

Adjudicator's Determination
Pursuant to the Construction Contracts (Security of Payment) Act 2004

Adjudication Number	28.14.01
Prescribed Appointer	RICS Dispute Resolution Service.
Adjudicator	Russell Welsh (Adjudicator 28)
Applicant:	[REDACTED]
Respondent:	[REDACTED]
Project:	[REDACTED], NT.
Amount to be paid by Respondent	\$2,844,988.22 including GST
Due Date For Payment	Within 7 days of release of determination
Adjudication Fees Apportionment	Applicant: 0% Respondent: 100%
Date of Determination or Dismissal	2 nd June 2014
Payment Claim	Claimed Amount : \$5,407,086.00 excluding GST (\$5,947,794.60 including GST) Dated : 25 th February 2014
Notice of Dispute / Response to Payment Claim	Notice of Dispute Amount : -\$1,491,351.00 excluding GST Dated: 18 th March 2014
Adjudication Application	Dated: 14 th April 2014
Adjudicator Acceptance	Dated: 17 th April 2014
Adjudication Response	Dated: 1 st May 2014

Table of Contents:

The Determination or Dismissal.....3
Background.....3
Appointment.....3
Material3
Jurisdiction.....4
Payment Claim5
Notice of Dispute / Response to Payment Claim5
Adjudication Application.....6
Adjudication Response7
Reason for the Determination7
Contract7
Issue in Dispute8
Valuation of issues in dispute9
Interest until determination.....51
Summary51
Adjudication costs.....52
Content of determination.....52

The Determination or Dismissal

1. I, Russell Welsh, Registered Adjudicator Number 28, as the Adjudicator pursuant to the Construction Contracts (Security of Payment) Act 2004 (the Act), for the reasons set out in this determination, determine that:
 - a. The amount to be paid by the respondent to the applicant is **\$2,844,988.22** including GST. This amount is to be considered against any amount paid by the applicant to the respondent pursuant to the respondent's Payment Certificate No. 20.
 - b. The respondent is to pay the amount due to the applicant within 5 (five) business days of the date of the determination being released.

Background

2. The application arises from an unpaid payment claim made by the applicant on the respondent in respect of construction work carried out under a contract between the parties for the design and construction of [REDACTED], Northern Territory (the Project).

Appointment

3. The applicant served its adjudication application on the RICS Dispute Resolution Service, a Prescribed Appointer under the Act, pursuant to section 28(1)(c)(iii) of the Act.
4. The adjudication application was referred to me as adjudicator on 17th April 2014 by the RICS Dispute Resolution Service pursuant to section 28(1)(a) of the Act.
5. The RICS Dispute Resolution Service served a notice of my acceptance of the appointment on the claimant, the respondent and the Registrar on 17th April 2014, pursuant to section 30(1)(c) of the Act.

Material

6. The following material was provided to me:
 - Adjudication Application dated 14th April 2014.
 - Adjudication Response dated 1st May 2014.
7. The following unsolicited submissions were received from the parties and have not been considered:

- The applicant's letter dated 6th May 2014
 - The respondent's lawyer's letter dated 6th May 2014.
8. On 7th May 2014 I requested further submission from the parties pursuant to section 34(2)(a) of the Act in respect of matters raised in the adjudication response. The following submissions were received within the deadline for set for doing so:
 - The applicant's further submission dated 8th May 2014.
 - The respondent's comments on the applicant's further submissions dated 9th May 2014.
 9. On 8th May 2014 I requested, pursuant to section 34(3)(a) of the Act, the Registrar's consent to extend the time for making a determination under section 33(1) of the Act by a further period of 10 business days. The Registrar consented to the request.
 10. On 26th May 2014 I requested, pursuant to section 34(3)(a) of the Act, the Registrar's consent to extend the time for making a determination under section 33(1) of the Act by a further period of 5 business days. The Registrar consented to the request.
 11. Where necessary throughout the determination I have made reference to documents generally by 'footnotes'. To remove doubt, I have considered all of the material submitted by the parties to a greater or lesser extent; however I have only footnoted the most relevant document to which I have referred.

Jurisdiction

12. The work executed under the construction contract is 'construction work' on a site in the Territory as defined under section 6(1)(c) of the Act.
13. The construction contract was entered into after the commencement of the Act pursuant to section 9(1) of the Act.
14. The applicant is a party who, under the construction contract concerned and under which a payment dispute has occurred, is entitled to apply to have the dispute adjudicated pursuant to section 27 of the Act.
15. To the best of my knowledge neither of the events stated in section 27(a) or 27(b) of the Act has occurred in respect of this matter.
16. I am therefore satisfied that the adjudication application falls within the jurisdiction of the Act.

Payment Claim

17. The applicant served the respondent with its progress claim (payment claim) pursuant to GCS clause 16 for work up to 25th February 2014 on 26th February 2014 in the amount of \$5,407,086.00 excluding GST (\$5,947,794.60 including GST). The respondent has confirmed¹ receiving the applicant's progress claim as asserted by the applicant.
18. The respondent does not dispute that the progress claim is made in accordance with the contract, save for the date of service, which it asserts for the first time in its adjudication response is deemed to be 25th March 2014 in accordance with the deeming provisions of GCS clause 16.1.
19. In its further submissions the applicant asserts for the first time that its payment claim incorporating the variation claims which are the subject of the adjudication application was first submitted on 25th February 2014 and an amended claim incorporating corrections to the contract works only was submitted on 26th February 2014.
20. The respondent makes no comments on the validity of the applicant's progress claim in its Progress Certificate No. 20 dated 18th March 2014.
21. I have carefully considered the submissions on this point and in my view because the respondent has acknowledged the applicant's progress claim made on 26th February 2014 with its discretionary Progress Certificate No. 20 dated 18th March 2014 this nullifies the deeming provisions of GCS clause 16.1 that a late progress claim will be deemed to have been made on the next date for making a progress claim. GCS clause 16.2 makes it clear that if the subcontractor fails to make a progress claim under GCS clause 16.1 i.e. 16.1(a)(viii) – 'on the date stated in Item 24 of Schedule 1', the Contractor's Representative may (discretionary) nonetheless issue a Payment Certificate. Notwithstanding that the respondent's Payment Certificate No. 20 was issued outside the 10 business days from receipt of the applicant's progress claim, in my view this time period is procedural and there is no remedy for the respondent's failure to comply with this period. There is perhaps an inconsistency or ambiguity between GCS clauses 16.1 & 16.2 in respect of late progress claims, however I am satisfied that my interpretation is reasonable in the circumstances.
22. I am therefore satisfied that the applicant's progress claim dated 26th February 2014 is a valid progress claim under the contract.

Notice of Dispute / Response to Payment Claim

23. The respondent responded to the applicant's progress claim with its Payment Certificate No. 20 on 18th March 2014 and outside the time permitted pursuant GCS clause 16.2 which requires 'The Contractor's Representative shall issue a certificate within 10

¹ Adjudication Response at paragraph 7.1

business days of receipt of the Subcontractor's progress claim ('Payment Certificate') to the Subcontractor'.

24. Notwithstanding that the respondent's Payment Certificate is made late, the contract provides no remedy for the late issue and nothing turns on this since its issue is procedural only and the payment mechanism pursuant to GCS clause 16.3 is dependent on the receipt by the respondent of the applicant's progress claim and not the date when the payment certificate is made.
25. The Payment Certificate states the amount due from the applicant to the respondent as \$1,491,351.00 excluding GST.
26. I am satisfied that the respondent's Payment Certificate No. 20 is made in accordance with the contract.
27. Pursuant to section 8(a) of Part 1 Division 2 of the Act, the dispute is taken to have arisen on the day the payment claim is due to be paid under the contract, i.e. on 2nd April 2014.

Adjudication Application

28. Section 28(1) of the Act provides for the applicant to apply for adjudication of a payment dispute within 90 days after the dispute arises.
29. The applicant applied for adjudication of the payment dispute on 14th April 2014 and within the time allowed pursuant to section 28(1) of the Act.
30. The application is in writing pursuant to section 28(1)(a) of the Act.
31. The application was served on the respondent pursuant to section 28(1)(b) of the Act.
32. The application was served on RICS Dispute Resolution Service pursuant to section 26(1)(c)(iii) of the Act.
33. The application contains the information required by Regulation 5 pursuant to section 28(2)(a) of the Act.
34. The application states the details of or attaches to it the information required pursuant to section 28(2)(b) of the Act.
35. I am therefore satisfied that the adjudication application complies with the requirements of section 28 of the Act.

Adjudication Response

36. The applicant says that it served with a copy of its adjudication application on the respondent on 14th April 2014 and the respondent acknowledges² service on that date.
37. Pursuant to section 29(1) of the Act the respondent has 10 working days after the date on which it is served with an application for adjudication in which to prepare and serve its written response on the adjudicator and the applicant i.e. 14th April 2014 plus 10 working days = 1st May 2014.
38. The respondent served its adjudication response on the adjudicator on 1st May 2014 and within the prescribed time pursuant to section 29(1) of the Act.
39. Accordingly, I am satisfied that the respondent has complied with section 29 of the Act.

Reason for the Determination

40. In making this determination I have had regard to the following matters, pursuant to section 34 of the Act:
 - the application and its attachments;
 - the response and its attachments; and
 - the responses to requests for further written submissions.

Contract

41. The applicant says that the contract is in writing, comprising the following and in the order of precedence listed in CGS Item 9 of Schedule 1:
 - Special Conditions of Subcontract (SCS);
 - General conditions of Subcontract (GCS) (including Schedule 1 – Subcontract Particulars);
 - Workplace Health & Safety Requirements (Schedule 13);
 - Site & Works Management (Schedule 15);
 - Technical Scope of Works (Schedule 11);
 - Drawings, as listed in Schedule 9;
 - Specification, as listed in Schedule 10;
 - Contractor Project Plan (Schedule 12);
 - Environmental Management Requirements (Schedule 14);
 - The Remaining Schedules attached to Subcontract;
 - Annexure 1A; and
 - Annexure 1B

² Adjudication Response paragraph 1.1

42. The applicant has excluded the 'Instrument of Agreement' and 'Annexure 1C' between the parties from the above list which are both contract document.
43. I have carefully considered the submissions and I am satisfied that a contract between the parties exists in the terms asserted by the applicant, together with the Instrument of Agreement and Annexure 1C.

Issue in Dispute

44. The applicant claims \$4,658,896.65 excluding GST in respect of 37 disputed variations and costs associated with the preparation of its adjudication application.
45. The difference between the applicant's progress claim and the amount sought at adjudication is in respect of the subcontract works and its subcontractor's variations which the applicant does not pursue at adjudication at this time.
46. The respondent says³ that the application must be dismissed because:
 - a. The application is wholly premature as the payment dispute has not yet arisen.
 - b. Alternatively the application must be dismissed as the disputed assessment of the value of disputed variations referred to adjudication are repeat claims which are impermissible because they fall outside the prescribed time under the Act for reference to adjudication.

47. I will address each item in turn as follows:

The application is premature:

48. I have addressed the validity of the applicant's payment claim above at paragraphs 17 to 22 where I determined that the payment dispute arose on 2nd May 2014.
49. Accordingly, on this point the respondent has no valid reason for withholding payment.

Repeated claims which are outside of the time prescribed under the Act:

50. Whether or not the variations are repeat claims and fall outside the time periods under the Act will depend upon the circumstances in each individual case. I will address each variation on its merits under the valuation of issues in dispute section below.

³ Adjudication Response at paragraph 2.1

Valuation of issues in dispute

51. The applicant has provided⁴ an itemised breakdown of the amount sought at adjudication in the amount of \$4,658,896.65 excluding GST as follows:

Item	Description	Adjudication Application \$
1	Variations	
	36 Disputed variations	2,870,961.79
	CKD variations	1,475,667.53
2	Cost of parties to payment disputes	179,762.89
3	Adjustment of deducted LOR amounts	132,504.44
	Total sought at adjudication	4,658,896.65

52. The items in dispute are addressed as follows:

36 Disputed variations

Generally

53. The applicant's breakdown above causes considerable confusion in that it is based upon gross amounts claimed for each item; whereas its progress claim reflects the value claimed since the previous progress claim.
54. The respondent asserts⁵ that all 36 disputed variation claims are out of time to be adjudicated.
55. In assessing the history of the individual variation claims I have had particular regard to the respondent's variation progress claim tracking table⁶.
56. The time restrictions imposed on the applicant for bringing a payment dispute to adjudication pursuant to section 28(1) of the Act have significant implications for the applicant in this matter. In my view if the applicant does not bring a payment dispute to adjudication within the prescribed time, it has forever lost its entitlement to dispute that claim notwithstanding that it may claim further amounts for the same previously claimed items.

⁴ Adjudication Application at paragraph 56 and file 1, tab 7

⁵ Adjudication Response at paragraphs 5.1 to 5.26

⁶ Adjudication Response, Statutory Declaration of [REDACTED] at Tab 7

No. 1 – ID 117 – Rock breaking

57. The applicant claims a gross amount of \$1,584,844.77 excluding GST in its progress claim no. 20, being \$884,844.77 excluding GST in excess of the previously certified payment of \$700,000.00 excluding GST.
58. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the applicant has no contractual entitlement to payment.
59. The applicant has claimed the variation progressively since September 2013 and the respondent certified payment on account progressively since September 2013 at lesser amounts than claimed. Accordingly, a payment dispute arose at the due date for payment of each progress claim where there was difference between the claimed and certified amounts for the first time. Prior to progress claim 20 the last dispute arose in respect of the applicant's November 2013 progress claim and the applicant had up to on or about 7th April 2014 in which to have the dispute adjudicated. The applicant elected not to pursue the dispute to adjudication and is therefore time bared from disputing the amount certified in respect of the November 2013 progress claim i.e. \$700,000.00 excluding GST.
60. In its November 2013 progress claim the applicant claimed \$1,584,844.85 excluding GST and the respondent certified \$700,000.00 excluding GST which was not disputed by the applicant and as a consequence it lost the opportunity to dispute the difference between the claimed and certified amount, being \$884,844.85 excluding GST
61. In respect of progress claim 20 the applicant's challenge is therefore limited to the difference between \$700,000.00 excluding GST and the amount certified in Payment Certificate No. 20 at \$0.00.
62. I have carefully considered the extensive submissions in relation to this claim and I am satisfied that the applicant has a valid claim. The administration of this variation appears to have been inappropriately dealt with by both parties with accusations and counter accusations having been made which I do not intend to discuss further. I find the applicant's submissions substantiating its claim to be less than satisfactory and can relate to the respondent's apparent frustration; however the respondent has not in my view been consistent in its approach culminating in its recent challenge to entitlement notwithstanding its several previous payments to account.
63. The respondent's reason⁷ for withholding payment is that the applicant has no contractual entitlement to payment.
64. The respondent provided a geotechnical site investigation report to the applicant at the time of tender and this was subsequently incorporated into the subcontract documents. The report was based on two physical investigation methods; 7 boreholes and 60 test pits.

⁷ Payment Certificate No. 20. Adjudication Response Statutory Declaration of Richardson at paragraph 7.89 & Tab 52

65. The 7 no. Borehole logs indicate rock strengths ranging from very low to high, but the high strength rock was only encountered below 9 m (BH02), 6.5 m (BH03), 8.5 m (BH04), 4 m (BH05) where high strength is defined as 1-3 MPa⁸.
66. The 60 no. Test Pit Engineering Logs encounter a variety of very low to medium strength materials. The deepest pit was 3.6 m. Two pits encountered 'refusal' at 0.5 m, five at 0.8 m, three at 0.9 m, four at 1.0 m, five at 1.1 m and six at 1.2 m, with no definition of the material encountered at 'refusal'.
67. In my opinion the Geotechnical Site Investigation Report would leave the applicant to believe that it would not encounter very high or extremely high strength material in its excavation works. This conclusion is supported by the Geotechnical Site Investigation Report Summary also provided by the respondent⁹.
68. The respondent does not dispute that the applicant encountered extremely hard rock.
69. I am not persuaded by the respondent's argument that the applicant bears the risk of site conditions pursuant to GCS clauses 2.8 and 9. In my view, having provided the geotechnical information on which the applicant was reasonably entitled to rely upon in formulating its tender, the respondent cannot discharge its responsibility for the accuracy of such information, particularly when for the applicant was not able to carry out its own tests. This view is supported by the courts in *BMD Major Projects Pty Ltd v Victorian Urban Development Authority* [2007] VSC 409 and could be persuasive to the NT courts.
70. Based upon the above, I am not persuaded by the respondent's arguments that the applicant has no entitlement to payment.
71. I am satisfied that the substantiation provided by the applicant is adequate for interim payment purposes.
72. Accordingly I find in favour of the applicant in the amount of \$700,000.00 excluding GST.

No. 2 – ID 73 – EL 11 & 11A phases 2, 3 & 4

73. The applicant claims a gross amount of \$603,514.80 excluding GST in its progress claim no. 20, which comprises three parts.
74. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis of non-compliance with GCS clause 10.3.

⁸ Adjudication Response, Statutory Declaration of [REDACTED], Tab 27 'Geotechnical Site Investigation Report' Appendix B, Rock Description Explanation Sheet (1 of 2).

⁹ Adjudication Application 'Claim for Additional Cost & Time Impact on Construction Works' at File 11, Appendix A.

75. The applicant has claimed the variation progressively since October 2013 and the respondent certified payment on account progressively in October 2013 and November 2013 at the amounts claimed until December 2013 when it certified a lesser amount than claimed. Accordingly, a payment dispute arose at the due date for payment of the December 2013 progress claim, where the applicant claimed a gross amount of \$603,514.80 excluding GST and the respondent certified a gross amount of \$506,444.40 excluding GST.
76. In my view, the applicant was entitled to pursue the December 2013 payment dispute at adjudication until on or about 14th May 2013 at which time its entitlement lapsed.
77. In respect of progress claim 20 the applicant's challenge is therefore limited to the difference between \$506,444.40 excluding GST and the amount certified in Payment Certificate No. 20 at \$0.00.
78. I note that the respondent has certified¹⁰ \$603,514.80 excluding GST in its Payment Certificate No. 21 where it says the variation is approved. In my view this resolved the payment dispute between the parties on this point and I am able to consider this fact pursuant to section 34(1)(a)(iii) of the Act.
79. Accordingly, I find in favour of the applicant in the claimed amount of \$603,514.80 excluding GST.

No. 3 – ID 52 – Light fittings and design for undercover walkways.

80. The applicant claims a gross amount of \$150,352.51 excluding GST in its progress claim no. 20, being \$17,447.93 excluding GST since the last progress claim.
81. The respondent assesses the variation at -\$397,981.44 in its Payment Certificate No. 20 on the basis that the work is included in the scope of work and has not been provided.
82. The applicant has claimed the variation progressively since August 2013 and the respondent certified payments on account since August 2013 at the amounts claimed until December 2013 when it certified a lesser amount than claimed apparently on the basis of work completed as opposed to disputing the total value of the variation, however in January 2014 it certified the amount claimed.
83. In respect of progress claim no. 20 the applicant is entitled to dispute the difference between the amount claimed in its progress claim and the amount included in the Payment Certificate for this variation.

¹⁰ Adjudication Response, Statutory Declaration of [REDACTED], at Tab 7 – CKD Variation Submission – Tracker for Closure

84. The respondent says¹¹ that the emergency lights were included in the respondent's scope of work. The respondent relies upon S-0290-1340-3006 Accommodation Village Design Specification Rev A which is not a document listed in GCS Schedule 9. I understand this document was first issued to the applicant on 26th March 2012 and before the contract was entered into between the parties. S-290-1658-001 Design Specification Rev E is however a contract document and the applicant refers¹² to this to defend the respondent's assertions.
85. I have carefully considered the submissions and I am not persuaded that S-0290-1340-3006 Accommodation [REDACTED] Design Specification Rev A is the basis of the applicant's contract price, particularly in view of GCS clause 1.6 Entire Agreement
86. I am satisfied that the applicant's substantiation is adequate for interim payment purposes.
87. Accordingly, I find in favour of the applicant in the amount claimed at \$150,352.51 excluding GST

No. 4 – ID 43 – Fire Suppression system

88. The applicant claims a gross amount of \$117,745.95 excluding GST in its progress claim no. 20, being \$0.00 since the last progress claim.
89. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the work is included in the contract scope of works.
90. The applicant has claimed the variation progressively since May 2013 and the respondent certified payments on account since May 2013 at the amounts claimed until January 2014 when it reversed its decision and certified \$0.00. Accordingly, a payment dispute arose at the due date for payment of the January 2014 progress claim, where the applicant claimed a gross amount of \$117,745.95 excluding GST and the respondent certified an amount of \$0.00.
91. In my view, the applicant is entitled to pursue the January 2014 payment dispute at adjudication until on or about 7th June 2014 at which time its entitlement lapses. Since the applicant has included this claim in the variations it pursues at adjudication in respect of its February progress claim, in my view I have jurisdiction to determine the dispute.
92. It would appear¹³ that the respondent has revised its assessment of the variation to \$107,386.65 excluding GST, following representation from the claimant. This is confirmed by reference to the respondent's Payment Certificate No. 21¹⁴.

¹¹ Adjudication Response, Statutory Declaration [REDACTED] at paragraphs 9.1 to 9.33

¹² Adjudication Application, Statement of [REDACTED] at paragraphs 4.1 to 4.16

¹³ Adjudication Application at paragraphs 265 to 277

¹⁴ Adjudication Response, Statutory Declaration of [REDACTED], at Tab 7 – CKD Variation Submission – Tracker for Closure

93. I have carefully considered the submissions and I am satisfied that the applicant has a valid claim and that its substantiation is adequate for interim payment purposes. I am not persuaded by the respondent's arguments which in my view have no merit.
94. Accordingly, I find in favour of the claimant in the full amount claimed at \$117,745.95 excluding GST.

No. 5 – ID 126 – Temporary Lighting Phase 1

95. The applicant claims a gross amount of \$116,223.34 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
96. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the work is included in the contract scope of works.
97. The applicant has claimed the variation progressively since August 2013 and the respondent certified payments on account since August 2013 at amounts less than claimed. Accordingly, a payment dispute arose at the due date for payment of the August 2013 progress claim, where the applicant claimed a gross amount of \$101,495.00 excluding GST and the respondent certified an amount of \$50,747.50 excluding GST and at each subsequent due date for payment following the applicant's progress claim for further amounts. In its November 2013 progress claim the applicant increased its gross claim to \$116,223.34 excluding GST.
98. In my view, the applicant was entitled to pursue the August 2013 payment dispute at adjudication until on or about 29th December 2013 at which time its entitlement lapsed. The applicant was also entitled to pursue the additional amount claimed in its November 2013 progress claim until on or about 7th April 2014 at which time its entitlement lapsed.
99. Accordingly, I find in favour of the respondent and determine that the applicant is not entitled to pursue the dispute at adjudication because it is a repeat claim.

No. 6 – ID 49 – AirCon Condenser Units to the Laundry

100. The applicant claims a gross amount of \$53,846.01 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
101. The respondent assesses the variation at \$44,000.00 excluding GST in its Payment Certificate No. 20 based upon 44 units, which it revises¹⁵ in its adjudication response to \$25,900.00 excluding GST based on 14 units.
102. The applicant claimed the full value of the variation in its August 2013 progress claim and the respondent certified payments on account in the full amount claimed for the August 2013 progress claim and thereafter until Payment Certificate No. 20 when it certified a lesser payment. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.

¹⁵ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 22.1 to 22.9

103. The dispute relates to the valuation of the variation.
104. The respondent relies upon the applicant's email provided pre-contract in which it provided a 'rough quote but hopefully this helps for now'. I am not persuaded that the applicant can be held to this quote as clearly it was very indicative in nature. The respondent appears to concede this in its adjudication response.
105. The respondent's reassessment is considerably less than the applicant's claim and there is insufficient information in the submission from which I can make a reasonable valuation. On balance, I prefer the applicant's submission, which is reasonable for interim payment purposes.
106. Accordingly, I find in favour of the applicant in the full amount claimed at \$53,846.01 excluding GST.

No. 7 – ID 92 – Electrical connections to pool pump

107. The applicant claims a gross amount of \$47,367.00 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
108. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20.
109. The applicant claimed the full value of the variation in its August 2013 progress claim and the respondent certified payments on account in the full amount claimed for the August 2013 progress claim and thereafter until November 2013 when it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the November 2013 progress claim.
110. In my view, the applicant was entitled to pursue the November 2013 payment dispute at adjudication until on or about 7th April 2014 at which time its entitlement lapsed.
111. Accordingly, I find in favour of the respondent and determine that the applicant is not entitled to pursue the dispute at adjudication because it is a repeat claim.

No. 8 – ID 91 – Mechanical connections to Ice Machine

112. The applicant claims a gross amount of \$40,074.60 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
113. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20.
114. The applicant claimed the full value of the variation in its August 2013 progress claim and the respondent certified payments on account in the full amount claimed for the August 2013 progress claim and thereafter until Payment Certificate No. 20 when it certified a lesser payment. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.

115. The dispute relates to the scope of the variation, however the respondent has certified \$0.00 notwithstanding that it does not dispute the SI constitutes a variation.
116. I have carefully considered the submission and I am satisfied that the applicant's claim is reasonable for interim payment purposes.
117. Accordingly, I find in favour of the applicant in the full amount claimed at \$40,074.60 excluding GST.

No. 9 – ID 94 – Sat City 2 & 3 Temp Power Hook up

118. The applicant claims a gross amount of \$34,512.45 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
119. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the work is within the contract scope of work, however it revises¹⁶ its assessment to \$14,096.00 excluding GST to reflect the works carried out in Phase 3.
120. The applicant claimed the full value of the variation in its May 2013 progress claim and the respondent certified payments on account in a lesser amount than claimed for the May 2013 progress claim but thereafter at the amount claimed until Payment Certificate No. 20 when it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the May 2013 progress claim and another separate payment dispute arose at the due date for payment of the February 2014 progress claim.
121. The dispute relates to what was included in the applicant's scope of work under the contract.
122. The respondent relies upon GCS clause 10.17, Schedule 11, Schedule 2 and Schedule 9 document V-31D3-BLD4-0050026 Temporary Facilities Plan Rev A.
123. The applicant says¹⁷ the variation relates to new temporary amenities or additions thereto and is not included in its scope of works.
124. I have carefully considered the submissions and I am satisfied that the claimant is entitled to claim for the works carried out which are in addition to its scope of works. I am not persuaded by the respondent's reliance of GCS clause 10.17 which can only be reasonably interpreted to refer to the scope of the works existing at the time of tender and nothing else.
125. I am satisfied that the applicant's substantiation is adequate for interim payment purposes.
126. Accordingly, I find in favour of the applicant in the full amount claimed at \$34,512.45 excluding GST.

¹⁶ Adjudication Response, Statutory Declaration of [REDACTED] at paragraph 12.18

¹⁷ Adjudication Application, Statement of [REDACTED] at paragraphs 5.1 to 5.5

No. 10 – ID 98 – Relocation of Temp Power Hook Up to [REDACTED] and Office

127. The applicant claims a gross amount of \$21,741.30 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
128. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the work is within the contract scope of work, however it revises¹⁸ its assessment to \$21,741.30 excluding GST in its adjudication response.
129. The applicant claimed the full value of the variation in its May 2013 progress claim and the respondent certified payments on account in the full amount claimed for the May 2013 progress claim and thereafter until Payment Certificate No. 20 when it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.
130. Accordingly, as there is now no dispute between the parties I find in favour of the applicant in the full amount claimed at \$21,741.30 excluding GST.

No. 11 – ID 31 – [REDACTED] Office Block – New Complex

131. The applicant claims a gross amount of \$10,203.27 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
132. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the work is within the contract scope of work.
133. The applicant claimed the full value of the variation in its January 2013 progress claim and the respondent certified payments on account in the full amount claimed for the January 2013 progress claim and thereafter until Payment Certificate No. 20 when it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.
134. The dispute relates to what was included in the applicant's scope of work under the contract.
135. The respondent relies¹⁹ upon GCS clause 10.17, Schedule 11, Schedule 2 and Schedule 9 document V-31D3-BLD4-0050026 Temporary Facilities Plan Rev A.
136. The applicant says²⁰ the variation relates to new temporary amenities or additions thereto and is not included in its scope of works.

¹⁸ Adjudication Response, Statutory declaration of [REDACTED] at paragraph 12.12

¹⁹ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 12.1 to 12.8

²⁰ Adjudication Application, Statement of [REDACTED] at paragraphs 5.1 to 5.5

137. I have carefully considered the submissions and I am satisfied that the claimant is entitled to claim for the works carried out which are in addition to its scope of works. I am not persuaded by the respondent's reliance of GCS clause 10.17 which can only be reasonably interpreted to refer to the scope of the works existing at the time of tender and nothing else.
138. I am satisfied that the applicant's substantiation is adequate for interim payment purposes.
139. Accordingly, I find in favour of the applicant in the full amount claimed at \$10,203.27 excluding GST.

No. 12 – ID 2 – Re position of [REDACTED]

140. The applicant claims a gross amount of \$9,158.10 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
141. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the work is within the contract scope of work.
142. The applicant claimed the full value of the variation in its January 2013 progress claim and the respondent certified payments on account in the full amount claimed for the January 2013 progress claim and thereafter until Payment Certificate No. 20 when it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.
143. The dispute relates to what was included in the applicant's scope of work under the contract.
144. The respondent relies²¹ upon GCS clause 10.17, Schedule 11, Schedule 2 and Schedule 9 document V-31D3-BLD4-0050026 Temporary Facilities Plan Rev A.
145. The applicant says²² the variation relates to new temporary amenities or additions thereto and is not included in its scope of works.
146. I have carefully considered the submissions and I am satisfied that the claimant is entitled to claim for the works carried out which are in addition to its scope of works. I am not persuaded by the respondent's reliance of GCS clause 10.17 which can only be reasonably interpreted to refer to the scope of the works existing at the time of tender and nothing else.
147. I am satisfied that the applicant's substantiation is adequate for interim payment purposes.
148. Accordingly, I find in favour of the applicant in the full amount claimed at \$9,158.10 excluding GST.

²¹ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 12.1 to 12.8

²² Adjudication Application, Statement of [REDACTED] at paragraphs 5.1 to 5.5

No. 13 – ID 144 – Electrical installation of ice machine in CKD

149. The applicant claims a gross amount of \$7,593.60 excluding GST in its progress claim 20.
150. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that no details have been provided, however it revises²³ its assessment to \$7,593.60 excluding GST in its adjudication response.
151. A payment dispute arose at the due date for payment of the February 2014 progress claim in respect of this variation.
152. Accordingly, as there is now no dispute between the parties, I find in favour of the applicant in the full amount claimed at \$7,593.60 excluding GST.

No. 14 – ID 3 – Installation of 8 Dual Cat 6 Outlets

153. The applicant claims a gross amount of \$7,302.75 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
154. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the work is within the contract scope of work.
155. The applicant claimed the full value of the variation in its January 2013 progress claim and the respondent certified payment on account in the full amount claimed for the January 2013 progress claim and thereafter until Payment Certificate No. 20 when it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.
156. The dispute relates to what was included in the applicant's scope of work under the contract.
157. The respondent relies²⁴ upon GCS clause 10.17, Schedule 11, Schedule 2 and Schedule 9 document V-31D3-BLD4-0050026 Temporary Facilities Plan Rev A.
158. The applicant says²⁵ the variation relates to new temporary amenities or additions thereto and is not included in its scope of works.
159. I have carefully considered the submissions and I am satisfied that the claimant is entitled to claim for the works carried out which are in addition to its scope of works. I am not persuaded by the respondent's reliance of GCS clause 10.17 which can only be reasonably interpreted to refer to the scope of the works existing at the time of tender and nothing else.
160. I am satisfied that the applicant's substantiation is adequate for interim payment purposes.

²³ Adjudication Response, Statutory declaration of [REDACTED] at paragraph 13.1

²⁴ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 12.1 to 12.8

²⁵ Adjudication Application, Statement of [REDACTED] at paragraph 7

161. Accordingly, I find in favour of the applicant in the full amount claimed at \$7,302.75 excluding GST.

No. 15 – ID 115 – Fix Light, Disconnect, Fix GPO

162. The applicant claims a gross amount of \$6,898.50 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
163. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the work is within the contract scope of work.
164. The applicant claimed the full value of the variation in its October 2013 progress claim and the respondent certified payment on account in the full amount claimed for the October 2013 progress claim and thereafter until Payment Certificate No. 20 when it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.
165. The dispute relates to what was included in the applicant's scope of work under the contract.
166. The respondent relies²⁶ upon GCS clause 10.17, Schedule 11, Schedule 2 and Schedule 9 document V-31D3-BLD4-0050026 Temporary Facilities Plan Rev A.
167. The applicant says²⁷ the variation relates to new temporary amenities or additions thereto and is not included in its scope of works.
168. I have carefully considered the submissions and I am satisfied that the claimant is entitled to claim for the works carried out which are in addition to its scope of works. I am not persuaded by the respondent's reliance of GCS clause 10.17 which can only be reasonably interpreted to refer to the scope of the works existing at the time of tender and nothing else.
169. I am satisfied that the applicant's substantiation is adequate for interim payment purposes.
170. Accordingly, I find in favour of the applicant in the full amount claimed at \$6,898.50 excluding GST.

No. 16 – ID 78 – IP66 GPOs and plug tops [REDACTED]

171. The applicant claims a gross amount of \$6,361.87 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.

²⁶ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 15.1 to 15.6

²⁷ Adjudication Application, Statement of [REDACTED] at paragraph 7.1.1

172. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that no details have been provided, however it revises²⁸ its assessment to \$6,361.87 excluding GST in its adjudication response.
173. The applicant claimed the full value of the variation in its January 2014 progress claim and the respondent certified payment on account in the full amount claimed but in Payment Certificate No. 20 it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.
174. Accordingly, as there is now no dispute between the parties, I find in favour of the applicant in the full amount claimed at \$6,361.87 excluding GST.

No. 17 – ID 125 – Freezer Door 14 A CKD

175. The applicant claims a gross amount of \$5,110.35 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
176. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the work was not a variation.
177. The applicant claimed the full value of the variation in its August 2013 progress claim and the respondent certified payment on account in a lesser amount than claimed until the November 2013 progress claim and thereafter where it certified the full amount claimed but in Payment Certificate No. 20 it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the August 2013 progress claim and a separate payment dispute arose at the due date for payment of the February 2014 progress claim.
178. The dispute relates to whether the change in door size is a variation or not.
179. I have carefully considered the submissions and on the balance of probability decide that the change in door size is a variation.
180. The applicant's substantiation is reasonable for interim payment purposes.
181. Accordingly, I find in favour of the applicant in the full amount claimed at \$5,110.35 excluding GST.

No. 18 – ID 107 – Power to Building 3, Power to Toilets, Generator to ablutions

182. The applicant claims a gross amount of \$4,840.73 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
183. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the work is included in the contract scope of work.

²⁸ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 17.1 to 17.3

184. The applicant claimed the full value of the variation in its November 2013 progress claim and the respondent certified payment on account in the full amount claimed and thereafter until Payment Certificate No. 20 where it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.
185. The dispute relates to what was included in the applicant's scope of work under the contract.
186. The respondent relies²⁹ upon GCS clause 10.17, Schedule 11, Schedule 2 and Schedule 9 document V-31D3-BLD4-0050026 Temporary Facilities Plan Rev A.
187. The applicant says³⁰ the variation relates to new temporary amenities or additions thereto and is not included in its scope of works.
188. I have carefully considered the submissions and I am satisfied that the claimant is entitled to claim for the works carried out which are in addition to its scope of works. I am not persuaded by the respondent's reliance of GCS clause 10.17 which can only be reasonably interpreted to refer to the scope of the works existing at the time of tender and nothing else.
189. I am satisfied that the applicant's substantiation is adequate for interim payment purposes.
190. Accordingly, I find in favour of the applicant in the full amount claimed at \$4,840.73 excluding GST.

No. 19 – ID 14 – Inspection of Back Up Generator

191. The applicant claims a gross amount of \$7,914.50 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
192. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the work is included in the contract scope of work.
193. The applicant claimed the full value of the variation in two parts, namely:
- a. in its April 2013 progress claim and the respondent certified payment on account in the full amount claimed and thereafter until Payment Certificate No. 20 where it reassessed the variation at \$0.00.
 - b. in its July 2013 progress claim and the respondent certified payment on account in the full claimed amount and thereafter until Payment Certificate No. 20 where it reassessed the variation at \$0.00.
194. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.

²⁹ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 12.1 to 12.8

³⁰ Adjudication Application, Statement of [REDACTED] at paragraphs 5.1 to 5.5

195. The respondent relies³¹ on GCS Schedule 2 as its reason for withholding payment.
196. The applicant says that the inspections of back-up generators were in respect of the respondent's own generators and as such this was not included in the applicant's scope of works.
197. I have carefully considered the submission and I am satisfied that the applicant has a valid claim and that its substantiation is reasonable for interim payment purposes. I am not persuaded by the respondent's argument.
198. Accordingly, I find in favour of the applicant in the full amount claimed at \$7,914.50 excluding GST.

No. 20 – ID 16 – Provide hook up of power to crib room being installed adjacent to

[REDACTED]

199. The applicant claims a gross amount of \$4,380.62 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
200. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the work is included in the contract scope of work, however revises³² its assessment to \$4,380.62 excluding GST in its adjudication response.
201. The applicant claimed the full value of the variation in its April 2013 progress claim and the respondent certified payment on account in the full amount claimed and thereafter until Payment Certificate No. 20 where it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.
202. Accordingly, as there is now no dispute between the parties, I find in favour of the applicant in the full amount claimed at \$4,380.62 excluding GST.

No. 21 – ID 10 – Install Flood Lights

[REDACTED]

203. The applicant claims a gross amount of \$2,998.80 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
204. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the work is included in the contract scope of work.
205. The applicant claimed the full value of the variation in its January 2013 progress claim and the respondent certified payment on account in the full amount claimed and thereafter until Payment Certificate No. 20 where it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.

³¹ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 21.1 to 21.4

³² Adjudication Response, Statutory Declaration of [REDACTED] at paragraph 12.14

206. The respondent appears to reassess³³ the variation however it is not entirely clear of its intentions regarding ID 10. I have nevertheless taken the reassessment to apply fully to both ID 10 and 98.

207. Accordingly, I find in favour of the applicant in the full amount claimed at \$2,998.80 excluding GST.

No. 22 – ID – 7 – Connection to additional Toilet Facilities at [REDACTED]

208. The applicant claims a gross amount of \$2,671.20 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.

209. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the work is included in the contract scope of work, however it revises³⁴ its assessment to \$2,671.20 excluding GST in its adjudication response.

210. The applicant claimed the full value of the variation in its April 2013 progress claim and the respondent certified payment on account in the full amount claimed and thereafter until Payment Certificate No. 20 where it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.

211. Accordingly, as there is now no dispute between the parties, I find in favour of the applicant in the full amount claimed at \$2,671.20 excluding GST.

No. 23 – ID 101 – Temp Power Hook up Sat City 2 – Relocate Spotlights and Hook up Toilet Block

212. The applicant claims a gross amount of \$2,402.40 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.

213. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the work is included in the contract scope of work.

214. The applicant claimed the full value of the variation in its May 2013 progress claim and the respondent certified payment on account in the full amount claimed and thereafter until Payment Certificate No. 20 where it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.

215. The dispute relates to what was included in the applicant's scope of work under the contract.

216. The respondent relies³⁵ upon GCS clause 10.17, Schedule 11, Schedule 2 and Schedule 9 document V-31D3-BLD4-0050026 Temporary Facilities Plan Rev A.

³³ Adjudication Response, Statutory Declaration of [REDACTED] at paragraph 12.12

³⁴ Adjudication Response, Statutory Declaration of [REDACTED] at paragraph 12.11

³⁵ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 12.1 to 12.8

217. The applicant says³⁶ the variation relates to new temporary amenities or additions thereto and is not included in its scope of works.
218. I have carefully considered the submissions and I am satisfied that the claimant is entitled to claim for the works carried out which are in addition to its scope of works. I am not persuaded by the respondent's reliance of GCS clause 10.17 which can only be reasonably interpreted to refer to the scope of the works existing at the time of tender and nothing else.
219. I am satisfied that the applicant's substantiation is adequate for interim payment purposes.
220. Accordingly, I find in favour of the applicant in the full amount claimed at \$2,402.40 excluding GST.

No. 24 – ID 11 – Installation of Push Buttons for Manual activation & Repair to
[REDACTED]

221. The applicant claims a gross amount of \$1,925.28 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
222. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the work is included in the contract scope of work, however revises³⁷ its assessment to \$1,925.28 excluding GST in its adjudication response.
223. The applicant claimed the full value of the variation in its January 2013 progress claim and the respondent certified payment on account in the full amount claimed and thereafter until Payment Certificate No. 20 where it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.
224. Accordingly, as there is now no dispute between the parties, I find in favour of the applicant in the full amount claimed at \$1,925.28 excluding GST.

No. 25 – ID 96 – [REDACTED] Temp Power Hook Up

225. The applicant claims a gross amount of \$1,912.05 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
226. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the work is included in the contract scope of work, however revises³⁸ its assessment to \$1,912.05 excluding GST in its adjudication response.

³⁶ Adjudication Application, Statement of [REDACTED] at paragraphs 5.1 to 5.5

³⁷ Adjudication Response, Statutory Declaration of [REDACTED] at paragraph 12.13

³⁸ Adjudication Response, Statutory Declaration of [REDACTED] at paragraph 12.16

227. The applicant claimed the full value of the variation in its May 2013 progress claim and the respondent certified payment on account in the full amount claimed and thereafter until Payment Certificate No. 20 where it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.
228. Accordingly, as there is now no dispute between the parties, I find in favour of the applicant in the full amount claimed at \$1,912.05 excluding GST.

No. 26 – ID 50 – Installation of the Electrical Earths to the Floor plates in the [REDACTED]

229. The applicant claims a gross amount of \$1,906.80 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
230. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the work is included in the applicant's scope of work.
231. The applicant claimed the full value of the variation in its May 2013 progress claim and the respondent certified payment on account in the full amount claimed and thereafter until Payment Certificate No. 20 where it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.
232. The respondent relies³⁹ on clause 2.3 of S-0290-1340-3006 Accommodation Village Design Specification Rev A to support its case, however as previously discussed this is not a subcontract document and therefore is not applicable. I am unable to find this requirement in the relevant subcontract document.
233. I have carefully considered the submissions and I am satisfied that the applicant has a valid claim and that its substantiation is reasonable for interim payment purposes.
234. Accordingly, I find in favour of the applicant in the full amount claimed at \$1,906.80 excluding GST.

No. 27 – ID 19 – Install Flood Light & Circuit for parking area at [REDACTED]

235. The applicant claims a gross amount of \$1,708.94 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
236. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the work is included in the contract scope of work, however revises⁴⁰ its assessment to \$1,708.94 excluding GST in its adjudication response.
237. The applicant claimed the full value of the variation in its October 2012 progress claim and the respondent certified payment on account in the full amount claimed and thereafter until

³⁹ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 18.1 to 18.4

⁴⁰ Adjudication Response, Statutory Declaration of [REDACTED] at paragraph 12.15

Payment Certificate No. 20 where it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.

238. Accordingly, as there is now no dispute between the parties, I find in favour of the applicant in the full amount claimed at \$1,708.94 excluding GST.

No. 28 – ID 110 – Disconnect LOR [REDACTED] at the front Entrance

239. The applicant claims a gross amount of \$1,302.00 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
240. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the work is included in the contract scope of work.
241. The applicant claimed the full value of the variation in its November 2013 progress claim and the respondent certified payment on account in the full amount claimed and thereafter until Payment Certificate No. 20 where it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.
242. The dispute relates to what was included in the applicant's scope of work under the contract.
243. The respondent relies⁴¹ upon GCS clause 10.17, Schedule 11, Schedule 2 and Schedule 9 document V-31D3-BLD4-0050026 Temporary Facilities Plan Rev A.
244. The applicant says⁴² the variation relates to new temporary amenities or additions thereto and is not included in its scope of works.
245. I have carefully considered the submissions and I am satisfied that the claimant is entitled to claim for the works carried out which are in addition to its scope of works. I am not persuaded by the respondent's reliance of GCS clause 10.17 which can only be reasonably interpreted to refer to the scope of the works existing at the time of tender and nothing else.
246. I am satisfied that the applicant's substantiation is adequate for interim payment purposes.
247. Accordingly, I find in favour of the applicant in the full amount claimed at \$1,302.00 excluding GST.

No 29 – ID 95 – [REDACTED] Temp Power Hook Up

248. The applicant claims a gross amount of \$1,044.75 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.

⁴¹ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 12.1 to 12.8

⁴² Adjudication Application, Statement of [REDACTED] at paragraphs 5.1 to 5.5

249. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the work is included in the contract scope of work.
250. The applicant claimed the full value of the variation in its May 2013 progress claim and the respondent certified payment on account in the full amount claimed and thereafter until Payment Certificate No. 20 where it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.
251. The dispute relates to what was included in the applicant's scope of work under the contract.
252. The respondent relies⁴³ upon GCS clause 10.17, Schedule 11, Schedule 2 and Schedule 9 document V-31D3-BLD4-0050026 Temporary Facilities Plan Rev A.
253. The applicant says⁴⁴ the variation relates to new temporary amenities or additions thereto and is not included in its scope of works.
254. I have carefully considered the submissions and I am satisfied that the claimant is entitled to claim for the works carried out which are in addition to its scope of works. I am not persuaded by the respondent's reliance of GCS clause 10.17 which can only be reasonably interpreted to refer to the scope of the works existing at the time of tender and nothing else.
255. I am satisfied that the applicant's substantiation is adequate for interim payment purposes.
256. Accordingly, I find in favour of the applicant in the full amount claimed at \$1,044.75 excluding GST.

No. 30 – ID 157 – [REDACTED] transfer to LOR process

257. The applicant claims a gross amount of \$8,892.00 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
258. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that no details have been provided.
259. The applicant claimed the full value of the variation in its November 2013 progress claim and the respondent certified payment on account in the full amount claimed and thereafter until Payment Certificate No. 20 where it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.
260. The respondent acknowledges⁴⁵ that details of this variation have been provided and it appears that it agrees the amount claimed, although it does not specifically say so.

⁴³ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 12.1 to 12.8

⁴⁴ Adjudication Application, Statement of [REDACTED] at paragraphs 5.1 to 5.5

⁴⁵ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 20.1 to 20.3

261. I have carefully considered the submissions and I am satisfied that the applicant has a valid claim and its substantiation is adequate for interim payment purposes. I am not persuaded by the fact that the respondent says this variation was not included in the applicant's progress claim no 21 and therefore may be withdrawn. This is not supported by the applicant's submissions.
262. Accordingly, I find in favour of the applicant in the full amount claimed at \$8,892.00 excluding GST.

No. 31 – ID 24 – Install 6 Industrial Wall Fans near [REDACTED]

263. The applicant claims a gross amount of \$1,008.00 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
264. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the work is included in the contract scope of work.
265. The applicant claimed the full value of the variation in its October 2012 progress claim and the respondent certified payment on account in the full amount claimed and thereafter until Payment Certificate No. 20 where it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.
266. The dispute relates to what was included in the applicant's scope of work under the contract.
267. The respondent relies⁴⁶ upon GCS clause 10.17, Schedule 11, Schedule 2 and Schedule 9 document V-31D3-BLD4-0050026 Temporary Facilities Plan Rev A.
268. The applicant says⁴⁷ the variation relates to new temporary amenities or additions thereto and is not included in its scope of works.
269. I have carefully considered the submissions and I am satisfied that the claimant is entitled to claim for the works carried out which are in addition to its scope of works. I am not persuaded by the respondent's reliance of GCS clause 10.17 which can only be reasonably interpreted to refer to the scope of the works existing at the time of tender and nothing else.
270. I am satisfied that the applicant's substantiation is adequate for interim payment purposes.
271. Accordingly, I find in favour of the applicant in the full amount claimed at \$1,008.00 excluding GST.

No. 32 – ID 2 – GPO Installed for Fans along Main Covered Walkway / Crib Hut

⁴⁶ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 12.1 to 12.8

⁴⁷ Adjudication Application, Statement of [REDACTED] at paragraphs 5.1 to 5.5

272. The applicant claims a gross amount of \$997.50 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
273. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the work is included in the contract scope of work.
274. The applicant claimed the full value of the variation in its April 2013 progress claim and the respondent certified payment on account in the full amount claimed and thereafter until Payment Certificate No. 20 where it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.
275. The dispute relates to what was included in the applicant's scope of work under the contract.
276. The respondent relies⁴⁸ upon GCS clause 10.17, Schedule 11, Schedule 2 and Schedule 9 document V-31D3-BLD4-0050026 Temporary Facilities Plan Rev A.
277. The applicant says⁴⁹ the variation relates to new temporary amenities or additions thereto and is not included in its scope of works.
278. I have carefully considered the submissions and I am satisfied that the claimant is entitled to claim for the works carried out which are in addition to its scope of works. I am not persuaded by the respondent's reliance of GCS clause 10.17 which can only be reasonably interpreted to refer to the scope of the works existing at the time of tender and nothing else.
279. I am satisfied that the applicant's substantiation is adequate for interim payment purposes.
280. Accordingly, I find in favour of the applicant in the full amount claimed at \$997.50 excluding GST.

No. 33 – ID 155 – [REDACTED] Sunday work to restart camp

281. The applicant claims a gross amount of \$992.00 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
282. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that no details have been provided.
283. The applicant claimed the full value of the variation in its January 2014 progress claim and the respondent certified payment on account in the full amount claimed however in Payment Certificate No. 20 it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.

⁴⁸ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 12.1 to 12.8

⁴⁹ Adjudication Application, Statement of [REDACTED] at paragraphs 5.1 to 5.5

284. The respondent acknowledges⁵⁰ that details of this variation have been provided and it appears that it agrees the amount claimed, although it does not specifically say so.
285. I have carefully considered the submissions and I am satisfied that the applicant has a valid claim and its substantiation is adequate for interim payment purposes. I am not persuaded by the fact that the respondent says this variation was not included in the applicant's progress claim no 21 and therefore may be withdrawn. This is not supported by the applicant's submissions.
286. Accordingly, I find in favour of the applicant in the full amount claimed at \$992.00 excluding GST.

No. 34 – ID 56 – Installation of 3 Data outlets for added CCTV in [REDACTED]

287. The applicant claims a gross amount of \$792.00 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
288. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20, however revises its assessment to \$792.00 excluding GST in its adjudication response.
289. The applicant claimed the full value of the variation in its August 2013 progress claim and the respondent certified payment on account in the full amount claimed and thereafter until Payment Certificate No. 20 where it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.
290. Accordingly, as there is now no dispute between the parties, I find in favour of the applicant in the full amount claimed at \$792.00 excluding GST.

No. 35 – ID 30 – Disconnect Building for removal from site – [REDACTED]

291. The applicant claims a gross amount of \$247.80 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
292. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the work is included in the contract scope of work.
293. The applicant claimed the full value of the variation in its January 2013 progress claim and the respondent certified payment on account in the full amount claimed and thereafter until Payment Certificate No. 20 where it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.
294. The dispute relates to what was included in the applicant's scope of work under the contract.
295. The respondent relies⁵¹ upon GCS clause 10.17, Schedule 11, Schedule 2 and Schedule 9 document V-31D3-BLD4-0050026 Temporary Facilities Plan Rev A.

⁵⁰ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 19.1 to 19.3

296. The applicant says⁵² the variation relates to new temporary amenities or additions thereto and is not included in its scope of works.
297. I have carefully considered the submissions and I am satisfied that the claimant is entitled to claim for the works carried out which are in addition to its scope of works. I am not persuaded by the respondent's reliance of GCS clause 10.17 which can only be reasonably interpreted to refer to the scope of the works existing at the time of tender and nothing else.
298. I am satisfied that the applicant's substantiation is adequate for interim payment purposes.
299. Accordingly, I find in favour of the applicant in the full amount claimed at \$247.80 excluding GST.

No. 36 – ID 35 – Fit Off Existing Cables from Office to Training Room – Old Site Office at the Top

300. The applicant claims a gross amount of \$173.25 excluding GST in its progress claim 20, being \$0.00 since the last progress claim.
301. The respondent assesses the variation at \$0.00 in its Payment Certificate No. 20 on the basis that the work is included in the contract scope of work.
302. The applicant claimed the full value of the variation in its October 2012 progress claim and the respondent certified payment on account in the full amount claimed and thereafter until Payment Certificate No. 20 where it reassessed the variation at \$0.00. Accordingly, a payment dispute arose at the due date for payment of the February 2014 progress claim.
303. The dispute relates to what was included in the applicant's scope of work under the contract.
304. The respondent relies⁵³ upon GCS clause 10.17, Schedule 11, Schedule 2 and Schedule 9 document V-31D3-BLD4-0050026 Temporary Facilities Plan Rev A.
305. The applicant says⁵⁴ the variation relates to new temporary amenities or additions thereto and is not included in its scope of works.
306. I have carefully considered the submissions and I am satisfied that the claimant is entitled to claim for the works carried out which are in addition to its scope of works. I am not persuaded by the respondent's reliance of GCS clause 10.17 which can only be reasonably interpreted to refer to the scope of the works existing at the time of tender and nothing else.

⁵¹ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 12.1 to 12.8

⁵² Adjudication Application, Statement of [REDACTED] at paragraphs 5.1 to 5.5

⁵³ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 12.1 to 12.8

⁵⁴ Adjudication Application, Statement of [REDACTED] at paragraphs 5.1 to 5.5

307. I am satisfied that the applicant's substantiation is adequate for interim payment purposes.

308. Accordingly, I find in favour of the applicant in the full amount claimed at \$173.25 excluding GST.

Summary 36 Disputed variations

309. A summary of the 36 disputed variations is as follows:

Item	ID	Adjudication Application \$	Adjudicated Amount \$
36 Disputed Variations			
1	117	1,584,844.77	700,000.00
2	73	603,514.80	603,514.80
3	52	150,352.51	150,352.51
4	43	117,745.95	117,745.95
5	126	116,223.34	-
6	49	53,846.01	53,846.01
7	92	47,367.00	-
8	91	40,074.60	40,074.60
9	94	34,512.45	34,512.45
10	98	21,741.30	21,741.30
11	31	10,203.27	10,203.27
12	2	9,158.10	9,158.10
13	144	7,593.60	7,593.60
14	3	7,302.75	7,302.75
15	115	6,898.50	6,898.50
16	78	6,361.87	6,361.87
17	125	5,110.35	5,110.35
18	107	4,840.73	4,840.73
19	14	7,914.50	7,914.50
20	16	4,380.62	4,380.62
21	10	2,998.80	2,998.80
22	7	2,671.20	2,671.20
23	101	2,402.40	2,402.40
24	11	1,925.28	1,925.28
25	96	1,912.05	1,912.05
26	50	1,906.80	1,906.80
27	19	1,708.94	1,708.94
28	110	1,302.00	1,302.00
29	95	1,044.75	1,044.75
30	157	8,892.00	8,892.00
31	24	1,008.00	1,008.00

32	2	997.50	997.50
33	155	992.00	992.00
34	56	792.00	792.00
35	30	247.80	247.80
36	35	173.25	173.25
		2,870,961.79	1,822,526.68

CKD Variations

Items 1-63 Generally

- 310. In assessing the variations I have had regard to the claimant's 'Cost Claim Spreadsheet'⁵⁵
- 311. The applicant claims a gross amount of \$1,533,659.00 excluding GST in its progress claim 20, being \$761,932.00 excluding GST since the last progress claim.
- 312. The applicant revises its claim to a gross amount of \$1,475,667.53 excluding GST in its adjudication application.
- 313. The respondent assesses the variations at a gross amount of \$221,477.00 excluding GST in its Payment Certificate No. 20.
- 314. The applicant first claimed the variation in the gross amount of \$1,826,451.00 excluding GST in its May 2013 progress claim and the respondent certified \$0.00 in its Payment Certificate. Accordingly, a payment dispute arose at the due date for payment of the May 2013 progress claim.
- 315. The applicant repeated its claim in its progress claims until September 2013 when it claimed a lesser gross amount of \$1,759,916.00 excluding GST and the respondent certified a gross amount of \$439,979.00 excluding GST which represented 25% on account. Accordingly, a new payment dispute arose at the due date for payment of the September 2013 progress claim.
- 316. The applicant claimed a gross amount of \$1,759,916.00 excluding GST in its October 2013 progress claim and the respondent certified a gross amount of \$879,957.94 excluding GST which represented 50% on account. Accordingly, a new payment dispute arose at the due date for payment of the October 2013 progress claim.
- 317. The applicant claimed a gross amount of \$1,759,916.00 excluding GST in its November 2013 progress claim and the respondent certified a gross amount of \$771,727.00 excluding GST. Accordingly, a new payment dispute arose at the due date for payment of the November 2013 progress claim.

⁵⁵ Adjudication Application, included in File 10

318. The applicant repeated its claim in its progress claims until January 2014 and the respondent continued to certify the same amount until January 2014 when the applicant reduced its gross claim to \$1,543,454.00 excluding GST and the respondent certified a gross amount of \$771,727.00 excluding GST which represented 50% on account. Accordingly, a new payment dispute arose at the due date for payment of the January 2014 progress claim.
319. The applicant claimed a gross amount of \$1,533,659.00 excluding GST in its February 2014 progress claim and the respondent certified it certified a lesser amount of \$221,477.00 excluding GST. Accordingly, a new payment dispute arose at the due date for payment of the February 2014 progress claim.
320. The applicant elected not to pursue to adjudication any of its payment disputes arising prior to its January 2014 and is now out of time to do so.
321. In my view the applicant is entitled to dispute the difference between the gross amounts certified in respect of its November 2013 progress claim and its February 2014 progress claim.
322. There does not appear to be a breakdown of the \$771,727.00 amount certified for the November 2013 progress claim but it is apparent that this was a 50% payment to account.
323. The following items are not in dispute – 2, 4, 11, 12, 19, 20, 25, 26, 39-44, 56 & 60.
324. I address each disputed item claimed as follows:

Item 1

325. The applicant claims \$6,774.35 excluding GST in its progress claim 20.
326. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20 on the basis of lack of substantiation⁵⁶.
327. I have carefully considered the submissions and I am satisfied that on the balance of probability the applicant has a justifiable claim albeit that it needs to fully substantiate the cost claimed.
328. The amount claimed is in my view reasonable for interim payment purposes.
329. Accordingly, I find in favour of the applicant in the amount claimed at \$6,774.35 excluding GST.

Item 3

330. The applicant claims \$7,193.12 excluding GST in its progress claim 20.

⁵⁶ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 6.236 to 6.247

331. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20 on the basis of lack of substantiation⁵⁷.
332. I have carefully considered the submissions and I am satisfied that on the balance of probability the applicant has a justifiable claim albeit that it needs to fully substantiate the cost claimed.
333. The amount claimed is in my view reasonable for interim payment purposes.
334. Accordingly, I find in favour of the applicant in the amount claimed at \$7,193.12 excluding GST.

Item 4

335. The applicant claims \$53,165.83 excluding GST in its progress claim 20.
336. The respondent assesses the claim at \$53,165.83 excluding GST in its Payment Certificate No. 20 and makes a further deduction of \$29,522.85 excluding GST for the original board.
337. I have carefully considered the submissions and agree with the applicant that the cost of the original board must be added back.
338. Accordingly, I find in favour of the applicant in the two amounts claimed at \$53,165.83 and \$29,522.85 both excluding GST

Item 5

339. The applicant claims \$3,393.35 excluding GST in its progress claim 20.
340. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20 on the basis of lack of substantiation⁵⁸.
341. I have carefully considered the submissions and I am satisfied that on the balance of probability the applicant has a justifiable claim albeit that it needs to fully substantiate the cost claimed.
342. The amount claimed is in my view reasonable for interim payment purposes.
343. Accordingly, I find in favour of the applicant in the amount claimed at \$3,393.35 excluding GST.

Item 6

344. The applicant claims \$11,760.00 excluding GST in its progress claim 20.

⁵⁷ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 6.257 to 6.263

⁵⁸ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 6.275 to 6.280

345. The respondent assesses the claim at \$12,348.00 excluding GST in its Payment Certificate No. 20.
346. Accordingly, as the respondent does not dispute the amount claimed, I find in favour of the claimant in the full amount claimed at \$11,760.00 excluding GST.

Items 7 & 13

347. The applicant claims \$9,057.17 excluding GST in its progress claim 20 for both items.
348. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20 on the basis that no additional transportation costs have been substantiated⁵⁹.
349. I have carefully considered the submissions and I am not persuaded that the applicant would have necessarily incurred any additional transportation costs and I am not persuaded by the applicant's submissions⁶⁰ on this point.
350. Accordingly, I find in favour of the respondent in the amount of \$0.00.

Items 8 - 10, 14 & 15

351. The applicant claims \$38,467.04 excluding GST in its progress claim 20 which it revises⁶¹ to \$42,840.00 excluding GST in its adjudication application.
352. The respondent assesses the claim at \$31,697.64 excluding GST in its Payment Certificate No. 20 which it revises⁶² to \$35,280.00 excluding GST in its adjudication response.
353. I have carefully considered the respective calculations and disagree with both based upon the submission provided. I value the work as follows:

Item	Description	Qty	Unit	Rate	\$
1	K1 Cable 240mm XPLE	560	m	33.00	18,480.00
2	K1 Cable 240mm XPLE	400	m	33.00	13,200.00
3	K! & K2 150mm conduit	35	lengths	36.57	1,279.95
4	Earth 120mm	50	m	20.00	1,000.00
					33,959.95
5	Margin			5%	1,698.00
					35,657.95

⁵⁹ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 6.281 to 6.287

⁶⁰ Adjudication Application, Statement of [REDACTED] at paragraphs 8.1 to 8.8

⁶¹ Adjudication Application, Statement of [REDACTED] at paragraphs 9.1 to 9.10

⁶² Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 6.288 to 6.292

354. Accordingly, I find in favour of the applicant in the amount of \$35,657.95 excluding GST.

Item 17

355. The applicant claims \$59,627.40 excluding GST in its progress claim 20

356. The respondent assesses the claim at \$44,517.38 excluding GST in its Payment Certificate No. 20 on the basis that the applicant claims for costs prior to the change having occurred⁶³.

357. I have carefully considered the submissions and I am satisfied that the changes occurred around 6th November 2012⁶⁴ and as such the costs claimed prior to that date would not on the face of the evidence provided relate to the changes. The respondent has excluded only costs claimed in October 2012 and not prior to 6th November 2012 and therefore I will adopt the respondent's view. I do not agree with the respondent's calculation of the per diem and value the work as follows:

Item	Description	Qty	Unit	Rate	\$
1	Engineering	97.5	hrs.	245.00	23,887.50
2	Drafting	98	hrs.	95.00	9,310.00
3	Airfares	3	no	900.00	2,700.00
4	Per diem	16	no	500.00	<u>8,000.00</u>
					43,897.50
5	Margin			5%	<u>2,194.88</u>
					46,092.38

358. Accordingly, I find in favour of the applicant in the amount of \$46,092.38 excluding GST.

Item 18

359. The applicant claims \$12,390.00 excluding GST in its progress claim 20.

360. The respondent assesses the claim at \$7,875.00 excluding GST in its Payment Certificate No. 20 which it revises⁶⁵ to \$12,390.00 excluding GST in its adjudication response.

361. Accordingly, as there is now no dispute between the parties I find in favour of the applicant in the amount of \$12,390.00 excluding GST.

Item 21

362. The applicant claims \$10,500.00 excluding GST in its progress claim 20

⁶³ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 6.293 & 6.294

⁶⁴ Adjudication Application, [REDACTED] Claim 25/09/2013 at Tab 2 Appendix 2

⁶⁵ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 6.295 to 6.297

363. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20 on the basis⁶⁶ that no additional plant was required.
364. Based upon the applicant's submissions I am not satisfied that the applicant has substantiated its claim.
365. Accordingly, I find in favour of the respondent in the amount of \$0.00.

Item 22

366. The applicant claims \$14,562.74 excluding GST in its progress claim 20.
367. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20 on the basis⁶⁷ that no additional staff were engaged.
368. Based upon the applicant's submissions I am not satisfied that the applicant has substantiated its claim.
369. Accordingly, I find in favour of the respondent in the amount of \$0.00.

Item 23

370. The applicant claims \$57,750.00 excluding GST in its progress claim 20.
371. The respondent assesses the claim at \$43,134.00 excluding GST in its Payment Certificate No. 20 but provides no breakdown of its assessment.
372. It seems to me that this variation mirrors ID 17, where the changes occurred in November 2012. I have recalculated the value under the same criteria as ID 17 above as follows:

Item	Description	Qty	Unit	Rate	\$
1	Engineering	84	hrs.	245.00	20,580.00
2	Drafting	45	hrs.	105.00	4,725.00
3	Drafting	98	hrs.	95.00	9,310.00
4	Airfares	3	no	900.00	2,700.00
5	Per diem	9	no	500.00	4,500.00
					<u>41,815.00</u>
6	Margin			5%	<u>2,090.75</u>
					43,905.75

⁶⁶ Adjudication Response, Statutory Declaration of [REDACTED], at Tab 7 – CKD Variation Submission – Tracker for Closure

⁶⁷ Adjudication Response, Statutory Declaration of [REDACTED], at Tab 7 – CKD Variation Submission – Tracker for Closure

373. Accordingly, I find in favour of the applicant in the amount of \$43,905.75 excluding GST.

Item 24

374. The applicant claims \$42,000.00 excluding GST in its progress claim 20.

375. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20 on the basis that the applicant has not proved its case⁶⁸.

376. I have carefully considered the submissions and I am satisfied that on the balance of probability the applicant has a justifiable claim. There is no dispute as to the architectural design error and as a consequence the ductwork was modified.

377. The applicant's substantiation is reasonable for interim payment purposes.

378. Accordingly, I find in favour of the applicant in the amount claimed at \$42,000.00 excluding GST.

Item 27

379. The applicant claims \$6,774.35 in its progress claim 20.

380. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20 on the basis that the applicant has not proved its case⁶⁹.

381. I have carefully considered the submissions and I am satisfied that on the balance of probability the applicant has a justifiable claim. There is no dispute as to the design change and its consequences.

382. The applicant's substantiation is reasonable for interim payment purposes.

383. Accordingly, I find in favour of the applicant in the amount claimed at \$6,774.35 excluding GST.

Item 28

384. The applicant claims \$8,799.00 in its progress claim 20.

385. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20 on the basis of lack of details⁷⁰.

386. I have carefully considered the submissions and I am satisfied that on the balance of probability the applicant has a justifiable claim. The respondent does not deny the design changes.

⁶⁸ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 6.69 to 6.88

⁶⁹ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 6.89 to 6.98

⁷⁰ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 6.152 to 6.159

387. In my view the applicant's substantiation is reasonable for interim payment purposes.
388. Accordingly, I find in favour of the applicant in the amount claimed at \$8,799.00 excluding GST

Item 29

389. The applicant claims \$32,042.54 excluding GST in its progress claim 20.
390. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20 on the basis that the applicant has not proved its case⁷¹.
391. I have carefully considered the submissions and I am satisfied that on the balance of probability the applicant has a justifiable claim. There is no dispute as to the design change and its consequences.
392. In my view the applicant's substantiation is reasonable for interim payment purposes.
393. Accordingly, I find in favour of the applicant in the amount claimed at \$32,042.54 excluding GST

Item 30

394. The applicant claims \$7,002.03 excluding GST in its progress claim 20 which it withdraws⁷² in its adjudication application.
395. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20
396. Accordingly, I find in favour of the respondent in the amount of \$0.00.

Item 31

397. The applicant claims \$90,965.70 excluding GST in its progress claim 20.
398. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20.
399. The applicant's claim is for variations to the cold rooms. The applicant's substantiation is fragmented but generally seeks to establish the difference between the tender and as built design.
400. The respondent does not acknowledge that there is a difference between the tender and as built.

⁷¹ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 6.99 to 6.104

⁷² Adjudication Application, Statement of [REDACTED] at paragraph 6

401. Based upon the limited information provided it appears to me that the applicant is correct and that its substantiation is reasonable for interim payment purposes.
402. Accordingly, I find in favour of the applicant in the amount claimed at \$90,965.70 excluding GST.

Item 32

403. The applicant claims \$33,702.90 excluding GST in its progress claim 20 which it revises⁷³ to \$28,187.25 excluding GST in its adjudication application.
404. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20 on the basis that it has not reviewed the applicant's submission.
405. The applicant's claim is for variations to the refrigeration equipment to the cold rooms etc. and follows from variation ID 31.
406. The respondent does not acknowledge that there is a difference between the tender and as built.
407. Based upon the information provided it appears to me that the applicant is correct and that its substantiation is reasonable for interim payment purposes.
408. Accordingly, I find in favour of the applicant in the revised amount claimed at \$28,187.25 excluding GST.

Item 33

409. The applicant claims \$15,485.02 excluding GST in its progress claim 20.
410. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20 on the basis that the applicant has not proved its case⁷⁴.
411. I have carefully considered the submissions and I am satisfied that the applicant incurred restocking fees as a direct result of the changes to the CKD design. I am not persuaded by the respondent's allegations regarding the adequacy of the fan which appears to be baseless particularly in view of the Certificate of Compliance.
412. In my view the applicant's substantiation is reasonable for interim payment purposes.
413. Accordingly, I find in favour of the applicant in the amount claimed at \$15,485.02 excluding GST

Item 34

⁷³ Adjudication Application, Statement of [REDACTED] at paragraph 8.7

⁷⁴ Adjudication Response , Statutory Declaration of [REDACTED] at paragraphs 6.126 to 6.132

414. The applicant claims \$31,288.95 excluding GST in its progress claim 20.
415. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20 on the basis that no variation was directed and the claim has not been made in accordance with GCS clause 10.2⁷⁵.
416. The claim turns on an alleged discussion between Peter Panatos and Gerry Sheehan regarding instruction to work overtime. Whilst this agreement is denied in the Statutory Declaration of Richardson I note that no such denial is recorded in Sheehan's Statutory Declaration.
417. I have carefully considered the submissions and I am satisfied on the balance of probability that there was an agreement to amend the ductwork under overtime conditions and that the substantiation provided is reasonable for interim payment purposes. The respondent indicates that the applicant has subsequently reduced its claimed amount to \$28,380.00 (which I assume is exclusive of 5%, therefore \$29,596.61 excluding GST). I will adopt this reduced amount.
418. Accordingly, I find in favour of the applicant in the revised amount claimed at \$29,596.61 excluding GST

Item 35

419. The applicant claims \$63,000.00 excluding GST in its progress claim 20
420. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20 on the basis of lack of details.
421. Based upon the applicant's submissions I am satisfied that on the balance of probability the MSSB had to increase in amperage due to the increase in air conditioning and equipment as asserted by the subcontractor⁷⁶. In my view the amount claimed is reasonable for interim payment purposes.
422. Accordingly, I find in favour of the applicant in the amount claimed at \$63,000.00 excluding GST.

Item 36

423. The applicant claims \$13,754.07 excluding GST in its progress claim 20.
424. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20 on the basis of lack of information⁷⁷.

⁷⁵ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 6.133 to 6.141

⁷⁶ Adjudication Application, Statement of [REDACTED] at paragraphs 17.1 to 17.5, NRP letter at Tab 11

⁷⁷ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 6.142 to 6.149

425. It is not clear from the submission what this claim relates to i.e. all or some of the freighting of the cold rooms. On this basis I agree with the respondent that the claim lacks particularisation.

426. Accordingly, I find in favour of the respondent in the amount of \$0.00.

Item 37

427. The applicant claims \$31,500.00 excluding GST in its progress claim 20.

428. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20 on the basis of lack of information⁷⁸.

429. I have carefully considered the submissions and I am satisfied on the balance of probability that the applicant would have incurred additional hire costs because of the design changes; however it has not adequately provided details of its tender allowance to demonstrate the additional cost incurred. For interim payment purposes I will adopt 50% of the amount claimed.

430. Accordingly, I find in favour of the applicant in the amount claimed x 50% at \$15,750.00 excluding GST

Item 38

431. The applicant claims \$312,328.80 excluding GST in its progress claim 20.

432. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20 but revises⁷⁹ its assessment to \$22,000.00 excluding GST in its adjudication response based upon an agreement to pay local recruitment fees.

433. The applicant's claim is for the cost of additional labour as a result of the changes to the design. The applicant's substantiation is limited to a bundle of time sheets and correspondence relating to local recruitment.

434. The respondent does not dispute that there were significant design changes and it is clear that the respondent acknowledged the necessity to increase the labour and specifically agreed to pay the extraordinary recruitment cost for using local labour. The applicant has not claimed this cost thus far but is entitled to do so in my view. This acknowledgement by the respondent is sufficient to persuade me that the labour recruited was additional solely because of the design changes and that the respondent would expect to pay for the additional labour.

435. I accept that the applicant's substantiation is not perfect but on the balance of probability this labour was wholly engaged in the changed work as asserted by the applicant.

⁷⁸ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 6.160 to 6.164

⁷⁹ Adjudication Response, Statutory Declaration of [REDACTED], at Tab 7 – CKD Variation Submission – Tracker for Closure

436. Accordingly, I find in favour of the applicant in the amount claimed at \$312,328.80 excluding GST and note that this does not include the recruitment fee which has not been claimed.

Item 45

437. The applicant claims \$62,420.00 excluding GST in its progress claim 20.

438. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20 on the basis that the costs claimed are included in the 5% variation mark-up⁸⁰.

439. The respondent's reliance on incorrect references to contract clauses is not helpful in assessing the claim. The respondent suggests that the applicant is entitled to a 5% mark-up on variation costs. This is in my view an incorrect interpretation of the contract. GCS clause 10.2 provides for a 5% mark-up on variations which reduce the contract sum only.

440. The only other time 5% mark-up is referred to is in GCS clause 10.5, which by its erroneous reference to Schedule 1, item 18 (whereas it should be item 17) provides for a mark-up in respect of variations instructed to be valued under daywork. Whereas the 5% mark-up prescribed in the contract might be an argument for this being applied to variations generally, in my view the applicant has no obligation to apply that percentage in preference to a percentage reflecting its costs and anticipated margin.

441. The applicant's claim is not fully substantiated in my view notwithstanding that it has merit. The applicant has not demonstrated how and where the additional costs claimed were incurred nor is there evidence that it has taken into account any costs received by way of the mark-up on variations. I determine that 75% of the amount claimed is reasonable for interim payment purposes.

442. Accordingly, I find in favour of the applicant in the amount of 75% of the amount claimed at \$46,815.30 excluding GST.

Item 46

443. The applicant claims \$17,482.50 excluding GST in its progress claim 20.

444. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20 on the basis of lack of details⁸¹.

445. The applicant's substantiation is not at all clear in my view. The applicant relies upon its consultant's invoice from which it has extracted all work on the CDK, comprising 'as wired' and 'A&J Supervision'. I am not persuaded that the 'as wired' exercise is additional to the scope of work unless this was a repeat exercise and the applicant has not clarified this

⁸⁰ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 6.177 to 6.183

⁸¹ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 6.207 to 6.212

point, whereas the 'A&J Supervision' appears to be an additional requirement due to the changed layout.

446. I value the 'A&J Supervision' at the rates claimed 10 hrs. @ \$111/hr. plus 5% margin = \$1,165.50.

447. Accordingly, I find in favour of the applicant in the amount of \$1,165.50 excluding GST.

Items 47-49

448. The applicant claims \$129,190.54 excluding GST in its progress claim 20 for these items.

449. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20 on the basis of lack of details⁸².

450. I accept that the applicant's substantiation needs further clarification, however on the balance of probability I accept that the applicant has incurred additional costs as a result of the architectural layout changes. In my view the applicant's substantiation is adequate for interim payment purposes.

451. Accordingly, I find in favour of the applicant in the amount claimed at \$129,190.54 excluding GST.

Items 50 - 55

452. The applicant claims \$50,708.43 excluding GST in its progress claim 20.

453. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20 on the basis of lack of information⁸³.

454. I have carefully considered the submissions and I am satisfied that on the balance of probability the applicant incurred additional cost for the rectification of the already installed dry fire systems in order to comply with the changes in architectural layout.

455. I am not persuaded by the respondent's arguments for withholding payment.

456. I am satisfied that the applicant's substantiation is adequate for interim payment purposes.

457. Accordingly, I find in favour of the applicant in the full amount claimed at \$50,708.43 excluding GST

Item 59

458. The applicant claims \$20,391.00 excluding GST in its progress claim 20 which it combines with item 45 in its adjudication application.

⁸² Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 6.213 to 6.219

⁸³ Adjudication Response, Statutory Declaration of [REDACTED] at paragraphs 6.192 to 6.206

459. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20

460. Accordingly, I have valued this item in item 45 above.

Item 61

461. The applicant claims \$98,832.30 excluding GST in its progress claim 20.

462. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20 based upon lack of substantiation⁸⁴.

463. I have carefully considered the submissions and I am satisfied that on the balance of probability the applicant incurred additional cost in order to comply with the changes in architectural layout.

464. I am not persuaded by the respondent's arguments for withholding payment.

465. I am satisfied that the applicant's substantiation is adequate for interim payment purposes, notwithstanding that further clarification would be necessary for final agreement.

466. Accordingly, I find in favour of the applicant in the full amount claimed at \$98,832.30 excluding GST

Item 62

467. The applicant claims \$23,628.11 excluding GST in its progress claim 20.

468. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20 on the basis that the applicant has no entitlement to payment under the subcontract.

469. I have carefully considered the submissions and I agree with the respondent that there is no entitlement for the applicant to claim these costs under the contract.

470. Accordingly, I find in favour of the respondent in the amount of \$0.00.

Item 63

471. The applicant claims \$26,153.40 excluding GST in its progress claim 20.

472. The respondent assesses the claim at \$0.00 in its Payment Certificate No. 20

473. I have carefully considered the submission and I am satisfied that the applicant was instructed to replace the ducting and exhaust fan. I am satisfied that the applicant's submission is adequate for interim payment purposes.

⁸⁴ Adjudication Response, Statutory Declaration of [REDACTED], at Tab 7 – CKD Variation Submission – Tracker for Closure

474. I am not persuaded by the respondent's submission on this point.
475. Accordingly I find in favour of the applicant in the amount claimed at \$26,153.40 excluding GST.

Summary of CKD Variations

476. A summary of the CKD variations is as follows:

Item	Gross claim incl. 5% \$	Payment Certificate 20 incl. 5% \$	Adjudicated Amount incl. 5% \$
1	6,774.35	-	6,774.35
2	9,737.83	9,737.83	9,737.83
3	7,193.12	-	7,193.12
4	53,165.83	53,165.83	53,165.83
	- 29,522.85	- 29,522.85	- 29,522.85
	29,522.85		29,522.85
5	3,393.35	-	3,393.35
6	11,760.00	12,348.00	11,760.00
7	4,200.00	-	-
8	27,670.59	43,877.64	35,657.95
	- 11,760.00	- 12,180.00	incl.
9	3,458.83	incl	incl.
10	1,482.35	incl	incl.
	- 420.00	incl	incl.
11	39,648.00	39,648.00	39,648.00
12	29,736.00	29,736.00	29,736.00
	- 29,736.00	- 29,736.00	- 29,736.00
13	9,057.17	-	-
	- 4,200.00	-	-
14	19,764.71	incl	incl.
15	2,470.59	incl	incl.
	- 4,200.00	- 4,200.00	incl.
16	-		-
17	59,627.40	44,517.38	46,092.38
18	24,780.00	7,875.00	12,390.00
	- 12,390.00	-	-
19	10,500.00	10,500.00	10,500.00
	- 10,500.00	- 10,500.00	- 10,500.00
20	21,000.00	21,000.00	21,000.00
21	10,500.00	-	-

22	14,562.74	-	-
23	57,750.00	43,134.00	43,905.75
24	42,000.00	-	42,000.00
25	-	-	-
26	-	-	-
27	6,815.00	-	6,815.00
28	8,799.00	-	8,799.00
29	32,042.54	-	32,042.54
30	7,002.03	-	-
31	90,965.70	-	90,965.70
32	33,702.90	-	28,187.25
33	15,485.02	-	15,485.02
34	31,288.95	-	29,596.61
35	63,000.00	-	63,000.00
36	13,754.07	-	-
37	31,500.00	-	15,750.00
38	312,328.80	-	312,328.80
39	-	-	-
40	-	-	-
41	-	-	-
42	-	-	-
43	-	-	-
44	-	-	-
45	62,420.40	-	46,815.30
46	36,309.00	-	1,165.50
	- 18,826.50	-	-
47	61,929.00	-	61,929.00
48	52,070.55	-	52,070.55
49	15,190.99	-	15,190.99
50	10,710.00	-	10,710.00
51	1,134.00	-	1,134.00
52	28,560.00	-	28,560.00
53	3,024.00	-	3,024.00
54	3,710.44	-	3,710.44
55	3,570.00	-	3,570.00
56	-	-	-
57	14,962.50	3,150.00	14,962.50
	- 11,812.50	-	- 11,812.50
58	-	-	-
59	20,391.00	-	-
60	-	-	-
61	98,832.30	-	98,832.30
62	23,628.11	-	-
63	26,153.40	-	26,153.40

	1,475,667.56	232,550.82	1,291,703.95
February 2014 Claim	1,475,667.56		
November 2013 Certification	<u>771,727.00</u>		
Uncontested dispute	703,940.56	<u>703,940.56</u>	
Balance due			587,763.39

477. In respect of the uncontested dispute amount above, I have taken the difference between the February 2014 progress claim and the November 2013 payment certificate as the uncontested dispute amount. The applicant's progress claims for the CKD variations differ from month to month and therefore I believe this to be a fair and reasonable method of determining the value of the claim which cannot be considered pursuant to section 28(1) of the Act.

Cost of parties to payment dispute

478. The applicant claims \$179,762.89 excluding GST in its adjudication application for costs incurred because of alleged frivolous or vexatious behaviour on the part of the respondent.

479. The applicant makes its submission under section 36 of the Act.

480. I have carefully considered the submissions on this point and I am not entirely satisfied that the respondent has acted frivolously or vexatiously. In respect of unfounded submissions, it appears that the respondent has not been consistent in its views and some of its arguments do not hold up to close scrutiny in terms of the subcontract.

481. It is also evident that the applicant has not always fully substantiated its claims to a reasonable standard throughout the subcontract duration. Some of the consultant's costs claimed I see as correcting the imbalance between the parties approach to contract administration rather than simply being incurred because of the respondent's approach.

482. On balance I am not satisfied that the applicant's claim has merit and therefore I decide not to award cost to be paid by the respondent.

Adjustment of deducted LOR amounts

483. The applicant claims \$132,504.44 excluding GST in its adjudication application.

484. I agree with the applicant that these amount were included in the respondent's Payment Schedule No. 20 and therefore need to be included in this assessment.

485. Accordingly, I find in favour of the applicant in the full amount claimed at \$132,504.44 excluding GST.

Summary of amounts sought at adjudication

486. A summary of the determination of amounts sought at adjudication is as follows:

Item	Description	Adjudication Application \$	Adjudicated Amount \$
1	Variations		
	36 Disputed variations	2,870,961.79	1,822,526.68
	CKD variations	1,475,667.53	587,763.39
2	Cost of parties to payment disputes	179,762.89	-
3	Adjustment of deducted LOR amounts	132,504.44	132,504.44
	Total excl. GST	4,658,896.65	2,542,794.51
4	GST	465,889.67	254,279.45
	Total incl. GST	5,124,786.32	2,797,073.96

Interest until determination

487. Pursuant to sections 35 of the Act I determine that the respondent shall be liable to the applicant for interest from the date the dispute arose until the date of this determination at the rate prescribed by Regulation, calculated as follows:

Value of Construction Work	2,797,073.96
Due date for payment	02/04/2014
Date of Determination	02/06/2014
Days payment delayed	61
Interest rate - Rule 35.08 Federal Court Rules	10.25%
Interest to determination	47,914.26

488. Accordingly, I find in favour of the applicant for interest until the date of determination in the amount of \$47,914.26 including GST.

Summary

489. A summary of the determination is as follows:

Item	Description	\$
1	Determination of disputed amounts	2,797,073.96
2	Interest to determination	47,914.26
	Total including GST.	2,844,988.22

490. Accordingly, I find in favour of the applicant in the amount of \$2,844,988.22 including GST.

Adjudication costs

- 491. Pursuant to sections 36 of the Act I determine that the respondent shall bear the costs in relation to the adjudication of the dispute and that the respondent shall be liable for 100% of the costs of the adjudication because its reasons for withholding payment have generally been unsuccessful.
- 492. The adjudication costs for this determination have been restricted to 150 hours @ \$325.00 plus GST = \$53,625.00 including GST plus disbursements incurred by the prescribed appointer at \$758.86 including GST, giving a total of \$54,383.86 including GST. A tax invoice will be issued accordingly.

Content of determination

- 493. Pursuant to section 38(1)(e) of the Act I have identified the following information which is not suitable for publication by the Registrar under section 54 of the Act.
 - a. The identity of the parties.
 - b. The identity and location of the project.



Signed:
Russell Welsh – Registered Adjudicator No. 28

Dated: 2nd June 2014.