

GUIDELINES FOR SERVICE PROVIDER SALE OF BUSINESS

Provided for information to guide CCACs and contracted service providers – March 2010.

A. OVERVIEW

A CCAC (or more than one CCAC) may be notified by one of its service providers that the service provider is selling all or a portion of its business. Typically, this is highly confidential information that should not be shared with other CCACs without the consent of the service provider.

There are two types of sale that will impact the CCAC, a sale of assets owned by the service provider or a sale of the majority of the shares of the service provider. Under the 2007 Clinical Services Template Agreement and the 2009 Equipment and Supplies Template Agreement, prior completing a sale of business a service provider under contract with a CCAC must i) obtain written consent from the CCAC(s) to an assignment of the contract to the purchaser (in an asset sale) or ii) obtain written consent from the CCAC(s) to the change of control of the service provider (in a sale of shares).

The OACCAC and Blakes have developed standard consent documentation that is to be used for each of these processes. Each process (asset sale and share sale) requires a different type of consent document. The CCAC should note that the current service provider, buyer and the CCAC will need to sign the documentation. Generally this will require the assistance of legal counsel and the legal services are often paid for by the service provider or the purchaser. In addition, the CCAC or the OACCAC will need time to conduct financial and other (experience, legal, etc.) due diligence on the purchaser before providing its consent. Often consent is conditional upon the service provider retaining the staff that are in existence at the time of the sale.

B. PROCESS

Generally, senior managers are first contacted about the sale of a business and any work that is to be completed by the CCAC is done by the contract managers. We recommend that the following process be followed when a CCAC is contacted about the sale of business of one of its service providers:

- 1) Find out as much information about the transaction as possible from the service provider. Ask the following questions:
 - It is a share purchase or an asset purchase?
 - When is the anticipated closing date for the transaction?
 - Who is the purchaser?
- 2) Contact Anne Bell at the OACCAC who will assist with coordination of all CCACs that are involved and, if necessary, involve legal counsel.
- 3) The CCAC will want to request financial information, experience information and legal information from the purchaser prior to approving the transaction. Refer to the attached checklist as an example of information to be requested. For the information of CCACs, the checklist requests information that is similar to the information obtained from applicants in the OACCAC's central prequalification process. Note that the checklist is only a basic list and additional information may be necessary

depending on the transaction. Request this information from the service provider as soon as possible and review all disclosed information.

- 4) Legal counsel for the CCAC will work with the CCACs to draft the appropriate consents. The information that will be required from each CCAC is as follows:
 - A list of each of the contracts (including any all contracts in effect and any amendments and extensions to such contracts) that a CCAC has with the service provider.
 - Name of the individual(s) at the CCAC who will sign the consent (signing authority).
- 5) Once the CCAC has signed off on the language of the consent, counsel for the CCAC will circulate the consents to counsel for the service provider. Typically a brief period of negotiation occurs. Execution of consents may occur concurrently (ie: CCAC may not be the last to sign the document).
- 6) Once finalized, the consents are signed by the CCAC. Execution of the consents must occur prior to closing of the transaction.

C. PREQUALIFIED ENTITIES

If the buyer has been prequalified as part of the OACCAC's prequalification process for providers of clinical services and medical equipment and supplies, some of the due diligence information may not be required. This information may have already been submitted and reviewed by the OACCAC as part of the prequalification process (for example, with respect to previous experience, the buyer will have an experience rating from the OACCAC). If the buyer has been prequalified, the OACCAC will recommend to the CCACs what, if any, due diligence material will not be required from the buyer.

The CCAC and any prequalified service provider should be aware that if a sale of business transaction results in a significant change to a Service Provider that, immediately prior to the transaction, is prequalified, (such as, for example, all of the assets are transferred out of the entity, the entity is dissolved, etc.), the entity's prequalification status may be adversely affected by the transaction and the Service Provider will need to apply to the OACCAC for prequalification prior to participating in any subsequent RFP process initiated by a CCAC.

Questions may be forwarded to Anne Bell at anne.bell@ccac-ont.ca or call 416-750-1720.

Due Diligence Checklist

Note: The following are due diligence questions that would be appropriate to ask a buyer.

FINANCIAL

1. Most recent audited financial statements of the buyer (in the case of an asset sale) or the buyer and the target company (in the case of a share sale).
2. Any proforma balance sheet prepared for the post-transaction entity.
3. If the buyer is not a current CCAC provider, audited financial statements for its two fiscal years immediately prior to the closing date of the transaction, and if the most recent audited statement will be more than 6 months old as of the closing date of the transaction, any interim financial statements produced since the audited financial statements.

EXPERIENCE

Asset Sale

1. Does the buyer have any other current contracts with a CCAC? What is the value (in dollars and, if applicable, hours or visits) of all current CCAC contracts?
2. Does the buyer have any equivalent experience (hospital, clinic, hospice, long-term care home or retirement home) and if so what is the value of the contract (in dollars and, if applicable, hours or visits).
3. What is the buyer's intention regarding the service provider's current staff.
4. If a buyer does not have a CCAC contract or equivalent experience, what is the buyer's plan for delivery the services?

Share Sale

1. Does the buyer have any current contract(s) with a CCAC? What is the value (in dollars and, if applicable, hours or visits) of all current CCAC contracts?
2. What is the buyer's intention regarding transition and integration of the new business (i.e. keep as a separate business, division, integrate into existing business etc)?

TRANSITION

1. What is the buyer's plan for transition?

LEGAL

1. The buyer should provide details regarding the following litigation matters for the three year period prior to the transaction:

Description Required		Buyer's Disclosure	
Provide details of any labour relations strikes or labour relations actions that may materially adversely affect the buyer's ability to deliver the Services as described in the Services Agreement with the CCAC.			
Provide details of any violation of wage or other fair labour practices and standards by the buyer.			
Provide details of any occurrences of default on a contract, or disqualification in a CCAC RFP process (not a simple failure to proceed in the RFP process) or being prohibited from providing services to a CCAC.			
Provide details of any contract that the buyer (or an affiliate of the buyer) has failed to complete, in which the buyer (or an affiliate of the buyer) has been terminated or in which the buyer (or an affiliate of the buyer) has received formal written notification that the buyer (or an affiliate of the buyer) has committed a material breach.			
Provide details of any conviction or investigation of the buyer (or an affiliate of the buyer) for a violation of the criminal law or any other regulations or requirements relating to professional matters or any other matters relevant to its business.			
Provide details of any administrative or regulatory offences, charges or penalties imposed on the buyer and the outcome of such.			
Provide details of any insolvency, bankruptcy or similar applications by or against the buyer.			
State any complete or ongoing lawsuits, arbitrations or legal actions arising from contracts undertaken by the buyer (or an affiliate of the buyer).			
<i>Year</i>	<i>Award FOR or AGAINST Buyer (or affiliate)</i>	<i>Name of client, cause of litigation, and matter in dispute</i>	<i>Disputed amount (current value in Canadian dollars)</i>

[Note to CCACs: If the buyer has significant operating affiliates, these entities should also provide legal disclosure.]

2. The buyer should indicate whether any of the litigation matters disclosed is covered by insurance.