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Infrastructure Services

Ref: AMIS/tie/letter/KAG/Projects/823

6th March 2008

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

Dear Graeme,

Subject: MUDFA Alfred McAlpine Infrastructure Services (AMIS) – Contract A150
Enabling Works – Constitution Street

Thank you for your letter Ref; DEL.MUDFA.7553.GB dated 5th March 2008.

Your letter raises, once again, concern in respect of the fundamental understanding and appreciation of senior MUDFA tie Limited staff on the application and administration of key and critical MUDFA terms and conditions, specifically Clauses 2.4 and 8, responsibility for Design and Work Ordering.

The most recent example being letter Ref; AMIS/tie/letter/KAG/Projects/780 dated 14th February 2008 where AMIS MUDFA note a response is pending from tie Limited for a period of three weeks.

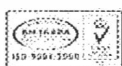
In the first instance "Enabling Works" is a defined Contract term, as previously notified and advised to tie Limited under cover of letter Ref; AMIS/tie/letter/KAG/Projects/672 dated 6th December 2007; once again AMIS MUDFA note a response is pending from tie Limited, on this occasion for a period of thirteen weeks.

Notwithstanding "Enabling Works" is defined under the Contract, under paragraph 2.51 of "Schedule One, Scope of Works and Services" as:-

"During the Pre-Construction Phase, the MUDFA Contractor may be requested by tie to carry out or procure cabling or pre-diversion works on site prior to the commencement of the Construction Phase".

Note; the terms "pre-diversion works" remains silent and has not been fully defined, although the definition is nevertheless self explanatory supported by the preceding paragraph (2.50, "Advance Construction Works") which states;

"During the Pre-Construction Phase, the MUDFA Contractor may be requested by tie to carry out or procure the carrying out of enabling works and demolition works (which could include.....removal/re-location of street furniture.....on Site prior to the commencement of the Construction Phase...."



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For the avoidance of any doubt "the Pre-Construction Phase" is defined as the period during which the MUDFA Contractor shall carry out and complete the Pre-Construction Services and any mobilisation duties; i.e. between October 2006 and March 2007, and not contemporaneous with utility diversions.

In light of the foregoing your reference to Prime Cost and Provisional Sums are, as a result, erroneous, particularly the £1,000,000.00 Prime Cost Sum for Traffic Management, all the more appropriate given your omission of the full description which contemplates "Work Sector".

Notwithstanding your attention is drawn to prerequisite requirements for the correct expenditure of Prime Cost and Provisional Sums which stipulates they "...may be instructed at the entire discretion of tie".

Under the terms and conditions of the MUDFA Agreement the singular means of instructing works is Clause 8.8 to 8.10 inclusive; Clause 8.8 states:-

"Before the MUDFA Contractor is permitted by tie to commence carrying out the Construction Works (which shall include the provision of vehicles and accommodation in accordance with Schedule 1 (Scope of Works and Services)) in any Work Section the following procedure shall be followed (unless expressly varied by tie in writing):"

It is a matter of record that all the enabling works completed to date are included within the circa £13M of Construction Works have indeed been commenced without the contractual procedure being followed, or varied in writing; despite every effort on the part of AMIS MUDFA to seek an appropriate remedy from tie Limited well in advance of operations.

Non-Conformance Report Ref; 005 was raised against tie Limited on the 29th October 2007, when the value of Construction Works being undertaken at divergence with the provisions of Clause 8 was assessed at £6.8M, letter Ref; AMIS/tie/letter/KAG/Projects/560 refers.

It is a matter of record that, after a period of approaching 19 weeks, the NCR has not even been afforded the basic courtesy of a reply, far less appropriate action by tie Limited to remedy the default.

The "fait accompli" to which tie limited refers was a direct and unequivocal consequence of the tie Limited default under Clause 8.

The ongoing absence of design, specification, detail and technical definition, visibility of workload and appropriate level of commercial protection led our internal Services Provider to explore other opportunities where their resources could be more effectively and productively deployed.

tie Limited, in their role as Employer, Project Sponsor and Project Manager need to proactively consider and manage all 'capacity' and 'constraint' issues to ensure all future and potential 'bottle necks' are de-risked and mitigated as a consequence, thereby ensuring successful delivery.





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As previously advised AMIS MUDFA are not prepared, under any circumstances, to proceed with Construction Services at technical, operational, health, safety, environmental and/or commercial risk; the requirements of Clause 8.9 "Work Order Requirements" must be discharged by tie Limited in totality and in a timely manner that supports Construction Services.

The 'back to back' design documentation transfer from SDS Provider does not constitute a Work Order instruction with little or no intervention to ensure the prescriptive requirements are sufficiently defined and established for the preparation of technical and commercial proposals by AMIS MUDFA to be adequately undertaken.

The attention of tie Limited is drawn to letter Ref: AMIS/tie/letter/KAG/Projects/632 dated 26th November 2007, where it was demonstrated and fully substantiated that the level of tie Limited Non-Compliance under the Work Order Requirements was in excess of 70%, i.e. only 30% compliant.

It is a matter of record that, after a period of approaching 14 weeks, this matter has not even been afforded the basic courtesy of a reply, far less appropriate action by tie Limited to remedy the default for the benefit of both parties.

Turning to the items identified in your letter by unique reference our response, adopting a numerical reference consistent with your comments is as follows:-

1. AMIS MUDFA confirms our commitment to provide support in respect of the Constitution Street enabling works, however tie Limited have not issued the full compliment of the Faber Maunsell design drawings and only partial details relating to traffic lights and road crossings have been identified at this stage.

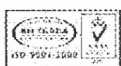
Furthermore AMIS MUDFA are concerned that the full extent of the enabling works necessary to support Construction Services has not been fully identified or reflected on the Faber Maunsell design drawings; this matter will be the subject of appropriate Technical Queries in due course.

At this juncture the lateness of design potentially precludes the adoption of Lux solutions.

2. Noted and agreed.
3. Traffic Management and Civils design is by others, managed by tie Limited.

AMIS MUDFA have discharged and will continue to discharge their obligations under the MUDFA terms and conditions with the reasonable level of professional skill, care and diligence appropriate to the project, as openly demonstrated to date and as acknowledged by all key Stakeholders on the project.

Your assertion that AMIS MUDFA have not discharged their obligations in respect of Clause 2 is wholly incorrect, inappropriate and in the absence of any substantiation should be withdrawn by tie Limited with immediate effect.





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Your reference to "temporary works" is an aberration given the fundamental failure of tie Limited to administer the Contract under Clause 8 and the actuality that the enabling works under review by the parties herewith cannot reasonably be considered to constitute "temporary works" in the context of Clause 2.4.

Finally your vexatious challenge to the proactive approach of AMIS MUDFA must be interrogated; the forward facing, solutioneering focused approach of AMIS MUDFA is beyond reproach.

Pertinent examples of the MUDFA Contractor discharging their obligations under the Contract are:-

- Gogarburn Depot which was executed without appropriate design detail and definition being received from tie Limited and delivered successfully with virtually no tie Limited assistance;
- A myriad of Early Warning and Risk Mitigation strategies drafted to manage and mitigate the tie Limited risks relative to IFC Design availability and integrity, the majority of which received no active engagement or even the basic courtesy of a reply;
- Proposed Value Engineering workshops and Risk / Cost Mitigation Initiatives, including INFRACO interface; letter Ref; AMIS/tie/letter/KAG/Projects/675 of 7th December 2007 refers. This proposal has received no response from tie Limited, current delay 13 weeks;
- Numerous Risk and Trade Off (RAT's) Proposals the protocol and implementation for which was developed by AMIS MUDFA and has proactively delivered value added results in the absence of SDS Provider IFC Designs and Design related Information, as managed by tie Limited;
- Preparation of Thumbnail Utility Sketches (TUDS) to assist SDS Provider as a consequence of their inability to secure SUC approvals for their IFC Designs, predominately for water and gas; and
- The conceptualisation to completion of the City handover by AMIS MUDFA.

In consideration of the foregoing should tie Limited wish to maintain their view that AMIS MUDFA has not been proactive in the face of the imposition of disproportionate and inappropriate risk as a direct consequence of the Employer's inability to discharge their obligations in full or in part then the matter needs to be addressed by senior management in the first instance or ultimately escalated under Schedule 9, "Dispute Resolution Procedure".

Yours sincerely,

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



Andrew Maikin
MUDFA AMIS Project Director





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Copies:-

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