

EXPLANATORY NOTE - PROJECT CARLISLE SCOPE TERMS AND PRICE

Overall Governance

We have taken cognisance of the Ethical Standards in Public Life etc. (Scotland) Act 2000 - Model Code of Conduct (see appendix A)

We have also considered compliance with EU Procurement Law

Executive Overview

This Explanatory Note seeks to inform **tie** on the optimum route map to finding a resolution to the difficulties which exist and bedevil the Infraco Contract. Those issues are thought to be:

- Difficult and capricious contract terms.
- Incomplete design.
- Extensive Changes.
- Unpredictable and unforeseen works/costs to the On-street sections.
- Project Management difficulties requiring **tie** to engage excessive advisor/consultant support.
- Poor Project/Design Management skills by the Contractor.
- Lack of proper Programming.
- Diminished stakeholder confidence in an affordable ETN being delivered by the Infraco Contract.

Infraco submitted an Offer under the guise of Project Carlisle on the 29 July 2010. This Explanatory Note considers that Offer and outlines the parameters for a Counter Offer. We conclude that a Starting Point offer of £272 million (£90 million less than Infraco's Offer) could be affordable within a total budget cost of £600 million for the ETN Airport to Newhaven.

However, we express some caution:

- **tie** should expect in the process of negotiation to have to close the £90 million gap between Offer and Starting Point.
- We are only able to propose Budget Costs for On-street Civil Engineering Works and in any event the actual costs will not be known until the work is carried out.

We also draw reference to the following issues which need to be resolved by **tie**:

- Solve the problems of providing a temporary power supply to a temporary Systems Point at St Andrews Square
- Finalise the design brief for On-street Civil Engineering Works.

- Estimate the cost of On-street Civil Engineering Works.
- Pricing the Infraco On-street works.

Financial Summary

	Airport – St Andrews Square £ million	St Andrews Square – Newhaven £ million	Total
Starting Point Budget	286	60.5	344.5
Add SDS/PSSA	24	NIL	24
Mean sensitivity	-7.5	23.5	16
High Sensitivity	38	46.5	84.5
Contract Price	175.1	63.5	238.6

Finally, we do believe that it is feasible that an ETN - Airport to St Andrews Square can be delivered by mid - late 2012 provided there are no further delays. We do not believe that the same timing can now be achieved for Airport to York Place.

Assuming that **tie** keeps its other costs within £200 million, we also believe (based on the information provided to us by **tie** and Infraco) that it is reasonable for **tie** to assume, before entering into detailed negotiations with Infraco, that an ETN could be commissioned from Airport to St Andrews Square within the budget of £545 million.

The Revised Scope

Our evaluation is based on the premise that the Infraco will not be required to carry out any further Civil Engineering work east of Haymarket, other than completing the Enabling Works in Section 1A and correcting defects between Lothian Road and Waverley Bridge.

The Infraco Works are to be separated into two parts:

- Part A** Airport to Waverley Bridge
- Part B** Waverley Bridge to Newhaven

Part A – Airport to Waverley Bridge.

With the exception of those works detailed in Appendix B completion of the Infraco Works in Part A is to be executed by the Infraco in accordance with the revised Sectional Completion Dates explained below.

Part B – Waverley Bridge to Newhaven

At their absolute discretion **tie** may instruct Infraco to carry out Infraco Works (excepting those detailed Civil Engineering Works) between Systems Points.

The GMP is by definition to be the final price for the Scope subject only to any variation or change which **tie** may be required to instruct in the future. We are assuming that such variation or change will have to be necessary for the satisfactory completion of the Infraco Works/ETN as defined in the Infraco Contract.

We have made no allowance for the Edinburgh Gateway Project which will be dealt with as Compensation Event (including design costs). We understand that it is feasible to believe that, subject to timeous agreement with Infraco on price for the enabling works, they should not delay the Infraco Works.

Compliance with EU Procurement Law

We believe that we have reached a solution which is in the public interest, but which may not deter questions being asked whether it complies with EU Law.

In our opinion what we are proposing protects the integrity of the Infraco Contract. It is caused by contractual Compensation Events, in particular the delays to Utility Diversions. Such circumstances were not foreseen during the properly conducted procurement process. Moreover, if the tenders had been based on these circumstances, we see no reason to believe that the outcome for the failed tenderer would have been different.

PAYMENT & CONDITIONS PART A

Guiding principles in arriving at a GMP for Part A

We explain that we have not been able to ascertain the GMP as a matter of fact. Our ascertainment is based on our judgement, relying on and taking account of information provided to us by the Infraco Parties and **tie** Limited - for which we can offer no guarantee or warranty to its accuracy. We recommend that our workings and budgets are verified by **tie** to satisfy themselves that a resolution by this route is affordable.

We have considered "affordability" for **tie**, but this has been only one factor in coming to a conclusion on the counter offer from **tie** and the eventual settled agreement.

In considering all of the issues we have decided that the following items are excluded from the GMP and should be subject to separate investigation and negotiation:

1. All works executed under or in connection with the Princes Street Supplementary Agreement.
2. Any payment to the SDS Provider.

By its definition the GMP should include for any additional payments due from **tie** to the Infraco, or for damages due from Infraco to **tie**, arising from any departure from the Base Case Assumptions, whether notified or not, and including any caused by breach of Contract by the Infraco. Moreover, the GMP should include for any payment/price adjustment entitlement from such departures which are notified and inter alia arise from **tie** Changes already instructed, **tie** Mandatory Changes or Changes in Law.

In arriving at the GMP we are not assisted by any meaningful explanation of prolongation or, in most cases, additional costs. We can refer to Sub-contract prices given to the Infraco by certain civil

engineering sub-contractors and some lump sums put forward by the Infraco for overheads and other increases in cost. We do take these amounts into account in determining the GMP. Moreover, we are able to assess certain costs that the Infraco may incur and the extent to which they may mitigate such costs.

In the absence of justification by both parties we are adopting the following principles:

1. The parties are put in the same situation as they would have been at May 2008 if the design had been completed for the revised Scope of Works.
2. Following the principle of Hadley & Baxendale - payments which may fairly and reasonably be considered as either arising naturally in the normal course of things, or may reasonably have been contemplated by both parties when they entered into the Infraco Contract.
3. Determining the value of the GMP broadly in accordance with the principles articulated under Clauses 88.8.1 to 88.8.4.

Throughout this explanation we refer to "Starting Point" by which we mean the minimum cost or value we consider to be in accordance with the above principles. It may be increased or decreased by **tie** in making a counter offer or in reaching a settled position with Infraco.

Completion Dates and Prolongation

Infraco's culpability for delay

We have concluded that Infraco are as yet not capable of carrying out the Civil Engineering works to the On-street sections. Our reasoning being:

- To date the Infraco Parties have failed to issue an assured integrated design for the track and track foundation which has been approved by the Roads Authority.
- We have no confidence that the Infraco Parties have sufficient experience to produce such a design which represents best value taking account of whole life costs.
- The work carried out in Princes Street is defective. The defects suggest that the Infraco Parties do not have adequate knowledge of the DMRB and local materials.
- Moreover, the defects suggest that the Infraco Parties do not possess the skilled resources required to satisfactorily complete 7.5 km of on-street work to sensitive city streets.
- The Infraco's behaviour when coming across adverse conditions is contrary to the spirit of co-operation and expediency required for such work.
- Our point of contact for the Infraco Members has expressed a strong desire not to carry out any works east of Haymarket.

It is also a fact that the Infraco have not as yet completed the design for the Infraco Works.

Extension of time

We also take note that the Infraco has made no submission for extension of time other than in respect of Rev 1 and MUDFA Rev 8. The first has been granted and Robert Howie QC has determined

the Infraco's entitlement in respect of the latter. We also note that **tie** offered nine months extension of time on 13 November 2009. We have decided therefore that it would be fair and reasonable, taking account of the circumstances explained below, to set new Sectional Completion Dates where Robert Howie has determined them with the exception of where he has decided that the Infraco has no further entitlement. For those sections to set them in accordance with **tie**'s letter of 13 November 2009.

The revised Completion Dates become:

Section A	Set by Robert Howie QC	2 November 2010
Section B	Set by the letter dated 13 November 2009	1 April 2011
Section C	Set by the letter dated 13 November 2009	1 December 2011
Section D	Set by the letter dated 13 November 2009	6 June 2012

Following discussions with **tie** we understand that the six months commissioning period between Section C and D could be reduced by up to 3 months.

It should be noted that in accordance with Infraco's Programme issued with their Offer they would suffer some £9 million in Liquidated Damages.

Liquidated Damages

We are advised by **tie**'s Financial Director the calculation of losses to be reflected in Liquidated damages may not be materially less for a truncated project. We therefore assume Liquidated Damages to remain as set-out in the Infraco Contract.

Prolongation costs

Infraco have not submitted any detailed claim for recovery of prolongation costs since Rev 1 and their Project Carlisle Proposal deals with it in global terms. For the off-street works we also take account that the Infraco has at the time of carrying out this evaluation not completed the design. Moreover, they have failed to give full Estimates as required by Clause 80 and have habitually been in breach of Clause 60. We are therefore unable to quantify and evaluate prolongation as a matter of fact.

We have in any case to consider the effect on prolongation due to the revised Scope, which omits the on-street civil engineering works and truncates the project at Waverley Bridge. The delays caused by utility diversions have no bearing on the GMP for Part A.

We note that **tie** admit a substantial increase in value through Changes. But, time is not directly proportional to increase in value. Nor are we convinced that in many circumstances to build the IFC design would take longer than could have been anticipated from BDDI. Moreover, in some cases we believe that the IFC design does not represent best value and is not what an experienced design and build contractor would normally have designed. There is no evidence that Infraco has exercised any value engineering we would expect of an experienced contractor.

There has been obvious delay in obtaining approvals from CEC and Network Rail and we are unable to disentangle responsibility for this in the absence of a detailed claim from Infraco. All of which does not lead us to conclude that there is no culpability on the side of **tie**. But we do conclude that in

light of the circumstances experienced by us through the Project Carlisle process that Infracore are culpable for delay and we are confident that they are not entitled to recompense for the full delay suffered. We find that the failure of Infracore to properly detail a claim for prolongation prejudices them.

We therefore decide that we cannot place any value on prolongation costs and propose that, in the absence of a detailed claim from Infracore, this is a matter which has to be compromised by the parties.

Valuation of civil engineering work by BB (UK).

The amount claimed by BB (UK)

To establish the level of BB(UK)'s claim for Scope Part A we start with BB(UK)'s offer of £251 million which includes sub-contractor prices amounting to £165 million and BB(UK)'s claims for Indirect Costs amounting to £46 million (including £5 million of risk) and a further £22 million for overheads and profit. It also includes £16.5 million for SDS. In doing so we can make the following reductions:

	£ million
Offer (excluding SDS)	235
Work Sections 2A-7A (preliminaries and work) – agreed with BB (UK).	-12
Reduce BB Preliminaries, Head Office Overheads and Profit reduce from £41.5M to £19.5M based on our assessment of cost to date of £6 million plus cost to complete of £13.5 million.	-22
We omit Risk of £5M and £4M	-9
Overheads reduced from 10 to 5%	-11
Revised Offer On-street and Off Street	183
Deduct On-street work not to be included in Scope	-21
Re-cast BB(UK) Claim for Scope Part A	160

Table 1

We draw attention to:

- the changes to Base Case Assumptions have not been fully substantiated or agreed. Where the changes arise from an agreed Notified Departure the Infracore is in breach of contract in this respect; some increases in cost of changes give rise to a need for scrutiny. For example:
 - the Gogar Burn Retaining Wall has increased by some 2,000% in cost; and
 - the Russell Road Retaining wall has increased by some 230%.
- there are substantial increases in all sub-contractor costs including 22% for the Depot.

- the alleged changes for Off-street works include values assessed by **tie** totalling some £13.08 million
 - £3.9 million for works instructed by third parties and £501k for betterment;
 - some £651k of Provisional Sums are said to have been instructed; and
 - some £8.03 million for Specified Exclusions
- there are value engineering savings to be made for example
 - to Murrayfield Retaining Wall;
 - Gogar Burn Retaining Wall at the Airport;
 - Russell Road Bridge; and
 - Balgreen Road Bridge.

As a Starting Point we can add the £13.08 million adduced above to the £80.41 million contained in the original Contract Price. **tie** have also confirmed to us that they assess their liability for Changes arising from the Pricing Assumptions in Schedule Part 4 at £19.8 million. We understand that this liability does not fully reflect **tie**'s liability - Infraco inform us that there are as yet further submissions from them amounting £17.78 million not considered by **tie**. We are also told that **tie** have certified additional payments amounting to £3.52 million for circumstances leading up to Rev 1.

In summary we assess the starting point (including the Enabling Works at Newhaven) as:

	£million
Allowance in Contract Price	80.41
None - pricing assumption changes valued by tie	13.08
Pricing assumptions valued by tie	19.80
Rev 1 payment agreed	3.52
Payment for Enabling Works at Newhaven	8.24
Outstanding changes claimed by Infraco (40%)	7.11
Starting Point	132.16

Table 2

As an alternative we can adduce from the Infraco's Proposals that the cost of procuring sub-contractors to carry out the Off-street works should not exceed £125 million. From that we can deduct savings of £12 million which have emerged from discussions with BB(UK) after the Proposal was submitted. We have then considered what the appropriate mark-up should be to compensate

BB(UK) for acting as a Management Contractor – in the circumstances we consider a fair and reasonable allowance to be 5%. On this basis we consider a valuation of £119 million could be appropriate for the Off-street civil engineering works as detailed on the final IFC drawings. This excludes approximately £8 million for the Enabling Works at Newhaven and the payment already agreed for Rev 1. - arriving at much the same conclusion as above.

Taking account of this we determine that the fair value for Part A Civil Engineering work is not less than £132.16 million.

Siemens

Appendix B analyses Siemen’s Contract Price of £96,917,005. Siemens have also submitted claims for Changes amounting to £5.38 million and an amount of £2.37 million for what they refer to as Additional GMP Carlisle Components. Our starting point for Siemens is summarised as:

	£ million
Airport to Haymarket	71.33
Haymarket – Waverley Bridge	6.67
Alleged changes	5.31
Deduct prolongation/disruption claimed	-1.52
Urban Traffic Light Control Airport to Waverley Bridge	2.09
OLE finials for street lighting	0.29
Starting Point	84.17

Table 3

CAF

We make no adjustment to CAF’s Contract Price. We take the view that any storage charges are a matter to be dealt with by Infraco Parties. In the event there are surplus trams they should be stored at the Depot.

Summary

	£ million
For Scope Part A GMP	
Starting point for BB (UK)	132.16
Starting point for Siemens	84.17
Starting point for CAF	55.78
Total Starting Point for GMP	272.11

Table 4

PSSA

In respect of the PSSA we are unable to place a value on this work because:

- we understand that it is common ground that the demonstrable costs submitted by Infraco are not agreed;
- it is admitted by Infraco that the works are defective and they have explained how and when they will remedy such defects; and
- in any event, the works have not been constructed a design approved by the Roads Authority.

We suggest that the fair and reasonable way-forward is for the parties to seek to resolve these matters and payment out-with the GMP.

Payment to the SDS Provider

We note that the Proposal from Infraco claims a payment of £16.275 million for design and services since May 2008, increased from £4.983 million. We believe that there are grounds to carry-out an investigation into SDS's entitlement and into any liability which may arise from failures by Infraco Parties to comply with the Infraco Contract. These reasons can be summarised as:

- evidence that the delivery of the design has been delayed by Infraco;
- examples of where the design solution does not represent best value;
- failure to deliver an integrated assured design for On-street works which will be approved by the Roads Authority;
- In addition to value engineering opportunities included above we believe that savings could have been made at:
 - Depot Access Bridge and Retaining Walls;
 - Tower Bridge;
 - Haymarket Viaduct; and
 - Various drainage solutions.

Moreover we believe that SDS's input into the PSSA process has resulted in unnecessary cost and a design solution which will not be approved by the Roads Authority.

We also consider that a designer with the experience expected for this project should have mitigated the delays and problems arising from finalising design proposals with the various departments of CEC.

We now know that there is an agreement between BB(UK) and SDS which may be prejudicial to **tie** and a breach of contract by both Infraco (as joint and several parties) and SDS.

We therefore make no recommendation on any value attributable to SDS Provider other than to recommend that an independent investigation should be carried out by **tie**.

We also recommend that as a Starting Point **tie** reserves the right to pursue any individual Infraco Party or all Infraco Parties for negligence arising from the design of the Infraco Works.

Reconciliation with Infraco Offer

	£ million
BB (UK) Offer	234.33
Deduct elements not included in Part A GMP	-25.00
Deduct Savings agreed	-12.00
Deduct risk allowances	-9.15
Deduct PSSA	-12.81
Adjusted Offer	175.04
Starting Point	132.14
Variance BB (UK)	42.90
Siemens' Offer (Airport to Waverley Bridge)	126.90
Starting point	84.17
Variance Siemens	42.73
CAF Offer	55.78
Plus €5.83 for storage etc.	4.79
Starting point	55.78
Variance CAF	4.79
Total adjusted offer	362.51
Total Starting Point	272.11
Total Variance Offer to GMP (excluding PSSA and SDS) - £ million	90.40

Table 5

Affordability

Haymarket to Waverley Bridge

The missing element of works from Airport to Waverley Bridge is the cost of Civil Engineering works from Haymarket to Lothian Road. The sub-contract pricing provided by BB(UK) asserts that the cost has increased from £3.871 to £12.601 million. The actual cost has yet to be forecast but it appears

that savings will be possible by applying a sensible design brief. The outline of the brief discussed with the Roads Authority is:

- Rheda City track slab to be no more than 404 mm deep.
- The infill between tracks to be concrete with a 40 mm bituminous or mastic wearing surface.
- A minimum depth of sub-base to satisfy DMRB (geo-textile replacement to be considered).
- Capping where CBR at formation is less than 5.
- Unforeseen obstructions and voids to be dealt with on an as found basis.
- Adjacent pavement works to be determined by the need to construct a sound joint between new and existing pavements.
- The potential for differential settlement will provided for by a best value solution.
- Latent void etc to be residual risks.
- Duct design will be reviewed to obtain best value.
- OLE base design will be reviewed to obtain best value.

Waverley Bridge – St Andrews Square

The minimum length of network which could be commissioned past Haymarket is to St Andrew's Square. To do so it would require a temporary power feed. It is thought that this could be produced by either installing the OLE to York Place or a temporary link from Cathedral Lane by way of St James Place and North Clyde Street Lane a distance of approximately 300 metres – much of which may be over-ground on poles or fixed to the NCP Car-park. A terminus in St Andrew's Square would require the installation of 350 meters of track with an additional crossing.

We estimate the additional costs to be added to the GMP to achieve a working network to St Andrews Square as:

	£ million
Civil Engineering Work Haymarket to Lothian Road	9.00
Civil Engineering Work Waverley Bridge to St Andrews Square	3.00
Siemens	1.10
Temporary Power Supply	0.30
Contingency	0.50
Total	13.90
GMP starting point for Part A	272.11

Total starting point

286.01

Milestone Payments

Table 6

Construction Milestones will have to be determined from which interim payments may be determined.

By reference to the Contract Price Analysis we can ascertain that the Total Construction Milestones should amount to:

	£ million	£ million
	Construction	Preliminaries
BB (UK) – 27% Preliminaries	96.50	35.64
Siemens – 23.5% Preliminaries	64.39	19.78
Total	160.89	55.42

Table 7

The Opening values should be calculated:

- Construction - as previously certified less any payment for PSSA and SDS
- Preliminaries recalculated as a proportion of Construction.

Interim values should be calculated:

- Construction Milestones – as completed
- Preliminaries – pro-rata of the difference between the total shown above and the opening value calculated and total value of Construction Milestones shown above.
- We suggest that any overpayment or underpayment at opening should be adjusted over a 12 month payment at monthly tranches.

Special Conditions

In addition to collapsing Schedule Part 4 and substantially revising Clause 80 there will be certain other special conditions other than an irrevocable Condition Precedent to the effect:

Infraco will procure such design assurance that is necessary for the Independent Competent person to admit a design for the On-street trackwork which is approved by and meets the requirements of the Roads Authority and of **tie** acting with absolute discretion

1. Infraco will not be entitled to extension of time to the revised Sectional Completion Dates C and D unless:

- a **tie** procure and complete the Civil Engineering Work from Haymarket to Lothian Road in such time which would prevent Infraco, working reasonably in Designated Working Areas, achieving those revised Sectional Completion Dates; and
 - b **tie** issues a Change Order pursuant to revised Clause 80.
2. The On-street Civil Engineering works will be completed by others under the direct supervision of **tie**. Other than providing design assurances in respect of the design of such works as directed by **tie** the Infraco will have no liability for such works. However, Infraco will be responsible for integrating the design of the E&M Works with the On-street Civil Engineering works.
 3. Infraco Parties will disclose all Agreements which they have entered into together since 13 May 2008 however so arising from and which they would have not entered into but for their involvement in the Infraco Contract .
 4. Pursuant to Clause 26 Infraco will submit for **tie**'s approval full details of the experience and qualifications of the Infraco's Representative and that such approval will be at the absolute discretion of **tie**.
 5. Only persons nominated as Key Personnel shall have day-to-day responsibility for and be involved in the performance of the Infraco Works.

Note:

1. Infraco will be responsible for all costs which may arise from any development or revision to the design other than required by a **tie** Change.
2. The GMP will be deemed to cover any additional costs arising from Specified Exclusions, Landfill Tax and any unforeseen Utility Diversions to the Off-street work costing less than £50k.

PAYMENT & CONDITIONS PART B

Scope of revised Infraco On-street Works Haymarket to Newhaven

It will be prudent to set a timescale for releasing Infraco from responsibility for completing all Infraco Works excluding all Civil Engineering Works other than such On-street Works already constructed by Infraco pursuant to the Princes Street Supplementary Agreement.

Installing trackworks on prepared foundation

Infraco will install trackwork in accordance with the Infraco and subject to **tie** issuing Infraco with 14 days notice to commence work and in accordance with the following provisions:

1. Providing, taking from store, delivering to site, permanently installing in accordance with the assured integrated design approved pursuant to Clause 19 and by **tie**, in accordance with a reasonable programme agreed by **tie**, track rails and their supports and sleepers on a foundation prepared by others.
2. Infraco will provide and permanently install in accordance with the said design composite packers to the rail flanges prior to handing over the installed track to **tie**.

3. Infraco will bear no responsibility for the foundation to the track, nor for any of the works subsequent to the installation of the track.
4. Infraco will be reimbursed in accordance with this schedule of rates:

Item	Approximate Quantity	Rate £'s
4.1 At one visit installing between 40 and 100 metres of track	tba	tba
4.2 At one visit installing between 100 and 200 metres of track	tba	tba
4.3 At one visit installing between 200 and 300 metres of track	tba	tba
4.4 At one visit installing greater than 300 metres of track.	tba	tba

Installing and commissioning overhead and E&M works

Infraco shall install, test, commission and energise all other Infraco Works contained in this Scope of Works in accordance with the Infraco Contract revised by the tie Change Order and subject to tie issuing Infraco with 14 days notice to commence work and in accordance with the following provisions:

1. In sections between Systems Points
2. Infraco will be reimbursed in accordance with this schedule of rates:

Item	GMP Sum
2.1 Haymarket to Shandwick Place	tba
2.2 Shandwick Place to St Andrews Square	tba
2.3 St Andrews Square to York Place	tba
2.4 York Place to Foot of Walk	tba
2.5 Foot of Walk to water of Leith	tba
2.6 Water of Leith to Ocean Terminal	tba
2.7 Ocean Terminal to Newhaven.	tba

3 Reimbursing Infraco (Siemens) for prolongation

Reimbursement will be predicated on the assumption that the above rates will be subject to the payment from 30 June 2012 for increases in labour and plant costs, calculated annually in line with the CPI published at each 30 June 2013, 2014 etc. (Or some such other method to be agreed.)

4 Materials Off-site

Siemens are asking to be paid for materials off site. There will be some benefits to **tie** to do so. However, we need to see that the materials actually exist and that they will be required (which depends on Infraco obtaining approval for their design alternative).

Our Starting Point will be to refuse as this is a major concession to their cash flow. In the event we concede we will put in place properly secure vesting arrangements.

If we don't concede we will need to provide for reimbursing prolongation costs of materials.

Terms to be included in Change order or revised terms.

- **tie** will be able to extend the agreement annually for a period of not more than five years subject to agreement of new rates which both parties acting reasonably agree are market rates.
- Maintenance agreement for each section completed between System Points will be effective from the date **tie** certifies that the section has completed all its tests and is taken into service.

Note:

1. **tie** will procure Civil Engineering sub-contracts on standard measure and value forms without Contractor's Design.
2. Separate sub-contracts will be let for works packages which complement the sections shown above for Siemens.
3. Final quantities of work will be determined by site conditions.

AFFORDABILITY

We are at this stage only able to give a budget price for completion to Newhaven. However based on Starting Point amounts we assess a prudent Budget Cost to Newhaven – excluding **tie**'s own costs:

	£ million
Budget Cost Airport to St Andrews Square	286.01
Budget Cost Civil Engineering St Andrews Square to Newhaven @ £9 million/km (Adduced from draft IFC Drawings and using Sched. 4 Rates less 10%)	43.65
Budget Cost Siemens St Andrews Square to Newhaven	16.55

SDS	14.00
PSSA	10.00
Prolongation & Contingency (see Sensitivity below)	NIL
Total	370.21

Table 8

Notes:

1. The above Budget Costs make no allowance for payment against the variance between the Infraco Offer and the Starting Point which amounts to £90.4 million.
2. We have measured and priced the works on the provisional IFC Drawings using the rates for changed works in Schedule Part 4 and arrive at an average price/km for On-street works of £12.91/km. This excludes dealing with any unforeseen conditions or artificial obstructions.
3. Although the vertical alignment has been determined it is likely that in some places it will need revision or cause unforeseen physical problems.
4. The condition/life of the existing road pavement is difficult to accurately assess until it is exposed. This may increase or decrease the quantity of pavement reconstruction required.
5. We assume that with the savings which should be obtained by this resolution **tie** Costs, including MUDFA could be restricted to £200 million in addition to the above budget.
6. There are amounts allowed for Changes which may be recovered from other parties

Sensitivity

It is necessary when considering these sensitivities to bear in mind which may have most influence the individual parties:

1. The revised Scope is advantageous to BB(UK) - it gives them a clear exit and removes substantial risk.
2. The revised Scope leaves Siemens with an uncertain exit and removes no risk.
3. CAF have possession of 27 Trams for which they have been paid – they may attempt to hold tie to ransom (EK thinks they will).
4. SDS are between a “rock and a hard place” and will be controlled by their PI Insurers.

Circumstance	Low £ million	High £ million	Mean £ million
<u>BB(UK)</u>			
By reference to Table 1 the difference between the recast Claim and the Starting Point is we believe the high end of the settlement value. Whilst in our opinion it is unlikely that a settlement will be achieved without some premium being paid over the Starting Point detailed in Table 2.	Nil	28	14
<u>Siemens</u>			
Siemens claim includes for £21.29 million for additional Preliminaries, £1.3 million for additional design costs and £1.32 million for additional costs to track and formation – all in addition to the £5.31 million of Changes valued by us in Table 3. We believe that these additional items represent the high end of settlement figure over the Starting Point detailed in Table 3	Nil	23	11.5
<u>Civil Engineering Works – St Andrew’s Sq. to Newhaven</u>			
The total length between St Andrews Square and Newhaven is 5 km.	Nil	28.5	14.3
We have a range of costs/km we can refer to for Civil Engineering Costs:			
The cost claimed under PSSA amounts to a total of £14.9 million for 1 km. We would consider this being the worst case scenario.			
In Table 8 we have forecast an average cost of £9 million/km.			
We have adduced this from BB’s claim for Section 1D - £8.25 million for 0.9 km.			
On this basis we would assess the worst case at 5 km at the difference of £5.7 km less 10% for excessive overheads and profit within BB(UK)’s claims.			
<u>Siemens Works – St Andrew’s Sq. to Newhaven (inc trackform)</u>			
We adduce from Siemens’s claim that there is £14 million additional cost we cannot attribute to fair value – nevertheless they may seek to recover some of this in exchange for agreeing to Scope Part B.	Nil	14	7

Allowance for unforeseen conditions Haymarket to Newhaven

2 5 3.5

By their definition “unforeseen circumstances” are impossible to price. We can however take a view of what the cost of measures may be.

Potential savings – Civil Engineering Work Haymarket to Newhaven

The original contract price included £48 million for Civil Engineering Works On-street that is £6.66/km.

This cost would be an average of a range of costs we estimate between £5 and 8 million/km.

-26 NIL -13

Compared with the £9 million allowed in Table 8 we assess potential savings.

Recovery third party changes/betterment

See Appendix E

-19.25 -5 -12

Potential recovery of Liquidated Damages

Account will be taken by both parties in the final agreement

-9 -9 -9

Total Sensitivity

-52.25 84.5 16.3

Note:

The last two items wouldn't be an adjustment to the GMP – but would be an adjustment to total cost of the project.

Conclusion

A meeting was held with Mr. Ed Kitzman – the Infracore appointed contact for Project Carlisle - on the 17 August 2010 when we presented the outline of the Scope to him as part of a six legged plan:

- PC team establish the Scope
- **tie** Submit Counter Offer
- PC Team clear easy issues
- Principals reach agreement of terms and price
- Legal teams put on paper
- Principals reach final agreement

Mr. Kitzman expressed satisfaction with the Scope as outlined above and we agreed the following timetable for finalisation.

Activity	By whom	When (2010)
Explain Scope	Joint PC Teams	Done
Finalise and issue Counter Offer	Tie PC Team to Infracore PC Team	24 August
Meet and discuss Counter Offer	Joint PC Teams	25 – 28 August
Revise Counter Offer (If required)	Joint PC Teams	29 August
Meet to finalise price and outstanding terms	Principals and advisors	By 3 September
Agree HOT's	Companies and legal advisors	8 September
Finalisation	Companies	15 September.

MAINTENANCE

We are being ably guided by Alastair Richards on the revisions required for Maintenance

Conditions

Infraco propose amendments to the conditions in the Infraco Contract – we agree with Alastair that such amendments are unnecessary.

Pricing

Alastair has formulated proposals which are attached in Appendices C and D.

draft - FOISA exempt - subject to verification

Public Body Model Code of Conduct Principles

Public Service

You have a duty to act in the interests of the public body of which you are a member and in accordance with the core tasks of that body.

Selflessness

You have a duty to take decisions solely in terms of public interest. You must not act in order to gain financial or other material benefit for yourself, family or friends.

Integrity

You must not place yourself under any financial, or other, obligation to any individual or organisation that might reasonably be thought to influence you in the performance of your duties.

Objectivity

You must make decisions solely on merit when carrying out public business.

Accountability and Stewardship

You are accountable for your decisions and actions to the public. You have a duty to consider issues on their merits, taking account of the views of others and must ensure that the public body uses its resources prudently and in accordance with the law.

Openness

You have a duty to be as open as possible about your decisions and actions, giving reasons for your decisions and restricting information only when the wider public interest clearly demands.

Honesty

You have a duty to act honestly. You must declare any private interests relating to your public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

APPENDIX D

Km Range	From	To	2007	2008	2009	2010	2011	2012	2013
			€/Km	€/Km	€/Km	€/Km	€/Km	€/Km	€/Km
	0	55000	TBD	TBD	TBD	TBD	TBD	TBD	TBD
	55001	60000	1.3756	1.416868	1.459374	1.503155	1.54825	1.594697	1.642538
	60001	65000	1.3187	1.358261	1.399009	1.440979	1.484208	1.528735	1.574597
	65001	70000	1.27	1.3081	1.347343	1.387763	1.429396	1.472278	1.516446
	70001	75000	1.2278	1.264634	1.302573	1.34165	1.3819	1.423357	1.466057
	75001	80000	1.1908	1.226524	1.26332	1.301219	1.340256	1.380464	1.421877
	80001	85000	1.1582	1.192946	1.228734	1.265596	1.303564	1.342671	1.382951
	85001	90000	1.1293	1.163179	1.198074	1.234017	1.271037	1.309168	1.348443
	90001	95000	1.1033	1.136399	1.170491	1.205606	1.241774	1.279027	1.317398
	95001	10000	1.08	1.1124	1.145772	1.180145	1.21555	1.252016	1.289576
	100001	UP	TBD	TBD	TBD	TBD	TBD	TBD	TBD

TENDER DATA

Forecast Km	0	0	0	0	57037	70000	85000
Trams					27	27	27
Total Forecast Kms					1539999	1890000	2295000
Total Forecast €					2384303	2782606	3173873
Currency derating f ₂ (40%@0.693, 60%@0.82=)					0.8772	0.8772	0.8772
Total forecast with currency derating					2091511	2440902	2784122
Latest forecast							47297.3