



Contractual Arrangements for Consortia in the Early Intervention Program

1. Background

The promotion of integrated services is not new for services funded through DoCS. Many projects funded by DoCS already reflect these integrated practices either formally (through contractual arrangements or MOUs) or through other less formal partnership arrangements. The Early Intervention Program provides an opportunity to apply this practice consistently across a whole program area through the funding of consortia.

There are two key contract management issues in relation to funding consortia to manage integrated service delivery models:

- How are the integrated arrangements managed internally, and
- How will DoCS contract with and fund these consortia

2. Definition

The terms consortia, partnerships or alliances are often used interchangeably in the context of funding integrated service delivery arrangements. While the terms have different legal and contractual implications for agencies, the overall intent is to differentiate multi-agency arrangements from single agencies. For the purposes of this paper, the term consortia will be used from herein.

3. Types of Consortia

In encouraging integrated approaches to the provision of the EIP, it is recognised that there are a variety of consortia arrangements that are possible between agencies and that may be proposed in Stage 2 of the EOI. The four (4) consortia arrangements that are most likely to be proposed are:

1. ***Incorporated alliance*** - members of the alliance formally incorporate to form a new legal entity for the purpose of providing a service.
2. ***A non-incorporated alliance*** - each member signs the one Service Agreement in their own right but a Lead Agency is nominated to undertake all dealings with the funding body.

3. **Sub-contracting** - an agency with funding responsibilities to deliver particular outcomes enters into a service agreement with the funding provider and then subcontracts aspects of the service delivery to another provider.

It is at the discretion of the agencies as to the type of arrangement they choose when forming a consortium. The various arrangements have different legal and financial implications for agencies, and as such agencies need to satisfy themselves as to what type of arrangement is most suitable for their needs. Agencies should seek independent legal advice on the impact of the various arrangements. NCOSS has offered to assist agencies involved in Stage 2 of the EIP EOI by providing information and advice in relation to the formation and maintenance of consortia arrangements.

Before DoCS enters into a contract with a consortium, DoCS will need to be satisfied that the proposed consortia arrangements are:

- able to deliver integrated services
- administratively streamlined and manageable
- able to bind all members to the accountability requirements of the EIP, and
- supported by a sound governance structure

Note that in circumstances where a single agency proposes to provide all of the EIP service components in-house without the need to enter into a partnership arrangement, DoCS will contract with one agency. In this instance, DoCS current contracting arrangements and current service agreement apply, and as such this contracting option is not covered in this paper.

4. Role of the Lead Agency

Regardless of the specific consortia arrangement chosen by agencies, the key contractual relationship to DoCS will be through a nominated Lead Agency.

The Lead Agency is the organisation that is contracted by DoCS to facilitate and manage the provision of Early Intervention Program services in a nominated area¹. A Lead Agency can be part of a consortium or be a single agency in instances where a single agency proposes to deliver the whole suite of EIP services.

A Lead Agency must be an eligible organisation. For the purposes of funding in the Early Intervention Program, an eligible organisation is considered to be a not-for-profit incorporated non-government community services organisation. Other organisations or individuals are not eligible to be a Lead Agency. However, a consortium can include a local government agency, other government agency, or a for-profit agency, as partner agencies, provided that these agencies are not the Lead Agency.

¹ This could be part of a planning area, a whole planning area or larger. There is also the possibility that more than one agency / consortia may be funded in an area.

The Lead Agency has a dual role in the Program:

- contract management relationship with DoCS (external)
- case management and integration of service provision to families in the Early Intervention Program (internal)

In a consortium arrangement, the budget will include provision for the administration costs associated with the Lead Agency's role in the internal management of the consortium and external reporting to DoCS.

5. Contract Management in Consortia Arrangements (where an NGO is the Lead Agency)

The Lead Agency is the focal point for the contract management relationship with DoCS in consortia arrangements. All correspondence and notices will be directed to the Lead Agency and funding is provided to agencies through the Lead Agency.

The same rules apply to consortia as apply to single agencies with whom DoCS holds a service agreement. The Lead Agency is responsible for the financial accountability, performance monitoring, and reporting arrangements, as well as service integration. These responsibilities are outlined in the *EIP Service Specification*.

In consortia arrangements, the member agencies jointly decide how and when members will receive funding from the Lead Agency at the time they are negotiating and forming the consortium. These financial arrangements should be negotiated and detailed in the consortium's legal management agreement/arrangement.

In consortia arrangements, the Lead Agency must be authorised to negotiate, act on behalf of, and bind each member of the consortium. Written confirmation of this authority will be sought by DoCS.

The legal management agreement of the consortia should clearly set out the roles and responsibilities of each member organisation in an endorsed/approved agreement. This should also specifically identify that the Lead Agency in a consortium will:

- ensure there are approved/endorsed agreements between the organisations in the consortium
- be responsible for communicating information provided by DoCS to other member organisations
- ensure member organisations comply with all aspects of the Service Agreement and Service Specifications, and
- be responsible for coordinating all reporting and monitoring aspects of the Service Agreement and Service Specifications

6. Contractual Arrangements for Consortia in the EIP

6.1 Incorporated Alliance

This is where members of the alliance incorporate to form a new legal entity for the purpose of providing the EIP services². This is indistinguishable from a single agency contract.

In this instance DoCS will enter into a contract with the newly formed legal entity, using the current *Service Agreement (Tab A)*. This model provides a clear and direct relationship between the agency (the complete new entity) and DoCS.

The disadvantage is that the liability of the consortium is limited to the value of the newly incorporated organisation. DoCS has a legal claim only against the agency for which it has contracted – in this case, the newly formed entity. DoCS has no recourse against the individual members of the consortium.

Who signs the contract?

The new entity signs the contract.

Who does DoCS give the funding to?

Funding is provided to the new entity.

6.2 A non-incorporated alliance

This is where each of the members in the alliance signs the contract with DoCS in their own right and a Lead Agency is nominated to undertake all dealings with DoCS. Each of the agencies agrees to abide by the terms and conditions outlined in the contract and is legally bound to do so.

In this instance DoCS will enter into a contract with all members of the alliance using the *Service Agreement Incorporating a Lead Agency (Tab B)*. There is no limit to the number of agencies with which DoCS can hold an agreement in this way. However, the first signatory is identified as the Lead Agency (and charged with the responsibilities outlined in section 4 and 5 of this paper).

Each member of the alliance has a direct relationship with DoCS. This means that each agency is liable for the actions of the consortium and DoCS is in a position to take action against any or all of the parties.

For this type of arrangement, members will have a partnership agreement, MOU or other type of legal instrument that describes the terms of the alliance and the roles and responsibilities of each member, such as an *Agencies Agreement (Tab C)*.

Who signs the contract?

All members sign the contract. A Lead Agency is identified on the contract.

² Note that each agency retains its own separate legal identity.

Who does DoCS give the funding to?

Funds are provided to the Lead Agency for distribution to members of the alliance as directed by their partnership agreement.

6.3 Sub-contracting

This is where an agency enters into an agreement with DoCS and sub-contracts aspects of that contract to be delivered by other agencies. This has the same effect as a consortium. However the legal responsibility for delivering the service lies with the agency that has signed the contract with DoCS.

The sub-contracting agencies do not sign the contract with DoCS. They have a legal relationship with the principal agency and not with DoCS.

In this instance, DoCS current *Service Agreement* applies (**Tab A**). The *Service Agreement* has clear provisions and processes for sub-contracting in such cases.

However, as DoCS has no legal relationship with the sub-contracting agencies, it cannot enforce the terms and conditions of the *Service Agreement* with them. DoCS can only take action against the agency with whom the *Service Agreement* is held. This agency can take recourse with it's sub-contractors. It is the agency's responsibility to ensure that its sub-contracting arrangements ensure adequate legal coverage for such circumstances.

Who signs the contract?

The Lead Agency signs the contract.

Who does DoCS give the funding to?

The Lead Agency is the recipient of DoCS funding. Funds will be distributed according to the direction of the sub-contractual arrangements.