

CMAG Impact Assessment Response Form

Change Proposal	CP376 'Clarifying restrictions on the role of Agent'
Delivery Partner	EMR Delivery Body
Impact Assessment Reference	IA7
Date Requested	24/01/2024
Response Deadline	14 February 2024

Issue Summary

The policy intent for Rule 3.3.5 is that each single CMU or multiple CMUs who all belong to the same Group (a holding company and its subsidiaries) is represented either by the Applicant themselves or by a nominated Agent who acts as Applicant, Bidder and/or Capacity Provider for only that CMU or the CMUs of that Group.

This rule is in place to ensure that those with the ability to bid in the CM auctions are acting independently so that the market remains competitive.

It is currently possible and within the rules for one Group to act as an Agent for multiple CMUs from different Groups by forming subsidiaries, such as a special purpose vehicle (SPV). However, this clearly contradicts the policy intent behind Rule 3.3.5.

Proposed Solution

Amending Rule 3.3.5 to clarify that an Agent cannot also be a member of a Group (the direct or indirect Holding Company and any Subsidiary of that Holding Company) that includes a member acting as an Agent representing other Applicants.

Proposed Legal Text

3.3 Submitting an Application for Prequalification

3.3.5 An Applicant may nominate an Agent to submit an Application for a CMU on its behalf and to otherwise perform its obligations under the Regulations or the Rules (whether in its capacity as Applicant, Bidder or Capacity Provider) provided that:

- (a) an Agent Nomination Form with respect to such Agent is included in the Application;
- (b) only one Agent is appointed by an Applicant with respect to a CMU at any one time;
- (c) such Agent (**or any Member within the Agent's Group**) is not also the Agent for any other Applicant (unless the other Applicant is a member of the same **Applicant's Group**);
- (d) if the Applicant wishes to revoke the appointment of an Agent or to appoint a different Agent, the Applicant must submit a new Agent Nomination form to the Delivery Body; and
- (e) the Agent shall ~~have~~ not ~~have~~ the authority to sign any Prequalification Certificate, Price-Maker Certificate, Certificate of Conduct or any other directors' or officers' certificate or other formal representation required to be submitted by the Applicant pursuant to the Regulations or the Rules.

CP376 Solution

Question 1: Please provide your view on the technical feasibility of the solution, and any constraints that need to be considered.

The EMR DB can confirm this change is technically feasible to deliver. We have based this Impact Assessment on current low numbers of Agents and use of a manual process, but if volumes were to increase significantly, we would need to investigate making some system changes to support higher volumes.

This change would result in an update to our Agent Nomination approval process carried out as part of the Prequalification assessment as well as further checks when subsequent Agent Nomination forms are submitted.

Specifically, we propose to add the following fields to Exhibit E (Agent Nomination Form) to enable us to implement this change.

1. Applicant Company Number
2. Applicant Parent Company Name
3. Applicant Parent Company Number

This additional information in Exhibit E will make it easier to confirm if an Applicant belongs to a Group where those Groups are registered organisations.

Question 2: Are there any alternative options that you believe need to be considered to mitigate risk or excessive cost?

No. The DB is already proposing to implement a manual solution that will minimize the level of change required to achieve the change objective.

CP376 Impacts

Question 3: Are there any known implementation costs for your organisation to implement CP376?

Low

As above, the main implementation cost will be developing changes to our internal Agent Nomination approval process to identify potential Agent's Groups. The main assurance will still come from true and accurate declarations in Exhibit E.

Question 4: Are there any known ongoing costs for your organisation to implement CP376?

Low

The Delivery Body already carry out checks on Agents when Agent Nomination Forms are submitted and throughout the Prequalification window, this change will add to those checks on an ongoing basis but the impact will be low.

Question 5: Are there any known impacts (positive or negative) to your organisation to implement CP376?

Low

See above impacts

CP376 Implementation

Question 6: What are your expected timescales for implementation of CP376?

The Delivery Body estimates that any change would take approximately two months to develop, implement and test following final rule wording.

Although this change may take less time in practice, this timeframe is given as standard to ensure sufficient time is left between when decisions are made and the Auction process that it is intended to be implemented for.

Additional Delivery Partner Comments

Question 7: Do you have any additional comments on CP376 that should be considered by CMAG before a recommendation is made?

We have no further comments.