

# Change of Ownership

## Guidelines and Responsibilities

In accordance with §414.422(d)(1), a DMEPOS supplier participating in the 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 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 subdivided. For the transfer of the contract to be considered, the CHOW must include the assumption of the entire Medicare competitive bidding contract, including all competitive bidding areas (CBAs) and product categories awarded under the 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.

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 change of ownership 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 as it existed before the transaction. 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 3 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 change of ownership for competitive bidding purposes provided 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 change of ownership, and no novation agreement is required. However, the successor entity (company A in this example) should notify the CBIC and the National Supplier Clearinghouse (NSC) regarding any change of ownership regardless of contract status. Company A should complete the Contract Supplier Change of Information Form or the Contract Supplier Location Update Form, both of which are available on the CBIC website, to identify any changes in authorized officials or changes in new locations. All new locations should meet applicable competitive bidding requirements before they can furnish items under the Competitive Bidding Program.

A sale of corporate stock (as in shares possessed by a stockholder) does not constitute a change of ownership, and no novation agreement is required. However, a stock purchase involving the purchase of assets and liabilities is considered a CHOW, and the CHOW requirements must be followed. In the event that a proprietorship incorporates and becomes a new corporation, then a new entity is formed, a change of ownership takes place, and a novation agreement is required.

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## Novation Agreement

A novation agreement is a legal document that is signed by the successor entity or new entity 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 supplier cannot divide a competitive bidding contract by CBAs or product categories for purposes of mergers or acquisitions. 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 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:

- 1** The agreement should clearly delineate the parties involved and must be between the transferee (purchaser) and CMS.
- 2** CMS shall not incur any costs associated with the contract transfer.
- 3** The transferee should agree to purchase all assets necessary to perform the terms of the contract.
- 4** The transferee must assume all rights, obligations, and liabilities of the competitive bidding contract that may have occurred from the transferor (seller) of the competitive bidding contract from the effective date of the contract as if the transferee were the original party to the contract.
- 5** The agreement must state that CMS does not waive its rights against the transferor insofar as the transferor may have violated federal law with respect to the DMEPOS contract.
- 6** 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.
- 7** 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.
- 8** The agreement must be signed by the appropriate representatives of the respective companies with certification and warranty by each party that it has full power and authority to enter into a novation agreement.

## 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 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 effecting 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.

- 3** Sufficient information about the contract 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 list of all locations that will be furnishing the product category(s) for the CBA(s) under the contract. Each location must meet all Competitive Bidding Program eligibility, accreditation, state licensure and financial requirements. All locations that service the CBA(s) and furnish items within the product category(s) must be included on this list. Please use the Change of Ownership - Purchaser Form to provide this information. This information is for CHOW evaluation purposes only. If CMS determines the CHOW is acceptable, 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.