CHAIRMAN

VICTORIAN BUILDING INDUSTRY DISPUTES PANEL
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ADCO CONSTRUCTIONS (VIC) PTY LTD
SCHOOLS PROGRAM

CFMEU

RE: APPLICATION OF EBA SITE ALLOWANCE PROVISIONS

23 APRIL 2010

DECISION

009-2010

[1] This decision relates to a notification of dispute lodged by the Construction, Forestry, Mining and Energy Union ("the CFMEU") concerning a dispute between the CFMEU and ADCO Constructions (Vic) Pty Ltd ("ADCO") over the application of Appendix C to the *ADCO Constructions (Vic) Pty Ltd and CFMEU Agreement 2008-2011* ("the Agreement").

[2] The CFMEU and ADCO are parties to the Agreement. It is not disputed that the Agreement applies to the work in question, which consist of the construction of buildings and associated works at 12 schools separately located in the Eastern Metropolitan Region. The work is part of the major schools redevelopment program funded by the Federal Government pursuant to its stimulus package. ADCO successfully tendered for the work which was let by the State Department of Education and Early Childhood Development through the Office for Resources and Infrastructure.

[3] Pursuant to the Agreement, site allowances are to be paid in accordance with the formula appearing in Appendix C to the Agreement. Clause 11 of Appendix C provides that "*(i)n all cases where the parties fail to reach agreement on the Project Site Allowance to apply to a particular site or project, then such disagreement shall be referred to the Chairperson of the Victorian Building Industry Disputes Panel for determination*".

[4] The CFMEU contended that, consistent with decisions of the former Chairman of the Panel [*L. U. Simon* (16 July 2009 Matter No 045-2009) and *Lyons Construction* (25 August 2009 Matter No 054-2009)], a finding should be made that the overall works constituted a single project and that, as the overall project value was $21.5 million, the appropriate site allowance should be determined to be $2.45 per hour.

[5] The facts in this case are essentially the same as those that pertained in the cases referred to in the immediately preceding paragraph. The Charter under which the Panel operates provides that no decision of the Chairman or the Panel is to be regarded as a precedent. Each matter must therefore be determined on its own circumstances. However, as the Panel has previously stated, "*it is in the interests of the stakeholders in the industry, namely the employers, the employees and their organisations that the Panel adopt a consistent approach to matters that come before it"* (see *Leighton Contractors Pty Ltd - Westall Rail Upgrade Project* 11 March 2010 Matter No 004-2010). Unless there were some compelling reason not to do so, the approach of the former Chairman should be followed.

[6] In reaching the decisions referred to above, the former Chairman relied significantly upon criteria established by Deputy President Ives when considering the question of site allowance and project value [*Bovis Lend Lease Pty Ltd and CFMEU* 28 December 2006 PR975618; see also *CDK Commercial Construction Pty Ltd and CFMEU* 21 September 2006 PR974122]. ADCO, however, contends that the Deputy President's reasoning should not now be followed and/or applied and that the former Chairman erred in determining that the contract packages constituted a "project". Reference was made to the history and development of site allowances in the industry and it was contended that such allowances were intended to be compensation for disabilities encountered by employees on major construction projects, disabilities which were not encountered on smaller construction sites. It was further contended that the letting of the contracts for the work on 12 separate and distinct sites as one package was merely a matter of administrative convenience and should not be allowed to lead to a conclusion that the package constituted a single project.

[7] I am not convinced that I should depart from the application of the criteria established by Deputy President Ives in this case. I am obliged to apply the terms of the Agreement. Even if I were to accept the employer's contention as to the historical background to the establishment of site allowances (and, on the basis of the material before me at this stage, I do not accept that contention), that would not prevent me from giving the terms of the Agreement their ordinary meaning.

[8] The table set out in Appendix C to the Agreement provides for site allowance rates to be calculated in accordance with "Project Value". The work in this case to be undertaken is a carefully planned enterprise, namely the upgrade by the State Government of 12 schools in the one Region. The enterprise is planned to achieve a particular result, i.e. the simultaneous upgrade of those 12 schools, rather than a general result. For whatever reason, administrative convenience or otherwise, the State Government has chosen to tender out the upgrade as a total package. There is a clearly established entity, namely the State Government, that is to exercise control over the enterprise's development. The scope of the enterprise is sufficiently definable at any given point in time so as to enable its proper definition and costing for the purpose of determining the appropriate site allowance.

[16] As I am satisfied that work to be undertaken by ADCO meets the relevant criteria, I determine that the site allowance should be calculated by reference to the overall value of the Project, namely $21.5 million. The rate of site allowance should therefore be $2.45 per hour adjusted as may be necessary from time to time in accordance with the provisions of Clause 9 of Appendix C to the Agreement.

Simon Williams
Chairman

Date: 23 April 2010