

# DISPUTE REVIEW BOARD RECOMMENDATION

April 15, 2002

E-Mailed April 15, 2002

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RE: FIN: 256338-1-52-01  
SPN: 14570-3519  
Contract No.: 21198  
County: Pasco  
District 7  
SR-54 from SR 55 (US-19) to East of Madison St.

Dear Sirs:

The Owner, Florida Department of Transportation (Department), requested a hearing to provide a recommendation to both parties on whether

the Contractor is entitled under the terms of the Contract to modification of the Incentive portion of the Incentive-Disincentive Completion dates for Milestones I and II.

Pertinent issues, correspondence and other information relating to the Department's and the Contractor's positions were forwarded to this Board for review and discussion at the hearing that was held on April 04, 2002.

## **DEPARTMENT'S POSITION:**

### *Section 8-13.1: Incentive - Disincentive*

#### **INTRODUCTION**

*The S.R. 54 Project (256338-1-52-01) contains three Incentive-Disincentive Completion dates in accordance with Section 8-13.1 Incentive-Disincentive, of the Special Provisions for this project. There are two interim milestones associated with the installation of the 60" outfall storm sewer pipe along U.S. 19 and one completion milestone. Milestone I consists of the installation of the 60" outfall storm sewer pipe from the outfall headwall at Leverock's to the south side of Trouble Creek Rd. with an Incentive-Disincentive Completion Date of 50 calendar days from the date of commencement of Work. Milestone II consists of the installation of the 60" outfall storm sewer pipe from the south side of Trouble Creek Rd. to the south side of the intersection of S.R. 54/U.S. 19 with an Incentive-Disincentive Completion Date of 85 calendar days from the date of commencement of Work. Final Acceptance is the Contract completion with an Incentive-Disincentive Completion Date of 350 calendar days from the date of commencement of Work. Each Milestone has an Incentive-Disincentive daily amount of \$10,000/Day with a total amount of \$250,000 for Milestone I, \$300,000 for Milestone II and \$240,000 for Final Acceptance. The Contractor is seeking to have the Milestone Incentive Completion Dates extended for the purposes of calculation of the incentive payment due to the presence of more limestone rock than what was shown in the plans or any other circumstances that have occurred on this project to date.*

**DAVID NELSON CONSTRUCTION CO.'S POSITION:** *The milestone dates can and should be extended due to the numerous and varied acts and omissions by the Department that virtually denied to DNCC their vested rights to benefit from the incentive clause, and did so without regard to DNCC's*