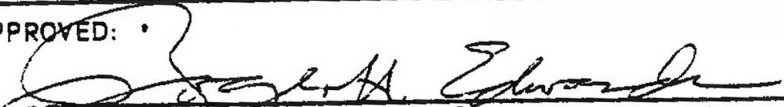


MODIFIED BY EI 86-033 EFFECTIVE 9/15/86, EI 94-007 EFFECTIVE 4/11/94 & EI 95-023 EFFECTIVE 6/9/95	<h1>ENGINEERING INSTRUCTION</h1>
SUPERSEDED BY EI 99-033 EFFECTIVE 12/20/99	- NEW YORK STATE DEPARTMENT OF TRANSPORTATION SUBJECT: INCENTIVE/DISINCENTIVE CLAUSES Subject Code: 7.26-2
Distribution: <input checked="" type="checkbox"/> 31 Main Office <input checked="" type="checkbox"/> 33 Regions <input checked="" type="checkbox"/> 34 Special	Code: <u>85-35</u>
APPROVED:  R. H. EDWARDS, Deputy Chief Engr., Facilities Design	Date: <u>9/17/85</u> Supersedes:

An Incentive/Disincentive Clause provides for payment to a contractor of a predetermined amount for each day the contract (or a specified portion of the contract) is completed ahead of schedule and for a deduction for each day the contractor overruns the completion date. These Clauses have been used on an experimental basis on FHWA demonstration projects. In their final report, the FHWA concluded that such Clauses are effective in reducing completion times and that the benefits of such Clauses outweigh the extra costs involved on some projects. Therefore, FHWA has removed Incentive/Disincentive (I/D) provisions from the experimental category and recommended that they be used as a regular practice on appropriate types of projects. The purpose of this Engineering Instruction is to establish a policy for the use of I/D Clauses in our construction contracts.

An I/D Clause should be considered on any contract where early completion of the contract, or a specified portion of the contract, would result in a significant benefit and late completion would result in a significant cost to the public. Ordinarily, these public benefits and costs would be attributable to delays and/or extra travel distances imposed on the public due to construction operations. This consideration should take place early in the project design when alternate methods of maintaining traffic are being evaluated.

The daily dollar value of these delays and/or diversions may be determined by using the FHWA publication IP 81-6, "Planning and Scheduling Work Zone Traffic Control". (Copies of this publication have been supplied to each Regional office and to other offices responsible for preparing plans, specifications and estimates). This amount should be reduced by any extra Departmental costs anticipated for construction supervision due to the use of the Incentive/Disincentive Clause. In order to ensure that the use of an I/D Clause will be cost effective, we will use approximately one half this value as the daily amount for early or late completion. In addition, the total amount of money payable or deductible under the I/D Clauses in any one contract will be limited to no more than 10% of the total bid amount for the contract. The I/D Clause will be inserted as a Special Note in the contract proposal. The Special Note should include a detailed description of the work to be completed by the specified date.

Subject: INCENTIVE/DISINCENTIVE CLAUSES

When an I/D Clause is used, particular care must be taken in establishing the completion date. A Critical Path Method (CPM) flow chart of construction activities shall be prepared. Optimistic activity times should be used based on the assumption that the contractor will use whatever means are available to expedite the work, including such things as overtime, multiple shifts, multiple crews, concurrent activities, etc. Where appropriate, we should request a waiver of overtime restrictions from the Commissioner of Labor in advance and include this information in the I/D Special Note. Also, the contract plans and proposal should be prepared in such a way that the contractor is given as much leeway as possible to use his ingenuity to develop efficient methods and procedures to minimize construction time. If the I/D Clause applies to the completion date of the total contract, make it clear in the Special Note that this is in lieu of, and not in addition to, the liquidated damages required under Section 108-03 of the Standard Specifications.

On any project where the designer intends to include an I/D Clause, the Special Notes, supporting analyses, CPM flow chart, and Maintenance and Protection of Traffic Plans must be submitted to the Preliminary Plan Review Bureau for their review and approval at least six weeks prior to the scheduled PS&E submission date.