

# Change of Ownership

## Guidelines and Responsibilities

In accordance with §414.422(d)(1), a Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) supplier participating in the DMEPOS Competitive Bidding Program that is negotiating a change of ownership (CHOW) must notify the Centers for Medicare & Medicaid Services (CMS) at least 60 days before the anticipated date of the change.

A CHOW does not, however, automatically grant contract supplier status to the new owner. CMS may permit the transfer of a DMEPOS competitive bidding contract to an entity that merges with or acquires a competitive bidding contract supplier if the new owner assumes all rights, obligations, and liabilities of the competitive bidding contract. A competitive bidding contract cannot be sold or subdivided. For the transfer of the contract to be considered, the CHOW must include the assumption of the entire competitive bidding contract, including all competitive bidding areas (CBA) and product categories awarded under the contract. For example, company A (a contract supplier) sells its business to or merges with company B. Company B must agree to assume all obligations under company A's competitive bidding contract with CMS. In essence, company B "steps into the shoes" of company A with respect to all of the contract obligations as of the beginning of the competitive bidding contract. CMS may allow the transfer of a competitive bidding contract to a new owner only if that entity meets all requirements applicable to a contract supplier. Contract suppliers that do not notify CMS of a CHOW will be considered in breach of contract.

CMS reviews the submitted documents to ensure that the suppliers are not selling their competitive bidding contract but, rather, that they are selling their company, or at least selling the part of the company that is responsible for meeting the terms of their contract and that provides the competitively bid items to beneficiaries located in the CBA. This includes evaluating all of the submitted documents to ensure that the successor entity is acquiring the assets of the existing contract supplier.

Please use the [Change of Ownership – Contract Supplier Notification Form](#), which is available on the Competitive Bidding Implementation Contractor (CBIC) website at [dmecompetitivebid.com](http://dmecompetitivebid.com), to notify CMS at least 60 days before the anticipated date of a CHOW.

### New Entity vs. Successor Entity

A CHOW results in a "new entity" or a "successor entity." A **new entity** is an entity that is formed as a result of a merger or acquisition and that did not exist prior to the transaction. For example, company A merges with or acquires company B to form company C, a brand new company. Company C is considered a new entity.

A **successor entity** is an existing entity that merges with or acquires a contract supplier and continues to exist after the CHOW. For example, company A merges with or acquires company B (a contract supplier). Company A remains in existence after the CHOW and wants to assume the obligations of company B's competitive bidding contract. Company A is considered a successor entity. (See **Figure 1** on page 4 for additional examples and required documents.)

### Transactions That Do Not Constitute a Change of Ownership for Competitive Bidding

A merger of a non-contract supplier with a contract supplier does not constitute a CHOW for competitive bidding purposes if the contract supplier continues to exist and remains the supplier performing the competitive bidding contract. For example, company A (a contract supplier) merges with company B (a non-contract supplier), and company A assumes ownership and continues as the contract supplier. This does not constitute a CHOW, and no novation agreement is required.

However, company A in this example should notify the National Supplier Clearinghouse (NSC) regarding any change of ownership regardless of contract status. If company A wants to add company B's location (identified by Provider Transaction Access Number (PTAN)) to the contract, it should complete the Contract Supplier Location Update Form on the CBIC website. To update any changes in authorized officials or changes in new toll-free telephone numbers or e-mail address, the contract supplier should complete the Contract Supplier Change of Information Form on the CBIC website. All new locations must meet applicable competitive bidding requirements before they can be added to the contract and can furnish items under the competitive bidding program.

When there is simply a sale of a contract supplier's corporate stock (as in shares possessed by a stockholder), and the contract supplier continues to exist and operate as before the transaction, neither a new entity nor a successor entity is involved. Therefore, the transaction does not constitute a CHOW, and does not require prior notification or a novation agreement. However, the new owners of the stock of the contract supplier would still be required to notify the NSC and submit the appropriate sections of the CMS 855S enrollment application. A stock purchase involving the separate purchase of assets and liabilities or a stock purchase where one of the companies involved is absorbed or dissolved into the successor entity is considered a CHOW, and the CHOW requirements under 42 CFR § 414.422(d) must be followed.

### **Change in Structure**

When a company changes from one type of corporation to another, such as changing from an S corporation to a C corporation and the essential nature/owner of the company is not changing, this is not considered a CHOW and a novation agreement is not required. However, in the event that a proprietorship incorporates and becomes a new corporation, then a new entity is formed, a CHOW takes place, and a novation agreement is required.

### **Novation Agreement**

A novation agreement is a legal document that is signed by the original entity (transferor), the successor or new entity (transferee), and CMS. For a new or successor entity to be designated as a contract supplier, it must submit a signed novation agreement acceptable to CMS stating that it will assume all competitive bidding rights, obligations, and liabilities according to the contract, including serving all CBAs and providing all product categories included in the contract. A novation can only occur after a CHOW has occurred. While the purchasing agreement 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 contract supplier obligations to the successor or new entity.

An acceptable novation agreement should include the following information:

- 1** The agreement should clearly delineate the parties (transferee and transferor) involved and the novation agreement itself must be between the transferee (purchaser) and CMS.
- 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 should agree to purchase the assets necessary to perform the terms of the contract.
- 5** The transferee must agree to be bound by and to perform the competitive bidding contract in accordance with the conditions contained in the contract. The transferee must also assume all rights, obligations, liabilities of, and claims against the transferor under the competitive bidding contract as if the transferee were the original party to the contract.

- 6** The transferee ratifies all previous actions taken by the transferor with respect to the contracts, with the same force and effect as if the action had been taken by the transferee.
- 7** CMS recognizes the transferee as the transferor's successor in interest in and to the competitive bidding contract. The transferee becomes entitled to all rights, titles, and interests of the transferor in and to the competitive bidding contract as if the transferee were the original party to the competitive bidding contract.
- 8** The agreement must state that, except as expressly provided in the novation agreement, CMS does not waive its rights against the transferor.
- 9** The transferee must assume the entire competitive bidding contract from the transferor, which includes all of the CBAs and product categories awarded under the contract.
- 10** The transferee should ensure the efficient transfer of services to Medicare beneficiaries required under the competitive bidding contract, such that Medicare beneficiaries continue to receive uninterrupted services.
- 11** All payments and reimbursements previously made by CMS to the transferor, and all other previous actions taken by CMS under the competitive bidding contract, shall be considered to have discharged those parts of CMS' obligations under the competitive bidding 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.
- 12** 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. For commonly owned or commonly controlled suppliers, each affected company may sign individually or the companies may submit a document delegating this authority to a single representative.
- 13** The competitive bidding contract shall remain in full force and effect, except as modified by the novation agreement.

A sample novation agreement, containing all of the above clauses, can be found at Federal Acquisition Regulation Subpart 42.1204.

## Required Information and Documentation

The following CHOW documents should be submitted to the CBIC within 30 days of the effective date of the CHOW. Suppliers must also make available any additional documentation requested by CMS in order to effect the transfer of the competitive bidding contract obligations.

- 1** One signed copy of the required novation agreement.
  - Successor entities must submit a signed novation agreement within 30 days prior to the effective date of the sale.
  - New entities must submit a final draft of a novation agreement at least 30 days prior to the effective date of the CHOW and an executed novation agreement within 30 days after the effective date of the CHOW.
- 2** One copy of a document describing the nature of the CHOW transaction, such as an authenticated copy of the instrument affecting the transfer of assets (e.g., bill of sale, certificate of merger, contract, deed, agreement, or court decree), unless the information is provided in the novation agreement. This document must include the effective date of the CHOW transaction.

- 3 Sufficient information about the supplier being purchased, such as the seller's legal business name, Taxpayer Identification Number (TIN), National Provider Identification (NPI) number (if applicable), authorized official name, telephone number, and e-mail address. Please use the Change of Ownership – Purchaser Form, which is available on the CBIC website, to provide this information.
  
- 4 A completed Change of Ownership - Purchaser Form that includes a list of all locations by PTAN that will be furnishing the product category(s) for the CBA(s) under the contract. All locations that service the CBA(s) and furnish items within the product category(s) must be included on this list. Each state in the CBA(s) included on the contract must have a location that is enrolled for that state and for the product category(s). If CMS decides to enter into a novation agreement with the purchasing supplier, you must use the Change of Ownership – Purchaser Form to provide the necessary information on this transaction. This information is for CHOW evaluation purposes only. Following CMS approval of the contract transfer, the purchasing supplier should then add or remove locations using the Contract Supplier Location Update Form, which is available on the CBIC website.
  
- 5 If the transferee is a corporation, it should submit a copy of its certificate and articles of incorporation.

### Other Document Requirements

To assume a competitive bidding contract, the successor or new entity may have to submit new or additional documents to demonstrate compliance with §414.414(b) through (d), the supplier eligibility, accreditation, quality, and financial standards. A successor entity must submit these documents if it has not previously submitted them or the documents are no longer current. The following chart provides guidance on when a novation agreement is necessary and when to submit financial documents.

Figure 1: Change of Ownership Summary Chart

Company Name	Company Name	Entity	Change of Ownership	Novation	CMS Notification*	Financial Documents Required**
Company A (CB Contract)	+ Company B (Non-Contract)	= Company A (No CHOW)	No	No	Yes	No
Company A (Non-Contract)	+ Company B (CB Contract)	= Company A (Successor)	Yes	Yes	Yes	Yes
Company A (CB Contract)	+ Company B (CB Contract)	= Company A (Successor)	Yes	Yes	Yes	No
Company A (CB Contract)	+ Company B (Non-Contract)	= Company C (New)	Yes	Yes	Yes	Yes

\* Information 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

\*\* Please refer to the Request for Bids (RFB) Instructions on the CBIC website for required financial documents.