

## DISPUTE REVIEW BOARD RECOMMENDATION

July 5, 2000

Ms. Ronda S. Daniell, Project Engineer  
Florida Department of Transportation  
1217 SW 10<sup>th</sup> Street  
Ocala, Florida 34474

Mr. Luther M. White, III  
White Construction Company, Inc.  
P.O. Drawer 790  
Chiefland, Florida 32644

Re: State Road 500 (US 27)  
Marion County  
F.P.ID 238679-1-52-01 & 238678-1-52-01  
State Project Numbers: 36070-3501 & 36070-3503  
Contract No. 20605  
Disputes Review Board (DRB)

Subject: Issue No. 1 – Restrictions on Burning Operations of Clearing and Grubbing Debris

### To Addressees:

The owner, Florida Department of Transportation, (FDOT), and the Contractor, White Construction Company, Inc. (White), requested a hearing to determine entitlement of White to additional compensation and contract time for delays to burning clearing and grubbing debris. Should entitlement be established, the DRB would not decide quantum of entitlement at this time. The parties, FDOT and White, would attempt to negotiate the value of entitlement.

Pertinent issues, correspondence and other information relating to FDOT's and White's positions were forwarded to the DRB for review and discussion at the hearing held in the Engineer's field office on June 30, 2000.

### ISSUE:

According to White, there were increasing burning restrictions placed on this project after commencing construction on September 27, 1999 (the first chargeable day), from those in place at the time the bid was submitted.

1. "In bidding the job, we planned on burning clearing and grubbing debris as then allowed under the law and as provided in specification 110-9.2."
2. "In January 2000, we began having trouble getting authorization to burn the debris due to drought conditions. In particular, we were required to stockpile debris in pond areas for burning, using an air curtain incinerator. As a result, etc., etc."
3. "In May 2000, the Governor imposed a burning ban due to drought conditions, etc., etc."
4. "Our planned sequence of work has been disrupted by the accumulated debris, etc., etc."

### CONTRACTOR'S POSITION:

Since burning was allowed when we bid the job, we view the restrictions on burning as "alterations in the work" within the meaning of that phrase in specification 4-3.2.1. These alterations "significantly change(d) the character of the work," since "the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed

construction.” In these circumstances, section 4-3.2.1 provides that “an adjustment...will be made to the contract.

Alternatively, a contract adjustment is appropriate under specification 4-4: “When work is required which is not covered by a price in the contract and such work does not constitute a “significant change” as defined in 4-3.2.1, and such work is found essential to the satisfactory completion of the contract within its intended scope, an adjustment will be made to the contract.” Since burning was allowed when we bid the job and that is how we intended to dispose of the debris, there is no price in the contract for disposing of the debris off site. Because of the change in the law, burning is prohibited now and off-site disposal is essential.

**F.D.O.T.’s POSITION:**

In accordance with specification 110-9.1, General Disposal, “Timber, stumps, brush, roots, rubbish, and other objectionable material resulting from clearing and grubbing shall be disposed of by the contractor in locations and by methods approved by the Engineer”, and 110-9.2, Burn Debris, “where burning of such materials is permitted, all such burning shall be subject to applicable laws, ordinances and regulations, including chapter 17-5 of the Department of Environmental Regulation and Chapter 51-2 of the Department of Agriculture and Consumer Services, Division of Forestry. All burning shall be done at locations where trees and shrubs adjacent to the cleared area will not be harmed. Where burning is prohibited by law, ordinance, or regulation, the contractor shall dispose of the materials within areas provided by him and approved by the Engineer.

**D.R.B. FINDINGS:**

The 1991 Edition of F.D.O.T. Standard Specifications for Road and Bridge Construction contain the following: (in part)

***Section 8-6 Temporary Suspension of Work***

***8-6.1 Authority to Suspend Work: (in part). The Engineer shall have the authority to suspend the work, wholly or in part, for such period or periods as may be deemed necessary. These periods of suspension include extreme adverse weather conditions such as flooding due to catastrophic occurrences, etc.***

***Section 8-7 Computation of Contract Time***

***8-7.3.2 Contract Time Extensions: (in part). The Department may grant an extension of contract time when a controlling item of work is delayed by factors not reasonably anticipated or foreseeable at the time of bid... etc.***

In its letter of June 15, 2000, F.D.O.T. stated: “The Department actions in this issue is granting weather days for each day the Contractor is unable to obtain a burning permit to dispose of the debris.”

***Executive Order Number 2000-160 (May 17, 2000) (in part):***

***WHEREAS, the Division of Forestry uses a numerical scale to measure the potential for wildfires on which a value of 400 denotes a significant danger of fire; and***

***WHEREAS, the Governor has been informed that at present the average statewide value now exceeds 550, with values exceeding 700 in some localities; and***

***WHEREAS, the Governor has been informed that at present the average statewide value now exceeds 550, with values exceeding 700 in some localities; and***

*WHEREAS, from January 1, 2000 to present the State of Florida has had more than 2800 wildfires that have burned over 85,000 acres to date, and that pose an ongoing danger to lives and property throughout the State; and*

**SECTION 1.**

*Because of the foregoing conditions, I hereby declare that the wildfires now threaten to create a major disaster, and that as a consequence of the wildfires a state of emergency exists in the State of Florida.*

(End of partial quotes from Ex. Order)

*May 17, 2000 – Florida Department of Agriculture and Consumer Services (Press Release)  
Bob Crawford, Commissioner  
(in part) Crawford Bans All Outdoor Burning Due to Drought.*

*June 27, 2000 – DOACS Press Release (in part) Crawford Lifts Burn Ban But Urges Continued Caution.*

The Department acknowledged changed conditions by granting weather days for days the contractor could not burn, however, remained mute as to recovery of cost incurred by the contractor associated with the burning ban.

**D.R.B. RECOMMENDATION:**

Based on the information sent to the Board and oral presentations to the Board at the DRB Hearing, the Board finds entitlement to the contractor's position, relative to this claim.

This Board appreciates the cooperation of all parties involved in this matter, and for the information presented for its' review in making this recommendation.

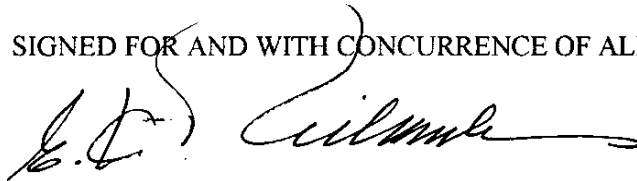
Please remember that a response to the DRB and the other party of your acceptance or rejection of this recommendation is required within 15 days. Failure to respond constitutes an acceptance of this recommendation by both parties.

I certify that I have participated in all of the meetings of this DRB regarding Issue No. 1, and concur with the findings and recommendations.

Respectfully submitted  
Dispute Review Board

E.K. Richardson, P.E.; DRB Chairman  
Ashley R. Cone; DRB Member  
Sam W. Thurmond, P.E.; DRB Member

SIGNED FOR AND WITH CONCURRENCE OF ALL MEMBERS



E.K. Richardson, P.E.; DRB Chairman