
From: Robert Burt [rburt@acutus.co.uk]
Sent: 25 November 2009 22:11
To: Fiona Dunn
Cc: Dennis Murray; John Casserly; Anne Connolly
Subject: J084: tie - CUS, MUDFA; Comments and observations on revised CUS adjusted model
Attachments: CUS BT Remedials labour hours.pdf; 201109 CUS -Model adjusted for labour factual info with RB Comments.xlsm

Dennis / Fiona – further to this latest model from CUS, I have included below my comments and observations re same.

Additional Work Section Preliminaries: £'Nil' [?]

The most recent model provided by CUS *appears* to value the alleged additional Work Section prelims at 'Nil'. That said, it is not clear whether this is CUS' real intention – I'm not sure what the terms were of its current without prejudice calculation.

It would however be quite reasonable for **tie**, when responding to CUS, to 'presume' that this is the case (this would obviously need to be confirmed with CUS).

[Note: the information previously provided by CUS on 6 November 2009, indicated that on an 'actual cost' basis, its revised preliminaries claim was £362,980. No data / analysis was provided substantiating this amount – but crucially nothing is included in the current calculation]

Work section disruption claim 'variables': £2,045,720 claimed

1. Increased labour rate claim: CUS appears to have dropped this element of its claim (i.e. it appears to have accepted that the claim for an increase in the labour rate to £20.00/hour is not valid). It's calculations therefore proceed on the basis of a labour rate of circa £14.89/hr plus 7% added later for fluctuations.

Please note however, that if disruption was valued 'properly', CUS would be entitled to payment of the measure of the disrupted hours at an actual cost of circa £20.00/hr – not merely at £15.93/hr (£14.89/hr plus fluctuations) as the present claim 'allows'. As a consequence, it is likely that (at least in this respect) the present CUS valuation method slightly undervalues this element (by about £4.00/hr). That said, the question remains about how many hours are true disruption hours.

2. Plant allowance: CUS appears to accept that a reduction in the plant allowance is valid (i.e. to reflect a shorter number of working days – the 10hr day versus 8hr day issue). It has adopted our starting position of applying **80%** of the original allowance.

Note: This is actually a larger reduction than it probably should be. The correct reduction is more likely to be around 10% not the 20% reduction presently applied (in value terms, this would halve the present reduction of circa £250k to £125k).

3. Labour hour variables:-

- 3.1 Errors, anomalies in CUS records: CUS accepts that some reduction in the labour hours claimed is appropriate. However, instead of applying the **10.00%** reduction we had previously worked out and agreed with CUS for the week ending 24/04/09, it has applied a reduction of **2.56%**. That percentage is based on what CUS contends is a wider sampling exercise than only the one week previously reviewed.

CUS attempted to demonstrate the veracity of the 2.56% during recent meetings. It could not do so. Instead, further anomalies arose in relation to the hours claimed and/or allegedly paid to sub-contractors. Although we have not been able to check the full detail of the current CUS figures, the 2.56% reduction proposed by CUS still feels low.

At this stage, we have no firm data which would convince us to change the **10.00%** reduction (although it is very possible that overall this figure might ultimately be incorrect).

[Note1: Every 1.00% increase in the percentage reduction applied reduces the current CUS claim by circa £35,000. So, for example, changing it to 7.56% reduces the current total by circa £175k; changing to 10% reduces it by circa £260k]

[Note2: as previously discussed, this does not address the fundamental question of responsibility for the hours allegedly expended]

3.2 BT Remedials: on the face of it, the recent CUS model accepts the principle of the need for a reduction in the hours claimed to take account of the BT remedials. In fact, this model does not result in any reduction in hours. This is due to the hours per LM which CUS contends it took to replace the BT ducts.

CUS contends that 5.38hrs/LM is a reasonable measure of time required for this work. This results in an overall assessment of 19,860 hours for BT Remedials. The CUS original 'records' show 19,984 hours. So in fact CUS does not recognise any reduction.

Our base model applied 10.39hrs/LM for the remedials.

The difference in the hours per LM arises from the base 'rate'/'rates' used to establish the labour content.

- CUS relies on two BT rates – see attached pdf file for breakdown. Those rates total circa £164.92/m and £202.63/m
- **tie's** labour rate analysis relies on a rate referred to in an analysis prepared by Billy MacBeth. That rate totals £379.08/m.

I'm not able to tell from the current information available to me which rate is more applicable.

CUS has also reduced the concrete breaking out concrete labour effort from 3.75hrs/m to 1.875 hrs/m.

Their logic behind this is that not all ducts were encased in concrete. Again, I'm a bit limited here because of a lack of factual knowledge on the remedials.

They do not question the length of ducting (31,500m).

The real issue is the hours per LM of remedial work.

I expect that there is likely to be some scope here for negotiation on the labour effort.

Perhaps we could discuss tomorrow morning.

3.3 Cable strikes: CUS has reduced the number of strikes to 42 and also the hours lost per strike to 0.92hours. Our base model applied an estimate of 100 strikes at 30hours each.

Looking at John Casserly's emails of 18/11/2009 we are looking at a minimum of 143 No. cable strikes (up to possibly 164No.); at 4 hours per strike.

3.4 Water mains rectification works: Looking at John Casserly's email of 18/11/2009 we are looking at 10 No. water main issues.

CUS had previously inserted 9No (totalling 87hours). For present purposes, I've prorated the hours to account for 10 issues.

3.5 Effect on productivity of adverse weather: we had previously applied a 1.00% reduction for this event. CUS has rejected this reduction.

There is however merit in the CUS position that this should be rejected – the logic being that as they have previously been granted an EoT the cause of the work being pushed into a period of bad weather would be an issue for which tie is responsible.

In effect this makes very little difference (only circa £35k).

3.6 Reduction output as a result of longer shift: this was discussed at the previous meeting where CUS rejected the deduction on the premise that since we are not allowing any increase in the rate for the longer shift (and taking the benefit of the plant reduction) we can't really take this deduction too. They do have a point.

3.7 Effect of BT remedials on other work: difficult to quantify. We did not include any reduction – neither do they.

4. Linear meterage: This is not an issue.

5. CUS labour factor: addressed in 3 above.

6. Plant Factor: CUS appears to accept the previous plant disruption factor of 17% (reduced from 291% in the previous model).
7. CUS Reinstatement claim: CUS appears to accept that this is not applicable. I'm not sure if that means they have dropped this claim completely, or if they will come back later and claim it separately.
8. Recovery under Change Control: CUS accepts tie's position on recovery under change control. One issue to watch here is the value applied to each section. This could be different now. I don't have the relevant details / data to check this.
9. Fluctuations: on the basis that the labour rate is now as per the original contract something would be due for fluctuations. That said, I'm conscious this itself is complex and not yet settled between the parties. As such, any agreement here may need to be carefully worded to limit it to this issue.

Other issues / questions arising:-

1. Period covered by CUS calculations: the current CUS claims relate to various periods e.g. Oct 2008 to May, July, August 2009 depending on the particular Work Section. There therefore exists the possibility that it will try to 'factor up' the £2M to take account of further periods. I'm not sure what CUS intends in this respect.
2. Sections covered by CUS calculations: similarly, CUS factored up its previous claims from £10M to £14M (without providing details) for the remaining three Work Sections (and also the above). It may therefore attempt to increase the £2M for this matter too.
3. Application of 8.8% uplift: this may not be a big issue but the uplift may only apply at full value if the rates and prices analysis is correct. If 'cost' is the correct method then there would be an argument to say that CUS may not be entitled to recovery of profit; whereas they probably would be entitled to some recovery for a contribution to head office overheads. This is unlikely to have much effect.

One of the main issues is that the current CUS calculation starts from the base position that **tie** is responsible for all additional hours (unless specifically deducted) and that the CUS original production rates / outputs were reasonable. This is not necessarily correct – and hasn't yet been proven. As discussed it is not the correct position from which to assess disruption.

In this regard, the current exercise being undertaken with Kevin and Jackie shows very little disruption over the first 3 weeks in January 2009. This however was expected simply because of the way in which they are approaching the disruption issue.

Summary

I expect that much depends on whether CUS intends this £2M to represent (i) its overall claim value; or (ii) merely a 'model' upon which to add a factor for the other three sections not yet submitted and any other Work Section period beyond that presently analysed. If '(i)' then I do think the parties are getting very much closer to resolving the issue. If, as I'd suspect it is closer to '(ii)' above, then they are probably looking at adding 40% to the £2M. This takes it away from a more reasonable figure.

Changing the CUS spreadsheet to reflect the variables above (except 3.2 above) reduces the £2M to **£1.777M**. See attached revised sheet. Revising '3.2' would reduce the figure further.

Without wishing to state the obvious, there will come a 'tipping point' where the cost to **tie** of continually analysing and defending the CUS disruption claim(s) and the risks attaching to having this decided in a dispute forum make settlement a more attractive option. Reducing the claim to circa £1.7/£1.8M might well be approaching that tipping point. The same scenario (but working in reverse) however is also true of the CUS position.

The biggest risk to **tie** remains that whilst CUS has only limited evidence of hours allegedly worked, **tie's** records (and therefore its ability to counter the CUS claims) are very much more limited. If referred to a third party for resolution it is likely that some adjudicators would attempt to work out the answer for themselves based on the CUS

records. Whilst we will definitely be able to reduce the claim values it is likely that a third party will look sympathetically on the CUS position.

I will be in the office all day tomorrow so if you wish to discuss the above, I can be contacted at any point.

Regards

Robert

From: Fiona Dunn [mailto:Fiona.Dunn@tie.ltd.uk]
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Subject:

Robert

As discussed – you will note that it is titled “Model adjusted for labour factual”

Regards

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