

Grant Approval Process



*Delegated Authority Policy

Grant v Procurement

A comparison of features of a grant and a procurement:

Grant	Procurement of Services
SDS makes contribution to a project designed/created by the grant recipient.	SDS creates the specification
Project supported by SDS as its aims/activities aligned to SDS policy aims	SDS need not be covering the full costs of the goods/services
Third party and not SDS receives the benefit of the funded activity	SDS (or a third party) receives the benefit in the goods/services
Subject to State Aid regulations and obligations commonly set out in funding documents imposed by SDS e.g. ESF Conditions.	Not subject to state aid regulations. May be subject to ESF Conditions
Not subject to Procurement Regulations	Subject to Procurement Regulations
Not Subject to VAT	Unless zero rated, is subject to VAT

A good rule of thumb when determining which is which is to think of a Grant funded arrangement as one where the activity or project is essentially determined, designed and operated by the provider, at the provider's instance – i.e. where SDS is just helping finance what is essentially the provider's project. SDS will be contributing funds on the basis that the project objectives are closely aligned to SDS policy aims. The recipient requires to submit a proposal on their company headed notepaper detailing comprehensive project details/funding request.

Procurement of a service on the other hand, can be:

- Activity which SDS must ensure is delivered by someone (i.e. a core requirement of SDS), or
- Even if it is not core activity, activity in respect of which we impose a number of detailed conditions. This would indicate that SDS wants a degree of control over the manner in which the activity is conducted. Where e.g. SDS imposes a statement of requirements or specification, or conditions regarding the quality of service/required outputs/outcomes, or e.g. SDS approves or identifies any element of the service or imposes specific conditions such as health & safety, insurance & liability - these are all indicators of a services being procured.

There are a couple of myths worth pointing out:

1. SDS need not be meeting the full costs of the service for it to be classed as a service
2. To constitute a service, the service need not be provided directly to the funder. An example of this is where SDS pays a provider to perform activities to third parties (e.g. training services provided to modern apprentices). SDS does not require to receive the services itself.

Whilst the rule of thumb approach mentioned above helps to highlight the difference, there are several issues which must be considered when making an actual determination. Based on guidance provided by Scottish Government, and with assistance of external legal experts in the field, our internal legal team have helped procurement produce a template called the Grant Assessment Form – which contains questions about your proposed funding scenario. Procurement will then use your responses to determine the applicable process. If there are any issues with the proposed arrangements, then further discussion should be held with procurement with a view to modifying your proposal to ensure that a compliant and appropriate process can be used.

Below is a copy of the questions from the Grant Assessment Form.

DETERMINING THE DIFFERENCE

When considering whether the arrangement in question may properly be regarded as a grant or is in fact a contract the following questions may assist. These serve as guidance only and should not be treated as absolutely determining whether the arrangement is a grant or service contract but will very strongly indicate one or the other.

	Grant	Services Contract
Q. Is the project delivering a general function of SDS? (Attached is a copy of SDS's Memorandum of Association which sets out SDS's functions.)	No	Yes
Q. Is the project providing a service to us that we could otherwise deliver inhouse given the appropriate resources?	No	Yes
Q. Are we really outsourcing a service, requirement or function?	No	Yes
Q. What do or should we require in return for the funding?	Reports and evidence of delivery only.	Compliance with obligations and specific requirements set by us e.g. does SDS determine eligibility for participants in the project, the number of starts registered, require training agreements to be completed, target volumes processed etc, or any specific SDS quality standards*
Q Are any payments dependent on outcome (e.g. achieving an SVQ qualification or getting a job)?	No	Yes
Q. Do we require the project to be delivered? **	No – we just do not fund it anymore or reclaim funding.	Yes
Q. If the project was not being delivered by the provider would we need to arrange for another body to deliver it or deliver it in-house?	No	Yes
Q. If the project was not completed what remedy would we seek?	Variation or repayment of grant monies	Enforcing delivery of the requirement through court action or a right to seek compensation or damages
Q. On completion of the project would we require it to be continued and seek to enter into a further agreement?	No	Yes

In answering the above questions in relation to any proposed project to be funded by SDS, it is unlikely that all the ticks will fall under one or other project type. The questions are intended to outline what you need to think about. You will then need to weigh up the answers and determine which type of funding arrangement the answers generally point to. It is also not a simple case of adding up the ticks on each side, since some questions will point more strongly to grant or procurement, and one answer alone may ultimately influence your decision e.g. the extent to which SDS imposes conditions within the agreement may be minor or considerable - where SDS imposes a number of conditions which the supplier would not otherwise fulfil as part of the project, this alone would suggest a contract for services, rather than a grant funding arrangement.

Grant funding may have State Aid implications. The principles of free trade, which are fundamental to the EU, require that state bodies do not subsidise commercial entities to give them an unfair advantage.

If the recipient of the grant funding is a commercial organisation it is more likely to be State Aid than if it is a Public Sector or Third Sector body. However, if it's a Public Sector or Third Sector body and the activity being funded is commercial in any way it may fall under State Aid.

Within the Grant Assessment Form there are questions relating to State Aid. For the most part State Aid is permitted in terms of EU Block Exemption Regulations. There are two Block Exemptions which mainly concern SDS – The General Block Exemption Regulations 2014 (GBER) and the De Minimis Block Exemption Regulations 2013. Further information on State Aid can be found on Scottish Government's website

Scottish Government State Aid website

<https://www.gov.scot/publications/state-aid-guidance/>

One point worth noting - The maximum De Minimis funding any single recipient can receive is €200,000 (cash grant equivalent) over a three-year fiscal period. If providing funding under De Minimis Block exemption, the grant offer letter must include specific wording which warns the recipient that they must keep account on what De Minimis aid they receive over the previous and succeeding three years. This puts the obligation on the recipient.

Whilst ESF funding will eventually disappear once the current funded commitment has been fully utilised, European laws such a procurement laws, data protection laws and state aid laws will continue to apply until such time as legislation is introduced to amend or remove it. As such, we should operate on the premise that these laws continue to apply.

The Procurement Team will be able to advise you how your arrangement should be treated given your responses to the Grant Assessment Form.