



Infrastructure Services

MUDFA Project
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Ref: AMIS/tie/letter/KAG/Projects/417

27th August, 2007

Mr. Graeme Barclay
tie MUDFA Utilities Construction Director
tie Limited.
Verity House,
19 Haymarket Yards,
Edinburgh.
EH12 5BH

Dear Graeme,

Subject: MUDFA Alfred McAlpine Infrastructure Services (AMIS) – Contract A150
Construction Services – Delay & Disruption

I refer to previous submissions in respect of the above, i.e. letters Ref: AMIS/tie/letter/KAG/Projects/260, 263 and 307 of 19th / 22nd June and 26th July 2007.

At the Commercial meeting of Monday 20th August 2007 a hard copy of documentation entitled "tie Assessment of AMIS MUDFA Projected Turnover and Overhead Recovery, based upon AMIS MUDFA Tender Programme", was tabled with an electronic copy being forwarded the following day.

This submission was subsequently reviewed by AMIS MUDFA and an initial view was outlined at the Commercial Meeting of Friday 24th August 2007.

Item 1: Schedule 8; Programme Turnover

A hard copy of the AMIS MUDFA assessment is attached showing a variance in the projected turnover between the parties of £9,026,061.43, derived from the tie Limited assessment of £16,151,790.51 and the AMIS MUDFA assessment of £25,177,851.94 as at 31st December 2007 (estimated).

In summary the variance can be categorised as follows;

ID	Descriptions	Value (£)	Comments
1	Measured Works	-633,779.59	Determined from the Schedule 8 Programme. Discrepancy identified between two Tender Measured Works values, not addressed.
2	Prime Cost & Provisional Sums	6,274,032.50	tie Limited assessment is 50%; AMIS MUDFA 80%; see comments below for derivation of the AMIS MUDFA value.
3	Work Sector Preliminaries	1,083,419.00	No value considered by tie Limited.
4	Contract Preliminaries	2,002,546.00	No value considered by tie Limited.
5	5 Year Defects Correction Period	299,843.52	No value considered by tie Limited.
Total Variance:-		9,026,061.43	



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Please note this variance has been further refined and checked from that provisionally presented at the Commercial Meeting on Friday 24th August 2007 following an internal review, post meeting. However the variance between respective measured work values, as Tendered needs to be addressed; see comments under ID 1 above.

The value of the turnover derived from the Prime Cost and Provisional Sums have been determined in accordance with the following agreed Contract documentation;

- The appropriate allocation within the Bill of Quantities (Schedule 4).
- By Work Sector and Line against the discrete Programme provided, at the request of tie Limited, during the CARP Process; and
- The Schedule 8 Programme.

As a consequence of the above basis, derived as noted from contemporaneous information, AMIS MUDFA are unable to concur with the statement made in your Mr. Casserly's email of Tuesday 21st August 2007, timed at 18:14hrs that the tie Limited assessment is;

".....based on the assumption that it is reasonable to assume, both at tender and as actual incurred costs, that 50% of the provisional and prime costs will be spent in the financial period".

With the greatest respect, adoption of what is perceived, by tie Limited, to be a "reasonable" assumption cannot be deemed as an appropriate or valid alternative for data and values derived from within the agreed contract framework. An arbitrary and unsubstantiated assessment of "50%" does not represent a party "acting reasonably".

Item 2: Turnover to December 2007, derived from the tie Limited and Stakeholder Constrained (formerly Imposed) Programme (Revision 05)

As advised at both of the above noted Commercial Meetings minimal input by AMIS MUDFA has been applied to determining the anticipated cumulative turnover at December 2007; given the ongoing delay, disruption and dislocation to the Programme such a process would be indicative only. The information provided has been derived on an indicative and for information purposes basis only.

Additionally the adoption of Gogar Depot within the overall turnover is noted; however the financial model and subsequent overhead recovery contemplated under MUDFA is predicated against 20% of the resources, the equivalent of circa 12% of the overall turnover, being subcontracted.

In the case of Gogar, the value of turnover subcontracted is significantly greater, given the nature and scope of the Works when considered against the MUDFA Bill of Quantities, rendering the full inclusion of Gogar Depot turnover inappropriate.

It is the Construction Services Programme at Revision 05 that determines the basis of the turnover and recovery calculation which has been adopted by default and is deemed tie Limited approved.

Item 3: Determination of 8.80% Overheads and Profit

As advised at both of the above noted Commercial Meetings AMIS MUDFA solely do not concur with the basis adopted by tie Limited to determine the corporate overhead percentage within the 8.80%.



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As a consequence the information provided has been derived on an indicative and for information purposes basis only, primarily for ease of comparison between values determined under item 1 above.

AMIS Commercial Director, Mr. Steve Hudson, will table the appropriate numbers at the meeting scheduled for Wednesday 29th August 2007 at 14:00hrs.

Item 4: Shortfall in Turnover at tie Limited Interim Certificate No.8, to 27th July 2007

As agreed please find attached an analysis of item 1 above, up to and including the most current tie Limited certification of the Works.

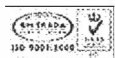
Description	Turnover		
	Certificate	CARP	Delta
Pre-Construction Services			
PCS	987,611	996,352	-8,742
Construction Services			
Preliminaries			
Contract Preliminaries	932,468	861,374	71,094
Line 1 Work Sector Preliminaries	34,067	310,681	-276,614
Line 2 Work Sector Preliminaries	6,730	155,340	-148,611
Works			
Work Orders (incl MOS)	167,468	3,410,665	-3,243,197
Change Controls (Prime Cost & Provisional Sums)			
All (including Gogar)	3,186,196	4,127,322	-941,126
Other			
1% for 5 years Defects Correction Period	0	113,162	-113,162
Totals	5,314,539	9,974,897	-4,660,358

This analysis highlights a shortfall in turnover of £4,660,358.00, as at the 27th July 2007, against, as established above, data and values derived from within the agreed contract framework.

Item 5: Conclusion and Action Plan For Success

The correspondence to date, together with all appropriate progress measures indicates that the MUDFA Works are significantly behind programme and values.

Contemporaneous records confirm that the root cause of this delay is a direct and irrevocable consequence of factors that AMIS MUDFA have been unable to control or mitigate over the Contract Period to date.



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The delays are a result of late and inaccurate designs, the breakdown of Pre-Construction Services, insufficient detail to support planning and effective operations, together with ongoing concerns relative to the suitability, accuracy and viability of those IFC designs and design related information, provided by tie Limited to date, as Employer, Project Sponsor and Project Manager.

Following letter Ref; AMIS/tie/letter/KAG/Projects/260 of 19th June 2007, AMIS MUDFA welcomed the acknowledgement by tie Limited of an entitlement to recover AMIS fixed costs and overheads, in recognition of the ongoing programme delay, disruption and mislocation resulting from late designs, that will not be recovered by December 2007.

The framework for the remedy has been identified, with the following actions proposed to provide a suitable and appropriate platform for the remedy to be administered;

1. Agree the entitlement as a matter of principle, with quantum to follow.
2. Acknowledgement by tie Limited that the agreed terms of reference should be adopted to evaluate turnover, not a unilateral perception or expectation.
3. Review and agree the component elements of the 8.80% overheads and profit uplift accordingly.
4. Following consensus on item 1 to 3 above measure and value the AMIS MUDFA entitlement up to and including 27th July 2007, with minimum dispute.
5. Review the entitlement determined under item 4 on an ongoing basis up to and including the December 2007 Payment Certificate; and
6. Agree a "shake and bake" related solution, as indicated by tie Limited at the Commercial Meeting of 24th August 2007, is inappropriate and does not serve the long term interests of either party.

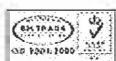
AMIS MUDFA look forward to the expedited resolution of this long running matter and appropriate certification on the forthcoming Payment Certificate.

In the event resolution is not achieved by Wednesday 29th August 2007, an indicative value will be included in Application for Payment No.9, in the expectation that tie Limited will acknowledge their obligations, liability and duty of care by certification and payment of an appropriate interim amount, on account to AMIS MUDFA.

Yours sincerely,

For and on behalf of Alfred McAlpine Infrastructure Services Ltd


Andrew Malkin
MUDFA AMIS Project Director



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Copies:-

tie Project Team
John Casserly

MUDFA Project Team
Keith Gourlay
Taryne Lowe
Steve Hudson

Attached/.... tie Limited Assessment of AMIS MUDFA Projected Turnover and Overhead Recovery, based upon AMIS MUDFA Tender Programme, updated to incorporate AMIS MUDFA determination (One A3 page).



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MUDFA Contract
 tie Assessment Of AMIS MUDFA Projected Turnover and Overhead Recovery
 Based Upon AMIS MUDFA Tender Programme

Assessment
 Financial Year Jan 07 To Dec 07 - Assumed 50% Provisional & Prime Cost Expenditure

TRAM Line 1	Revised Tender Programme Commencement Date	Tender Programme Duration (Days)	Tendered Measured Works Value	Tendered % Complete In Period	Anticipated Tender Turnover In Period	50% Prov & Prime Cost Spend	Rev 05 Projected Commencement Dates	Projected Actual % Complete In Period Based on July Commencement	Projected Actual Turnover In Period	Maximum Prov & Prime Cost Spend
Haymarket to Picardy	30/04/2007	227	5,006,203.65	100	5,006,203.65	3,354,156.45	29/10/2007	28	1,389,386.92	939,163.80
Picardy to South Leith	02/04/2007	190	2,751,629.18	100	2,751,629.18	1,843,591.55	06/08/2007	69	1,897,175.91	1,272,078.17
South Leith to Ocean Term	17/12/2007	131	2,078,071.15	10	206,220.80	139,230.77	2/4/07 & 2/07/07	88	1,824,260.93	1,225,231.75
Haymarket to Roseburn	22/10/2007	80	162,379.60	89	144,111.90	96,826.96	26/11/2007	43	69,011.33	46,781.56
Granton to Ferry Rd	06/08/2007	84	1,381,884.16	100	1,381,884.16	925,862.39	01/12/2008	0	0.00	0.00
Roseburn to Ferry Rd	12/11/2007	38	180,881.87	100	180,881.87	121,190.85	18/08/2008	0	0.00	0.00
			11,551,049.61		9,670,931.56	6,480,858.96			5,179,835.09	3,483,254.29
50% Prov & Prime Cost Spend					6,480,858.96				3,483,254.29	
Gogar Depot Phase 1					0				2,849,256.50	
Gogar Depot Phase 2					0				1,783,083.10	
Supply Of Power Cables - Allow For period Based On AMIS Submissions ie circa £450k in total					0				378,431.06	
Change Control (As per attached summary)					0				421,179.34	
					16,151,790.51				14,095,039.38	
Total					16,151,790.51				14,095,039.38	
Potential AMIS Underrecovery										
AMIS Contract Overhead			8.80%							
Odt										
Insurance			2.80%							
Profit (based on O6)			3.30%							
% to be applied			2.70%							
									Potential Reduced Turnover	2,056,751.13
									Potential Underrecovery @ 2.7%	55,532.28

Note :

1. AMIS MUDFA tender submission and programme based upon construction start delayed to 2nd April 2007
2. Assume Prelims in the period will be neutral ie 52 weeks as per tender
3. Prime cost and Provisional Sums - maybe an argument that there is potentially a minimal reduction in turnover associated with the reduced percentage complete on the three highlighted areas above - but this may be based on a flawed tender assumption that all provisional and prime cost sum would be 100% spent. For the basis of this exercise taken Prime/Prov sums of £15.5m against an original measured works value of £11,561,049 which is a multiplier of circa 1.34 and only 50% of the provisional sums are actually expended.
4. No account has been taken in the above calculations for the EAL utility diversions which are circa £3m for TRAM works and will be spent over two periods
5. No account has been taken of the potential over recovery of AMIS in future periods.

AMIS assessment

TRAM Line 1	Area	Revised Tender Programme Commencement Date (1 month delayed)	Tender Programme Duration (Days)	Tendered Measured Works Value	Tendered % Complete In Period (From Programme)	Anticipated Tender Turnover In Period	100% Prov & Prime Cost Spend (From Programme)	Rev 05 Projected Commencement Dates	Projected Actual % Complete In Period Based on July Commencement	Projected Actual Turnover In Period	Maximum Prov & Prime Cost Spend
Haymarket to Picardy	1	30/04/2007	227	4,909,948.06	see data	4,324,801.68	6,103,673.51	29/10/2007	28	1,362,672.81	921,106.28
Picardy to South Leith	2	02/04/2007	190	2,736,928.05	see data	2,736,928.10	3,862,856.46	06/08/2007	69	1,897,039.87	1,265,281.84
South Leith to Ocean Term	3	17/12/2007	131	2,169,027.86	see data	33,868.02	47,800.78	2/4/07 & 2/07/07	88	1,904,108.43	1,278,858.93
Haymarket to Roseburn	4	22/10/2007	80	174,475.14	see data	150,021.38	211,737.77	26/11/2007	43	74,151.60	50,266.29
Granton to Ferry Rd	5	06/08/2007	84	1,510,373.08	see data	1,510,373.08	2,131,716.98	01/12/2008	0	0.00	0.00
Roseburn to Ferry Rd	6	12/11/2007	38	40,297.43	see data	38,508.26	54,349.94	18/08/2008	0	0.00	0.00
Line 2											
Roseburn to Gogar	7	19/11/2007	81	5,478,675.62	see data	242,851.43	342,756.62	January 08	0	0.00	0.00
			12,088,917.52		9,037,151.96	12,754,891.46				5,227,970.04	3,515,513.21
80% Prov & Prime Cost Spend										3,515,513.21	
Gogar Depot Phase 1										2,849,256.50	
Gogar Depot Phase 2										1,783,083.10	
Supply Of Power Cables - Allow For period Based On AMIS Submissions ie circa £450k in total										378,431.06	
Change Control (As per attached summary)										421,179.34	
										21,792,043.42	14,175,436.25
Work Sector Preliminaries						1,083,419.00				244,200.00	
Contract Preliminaries						2,002,546.00				2,177,972.29	
1% for 6yr Defects Correction Period						299,843.52				173,456.83	
						3,385,808.52				2,595,631.12	
Total						25,177,851.94	9,029,081.48			16,771,067.37	
Potential AMIS Underrecovery											
AMIS Contract Overhead			8.80%								
Odt											
Insurance			2.80%								
Profit (based on O6)			3.30%								
% to be applied			2.70%								
										Potential Reduced Turnover	8,406,784.57
										Potential Underrecovery @ 2.7%	226,983.18

Note :

1. AMIS MUDFA tender submission and programme based upon construction start delayed to 2nd April 2007
2. Prime cost and Provisional Sums - From GARP programme
3. Line 2 considered
4. Simplistic view = £39,104,844 / 64 weeks x 40 weeks = £24,440,528 (ie comparable to AMIS assessment of circa £25m)