

Findings from our Investigations:

1. The Subcontract has reached completion and retentions with-held are at 10% of the Subcontract price which in effect is in reality at least 25% -30% of the actual work value after adjustment for the expected normal overhead and profit (OH&P) for similar work.

Therefore likely Subcontract Work Value Calculation (excluding profit and overhead) is:

Subcontract Price \$ 425,000 X 27.5% = \$116,875 = normal overhead and profit

Then Value of Work component is

Subcontract Price = \$425,000.00

Deduct for expected normal OH&P = \$116,875.00

\$ 308,125.00 =Value of works component

2. There has been no instruction (direction) given pursuant to Article 11 of the Subcontract from by the Client (whether directly or ostensibly) for correction of the works in question prior to the Subcontract completion date and commencement of the 3 month warranty period.
3. The Subcontractor has not been made aware of the Contractor's own programme of works to have the steel columns installed immediately upon reaching the Subcontract completion date, nor is there any evidence or reason to believe that Subcontractor should have known this.
4. The Contractor in not paying the Subcontractor all of payment no.4 of 4 (in total each representing 25% of the contract price) has presumably based this on a calculation to correct the work.
5. The Contractor is believed to have priced the corrective works based a quote (received for work unseen) from another Subcontractor who is in fact also the Steelwork contractor whose speciality is neither concrete nor remedial works thereof and thus if such a quote has been provided, it cannot be accepted as representative of the price a subcontractor would charge to directly carry out those works.

Therefore from item 1

$\$308,125 \times 0.25 = \$77,031.25$

Add half retention due on completion still with-held = \$21,250.00

\$98,281.25 = quote received

6 As per the Engineers Report provided in the Appendix of this valuation, this claim relates to corrective works to holding down bolt cast-in on 47 concrete pedestal footings out of a total of 320. That's equivalent to 15% of the work which amounts to only \$63,750 (including normal profit and overhead) under the Subcontract and not the \$ 98,281.25 with-held. Clearly this shows that the Steelwork subcontractor is not carrying out this work directly.

7 However as per item 1, the valuation for corrective works should be:

$\$425,000 \times 15\% = \$ 63,750.00$, provided the Contractor is acting correctly in having this work done by others

Alternatively,

If not ,then as the case suggests in items 2 and 3 above, the Subcontractor has the right to carry this work as defects during the warranty period and the valuation for corrective works is then largely paid for from the retentions withheld in the sum of \$42,500.

The valuation for corrective works is then:

Value of works component = $308,125 \times 15\% = \mathbf{\$46,218.75}$

Conclusion from our Findings:

8 Notwithstanding the validity of the correctness of the Contractor's actions in removing this work from the subcontractor and having it done by the Steelwork contractor, we cannot support the valuation / calculation made by the Contractor of the cost to rectify the defective works.

9 Therefore in conclusion and subject to being provided with legal opinion we hereby value the correction of the defective works as between \$ 46,216.78 and \$63,750.00.

Recommendation from our Conclusion

10 The Subcontractor should consider statutory adjudication for the difference in the valuation and the amount wrongly withheld by the Contractor, including interests on those amounts.