

DSS OFFICE OF CONTRACTS

SUBCONTRACTING FREQUENTLY ASKED QUESTIONS

A Contractor may enter into a third-party agreement that supports direct services only if the Department of Homeless Services (“DHS”) / Department of Social Services (“DSS/HRA”), (collectively “the Department”) approves.¹ Approval of a third-party agreement is given by the Department via a Subcontractor Approval Form 65A (“SAF”) signed by the Agency Chief Contracting Officer (“ACCO”), or designee.

All approved SAF’s must be attached to the annually reviewed budget submission. In addition, the signed SAF may be requested by the Department to verify third-party approval to support budgeted expenses, including prior to budget approval or in a post-payment audit.

Any third-party vendor costs that have not been approved by the Department must be moved into Unallocated Funds until an approval is obtained. Budget amendments/modifications for third party agreements that exceed \$25,000 will not be approved until the SAF is submitted and approved. Agreements that are not approved by the Department are at risk of not being reimbursed.

Knowingly presenting a document that contains false information to a public office, public servant or public authority could be a violation of Sections § 175.30 and § 175.35 of the New York State Penal Law, and the Department may be obligated to report any such instance of false filings to the NYC Department of Investigation. Please keep a copy of each approved SAF and do not alter the Department’s documentation or approved forms.

Q1. My organization uses vendors, not subcontractors. Is subcontractor approval required?

Yes. DHS/DSS/HRA now refers to these terms collectively as third-party vendors and Department approval is required.

Q2. My organization uses consultants who are properly classified as 1099 independent Contractors as defined by the New York State Department of Labor classification guidance. Do we need to request subcontractor approval for these independent Contractors?

No. Department approval is not required for a professional working as an independent Contractor. However, this should be recorded in the budget as a professional service in accordance with the DHS/HRA Fiscal Manual.

Q3. When am I required to submit a Subcontractor Approval Form 65A?

For third-party agreements that are greater than or equal to \$25,000 and are under direct reimbursable line, classified as a “Contracted Service” in HHS Accelerator, the Contractor shall submit a SAF along with required information to the Department. Contractors shall not enter into any third-party agreement for an amount greater than \$25,000 without prior approval by the Department.²

¹ Pursuant to Section 4-13(a) of the PPB Rules, and consistent with the terms of the Standard Human Services Contract (“Contract”), Appendix A Section 3.02, and the DHS Fiscal Manual. In instances where this FAQ conflicts with the Contract, the City Contract shall take precedence.

² DHS understands that for third party agreements the Contractor entered prior to FY2023, approval may not have

Approvals of third-party agreements for FY2022, FY2023 and FY2024 are required for purposes of payment and fiscal year closeouts. DHS will withhold payments connected with third-party vendor usage if the Contractor fails to obtain Department approval.

Q4. I have multiple third-party agreements with the same vendor. Each individual agreement is less than \$25,000, do I need to submit a Subcontractor Approval Form 65A?

If the aggregate value is \$25,000, or greater, yes. Department approval is required.

Q5. What is required when submitting a Subcontractor Approval Form 65A?

For third-party agreements valued greater than \$25,000:

- 1) Third-party vendor must be registered in PASSPort
- 2) Third-party vendor must be active in the City's Payee Information Portal (PIP)
- 3) Contractor must add the third-party vendor to the contract in PIP
- 4) Contractor must submit completed Subcontractor Approval Form 65A
- 5) Contractor must submit completed Subcontractor Log
- 6) Procurement requirement: Contractor to submit at least three (3) bids/estimates
- 7) Justification letter:
 - a) If the organization did not select the lowest bidder, a justification letter addressed to the ACCO, explaining why the lowest bidder was not selected.
 - b) If the Contractor fails to adhere to the procurement requirement, a procurement plan is required in the form of a justification letter addressed to the ACCO, explaining why bids were not obtained and outline the plan to be compliant in the upcoming fiscal year. Note, if a procurement plan is required to bring the Contractor into compliance, requests for multi-year approvals will not be granted.
 - c) If the Contractor was identified in the proposal, a justification addressed to the ACCO, explaining that the third-party vendor was included in the proposal.

For third-party agreements valued less than \$25,000:

- 1) Third-party vendor to be registered in PASSPort, (1099 employees are excluded)
- 2) Third-party vendor must be active in the City's Payee Information Portal (PIP)
- 3) Contractor must add the subcontractor to the contract in PIP
- 4) Contractor must submit subcontractor Log

The Subcontractor Approval Form 65A, FAQ, subcontractor log and related documents at can be found at www.nyc.gov/site/dhs/about/contracts.page

Q6. How do I submit a Subcontractor Approval Form 65A to the Department?

Submissions of all Subcontractor Approval Forms – 65A's, logs, bids, etc., (see Q5) – must be emailed to subcontractorapprovals@dss.nyc.gov. To avoid processing delays please include the contract number, your organization's name and the name of the third-party vendor in the subject line of the email.

Example: CT107100000000 – ABC Foods – XYZ Non-profit name. The Department strongly recommends that all required information is provided in the email submission so that the Department can review and respond quickly and efficiently. Sending information piecemeal will delay the approval process.

been obtained. DHS (budget) will be reviewing SAF's retroactively for FY2022 and FY2023. Determinations regarding compliance with this contractual requirement for FY2021 and prior remain subject to close-out and audit.

Q7. Is the Contractor required to add the subcontract information to the contract in the City's Payee Information Portal?

Yes. Before submission of the SAF to the Department, the Contractor must add the proposed subcontractor in the City's Payee Information Portal (www.nyc.gov/pip) and provide the following information: maximum subcontract value, description of subcontractor work, start and end date of the subcontract, and the subcontractor's industry. For technical assistance, you may contact the PIP Help Desk at PIP@fisa-opa.nyc.gov.

Note that entry of the third-party data into PIP is contract specific and must match the information on the SAF, including the third party's name as it appears in PASSport. You may begin recording payments made to the third-party in PIP once approved.

Q8. Does the Department need to approve third-party vendors whose agreements that are less than \$25,000?

No. The Department does not need to approve third-party vendors whose total subcontract value does not exceed \$25,000.00 in the aggregate. The Department will request a log listing all such third-party vendors. However, once a third-party agreement total increases to \$25,000 or more, the prime Contractor is responsible for following the procedure for submitting a SAF.

Q9. Are written bids/estimates required?

Yes. At least three written bids/estimates are required for third-party vendors including, but not limited to, IT Consultants, medical services, security, food service, building maintenance, extermination and contracted temp services and services performed by other non-profits, that are greater than or equal to \$25,000. All pages of the bids are required and should include, dates, contact information, and pricing. As a general rule, the Department will review only those bids for services that are directly reimbursable under the specific contract(s). Third-party vendors that are funded by the Contractor's Indirect Cost Rate do not require ACCO approval. All third-party agreements may be subject to audit and must be procured in accordance with the Contractor's procurement policies.

Q10. I am unable to obtain three bids. The vendors that were solicited sent me a letter declining to bid. Does that count as a bid?

No. Declination to bid does not count as a bid. For a list of M/WBE vendors, you may go to the M/WBE Online Directory at <https://sbsconnect.nyc.gov/certification-directory-search/> or send an email request to mwbe@dss.nyc.gov

Q11. How long is the subcontractor approval process?

Upon receipt and completion of all requirements, please expect a minimum 30-day turnaround time for review, and responses that approve, disapprove, reject, or comment on missing elements. When following up on a submission, the Contractor shall reply to the original submission email.

Q12. For how long is my third-party vendor approved?

Third-party vendors are approved based on the contract dates indicated on the SAF. However, the Department reserves the right to limit the term of approval based on circumstances including but not limited to:

- 1) the last time the work has been competitively bid by the Contractor;
- 2) capacity of the third-party vendor;
- 3) the Department determined that there was a fault in the underlying selection process for the third-party vendor and the Department allows time for a transition period; and

- 4) the Department in its determination, determined that the length of the third-party agreement is unreasonably long.

Note, the contract allows the Department to withdraw approval with a 10 day notice. The Department recommends similar terms be included in the Contractor's third-party agreements.

Q13. Are bids required if utilizing a third-party vendor that is part of the Essensa network?

No. Essensa is a New York-based Group Purchasing Organization that offers membership to non-profits working with New York City³. Proof that the Contractor is an Essensa member, and the third-party vendor has an Essensa contract*, i.e., Essensa Contract ID, exempts the Contractor from needing to submit three bids. **Third-party vendor must be an Essensa vendor before the commencement of work and request for ACCO approval.*

Note that a SAF submission is still required for Department approval. This is also applicable to NYS Office of General services centralized contracts. Contractors may provide the OGS award number with their SAF.

Q14. If I use an Essensa vendor, do I still need Department approval?

Yes. Submission of the SAF is still required. Using an Essensa vendor only eliminates the need for obtaining three bids to procure the service, as Essensa has already conducted a competitive procurement process.

Q15. How often do I need to solicit for a contracted service?

The Department strongly recommends that the bids are no more than five years old.

Q16. Can I request to use a third-party vendor for multiple years?

Yes. The terms of the third-party agreement should either match the term of the prime contract and/or be no longer than five years.

Q17. My proposed third-party vendor was identified in the contract proposal and is integral to the success of my program. Are we still required to submit bids?

No. However, while bids are not required, Department approval still is. Note that mere mention that a third-party vendor was identified in the proposal does not alleviate the competitive requirements of the contract and is still subject to Department review. The Contractor is required to submit a SAF with an attached explanation, addressed to the ACCO, that the third-party vendor was included with the proposal.

Q18. Is approval of third-party agreements required on emergency contracts?

Yes. The Department can provide preliminary approval or an expedited review in some individual cases.

Q19. Do second tier third-party agreements require Department approval?

Yes. A second-tier third-party vendor is an entity that is contracted by the third-party vendor as part of service provision. For example, if demolition is needed for repair work, a demolition Contractor may be hired by the third-party vendor. The subcontractor would then hire a second-tier vendor to perform the demolition work. Bids are not required for second tier vendors. Please note that the third-party vendors should not enter into agreements with second tier Contractors for security,

³ New York City Department of Homeless Services Human Service Providers Fiscal Manual, January 2022, p. 53-54).

maintenance, food, or temporary staffing.

Q20. How do I know when my proposed third-party agreement is final approved?

Third-party vendors are approved for work on a human service contract when the Department issues a SAF signed by the ACCO or designee.

Q21. Does the Department need to approve raw food vendors? For example, meat, dairy, produce?

The Department does not require approval for raw food providers. However, Contractors have the affirmative obligation to keep all contracting paperwork and pricing on file and provide such information upon Department request or for audit purposes. This information is extremely important to determine budget allocations for multiple sites.

Q22. Are phone bids deemed an acceptable form for a bid?

No. Any third-party agreements that exceed \$25,000 should be procured by written solicitation. Bids should include, dates, contact information, and pricing. For shelter contracts, prevailing wages for security guards must be included.

Q23. Is one Subcontractor Approval Form 65A, signed by the Department, good for multiple years and across all contracts?

No. Department approvals are only good for the start and end dates and the contract number specified on the signed SAF.

Q24. My third party vendor has been approved by the ACCO, but the subcontract value has since increased although the scope of services did not change. Do I need to submit a new Subcontractor Approval Form for the new value?

No. However, the Contractor would need to submit a budget amendment to fund the increase. Only if there is no change to the scope of services:

- 1) Contractor should consult with DHS Budget Team to request approval.
- 2) If approved, Budget Team will add the approved amendment to the SAF and will provide a copy to the Contractor for their records.
- 3) Contractor will then update PIP and will continue to record payments.

Note, as part of the budget modification process, the Department may review documentation as to the cost increase and may confer internally to determine whether a third-party agreement should be resolicited due to issues with cost.

Q25. What should I keep as proof of Department approval? What will I need to show in future years to confirm the third-party agreement was approved?

The Department will send an email communication which will include a copy of the signed SAF. Please retain a copy of this communication and the approved SAF as proof of department approval. Approval forms should be uploaded into the budget to demonstrate that the third-party vendor is approved to be used under that specific contract during the approved period.

Q26. Our organization submitted a Subcontractor Approval Form, and it was not approved. How can I find out why?

All disapprovals are made in writing and sent to the requestor. The disapproval notice will include contact information in case there are any questions. Common reasons why use of the third-party vendor is not approved are as follows:

- a. Contractor is using third party vendors that were bid multiple years ago and it is impossible to determine if costs are reasonable.
- b. Contractor secures a third-party vendor via a quality-based selection which is not a compliant method of selection according to the requirements of the agreement.
- c. Contractor proceeded with a bid for a third-party vendor but is attempting to bypass the low bid without adequate justification.
- d. Contractor secured less than three bids when procuring a third-party vendor.
- e. Contractor's solicitation and/or process for securing a third-party vendor includes apparent conflicts of interest.

Q27. Our organization solicited bids for work to start July 1 of the upcoming fiscal year. When should we submit Subcontractor Approval Forms?

The Department strongly encourages that SAF's be submitted as early as possible to ensure that final approval is secured before the date third-party services begin. For services that begin on July 1, the Department requests that all SAF's and its requirements be met and submitted by mid-May to avoid any delays in budget approvals.

Q28. What happens if we incur unexpected costs with a third-party vendor that goes over \$25,000 mid fiscal year?

The Contractor should contact the Office of Contracts, Vendor Compliance and Relations at subcontractorapprovals@dss.nyc.gov to advise of the increase and submit a formal request for subcontractor approval. Please be advised that DSS/HRA/DHS strongly recommends soliciting for various on-call services that have been historically needed by the Contractor. Lack of bidding for such services may affect approval of these third-party vendors.

Q29. What is a procurement schedule/ bidding plan?

A procurement schedule is a schedule/plan to issue a bid solicitation, obtain pricing and evaluating bids, and/or pricing in accordance with the Contractor's own procurement policies and by-laws. Such a plan should provide enough time to engage third-party vendors and obtain DSS approval before services commence.

Q30. What are examples of contracted services that require approval?

Examples include any third-party service that is necessary for the Contractor to provide services under the contract, and which is directly paid as a line item. Services include, but are not limited to security, prepared meals, language services, building maintenance (not including construction and major systems repair), temporary personnel services, and medical services.

Q31. Do I need Department approval for payroll services?

Yes, the Department requires a SAF for payroll services if costs are being billed directly to the program budget. There are a range of services provided by payroll management companies, and many companies to choose from. Contractors should solicit for payroll services in compliance with the contract if expenses exceed \$25,000.

Q32. When completing the Subcontractor Approval Form 65A, how do I determine the subcontract value?

The subcontract value should be based on the cost bid by the successful third-party vendor when obtaining three estimates. The value should match the contract the Contractor enters into with the third-party vendor.

Q33. My third-party vendor was approved for one contract. Does that mean I am approved to use them across all contracts?

No. SAF approvals are specific to the individual contract number and time period.

Q34. My third-party vendor is not enrolled in PIP/PASSport. Can they still be approved?

No. The Department requires PASSPort and PIP enrollment. DSS will not entertain any requests for waivers, and Contractors should not engage with third-party vendors who refuse to complete PASSPort questionnaires.

Q35. I have been trying to get my third-party vendors approved to no avail. What can I do?

If there are any questions with regards to any delayed approvals (more than 30 days) or disapprovals, please reach out to the Vendor Compliance and Relations team immediately. There are several reasons why a particular third-party vendor has not been approved. For example, conflicts of interest, improper bid process, or an unapproved justification to not use the lowest bidder, could prevent the Department from approving the third-party vendor. Moreover, the third-party vendor may have performance or responsibility issues. It is imperative that Contractors seek approval before work commences to avoid these issues.