



## Policies and Procedures



### Creating a Contract Modification for a Novation or Change of Name

#### **BACKGROUND**

In accordance with [COMAR 21.05.02.24](#):

A. No Assignment. A State contract is not transferrable, or otherwise assignable, without the written consent of the procurement officer provided, however, that a contractor may assign monies receivable under a contract after due notice to the State.

B. Recognition of a Successor in Interest Novation. When in the best interest of the State, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that:

- (1) The transferee assumes all of the transferor's obligations;
- (2) The transferor waives all rights under the contract as against the State; and
- (3) Unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

C. Change of Name. When a contractor requests to change the name in which it holds a contract with the State, the procurement officer responsible for the contract shall, upon receipt of a document indicating the change of name (for example, an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting contractor to effect the change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are changed.

In accordance with [BPW Advisory 2002-2](#):

**Purpose:** To notify State agencies that the Procurement Regulations require that a State contractor may not transfer, assign, or change the name in which it holds a procurement contract until the Procurement Officer provides written consent. COMAR 21.05.02.24. This Advisory sets forth the necessary procedures when such a request is made.

**Novation:** Before approving a successor-in-interest to a State contract, the Procurement Officer should complete this checklist:

- Has the successor-in-interest completed the Contract Affidavit?
- Is the successor-in-interest eligible to perform State contracts (i.e., not suspended, debarred, or otherwise determined to be not responsible)?
- Has the successor-in-interest furnished a performance bond equivalent to the original contractor's bond, or does the original contractor guarantee performance?
- Are the rights and obligations of the contracting parties spelled out in a novation agreement approved by the Office of the Attorney General? Has the name change been made in ADPICS?



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**Change of Name:** If a contractor is simply requesting to change the name in which it holds a State contract, the Procurement Officer will enter into an agreement with the contractor to effect the name change. The agreement must indicate that no other terms and conditions of the contract are changed. The name change must be made in ADPICS.

**Board Agenda Items:** If a contract option or modification requiring Board approval involves a company that has changed names or is a successor in-interest, the procurement agency must include the name of the original contracting party and a brief explanation of circumstances (novation or name change) in the Action Agenda Item. A copy of the novation agreement or name change agreement must be included as back-up. The contractor named in the Board item and the contractor named in ADPICS must be identical.

### PROCEDURES

#### **A. Documentation Requirements**

1. In order to be compliant with the regulations and advisories stated in the Background above, a Novation or Change of Name Agreement requires the following documentation:
  - a. Articles of Incorporation for both companies;
  - b. Corporate Resolution showing sale; a notice of sale, merger or acquisition documents. Must be signed by both the assignor and assignee (cannot be the same person signing for both the assignee and the assignor.) The signatures should be those of the principal officers (i.e. president, vice president, secretary, treasurer, or member of the board of directors); and
  - c. One or more of the following “Novation Documents” (provided separately as an attachment to this policy):
    - i. An executed copy of the Assignment and Novation Agreement; or
    - ii. An executed copy of the Successor in Interest Assignment and Novation Agreement; or
    - iii. An executed copy of the Name Change Agreement.
2. The Financial Management Inventory System (FMIS) updates for a Novation Agreement with a new firm or a Change of Name Agreement require the following:
  - a. A new federal W-9 form with the current company name, address and FEIN number; and
  - b. A new executed Contract Affidavit.

#### **B. Procurement Officer Step by Step Guidelines**

1. The Procurement Officer will review the required documents received from the contractor to ensure the bulleted questions in the BPW Advisory 2002-2 are answered satisfactorily and



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the Novation or Name Change Agreement request is in accordance with COMAR 21.05.02.24.

2. The Procurement Officer will check the Vendor's compliance with the State Department of Assessment and Taxation (SDAT) by searching for the Vendor's name on the [SDAT website](#) to verify the Vendor is in good standing with the State and that its resident agent's name and address match what was provided on the new Contract Affidavit. The Procurement Officer will also check the tax clearance number from the Comptroller's Office by sending an email with the Company's name, City, State and Federal Identification Number (FEIN).
3. Once the Vendor has been confirmed to be responsible and all signatures have been obtained to execute the Contract Modification, the new Vendor information needs to be added to FMIS to update the system for the Contract and payments.
4. For a Name Change Agreement, the Procurement Officer will contact the FMIS Vendor Support staff to request to add a new mail code and new name to the current FEIN number in the FMIS Vendor Table by providing the documents required in A.2 above. *[Note: The old Vendor name should not be removed completely in order to maintain historical data.]*
5. For a Novation Agreement with a firm that has never done business with the State and is, therefore, not currently in the FMIS Vendor Table, the Procurement Officer will contact the FMIS Vendor Support staff to request to add the new vendor and its FEIN to the FMIS Vendor Table by providing the documents required in A.2 above.
6. The Procurement Officer will be notified by the FMIS Vendor Support staff once the request in Steps 4 or 5 has been completed in order to proceed to Step 7.
7. Once the vendor information has been updated in the FMIS Vendor Table, the Procurement Officer will create one or two Change Orders (CO) using the 8710 screen in ADPICS to update the Contract Blanket Purchase Order (BPO) as follows:
  - a. Name Change: The Procurement Officer will create a CO to add the new vendor name and new mail code for the Vendor to the BPO first. Once the CO has been approved, a second CO is created to delete the old mail code for the old vendor name from the current contract. *(The CO to delete the old vendor name will not completely remove the old vendor information. It will simply make it impossible to continue to pay the Vendor using the old name.)* In this instance, the new vendor FEIN should be the same as the old vendor FEIN.
  - b. Successor in Interest Assignment and Novation Agreement: The Procurement Officer will create a CO to add the new vendor information and mail code to the



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BPO first. Once the CO has been approved, a second CO is created to delete the old mail code for the old vendor name from the current contract. *(The CO to delete the old vendor name will not completely remove the old vendor information. It will simply make it impossible to continue to pay the Vendor using the old name.)* In this instance, the new vendor being added will always have a new/different FEIN.

- c. Assignment of Payment: The Procurement Officer will create one CO to add the new vendor that will be paid for the goods or services rendered (line items). *[Note: An assignment of payment is only a change to who gets paid; it does not shift contractual responsibility to that Vendor from the Contractor.]*
  - d. The Procurement Officer will also create a note in the Notepad (the 9200 screen in ADPICS) to include information on the terms and specifications of the executed document explaining the modification to the contract. These notes are sometimes referred to as the "Contract Crosswalk".
- 8. Once all required documents have been executed and FMIS has been updated, the Procurement Officer shall send an executed copy of the Novation or Change of Name Agreement to the Contractor for their records.
  - 9. The Procurement Officer should update any websites that utilize the Contractor's name in association with the award of the contract (i.e. if the contract is a Statewide Contract, the Novation/Name Change Agreement would need to be uploaded to the DGS website along with changing the Contractor's name). *[Note: Before uploading any documents into the public domain, the Procurement Officer must redact the FEIN and any other confidential information from the agreement/modification.]*
  - 10. The Procurement Officer should save all email communications with the Contractor and all executed documents pertaining to this action in the correct folders in their electronic and hardcopy procurement files, as appropriate.