

In Conclusion and from the foregoing report we find as follows:

Pursuant to the expert opinion provided by W.B. Fairbrother M&E Consultants (as enclosed in this report), we hereby conclude that the HVAC system installed by the Contractor, whilst being non-compliant to that called for under the specification MEX090-2005 is however fit for purpose. Albeit the manufacturer warranty offered on the non-compliant HVAC system is for 7 years and not 10 years as would have been the case for the specified system.

Nevertheless the Architects deduction of monies in the sum \$677, 092.05 for that component of work from the Contractor's Progress Certificate is wholly unreasonable and the request for *specific performance* we find also inappropriate given that the system and its ductwork had already been installed some 4 months before the Architect first raised this matter, under letter AC-162 and the absence of a resale market for the HVAC equipment. The valuation methodology adopted is therefore incorrect and a fair value (based on the cost to transfer the liability) rather than contract value should have been deployed by the Architect.

In summary and as already provided in the report the HVAC for all 6 floors of the Project have been completed with the exception of the fixing of ceiling registers/grills and the secondary ductwork to the FCUs, which amounts to a sum \$ 174,600 in the Contractor's contract price to the client. This together with the primary supply and return ductwork (with insulation) totalling \$158,720 as also valued in this report is not subject to diminution in value. The deduction for defective work should therefore have been calculated as follows:

	<u>Contractor's HVAC contract price</u>	\$851,692.05
LESS		
Attendance on the works @ 3.5%	\$ 29,809.22	
Pro-rata Contractor's overhead & profit @ 8.0%	\$ 68,135.37	
HVAC works not yet completed	\$174,600.00	
Conforming works component of contract price	<u>\$158,720.00</u>	
		<u>\$256,664.59</u>
	<u>Value of HVAC work subject to diminution</u>	\$595,027.46

LESS

Diminution calculated @ 15% (market verified)

\$ 89,254.12

AHUs/FCUs difference between 'as-if' and 'as-is' valuation

\$505,773.34

LESS

Contract Adjustments for:

(1) Interest on monies owed @ 10.5% p.a x \$ 171,318.71 from
14th of May to date of this report

\$10,793.08

(2) 3 years additional warranty or maintenance contract in-lieu

(\$25,000.00)

\$ 14,206.92

Contract defective works valuation as at date of this report

\$491,566.42

If *specific performance* was required and the AHU/FCUs removed and primary supply/return ductwork disconnected and reconnected to the new AHU/FCUs, the cost would far outweigh the benefit provided by doing so.

Considering that the equivalent solution can be obtained by providing the 3 year additional warranty at \$25,000, the cost of removal and replacement of AHU/FCUs which is likely to be in the hundreds of thousands of dollars is not the correct approach , especially owing to there being no established resale market for used AHU/FCUs (in this case used is unpacked and installed/dismantled) the Contractor will be significantly out of pocket by not being able recover its costs for these to partly offset the purchase of the specified AHU/FCUs.

By this reasoning the fair value approach to the problem is achieved by the diminution of value calculation provided above.

The Architects deduction of \$ 677, 092.05 needs to be revised to \$491,566.42 as valued at the date of this report.