

On Monday 16 November 2009, the Department of Health (the Department) launched the new model PDS+ Agreement for improving Dental access. Although it is in a significantly different form to the first draft presented by the Department four months ago, and now contains amendments reflecting their consultation with the British Dental Association (BDA) and their specialist advisers, the new Agreement still falls short, containing many of the concerns previously highlighted.

The new Agreement sees a shift from the standard GDS Contracts and PDS Agreements that dental contractors are familiar with, to more of a short-term contract based on the APMS model contract favoured by the Department for general practitioners. It runs for more than 50 pages and has 17 working Schedules.

The Agreement is to be for a term of 5-10 years, extendable, at the PCT's discretion, for a further 5-10 years. The main concerns are that the Agreement is very prescriptive, one-sided (favouring the PCT) and requires robust management systems to be in place. Consequently, fulfilling the requirements may be difficult both for the big dental corporates, and to a greater extent, the small dental practice.

No doubt PCTs will shortly commence procurement and contracting of the new Agreement and, in some instances, have already begun testing early model documentation. The format of the Agreement is such that PCTs can amend and modify parts of the Agreement depending on their perceived local requirements.

Be prepared

If dentists are thinking about bidding we would suggest that they first read carefully the Agreement being tendered, the requirements being imposed, the viability of achieving the targets and whether any initial outlay can be recouped within the term of the Agreement.

Unfortunately, it is an unduly complex Agreement and before time and money is spent going through the tender process, potential bidders should seek advice. John Milne, Chair of the GDPC, says *"Although it must be an individual business decision, we advise dentists to think carefully and seek advice before taking on one of these contracts as the dangers of breach are rife, and the consequences of breach may be very damaging to practices."*

Being able to decide at the outset whether this Agreement would be a good investment, before large resources are committed to this project, is a definite requirement, since signing in the expectation that the PCT will vary the Agreement substantially once you have achieved preferred bidder status, is unlikely, if not impossible.

The Department expects dentists who bid for these Agreements to be able to reflect in the bid price the additional risks that they will be accepting and the extra time and man power that will be required to satisfy the stringent requirements of this Agreement. Getting this right will be a challenge.

It is very important to ensure that the payment element and related Key Performance Indicators (KPIs) are also right. Although this aspect of the Agreement is still in primary stages it is important to ensure that the KPIs are achievable and dentists know the consequences should they fail to achieve them.

Note that the payment provisions are split into three parts: Services, Access and Performance (measured by achievement of the KPIs). A minimum of 51% of the payment is allocated to Services and only this proportion falls under the provisions of the Statement of Financial Entitlements (SFE). This is likely to impact on the contractor's superannuation payments and additional claims permissible under the SFE and dentists should ensure an accountant is able to quantify these financial implications of this.

The clinical and governance standards to be met are high. The one sided nature of the Agreement is reflected in sweeping requirements whereby the PCT is to be indemnified by the contractor when any of these standards are not satisfied.

Although the Agreement must (and does) follow the standard PDS Regulations in respect of termination on breach, the concern for the contractor is that there are potentially more opportunities for the contractor to find itself in breach.

Right to a GDS Contract

Since the right to a GDS contract derives from the PDS Regulations, a contractor providing services under a PDS+ Agreement will have the right to move to a GDS Contract when this Agreement determines. However, contractors must be aware that in doing so, only the Service element (i.e. not the KPI or access elements) will be transferred to the GDS Contract. Further, whilst the UDA requirement is transferred to the GDS Contract, there is no guarantee under the PDS Regulations that the value attributable to those UDAs will also transfer.

Considerations for potential bidders

First, it is important to get the bid-price right. Most contractors will probably bid on the basis that they will achieve Band B in respect of the KPIs. Whilst this is probably a sensible approach, potential bidders should aware that even mid-range targets may be difficult in the first few years simply because the system is new.

Bidders should also:

- Factor into their bid price other costs that are apparent throughout the Agreement and for which the contractor may be liable;
- Ensure that they are likely to recoup their start up costs early in the term to ensure any risk of being left short because the Agreement is terminated early or is not extended is minimised; and
- Consider how the provision of services under this Agreement fit in with the requirements of your existing contract or agreement.

Micromanagement

Historically, a dentist's practice was his private business. This PDS+ Agreement hands over significant parts of that business autonomy to the PCT. An issue of great concern is that the Agreement struggles to distinguish between a contractor taking on this Agreement as a supplement to his existing business and a contractor who takes on this Agreement as a new business.

Bidders must be very careful when deciphering the draft Agreement to ensure that where they are looking to provide the services to supplement their existing business they will not, at the expiry of the Agreement, be required to transfer or assign their business assets, licences, leases etc (which existed prior to the PDS+ Agreement) to the PCT or a new provider coming in. This could always reflect this in the bid price!

Final thought

In order to best protect a contractor's existing and future dental business, it is advisable to seek the advice of specialist accountants and solicitors early in any tendering process and this is particularly true of the new dental access arrangements.

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