



ENGLISH HERITAGE

Public Procurement: Questions & Answers

What has changed?

All bodies receiving public money, including English Heritage and successful grant applicants, have to demonstrate that it is spent fairly. This means that, grant recipients will be obliged to explain how their lead professional adviser (usually an architect or surveyor) employed to specify and supervise the repairs, other professional advisers and the contractors who carry out the repairs have been appointed.

This is because the legal framework for projects offered grants has changed to meet demands for transparent and unbiased use of public money. This change is in response to the enactment of European legislation, through the UK legislation *Public Contract Regulations SI 2006 No.5*. This affects all successful grant applicants, those who counter-sign applications and professional advisers and contractors. The enclosed advice is intended to help those applying to one of English Heritage's grant schemes.

Why has this been introduced?

The reason for this is that UK legislation and case law means that both services and works on any projects that receive more than 50% public funding have to be openly tendered. "Public funding" includes English Heritage grants, funding from the Department for Culture, Media and Sport and local authorities. We anticipate that nearly all successful applicants are likely to be subject to this legislation.

Is there a lower limit below which this doesn't apply?

No. The regulations do not state a lower limit.

Is there an upper limit?

Large projects will have to follow a process set by the European Union, including advertising in the Official Journal of the European Union (OJEU). This is where the estimated cost of services or works is close to or above the thresholds set by Europe (projects of around £1 million). For the current UK thresholds see the Office of Government Commerce website (www.ogc.gov.uk/procurement_policy_and_application_of_eu_rules_eu_procurement_thresholds.asp). English Heritage can provide specific advice for any large project.

What happens if a successful grant applicant ignores this?

If the requirements of the law are not fulfilled, there could be a challenge through the courts by an aggrieved party seeking damages. Whilst the likelihood of this may be small the impact of a successful challenge is potentially huge. English Heritage would have to recover the whole grant given.

Doesn't English Heritage realise how difficult it is to apply for a grant already, without this additional requirement?

Yes. We understand that applications are quite often made by hard-pressed volunteers. This requirement has been brought about by changes in the law. We



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realise that there will always be a certain amount of work involved in applying for a grant and are doing our best to ensure that this process is as straightforward as possible.

What if we have already appointed a professional adviser?

Where an open tendering process has been undertaken, details of this should be sent to your English Heritage regional office, together with a brief explanation of the process.

Where no open tendering process has been undertaken, a letter should be sent to your English Heritage regional office when accepting the grant offer, explaining why the appointed professional adviser is the most appropriate person to undertake the work. The reasons are likely to vary in each case, but may include, for example: special knowledge and experience of the nature and type of building under consideration; knowledge and understanding of the individual building under repair; knowledge and experience of the type of repair works proposed; and confirmation that they are an appropriately qualified professional.

What if we don't yet have a professional adviser?

If you have not yet appointed a professional adviser and are made an offer of grant you will have to complete a process of public competition. The opportunity to tender for the work needs to be publicly advertised and a formal selection process must be carried out.

We have produced a guidance note to take you through each step, with examples and detailed instructions on how to undertake each element. Whilst the process might take three months to complete, there will be only a limited amount for you to do during this time. We are not allowed to recommend any particular route but we have provided guidance on one way to appoint a professional adviser. There may be other ways to satisfy the legislation. Any other appointments (for services and for the repairs themselves) can be handled by the lead professional adviser.

That sounds complicated. Is help needed, will it cost the applicant money and how long will the process take?

Applicants may need some help to undertake this process. Help should not be sought from any person or organisation who might later wish to tender for the job itself. Another architect or quantity surveyor could be employed specifically to assist with the professional services competition stage.

If we have a series of phased repairs that will need grant aid do we have to tender for each phase?

No, providing the nature of the whole project and its phases is made clear when the work is advertised the whole project should be covered. If the project is very large (around £1 million) you may need to advertise in the Official Journal of the European Union. We can provide specific advice for any large project.

Where can I find out more about the legal framework?



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This change is in response to the enactment of European legislation, through the UK legislation *Public Contract Regulations SI 2006 No.5* (which can be seen at <http://www.opsi.gov.uk/si/si2006/20060005.htm>).

Section 34 has a direct impact on our grant giving work. This legislation requires that any element of civil engineering works (such as building repairs) or services (such as architects or quantity surveyors) funded in excess of 50% by public money and which fall within Schedule 2 of the Regulations must be openly procured so that any person or body in the EU has an opportunity to tender. It is mandatory for us to comply and there is no exemption for any particular building type. Any public monies going into a project must be aggregated to see whether the 50% threshold has been exceeded.