

Applying for consent to subcontract FACS-funded services



For child and family, community building, domestic and family violence, and homelessness programs

FUNDED CONTRACT MANAGEMENT | Guide | 8 October 2018

About this guide

This guide explains how service providers apply to the Department of Family and Community Services (FACS) for consent to subcontract FACS-funded services.

It explains important information you need to know before applying to subcontract, as well as the information required in your application.

Your obligations under the contract

As a funded service provider, your contract requires you to obtain written consent from FACS before entering into any subcontracting arrangement.

‘Subcontracting’ means using FACS funds to pay a **third party** — whether an organisation or an individual — *to fulfil part of, or all of the services FACS has funded you to deliver.*

There are three arrangements which FACS considers to be subcontracting:

1. A consortium, where a FACS-funded service provider has a contract with one or more third parties to deliver all or part of the funded services.
2. A fee-for-service arrangement, where regularly or from time to time a FACS-funded service provider uses purchase orders to buy services from one or more

third parties to deliver all or part of the funded services.

3. A labour-hire arrangement where a FACS-funded service provider hires contractors, either directly or through a third party — full time, part time or casually — to deliver any aspect of the funded services.



Refer to the [What you need to know about subcontracting](#) fact sheet on the FACS website for more information about:

- what FACS defines as subcontracting of funded services
- why FACS consent is required
- your responsibilities when subcontracting.

Using this guide

This guide is used for applying for consent to subcontract services you have been funded to deliver under a FACS contract. It does not apply when tendering for FACS services.

Support and assistance

If you have any questions or require any assistance to apply for consent to subcontract FACS-funded services, please contact your FACS contract manager.

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What to do before submitting an application to FACS

Talk to your FACS contract manager

If you propose to subcontract any part of the services you have been contracted by FACS to deliver, you must discuss it with your FACS contract manager. This will give you an opportunity to understand and discuss the requirements and responsibilities of subcontracting.

Carry out your due diligence

Each third party you propose to subcontract must be capable of delivering services on your behalf, on terms and conditions consistent with those you have agreed in your contract with FACS.

You will be responsible for the performance of any third party you subcontract to deliver FACS-funded services.

This includes:

- ensuring that each third party has the relevant qualifications, capability and capacity to deliver the services
- verifying that each third party has the requisite and up-to-date insurances and has the requisite up-to-date recognition by a regulator¹ to deliver the services
- ensuring that all applicable staff of each third party have a current *Working with Children Check* and *National Police Certificate* for the purpose of delivering child-related services
- in the case of a consortium or fee-for-service arrangement:
 - assessing the financial viability of each third party, and its ability to remain financially viable for the term of the contract
 - sighting relevant documents such as each third party's constitution, and policies and procedures which demonstrate the organisation's practices.

You are required to declare in your application that you have performed due diligence checks.

About the application forms

To obtain consent to subcontract from FACS, you must complete an application for consent to subcontract FACS-funded services.

There is a different application form for each type of subcontracting arrangement:

- Use the *Application for consent to subcontract FACS-funded services to another organisation* form if you are

¹ Recognition by a regulator includes an accreditation, certification, registration or licence.

applying to subcontract an organisation (but not for labour hire) in a consortium or fee-for-service arrangement.

- Use the *Application for consent to subcontract FACS-funded services to individuals* form if you are applying to subcontract individuals, either directly or through another organisation, in a labour-hire arrangement.



The application forms are available on the [FACS website](#), and can also be obtained from your FACS contract manager.

FACS will only consider applications which have used the relevant FACS form.

Your application must satisfy FACS that:

- each third party has the required capability and capacity, and is suitable to deliver the FACS-funded services
- each third party is willing and able to deliver the services on terms and conditions consistent with those you have agreed in your contract with FACS
- the proposed subcontracting arrangement will not compromise your responsibilities and obligations under your contract with FACS.

You must answer all questions truthfully and sign the declaration at the end of the application form.

You are not required to attach any supporting documents referred to in the application form's declaration.

FACS may request copies of the supporting documents while reviewing your application or at any time during the term of the contract if FACS consents to your application.

How to submit your application

Once you have completed all required details in the application form and signed the

declaration, please submit the application by email to your FACS contract manager.

Review and assessment of your application

FACS will notify you, in writing, of whether consent is granted or not, usually:

- within 4 weeks, for a consortium
- within 2 weeks, for a fee-for-service arrangement
- within 1 week, for a labour-hire arrangement.

These timeframes are estimates and subject to variation, and are dependent on the exact nature of an application. FACS will notify you if it requires more time to consider your application.

The application is assessed by your FACS contract manager, who may consult others within FACS as required.

In the case of a consortium or fee-for-service arrangement, FACS may consent to some third parties and reject others. If a third party is not consented to, you will have the opportunity to propose an alternative. In this circumstance, a new application is not required; you only need to provide the details for the alternative third party. FACS will then assess whether it consents to you subcontracting the funded services to the alternative third party.

What to do if the circumstances change before you receive a decision from FACS

If, during your negotiations with the proposed third parties, there are substantial changes to your proposed subcontracting arrangements, you must notify FACS as soon as the

changes occur, so that we may advise you of how to proceed.

Depending on the circumstances, FACS may ask you to submit a revised application for consent to subcontract.

Successful applications

Your contract manager will advise you in writing of the outcome of your application.

Consent may be subject to certain terms and conditions. These will be explained, in writing, with the FACS decision.

In all cases, consent is effective within the term of your contract with FACS. That means when your contract with FACS expires, consent to subcontract also expires. If you sign a new contract with FACS, you must lodge a new application for consent to subcontract, which will be reviewed by your FACS contract manager.

If FACS consents to your application to subcontract, FACS may request, and you must make available to FACS, the contract with the subcontractors and/or purchase order terms and conditions.

Reasons your application may be unsuccessful

If your application for consent to subcontract is unsuccessful, FACS will provide you with the reasons.

An application may be unsuccessful if FACS determines you have not adequately prepared for the responsibilities required to subcontract FACS-funded services.

In reviewing an application, FACS will consider the following factors:

- the amount of evidence provided to clearly explain each party's responsibilities and accountabilities
- any substantiated concerns that FACS may have about the performance of a third party
- whether FACS considers the proposed subcontracting arrangement poses any risk to delivery of the funded services.

You may appeal the FACS decision in writing, and explain the grounds of your appeal. However, FACS reserves its right to make the final decision, and whether to accept or reject your appeal.

What to do if your circumstances change

If at any time you want to change and/or end the subcontracting arrangement, you must notify FACS immediately, in writing. FACS will advise you of how to proceed, in consideration of the importance of maintaining your capacity and capability to deliver services to FACS clients.

If FACS considers the changes to the subcontracting arrangement will pose a risk to the delivery of the funded services, FACS may withdraw its consent.

Additional information about the *Application for consent to subcontract FACS-funded services to another organisation form*

This form applies to applications to subcontract an organisation (but not for labour hire) in a consortium or fee-for-service arrangement.

This section explains why, in Part 2 of the form, FACS asks for the following details about each of the proposed third parties.

Information requested about proposed third parties	Why FACS requires this information
1. Type of organisation	These are standard business details about an organisation and its authenticity.
2. Trading name	
3. Parent company If applicable.	
4. Australian Company Number (ACN)	
5. Australian Business Number (ABN)	
6. Website address	
7. Address of registered office	
8. Postal address	
9. Years in business	<p>This may be an indicator of the experience of the third party in delivering services and working in the sector.</p> <p>New organisations may be inexperienced in governance, financial management and/or service delivery, and your organisation may need to consider whether it can provide the support that may be required to assist the third party if it struggles with service delivery.</p>
<p>10. Members of the governing body</p> <p>For each member, provide their name, qualifications and a summary of their skills and experience.</p>	<p>Providing members' names enables FACS to consider any history with an individual, and whether the individual may pose a risk to service delivery.</p> <p>Providing the qualifications, skills and experience of the members of the governing body enables FACS to consider the organisation's strength and capacity.</p>

Information requested about proposed third parties	Why FACS requires this information
<p>11. Names of principal shareholders</p> <p>If applicable.</p> <p>Name parties with >= 20% shareholding.</p>	<p>Providing the names of shareholders enables FACS to consider any history with an individual or organisation, and whether the individual or organisation may pose a risk to service delivery.</p> <p>If an individual is a shareholder in both your organisation and the proposed subcontractor, FACS will have to verify whether this constitutes a conflict of interest.</p>
<p>12. Number of staff</p>	<p>This will enable FACS to assess whether there are sufficient staff to deliver the services.</p>
<p>13. What are the core capabilities of the organisation?</p>	<p>This will allow FACS to consider if the third party's capabilities meet the needs of the FACS-funded services or activities proposed to be provided by the third party.</p>
<p>14. What are the FACS-funded services or activities proposed to be provided by this organisation?</p> <p>State the services or activities as they are specified in the contract.</p>	<p>This information, together with the answers to questions 12-18, enables FACS to consider whether the third party has the capacity and capabilities to deliver the services, and whether there may be any risk to service delivery.</p>
<p>15. Number of staff proposed to provide FACS-funded services</p>	<p>When considered in relation to the total number of staff (question 12), FACS can assess the proportion of resources committed to deliver FACS-funded services, and whether this poses any risk to service delivery.</p>
<p>16. Is the organisation funded by FACS?</p> <p>If 'yes':</p> <p>a. What services are they funded to provide?</p> <p>State the services as they are specified in the contract.</p> <p>b. Is there a FACS <i>Performance Improvement Plan</i> or <i>Service Development Plan</i> in place?</p>	<p>If the third party has significant performance issues, which are not being addressed to FACS satisfaction, FACS may consider it as a risk to service delivery.</p> <p>As your organisation is responsible for performance of the subcontractor, it is also in your best interests to know if the third party has any performance issues.</p>

Information requested about proposed third parties	Why FACS requires this information
<p>17. Is the organisation funded by other agencies?</p> <p>If 'yes':</p> <p>c. Provide details.</p> <p>List the agencies, the amount of funding, how long the organisation has been receiving funding, and what services they are funded to provide.</p> <p>d. Are there any performance concerns and/or is there a plan in place to improve performance?</p>	<p>These agencies are potential referees, and may be contacted by FACS for references.</p> <p>As FACS may contact other funding agencies, it is in the third party's best interests to declare any performance issues.</p> <p>If the third party has significant performance issues, which are not being addressed to an agency's satisfaction, FACS would consider it a risk to service delivery to be subcontracting the third party.</p>
<p>18. Does the organisation have joint working arrangements with any other organisations?</p> <p>If 'yes', provide details</p> <p>State the nature of the joint working arrangement, and the names of the organisations involved.</p>	<p>FACS wants to know whether the third party is involved in, for example:</p> <ul style="list-style-type: none"> • a formal arrangement for sharing resources such as staff or property • an informal alliance for sharing information • a consortium established to tender for a project or services. <p>This information assists FACS to determine, for example:</p> <ul style="list-style-type: none"> • level of involvement in, and commitment to the sector • level of dependence on other organisations • potential conflicts of interest • risk to service delivery due to over-commitment of resources.
<p>19. Is there any outstanding legal action against the organisation, or any directors or partners?</p> <p>If 'yes', provide details</p> <p>State the nature of the legal action and who or what is affected by it</p>	<p>While the organisation is under no obligation to provide this information, it is in your best interests to ask.</p> <p>If the answer given is 'no', and it becomes public that there is legal action pending, then this will not be favourable to the third party and, depending on the nature of the action, may be damaging to your organisation, FACS and the sector in general.</p>
<p>20. Is the organisation anticipating a merger, acquisition or amalgamation?</p>	<p>Mergers, acquisitions and amalgamations result in a significant change of control for the organisation involved. All aspects of governance, financial management and service delivery may be affected.</p>

Information requested about proposed third parties	Why FACS requires this information
<p>If 'yes', provide details</p> <p>State whether a merger or acquisition is being considered or planned, and the names of the organisations involved.</p>	<p>FACS wants to know whether the third party is actively planning or only considering a merger, acquisition or amalgamation.</p> <p>In addition, FACS wants to know the names of the organisations involved so it may consider any history with an organisation, and whether the organisation may pose a risk to service delivery, such as a conflict of interest.</p>
<p>21. Does the organisation or is the organisation planning to subcontract any of the services?</p> <p>If 'yes', provide details</p> <p>State whether subcontracting is in place or being considered or planned, the names of the organisations involved, and the applicable services or activities.</p>	<p>On-subcontracting of the services may pose a risk to service delivery.</p> <p>FACS wants to know whether the third party currently subcontracts, or is actively planning or only considering to subcontract.</p> <p>In addition, FACS wants to know the names of the organisations, and what services are or would be subcontracted to them.</p>
<p>22. Is the organisation, or any of its staff nominated to provide the services, in a position which may or does give rise to an actual, potential or perceived conflict of interest in relation to the services to be delivered?</p> <p>If 'yes', provide details</p> <p>State the names of the individuals involved, and the nature of the conflict of interest.</p>	<p>Three types of conflict of interest must be considered and declared if applicable, where individuals, including members of the governing body:</p> <ol style="list-style-type: none"> 1. are being influenced by a conflicting interest – actual 2. could be influenced by a conflicting interest – potential 3. appear to be influenced by a conflicting interest – perceived.

Additional information about the *Application for consent to subcontract FACS-funded services to individuals* form

This form is a means of obtaining consent-in-advance from FACS to subcontract:

- the services you nominate in the application
- until expiry of the contract term
- subject to the conditions you agree to in the declaration you must sign as part of the application.

You are not required to give the names of the individuals you plan to subcontract to, nor the names of any labour-hire organisations you plan to use.