

Strategy and Investment Directorate

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Your ref:

Our ref:

Date:
31 Mar 09

Donald McGougan
Treasurer
Forth Estuary Transport Authority
10 Waterloo Place
EDINBURGH
EH1 3EG

Dear Donald,

OFFER OF GRANT-IN-AID FOR FORTH ESTUARY TRANSPORT AUTHORITY FOR CAPITAL EXPENDITURE IN 2009-10

The Scottish Ministers in exercise of their powers under section 70 of the Transport (Scotland) Act 2001 hereby offer to give to the Forth Estuary Transport Authority (FETA) ("the Grantee") Grant-in-aid of up to £8,007,000 STERLING, payable over the financial year 2009-2010. This Grant-in-aid is offered in order to fund and support delivery of FETA's capital programme, subject to the following terms and conditions:

1. Definitions and Interpretation

- 1.1 In these Conditions, the words and expressions set out in Schedule 1 shall have the meanings ascribed to them in that Schedule.
- 1.2 In these Conditions unless the context otherwise requires, words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.
- 1.3 The headings in these Conditions are for convenience only and shall not be read as forming part of the Conditions or taken into account in their interpretation.
- 1.4 Except as otherwise provided in these Conditions, any reference to a clause, paragraph, sub-paragraph or schedule shall be a reference to a clause, paragraph, subparagraph or schedule of these Conditions.

2. Purposes of the Grant-in-aid

- 2.1 The Grant-in-aid shall only be used to fund capital expenditure, as set out in the Grantee's capital spending programme, as agreed with the Scottish Ministers.

2.2 No part of the Grant-in-aid shall be used to fund option appraisals or feasibility studies which cannot be properly capitalised in accordance with accepted accounting practice applicable to the Grantee.

2.3 No part of the Grant-in-aid shall be used for revenue purposes.

2.4 No part of the Grant-in-aid shall be used to fund any activity or material which is party political in intention, use, or presentation or appears to be designed to affect support for a political party.

3. Payment of Grant-in-aid

3.1 The Grant-in-aid shall be paid by the Scottish Ministers to the Grantee in accordance with the terms of Schedule 2 attached.

3.2 The Grantee may, subject to agreement by the Scottish Ministers, carry over sums arising from slippage on specific capital projects into the next financial year.

3.3 Agreement to carry forward such sums will not be unreasonably withheld where there has been unforeseen slippage on projects during the financial year, and where such projects form part of the agreed capital spending programme.

3.4 The Scottish Ministers' agreement to carry forward sums from one financial year to the next shall be confirmed by letter at the start of each financial year. Agreement shall be subject to ongoing monitoring of the Grantee's capital programme, and agreement on the appropriate level of financial reserves which might be held at any time.

3.5 The Grantee should account for unspent Grant-in-aid in accordance with proper accounting practices.

3.6 The Grantee shall, by 30 June following the end of the financial year in respect of which the Grant-in-aid has been paid, submit to the Scottish Ministers a statement of compliance with the Conditions of the Grant-in-aid, using the form of words provided in Schedule 3. The statement shall be signed by the Grantee's Treasurer.

4. Inspection and Information

4.1 The Grantee shall supply to the Scottish Ministers such documents and information which they may require in support of the payment of Grant-in-aid.

4.2 The Grantee shall keep the Scottish Ministers fully informed of the progress on the agreed capital programme in the form of quarterly reports. Details shall include actual expenditure to date compared with profiled expenditure and any change to estimated expenditure for the financial year, the reasons for any such changes and progress in achieving objectives / outcomes.

4.3 The Grantee shall, by 30 June following the end of the financial year in respect of which the Grant-in-aid has been paid, submit a report to the Scottish Ministers summarising how the Grant-in-aid has been used in that financial year.

4.4 The Grantee shall by 30 June 2010 submit to the Scottish Ministers a copy of the Authority's unaudited accounts, and shall submit audited accounts by 15 October 2010.

4.5 The Grantee shall provide the Scottish Ministers with prompt access to such other information as they reasonably require to ensure compliance with these Conditions.

4.6 The Grantee shall keep and maintain for a period of 6 years after the expenditure occurs, adequate and proper records and books of account recording all receipts and expenditure of monies paid to it by the Scottish Ministers by way of the Grant-in-aid. The Grantee shall afford the Scottish Ministers, their representatives, the Auditor General for Scotland, his/her representatives and such other persons as the Scottish Ministers may reasonably specify from time to time, such access to those records and books of account as may be required by them at any reasonable time in response to a written request for such access from the person seeking it. The Grantee shall provide such reasonable assistance and explanation as the person carrying out the inspection may from time to time require.

5. Confidentiality and Data Protection

5.1 The Grantee will respect the confidentiality of any commercially sensitive information that they have access to as a result of the capital programme to which this offer of Grant-in-aid relates. Notwithstanding this, the Grantee may disclose any information in compliance with the Freedom of Information (Scotland) Act 2002, any other law, or as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure.

5.2 All information submitted to the Scottish Ministers may need to be disclosed and/or published by the Scottish Ministers. Without prejudice to the foregoing generality, the Scottish Ministers may disclose information in compliance with the Freedom of Information (Scotland) Act 2002, any other law, or as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure. Further, the Scottish Ministers may also disclose all information submitted to them to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland, in right of the Scottish Administration or the United Kingdom, and their servants or agents. When disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Scottish Ministers shall if they see fit disclose such information but are unable to impose any restriction upon the information that it provides to Members of the Scottish Parliament, or Members of the United Kingdom Parliament; such disclosure shall not be treated as a breach of this agreement.

5.3 The Grantee shall ensure that all requirements of the Data Protection Act 1998 are fulfilled in relation to the Grant-in-aid.

6. Disposal of Assets

The capital programme, as agreed by the Scottish Ministers, shall reflect any receipts, actual or projected, arising from the disposal of capital assets. The Grant-in-aid offered to the Grantee by the Scottish Ministers reflects the amount required to fund the capital programme, net of any such receipts.

7. Publicity

The Grantee shall, where requested to do so by the Scottish Ministers and where reasonably practicable, acknowledge in all or in such specified publicity material relating to the capital spending programme the contribution of the Scottish Ministers to the costs of the programme. The Scottish Ministers may require to approve the form of such acknowledgement prior to its first publication.

8. Intellectual Property Rights

8.1 All Intellectual Property Rights of the Grantee shall be retained by the Grantee, or by the Grantee's statutory successor. Those rights shall not be assigned or otherwise transferred to a third party without the written consent of the Scottish Ministers.

8.2 The Grantee shall ensure that nothing contained in any materials produced or submitted to the Scottish Ministers by the Grantee or anyone acting on its behalf nor the reproduction of such materials shall constitute an infringement of any third party copyright or intellectual right and shall indemnify the Scottish Ministers against all actions, proceedings, claims and demands made by reason of any such infringement.

9. Default

9.1 The Scottish Ministers may re-assess, vary, make a deduction from, withhold, or require immediate repayment of the Grant-in-aid or any part of it in the event that:

9.1.1 The Grantee commits a Default;

9.1.2 The Scottish Ministers consider that any change or departure from the purposes for which the Grant-in-aid was awarded warrants an alteration in the amount of the Grant-in-aid;

9.1.3 Grant-in-aid paid to the Grantee exceeds the amount payable in accordance with the conditions in this letter; or

9.1.4 Any Grant-in-aid is not used in accordance with these Grant-in-aid conditions.

9.2 In the event that the Grantee becomes bound to pay any sum to the Scottish Ministers in terms of clause 9.1, the Grantee shall pay the Scottish Ministers the appropriate sum within 14 days of a written demand for it being given by or on behalf of the Scottish Ministers to the Grantee.

9.3 Notwithstanding the provisions of this clause 9, in the event that the Grantee is in breach of any of the Conditions, the Scottish Ministers may, provided that the breach is capable of a remedy, postpone the exercise of their rights in terms of clause 9 for such period as they see fit, and may give written notice to the Grantee requiring it to remedy the breach within such period as may be specified in the notice. In the event of the Grantee failing to remedy the breach within the period specified, the Grantee shall be bound to pay the sum to the Scottish Ministers in accordance with the foregoing provisions.

9.4 Any failure, omission or delay by the Scottish Ministers in exercising any right or remedy to which they are entitled by virtue of clauses 9.1 to 9.3 shall not be construed as a waiver of such right or remedy.

10. Assignment

The Grantee shall not be entitled to assign, sub-contract or otherwise transfer its rights or obligations under the Agreement without the prior written consent of the Scottish Ministers.

11. Termination

The Agreement may be terminated by the Scottish Ministers giving to the Grantee not less than 3 months' notice in writing from the date of the notice being sent. Prior to giving such notice, the Scottish Ministers will ensure that proper and sufficient alternative arrangements are in place for funding, maintaining and operating the bridge following the termination of this Agreement.

12. Corrupt Gifts and Payments of Commission

The Grantee shall not offer or give or agree to give any person any gift or consideration of any kind as an inducement or reward in relation to this Grant-in-aid. The Grantee shall ensure that its employees shall not breach the terms of the Prevention of Corruption Acts 1889 to 1916 in relation to this or any other Grant-in-aid.

13. Continuation of Conditions

These Conditions shall continue to apply for a period of 6 years after the end of the financial year in which the final instalment of the Grant-in-aid was paid.

14. Compliance with the Law

The Grantee shall ensure that in relation to the capital programme, they and anyone acting on their behalf shall comply with the relevant law for the time being in force in Scotland.

If you wish to accept this offer of Grant-in-aid on the whole terms and conditions as set out in the letter and annexed Schedules, you should sign and date the Grant-in-aid Acceptance below and return one copy of the offer of Grant-in-aid and Schedules to me at the above address. You should retain a second copy of the offer of Grant-in-aid and Schedules for your own records.

Yours sincerely

FRANCES DUFFY

GRANT-IN-AID ACCEPTANCE

On behalf of the Forth Estuary Transport Authority I accept the foregoing offer of capital Grant-in-aid by the Scottish Ministers dated 31 March 2009 on the whole terms and conditions as set out in the letter and annexed Schedules. I confirm that I hold the relevant signing authority.

Signed: 
Treasurer

Print Name: DONALD MCGOUGAN

Position in Organisation of Person Signing: Treasurer Feta.

Date: 1st April 2009

Place of Signing: Waverley Court, Edinburgh.

Signed: 
Witness

Witness Name: IAN KNOWLES

Address: 4, EAST MARKET STREET
EDINBURGH EH8 8BG

Date: 1st April, 2009

Place of Signing: WAVERLEY COURT, EDINBURGH

SCHEDULE 1

DEFINITIONS

"Agreement" means the agreement constituted by the Scottish Ministers' offer of Grant-in-aid and the Grantee's acceptance of that offer;

"Conditions" means these Grant-in-aid conditions;

"Default" means:

- (a) Any breach of the obligations of either party under this Agreement (including, but not limited to, any breach of any undertaking or warranty given under or in terms of this Agreement);
- (b) Any failure to perform or the negligent performance of any obligation under this Agreement;
- (c) Any breach of any legislation;
- (d) The provision of any information which is false in any material particular; or
- (e) Any negligence or negligent or fraudulent mis-statement or misappropriation of Grant-in-aid, or any other default,

In all cases by either party, its employees, agents or representatives;

"Financial Year" means a period from 1 April in one year until 31 March in the next;

"Grant-in-aid" means the grant offered by the Scottish Ministers to the Grantee as specified in the offer letter, as varied from time to time in accordance with these Conditions;

"Grantee" means the person, organisation or body to which the Grant will be payable as specified in these Conditions;

"Intellectual Property Rights" means all rights of ownership, including all copyrights and other intellectual property rights in books, leaflets and other printed and published materials in whatever form produced by or on behalf of the Grantee including all reports and any such published materials stored in or made available by means of an information technology system and the computer software relating thereto and all patents, trademarks, registered designs and other rights in the nature of intellectual property;

"Payment" means each of the payments specified in Schedule 2 Annex A hereto.

SCHEDULE 2

PAYMENT OF GRANT

1. The Grantee shall submit an outline capital spending programme for the following financial year by 30 November 2009, setting out the overall requirement for capital Grant-in-aid funding and the main outcomes to be delivered.
2. The Grantee shall submit, for the agreement of the Scottish Ministers, a detailed capital spending programme for the following financial year by 28 February 2010. The capital spending programme shall list the schemes to be funded from the Grant-in-aid, and shall provide an indicative profile of spending in the year, in the form attached at Annex A.
3. The Grant-in-aid will be paid on the 15th of each month, in accordance with the financial profile provided by the Grantee, or on such other basis as may be agreed between the Grantee and the Scottish Ministers. By 31 July, 31 October, 31 January and 31 May each year, the Grantee will submit to the Scottish Ministers a summary statement of Grant-in-aid received and capital expenditure incurred in the previous quarter.
4. The Scottish Government and the Grantee will meet regularly to review the actual expenditure against the financial profile, and the amount of Grant-in-aid paid. Subject to the outcome of such meetings, the Grantee will adjust the financial profile for the remainder of the financial year and submit this to the Scottish Ministers for approval.

**FORTH ESTUARY TRANSPORT AUTHORITY
SECTION 70 CAPITAL GRANT-IN-AID – FINANCIAL PROFILE 2009-10 - AS AT 31 March 2009**

Homecoming Scotland 2009
homecoming@scotland2009.com

SCHEDULE 3

STATEMENT OF COMPLIANCE WITH CONDITIONS OF GRANT-IN-AID

Forth Estuary Transport Authority - Capital Expenditure Programme

This is to confirm that the Grant-in-aid received by the Forth Estuary Transport Authority, in relation to the agreed capital expenditure programme during the financial year ended 31 March 2010, was properly due and was used for its intended purpose(s) in accordance with the terms and conditions of the Grant-in-aid. This statement is supported by the records of the Forth Estuary Transport Authority.

Signed:



Name in block capitals:

Position:

Date:

