
From: Fitchie, Andrew
Sent: 02 September 2010 20:19
To: 'Richard Jeffrey'; 'Anthony Rush'
Cc: 'Stewart McGarrity'
Subject: RE: Cost of termination

Legally privileged and FOISA Exempt

Richard

On the litigation cost, one's costs at £50 million would be top end. Litigation commences predictably enough and most firms can give budgets and some measure of capping. It is often the other parties' conduct and Court timetable which increases cost


My own estimate for a case coming to a full hearing over a two year period with a hearing lasting, say, three months, would in the £15-20 million range, with some cost recovery in the case of a win (calc. based deploying (full on) a five man team and Counsel) but I will check with colleagues.

If there were appeals, then costs would reflect this but not in multiples, since appeals do not involve the groundwork of evidence preparation and preliminaries. Add another 5 million, perhaps.

So that a winning case through to highest authority: £25/27 million, with prospect of perhaps 60% recovery on costs.

kind regards

Andrew S. Fitchie
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From: Richard Jeffrey [mailto:Richard.Jeffrey@tie.ltd.uk]
Sent: 02 September 2010 11:53
To: Fitchie, Andrew; Anthony Rush
Cc: Stewart McGarrity
Subject: FW: Cost of termination

This is where Nick gets his £593m from.

He looks at the numbers, but not the caveats.

I will get the team here to do some more work on this.

Andrew/Tony, your confirmation of the things (a possible range of values?) that BSC could claim for in the event that any termination by tie is deemed to be 'wrong' in the courts. Also your guess (and I appreciate it would be no more than a guess) as to the time, legal and expert fees that might be incurred in litigation, As a starter for 10 I am assuming 5 years and £50m, how does that sound? (other than a very attractive pot of fees!)

R

CEC00212352_0001

From: Stewart McGarrity
Sent: 01 September 2010 17:41
To: Richard Jeffrey
Subject: FW: Cost of termination

You'll remember this as the last thing on Termination costs I did back in June and is the base data for Nick Smiths deliberations. I'll scratch my head about this tomorrow.

S

Stewart McGarrity
Finance Director
Edinburgh Trams
Mobile: (██████████)

From: Stewart McGarrity
Sent: 10 June 2010 17:26
To: 'Nick Smith'; Ailie Wilson
Cc: Susan Clark; Alastair Richards; Dennis Murray; Steven Bell; 'Graeme Bissett'; Richard Jeffrey; Mandy Haeburn-Little; david_mackay@██████████
Subject: RE: Cost of termination

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Pitchfork (Private & Confidential) – Costs of Termination / Cancellation

Nick/Ailie,

The Pitchfork work on termination and cancellation costs was tabulated as Option 1 at P74 of the main report and the notes on assumption and uncertainties on that option were at P78. Attached is an extraction for easy reference. The estimate at that time was **£388m** for termination of Infraco **and** cancellation of the project.

At that time we had recorded expenditure to end of Jan 2010 of **£329m**. Our spend is now up to **£363m** including another £20m under Infraco and another £5m on Project costs and £6m on vehicles. The additional spend on vehicles in the intervening period won't change the overall estimate as it was envisaged the vehicles would be completed and then we dispose of our interest in them in any case. The additional spend on the Infraco and other costs is a straight add on to the sunk cost in the event of Termination and Cancellation taking the costs on a like for like basis up to **£415m** and increasing as we spend more money.

However – it is very important to recognise the assumptions and uncertainties in this estimate – the main ones were listed in the Pitchfork report as:

- BB and S ability to demonstrate and prove entitlement to costs on a termination (eg prelims, other financial commitments, materials bought and stored) which we have limited visibility of
- Assumes we complete the vehicle contract – a high proportion of CAFs fixed and variable costs having already been spent – and recover **50%** of the vehicle costs on a forced sale.
- Project Costs for an orderly shut-down of the project and of tie – c£8m (12 mths)
- Demobilisation and loss of profits £10m for BB and £5m for S
- Reinstatement costs provision £15m – extent of reinstatement of works in progress or completed (eg structures, depot, Princes St, Guided Busway) would need careful thinking about.

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- Execution risk (risk of extended litigation which we lose) is potentially very large and very difficult indeed to estimate with reliability – we plugged in £40m

These uncertainties in a termination and cancellation scenario are no easier to estimate than the costs of resolving our disputes. It's not a simple matter of reading the clauses in the contract which describe their entitlement – especially if the very likely event BSC got litigious.

Other very, very important points:

- This is the termination **and** cancellation scenario. The terminate and repro cure option would look different eg there would be no loss on a forced sale of vehicles and no reinstatement costs. In fact what Carlisle looks like is a reduced BSC scope and partial repro curement.
- Since Pitchfork we have a far, far clearer and convincing statement of our case for termination (BSC catalogue of breaches – project Notice) which if proven would mitigate our costs – but might still take a long, long time to settle assuming they'd want to see us in court. We could not discount the possibility of a significant counter claim by us to recover our losses from BSC to further mitigate our costs.

Hope that's helpful and trust that these figures are not going to be quoted anywhere. I also hope you can dissuade anybody who thinks termination (with or without subsequent cancellation) is an attractive option even if it were to be the only one.

Copied to colleagues to make sure everyone knows what I've said here.

Regards,
Stewart

Stewart McGarrity

Finance Director

Edinburgh Trams

Mobile: [REDACTED]

From: Nick Smith [mailto:Nick.Smith@edinburgh.gov.uk]

Sent: 10 June 2010 15:09

To: Ailie Wilson; Stewart McGarrity

Subject: RE: Cost of termination

Stewart

From memory there was a figure provided some time ago which gave a termination cost but not including reinstatement. For some reason 380ish springs to mind but I may be way out.

Kind regards

Nick

Nick Smith
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(t) [REDACTED]

Please note that I am not in the office on a Monday

CEC00212352_0003

From: Ailie Wilson
Sent: 10 June 2010 15:04
To: Stewart McGarrity
Cc: Nick Smith
Subject: Cost of termination
Importance: High

Stewart,

Do you have a copy of the termination cost that was prepared as part of the Pitchfork work, that you could send me? Donald is looking for a note on the implications should the Council decide to terminate the project, following Cllr Cardownie's call for a referendum, and I need to include that cost.

Alan has files saved on our server, but they are passworded, and I don't know the password! I have a hard copy from our Wednesday update meetings, showing a cost of £59.5m (based on COWD at Jan 2010) but is that still the latest version?

I understand that the cost is only indicative, as it is so hard to predict, but at least its a start.

Thanks,
Ailie

Ailie Wilson | Finance Manager (Edinburgh Trams) | Financial Services | The City of Edinburgh Council | Waverley Court, Level 2:6, 4 East Market Street, Edinburgh, EH8 8BG | Te [REDACTED] Mobile ([REDACTED]) Fax 0131 529 6223 | ailie.wilson@edinburgh.gov.uk | www.edinburgh.gov.uk

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