

User Guide: Procurement Operation or Grants

This User Guide promotes

- a consistent approach by public authorities when distinguishing between procurement operations (as defined in the *State Procurement Act 2004*) and grants (as defined in Treasurer's Instruction) and
- provides guidance to public authorities to help determine whether a contracting arrangement is a procurement operation or a grant; making this determination requires the exercise of judgement based on the public authority's knowledge of the arrangement. More complex cases may require advice from the Crown Solicitor's Office.

Definitions:

Procurement operations: State Procurement Act

- (a) the procurement of goods or services required by the authority for its operations, including (without limitation) the procurement of—
 - (i) a supply of electricity, gas or any other form of energy; or
 - (ii) intellectual property; or
- (b) the management of goods of the authority, including (without limitation) the care, custody, storage, inspection, stocktaking or distribution of goods of the authority; or
- (c) the management of the authority's contracts for services; or
- (d) the disposal of goods surplus to the authority's requirements,

but does not include operations excluded from this definition by the regulations.

Grants as defined in Treasurer's Instruction 15 are **excluded** from the definition of procurement operations via the State Procurement Act regulations.

Grants: Treasurers Instruction 15

- (1) the provision of funding to a third party is classified as a grant if it falls within the ambit of subclause (2).
- (2) Funding falls within the ambit of this subclause if—
 - (a) it constitutes expenditure by a public authority to assist or support a third party in the conduct of its undertaking; and
 - (b) the benefits on account of that expenditure do not flow, or do not predominantly flow, to the public authority.

The following guidance is provided to assist public authorities to determine if a funding arrangement is a procurement or a grant.

Grants constitute expenditure by a public authority to assist or support a recipient in the conduct of the recipient's undertaking whereas a procurement operation relates to the procurement of goods or services required by the public authority for its operations.

When determining if the funding is a grant or a procurement operation, a key consideration is determining **if the expenditure is for the public authority's own undertaking or for the undertaking of the recipient.**

Are there government policies to provide services to the public and establish a program that has specified services and regulations around the provision of the service by a third party?

- If yes, then this funding is likely to be a procurement.

Is the expenditure provided to a third party, who has its own established undertaking to which the government is assisting the third party to achieve?

- If yes, then this funding is likely to be a grant.

The public authority also needs to determine **who receives the predominate benefit of the funding**. This benefit is not the benefit to the community or to the government as a whole but rather to the public authority itself.

In many instances, a practical test for this part of the definition is whether the public authority receives **approximate equal value of goods and services** in exchange for its expenditure.

Does the funding provided fully fund the project, i.e. the benefits provided to the public authority are of approximate equal value to the funding provided?

- If yes, then this funding is likely to be a procurement.

Is the public authority's contribution only a proportion of the total cost of the project being funded?

- If yes, then this funding is likely to be a grant.

The following examples are provided to assist with this determination:

Funding of Aged Care Home Nursing Services

- One of SA Health's functions is to provide aged-care home nursing services to the South Australian community.
- SA Health engages an NFP organisation to provide nursing services to the community and provides funding to a third party to undertake these services to the community.
- SA Health specifies the services and will determine who is eligible to receive those services.
- The community and the third party benefit from these services but SA Health receives the predominate benefit as it would otherwise have had to provide the services itself.
- This funding is a **procurement**.

Funding to a Sporting Club to purchase equipment

- One of the functions of the Office of Recreation, Sport and Racing (ORSR) is to promote sport for children.
- ORSR provides money to a football club for the purchase of 100 new footballs for its junior program (third parties undertaking).
- The community and the third party are the predominant beneficiaries of this funding.
- ORSR does not use the footballs in the production of its services.
- This funding is a **grant**.

Funding of Peak Body to undertake advocacy

- The Department of Human Services (DHS) provides funding to a Peak Body such as SACOSS to undertake advocacy for social services in South Australia.
- DHS has provided this funding to SACOSS for SACOSS' own undertakings.
- There is minimal specification of the services to be provided by SACOSS.
- DHS does not receive any direct benefit back. The benefit is to provide SACOSS with the ability to participate and contribute to a policy debate.
- This funding is a **grant**.