

Department of Developmental Services

Commonwealth of Massachusetts
Executive Office of Health & Human Services



Contracting with DDS General Overview FY 2024

Revised: July 2023

CONTRACTING WITH DDS GENERAL OVERVIEW FY2024

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PROVIDER YEARLY FINANCIAL QUALIFICATION

Every year, providers that contract with an Executive Office of Health and Human Services (EOHHS), Department must undergo a Financial Qualification review. This review is based on the Uniform Financial Reports uploaded by contracted providers to the Operational Services Division e-file site.

This annual provider qualification review process is performed for the following reasons:

1. To minimize financial and administrative risk to the Commonwealth and the people served through the POS system;
2. To promote familiarization and enforce compliance with applicable state and federal regulations; and
3. To maintain current, accurate information on POS organizations, including contact names, addresses, and other information critical to the effective and efficient management of the POS system.

Often, provider organizations render services to multiple Executive Office of Health and Human Services (EOHHS) state agencies; however, the organization is qualified by only one agency, the Principal Purchasing Agency (PPA). EHS assigns the PPA based on funding by each Department to a provider. The department that provides the most funding is the PPA. The PPA is listed in the Provider Data Management (PDM), a system maintained by EHS, and is responsible for entering a qualification status for assigned providers on a yearly basis.

COMMBUYS

All procurements for DDS services are posted on the COMMBUYS system. The COMMBUYS site lists all current Requests for Responses (RFR's)/BIDS open for provider bids. Providers are encouraged to register in COMMBUYS and maintain an active email address so they aware of any RFR/BIDS that are posted by the Department.

RFRS PLANNED IN FY2024

The Department is planning re-issue the following RFR (BID) on COMMBUYS in FY2024 as current contracts will terminate effective 6/30/2024. The Department may issue other BIDS in response to changing needs or to pilot new service models.

- Assistive Technology
- Financial Management Services
- Shared Living
- Remote Supports and Monitoring
- Urban Youth Collaboratives
- Various training programs

REQUEST FOR RESPONSE (BID) ON COMMBUYS

Any RFR published by the Department on COMMBUYS will indicate where the Department intends to award a single contract or multiple contracts. A RFR may be competitive and only a specific number of awards will be made. In other cases, a RFR may result in a qualified contractor list whereby the department will award contracts to a number of providers that may or may receive referrals from the Department.

Qualified Contractor List: Master Agreement Contract

The purpose of the RFR is to identify multiple contracts by establishing a set of criteria for providers to be included as a qualified provider. Qualification may include technical expertise, experience, staffing, location, etc. Providers that are evaluated as qualified execute a Master Agreement/Rate Contract with the Department and are placed on a qualified vendor list. Signing a Master Agreement contract is no guarantee the Department will “engage” the provider during the life of the contract.

The Master Agreement is written as a Rate Contract with no maximum obligation noted on the Standard Contract Form. A description of the services for each program covered by the Master Agreement is noted in the RFR and the provider’s response to RFR.

Rolling Enrollment Qualified Contract List

The rolling method allows new Bidders to submit responses after an initial selection period as specified by the Department.

Rolling RFRs Currently Posted on COMMBUYS:

- ALTR-24: ADULT LONG TERM RESIDENTIA SERVICES
 - Activity Codes: 3153, 3182, 3713, 3751 and 3753
- ANSS - 15: As Needed Support Services
 - Activity Code: 3174
- DESE/DDS - 19: Community Residential Prevention services
 - Activity Code: 3738
- EMPDAY - 20 : Employment and Day Supports
 - Activity Codes: 3163, 3168, and 3181
 - Also includes Activity Code: 3196. DDS Transportation negotiated/accommodation rate supported transportation and rate regulated transportation. It does not include transportation provided by EHS Human Services Transportation
- IHS – 16: In Home Supports
 - Activity Code: 3798
- PS - 15: Placement/Shared Living
 - Activity codes: 3150 and 3752
- SSQUAL - 23: Support Services Qualification
 - 3700 - Family Support Navigation
 - 3701 - Respite In Recipient’s Home-Day
 - 3702 - Respite In Care Giver’s Home
 - 3703 - Individualized Home Supports
 - 3705/3735 - Respite in Caregiver’s Home - Child
 - 3707 - Adult Companion
 - 3710 - Behavioral Supports and Consultation
 - 3712 - Emergency Stabilization in Caregiver's Home
 - 3716 - Community Peer Support/ Residential Peer Support
 - 3731 - Respite in Recipient’s Home- Hourly
 - 3759 - Site Based Respite (Planned, for adults)
 - 3775: Site Based Respite for Children

- SUPPDAY20 RFR: Supplemental Day Services
 - Activity Codes: 3165, 3664 and 3291

All other RFR/BIDS are closed. DDS may choose to reopen a closed procurement to add providers or services.

NAME OR ADDRESS CHANGE

A provider that changes its legal name must communicate the name change to the Department via email. The email should include the name change, the provider's Vendor Customer Code and when the articles of amendment will be filed with the Secretary of State. If the corporate address is changing, the letter should include the provider's old and new address. The appropriate DDS Office will send the provider electronic forms to complete and return to the Department for processing with the Office of the State Comptroller.

CHANGE IN CONTRACTOR IDENTITY

The following is taken from the *Amendments, Suspensions or Terminations, November 19, 2014, published by the Office of State Comptroller and Operational Services Division.*

A change in contractor identity occurs whenever the legal name, organizational structure, Tax Identification Number (TIN), Vendor Code or other change occurs in a contractor from what was presented in the contractor's response to procurement. However, certain changes, such as a legal name change, are insignificant to the underlying contract(s) and can merely be recorded to keep the procurement file up-to-date. Other changes are considered material and may affect not only the underlying contract(s) but also the integrity of the original procurement.

Material Change in Contractor Identity: Merger, Buyout or Consolidation

A merger, buyout or consolidation is a **structural change** to a contractor in which the assets and liabilities of one or more organizations (one being the contractor) are combined into a single successor entity. Both mergers and consolidations are governed by state statutes, which require a formal filing with the Secretary of the Commonwealth and that certain conditions are met. Under M.G.L., the new entity assumes all of the obligations and responsibilities of the prior entity.

- **Merger or Buyout.** One or more organizations merge into another, or one organization buys another, and one becomes the surviving organization. For example, Organization A merges into, or is bought out by, Organization B and the surviving entity is Organization B, with A no longer existing as a separate legal entity.

If the department's current contractor is Organization B, the merger or buyout will not change the underlying contract documentation. The department should verify, however, that the merger or buyout by the contractor will not result in any changes to the performance responsibilities of the contractor under the current contract(s).

If, however, the department's current contractor is Organization A, which is merged into, or is bought out by, Organization B, this presents a **substantial structural change** in the contractor which does affect the underlying contract(s) and procurement, and may trigger the "assignment" or "termination" clauses of the Commonwealth Terms and Conditions for Human and Social Services

- **Consolidation.** Two or more organizations combine (“consolidate”) into a new or resulting corporation ($A + B = C$, with both A and B no longer existing as separate legal entities). If the department’s current contractor is either Organization A or B which are consolidated into a new Organization C, this presents a ***substantial structural change*** in the contractor which does affect the underlying contract(s) and procurement and may trigger the “assignment” or “termination” clauses of the Commonwealth Terms and Conditions for Human and Social Services.

Contract Options

The Commonwealth Terms and Conditions for Human and Social Services contains provisions on termination and contract assignment which assert the Commonwealth’s control over whom it does business with. While a contractor may freely make whatever organizational or structural changes it wishes, if it involves a material change to its identity (as noted by a change in Taxpayer Identification Number) then its existing contracts may terminate. Further, a contractor may not unilaterally assign, or delegate its responsibilities or duties under a contract to another entity. The procuring department has the sole authority to determine what to do with the remaining contract performance in all such instances.

When faced with a material change in contractor identity, the Department of Developmental Services (DDS) must determine what is in the best interests of the department, what actions are appropriate to prevent a lapse in any necessary services or a project, the most cost-effective actions given available resources and funding, and what actions will maintain the integrity of the original procurement to continue the underlying contract(s) or undertake any other action.

DDS has the following options:

- Continue the contract through assignment to the successor entity, upon review and justification as outlined further in this document;
- Award a short-term interim contract to the intended successor entity on a competitive procurement exception basis (in order to permit adequate time for a review and/or re-procurement and potential transition to a new contractor);
- Award the remaining contract performance as an interim contract to another contractor (the next best value bidder from the original procurement) on a procurement exception basis, if justified;
- Consolidate the contract into another existing contract (if permitted under the original procurement);
- Allow the contract to lapse or terminate the contract;
- Suspend or terminate the current contract and re-procure the contract; or
- Take any other permitted contracting or procurement action.

Contract Assignment

A contract assignment refers to an assignment of the remaining contract performance to a successor contractor or to another department. DDS should approve the assignment of the remaining contract obligations, duties or responsibilities under a procurement to another entity only in certain circumstances. These are usually limited to circumstances in which a contractor’s identity changes (through a merger, buyout, consolidation or other underlying business relationship) resulting in a new successor entity and the department has determined that the assignment of the remaining performance is essential.

When a contractor is planning a merger or other significant organizational change, it is important that the relevant state departments be informed as soon as possible. **At a minimum, DDS requires 90 day notice.** This notice should be via written communication to the Commissioner, Regional Director and Central Office Contracts Director.

If the contractor holds contracts with multiple departments, each department will undertake its own review and may grant approval of a contract assignment, including the establishment of conditions, if appropriate, or may take any other contract management action it deems advisable under the specific circumstances. A decision by DDS does not apply to any other department that may hold contracts with the same contractor.

Evaluating the Impact of a Material Change in Contractor Identity

The primary responsibility of DDS staff is to protect the interests of the Commonwealth and of the interests of consumers being served under any contract. The Department is responsible for maintaining documentation of its review process and all other relevant information in the procurement file.

In considering whether or not to permit a contract assignment, DDS staff will conduct and document a thorough review of the potential impact. Factors to consider include:

- **Critical Services or Continuity of Program or Project**

In certain circumstances, such as a critical need to prevent a lapse in services for certain types of long-term service projects, mandated client services, clients in residence, etc., it may be prudent to permit these contracts to be assigned to a successor organization, rather than terminating and re-awarding these contracts to another contractor.

- **Original Procurement (Referred to as BIDS in COMMBUYS) Requirements**

The successor entity must meet the same requirements as the contractor under the original procurement/s. Some of these requirements include basic qualifications under an RFR, years of experience, consumer-controlled or non-profit organization status (which might affect its competitive ranking or eligibility for a contract award) and internal contract management capacity.

- **Qualifications of Successor Entity**

The assignment of the remaining contract performance should not be made to a successor entity unless the level of quality of performance will be maintained or increased. An assignment is only appropriate if the new contractor's key personnel, financial stability, staff resources and qualifications are equal to or better than the current contractor. If the financial stability, capability to perform and the core individuals responsible for performance are the same, it is easier to argue that an assignment is appropriate. If not, the department must be able to defend that the assignment is more appropriate than the award of an interim contract to the next ranked best value bidder or a new procurement.

- **Price or Cost Implications**

The successor entity should be assuming the contractual responsibilities outlined in the current contractor's RFR response at the same costs and Chapter 257 rates (if applicable).

- **Non-Profit Status**

Additional considerations arise when the original contractor was a non-profit. If an organization's non-profit status is affected by a material change in contractor identity, there are legal, policy and administrative factors that departments should consider.

- **Assumption of Liabilities**

Will the successor entity assume all the obligations and liabilities of the prior contractor under prior year contracts within the current contract cycle of the contract to be assigned? While this is required in mergers and consolidations (see M.G.L. c.156B, s.80 and c.180, s.10A for relevant legal requirements in Massachusetts), in other situations, such as a contractual affiliation, the department should assure itself that all outstanding or potential obligations and liabilities will be covered.

The successor entity should be aware of Commonwealth audit and audit resolution policies and understand that it may be liable in future years for findings of audits to be conducted of prior year activities.

Administrative Process for a Material Change in Contractor Identity

In cases involving a material change in contractor identity that may affect more than one department, the affected departments will identify a principal procuring department or principal purchasing agency (PPA) to assume responsibility for coordinating and facilitating communication among other affected departments.

Required Documentation

A material change in contractor identity, such as with most mergers, buyouts and consolidations resulting in a new successor entity, also involve a legal structural change and a new Tax Identification Number. Along with identifying contract specific information to assign contract performance to the successor entity, several documents are required. There may be instances where the successor contractor is technically not "new" but rather is an existing contractor with a contract for the same type of service, into which the department may decide to incorporate the performance assignment.

The successor contractor must complete and execute, as appropriate:

- request for verification of taxation reporting information (Massachusetts Substitute W-9 Format);
- a Contractor Change in Identity Form, or new contract forms, to document any remaining performance and payments to the current contractor and the balance of performance and anticipated amounts to be expended by the new contractor;
- any required attachments that were required under the original RFR

OTHER TYPES OF CONTRACTOR CHANGE

This summary describes common contractor business arrangements, from the least to the most integrated form of organizational combination/restructuring (except for merger and consolidation, which was described earlier).

These examples do not necessarily formally trigger the "assignment" clause but may have an impact upon services which could justify DDS review of the contract(s) and follow up monitoring or other action as needed. If serious concerns arise, the contract may be terminated with an appropriate notice period in accordance with the applicable Commonwealth Terms and Conditions.

- **Management Agreement** - One party provides management services to another, as spelled out in a contractual agreement. The nature and scope of these agreements can vary greatly. This may or may not involve a delegation of some contract related responsibility which would be impacted by the assignment clause. Reimbursement restrictions (see 808 CMR 1.00) and potential related party disclosure may apply.
- **Joint Venture** - A limited purpose undertaking by two or more parties. The venture may be set up through a contractual agreement (functioning as a partnership), or more formally by establishing a separate corporation, either for-profit or not-for-profit, to undertake the activity or to provide support. In a contractual joint venture, one contractor must act as the lead agency in terms of being a party to a Commonwealth contract (because the Commonwealth generally does not enter into multi-party contracts) and then subcontract with its venture partners. If a separate corporation is established and is intended to be the contractor, then it is treated like any other new vendor.
- **Contractual Affiliation** - Similar to a joint venture, but the undertaking is broader in scope in terms of services involved. The participating parties may jointly develop programs, combine resources or lend assistance. One example of a contractual affiliation is the formation of a network, through the establishment of a new organization in which each affiliating contractor is a member. In this case the new “network” corporation enters into service contracts on behalf of the network, and subcontracts with its member contractors.

Related party disclosure requirements will likely be triggered for direct care services. From an accounting perspective the affiliated parties may be determined to be consolidated entities, which must then file audited financial statements accordingly. Should the Department wish to permit a contract assignment to the network corporation, all entities assume responsibility for prior year obligations.

- **Corporate Affiliation or Acquisition** - An action whereby one entity takes control of another (i.e., a parent/subsidiary relationship is established). In a not-for-profit, this occurs through by-law changes so that the controlling organization appoints the directors of the subsidiary organization, which remains intact as a separate corporation.

In the above affiliation or acquisition, certain administrative requirements are triggered such as notification of changes to the Board of the acquired organization, and related party disclosures.