

## 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 process for a subcontractor to procure items exceeding \$2,500 and how to obtain reimbursement for subcontract-related costs.

These documents must be retained for three (3) years following the final payment under this Agreement.

## I. General Information

### Definition and Purpose

A subcontract is a written agreement between a WIC local agency and another individual or business to provide WIC services detailed in the WIC local agency Agreement CMB Chapter 4, Exhibit A, Scope of Work, such as administrative, certification, nutrition, breastfeeding education, outreach, staff training, etc. Subcontracts may be used to help WIC local agencies provide all contractually required services outlined in the Scope of Work.

### Authorization

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

A WIC local agency must request official written authorization from the State WIC Program prior to executing a subcontract exceeding \$2,500 and before services are rendered. If the subcontract amount is \$2,500 or less, State WIC Program approval is not required, but the subcontract must be budgeted in Line Item 4, Other Costs.

When a subcontract has a cumulative budget exceeding \$2,500 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.

<b>Term</b>	Subcontract terms may not begin prior to, or extend beyond the term limits of the WIC local agency Agreement.
<b>Budget</b>	<p>The funds for <b>all</b> subcontracts, regardless of the dollar amount, must be budgeted in Line Item 4, Other Costs, of the WIC local agency's budget.</p> <p>If a subcontract is needed, but funds have not been budgeted in Line Item 4, the WIC local agency must contact the Contract Manager regarding a request for an amendment. Refer to CMB Chapter 4, Section III.</p>
<b>Direct vs. Indirect</b>	If a WIC local agency receives services as part of a parent agency subcontract or arrangement, 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 provide documentation of the agreement or a subcontract for their portion of the cost.
<b>Role Definitions</b>	<p>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 ensure 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.</p> <p>Under a subcontract, the individual or business providing services:</p> <ul style="list-style-type: none"> <li>A. Must fulfill the obligations detailed in the subcontract, and</li> <li>B. May renegotiate payment, scope of work, and the terms and conditions under the subcontract, providing both parties are in agreement.</li> </ul>
<b>Essential Maintenance Services</b>	Maintenance agreements for office machines and equipment are allowable and do not require prior approval from the State WIC Program due to their essential and continuous nature in the day-to-day operations within an office environment. However, non-manufacturer maintenance agreements or general services need to follow the bidding procedure requirements.

**Subcontracts over \$50,000**

If a subcontract total is \$50,000 or more, the subcontractor must complete a budget worksheet for all five (5) 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. Refer to CMB Chapter I for the required budget detail worksheets.

**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 (3) bids from three (3) different sources for subcontract services, or provide a justification for a non-competitive bid award. The bid documentation must be submitted to the State WIC Program with the subcontract request, and kept on file at the WIC local agency for future audits for a minimum of three (3) years following the date of submission of the final expenditure report for the period to which the records pertain.

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

**Local Agency Responsibilities**

The WIC local agency is responsible for ensuring:

- A. All performance requirements of the subcontract are met;
- B. The subcontractor's scope of work includes clear deliverables and 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 including bidding documentation.

### III. Development of a Subcontract

#### Required Elements of the Subcontract

A written draft of the subcontract (unsigned) between the WIC local agency and the proposed subcontractor must be submitted to the State WIC Program for approval **before** it has been signed by either party and **before** services are rendered. The subcontract 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. The Subcontract terms may not begin prior to, or extend beyond the term limits of the WIC local agency Agreement;
- E. Maximum amount payable (subcontract amount), if the subcontract is for more than one (1) 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 (3) years after termination of (WIC Local Agency Contract Number) and final payment from the State WIC Program, and to permit the State WIC Program 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. The Authorization to Subcontract package must include a cover letter that includes justification for the need to subcontract, a Request for Authorization to Subcontract Form, bid documentation, and an unsigned copy of the subcontract.

### Cover Letter

A request must be submitted to the Contract Manager, in writing, on local agency letterhead. The letter must include an original signature in blue ink of the Primary WIC Program Contact.

### Justification for the Need to Subcontract

The cover letter must include the 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 the WIC local agency is unable to perform the services to be subcontracted;
- B. An analysis and cost benefit of entering into a subcontract. If subcontracting appears not to be cost effective, then the justification must include the rationale for the expense (i.e. 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.

### Request for Authorization to Subcontract Form

The Request for Authorization to Subcontract form (Attachment 8-1) shall be completed when requesting authorization to enter into a **new** subcontract agreement, or when **amending** an existing subcontract agreement exceeding \$2,500. This form must be completed and approved by the State WIC Program **before** execution/signature and prior to services being rendered by the subcontractor.

For specific instruction on how to fill out the form, refer to the Request for Authorization to Subcontract Instructions (Attachment 8-1).

<b>Bid Documentation</b>	Include three (3) bids from different sources for subcontract services, or a justification for the non-competitive bid award. Refer to Chapter 7, Section II for Bidding Process and Vendor Selection and Non-Competitive Bid Approval Requirements.
<b>Unsigned Copy of Subcontract</b>	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 <b>before</b> execution/signature and prior to services being rendered by the subcontractor.
<b>Where to Submit</b>	The WIC local agency must submit one (1) original package of all required documents for review and approval to: <p style="text-align: center;">California Department of Public Health State WIC Program Attention: (Contract Manager) Local Agency Support Branch 3901 Lennane Drive Sacramento, CA 95834</p>
<b>Review of Documents</b>	The State WIC Program will review the subcontract request submitted by the WIC local agency and will notify the WIC local agency of approval or disapproval via returned copy of the Request for Authorization to Subcontract form.
<b>Action Upon State Approval</b>	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 must make the changes requested and resubmit for approval, or withdraw the request.

**V. Subcontract Amendments**

<b>Definition</b>	<p>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 amendment changes include increase or decrease of costs, term, or scope of work.</p> <p>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).</p>
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**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.

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## **VI. Reimbursement for Subcontract Costs**

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**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 of \$50,000 or more, the subcontractor must submit an invoice to the WIC local agency for approval. The WIC local agency must include the amount on the invoice submitted to the State WIC Program.

The WIC local agency must ensure adequate funds are available in Line Item 4, Other Costs.

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## **VII. Procurement Process for Subcontractors**

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**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 exceeding \$2,500, (e.g., equipment, supplies, services, etc.). The WIC local agency is responsible for ensuring that the subcontractor's procurements are approved per the requirements in CMB Chapter 7.

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## **VIII. Subcontract Examples**

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**Subcontract Examples**

The following examples provide a framework when entering into a subcontract:

- Example 1** 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 \$2,500 or less, 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.

**Example 2** Outreach: A WIC local agency needs to increase participation and decides a consultation is needed to develop different types of outreach methods within the community (i.e. the design of outreach items such as posters and billboards), and ways to disseminate the message to the community.

Subcontract? Yes

Reason: Consulting with an individual or business on outreach activities is a 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).

**Example 3** 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 a procurement, not a subcontract.

**Example 4** 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 should be budgeted under the Operating Expenses Line Item.

Because the dollar amount of the procurement is \$2,500 or less, 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) and retain the records for auditing purposes.

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## **IX. Attachments**

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Request for Authorization to Subcontract

Attachment 8-1

## REQUEST FOR AUTHORIZATION TO SUBCONTRACT

New <input type="checkbox"/>	Private Nonprofit <input type="checkbox"/>	<input type="checkbox"/> Budget Year 14-15 FFY \$ _____
Amended <input type="checkbox"/>	Government <input type="checkbox"/>	

### I. Contractor Information

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

### II. Subcontractor Information

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

### III. Subcontract Amendment Information (if applicable)

<p>A. If the <b>amount</b> 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 <b>term</b> of the subcontract is being amended complete the information below:</p> <table style="width: 100%;"> <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:						
<p>C. If the <b>scope of work</b> is being amended, provide a brief explanation of the changes:</p> <p>Brief statement on reason for amendment:</p>							

**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
<b>By signing this form, Contractor certifies that all requirements are included in this request to subcontract.</b>	
Contractor , Primary WIC Program Contact (In Blue Ink)	Date

### State WIC Program Use Only

Contract Manager (Signature)	Date
Section Chief (Signature)	Date

## REQUEST FOR AUTHORIZATION TO SUBCONTRACT INSTRUCTIONS

Complete this form when requesting approval to enter into a **new** subcontract agreement, or when **amending** an existing subcontract agreement of \$2,500 or more. Refer to CMB Chapter 8 for all subcontract requirements.

**New:** Check this box if this is a new subcontract.

**Amended:** Check this box if this is an amendment request to an existing subcontract.

**Private Nonprofit or Government:** Check the box that applies to your WIC local agency.

**Budget Year:** Check the box(es) that apply to the subcontract term. Enter the dollar amount budgeted for each Federal Fiscal Year (FFY) of the subcontract.

### I. Contractor Information

**Legal Name of Local Agency:** Enter your WIC local agency's the legal name exactly as it is written in your WIC local agency contract.

**Mailing/Street Address:** Enter in the current address for the Primary WIC Program Contact.

**WIC Contract Number:** Enter in the current WIC local agency contract number.

**Contract Amount:** Enter in the dollar amount of the current WIC local agency contract.

**Contract Term:** Enter in the current term of the WIC local agency contract.

**PWPC Name, Phone Number, and Fax Number:** Enter the current contact information.

### II. Subcontractor Information:

**Legal Name of Subcontractor:** Enter the Legal Name of the Subcontractor exactly as it appears in the subcontract.

**Mailing/Street Address:** Enter in the current mailing/street address for Subcontractor.

**Federal Taxpayer I.D. #:** Enter the Federal Taxpayer I.D. # of the Subcontractor.

**Total Subcontract Amount:** Enter the Total Subcontract Amount for the entire term.

**Subcontract Term:** Enter the dates of the Subcontract Term. The dates of the subcontract term may not begin prior to, or extend beyond the term limits of the WIC local agency Agreement.

**Brief statement on proposed subcontract services:** Include what services are being provided.

### III. Subcontract Amendment Information (if applicable):

A. If the **amount** of the subcontract is being amended, enter in the Original Subcontract Amount, the Increase/Decrease Amount, and the Amended Subcontract Total.

B. If the **term** of the subcontract is being amended, enter in the Original Subcontract Term (Beginning and Ending dates), and the Amended Subcontract Term (Beginning and Ending dates).

C. If the **scope of work** is being amended, provide an explanation of the change.

**Brief statement on reason for amendment:** Provide a brief statement explaining why the amendment is being requested, i.e., additional consultant hours or broader scope.

### Signatures: This form must include all original signatures in blue ink.

**Subcontractor Signature (in Blue Ink):** The form must be signed and dated by the Subcontractor.

**Contractor, Primary WIC Program Contact (In Blue Ink):** The form must be signed and dated by the PWPC or person at the WIC local agency with the authority to enter into a subcontract.

The Authorization to Subcontract package must include a cover letter that includes justification for the need to subcontract, a Request for Authorization to Subcontract Form, bid documentation, and an unsigned copy of the subcontract. Mail the complete package to:

California Department of Public Health, State WIC Program, Attn: (Contract Manager)  
Local Agency Support Branch, 3901 Lennane Drive, Sacramento, CA 95834