

SETTLEMENT FIGURE ANALYSIS

Settlement Figure

Hg Consulting has been asked to offer an opinion on the Contractor's approach and possible values that will be sought to gain a settlement under the option of Separation and Attrition.

To reach a view we have been provided with information from tie, City of Edinburgh Council and McGrigors, together with supplementary reports from Cyril Sweett. In addition, we have reviewed Minute of Variation 4.

While we do not offer a view on the validity of the heads of claims, entitlements and value of the work, we understand the magnitude of the sums of money involved.

It is our opinion that taking a commercial view of separation and attrition, certainly in the early stages of both processes, the tactics and values being considered will be similar.

A divergence will occur at the point in time of the Contractor's willingness to settle.

This analysis of a settlement sums will be related to the extent of the contractual claims, in particular the strength of case and the period of time that dispute resolution can be run.

If we consider the baseline tactics to identify settlement figures, issues that would be marshalled for evaluation would include, but not be limited to, the following:

1. Other project opportunities and how active the market is at the time of project separation/attrition.
2. The 'embarrassment' factor of the incomplete works lying open in the capital of Scotland.
3. Strength of communications and blame that can be apportioned on the Client side.
4. Making an early case to ensure that the advance payment of £45.20m is not returned in any part to the Client.
5. Loss of profit and overhead, citing both the time of tender (buoyant) and when separating (only if ascending at that time).
6. The basis of the attrition calculations will be the Contractor being deprived of the contract from the Airport to Newhaven.
7. By holding possession of the site, consideration to being able to hold up other developments or investments in the city - ransom
8. The nature of the sub contractor's willingness to settle and what sums are required to buy off their loss of profit.

There are many factors within the dynamic of the above noted list and it will fall to the experience and attitude of the commercial teams within the Contractor's organisation.

To that end, I believe they would extrapolate existing costs to arrive at a "notional" contract sum figure.

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On the basis of separation, our view of a negotiating figure would be around £50m, with £20m being set aside for sub contractors and suppliers.

Taking a more aggressive line with attrition, it would be feasible to consider an opening negotiating stance at £100m. This sum would be more susceptible to a “quick win” settlement discount, with the prospect of having a lower range point in the order of £80m.

It should be recognised that the opinion of values expressed in this statement will be influenced by the above noted and other factors and will be driven in the main by the prevailing commercial attitude of the Contractors at the point of separation/attrition.

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