
From: Robert Burt [rburt@acutus.co.uk]
Sent: 23 June 2010 16:03
To: Fiona Dunn
Cc: Anne Connolly
Subject: J084: FW: Revised Carillion Claim

Fiona – Anne has spent a couple of days going through the revised CUS claims. I have spent some time today going through same. Initial comments are as follows.

Overview

In short, the current claims are essentially based on the same (hypothetical) approach adopted by CUS before. As before CUS starts from the position that *tie* is responsible for all additional labour hours (beyond those which it decides to omit).

Although CUS has provided more ‘analysis’ in its recent submission; it still has not provided the data and facts which may (or may not) support its position. That is, it appears that CUS again fails to substantiate its claims by providing verifiable / auditable data (perhaps you can confirm whether it has presented data beyond that emailed to us on 15 June). It merely presents ‘figures’ which cannot be checked. Importantly, I note that CUS has failed to provide any of the information requested in our email of 23 January 2010.

What CUS has done is present a claim which may well be viewed by a third party as being ‘more balanced’ than previous submissions. The present risk to *tie* is that what CUS now refer to as actual data (particularly re plant) *may* be supportable. The current difficulty which we face is that CUS has still failed to provide that data analysis for verification. As such, we believe it is extremely important that CUS are pressed to provide *all* of the data relied upon (as opposed to mere summary tables) so that their claims can be properly reviewed. Without sight of that data it is not possible to verify whether CUS is correct or not re the plant and labour resources alleged to have been committed. That is an uneasy and risky position to be in.

Initial comments on recent CUS June 2010 submission

In the first instance, we note from its recent submission that there has been a significant reduction in the amount now claimed by CUS. As detailed in the table below, CUS now seeks to recover £8,848,939 (in essence **£7,548,939**, excluding “Claim Preparation Costs”). This is in contrast to the previously claimed amount of £13,144,871. In broad terms the CUS claim can be summarised as follows:

CUSSA Revised Schedule of Rates and Entitlement Summary	CUS claim Dec 2009	CUS claim June 2010
Work Sections (excl. prelims)	£10,741,419	£7,218,256
Preliminaries (incl. traffic management)	£ 1,453,452	
Preliminaries (excl. traffic management)		£ 105,272
Traffic Management		£ 225,311
Sub Total	£12,194,871	£7,548,839
Claim Preparation Costs	£ 950,000	£1,300,000
Total	£13,144,871	£8,848,839

Notwithstanding the above, from our initial review it is apparent that the key factors which have contributed to the *reduction* in value are as listed at (i) to (v) below:

- (i) preliminaries now claimed on the basis of only allegedly prolonged site accommodation costs. Previously CUS calculated its alleged “entitlement” to additional preliminaries (including Traffic Management) by reference to a “factor”;
- (ii) traffic management now calculated on the basis of an alleged ‘average’ weekly cost, where previously a “factor” was used;
- (iii) an increased labour rate of £18.80/hr as opposed to the previously sought £20/hr;

- (iv) an adjustment to the alleged tender allowances for plant to reflect what CUS claims was the actual plant usage in a particular work section. This ultimately impacts on the rate CUS applies its disruption “factor” to. This is a key area that requires to be understood;
- (v) alleged disruption to reinstatement now calculated for each work section on the basis of “actual” cost less the planned “tender allowances”, less a proportion in respect of CUS inefficiencies (buying losses, over-breaking of trenches and the like). Previously delay and disruption to ‘reinstatement’ was claimed by CUS by reference to a percentage calculated from what it claimed to be its original tender allowances in this regard. That percentage was then applied to total amount claimed by CUS in respect of its “New Rate”.

What CUS has failed to address (or appears to have failed to address) are the ‘core’ concerns re the increased rate, the hours claimed and a lack of evidence of who was doing what, when and why. The overriding presumption that **tie** is responsible for all hours worked remains in place. We cannot see where/if CUS reconciles the previous concerns re anomalies in ‘recorded’ and/or claimed hours.

What is also apparent is that the meterages claimed have changed, the hours claimed have changed, the productivity rates have changed – all without proper explanation and evidence.

I’m not sure how far or where you would like us to take this at present, but may I suggest the following short-term proposals:-

- (i) Anne continues to look through the claims over the next day or so to highlight other areas of concern and/or error in the analysis;
- (ii) We could meet with you, say in the afternoon of Tuesday 29 June, prior to your meeting with Philip on 30 June, to discuss the issues arising;
- (iii) Most importantly at this stage, CUS really needs to be pressed as hard as you possibly can for the data underlying the summary figures. The absence of this data renders it difficult to assess the risks to tie (particularly in relation to the plant element of the CUS claims);
- (iv) CUS should also be pressed to substantiate, and demonstrate the source of, all of the revised figures in their June 2010 claims (if they provide the data listed in our email of 23 January that would go a long way to addressing this point);
- (v) Would it be possible to arrange for CUS to present / explain this revised analysis to tie or ourselves (that would be much more cost effective than us trying to figure it all out again)? This would also ‘buy’ time just in case this dispute does proceed further.

It would also be useful if we could discuss on Tuesday afternoon (or after your meeting with Philip on Wednesday) where this dispute is likely to go (so that we do not get caught out in terms of preparation / report writing for any adjudication / mediation process).

Once you’ve had a chance to review the above, perhaps you could confirm if you would like to meet on Tuesday afternoon.

Regards

Robert

Robert Burt, Director

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From: Robert Burt
Sent: 15 June 2010 22:52
To: 'Fiona Dunn'
Subject: RE: Revised Carillion Claim

Thanks Fiona. All three emails received. I'm out most of this week at adjudication hearings (not Tram related) but have passed to Anne to start looking at this.

Will get back to you early next week with initial comments. We can then discuss how best to address the revised submission. Hopefully that's OK with you.

Kind regards

Robert

From: Fiona Dunn [mailto:Fiona.Dunn@tie.ltd.uk]
Sent: 15 June 2010 09:51
To: Robert Burt
Subject: Revised Carillion Claim

Robert

I attach for your info an advanced copy of a letter received from Carillion regarding their claim.

I have not yet received their revised back-up but will give you a call when I do!

Regards

Fiona

From: Roxanne Nicol
Sent: 15 June 2010 09:45
To: John Casserly; Fiona Dunn
Subject: FW: Letter

From: Murray Bill [mailto:Bill.Murray2@carillionplc.com]
Sent: 14 June 2010 16:42
To: Roxanne Nicol
Cc: Lowe Taryne D; GMBXamismudfa
Subject: Letter

Roxanne,

Please find attached CUS letter 3163 for your records. The original and attachments are in tonight's mail run.

Regards.....Billy


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