

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
 )  
Clauss Construction ) ASBCA No. 53953  
 )  
Under Contract No. DACA21-96-C-0153 )

APPEARANCES FOR THE APPELLANT: Garris Neil Yarborough, Esq.  
Jana L. Berg, Esq.  
The Yarborough Law Firm  
Fayetteville, NC

APPEARANCES FOR THE GOVERNMENT: Thomas H. Gourlay, Jr., Esq.  
Engineer Chief Trial Attorney  
William A. Hough, Esq.  
District Counsel  
Henry R. Richmond, Esq.  
Engineer Trial Attorney  
U.S. Army Engineer District,  
Savannah

OPINION BY ADMINISTRATIVE JUDGE JAMES

Clauss Construction (CC) submitted a claim under the captioned Army Corps of Engineers (ACOE) contract for extra work and loss of salvage profits on 86 family housing units (FHUs), whose denial was appealed under ASBCA No. 51707. The Board's 7 December 2001 decision on entitlement in *Clauss Construction*, ASBCA No. 51707, 02-1 BCA ¶ 31,678 at 156,546-47, held:

that respondent's refusal to allow CC to remove and relocate FHUs intact for later sale to the public, and [its direction] to regard the salvageable wooden FHU structures as "unsalvageable" demolition debris to be disposed of in a landfill, constituted a constructive change.

We sustained the appeal and remanded it to the parties to resolve damages.

After the parties failed to resolve damages, we reinstated the appeal and designated it as ASBCA No. 53953 on quantum. The Board has continuing jurisdiction of the appeal under the Contract Disputes Act of 1978 (CDA). Pursuant to the Board's order, in the nature of pleadings, CC filed a "Statement of Cost" and respondent replied thereto. The parties agreed to include in the appeal record the hearing transcripts, Rule 4 documents, and trial exhibits in evidence in ASBCA No. 51707, and submitted additional Rule 4 documents

and trial exhibits on quantum. After another three-day hearing at Fayetteville, NC, the parties filed post-hearing briefs. We assume familiarity with our decision in ASBCA No. 51707, and cite selected findings in that decision that are useful to understand the issues in determining quantum.

FINDINGS OF FACT

1. ACOE’s pre-bid estimate for Contract No. DACA21-96-C-0153 (contract 153) was \$640,979 (R4, tab 3, attach. 20 at 2; tr. 3/174<sup>1</sup>). CC’s 19 September 1996 \$223,370 bid for contract 153 (R4, tab 5 at 2; tr. 3/175) was based on CC’s in-house estimate, not on subcontractor bids; was based on salvaging 20 to 25% of the material processed; and contemplated further investigation of removing FHU structures intact (51707, finding 7).

2. Contract 153 incorporated by reference the FAR 52.243-4 CHANGES (AUG 1987) clause (51707<sup>2</sup> ex. G-48 at 00700-16).

3. On 14 January 1997, Olde Fayetteville Investments, Inc. (OFI) submitted a bid to CC for \$65,000 to relocate and to “market the units to the fullest extent possible” with a minimum of 45 FHUs or more as allowed by the government (51707, finding 9).

4. On 21 January 1997, OFI subcontracted with World Marketing Associates, Inc. (WMA) to advertise and market the foregoing 86 FHUs for sale (51707, finding 11). The 86 FHUs were of three types, designated by their square footage: Type A, 3 units; Type B, 6 units; and Type C, 77 units (tr. 1/192-93, 2/35).

5. On 26 February 1997, CC entered into a written subcontract with OFI, also known as “Architectural Salvage, Inc.” (ASI), for the demolition, removal, salvage and disposal of 86 FHUs in accordance with contract 153 for \$65,000.00 (51707, finding 10). Subcontract clause IV.4 provided for “CHANGE ORDER WORK,” general conditions 6 and 17 provided for changes and extras, and Addendum No. 3, ¶ 1, provided that “[t]he Subcontractor agrees to be bound to the Contractor’s executed Construction Contract with the Owner” designated as contract 153 (51707, ex. G-1 at 2, 4-5, 8).

6. Between 28 December 1996 and 7 April 1997, ASI and WMA executed 10 purchase agreements for FHUs at Fort Bragg to be relocated at the purchasers’ sites.

<u>Sales</u>	<u>Purchase</u>		<u>FHU</u>		<u>Unit</u>	<u>Total</u>
<u>Agent</u>	<u>Date</u>	<u>Purchaser</u>	<u>Type</u>	<u>Quantity</u>	<u>Price</u>	<u>Price</u>

---

<sup>1</sup> Transcript cites designating a volume (*e.g.*, 3/174) refer to the hearing in ASBCA No. 53953. Other transcript cites refer to the hearing in ASBCA No. 51707.

<sup>2</sup> The 51707 or 53953 prefix in citations to exhibits indicates under which docket number the exhibit was received in evidence.

	ASI	12/28/96	Flaherty	C	6	\$9,000	
							\$54,000
6,700	WMA	1/23/97	Parker	B	1	6,700	
6,700	WMA	2/3/97	Bailey	B	1	6,700	
22,000	“	“	“	C	4	5,500	
9,100	WMA	2/7/97	Barefoot	A	1	9,100	
11,000	WMA	2/14/97	Spearman	C	2	5,500	
22,000	WMA	2/17/97	Colvin	C	4	5,500	
188,000	WMA	2/20/97*	Brookridge	C	20	9,400	
			Farms Devel.				
5,500	WMA	3/18/97	Elliott	C	1	5,500	
10,000	WMA	4/4/97	Simmons, S.	C	2	5,000	
10,000	WMA	4/7/97	Latta	C	2	5,000	—
	Total Sales:				44		\$345,000

\* Approximate date

WMA sold one other Type B FHU and one Type C FHU to P. and G. Simmons, but that sale was canceled and the deposit refunded. The foregoing purchase agreements do not mention “Jack Lilly” as ASI’s marketing agent for the Flaherty sale (notwithstanding respondent’s proposed finding 26), identified the items that ASI would remove from the FHUs, and did not require ASI to restore the FHUs to their pre-salvage condition at Fort Bragg. (51707, ex. A-43 at 14, 19, 10, 34, 5, 24, 28, 39; 53953 exs. A-4, -11; R4, tab 4 at C.2; SR4, tab 7 at H-4a) At the 2003 quantum hearing, ASI said that it might have restored the balance of unsold FHUs (tr. 1/91, 202, 205-06). Restoration by ASI did not appear in its 1997 salvage plan (51707, ex. A-45 at 27). We find that such idea was an afterthought.

7. Mr. Flaherty’s 28 December 1996 purchase of six Type B FHUs at \$10,200 each (53953, ex. A-4) was changed to six Type C FHUs at \$9,000 each (tr. 2/201, 211). Mr. Flaherty’s purchase price included a \$3,500/FHU “moving allowance” (tr. 3/130, 158). Brookridge’s purchase price included \$2,400/FHU for “House & Moving” (R4, tab 4 at C.2; SR4, tab 7 at G-2). The other eight purchase agreements required the purchaser to pay directly to the mover its fee to move the FHU from Ft. Bragg to the purchaser’s site (51707, exs. A-43, -46 at 4; 53953, ex. A-11; tr. 2/211, 3/200).

8. WMA's owner Lynnwood Berg and investor Robert Cleveland were partners in Brookridge Farms Development (tr. 1/137, 146-47, 154, 2/175-79). WMA did not have the duty to pay commissions on sales to Brookridge Farms Development (tr. 161-62). Thus, no sales commissions were payable on 26 of the 44 FHUs sold.

9. On 7 July 1997, CC submitted a \$1,862,195 (sic) claim to the contracting officer (CO), including CC's \$8,182 direct cost, ASI's 20 June 1997 \$1,551,300 claim, and CC's overhead, profit and bond premium of \$302,714 (R4, tab 3). On about 20 July 1997 the CO received CC's claim certification dated 7 July 1997 (51707, ex. G-52).

10. The CO's 26 May 1998 final decision denied CC's 7 July 1997 claim in its entirety. On 24 August 1998, CC timely appealed therefrom to the ASBCA. (51707, finding 19)

11. As amended on 30 June 2003, appellant's "Statement of Cost," ordered to be submitted by the Board, included the following break down:

**I. ASI**

**A. Lost Consideration:**

i. Fair Market Value of Intact FHUs		
a. Appraised Value of FHUs		
(Based on like kind houses)		
Formula: \$60,000 x 75 units	4,500,000	
b. Less: Cost to complete FHUs		
Formula: \$34,547 x 75 units less		
paid commissions	<u>2,591,025</u>	
Total FMV 75 FHUs	1,908,975	
ii. Fair Market Value of Additional Salvage Lost	<u>31,200</u>	
Total Lost Consideration		1,940,175

**B. Liquidated Damages:<sup>3</sup>**

i. Currie/Bailey	37,800	
ii. Flaherty	<u>38,774</u>	
Total Liquidated Damages		76,574

**C. Additional Costs:**

i. Direct Cost of Additional Demolition	144,570	
---	---------	--

---

<sup>3</sup> These amounts are state court judgments.

ii. House Movers Fee	<u>3,000</u>	
Total Additional Costs		147,570
iii. Plus ASI Audited Indirect Expense Rate (99%)		<u>146,094</u>
Total ASI		2,310,413

**II. Direct Cost Clauss:**

A. Materials - Clauss	8,182	
B. Overhead @ 18.3%	424,303	
C. Profit @ 12%	<u>329,148</u>	
Total Direct Cost - Profit Clauss		761,633

**III. Indirect Costs:**

A. Interest	1,057,705	
B. Allowable Legal Fees	56,599	
C. Other Litigation Costs	<u>7,500</u>	
Total Indirect Cost		<u>1,121,804</u>

**IV. TOTAL Loss:** \$4,193,850

12. Respondent does not dispute ASI’s “Fair Market Value of Additional Salvage Lost,” *i.e.*, the lost salvage value of water heaters, HVAC equipment, toilets, sinks, tubs, doors, windows, flooring, and the like (51707, ex. A-45 at 62-64) that ASI planned to remove from the 86 FHUs (\$31,200), and CC’s material costs (\$8,182) (tr. 3/212). Respondent disputes: (a) the lost salvage value of the 86 FHUs, (b) the total for ASI’s additional direct demolition and applicable overhead costs, (c) house movers’ costs, and (d) CC’s overhead and profit amounts, interest and legal/litigation costs (53953, ex. G-24; tr. 1/34-35, 44, 3/118, 135).

13. Respondent’s formula for lost salvage value of the 86 FHUs is: FHU sales revenue - expenses - retained buyers’ deposits + lost value of removable components = net salvage value (53953, exs. G-24, -25 at 10; tr. 3/133). Respondent calculated FHU sales revenue as follows:

3 Type A FHUs at \$9,100	=	\$ 27,300
6 Type B FHUs at \$6,700	=	+ 40,200
77 Type C FHUs at \$6,183	=	+ <u>476,091</u>
Total sales revenue	=	<u>\$543,591</u>

(tr. 3/125-26, 130-31). We find that ASI sold 41 Type C FHUs at an average price of \$7,865.85 (\$322,500 ÷ 41) (see finding 6), which, multiplied by 77 units, amounts to \$605,670. We find, accordingly, that the extrapolated gross sales revenue should be \$673,170 (\$605,670 + \$27,300 + \$40,200), and this resale value, derived from ASI’s sales contracts, is the best measure of the fair market value of the FHUs in this appeal.

14. Respondent calculated expenses composed of:

Housing preparation, 86 FHUs @ \$1,700/FHU	= \$146,200
House moving	= 3,000
Sales commissions on--	
3 Type A FHUs @ \$2,110/FHU	= 6,330
6 Type B FHUs @ \$1,708/FHU	= 10,248
57 Type C FHUs @ \$1,507/FHU	= <u>85,899</u>
Total expenses	= <u>\$251,677</u>

Respondent derived \$146,200 for housing preparation from appellant's \$1,700 unit cost (53953, ex. G-16 at 4), included no commissions for 20 FHUs sold to Brookridge Estates (tr. 3/127, 132), but included commissions on the 6 FHUs ASI itself sold to Flaherty.

15. Respondent calculated retained buyers' deposits as \$181,866.33 (tr. 3/133). Respondent derived net salvage value by subtracting from the \$543,591 in sales revenue \$251,677 in expenses and \$181,866.33 in retained buyers' deposits, and adding \$31,200 for removable components, which amount it rounded to \$141,248 (53953, ex. G-25 at 10; tr. 3/134). Respondent included the Currie/Bailey and Flaherty FHU sales in the lost salvage value of 86 FHUs, rather than separately as "liquidated damages" (53953, ex. G-24). Respondent interpreted the CC-ASI subcontract to provide that CC was to receive no profit on the salvage of intact FHUs, so it disallowed overhead and profit for ASI's lost salvage value (tr. 3/137-38). There is no record evidence that Clauss or ASI will refuse to repay the \$181,866.33 in retained buyers' deposits. WMA's Lynn Berg testified credibly that pursuant to agreements he made with each purchaser separately, part of the money recovered in this litigation would be returned to the FHU buyers (tr. 1/177-79).

16. In support of appellant's "Appraised Value of FHUs," appellant introduced documentary and testimonial evidence of the appraised values of buyer site preparation -- purchasing land, installing roads, connecting utilities -- and rehabilitating and enhancing the FHUs which the third party purchasers paid, or would have paid but for the ACOE's frustration of the FHU sales (finding 11; R4, tab 4 at C.1, C.2; tr. 2/211). Since the costs of buyer site preparation, restoration of, and enhancements to the FHUs were not within the terms of ASI's agreements with the third party purchasers, *i.e.*, ASI had no obligation to perform or to finance site preparation, restoration and enhancement, their appraised values are immaterial. There was credible testimony that such "downstream" costs and liabilities are irrelevant in determining the lost salvage value of the FHUs (tr. 3/163, 180).

17. Respondent calculated additional ASI demolition costs by subtracting from its \$243,937 total direct costs, \$3,677 in interest and \$9,072 in legal fees, for a subtotal of \$231,188, adding \$228,876 in overhead at 99%, for a \$460,064 total cost, which it divided by 86 FHUs to derive a \$5,350 unit cost. Respondent compared that \$5,350 to ASI's \$2,128 "bid cost per unit" (taken from ASI's 26 September 1996 \$174,968 bid that CC rejected) (SR4, tab 7 at I-5), resulting in a \$3,222 unit loss or a \$277,092 total loss for 86

units. Respondent designated that \$277,092 “total loss” as the “maximum cost of additional demolition,” from which it subtracted \$159,823 for “modifications” for a net amount of \$117,269, which it divided by 86 and multiplied by 44, for a final amount of \$59,998 (53953, ex. G-23). We do not accept respondent’s underlying premise that the equitable adjustment should be based upon a rejected bid that did not identify the credit for salvaged materials, nor its limitation of added demolition costs to 44 of the 86 FHUs demolished.

18. Appellant derived ASI’s \$144,570 direct cost of additional demolition by deducting from its \$243,937 total direct costs of performing the subcontract, \$3,677 in interest, \$9,072 in legal fees, \$46,268 for original site work, and \$40,350 in direct costs received under contract Modification No. P00005 (51707, ex. A-41 at 10; SR4, tab 2 at 4; tr. 2/13-18; Statement of Cost at 4).

19. We find that ASI’s additional demolition costs were \$140,082.76, derived from \$243,937 in total direct costs, less \$3,677 in interest, \$9,072 in legal fees, \$46,268 for direct costs of original, unchanged site work, \$44,411.80 for ASI’s direct costs proposed for Modification No. P00005 (P00005), and \$425.44 in ASI’s direct costs proposed for Modification No. P00009 (P00009) (51707, ex. A-41 at 10; SR4, tab 2 at 4; Statement of Cost at 4; 53953, ex. G-11 at 9, G-15 at 6).

20. In P00005, respondent calculated 9.15% profit for CC and 10.8% profit for ASI, based on its weighted profit guidelines, but negotiated the change price on bottom line costs without discussing profit (52953, ex. G-11 at 8). In P00009, CC and ASI each proposed 10% profit; respondent agreed to the proposed modification price without calculation or discussion of profit (53953, ex. G-15 at 4, 6).

21. ASI subcontracted with Fayetteville House Movers (FHM) and Adams House Moving (AHM) to move portions of the 86 FHUs (tr. 248, 359, 363, 370-71). At the March 2001 hearing on ASBCA No. 51707: (a) Mr. Bill Bentley, FHM’s owner, stated he had made site investigations and measurements to assure that the FHUs could be moved, but stated nothing about claiming or billing ASI for such work (tr. 247-56), and (b) Mr. Glen Dew, of AHM, did a site visit to determine that he could move the FHUs successfully, he felt the ACOE’s refusal to let ASI move the FHUs damaged his business, and he had not asked ASI to pay for such damage (tr. 363, 370-72).

22. In March-April 2002 (following our entitlement decision in ASBCA No. 51707) AHM sent an undated statement to ASI, and Mr. Bentley signed an undated document on FHM letterhead, “To Whom it may concern,” each of which documents stated, “Mobilization, investigation and preparation for relocation of 43 houses from Ft. Bragg to various locations” after which AHM added: “\$1500.00” and FHM added: “\$1,500 each” (SR4, tab 6 at M-3c). We find no record evidence that ASI separately subcontracted with AHM or FHM to perform such site investigations and preparations.

23. Appellant demolished 86 FHUs at Fort Bragg from about 11 June to 25 July 1997 (51707, ex. G-51, A-42 at 90). Respondent used CC's audited, 13.7% overhead rate for the first half of 1997 (SR4, tab 1 at 4) and EFARS 15.404-73 weighted guidelines regulations (53953, ex. G-25 at 11) to derive a 5.45% profit rate, which it applied to (i) \$59,998 for additional ASI demolition costs, and (ii) \$8,182 for CC's materials, producing \$9,341 in overhead and \$4,225 in profit to CC (53953, ex. G-25 at 11-16; tr. 3/136-37, 139-43). ASI's 1997 overhead rate was 99% (SR4, tab 2 at 7; tr. 1/70, 2/21), which respondent does not dispute (gov't br. at 30).

24. The amount of CDA interest is an arithmetical function of the amount of recovery allowed in this litigation. Recovery of legal and litigation costs is for later resolution, if CC is eligible therefor under the Equal Access To Justice Act (tr. 3/210).

## DECISION

### I.

When the government deprives a contractor of its right to salvage property to which the contract gives it title, such action is a constructive change entitling the contractor to an equitable adjustment. *See Norcoast Constructors, Inc. v. United States*, 477 F.2d 929, 930 (Ct. Cl. 1973). The same rule applies to a subcontractor's lost salvage rights claim sponsored by the prime contractor. *See Philip Environmental Services Corp.*, ASBCA Nos. 53445, 53573, 02-1 BCA ¶ 31,841 at 157,336-37.

The key to an equitable adjustment for lost salvage value is the fair market value of the property, less the costs of sale such as removing the salvaged property from the government site and refurbishment by the seller. Thus when the contractor contemplated very little refurbishment to resell a 30 HP capstan, the equitable adjustment was its fair market value, consisting of its estimated resale value less the estimated costs of its refurbishment and removal from the government's wharf. We stated:

The price an end user would be willing to pay more fairly reflects market value than the price offered by a used machinery dealer buying for resale. . . . In the words of Prof. McCormick . . . fair market value, used in assessing damages, is "what the property could probably have been sold for in the ordinary course of a voluntary sale by a *leisurely* seller to a willing buyer."  
*McCormick, Damages* at 165 (1935) [emphasis added].

*The Vemo Co.*, ASBCA No. 27048, 83-1 BCA ¶ 16,194 at 80,460-61; *see also Roberts Construction Co.*, ASBCA No. 32171, 86-2 BCA ¶ 18,981 at 95,859; *Roberts Construction Co.*, ASBCA No. 31648, 87-2 BCA ¶ 19,899 at 100,657.

When the contractor was not in the business of refurbishing and reselling trucks, and there was no evidence that it had the resources and skill to do so, we rejected the contractor’s proposed recovery of the lost resale value less refurbishment costs of 245 trucks, and instead determined the fair market value of the trucks by averaging the proven sales prices of comparable trucks in the condition in which the CO received them, before they were used for gunnery practice, in accordance with the remand directions of the Federal Circuit. *See International Gunnery Range Services, Inc.*, ASBCA No. 34152, 96-2 BCA ¶ 28,497 at 142,306-07.

When the contract required the contractor to obtain and install a fuel storage tank on an Aleutian island, to which tank the government erroneously claimed title and refused to allow the contractor to salvage, the equitable adjustment was the reasonably estimated salvage value of the tank, composed of its material, piping and shipping costs, less the costs of cutting and removing the tank. *See Norcoast Constructors, Inc. and Morrison-Knudsen Co., Inc., a Joint Venture*, ASBCA No. 12751, 72-2 BCA ¶ 9699 at 45,285, *aff’d*, *Norcoast Constructors, Inc. v. United States*, *supra*. In each of the foregoing cases, the Board did not allow any overhead or profit on the fair market value of the lost salvage.

In this appeal, the salvage value of 86 FHUs depends upon the purchase agreement terms for FHUs sold to the purchasers. Those purchase agreements identified items (such as HVAC equipment, toilets, sinks, tubs, doors, windows, flooring and other materials) to be removed for separate resale, and did not require ASI to restore the FHUs to their pre-salvage conditions at Fort Bragg (findings 6, 12, 16). The FHUs were sold “as-is,” ready for moving to another site. We found that the extrapolated gross sales revenue was \$673,170 for 86 FHUs, and their resale value, as derived from ASI’s sales contracts, is the best measure of the fair market value of the FHUs in this appeal (finding 13). Accordingly, we reject appellant’s inclusion in the fair market value of the added value which would result from the third party purchasers’ preparatory site work, repairs and improvements, none of which ASI contracted to perform, nor were they costs of refurbishment by the seller *deductible* from fair market value within the *Vemo* formula.

We accept housing preparation costs of \$1,700/FHU (finding 14), the \$3,500/FHU moving costs for the Flaherty sale and \$2,400/FHU moving costs for the Brookridge sale (finding 7), and sales commissions of \$2,110/Type A FHU, \$1,708/Type B FHU, and \$1,507/Type C FHU (finding 14). \$28,131 in commissions were payable for the 44 FHUs sold (1 A x \$2,110 + 2 Bs x \$1,708 + 15 Cs x \$1,507). Thus, an estimated \$54,983 in commissions (86/44 x \$28,131) would be payable for 86 FHUs. We calculate the lost salvage value of the 86 FHUs as the average of their proven sales prices, preparation costs and sales commissions for 44 FHUs (findings 6, 13), extrapolated to 86 FHUs:

3 Type A FHUs at \$9,100	\$ 27,300
6 Type B FHUs at \$6,700	+ 40,200
77 Type C FHUs at \$7,865.85	<u>+605,670</u>
86 FHUs projected sales revenues	\$673,170

Less: housing preparation costs	- 146,200
Less: Flaherty/Brookridge moving costs (6 x \$3,500 + 20 x \$2,400)	- 69,000
Less: sales commissions	- 54,983
Plus: salvageable materials	+ 31,200
Lost salvage value:	<u>\$434,187</u>

We exclude the \$76,574 “liquidated damages” on the 11 FHUs Currie/Bailey and Flaherty agreed to purchase, which appellant included as the measure of their salvage value, because the “liquidated damages” (judgment) amounts differ from their sales prices, and their inclusion would duplicate part of the 86 FHUs’ sales revenues set forth above.

In this appeal, ASI’s purchasers received no intact FHUs and the ACOE thwarted the accomplishment of ASI’s salvage objective. Thus, it is not appropriate to deduct the \$181,866.33 in deposits ASI received from the purchasers (finding 15). Respondent argues that by including the \$181,866 in the Board’s damage award, appellant may get a double recovery or “windfall” profit, since the Board cannot assume or speculate that it will refund that \$181,866 (gov’t br. at 52). We have found that there is no evidence that appellant will not repay the \$181,866 in retained purchasers’ deposits, and there is credible evidence that WMA has agreed to make such refunds to the FHU purchasers (finding 15). Respondent cites no precedent, and our research has uncovered none, requiring a tribunal to direct or assure the distribution of an equitable adjustment by the prime contractor to its subcontractor and its creditors.

## II.

The ACOE’s refusal to permit CC and ASI to remove the 86 FHUs intact from Fort Bragg for resale resulted in increasing their “direct demolition” costs. ASI calculates such added costs as \$144,570 (finding 11); the ACOE calculates them at \$59,998 (finding 17). ASI’s calculation contains inaccuracies (see findings 18-19). Respondent’s calculation proceeds from the unsound premise that the equitable adjustment should be based on ASI’s rejected 26 September 1996 bid to CC that did not identify the credit for salvaged materials (finding 17). We have found that ASI’s direct cost of added demolition work was \$140,082.76 (finding 19), which we round to \$140,083. The parties do not dispute CC’s added material cost of \$8,182 (finding 12). On contract Modification No. P00005, respondent calculated 9.15% profit for CC and 10.8% profit for ASI, based on its weighted profit guidelines (finding 20). ASI’s \$3,000 item for site investigations and preparations by its subcontractors AHM and FHM fails for lack of evidence that ASI separately subcontracted with AHM and FHM for such work (finding 22).

We conclude that CC’s audited, 13.7% overhead rate for the first half of 1997, ASI’s audited 99% overhead rate, CC’s profit rate of 9.15% and ASI’s profit rate of 10.8% are appropriate for the added work (findings 20, 23). Thus, we calculate the equitable adjustment for the added demolition work as follows:

ASI added costs	\$140,083
ASI overhead @ 99%	<u>138,682</u>
Subtotal	278,765
Profit @ 10.8% of subtotal	<u>30,107</u>
Subtotal	308,872
CC added costs	8,182
CC overhead @ 13.7% x (\$8,182 + \$308,872)	<u>43,436</u>
Subtotal	360,490
CC profit @ 9.15% of \$360,490	<u>32,985</u>
“Added demolition” total	\$393,475

III.

We hold that appellant is entitled to an equitable adjustment composed of lost salvage value of \$434,187 and added demolition of \$393,475, totaling \$827,662, plus CDA interest thereon from 20 July 1997 when the CO received appellant’s claim certification (finding 9) until the date of payment.

Dated: 29 April 2004

---

DAVID W. JAMES, JR.  
Administrative Judge  
Armed Services Board  
of Contract Appeals

(Signatures continued)

I concur

I concur

---

MARK N. STEMLER  
Administrative Judge  
Acting Chairman  
Armed Services Board  
of Contract Appeals

---

EUNICE W. THOMAS  
Administrative Judge  
Vice Chairman  
Armed Services Board  
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 53953, Appeal of Clauss Construction, rendered in conformance with the Board's Charter.

Dated:

---

DAVID V. HOUPE  
Acting Recorder, Armed Services  
Board of Contract Appeals