

### **Settle out of court (H)**

**tie** and BSC are now moving towards a mediation period in early March 2011. With that in mind the settle out of court option seems to be the most likely scenario. Any mediation could take a number of turns which might include BSC completing a section of the works (e.g. to Haymarket); BSC to complete some works to allow testing and commissioning of the trams and the remainder of the depot; or BSC ‘up-sticks’ and leave the worksite in an orderly agreed fashion. In Scenario (H) we assume that BSC stop work immediately, and that work ‘to go’ will be completed by another party. The cost to complete core Infrastructure works should fall within similar ranges for these varying agreements, with the difference being the mix of who completes each element of the build.

Although there is assumed to be no ‘loss of profits’ payment in the Settle out of Court scenario, we anticipate that BSC are likely to look for a ‘premium’ to cover an element of their ‘lost profit’. This is a key cost difference when comparing ‘settle’ versus ‘win’ and ‘lose’ scenarios. The assumed ‘settlement premium’ within option (H) is made up from the circa£33m of cost **Certified in advance of work done (BB+S)**. Settling out of court is a likely option to consider as it can bring with it the benefit of a more timeous agreement than Terminate, and in-turn should eliminate the majority of legal litigation costs which would be associated with a Termination / reprocure situation. One likely additional cost relates to any legal/ professional fees associated with an agreed out of court settlement. These costs are assumed to be covered under the header **tie Litigation and Professional Costs** (£3m QS view) under the **Highly Variable Sensitive Elements** section.

We have established the **‘Entitlement for work done (BB+S)’** with the baseline being our latest Certificate to BSC, with commercial adjustments being an assessment of WIP for incomplete milestones. It should be noted that there is no value recognised for any of the materials which might have been purchased by BSC as part of our CWP, but which we might have expected to have been included as part of our up-front payment (our Commercial view is that materials of around £16m value could have already been procured by BSC). This is because if we have not paid for materials, then they are assumed to form part of the new procurement costs “to go”. The **Infrastructure (BB+S) Certified** values exclude SDS and CAF elements. The difference between our QS assessment of the Entitlement for Work done and Certified to date (BB+S) is noted as **Certified in advance of work done (BB+S)**.

The **Total BSC** cost is derived by adding back in CAF vehicles, SDS Post novation design costs and our view of further SDS design risk. The **CAF vehicles** cost is based upon the original CAF milestone contract, plus agreed changes and an assessment of additional risk for current and further EoT claims (£2m-£4m). The **Design Post Novation (SDS)** cost includes all of the SDS changes certified to date, with a further assessment of **SDS design risk** (£2m-£6m) for SDS to complete the design.

**Interim works & reinstatement** costs are made up from two separate elements. The first element is **Interim works during Reprocure** and is driven by a joint **tie**/CEC operational assessment of a scope of works which can be completed in the absence of BSC progressing works (£9.9m). It is anticipated that some of the Interim works undertaken will reduce the **tie** assessment of ‘works to go’ under the header of New Procurement Costs (no cost assessment has been included for this anticipated benefit).

**Reinstatement/ remedial during reprocure** costs relate to a scope which has been agreed between **tie**

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and CEC operations teams, and priced by the **tie** commercial team. The works are required to bring the work sites up to a suitable state/ position prior to re-procurement (such as bringing roads in the Leith area back to a suitable condition).

**New Procurement Costs** are based upon a commercial assessment of total project construction costs less the value of work already done (BSC element). Off-street works include our Construction Works Price plus Changes (plus an allowance for contamination (ranging from £4-8m) and 9 months delay costs. Prelims have been calculated ranging from 22.5% Low, 27.5% medium, 35% High of Direct Costs. On Street works have been priced based upon a Bill of Quantities for our latest IFC drawings based upon schedule part 4 (note: we have had commercial advice off-line from Cyril Sweett indicating that the rates used in schedule part 4 of the Infraco contract are above the current market rate). An additional 15% risk has been added for on-street works (split 10% risk and 5% ground conditions). **New procurement costs are due to be amended on an ongoing basis according to our evaluation of works completed and the impact of interim works during re-procurement. The adequacy of the risk element above will become clearer on receipt of the external pricing assessment by Cyril Sweett.**

**3<sup>rd</sup> Party funded** allowances have been deducted from the **Total New Procurement** costs. This is to allow a like with like comparison with previous estimates. It is assumed that **tie**/CEC recover all BSC costs incurred against works at Forth Ports, RBS, and Public Realm works (CEC). These items are not part of the original Tram funded scope of works and are valued at -£4.3m per our latest AFC's.

**Securing sites** are included under the banner of Termination costs here, but are a relevant cost if we are to come to a settlement out of court and reprocure. The assumption is that we will not build the main Infrastructure until at least the start of January 2012 (other than for 'interim works/ reinstatement'). The £2m is a block figure, with the logic applied of £150k pcm for site-wide security, safety and barrier maintenance costs over a 12-16 month period.

### Other Costs

**Phase 1b payment to BSC** (£3.2m).

**Design Pre Novation incl 1b and Utilities.** SDS design costs sit both within SDS and Infraco reporting codes with SDS pre-novation costs included here. **Important Note: Confirmation is required by DM that phase 1b costs (£3m) are already included in the £28.7m pre-novation assessment.**

**Utilities and Other infrastructure costs** are made up from all CUS costs, SUC's costs forecast and Betterment, all non-Infraco works such as Burnside Road, Clancy Docwra, and Farrans, Non-Infraco Provisional Sums such as Fastlink and historical project costs pre-2006 (£3m). Note: a full costs breakdown is detailed on the **AFC reconciliation tab**.

**Project Costs (to go)** have been collated on the assumption that after some time the team delivering the project would be much smaller (see the full breakdown of assumptions on the Project Costs forecast sheet). The current run-rate for all Project Costs including overheads as at the end of period

10 2010/11 is £0.8m per period. The run-rate would have to be significantly reduced in order to deliver these strands of work for the forecast allowance.

**Other Costs /including land** includes items such as JRC, land and Business Support Costs, 3<sup>rd</sup> Party Negotiations costs and insurance costs. All other cost codes allocated here are for closed/ dormant codes such as PUK or Service Integration.

**Testing and Commissioning Costs:** No additional costs are included in this assessment for testing and commissioning on an incremental opening basis.

### **Highly Variable Sensitive Elements**

For Settle out of Court (H) it is assumed that the settlement premium is made up from the circa£33m **Certified in advance of work done** figure. The **Bond Call** and **BSC - Settlement Premium** are shown here offsetting each other. For clarity, part of the settlement might involve trading £10m settlement premium against -£10m Bond call for Princes Street.

**Vehicles – Lease/ Sale recoveries** (-£10.5m) This view assumes that our best option is to take CAF contract back in-house and then lease surplus vehicles (with maintenance). Those Trams that will not be required to deliver a service from the Airport to SAS (10 of) for 10 yrs at a yield of 7.5% pa: i.e. £150k per tram per year for 7 years. This also assumes that we take the trams back after 7 years to operate the full Ph1a service line to Newhaven. Note: Pricing is subject to proper professional advice and negotiation. The Option to sell the Trams is also a possibility. Both options would need TS's endorsement to proceed.

**Re-design (risk of SDS not completing)** assumes that we are able to come to an agreement and have to pay a premium for a full redesign. The estimates are based upon the assumption that the design is just 80% complete currently and that it will take a third party a further 6 months to complete the design. **Verification of this cost would be useful but is unlikely to be possible within the current timescales available prior to mediation.** Our prudent commercial view includes a £5m- £15m further design risk allowance.

**tie litigation & professional fees** includes additional professional fees resource to complete factual matrix and any preparation for litigation whilst an out of court settlement is considered.