear Mr. Murrill:

The State Highway Administration (SHA) is submitting this work plan to utilize a No Excuse Bonus in the amount of \$5,000,000 for the MD 404 from US 50 to East of Holly Road Design-Build project (Contract No. AW8965170). Subject to the Federal Highway Administration's approval under the Special Experimental Project No. 14, SHA will include the No Excuse Bonus provision in the contract.

Thank you for your consideration of this request. If you have any questions or concerns, please contact Mr. Jeffrey T. Folden, SHA Innovative Contracting Division Assistant Chief, at 410-545-8814, toll-free at 1-888-228-5003, or via email at jfolden1@sha.state.md.us. Mr. Folden will be happy to assist you.

Sincerely,

Gregory C. Johnson, P.E.
Administrator

By: 
Jason A. Ridgway
Director, Office of Highway Development

Enclosure

cc: Mr. Jeffrey T. Folden, Assistant Chief, Innovative Contracting Division, SHA

My telephone number/toll-free number is 410-545-8800 or 1-888-228-6971
Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone 410.545.0300 • www.roads.maryland.gov

**MARYLAND STATE HIGHWAY ADMINISTRATION
SPECIAL EXPERIMENTAL PROJECT NO. 14 NO EXCUSE BONUS
WORK PLAN**

Project: MD 404 from US 50 to East of Holly Road Design-Build
Contract No. AW8965170
FAP No. AC-NHPP-G-300-1(53)N
Estimated Construction Cost: \$90,000,000 - \$110,000,000 (Bid Range)

The State Highway Administration (SHA) submits this work plan for review and approval as a No Excuse Bonus for a total amount of \$5,000,000 for this project under the provisions of Special Experimental Project No. 14 (SEP-14) for the use of innovative contracting practices.

This project will complete the construction of approximately 9 miles of four lane dualization of MD 404. The 11.83 mile MD 404 project was originally broken into multiple phases. Phase 1A is complete and Phase 1B is under construction. Phases 2A, 2B, and 5 were funded for engineering in 2014; however, full funding through construction for those phases along with Phases 3 and 4 recently became available. The SHA is looking to accelerate the construction of these phases through a Design-Build Contract to complete the entire roadway by the end of 2017.

The purpose of this No Excuse Bonus provision is to expedite construction, improve safety for road users, and reduce road user costs. The SHA would like to include this No Excuse Bonus to minimize the construction time for this accelerated project and provide adequate incentive to open all four lanes of the MD 404 to traffic by Thanksgiving 2017.

The contract will have a required completion date of July 31, 2018. The No Excuse Bonus will be awarded if the Design-Builder can substantially complete the roadway and open all four lanes of traffic for the unrestricted and beneficial use of the traveling public by November 21, 2017.

The SHA finds that the \$5,000,000 is a reasonable amount for the No Excuse Bonus to encourage the Design-Builder to accelerate the project. The amount was determined considering the typical timeframe to complete this project and open four lanes to traffic of approximately 3 years being reduced to less than 18 months. Considering the calculated Loss of Public Benefit of \$22,200 per calendar day, there is nearly \$12.8 million in user savings. Additionally, the user savings between the required completion date and the substantial completion date would be nearly \$5.6 million. The SHA believes that the proposed \$5,000,000 bonus would be appropriate to encourage and incentivize the acceleration. It is also inline with Federal Highway Administration (FHWA) recommendations for incentives not to exceed 5% of the contract value. In addition to the No Excuse Bonus, a disincentive of \$22,200 would be applied to the contract in the event the four lanes are not open to traffic by the substantial completion date of November 21, 2017.

A report will be submitted to the FHWA after completion of the project. This report will include an evaluation of the technique used, the industry and Administration reactions and issues, and a recommendation as to whether or not to use this construction method on future projects.

The draft project contract provision is included for your review:

“NO EXCUSE BONUS”

The Administration desires to expedite construction on this Contract to minimize the inconvenience to and improve safety for the traveling public and to reduce the time of construction. In order to achieve this, a “No Excuse Bonus” provision is established for the milestone described below. The Administration will pay the Design-Builder a “No Excuse Bonus” in the amount of **\$5,000,000** if the work is completed as described below on or before **November 21, 2017**, which is the “Bonus Completion Date”.

Substantial Completion – Substantial Completion is defined as the calendar date when the public has full and unrestricted use and benefit of the 4 lane divided highway both from the operational and safety standpoint. To meet this definition, all work between the outside edge of pavement of the eastbound roadway and the outside edge of pavement of the westbound roadway, including all work in the median, must be complete. This may include, but is not limited to, final paving, final marking, signing, intersection lighting, and traffic barrier required for the safe flow of traffic. For the 4 lane divided highway to be considered substantially complete, no additional work requiring any lane closures or permanent shoulder closures will still need to be completed. Temporary shoulder closures will still be allowable after Substantial Completion.

The “No Excuse Bonus” will be paid only if “Substantial Completion” is achieved as set forth above on or before the “Bonus Completion Date” and subject to the conditions precedent set forth below. For the purposes of the calculation and determination of entitlement to the “No Excuse Bonus” stated above, the “Bonus Completion Date” will not be adjusted for any reason, cause or circumstances whatsoever, regardless of fault.

The parties anticipate that delays may be caused by or arise from any a 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, approval process delays, expansion of physical limits of project to make it functional, weather, weekends, holidays, suspensions of the Design-Builder’s operations, or other such events, forces or factors sometimes experienced in highway construction work. Such delays and events and their potential impact on performance by the Design-Builder are specifically contemplated and acknowledged by the parties entering into this Contract, and shall not extend the “Bonus Completion Date” set forth above. Further, any and all costs or impacts whatsoever incurred by the Design-Builder in accelerating its work to overcome or absorb such delays or events in an effort to complete the work prior to the “Bonus Completion Date”, regardless of whether the Design-Builder successfully does so or not, shall be the sole responsibility of the Design-Builder in every instance.

Should the Design-Builder fail to achieve the “Substantial Completion” milestone on or before the “Bonus Completion Date”, the Administration shall deduct **\$22,200** for each calendar day after the “Bonus Completion Date” for which the conditions of “Substantial Completion” have not been achieved, from monies otherwise due to Design-Builder. This deduction shall be the disincentive for the Design-Builder’s failing to timely provide the public the full and unrestricted use and benefit of the 4 lane divided highway both from the operational and safety standpoint.

In the event that there is a catastrophic event where there is a declared state of emergency directly and substantially affecting the Design-Builder's operations on the Contract, the Design-Builder and the Administration shall agree as to the number of calendar days to extend the "Substantial Completion" milestone solely for the purposes of the calculation of the disincentive. For no reason, cause or circumstances whatsoever will this calculation for the disincentive adjust the "Bonus Completion Date" of November 21, 2017 or affect the Design-Builder's entitlement to the "No Excuse Bonus". In the event the Design-Builder and the Administration are unable to agree to the number of calendar days to extend the "Substantial Completion" milestone for the purposes of the calculation of the disincentive, the Administration will unilaterally determine the number of calendar days to extend the "Substantial Completion" milestone reasonable necessary and due solely to such catastrophic event. The Design-Builder shall have no right whatsoever to contest such determination, save and except the Design-Builder establishes that the number of calendar days determined by the Administration were arbitrary or without any reasonable basis.

No later than 60 days after final acceptance by the Administration, the Design Builder must either (a) elect to be paid the "No Excuse Bonus" pursuant to the next paragraph or (b) notify the Administration in writing that the Design-Builder that the Design-Builder is electing to be paid the "No Excuse Bonus" and is reserving one or more outstanding GP-5.14 claims for final determination.

The Design-Builder shall notify the Administration in writing, within 60 days of the final acceptance of the work in the Contract by the Administration, that the Design-Builder elects to be paid the "No Excuse Bonus" which the Design-Builder is eligible to be paid based on the actual acceptance of the "Substantial Completion" date, and such written notice shall constitute a full and complete waiver, release and acknowledgment of satisfaction by the Design-Builder 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 Administration, its employees, officers, agents, representatives, consultants, and their respective employees, officers and representatives, the Design-Builder has or may have as to work performed, work deleted, change orders, supplemental agreements, delays, disruptions, differing site conditions, utility relocations and conflicts, design changes or defects, time extensions, extra work, right of way issues, permitting issues, actions of suppliers or 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 Design-Builder's operations, extended or unabsorbed home office or job site overhead, lump sum maintenance of traffic adjustments, lost profits, prime mark-up on subcontractor work, acceleration 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 Contract. This waiver, release and acknowledgment of satisfaction shall be all-inclusive and absolute, save and except any routine Administration final estimating quantity adjustments.