ORIGINATION FORM

THE INFORMATION BELOW IS TO BE PROVIDED BY THE ORIGINATOR

☑ Modify Specification 00800MSSP/008IDMSSP.
Section/File number

☐ New Section _____.
Section number

Subject: "Milestone Bonus" Payment and Waiver of Contractor Claims "Milestone Incentive – Disincentive"

Origination date: 11/30/05

Originator: David Sadler
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Problem statement: This specification needs to be modified to clarify that when the contractor accepts the milestone bonus he is only waiving claims up to the milestone date, not potential claims in the future.

Information source: Ananth Prasad, Clay McGonagill, Tim Lattner

Background data: The following is the proposed language to update this specification.

Recommended Usage Note: On all projects with the milestone bonus.

Desired implementation date: Beginning with the January 2007 letting.

Florida Department of Transportation

JEB BUSH
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

DENVER J. STUTLER, JR.
SECRETARY

M E M O R A N D U M

DATE: March 13, 2006

TO: Specification Review Distribution List

FROM: Duane F. Brautigam, P.E., State Specifications Engineer

SUBJECT: Proposed Specifications Change: 008idms-Incentive-Disincentive

In accordance with Specification Development Procedures, we are sending you a copy of a proposed specification change to Incentive-Disincentive.

This change was proposed by David Sadler of the State Construction Office to clarify Contractor responsibilities upon acceptance of the Bonus and Incentive-Disincentive milestones.

Please share this proposal with others within your responsibility. Review comments are due within four weeks and should be sent to Mail Station 75 or to my attention via e-mail at SP965DB or duane.brautigam@dot.state.fl.us. Comments received after April 10, 2006 may not be considered. Your input is encouraged.

DFB/sh

Attachment

COMMENTS: _____

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Submitted by: _____ Phone #: _____

8-13.1 Incentive - Disincentive.
(REV ~~12-15-03~~*2-9-06*) ~~(FA 1-8-04) (7-04)~~

The Department desires to expedite construction on this Contract to minimize the inconvenience to the traveling public and to reduce the time of construction. In order to achieve this, incentive - disincentive provisions are established for the Contract Work Items described below. The total combined incentive payment(s) or disincentive deduction(s) shall not exceed $_____.

Contract Work Item	Incentive – Disincentive Completion Date	Incentive – Disincentive Daily Amount	Incentive – Disincentive Total Amount
Usage- describe work and tie to the plans	Alt 1 Calendar days from commencement of Contract Time. Alt 2 Date	(Amount)	(Amount
Example: Complete project in accordance with 5-11	Alt 1 Calendar days from commencement of Contract Time. Alt 2 Date	(Amount)	(Amount)

The Department will pay the Contractor an "incentive payment" in the amount of the "Incentive-Disincentive Daily Amount" as set forth above for each calendar day the actual completion date of the "Contract Work Item" as set forth above precedes the "Incentive – Disincentive Completion Date" as set forth above, and as determined by the Engineer and subject to the conditions precedent set forth below. For purposes of the calculation and the determination of entitlement to the "incentive payment" stated above, the "Incentive-Disincentive Completion Date" will not be adjusted for any reason, cause or circumstance whatsoever, regardless of fault, save and except in the instance of a catastrophic event (i.e., hurricane or a declared state of emergency).

The parties anticipate that delays 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 "Incentive – Disincentive Completion Date" for the purposes of calculation "incentive payment" as 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 complete the Contract by the "Incentive-Disincentive Completion Date", regardless of whether the Contractor successfully does so or not, shall be the sole responsibility of the Contractor in every instance.

In the event of a catastrophic event (i.e., hurricane or a declared state of emergency) directly and substantially affecting the Contractor's operations on the Contract, the Contractor and the Department shall agree as to the number of calendar days to extend the "Incentive-Disincentive Completion Date" so that such extended "Incentive-Disincentive Completion Date" will be used in calculation of the "incentive payment". In the event the Contractor and Department are unable to agree to the number of calendar days to extend the "Incentive-Disincentive Completion Date", the Department will unilaterally determine the number of calendar days to extend the "Incentive-Disincentive Completion Date" reasonably necessary and due solely to such catastrophic event and the Contractor shall have no right whatsoever to contest such determination, save and except that the Contractor establishes that the number of calendar days determined by the Department was arbitrary or without any reasonable basis.

However, notwithstanding anything above to the contrary, upon the Contractor's written request being made directly to the Chief Engineer, with copies provided to both the Resident Construction Engineer and the District Construction Engineer, the Department reserves unto the Chief Engineer, in his sole and absolute discretion, according to the parameters set forth below, the authority to make a determination to either fully enforce the above provisions with no modification, modify the "Incentive-Disincentive Completion Date" by moving it, or both modify the "Incentive-Disincentive Completion Date" by moving it and also modify the "incentive payment" amount by reducing it.

No modification of an "Incentive-Disincentive" provision will be considered by the Chief Engineer for any impacts whatsoever, beyond the reasonable control of the Contractor, for which the effect results in a time extension of less than 15% of the time remaining in the period from the first day of occurrence of such impact to the "Incentive-Disincentive Completion Date". Furthermore, as to any such impact, for which the effect results in a Time Extension of 15% or more of the time remaining in the period from the first day of occurrence of such impact to the "Incentive-Disincentive Completion Date", no modification of an "Incentive-Disincentive" provision will be considered by the Chief Engineer unless the Contractor clearly establishes that it has continuously from the beginning of the project aggressively, efficiently and effectively pursued the achievement of the "incentive payment". This would include the utilization of any and all reasonably available means and methods to overcome all impacts and accelerate the work so as to still achieve the "incentive payment," and that, but for this impact, the contractor would have otherwise earned the "incentive payment" provided in the original Contract. Also, to the extent the request is not submitted in writing to the Chief Engineer within not less than twenty (20) calendar days prior to the original "Incentive-Disincentive Completion Date", the Contractor must also continue to aggressively, efficiently, and effectively pursue the completion of the "Incentive-Disincentive" work. This would include the utilization of any and all

reasonably available means and methods to overcome all impacts and accelerate the work, until a determination is made by the Chief Engineer or twenty (20) calendar days has expired since such written request was received. There shall be no right of any kind on behalf of the Contractor to challenge or otherwise seek review or appeal, in any forum, of any determination made by the Chief Engineer under this provision.

The Contractor shall have no rights under the Contract to make any claim arising out of this incentive payment except as is expressly set forth in this Article.

As conditions precedent to the Contractor's entitlement to any "Incentive payment" the Contractor must:

(1) Deliver in-hand to the Department any and all claims in full accordance with 5-12.3 and subject to the limitations therein, no later than 60 days after completion of the work on which such claim is based and tentatively schedule a Disputes Review Board hearing while awaiting Department review and response to any such claim. Furthermore, as to any such 5-12.3 claims for which the Disputes Review Board has determined entitlement, but both parties have not reached an agreement on monetary compensation prior to final acceptance, and also as to those 5-12.3 claims pending at or submitted after final acceptance, tentatively schedule a Disputes Review Board hearing within 60 calendar days after the final acceptance date while awaiting Department review and response to any such claim. The sole forum for final determination as to both entitlement and amount of monetary compensation, if not otherwise mutually resolved, or otherwise agreed, shall be the Disputes Review Board.

(2) Actually complete the "Contract Work Item" and obtain written verification of the actual completion date from the Engineer on or before the "Incentive-Disincentive Completion Date".

(3) No*t* later than 60 days after ~~final acceptance~~*verification of the actual "Incentive-Disincentive Completion Date"* by the Department, the Contractor must either (a) elect to be paid the "incentive payment" pursuant to (4) below, or (b) notify the Department in writing that the Contractor is electing to be paid the "incentive payment" and is reserving one or more outstanding 5-12.3 claims for final and fully binding determination by the Disputes Review Board. The determinations of the Disputes Review Board as to any such 5-12.3 claims will be fully binding on both the Department and the Contractor, with no right of any kind of challenge, review or appeal, in any forum, by either party. Further, under (b) herein, any previous Disputes Review Board determinations on any such 5-12.3 claims issues shall then be fully binding and not subject to reconsideration by the Disputes Review Board, regardless of whether either party has previously rejected or otherwise not accepted one or more such recommendations at the time such were rendered.

(4) The Contractor shall notify the Department in writing, within 60 days of receiving written verification of the actual completion date of the Contract Work Item by the Engineer per (2) above, that the Contractor elects to be paid the incentive payment which the Contractor is eligible to be paid based on the actual "Incentive-Disincentive Completion 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, officers 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 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 the Contractor'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 *Work Item" up to and including the date of the applicable "Incentive-Disincentive Completion Date"*. 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 the Contract Work Item and obtain written verification of the actual completion date from the Engineer prior to the "Incentive - Disincentive Completion Date", or should the Contractor, having done so, fail to timely request the "incentive payment" for any reason, and including but not limited to the Contractor choosing not to either reserve on or more outstanding 5-12.3 claims for final and fully binding determination by the Disputes Review Board as set forth in (3)(b) above, or to fully waive, release and acknowledge satisfaction as set forth in (4) above, the Contractor shall have no right to any payment whatsoever under this Article. Notwithstanding the Contractor's election or non-election of the "incentive payment" under this provision, the disincentive provision applies to all circumstances where the work in the Contract is not verified as completed by the Engineer in writing by the Allowable "Incentive - Disincentive Completion Date".

Should the Contractor fail to complete the Contract Work Item on or before the Allowable "Incentive - Disincentive Completion Date", as adjusted in accordance with the provisions of 8-7.3, the Department shall deduct the "Incentive-Disincentive Daily Amount" for each calendar day completion exceeds the Allowable "Incentive - Disincentive Completion Date", from monies otherwise due the Contractor. The term Allowable "Incentive - Disincentive Completion Date" as used in this Article shall mean the "Incentive - Disincentive Completion Date" plus adjustments pursuant to 8-7.3. This deduction shall be the disincentive for the Contractor's failing to timely complete the Contract Work Item. Article 8-10 relating to liquidated damages remains in effect and is applicable.

In the event the Contractor elects to exercise the "incentive payment" provision, should this provision conflict with any other provision of the Contract, the Contract shall be interpreted in accordance with this provision.

As to any Contract Work Item provided for herein, the Contractor will remain responsible for all such work and the continued maintenance thereof until such date as the Department final accepts all Work under the Contract in accordance with 5-11, and without regard to whether the Department has provided written verification of the actual completion date or not, and without regard to whether any "incentive payment" was earned or elected hereunder.