

STATE OF NEW JERSEY  
DEPARTMENT OF HUMAN SERVICES

**SUBJECT:** The Acquisition, Affiliation, Consolidation, or  
Merger of a Provider Agency

**EFFECTIVE:** September 1, 1997

**PROMULGATED:** September 1, 1997

The purpose of this policy circular is to establish Department policy and procedures regarding the continuation of a Contract when a Provider Agency Acquisition, Affiliation, Consolidation, Merger, etc. occurs.

**I. SCOPE**

This policy circular applies to all Provider Agency Contracts that are affected by an Acquisition, Affiliation, Consolidation, Merger, etc. Other synergies and corporate takeovers, although not defined in this circular, do not preclude this circular from applying to those situations.

**II. DEFINITIONS**

In addition to the defined terms included in the Glossary of the Manual, the terms listed below, when capitalized, shall have meanings as stated.

Acquiring Organization means the business entity that acquires, affiliates, consolidates, merges, etc. with a Provider Agency.

Acquisition means the takeover of one corporation by another, if both parties retain their legal existence after the transaction.

Affiliation means the association of two or more entities for the advancement of a specific goal or purpose.

Consolidation occurs when two or more corporations cease to exist, and by the same process a new one is created, taking over the assets and assuming the liabilities of those passing out of existence.

Marketable Asset means any item of value that can be sold, bartered or traded.

Merger occurs where one corporation absorbs another of relatively equal size and importance and remains in existence while the other is dissolved.

Transfer of Governing Board occurs when the Provider Agency remains intact, but assigns control or governance to a new entity or Governing Board.

Umbrella Organization means an affiliation among two or more business entities whereby each remains distinct, but join to form a new collective directing organization. The new organization may be given management or service control, without acquiring the assets or liabilities of the existing entities.

### **III. POLICY**

- A. A Department Contract is not a Marketable Asset that may be purchased from a Provider Agency by another organization through an Acquisition, Affiliation, Consolidation, Merger, etc. Because a Department Contract is a negotiated instrument that establishes responsibilities between the Department and the Provider Agency, the Department is contractually obligated to the original signatory party(ies) only. If a Provider Agency is merged with, consolidated with, enters into any form of Affiliation, such as an umbrella arrangement, etc., or is otherwise acquired by another organization, the Department is not obligated to honor the conditions, terms, or fiscal arrangements of the Contract or assume any of the liabilities of the Acquiring Organization.
- B. Department Contracts are not automatically assignable or assumable by the Acquiring Organization, and consent, in writing, for the transfer or renewal of any and all Contract rights is required from the Departmental Component(s) by the Acquiring Organization.
- C. Any anticipated change(s) in the corporate or legal status of a Contract signatory during the Contract term shall be transmitted, in writing, to the Departmental Component(s) at least 90 Days prior to the intended change(s) or takeover.
- D. Whenever an Acquiring Organization acquires, affiliates, consolidates, merges, etc. with a Provider Agency, the Departmental Component may:
  1. Continue the current Contract with the Acquiring Organization and modify the Contract in accordance with Contract Modification Policy Circular P1.10.
  2. Continue the Contract on a conditional basis as stipulated in a Contract Modification, provided that the Acquiring Organization complies with all conditions indicated within the specified time frames established by the Departmental Component in the Contract Modification.

3. Terminate the current Contract based on an evaluation of the criteria and documentation submitted in accordance with Section IV. of this circular and issue a Request for Proposal (RFP) according to Department Policy Circular P1.04.
- E. The Department reserves the right to issue a Request For Proposal (RFP) for any subsequent renewal Contracts when an Acquisition, Affiliation, Consolidation, Merger, etc. occurs.
- F. Although title to all Equipment purchased through a Department Contract rests with the Provider Agency, the Department's equitable interest in that Equipment does not end or diminish with an Acquisition, Affiliation, Consolidation, Merger, etc. In addition, the Department has the right to require the transfer of any Equipment directly to the Department or to an eligible non-State party designated by the Department.
- G. Failure to submit the documentation required as outlined in Section IV. of this circular will result in a delay in the Departmental Component rendering a final decision on Contract continuation.

#### **IV. PROCEDURES**

- A. Whenever an Acquisition, Affiliation, Consolidation, Merger, etc. is anticipated, the Acquiring Organization and/or Provider Agency should provide the required information listed below. Time frames listed below are approximate due dates and refer to Days before the intended Contract takeover date.

##### 90 Days

A Provider Agency shall notify the contracting Departmental Component(s), in writing, of the anticipated takeover date of the Acquisition, Affiliation, Consolidation, Merger, etc. The Notification shall be accompanied by a dated copy of the Provider Agency's Board minutes indicating that the Board has discussed the intended Acquisition, Affiliation, Consolidation, Merger, etc.

The minutes shall include the results of the approval vote and any other pertinent information. Such information shall include, as a minimum, a written statement, signed by the Provider Agency Chief Executive Officer, that establishes the name of the Acquiring Organization and the exact date of the intended Acquisition, Affiliation, Consolidation, Merger, etc.

75 Days

A Board resolution by the Acquiring Organization must be received by the Departmental Component(s) prior to the projected take over of the Contract indicating its desire for a continuance of the Department of Human Services Contract. The Board shall also submit, at the same time, correspondence on company letterhead indicating the authorized signatories for Contracts, invoices and checks. In addition, the Acquiring Organization shall submit:

1. A plan explaining how the Acquiring Organization will effect the Acquisition, Affiliation, Consolidation or Merger including safeguards to be taken to protect contracted services.
2. A plan outlining how the Acquiring Organization will notify current clients served under the existing Contract including any impact on the clients.

This information shall be retained on file by the Departmental Component(s) for reference.

60 Days

The following information must be submitted by the Acquiring Organization to the Departmental Component(s) for review before a determination can be made regarding a continuation of the current Contract.

1. Required Acquiring Organization documents shall be current and attested to regarding their validity, in writing, by the Board of the Acquiring Organization. Current minimum documents required to determine if a continuation of the current Contract is warranted, are:
  - a. Certificate of Incorporation
  - b. Current list of Board Members
  - c. Current list of Chief Operating Officers
  - d. Conflict of Interest policy
  - e. Federal ID number
  - f. Personnel policies
  - g. Copy of the By-laws
  - h. Copy of the Acquisition, Affiliation, Consolidation, Merger, etc. agreement
  - i. Chief Executive Officer (CEO) statement certifying that the Acquiring Organization is in compliance with all State, federal laws and regulations
2. The name and address of the Acquiring Organization, including the address(es) of all program sites(s) for Department contracted services.

3. A chart of the newly formed organization showing the new structure, along with a functional statement(s) noting the duties and/or responsibilities of all units that are associated with delivering contracted services to the Department.
4. A copy of the Acquiring Organization's balance sheet for all units that are associated with delivering contracted services to the Department which shows all merged assets and liabilities, as of the intended date of association or takeover in accordance with the Financial Accounting Standards Board (FASB) standards and/or interpretations.
5. A copy of the most recent annual organization-wide single audit of the Acquiring Organization, a corrective action plan, if needed, and a remedy of any unsatisfactory condition(s) present at the Acquiring Organization. In addition, any other financial information concerning the Acquisition, Affiliation, Consolidation, Merger, etc. requested by the Departmental Component(s) must be submitted prior to any consideration for a continuation of the current Contract.
6. A list, if appropriate, of all federal, state, local government or private agency contracts and grants awarded to the Acquiring Organization that overlaps the term of the Department Contract. The list shall include as a minimum: the awarding agency and address, amount of the award, period of performance, purpose of the contract/grant and a contact telephone number of the granting agency.
7. A written statement from the Acquiring Organization that the newly formed entity recognizes its responsibility for any corrective action plan(s), questioned costs, or Contract overpayments incurred by its predecessor organization (Provider Agency) that may be identified in any subsequent audits of Contract(s) assumed by the Acquiring Organization.

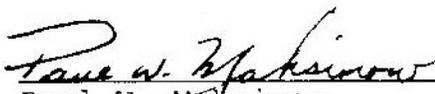
#### 45 Days

The decision by a Departmental Component(s) to authorize or disapprove a continuation of the current Contract shall be rendered based on submitted documentation, timeliness of submitted documentation, and one or more of the following criteria:

1. The Acquiring Organization has a history of providing the same or like service to individuals demonstrating needs similar to the Department's clients.

2. The service history indicates that the Acquiring Organization, if they had a contractual relationship with the Department has been satisfactory in:
    - a. meeting contractual performance outcomes if stipulated in the Contract(s);
    - b. providing accurate and timely interim reports as specified in any prior Department Contract; and
    - c. providing acceptable contracted Levels of Service (LOS).
  3. The Acquiring Organization, where appropriate, has received the endorsement of the Department-affiliated local planning entity, i.e., county mental health board; county human services advisory council; children's inter-agency coordinating council; etc.
  4. The Acquiring Organization has/or is capable of presenting an acceptable plan which has a cost equal to or less than the acquired Provider Agency's service delivery cost, while ensuring the professional capability to provide Department of Human Services contracted services.
  5. There is no disruption of service or diminution of the quality of service, including no loss of service days, while ensuring that an appropriate continuity of care and/or treatment is maintained, unless written permission to the contrary is obtained from the Departmental Component(s).
- B. A written notification that establishes the Departmental Component's intention to issue an RFP, authorize a Contract continuation or require a conditional Contract continuation shall be transmitted to the Acquiring Organization only after all required information and documentation from the Acquiring Organization is date stamped received. Up to sixty (60) Days after receiving all required documentation, the Departmental Component shall send written notification to the Acquiring Organization by certified mail of its decision, or advise, in writing, if an extension is needed.

Issued By:

  
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Paul W. Maksimow  
Assistant Commissioner  
Department of Human Services