

APPEAL PANEL DECISION FORM

I. CLAIMANT AND CLAIM INFORMATION

Claimant Name	Last/Name of Business ████████████████████	First ██████████	Middle ██████████
Claimant ID	██████████	Claim ID	██████████
Claim Type	Business Economic Loss		
Law Firm	██		

II. DECISION

Select the Compensation Amount set forth in either BP's Final Proposal or the Claimant's Final Proposal as the final outcome on the claim and check the appropriate box to signify your decision.

<input type="checkbox"/> BP's Final Proposal	Compensation Amount	\$94,962.74
	Risk Transfer Premium	.25
	Prior Payment Offset	\$0
<input type="checkbox"/> Claimant's Final Proposal	Compensation Amount	\$152,360
	Risk Transfer Premium	.25
	Prior Payment Offset	\$0
<input checked="" type="checkbox"/> Remand to Claims Administrator		

III. PRIMARY BASIS FOR PANELIST DECISION

Please select the primary basis for your decision. You may also write a comment describing the basis for your decision.

- Error in documentation review.**
- Error in calculation.**
- Error in RTP multiplier.**
- Error in Prior Spill-Related Payment Amount.**
- No error.**

Comment *(optional)*:

The Claims Administrator awarded \$94,962.74 to the Claimant, an electric service contractor in [REDACTED] (Zone D). Policy 495 criteria were triggered and the financials were restated by the program accountant utilizing the Construction Methodology. Claimant appeals on the basis that the Administrator should have applied the AVM Methodology.

Claimant provides maintenance and electric service for grain elevators located on the [REDACTED]. The Administrator assigned NAICS Code 238210 “Electrical Contractors and Other Wiring Installation Contractors.” On this basis, the program accountant determined that the Construction Methodology was applicable. Claimant’s argument is that it should not have been classified as a construction company under Policy 495. Claimant argues that the rationale for the Construction Methodology, as reflected in Attachment C of Policy 495, assumes that variable expenses of a construction claimant are more accurately recorded on its P&Ls than revenues. Claimant points out that the majority of its work during the Benchmark and Compensation Periods was completed in under 30 days and invoiced with payment received within an additional 23 days. Because the P&Ls are maintained on a cash basis, Claimant argues forcefully that its revenues *are* accurately recorded on the monthly P&Ls because of its short billing cycle. Claimant also emphasizes that it does not utilize percentage of completion accounting methods like traditional construction companies. Claimant therefore contends that the Construction Methodology was not the appropriate methodology for restating its particular financials.

BP responds that Claimant’s NAICS code is listed among those to which the Construction Methodology specifically applies. BP sees the realities of Claimant’s business operation differently,

arguing that the financials exhibit precisely the characteristics that the Construction Methodology was designed to address.

The Calculation Notes provide insight into the basis for the program accountant's selection of the Construction Methodology:

“The claim is classified under a Construction NAICS Code per Appendix A of Policy 495. The DWH Accountant adopted the Construction Methodology as the COGS expense accounts are reflective of the work being performed at the time. The Claimant's Accountants stated the Materials are recorded as paid. Per the Claimant, no inventory is kept on hand. Additionally, payroll amounts tend to increase in the months with increased revenues. Variable expenses are deemed to be accurately recorded on a monthly basis and thus reflect when services are performed.”

This case presents the convergence of the decision to base the selection of a methodology based on the NAICS code with the Claimant's actual practice of accurately recording its revenues. In numerous decisions, this panelist has deferred to the professional judgment of the program accountants. Such a result could also be rationalized here if not for two factors. First, the record is undisputed that this Claimant does not utilize any form of percentage of completion accounting and its revenues are accurately recorded on a monthly basis. Of equal importance, Attachment A to Policy 495 is clear that rigid and formulaic reliance solely on the Claimant's NAICS Code is not required in all circumstances:

This document summarizes NAICS Codes that will *likely* fall into each methodology. However, it is important to note that a Claimant with a given NAICS *will not automatically* be assigned to a given methodology by virtue of the NAICS code if, in the judgment of the Claims Administrator's office, there are factors that indicate that revenues and expenses would be more sufficiently matched by applying an alternative methodology.

Here, the factors noted first above indicate that the financials would be more sufficiently matched by applying the AVM Methodology. Accordingly, the specific facts of this case are, in the opinion of this panelist, sufficient to override the Accountant's reliance on the NAICS Code.

For the foregoing reasons, the Administrator's selection of the Construction Methodology is overturned. This claim is remanded to the Claims Administrator with instructions to recalculate the claim utilizing the AVM Methodology.