

FRAMEWORK FOR PROCURING EXTERNAL SUPPORT FOR COMMISSIONERS (FESC)

POLICY STATEMENT

Introduction

1. This document sets out the Department of Health's policy in relation to the introduction of the Framework for procuring External Support for Commissioners (FESC).
2. Commissioning is the means by which we secure best value for patients and taxpayers. Best value includes the best possible health outcomes and the best health care possible within the resources made available by the taxpayer. In *Health Reform in England, update and commissioning framework* (July 2006) we set out a vision for stronger and more effective commissioning, as a key element of a comprehensive programme of health reforms.
3. The vision for commissioning is challenging and demands high levels of commissioning skills from PCTs and practice based commissioners. Effective commissioning will require a major improvement in the capacity and capability of PCT commissioners. This requirement to build capacity and capability is being addressed in a number of ways, including the provision of a range of skill development opportunities for PCT Directors and Boards, and a collaborative approach to PBC development, supported by the Improvement Foundation.
4. The Commissioning Framework recognised that PCTs will need to develop excellent skills in a range of commissioning processes, for example, in actuarial approaches to population risk assessment, in data harvesting and analysis, social marketing, opinion surveys, service evaluation and redesign, procurement and performance management. Part of the purpose of the FESC is to allow for development and sharing of skills across organisations, particularly where partners have worked in different parts of the NHS and in other healthcare systems.
5. Where PCTs identify gaps in their abilities in these areas they can address them in a variety of ways. They can develop their own internal solutions (by recruitment or training), use public sector support (by working with other NHS bodies or local authorities to provide innovative solutions), or may look for support from private sector companies with a particular expertise. These are judgements for PCT boards to make. NHS organisations have always been able to buy in support from public bodies and private sector companies to provide services.

Why the FESC is Needed

6. PCT boards which choose to secure support from private sector companies have traditionally done this by undertaking their own procurement, and they will continue to be able to do this.

7. However, as part of DH's role in supporting the development of commissioning capability, we announced in the Commissioning Framework that we would undertake a national procurement to support PCTs who wish to do so to procure a range of commissioning skills and services from the private sector. This procurement, known as the Framework for External Support for Commissioners (FESC), will give PCTs an additional option from which to choose. It recognises that in many cases, the NHS will achieve better value for money by DH procuring a single framework contract, rather than individual organisations undertaking many separate procurements. PCTs will be able to secure the support they need more quickly and from a pre-appointed list of suppliers.
8. SHAs have indicated that the results emerging from the PCT Fitness for Purpose Exercise and the discussions around the subsequent development plans, demonstrate that there are gaps in both PCT competency and capability levels. The level and complexity of these gaps vary across each SHA but there are distinct common themes that match the four main groupings of commissioning activities offered in the FESC. In view of this the SHAs have expressed a collective view that the FESC is both desirable and necessary.
9. Increasingly PCTs are devolving a range of commissioning functions and activities to practice based commissioners, usually acting in groups or consortia. The recent PBC Guidance, *Practice based commissioning, practical implementation* (Nov 2006), set out the expectation that PCTs would provide appropriate management support to PBC groups. Practices, in agreement with PCTs, may wish to obtain support in particular functions by using the FESC. The framework will therefore become an important additional tool to support the development of PBC.
10. A reference group was established at the outset of the procurement to guide the development of contract documentation so that it reflected the requirements of the NHS. The membership of the reference group was drawn from a range of senior SHA and PCT staff (including Practice Based Commissioning expertise and clinical input). All SHA chief executives were informed about the project and invited to nominate senior PCT and SHA staff to assist in the evaluation of FESC bidders. A range of experienced staff were proposed to support the prequalification evaluation process and a larger number have been proposed to support the next phase of evaluation.

Features of the FESC

11. The FESC is a framework of services, commissioned at a national level to provide a structured and time efficient mechanism for PCTs to procure a range of commissioning skills and services from the independent sector, structured in a way that will facilitate choice by the PCTs either of a particular service or of group of services.
12. The FESC will provide a menu of expert services to choose from which will be further specified and localised as part of the PCT procurement under the FESC. These PCT procurements will each lead to an External Support Services Agreement (ESSA). The structure of the FESC ensures that every ESSA entered into by PCTs is quality assured to meet the national imperative of providing excellent commissioning skills to

the NHS and capable of being effectively and efficiently localised to ensure the delivery of services that meet PCT specific requirements.

13. It is important that the FESC procurement is seen in its correct context. PCTs have both a commissioning function for primary and secondary care and some responsibilities for directly providing primary care clinical services, particularly nursing and health visiting. This procurement relates **only** to the commissioning function and makes no assumptions about, nor does it have any implications for, the provider function. The commissioning function is and remains a statutory responsibility of the PCT board. The board remains accountable for the effective discharge of the function and cannot delegate this accountability to any other body.
14. Through the use of the framework it is envisaged that NHS staff competencies will be able to be benchmarked to assist in the development of the skill sets of existing NHS staff. PCTs will be encouraged to adopt innovative approaches from private sector partners to ensure that this and other additional benefits are obtained. In all discussions which could affect existing NHS staff, all parties will ensure that normal processes will be followed, particularly in relation to involvement in and consultation about any proposed changes.
15. By using the framework PCTs will benefit from reduced procurement timescales as the requirement to issue an OJEU notice and run a prequalification process is avoided.

Commissioning Functions covered by the FESC

16. It is proposed that the areas covered by the commissioning function will be:
 - Assessment & Planning;
 - Contracting & Procurement;
 - Performance Management, Settlement & Review; and
 - Patient & Public Engagement.

This range of activity includes items such as the identification of population health needs, data collection, analysis & distribution, the design of care pathways and the implementation and management of contractual arrangements in accordance with those needs.

Governance and Oversight of the FESC

17. The management of the FESC will be key to ensuring that PCTs use it effectively to improve their commissioning function, not just as part of their ongoing activity, but using the opportunity to make step changes.
18. Following signature of the FESC a Programme Board comprising key stakeholders will be established to:

- Market the FESC across the NHS and manage the take-up of the FESC in such away as to ensure quality and consistency of ESSA procurements and avoid overheating of the market which may result in service deficiencies.
- Ensure that End-to-End services are procured only in exceptional circumstances;
- Oversee the procurement processes, avoiding piecemeal activity either nationally or locally; and
- Oversee the management of the FESC membership and ESSA contracts, to include benchmarking the FESC and associated ESSAs to ensure they are delivering benefits to NHS patients and value for money to the NHS.

The Programme Board will oversee the DH FESC dedicated team.

19. The constitution of this Programme Board is to be determined, but it may include representatives from:
 - SHA Chairs, Chief Executives and Directors of Commissioning;
 - DH Commissioning and Commercial Directorates; and
 - National clinical representation to maintain an oversight of the clinical standards and performance of PCT contracts.
20. The Director General of Commissioning will be required to sign off any application in relation to criteria established for “*exceptional circumstances*”. He will consider both the soundness of the proposal and ensure that the national market will be able to respond without impacting detrimentally on other schemes.
21. It is expected that the majority of PCTs which choose to use the FESC will secure micro or macro packages of services. If, in exceptional circumstances, a PCT wished to consider a comprehensive end-to-end service they would need to refer their plans to their SHA, whose approval would be required.
22. It is imperative that there is a consistency of ESSA procurement and that there is an efficient dissemination of lessons from the various ESSA procurements to inform ongoing and future procurement activities.
23. PCTs will have the assistance of a national FESC dedicated team including commercial, commissioning and clinical specialists throughout their ESSA procurement process, from the initial strategic decisions to use the FESC through to mobilisation. This will ease the burden on PCT staff themselves and ensure that the best use is made of the framework for the particular needs that are to be addressed. The dedicated team has been created to give the local procurement the benefit of access to diverse specialist skills and national co-ordination. This will allow the efficient dissemination of lessons learnt from and during every ESSA procurement and subsequent post contract benchmarking exercises carried out by or on behalf of the Programme Board.
24. PCTs wishing to engage in a ESSA procurement under the FESC will be required to work with the dedicated team to ensure consistency of procurement across the

national health economy and thus enable the Programme Board to effectively benchmark and manage the FESC at a national level.

25. PCT boards will establish a retained management function to manage the relationship with the Supplier who would deliver the services under an agreement and ensure contractual terms are being met and performance targets achieved or where possible exceeded. This will be proportionate to the scope of the services let but will typically involve three roles: contract management, financial management and an analytical function to assess the quality of the services provided. In particular, each PCT will have an explicit responsibility to overview the clinical standards and quality performance against the contract. The PCT must establish a specific group, with clinical representation, to undertake this responsibility and to report to the Board on a regular basis about progress.

Ensuring Value for Money

26. It is critical that any contracts made under this framework must offer the best value for money for the taxpayer. It is not acceptable that suppliers are appointed to provide a fee-based service that adds cost to the commissioning budget without providing the value for money and quality improvement that is essential. For this reason, a number of payment models are proposed for use by PCTs when procuring services, to provide an incentive to the supplier to deliver that value. This approach requires the supplier – in some circumstances – to accept similar financial risk that the PCT faces as a health care commissioner. This will allow the most appropriate payment mechanism to be established for the particular local requirements and also ensure that the development of any incentives is directly linked to the attainment of national performance measures by the PCT and the delivery of national priorities (e.g. *Our Health, Our Care, Our Say*).
27. The FESC will set out the principles of 5 different payment models according to different levels of risk transfer (1 to 5, with 5 being the highest risk transfer). It will be for a PCT to determine during the development of documentation for the ESSA procurement which payment model is most appropriate for their needs. PCTs could invite Suppliers on the framework to submit bids for more than one payment model in order to establish at the outset which payment model or combination of payment models over the life of the contract would offer best value for money. However, where End-to-End services are procured, PCTs will only be allowed to adopt payment models 1 and 2, with higher levels of risk transfer only following evaluation and after a minimum period of two years.
28. Where payment models offer a share of demonstrated (and delivered) savings there may be a legitimate concern that suppliers could sacrifice quality and/or quantum of service in return for financial gain. From a quality perspective, where a payment model includes a share of savings these are linked to the achievement of Operational Performance Indicators (OPIs) – which will themselves reflect national performance measures. If OPI targets are not met, then the savings share for the supplier will be reduced proportionately. As regards the quantum of care commissioned, the suppliers will be working within existing demand management protocols agreed with GPs and

the PEC. Any new protocols would need to be approved within the existing governance process of the PCT.

29. Suppliers under FESC will also be required to encourage PBC participation in their area. Any savings made by GP practices under PBC will be shared with GP practices for re-investment in patient care in accordance with agreed sharing arrangements. There will be no duplication of payments against savings made by GP practices and commissioning suppliers.

PCT Staff

30. In all discussions which could affect existing NHS staff, all parties will ensure that normal processes will be followed, particularly in relation to involvement with staff and their unions and consultation with them about any proposed changes.

Avoiding Conflicts of Interest

31. Any material conflicts of interest in the way the FESC is used will be prevented.
32. There are four types of potential conflict of interest to which suppliers could be subject:
 - Acting simultaneously as a provider of commissioning services and a provider of clinical services;
 - Working with the NHS to provide other services (e.g. consultancy);
 - NHS or public sector involvement in the Bidder; and
 - Multiple bid involvement.
33. Any material conflicts of interest in the way the FESC is used should be evaluated and appropriate mitigating actions agreed and adopted. The PCT, working through the Programme Board, and the relevant SHA *will have the right to exclude any Bidder at the ESSA procurement stage, where there is any potential material conflict of interest and there are no other appropriate mitigating actions which could be adopted.*
34. In particular the PCT, working through the Programme Board, and the relevant SHA *will exclude any Bidder at the ESSA procurement stage, where there is a conflict between the commissioning function and the provision of clinical services to the PCT or its population within the PCT area.*
35. There are no organisations to be appointed to the FESC for whom inclusion on the FESC would result in a commissioner/provider conflict in all or even a majority of PCTs. This should ensure effective competition for all ESSA procurements on a national basis. It would not, therefore, be necessary or appropriate to exclude any of the bidders from *any* participation in the FESC as a result of such conflicts.

Supplier Obligation to Engage

36. Suppliers appointed to the framework will be required to bid for all relevant commissioning services when requested to do so by a procuring Authority, subject to

certain exceptions for capacity constraints and conflicts of interest. This will ensure effective competition for all ESSA procurements on a national basis.

37. It would not be appropriate to allow suppliers discretion as to which PCT requirements they respond to as they may seek to avoid bidding for PCTs which face particular challenges, or for PCTs in areas where it might be more difficult to supply a service. This is particularly important bearing in mind that the FESC is not an exclusive route to the PCT market.
38. Suppliers will need to have confidence in information provided by PCTs when bidding. Suppliers will therefore be given due diligence information provided by PCTs.