

Practice based commissioning and procurement

Introduction

Practice based commissioning provides practices with the incentives and opportunities to get involved in the provision of care. Under practice based commissioning, PCTs remain responsible for the decisions and contracting arrangements for new services agreed. They must therefore balance the requirement to follow rules on procurement with the need to foster innovation and avoid an unduly bureaucratic or lengthy process.

The following brief guidance has been agreed with the NHS Purchasing and Supply Agency. We intend to produce more complete guidance in due course, and are working with the NHS Primary Care Contracting Team to produce this.

We would urge PCTs to follow appropriate processes irrespective of whether the value of a service falls above or below the threshold stated under The Public Contracts Regulations 2006 (SI2006 no5).

The procurement process undertaken together with the level and extent of advertising should be proportionate to the size of the contract value. As with all contract awards, it is imperative to demonstrate fairness and equity to all participating suppliers and PCTs should expect their decisions to be subject to audit investigation and therefore ensure robust record keeping.

Guidance

The procurement of medical services are classified as Residual B Services under The Public Contracts Regulations 2006 (SI2006 no5). This classification means that whilst the full range of EU procedures do not apply, if the contract value exceeds the permitted threshold (£144,371 (excl. VAT) as from 31 January 2006), then the procedural requirements that must be adhered to under the Regulations are:

- adherence to the principles of equality of treatment, transparency and non-discrimination on the grounds of nationality;
- adherence to the rules on EU standards; and
- placement of an award notice in OJEC once the contract has been placed.

Further guidance is contained within the Alternative Provider Medical Services Toolkit (APMS) available at www.pasa.nhs.uk

The European Court of Justice has indicated that the principles of the EU Treaty require that all contract opportunities receive sufficient advertising to ensure open competition. This implies that restricting access to residual B services through 'in-house' or 'approved' supplier lists is in breach of EU Treaty principles.

In addition to the need to comply with The Public Contracts Regulations 2006 (SI2006 no5) for contracts above the threshold, a PCT must also fully comply with their own internal standing financial orders and standing financial instructions for all contracts below this threshold.

These will include authority limits unique to an individual PCT and determine the authority regime for contract awards, e.g. stages requiring board approval, or in some cases, approval from the Strategic Health Authority, delegation of duties, minimum number of suppliers to be invited to tender etc.