



**Infrastructure Services**

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Ref: AMIS/tie/letter/KAG/Projects/855

19<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**  
**Adoption of term Confirmation of Verbal Instruction (CVI)**

AMIS MUDFA acknowledge receipt on the 10<sup>th</sup> March 2008 of your letter Ref; DEL.MUDFA.7594.GS.GB dated 7<sup>th</sup> March 2008.

In consideration of your comments, presented below in italic within a text box for ease of reference and identification, AMIS MUDFA would respond as follows:-

1. *"Further to the receipt of over 500 CVI/Record Sheets, we write to clarify our position for the use of the term CVI on this project and in particular with reference to Clause 68.2 of our Agreement."*

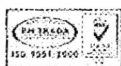
The introduction of the CVI/Record Sheets was an AMIS MUDFA initiative designed to ensure an appropriate level of control, Project and Risk Management was maintained given the ongoing failure of tie Limited to manage the MUDFA Works in accordance with the agreed terms and conditions; primarily Work Ordering under Clause 8 and Change under Clause 46.

The initiative was so successful tie Limited adopted the AMIS MUDFA proforma in its entirety, evidence that the Project Management Infrastructure and requisite intellectual property was not previously available within the tie Limited organisation structure and systems.

Clause 68.2 relates to the maintaining of records for the MUDFA Works; the CVI/Record Sheet, given the systemic failure of tie Limited to manage and discharge their obligations in full under the MUDFA terms and conditions, the introduction of the CVI/Record Sheet cannot reasonably be construed as contrary to this, or any of the Contract provisions.

2. *"Primarily the term is strictly not in accordance with the contract and has created much confusion, unnecessary paperwork and abortive management time"*

AMIS MUDFA acknowledges that the CVI/Record Sheet was not contemplated within the MUDFA terms and Conditions.





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The MUDFA terms and conditions are prescriptive in nature and as stated above the CVI/Record Sheet was introduced to mitigate the impact of tie Limited not being able to manage and administer the Work Ordering and Change Provisions under Clause 8 and 46 respectively.

Another factor is the level of change associated with the MUDFA Works, not contemplated when the Contract was executed on 4<sup>th</sup> October 2006; this Change is at a level, volume and configuration requiring meticulous management. Change that has been demonstrated as a direct and unequivocal consequence of the inaccuracy, lack of technical detail and definition, configuration and consideration of dependencies evident in the IFC Design and Design related Information.

Had the level and magnitude of change and associated impact on schedule adherence being experienced been contemplated by the parties a CVI and Technical Query process would have been incorporated into the MUDFA terms and conditions; the exclusion of these protocols from the Contract Agreement demonstrates that the design process was not considered a risk by tie Limited.

It is a matter of record that the AMIS MUDFA CVI/Record Sheet has become instrumental and pivotal to the successful day to day management of the project; consequently tie Limited are invited to withdraw their unsubstantiated and vexatious statement "...much confusion, unnecessary paperwork and abortive management time" has been created as a result.

These are the very same records used by tie limited in the interrogation of performance and cost and are therefore considered to be effective and of value.

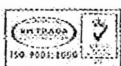
3. "AMIS CVI's also undermine and overlap our TQ process"

In the first instance the TQ process was instigated by AMIS MUDFA in the absence of any system generated by tie Limited or SDS Provider.

It would have been consistent and ideal for AMIS MUDFA to have adopted the SDS Provider system, in accordance with our former requests (November 2006).

The attention of tie Limited is drawn to the following items of correspondence, relating to the TQ process, where a formal acknowledgement is outstanding, notwithstanding a structured response to the issues and concerns raised.

Table with 3 columns: ID, Reference, Date, Current Delay. It lists 6 items of correspondence with their respective dates and current delays.





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7 AMIS/tie/letter/KAG/783 19<sup>th</sup> February 2008 4 Weeks

Under no circumstances could the CVI/Record Sheet reasonably be considered as undermining or unnecessarily overlapping the TQ process.

As a consequence tie Limited are invited to withdraw these unsubstantiated and anecdotal comments and deploy the appropriate level of effort to address the various issues detailed in the above noted correspondence in the key and critical role of "Project and Interface Managers".

4. "AMIS CVI's also appear to ignore the contract Change Order process"

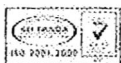
The comments under item 2 above, in terms of the prescriptive nature of the MUDFA terms and conditions, together with the disproportionate magnitude and level of Change being experienced apply equally in this instance.

The CVI/Record Sheet supplements and compliments the Change Order process; notwithstanding it is inappropriate and impractical for AMIS MUDFA to activate Clause 46.17, the only mechanism for MUDFA Contractor Change, when the Change issues need to be addressed in real time to mitigate cost and ensure schedule adherence.

Notwithstanding the party responsible for seeking to circumvent the Change Order process is tie Limited who, after in excess of 40 Change events did not:-

- Serve a Notice of Change (Clause 46.3) "...in sufficient detail to enable the MUDFA Contractor to calculate and provide the Estimate" with the Estimate to be provided under Clause 46.4 "...within ten business days";
- "Where the circumstances dictate an Estimate cannot reasonably be provided by the MUDFA Contractor timeously, tie's representative may at his absolute discretion waive the requirements of Clause 46.4 or part thereof";
- "As soon as reasonably practicable...the parties shall discuss and agree the issues set out in the Estimate", Clause 46.9; and
- "As soon as reasonably practicable after the contents of the Estimate have been agreed...tie shall:
  - Issue a tie Change Order; or
  - Withdraw the tie Notice of Change"

Clauses 46.11, 46.11.1 and 46.11.2 inclusive.







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It is a matter of record, as set out in letter Ref: AMIS/tie/letter/TL/Projects/738 dated 23<sup>rd</sup> January 2008, that this process has not been discharged in accordance with the agreed MUDFA terms and conditions by tie Limited and set out proposals by way of rectification and mitigation.

Furthermore this letter has not even received the courtesy of a reply, never mind a considered and substantive response, after a period of seven (7) weeks. In recognition of this tie Limited are invited to withdraw the above noted erroneous and unsubstantiated statement and focus their efforts on the due and proper administration of Clause 46, commencing with the backlog of outstanding issues.

### Conclusion

For the avoidance of doubt the CVI/Record Sheet process was introduced by AMIS MUDFA as a direct and consequential impact of the following:-

- Non-Compliance of Clause 8 and Clause 46 by tie Limited;
- The late issue of IFC Designs and Design related Information, as managed by tie Limited;
- Inaccurate IFC Designs and Design related Information, as reviewed (Record of Review: (RoR)) by tie Limited;
- The late issue of Traffic Management Plans and Temporary Traffic Regulation Orders;
- The absence of appropriate technical detail and definition to support Construction Services and schedule adherence by tie Limited and their appointed agents; and
- Deficient configuration and consideration of dependencies reflected in the IFC Design and Design related Information by tie Limited appointed agents.

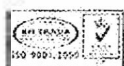
Furthermore CVI's have been drafted by senior AMIS MUDFA personnel as a substitute for appropriate action and forward planning on the part of tie Limited in their role as Employer, Project Sponsor and Project Manager.

AMIS MUDFA records demonstrate no CVI or Work Order Requirements have been forthcoming to the appropriate level of compliance, as substantiated in recent correspondence, most recently letter Ref: AMIS/tie/letter/KAG/Projects/816 and 833 dated 3<sup>rd</sup> and 11<sup>th</sup> March 2008 respectively.

The most appropriate examples are Gogarburn Depot, the Enabling Works Programme, conceptualisation to completion of the City Traffic Management handover, Shandwick Place Logistics support team and Constitution Street pre-event activities.

Were AMIS MUDFA to accede to your instructions the responsibility for these matters would revert to the exclusive domain of tie Limited; no further CVI's would be prepared by AMIS MUDFA and no Works would commence until the provisions of Clauses 8 and 46 were discharged in full, in accordance with the pre-agreed timescales.

Furthermore when issues materialise on site the matter would be recorded on a Record Sheet, with the responsibility for determining the technical resolution resting immediately with tie Limited, as





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appropriate under the Contract and the inherent risk profile associated with the Design and other related information.

Additionally all costs associated with unproductive, inefficient and dislocated working incurred by AMIS MUDFA are underwritten by tie Limited in their entirety as a result

### Way Forward

In the considered opinion of AMIS MUDFA this would be an inappropriate outcome and at divergence with the MUDFA Contractors obligations under the Contract, specifically Clause 2.

Letter Ref: AMIS/tie/letter/TL/Projects/738 of 23<sup>rd</sup> January 2008 set out proposals to address the CVI/Record Sheet protocol in a manner that allowed the parties to the Contract to more satisfactorily discharge their obligations more readily.

It is apparent that the current drafting of the MUDFA terms and conditions contemplated a more robust, accurate, fully configured and schedule compliant set of IFC Designs than presently issued by SDS Provider; thereby allowing the prescriptive and time constrained provisions of Clauses 8 and 46 to be managed without the consequential impact on schedule adherence or commercial escalation.

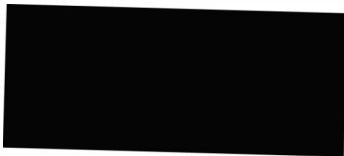
This assessment is supported by the absence of a Technical Query process, overlapping or otherwise within the MUDFA terms and conditions.

Both these protocols have proved instrumental in the successful delivery of the MUDFA Works to date and should be administered as complementary to the MUDFA terms and conditions, not in lieu of, as is presently the case.

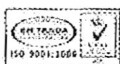
AMIS MUDFA awaits your confirmation and/or instruction in this respect with great interest.

Yours sincerely,

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



**Andrew Malkin**  
MUDFA AMIS Project Director





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**Copies:-**

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