



SCOTTISH EXECUTIVE

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Our ref: B1513621

30 August 2007

GRANT OFFER TO FORTH ESTUARY TRANSPORT AUTHORITY FOR CAPITAL EXPENDITURE IN 2007-08

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 ("the Grantee") a grant of up to a maximum of £1.946 million STERLING, payable over the financial year 2007-2008, to support the Board's capital works programme, including the current contract for the upgrading of the A8000/M9 Spur. This offer is subject to the following terms and conditions:

1. Definitions and Interpretation

- 1.1 In these Conditions, the words and expressions set out in **Schedule 4** 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, subparagraph or schedule shall be a reference to a clause, paragraph, subparagraph or schedule of these Conditions.

2. Purposes of the Grant

- 2.1 The Grant is made to enable the Grantee to carry out the capital works programme.
- 2.2 The Grant shall only be used in connection with the Board's capital works programme and for no other purpose whatsoever.

2.3 No part of the Grant 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.

2.4 No part of the grant shall be used for revenue purposes.

3. Payment of Grant

3.1 The Grant shall be paid by the Scottish Ministers to the Grantee in accordance with the terms of **Schedule 1** attached.

3.2 The Grantee shall within 6 weeks of receiving the final instalment of the Grant submit to the Scottish Ministers a statement of compliance with the Conditions of the Grant using the form of words provided in **Schedule 3**. The statement shall be signed by the Grantee's Treasurer.

3.3 In the event that the amount of the Grant paid by the Scottish Ministers to the Grantee at any point in time is found to exceed the amount of the expenses reasonably and properly incurred by the Grantee in connection with the Project, the Grantee shall repay to the Scottish Ministers the amount of such excess within 14 days of receiving a written demand for it from or on behalf of the Scottish Ministers.

4. Inspection and Information

4.1 The Grantee shall keep the Scottish Ministers fully informed of the progress of the Project in the form of quarterly reports, along with claims for Grant. Details shall include actual expenditure to date compared with profiled expenditure and any change to estimated expenditure for the financial year.

4.2 The Grantee shall provide the Scottish Ministers with prompt access to any information they reasonably require to ensure compliance with these Conditions.

4.3 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. 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 Project.

5.2 Notwithstanding the above, the Grantee may disclose any information as required by law or judicial order. 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 Project.

6. Publicity

The Grantee shall where reasonably practicable acknowledge in all publicity material relating to the Project the contribution of the Scottish Ministers to its costs. The Scottish Ministers may require to approve the form of such acknowledgement prior to its first publication.

7. Default

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

7.1.1 The Grantee commits a Default;

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

7.1.3 The Grantee fails to carry out the Project;

7.1.4 In the Scottish Ministers' opinion, the progress on the Project is not satisfactory; or

7.1.5 In the Scottish Ministers' opinion, the future of the Project is in jeopardy

7.2 Notwithstanding the provisions of this clause 7, 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 to recover any sum from the Grantee in terms of clause 7 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.

7.3 Any failure, omission or delay by the Scottish Ministers in exercising any right or remedy to which they are entitled by virtue of clauses 7.1 to 7.3 shall not be construed as a waiver of such right or remedy.

8. 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.

9. Termination

The Agreement may be terminated by the Scottish Ministers giving not less than 3 months' notice in writing from the date of the notice being sent.

10. 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. 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.

11. Continuation of Conditions

These Conditions shall continue to apply for a period of 5 years after the end of the financial year in which the final instalment of the Grant was paid.

12. Compliance with the Law

The Grantee shall ensure that in relation to the Project, 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 the offer of this Grant on the whole terms and conditions as set out in the letter and annexed Schedules, you should sign and date the Grant Acceptance below and return one copy of the offer of Grant and Schedules to me at the above address. You should retain a second copy of the offer of Grant and Schedules for your own records.

As you know, the Scottish Ministers propose in the near future to introduce a Bill to abolish bridge tolls in Scotland. This offer of Grant is not affected by that proposal. Discussions on future funding arrangements between the Scottish Ministers and the Forth Estuary Transport Authority will continue separately.

Yours sincerely

KEITH MAIN

GRANT ACCEPTANCE

On behalf of the Forth Estuary Transport Authority I accept the foregoing offer of Grant by the Scottish Ministers dated 30 August 2007 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:

Position in Organisation of Person Signing:

Date:

Place of Signing:

Signed:

Witness

Witness Name:

Address:

Date:

Place of Signing:

SCHEDULE 1

PAYMENT OF GRANT

1. The total Grant of £1.946 million shall be payable by the Scottish Ministers to the Grantee quarterly in arrears on receipt of a completed claim for Grant in the form set out in **Schedule 2** together with the associated monitoring information set out in paragraph 4.1 of the Offer of Grant.
2. The Grantee shall provide a monthly profile of expenditure of the Grant before the start of the financial year. Any change to the profile or to the overall costs of the Project shall be notified to the Scottish Ministers at the earliest opportunity via the claims for Grant and monitoring reports.
3. Each claim shall be for an amount equal to the actual reasonable and proper costs and expenses incurred by the Grantee in connection with the Project since the submission by it of the last claim for an instalment of the Grant.
4. Each claim shall be submitted together with such explanatory or supplementary material as the Scottish Ministers may from time to time require whether before or after submission of the claim.
5. On receipt of each claim, the Scottish Ministers shall determine the amount of expenditure which they consider the Grantee has reasonably and properly incurred in connection with the Project having regard to that claim. The determination shall be based on the information provided by the Grantee in accordance with this Schedule. The Scottish Ministers shall, where possible, pay the amount determined to the Grantee within 6 week(s) of receiving the Grant claim form.
6. In order to facilitate the accrual of expenditure of the Grant for the financial year the Grantee shall, where appropriate, advise the Scottish Ministers in writing by 11 April the amount of the Grant actually expended up to and including 31 March.

SCHEDULE 2

GRANT CLAIM FORM

Organisation: *[Name and address]*

Bank details: *[Name and address, sort code, account number]*

Project: *[Name / Description]*

Total agreed grant for 2007-08: *[Amount]*

Latest forecast of expenditure of grant for 2007-08: *[Amount]*

Grant claimed to date: *[Amount]*

Claim for grant for the period [from _____ to _____]: *[Amount]*

We hereby claim [total] grant of £_____ in respect of the above period in accordance with the terms and conditions of the offer of Grant dated 30 August 2007 and the Schedules attached thereto.

Completed by:

Position:

Contact Details:

Date:

Items of Expenditure

Please list in the table below all discrete items of expenditure relevant to the above period and the type of documentary evidence that has been submitted to substantiate each amount.

A	B	C	D
Item	Amount (£)	Paid Invoice [Y/N]	Other (please specify, e.g. certificate of payment in kind)
TOTAL*			

* Note the total should add up to the total expenditure claimed for the period.

SCHEDULE 3

STATEMENT OF COMPLIANCE WITH CONDITIONS OF GRANT

Forth Estuary Transport Authority - Capital Works Programme

This is to confirm that the grant claimed by the Forth Estuary Transport Authority in relation to the capital works programme during the financial year ended 31 March 2008 was properly due and was used for its intended purpose(s) in accordance with the terms and conditions of the Grant. This statement is supported by the records of the Forth Estuary Transport Authority.

Signed:

Name in block capitals:

Position:

Date:

SCHEDULE 4

DEFINITIONS

“Agreement” means the agreement constituted by the Scottish Ministers’ invitation to apply for a grant, the Grantee’s Application, these Conditions and the Grantee’s acceptance of these Conditions;

“Conditions” means these grant 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; or

(d) Any negligence or negligent or fraudulent mis-statement or misappropriation of Grant, 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” means the grant offered by the Scottish Ministers to the Grantee as specified in the Award 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. Where two or more persons, organisations or bodies are the Grantee, references to the “Grantee” are to those persons, organisations or bodies collectively and their obligations under the Agreement are undertaken jointly and severally;

“Project” means the purpose for which the Grant has been awarded as described in the Offer of Grant;

“Payment” means each of the payments specified in Schedule 1 hereto.