



**Infrastructure Services**

MUDFA Project  
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Ref: AMIS/tie/letter/KAG/Projects/879

28<sup>th</sup> March 2008

**Mr. Graeme Barclay**  
tie MUDFA Utilities Construction Director  
tie Limited.  
Citypoint,  
1<sup>st</sup> Floor,  
65 Haymarket Terrace,  
Edinburgh.  
EH12 5HD

Dear Graeme,

**Subject: MUDFA Alfred McAlpine Infrastructure Services (AMIS) – Contract A150**  
**Alleged Confirmation of Client Instruction.**

Thank you for your letter Ref; DEL.MUDFA.7805.GB dated 19<sup>th</sup> March 2008 in connection with the above noted subject.

In the first instance the term "Client Instruction" is not a recognised term under the MUDFA terms and conditions and the attention of tie Limited is respectfully drawn to Clause 8 "...Construction Work and Issue of Work Orders", once again.

A synopsis of the provisions is as follows:-

Clause Ref.	Provisions
8.8	"Before the MUDFA Contractor is permitted by tie to commence carrying out Construction Works.....the following procedure shall apply (unless expressly varied by tie in writing):"
	The "following procedure" is defined as:-
8.8.1	"tie shall issue a Work Order.....and each Work Order shall include the Work Order Requirements" [Technical Definition and Detail].
8.8.2	"within 10 Business Days.....the MUDFA Contractor shall submit a Work Order Proposal"
8.8.3	"within 5 business days of the receipt of the Work Order Proposal, tie shall either:"
8.8.3.1	"confirm the Work Order by issuing a Work Order Confirmation Notice; or"
8.8.3.2	"withdraw the Work Order; or"



Alfred McAlpine Infrastructure Services Limited. Registered in England No. 00728599  
Registered Office: Kinnaird House, 1 Pall Mall East, London SW1Y 5AZ



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Table with 2 columns: Clause Ref. and Provisions. Rows include 8.8.3.3, 8.9, 8.9.1 through 8.9.11.

For the avoidance of any doubt Clause 2.4 states "...the SDS Provider shall be responsible for the design and specification of the MUDFA Works", as directly managed by tie Limited.

It is a matter of record that the Works purported to be instructed under your letter Ref; DEL.MUDFA.7805.GB dated 19<sup>th</sup> March 2008 did not adhere to the agreed prescriptive requirements established under Clause 8. Clause 8.8 is clear and unequivocal;

"Before the MUDFA Contractor is permitted by tie to commence carrying out Construction Works.....the following procedure shall apply (unless expressly varied by tie in writing):"



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At no time has this provision been "expressly varied" by tie Limited "in writing", a requirement most certainly not discharged by tie Limited letter of 19<sup>th</sup> March 2008 and as a consequence AMIS MUDFA considers what was presented by tie Limited as "...a formal instruction to proceed" to be erroneous and having no standing under the MUDFA terms and conditions.

Furthermore Clause 13.3 states;

*"Except as expressly stated in the Agreement, tie's representative shall have no authority to amend the Agreement....."*

The attention of tie Limited is drawn to letter Ref; AMIS/tie/letter/TL/Projects/738 dated 23<sup>rd</sup> January 2008, where a remedy to this deficiency was outlined by AMIS MUDFA. It is a matter of record that after a period of approaching nine (9) weeks this initiative has never received an acknowledgement from tie Limited, far less an action plan to address the matter in earnest.

In essence tie Limited have sought to instruct these Works in a manner outside the provisions of the Contract, on the basis of AMIS MUDFA drafted CVI's, the vast majority of which have been signed by tie Limited staff, in an unconfigured and uncontrolled manner and in clear contravention of tie Limited's recent stance on CVI's.

This view is supported and endorsed by your letter Ref; DEL.MUDFA.7594.GS.GB dated 7<sup>th</sup> March 2008 where tie Limited state:-

*"Generally the term [CVI] is strictly not in accordance with the contract....."*

Notwithstanding our response to this letter (see letter Ref; AMIS/tie/letter/KAG/Projects/855 dated 19<sup>th</sup> March 2008) where it is acknowledged CVI's have no standing under the MUDFA terms and conditions, AMIS MUDFA wish to express their surprise at the subsequent adoption by tie Limited of a procedure they themselves have confirmed, in writing, has no status under the Contract.

This level of ambiguity, confusion and consistent change frustrates the ability of AMIS MUDFA to manage and discharge their obligations under the MUDFA terms and conditions, in accordance with the set provisions.

Furthermore, as evidenced by the updated version of your Appendix 'A', the configuration, accuracy and content of what is purported to be a "formal instruction" to proceed needs to be fully re-configured and re-issued as a formal Works Order and Confirmation Notice, with full and comprehensive detail and definition as contemplated under Clause 8.8.3.1, together with the Works Order Requirements under Clause 8.8.1 and 8.9.

This request applies to all Works instructed by tie Limited under the MUDFA terms and conditions retrospectively, as discussed and agreed at the Directors meetings held on 7<sup>th</sup> September and 12<sup>th</sup> December 2007, together with 25<sup>th</sup> February and 13<sup>th</sup> March 2008.





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The administration by **tie** Limited of Clause 8 has attracted a significant level of correspondence relating to Non-Compliance and imposition of inappropriate/disproportionate risk to the MUDFA Contractor and as a direct result of recent **tie** Limited actions and commitments AMIS MUDFA are satisfied that the **tie** Limited actions will fully reinstate the Contract Work Ordering Requirements.

The attention of **tie** Limited is also drawn to letter Ref; AMIS/tie/letter/KAG/Projects/833 dated 11<sup>th</sup> March 2008, enclosing Report and Recommendation in respect of the Schedule Four Rates and Prices, demonstrating **tie** Limited's obligations under the Work Ordering process has not been discharged in full for £12,359,945.24, as at 23<sup>rd</sup> February 2008.

In the circumstances the immediate attention of **tie** Limited is required to address this matter and deliver the commitments recently made at a senior level, prior to formal escalation.

Yours sincerely,

For and on behalf of **Alfred McAlpine Infrastructure Services Ltd**



**Andrew Malkin**  
**MUDFA AMIS Project Director**

**Copies:-**

**tie Project Team**

John Casserly  
Steven Bell  
Ian Clark  
Michael Blake

**MUDFA Project Team**

Keith Gourlay  
Rod Aves  
Taryne Lowe





Appendix 'A': Letter Ref; AMIS/tie/letter/KAG/Projects/\*\*\*\* dated \*\*th March 2008

AMIS MUDFA CVI	Title.	No.	Rev:	Comments
23784	Princes Street/Western Approach Road	60040743_010_105	C	
23781	Bus Stop Standard Details	60040743_BS_003		
23781	Bus Stop Locations	60040743_BS_001		
23781	Bus Stop Locations	60040743_BS_002		
23782	City Centre Parking Bay Removal Drawing	60040743_010_1202		
23783	Additional Signs Requested By TMRP	60040743_010_TRMP_SIGNS		
23757	Traffic Management Signing	60040743_010_TM_Signs	A	
23788	Traffic Regulatory Signing	60040743_010_REG_SIGNS_2		
23788	Servicing Access Strategy Existing Restrictions Phase 1	60040743_010_702	A	
23788	Servicing Access Strategy Existing Restrictions Phase 2	60040743_010_701	A	
23787	Taxi Rank Standard Details	60040743_010_TAXI_SD		
23787	Taxi Rank Locations	60040743_TR_001		Same drawings, same revision, yet differing design. tie Limited to confirm
23787	Taxi Rank Locations	60040743_TR_002		As above
23790	Taxi Rank Locations	60040743_TR_001		As above
23791	Taxi Rank Locations	60040743_TR_002	A	Should be Revision B
23790	Taxi Rank Locations	60040743_TR_002	A	
23798	Existing Traffic Signs To Be Amended / Removed	60040743_010_1203	A	Drawing has no revision number
23794	Revised Lining Layout Charlotte Square / Hope Street	60040743_010_104	A	
23857	Carriageway Marking Standard Detail 5	60040743_010_905		
23857	Traffic Regulatory Lining Drawing	60040743_010_1204	D	
23857	Charlotte Square / Princess Street	60040743_010_100	E	
23856	Carriageway Marking Standard Detail	60040743_010_901		
23856	Carriageway Marking Standard Detail 2	60040743_010_902		
23856	Charlotte Square / Princess Street	60040743_010_100	D	
23856	Princess Street / Frederick Street	60040743_010_700b	C	
23855	Traffic Regulatory Lining Drawing	60040743_010_1204	B	
23858	Lothian Road Carriageway Text	60040743_010_1205		
23858	West Approach Road Central Reserve Removal	60040743_010_1006	A	Should be 106 not 1006
23858	Charlotte Square / Princess Street	60040743_010_100	F	
23854	Carriageway Marking Standard Detail 4	60040743_010_904		
23854	Lothian Road Carriageway Text	60040743_010_111		
23854	West Approach Road Central Reserve Removal	60040743_010_106		
17388	LUX @ Frederick Street			Attached to letter but not referenced
23800	Athol Crescent – Additional Works			Attached to letter but not referenced. CVI signed by Graeme Barclay