



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject **ACTION:** Minnesota No-Excuse Incentive:
(Locked Incentive Date) Contract Provision under
Special Experimental Project No. 14 (SEP-14)

Date: August 26, 2022

From: *Digitally signed by BRIAN JEFFERY FOUCH Date: 2022.08.26 15:58:46 -04'00'*
Brian J. Fouch, P.E. /s/
Director, Office of Preconstruction,
Construction, and Pavements

In Reply Refer To:
HICP-20

To: Wendall L. Meyer
Division Administrator
St. Paul, MN.

This memorandum is in regard to an August 2 email sent by Abbi Ginsberg of your office, which transmitted and endorsed the following:

1. A Minnesota Department of Transportation (MnDOT) Special Experimental Project No.14 (SEP-14) workplan, dated July 2022, for the use of a No Excuse Incentive (Locked Incentive Date, or LID) Contract Provision for an Unbonded Concrete Overlay project on TH 52 from north of CSAH 42 to CSAH 86 near Cannon Falls, MN (MnDOT Project No. 1906-71) ; and
2. A transmittal letter dated July 27 and signed by Tom Ravn, MnDOT State Construction Engineer, transmitting the above workplan and requesting FHWA approval.

The primary needs of the project are: to extend the minimal remaining service life of the pavement on TH52; and the desire for long term ride improvement. MnDOT is proposing the use of the LID to reduce the need for a partial 2nd construction season and therefore reduce the duration of traffic impacts and the cost of the extensive traffic control required for the work. The construction will impact several interchanges, which will lead to long detours for local residents for portions of the project. TH52 also has significant at-grade access that is impacted for the duration of the project. Acceleration of this project will greatly reduce impacts to business, shipping and reduce commuter delays.

MnDOT shall pay the Contractor a lump sum incentive of \$700,000.00 if the work specified in the contract is completed on or before November 17, 2023. The LID incentive amount is based on approximately 1.2% of the anticipated contract bid price. This amount was agreed to by all project partners as a reasonable incentive and an attractive incentive for the contractor. The LID cost is lower than the estimated impact costs to motorists and businesses.

Under the proposed LID contract language, the LID shall not be adjusted for any reason, cause, or circumstance whatsoever, regardless of the cause of the delay, and even though it may have

been caused by MnDOT, Contractor acknowledges and agrees that delays may be caused by or arise from any number of events during the course of the Contract. Such delays or events and their potential impacts on the performance by the Contractor are specifically contemplated and acknowledged by the parties in entering this Contract and shall not result in an extension of the LID set forth above. Any and all costs or impacts incurred by the Contractor in accelerating the Contractor's work to overcome or absorb such delays in an effort to complete the work by the LID, regardless of whether the Contractor successfully meets the LID or not, shall be the sole responsibility of the Contractor in every instance.

Though the LID Special Provision does not address catastrophic (force majeure) events, MnDOT believes that these events are addressed elsewhere in the MnDOT Specifications.

Other details are included in the SEP-14 workplan.

MnDOT's use of a No Excuse Incentive (Locked Incentive Date, or LID) Contract Provision for an Unbonded Concrete Overlay project on TH 52 from north of CSAH 42 to CSAH 86 near Cannon Falls, MN (MnDOT Project No. 1906-71) is hereby approved.

Should you have any questions, please contact Mr. Brian Hogge at (334) 399-0081 or Mr. John Huyer at (720) 437-0515.