

B. Incentive Payment for Early Completion.

For this particular contract, the Department agrees to pay the Contractor an “incentive payment for early completion”, but only where the Contractor completes the Work as specified in B.1a below and fully and completely complies with all the requirements of the Contract Documents, including the provisions set forth in the paragraphs below. Time is of the essence for all time frames. Beneficial use of the specified Work will not be sufficient to provide for an incentive payment.

- 1a. For each Calendar Day the Work is completed prior to the date as specified for Subpart A in Subsection 108.10 of these Special Provisions, the Contractor will receive an incentive payment of \$25,000, not to exceed a total maximum amount of \$750,000.
2. The Department retains the rights to add extra work or modify work to the contract or increase the quantity of an item(s) as provided by the Specifications. All added or modified work shall also be completed in order to receive an incentive payment; unless, however, such work is added or increased within 4 months of the start date for B.1a above or the total thereof is equivalent to more than 20 % of the of the total value of the respective work based on contract quantities and bid prices of the items. Also, all added, increased or extra work that is not required to be completed in order to receive an incentive payment as determined by the Department shall still be completed according to the term completion date as specified in the respective Change Order or Supplementary Agreement.
3. The Contractor shall have no right to, nor shall it make any claim for Additional Compensation because an extension or reduction of time to perform the contract work is granted by the Department that in turn results in the incentive payment as specified in B.1a above being reduced or eliminated. The Contractor may only seek to have the time frames of the incentive payment increased, as determined by the Department, with respect to Construction Operations for the work specified in B.1a, above solely by reason of exigent circumstances so long as the Contractor acts in good faith to mitigate the effects of such exigent circumstances. The Contractor shall document as specified in Subsection 108.04 that the exigent circumstances impacted specific items of Work which are on the critical path of a current approved Progress Schedule updated for the respective milestone, or significantly impact that schedule so as to cause such affected items of Work to become critical as determined by the Department. Exigent circumstances shall only include the following events: 1) fire; 2) acts of civil or military authorities, war, terrorism or riot; 3) severe floods, hurricanes, cyclones, severe sustained winds exceeding 75 mph, tornadoes, tidal waves or other cataclysmic natural phenomenon exclusive of Extreme Weather Conditions 4) strikes or labor disputes beyond the control or fault of the Contractor; and 5) court orders or injunctions not resulting from the fault of the Contractor. Extensions of time of the Completion of the Work date or Substantial Completion date will not affect or modify the dates applicable to receipt of an incentive payment except where such dates are adjusted by reason of “exigent circumstances” as specified above.
4. The Contractor shall not have the right to make any claims for Additional Compensation by reason of any delays which result in the loss of or diminution of the incentive payment, whether or not the fault of the Contractor, arising from reasons of what ever nature, except that it may seek to have the time frames of the incentive payment modified as specified in B.3. above, subject to the provisions of this subsection.
5. The Contractor shall not have any right to an increase in the amount of the incentive payment over and above the maximum limit specified in B.1a above no matter what

adjustments were made to the Contract or when the Contractor completes the Work. Furthermore, the Contractor shall not be entitled to an incentive payment in the event of a termination of contract by the Department whether it be for fault or convenience or a default as specified in Subsection 108.17 or 108.18. In the event of a termination for convenience or partial termination for convenience, compensation for documented premium time expended in the effort to achieve incentive payment will be paid subject to and as specified in B.7. below.

6. The Contractor shall not rely upon or anticipate receipt of an incentive payment as compensation for the work performed and shall not include in any manner, anticipation of the receipt of the incentive payment while calculating its bid proposal for the various items of work.
7. In the event of a termination for convenience as specified in Subsection 108.18, and not a termination for fault or a default and termination, and the Contractor has not been determined by the Department to be entitled to any incentive payment, the Contractor shall only be entitled to payment of documented premium time for contract labor and documented premiums paid to subcontractors and suppliers not under control or ownership of the Contractor, and reasonably expended by the Contractor to accelerate the work so as to qualify for the incentive payment and not because it was behind in its Progress Schedule as specified in Subsection 108.04. Any such payment shall be in lieu of an incentive payment and shall not exceed the corresponding percentage of completion of the respective milestone item of the Project as applied to the incentive payment. The Contractor agrees that it shall not be entitled to any Additional Compensation in the event the Contract is terminated prior to the Contractor qualifying for an incentive payment and that its remedy shall be limited to payment of premium time and subcontractor and supplier premiums only. Furthermore, the Department retains the right to eliminate any item of work or part of any item of Work at any time. In such event the Contractor shall not make any claim to increase the incentive payment in such an event. However, where the Department eliminates work the total value of which is equivalent to more than 20% of the total value of the respective milestone work based on contract quantities and bid prices of the items, the Department may eliminate the incentive payment. In such event the Contractor's remedy shall be limited to that provided under a partial termination or termination for convenience as the case may be.
8. The Contractor shall notify the Resident Engineer in writing when it contends that the work specified in B.1a above has been started and completed or shall be completed within 10 Working Days. Upon receipt of such notice, the Department will respond within 5 State Business Days of the date the notice was received from the Contractor or from the date that the Contractor contends the Work will be done which ever is later. The Department's response will also be in writing and in the event completion is not found to have occurred, the Department will enumerate the reasons for its determination. When it is determined by the Department that an incentive payment is due as specified in this Subsection, such payment will be made by a single payment for each milestone that is achieved in accord with the above specifications (possibly multiple checks) after a change order has been prepared, approved, and fully processed by the Department. Breach by the State, its official or employees, of this provision, or any other provision of this Subsection shall not nullify the terms or the conditions for an incentive payment under this Contract.