



Memorandum

U.S. Department
of Transportation

**Federal Highway
Administration**

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

Date: December 17, 2015

From: /s/ Thomas D. Everett
Director, Office of Program Administration

Reply to
Attn. of: HIPA-30

To: Gregory K. Murrill
Division Administrator
Baltimore, MD

This is in reference to Dan Montag's December 9th email that transmitted the Maryland State Highway Administration's (SHA) SEP-14 workplan for the use of a No Excuse Bonus contract provision for the MD 404 design-build project from US 50 to East of Holly Road.

The purpose of the No Excuse Bonus contract provision is to provide the successful contractor with a \$5,000,000 incentive to plan, schedule and achieve "substantial completion" by November 21, 2017 thus improving safety for road users and reducing significant road user costs during the 2017 Thanksgiving holiday period. The amount of the incentive considered the potential loss of public benefit for not having the roadway open to traffic as well as potential road user savings of approximately \$5.6 million between the required completion date and the substantial completion date.

Under the no excuse incentive provision, the design-builder will assume the schedule risk for any potential delays that may arise from any number of events 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.

The No Excuse Bonus provision also provides a \$22, 200/calendar day disincentive for failure to meet the "substantial completion" milestone on or before November 21, 2017.

The proposed single initial/final evaluation report is satisfactory. It should address industry reactions to the use of this concept, the effectiveness of this contract provision and specifically identify administrative or legal issues related to the interpretation of contract schedule provisions or FHWA's contract requirements in 23 CFR Part 635.

The SHA's workplan and evaluation proposal are 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 Gerald Yakowenko at (202) 366-1562.