



2-34.1 Incentive/Disincentive

Incentive/disincentive provisions in a contract provide an opportunity for the contractor to earn a bonus, and they also provide a penalty for not completing the work within the specified time. Incentive/disincentive provisions are usually in addition to the liquidated damages specified in [standard spec 108.11](#). They are included in critical projects where traffic inconvenience and delay is to be kept to a minimum and access is to be restored as soon as possible.

There are two types of incentive/disincentive provisions that are used in contracts. Incentive/disincentive for interim completion is the special provision that is used in most cases. The provision provides for critical work to be completed and the highway opened to traffic without restrictions by a specified date. The remaining work can be completed with the highway open to traffic. There may be cases where the department would not want any work being done on or adjacent to a highway open to traffic; therefore, the Incentive/Disincentive for Completion of Work provision is included in the contract.

Usually the contract provisions will modify the standard specs to remove weather delays, labor disputes, and material deliveries as reasons for granting time extensions to the incentive/disincentive time requirements.

2-34.2 Liquidated Damages

[Standard spec 108.11](#) sets forth daily amounts of money to be deducted from monies due to the contractor for not completing the work within the allotted contract time. The contract provisions, especially in the case of large and or complex projects, may modify these amounts.

These amounts are considered to be compensation to the state for damages incurred by reason of inconvenience to the public, added cost of engineering and supervision, maintenance of detours, and other items. They are not considered to be a penalty. The courts have long held that a penalty cannot be assessed unless an opportunity to earn a bonus is also present.

2-34.2.1 Interim Liquidated Damages

Interim liquidated damages are not considered a penalty but are considered fixed and agreed damages due the state from the contractor by reason of inconvenience to the public, added cost of engineering and supervision, maintenance of detours, and other items which have caused an expenditure of public funds resulting from failure to complete the work within the time specified in the contract.

When the routing of traffic over a detour causes abnormal inconvenience to the public that results in excessively high vehicle operating costs, interim liquidated damages are usually included in the contract.

Interim liquidated damages are used to motivate the contractor to complete a portion of the construction early in order to discontinue the use of a detour and reopen a section of highway to through traffic. They are in addition to liquidated damages imposed by [standard spec 108.11](#) for failure to complete all the work under the contract.

Usually the contract provisions will modify the standard specs to remove weather delays, labor disputes, and material deliveries as reasons for granting time extensions to the time requirements for the portion of the work included under interim liquidated damages.

2-34.2.2 Interim Liquidated Damages – Multiple

With the combining of several small projects into one contract, such as small bridge and approach projects, to obtain more competitive bids, it sometimes is necessary to complete one or more of these projects at a specified date or within a required time period within the overall contract time.

When this is necessary an interim liquidated damage provision may be used for each project that has to be completed by a specified date or within a required time period. If not completed within the time frame the contractor is assessed interim liquidated damages. The use of this provision is to:

1. Reduce inconvenience to the public.
2. Shorten the detour time.
3. Reduce disruption to traffic.
4. Reduce effects on businesses, tourism, etc.
5. Reduce road user costs.