

CHAPTER 8 SUBCONTRACTS

Introduction

This chapter provides instructions on how to obtain a subcontract and guidelines on developing a written agreement with a subcontractor. It also defines when State WIC approval is required and how to receive it. It describes the procurement process for a subcontractor for items over \$5,000 and how to obtain reimbursement for subcontract-related costs.

I. General Information

Definition and Purpose

A subcontract is a written agreement between a WIC local agency and another individual or business to provide a portion of WIC services detailed in the WIC local agency agreement, Exhibit A, Scope of Work, such as administrative, certification, nutrition, breastfeeding education, outreach, staff training, etc.

The reason for using a subcontract is to help a WIC local agency provide all contractually required services outlined in the Scope of Work.

If a WIC local agency receives services as part of a parent agency subcontract, then the services, if allowable, must be considered indirect and the WIC local agency will cover the cost in line item 5 of the budget (indirect costs). If the parent agency wants to directly charge services across programs, then the WIC local agency would need to initiate a subcontract for their portion of the cost.

No work shall be performed by the subcontractor prior to receipt of approval from the State WIC Program. If work starts prior to receiving state review, then a WIC local agency is responsible for paying all subcontractor expenses from non-WIC funds if the subcontract is not approved.

Role Definitions

When services are provided under a subcontract, the individual providing those services cannot be an employee of the WIC local agency because the subcontractor's relationship must be at "arms-length" to avoid a conflict of interest. Also, to insure compliance with State and Federal statutes governing the collection of payroll taxes, a WIC local agency must differentiate between employees of the WIC local agency and subcontractors.

Under a subcontract, the individual or business providing services:

- A. Must fulfill the obligations detailed in the subcontract, and
 - B. May renegotiate payment, scope of work, and the terms and conditions under the subcontract, providing both parties are in agreement.
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Budget

The funds for **all** subcontracts are budgeted in line item 4, Other Costs, of the WIC local agency's budget.

Subcontracts over \$50,000

If a subcontract total is \$50,000 or more, the subcontractor must complete a budget worksheet for all five line items and include budget detail for line items 1 through 4. The entire subcontract must be submitted to the State WIC Program with the request for approval.

Authorization

A WIC local agency must request official written authorization from the State WIC Program prior to executing a subcontract of **\$5,000 or more** and before services are rendered. If the subcontract amount is under \$5,000, written authorization is not required, but the subcontract must be budgeted in line item 4, Other Costs. If a subcontract is needed but funds have not been budgeted in Line Item 4, the WIC local agency must complete a line item shift request form (Attachment 12-5) and move funds into line item 4 to cover the cost of the subcontract. This must be done before the WIC local agency can request reimbursement for subcontract costs

When a subcontract has a **cumulative** budget that equals \$5,000 or more per fiscal year, State WIC Program approval is required. For example, if the initial subcontract totaled \$2,000 and the subcontract is amended to increase the amount paid to the subcontractor by \$3,500 (for a total of \$5,500), State WIC Program approval is required.

Term Subcontract terms may not begin prior to, or extend beyond the term limits of the WIC local agency agreement.

II. Selection of a Subcontractor

Award Process A WIC local agency must ensure that the award process used in the selection of a subcontractor is conducted in a manner that provides open and free competition. A WIC local agency must obtain three bids from three different sources for subcontract services, or provide a justification for a sole-source award. This information must be kept on file at the WIC local agency for future audits.

The same bidding procedure described in CMB Chapter 7 shall be followed in the selection of a subcontractor.

Local Agency Responsibilities A WIC local agency is responsible for ensuring:

- A. All performance requirements of the subcontract are met;
- B. Subcontractor's scope of work is consistent with the WIC local agency agreement,
- C. Payments are made to the subcontractor in a timely manner;
- D. A copy of the following documents are kept on file at the WIC local agency for approval, inspection, and/or audit upon the State WIC Program's request:
 - 1. subcontract approval documents from the State WIC Program,
 - 2. an original signed copy of each subcontract, and
 - 3. an explanation of the award process for each subcontract.

III. Development of a Subcontract

Elements A written draft of the subcontract (unsigned) between the WIC local agency and potential subcontractor must be submitted to the State WIC Program for approval **before** it has been signed by either party and before services are rendered, and must include the following information:

- A. The legal names of both parties (WIC local agency and subcontractor);
- B. Full address of both parties;
- C. Subcontractor's Federal Taxpayer I.D. #;
- D. Subcontract Term (including the beginning and ending dates);
- E. Maximum amount payable (subcontract amount), if the subcontract is for more than one Federal Fiscal Year (FFY), the amount to be paid in each FFY;
- F. Record retention clause: (*Subcontractor Name*) agrees to maintain and preserve, until three years after termination of (*WIC Local Agency Contract Number*) and final payment from the State, and to permit the State or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers, and records related to this subcontract;
- G. Reimbursement provisions (method, rate, frequency, etc.);
- H. Termination clause;
- I. Scope of Work to be performed or provided, and any product to be produced, by the subcontractor; and
- J. Statement: "(*Subcontractor Name*) shall comply with all applicable federal, state and local laws, regulations, ordinances, and codes, and provisions of the WIC local agency agreement."

IV. Approval Process

The following documents must be submitted to the State WIC Program when requesting approval to enter into a subcontract or amend a subcontract.

Cover Letter

A letter requesting formal authorization to subcontract. The letter must be typed on the WIC local agency's letterhead and must include an original signature (in blue ink) of the WIC Agency Director.

**Request for
Authorization to
Subcontract Form**

This form (CMB Chapter 1, Attachment 1-20) identifies:

- the WIC local agency and the proposed subcontractor,
- the subcontract, or subcontract amendment, and
- the term and amount.

This form must also include all original signatures (in blue ink).

**Justification for the
Need to Subcontract**

The justification must include all details for evaluating the necessity or desirability of incurring such a cost, including the following:

- A. The reason(s) the WIC local agency is unable to perform the service(s) to be subcontracted;
 - B. An analysis of the cost benefit(s) of entering into a subcontract. If subcontracting is not cost effective, an alternative justification must be provided (e.g., efficiency, customer service, practicality, other benefits, etc.);
 - C. The basis for determining the reasonableness of cost (rate of pay, recruitment barriers, etc.); and
 - D. A detailed scope of work to be performed by the subcontractor.
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**Unsigned Copy of
Subcontract**

A final draft of the written agreement between the WIC local agency and the subcontractor must be submitted to the State WIC Program for review **BEFORE** execution/signature and prior to services being rendered by the subcontractor.

Where to Submit

The WIC local agency must submit one original and one legible photocopy of all required documents for review and approval to:

Department of Public Health
WIC Program
Local Agency Support Branch
Attention: Regional Advisor
3901 Lennane Drive
Sacramento, CA 95834

Review of Documents

State WIC Program reviews subcontract documentation submitted by WIC local agency and notifies the WIC local agency of approval or disapproval via returned copy of the Request for Authorization to Subcontract form.

Action Upon State Approval

Upon receipt of approval of the subcontract or amendment, the WIC local agency may then execute the subcontract or amendment. If the request for authorization to subcontract is not approved, the WIC local agency may work with the State WIC Program to make necessary changes to resubmit for approval.

V. Subcontract Amendments

Definition

A subcontract amendment is a formal change to an existing subcontract. When changes to an existing subcontract are required, the WIC local agency must request official written authorization from the State WIC Program prior to the signing of the subcontract amendment by either party.

Examples of changes include:

- increase or decrease of costs,
- term, and/or
- scope of work.

WIC local agency responsibilities and required documentation for subcontract approval also apply to subcontract amendments (refer to previous sections of this chapter for more information).

Copy of Previous State Request for Authorization to Subcontract (when applicable)

When a subcontract is amended, a copy of the original Request for Authorization to Subcontract that was previously approved by the State WIC Program must be submitted as part of the documentation.

VI. Reimbursement for Subcontract Costs

After a WIC local agency has received an approved Request for Authorization to Subcontract form from the State WIC Program, the WIC local agency may then claim reimbursement for subsequent subcontract expenses.

For subcontracts over \$50,000, the subcontractor must submit an invoice covering the same billing period to the WIC local agency to be submitted with their WIC invoice for reimbursement.

VII. Procurement Process for Subcontractors

A WIC local agency must obtain prior approval from the State WIC Program, on behalf of the subcontractor, for procurement requests of \$5,000 or more, (e.g., equipment, supplies, services, etc.). The WIC local agency is responsible for ensuring that the subcontractor's procurement requests of \$5,000 or more are submitted directly to the WIC local agency. The WIC local agency will then process the procurement request as detailed in CMB Chapter 7.

VIII. Subcontract Exemptions and Examples

Exemptions

Janitorial services and maintenance agreements for office machines and equipment are allowable, but are exempt from State WIC Program approval due to their essential and continuous nature in the day to day operations within an office environment.

Examples

Each subcontract will be carefully reviewed by State WIC staff to support WIC local agency objectives. The following examples provide a framework for your decision making:

Personnel: A staff member from the WIC local agency who provides breastfeeding support services goes out on maternity leave. Because of the temporary nature of the staff member's absence, the WIC local agency does not want to hire a full time staff member to replace her. The WIC local agency initiates a subcontract with an IBCLC for \$11,000 to cover the staff member in her absence.

Subcontract? Yes

Reason: This is a personal service and is consistent with Scope of Work activities detailed in Exhibit A of the WIC local agency

agreement. Because of the dollar amount of the subcontract, the WIC local agency would need to receive approval from the State WIC Program prior to the services being rendered by the subcontractor. If the dollar amount of the subcontract is under \$5,000, State WIC Program approval is not needed, but the WIC local agency must document the cost in line item 4 of the budget (Other Costs) for auditing purposes.

Outreach: A WIC local agency needs to increase participation and decides to consult with a business to develop different types of outreach methods within the community (e.g., the design of outreach items [posters, billboards, etc.]), and ways to disseminate the message to the community.

Subcontract? Yes

Reason: Consulting with an individual or business on outreach activities is a personal service and is consistent with Scope or Work activities detailed in Exhibit A of the WIC local agency agreement. Local agencies may not have the ability to develop and disseminate outreach activities in-house, so a subcontract is necessary to obtain these services. However, merely placing media advertisements or performing a single act of outreach could be categorized as a procurement (see below).

Outreach: Purchasing advertising space.

Subcontract? No

Reason: If the outreach items (posters, billboards, etc.) have already been created and the WIC local agency is simply purchasing advertising space to display these items, then this is procurement, not a subcontract.

Training: A WIC local agency seeks to provide staff training which will cost the WIC local agency \$1,500. The training is to enhance staff skills while working for the WIC local agency. The venue could be on site at the WIC local agency or at a training facility.

Subcontract? No

Reason: Although the training will involve an individual providing a service (the instructor), staff training is considered a procurement and would be listed under the operating expenses line item. Because the dollar amount of the procurement is under \$5,000, State WIC Program approval is not needed, but the WIC local agency must document the cost in line item 2 of the budget (operating expenses) for auditing purposes.

REQUEST FOR AUTHORIZATION TO SUBCONTRACT

New <input type="checkbox"/>	Private Nonprofit <input type="checkbox"/>	<input type="checkbox"/> Budget Year 11-12 FFY \$ _____
Amended <input type="checkbox"/>	Government <input type="checkbox"/>	<input type="checkbox"/> Budget Year 12-13 FFY \$ _____
		<input type="checkbox"/> Budget Year 13-14 FFY \$ _____

I. Contractor Information

Legal Name (Local Agency):		
Mailing/Street Address:		
City:	State:	Zip:
WIC Contract Number:	Contract Amount: \$	Contract Term:
Local Agency Contact Person:	Phone Number:	Fax Number:

II. Subcontractor Information

Legal Name of Subcontractor:		
Mailing/Street Address:		
City:	State:	Zip:
Subcontract Term:	Total Subcontract Amount: \$	Federal Taxpayer I.D. #:

Brief statement on proposed subcontract services:

III. Subcontract Amendment Information (if applicable)

<p>A. If the amount of the subcontract is being amended, complete the information below:</p> <p>Original Subcontract Amount: \$</p> <p>Increase/Decrease Amount: \$</p> <p>Amended Subcontract Total: \$</p>	<p>B. If the term of the subcontract is being amended complete the information below:</p> <table style="width: 100%; border: none;"> <tr> <td style="text-align: center;"><u>Original Subcontract Term</u></td> <td style="text-align: center;"><u>Amended Subcontract Term</u></td> </tr> <tr> <td>Beginning:</td> <td>Beginning:</td> </tr> <tr> <td>Ending:</td> <td>Ending:</td> </tr> </table>	<u>Original Subcontract Term</u>	<u>Amended Subcontract Term</u>	Beginning:	Beginning:	Ending:	Ending:
<u>Original Subcontract Term</u>	<u>Amended Subcontract Term</u>						
Beginning:	Beginning:						
Ending:	Ending:						

C. If the **scope of work** is being amended, provide a brief explanation of the way in which it is being changed:

Brief statement on reason for amendment:

By signing this form, subcontractor agrees to all terms and conditions of the contract entered into by the Contractor with the State of California.

Subcontractor Signature (in Blue Ink)	Date
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By signing this form, Contractor certifies that all requirements are included in this request to subcontract.

Contractor, WIC Director (In Blue Ink)	Date
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State WIC Program Use Only

Regional Advisor (Signature)	Date
Section Chief (Signature)	Date
Contract Analyst (Signature)	Date

REQUEST FOR AUTHORIZATION TO SUBCONTRACT INSTRUCTIONS

Complete this form when requesting authorization to enter into a **new** subcontract agreement, or when **amending** an existing subcontract agreement of \$5,000 or more. This Request for Authorization to Subcontract form must be completed and approved by the State WIC Program **prior** to a request for reimbursement of subcontract expenditures.

The purpose of this form is to ensure the appropriate documentation and provisions have been incorporated/attached to the subcontract.

Mail this form, a draft and one copy of the subcontract to:

California WIC Program
Attn: Regional Advisor
Local Agency Support Branch
3901 Lennane Drive
Sacramento, CA 95834

Subcontract Requirements

1. If the subcontract total is \$50,000 or more, the subcontractor's budget worksheet for line items 1 through 4 and budget detail must be submitted to the State WIC Program. Original budget summaries are located in the local agency's funding application; blank copies of the budget summaries can be found in CMB Chapter 1, Attachments 1-5 through 1-7.
2. This form must be attached to the Contractor's cover letter (on local agency letterhead) and justification requesting formal authorization to enter into a subcontract. The justification must meet the following requirements:
 - A justification of the need to subcontract, including all justification requirements listed in the CMB, Chapter 8;
 - Include State required provisions as specified in Exhibit D(F) of the Contractor's agreement; and
 - Any other terms and conditions required by the Contractor to ensure the subcontract is a legally binding document.
 - The start date must be the same as or later than the Contractor's agreement with the State. The end date must be the same as, or earlier than the end date of the Contractor's agreement with the State. (The subcontract term cannot exceed the Contractor's agreement term with the State.)
 - The subcontract amount must be less than the amount of the Contractor's agreement with the State.
3. The Contractor's method for awarding to the subcontractor must be documented and available for review upon request by the State WIC Program.

Refer to the CMB, Chapter 8 for detailed instructions.