

DSS OFFICE OF CONTRACTS

SUBCONTRACTING FREQUENTLY ASKED QUESTIONS

5/2023 Revised 9/12/2024

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. Please note that, as of September 23, 2024, the subcontractor approval process will be transitioned to PASSPort. Information concerning PASSPort, including training materials can be found at [About PASSPort | MOCS \(nyc.gov\)](#). Note that these FAQs will likely change as the PASSPort modules are rolled out.

Subcontractor approvals must be included with the annually reviewed budget submission. In addition, Proof of subcontractor approval may be 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 subcontractor approval is submitted and approved. Subcontractors and 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. The subcontractor modules within PASSPort will be considered the items of record for purposes of subcontractor approvals for payment and audit purposes.

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 for Subcontractor Approval?

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 the item for subcontractor approval 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 for subcontractor approval?

If the aggregate value is \$25,000, or greater, yes. Department approval is required. Submissions will have to be on a contract by contract basis.

Q5: What is required when submitting a third party for subcontractor approval?

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

- 1) Third-party vendor must be registered in PASSPort
- 2) Contractor must submit the third party agreement into PASSPort for approval

PASSPort subcontractor approval submissions must include the following:

- 3) Contractor must submit a completed Subcontractor Log
- 4) Procurement requirement: Contractor to submit at least three (3) bids/estimates
- 5) 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 contractual procurement requirements, a justification letter must be included with the submission, explaining the deficiencies in the Contractor's selection process, discussions of corrective actions, including future procurement plans and discussions of the Contractor's 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) Contractor must submit the third party vendor on their subcontractor Log

Q6: How do I submit a subcontractor for approval in PASSPort?

Approvals of third-party vendors in PASSPort would be made on a contract by contract basis. Each contract includes a "Subcontractors" tab. The third-party vendor would be submitted through this tab. Contractors shall complete all sections as required, and documentation consistent with Q6 above must be uploaded. The Department strongly recommends that all required information is provided in the original submission so that the Department can review and respond quickly and efficiently.

Q7: Does the Department need to approve third-party 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 the third party agreement for

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.

approval on all affected contracts.

Q8: 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.

Q9: 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?

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

Q10: 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. All approvals, rejections, requests for additional information and resubmission will take place in PASSPort.

Q11: 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.

Q12: Are bids required if utilizing a third-party vendor that is part of the Essensa network?

The City of New York no longer maintains a contract with a Group Purchasing Organization; therefore, there is no allowance to waive the bidding requirements in the Standard Human Services Contract.

Q13: How often do I need to solicit for a contracted service?

The Department strongly recommends that the solicitations for services do not result in contracts exceeding five years.

Q14: 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.

Q15: 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 the third-party approval with an attached explanation, addressed to the ACCO, that the third-party vendor was included with the proposal.

Q16: 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.

Q17: 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 vendors for security, maintenance, food or temporary staffing.

Q18: 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 approves the request in PASSPort.

Q19: 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.

Q20: 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.

Q21: Is one Subcontractor Approval good for multiple years and across all contracts?

No. Department approvals are specific as to contract and cannot exceed the prime contract term.

Q22: 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 request for approval?

The Contractor would need to submit a budget amendment to fund the increase. If there is no change to the scope of services, the following process can be followed:

- 1) Contractor should consult with DHS Budget Team to request approval.
- 2) If approved, Contractor shall submit an amended request through PASSPort.
- 3) Approval of a third party vendor at a revised amount does not indicate that a budget modification has been approved.

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.

Q23: 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?

All documents and approvals will be kept in PASSPort. Note that the contract manager may require approval forms to be uploaded into the budget.

Q24: Our organization submitted a third-party vendor through PASSPort and it was not approved. How can I find out why?

All disapprovals will be transmitted through PASSPort and will discuss reason(s). 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.
- f. Third party
- g. S record of performance and/or business integrity

Q25: Our organization solicited bids for work to start July 1 of the upcoming fiscal year. When should we submit for approval?

The Department strongly encourages that requests for approvals 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 and their requirements be met and submitted by mid-May to avoid any delays in budget approvals.

Q26: 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 in PASSPort. 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.

Q27: 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 begin.

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

Examples include any third-party services that are necessary for the Contractor to complete 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 contraction and major systems repair), temporary personnel services, and medical services.

Q31: Do I need Department approval for payroll services?

Yes, the Department requires approval 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: How do I determine the subcontract value for purposes of third-party vendor approval?

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. Approvals are specific to the individual contract number and time period.

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

No. Enrollment in PASSPort is a requirement as part of the revised process and is in accordance with the Department's policy. 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 or disapprovals, please reach out Vendor Compliance and Relations 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.