

Change of Ownership Guidelines and Responsibilities

In accordance with 42 CFR §414.422(d)(1), a Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program contract supplier¹ that is negotiating a change of ownership (CHOW) must notify the Centers for Medicare & Medicaid Services (CMS) as described below. Contract suppliers that do not notify CMS of a CHOW are in breach of contract.

Mergers and Acquisitions

If an entity merges with or acquires a contract supplier (seller), or if a seller no longer remains in control of the assets necessary to perform the terms of the contract, the seller should do the following:

- Submit a signed novation agreement within 30 days after the effective date of the CHOW (see “Novation Agreement for a Full Transfer of a Contract” section below for details).
 - This requirement applies even if the purchaser is a contract supplier for all or some of the competitions on the seller’s contract.
- Submit a copy of the document(s) describing the structure of the ownership change, which would include an authenticated copy of the instrument affecting the transfer of assets (e.g. bill of sale). This document must include the effective date of the CHOW transaction.
- Submit updated versions of the financial documentation listed in the [Request for Bids \(RFB\) instructions](#) on the Competitive Bidding Implementation Contractor (CBIC) [website](#).

Change in Business Structure

In the event that a change in corporate structure results in a new entity being formed (e.g., a sole proprietorship incorporates and, therefore, becomes a new corporation), then a CHOW has taken place and a novation agreement is needed to transfer the contract to the new entity. In this instance, the contract supplier is responsible for submitting a novation agreement with the new entity in order for CMS to transfer the contract to the successor entity. Required elements of an acceptable novation agreement are explained at the end of this fact sheet. However, when a company changes from one type of corporation to another (e.g., changing from an S corporation to a C corporation) and no new entity is formed, this is not considered a CHOW and a novation agreement is not appropriate.

Stock Purchases

According to 42 CFR §414.412 (e)(1)(iii), two or more suppliers are commonly owned if one or more of them has an ownership interest totaling at least five percent in the others. CMS does not consider a stock purchase alone to be a CHOW; however, for stock purchases that result in five percent or more ownership, the seller must notify the CBIC by mailing or faxing all pertinent information regarding the transaction. The seller must include all information sent to the National Supplier Clearinghouse (NSC), as well as any additional information necessary for assessing the impact to the seller’s contract (e.g., any requests to add or remove supplier locations on the contract).

Refer to the instructions in the “Mergers and Acquisitions” section if the seller no longer remains in control of the assets necessary to perform the terms of the contract.

Transferring a Portion of the Contract

A DMEPOS Competitive Bidding Program contract cannot be sold or subdivided. However, in accordance with

¹ A contract supplier is an entity awarded a contract by CMS to furnish items under a competitive bidding program established by section 1847 of the Social Security Act, as revised by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.



§414.422(d)(4), for contracts issued in Round 2 Recompete and subsequent rounds, when a contract supplier sells a **distinct company** that furnishes a specific product category or services a specific CBA, CMS may transfer the portion of the contract performed by the distinct company to a new qualified entity. As explained above, the purchaser must meet all applicable competitive bidding eligibility requirements in accordance with CFR §414.414(b) through (d).

If a contract supplier is selling a distinct company that furnishes a specific product category or services a specific CBA, the seller must submit the following documents for CMS to determine if the relevant portion of the contract is eligible to be transferred:

- Taxpayer identification number(s) (TIN)
- Draft bill of sale/letter of intent
- Seller's organizational chart/structure and any additional documentation to assist with determining the distinct company
- Copy of seller's certificate and articles of incorporation (if corporation)
- Tax return extract
- PTAN(s) of distinct company being sold
- Financial statements

The transfer of the distinct company's portion of the contract to the purchaser will not be considered until CMS determines the regulatory requirements at CFR §414.422(d)(4) are met.

A portion of a contract **cannot** be transferred if:

- The company being sold furnishes the same product categories and services the same CBA(s) as the seller's other company(s).
- The purchaser does not agree to accept the rights, liabilities, and the responsibilities associated with the portion of the contract to be transferred.
- The purchaser does not meet the eligibility requirements in accordance with CFR §414.414(b) through (d).
- CMS determines transferring a portion of the contract could cause harm to beneficiaries or a disruption in the continuity of care for beneficiaries.

CMS will make a determination whether the portion of the contract being performed by the distinct company can be transferred to a new qualified entity, and will notify the seller of the determination.

If it is determined that the contract can be transferred to the new entity, the seller is responsible for submitting a novation agreement to transfer a portion of the contract to CMS. For more information on this agreement, please refer to the "Novation Agreement to Transfer a Portion of the Contract" section below.

CMS Evaluation

CMS reviews submitted documents to be assured that the purchaser or new entity is eligible to perform as a contract supplier in accordance with CFR §414.414(b) through (d).

CMS also reviews submitted documents to determine whether a novation agreement is appropriate. A novation agreement is not needed if CMS determines:

1. The seller remains in control of the assets involved in performing the terms of the contract.
2. The seller continues to perform the terms of the contract.

However, if CMS determines the seller does not remain in control of the assets involved in performing the terms of the contract, or the seller no longer performs the terms of the contract, the seller is responsible for submitting a novation agreement between the seller, the purchaser (or new entity), and CMS.

Upon executing a novation agreement (i.e., approval of the contract transfer), the purchaser or new entity should, as applicable, submit a Contract Supplier Change of Location/Information Update Form, which is available in Connexion – CMS's secure online portal for the DMEPOS Competitive Bidding Program. Before adding any locations to the contract, CMS reviews each location to ensure it is eligible to furnish the competitively bid item(s)

for the applicable CBA(s) (i.e., evaluate to ensure that the location(s) meets all applicable competitive bidding requirements set forth in the RFB). A contract supplier must have at least one enrolled location, consistent with 42 CFR 424.57(b)-(c), that meets all applicable competitive bidding eligibility requirements for each competition on its contract, or it is in breach of contract.

Novation Agreement for a Full Transfer of a Contract

A novation agreement is the means by which CMS transfers a DMEPOS Competitive Bidding Program contract from one supplier to another. This agreement is a legal document that is signed by all parties involved in the contract transfer – the seller (transferor), the purchaser (transferee), and CMS. A novation can only occur after a CHOW has occurred. While a purchasing agreement (e.g., bill of sale) that supports the novation agreement may contain contingencies, the novation agreement may not contain any contingencies. CMS will review all novation agreements and will only accept those that assign all applicable contract supplier obligations to the purchaser.

An acceptable novation agreement should include the following information:

1. A clear delineation of all parties (transferor, transferee, and CMS) involved with the novation agreement.
2. CMS shall not incur any costs associated with the contract transfer.
3. The transferor waives any claims and rights against CMS that it now has or may have in the future in connection with the contracts.
4. The transferee has obtained the assets necessary to perform the terms of the contract.
5. The transferee must agree to be bound by, and to perform in accordance with, all of the conditions contained in the DMEPOS Competitive Bidding Program contract. The transferee must also assume all rights, obligations, liabilities of, and claims against, the transferor under the DMEPOS Competitive Bidding Program contract as if the transferee were the original party to the contract.
6. The transferor guarantees the performance of all obligations that the transferee (i) assumes under the agreement or (ii) may undertake in the future should the contract be modified under its terms and conditions. The transferor waives notice of, and consents to, any such future modifications.
7. CMS recognizes the transferee as the transferor's successor in interest in and to the DMEPOS Competitive Bidding Program contract. The transferee becomes entitled to all rights, titles, and interests of the transferor in and to the DMEPOS Competitive Bidding Program contract as if the transferee were the original party to the DMEPOS Competitive Bidding Program contract.
8. The agreement must state that CMS does not waive its rights against the transferor.
9. The transferee should ensure the efficient transfer of services to Medicare beneficiaries required under the DMEPOS Competitive Bidding Program contract, such that Medicare beneficiaries continue to receive uninterrupted services.
10. All payments and reimbursements previously made by CMS to the transferor, and all other previous actions taken by CMS under the DMEPOS Competitive Bidding Program contract, shall be considered to have discharged those parts of CMS' obligations under the DMEPOS Competitive Bidding Program contract. All payments and reimbursements made by CMS after the date of the novation agreement in the name of or to the transferor shall have the same force and effect as if made to the transferee, and shall constitute a complete discharge of CMS' obligations under the contracts, to the extent of the amounts paid or reimbursed.
11. The novation agreement must be signed by the appropriate representatives of the respective companies (both transferee and transferor) with certification and warranty by each party that it has full power and authority to enter into a novation agreement. For networks, the officials authorized to sign for the network are authorized to sign the novation agreement, unless they submit a document delegating this authority to a single representative.
12. The DMEPOS Competitive Bidding Program contract shall remain in full force and effect, except as modified by the novation agreement.
13. Nothing in the novation agreement shall relieve the transferor or transferee from compliance with any federal law.

A sample novation agreement, containing all of the above clauses, can be found at Federal Acquisition Regulation 42.1204. (https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2042_12.html)

Novation Agreement to Transfer a Portion of the Contract

This agreement is a legal document that is signed by all parties involved in the transfer of a portion of the contract – the seller (transferor), the purchaser (transferee), and CMS. Similar to the novation agreement, the agreement to transfer a portion of the contract may not contain any contingencies. CMS will review all agreements and will only accept those that assign all applicable contract supplier obligations to the purchaser.

Submitting Information to the CBIC

Documentation should be submitted to the CBIC by one of two methods:

Fax: 803-264-6228

Mail: Palmetto GBA

Competitive Bidding Implementation Contractor

2743 Perimeter Pkwy Ste 200-400

Augusta, GA 30909-6499