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# RCN Policy Unit

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## Policy Briefing 10/2006

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# Policy Unit Briefing on the Department of Health Tender for Commissioning NHS Services

### ABSTRACT

This briefing contains a detailed analysis of the content of the Department of Health's tender for commissioning services in the NHS in England. This is the first time that such a detailed set of requirements for NHS commissioners appeared in 2006, and this briefing sets out each area in full as well as considering the issues for nurses.

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## Introduction

The Department of Health has published a tender by which independent and commercial organisations can bid for a range of commissioner services currently provided by Primary Care Trusts in England. The Department of Health will use the tender to create a central list to be held at Department level of successful bidders. Those Primary Care Trusts who want external commissioning services will seek suppliers from that central list.

The process being used by the Department of Health is to create a Commissioning Service Framework and an advertisement has been placed in the Official Journal of the European Union (OJEU). This is a legal requirement for all member states of the European Union where significant contracts are available for tender. A full set of the tender documents is now available on the D



The RCN has also published *Health Reform in England: Update and Commissioning Framework*<sup>1</sup> which gives a broad outline of the current policy direction. This is available on the RCN website.

## Key Issues for Nurses

The key area of interest for nurses will be that for the first time, a comprehensive list of every function that falls under the broad heading of commissioning has been set out by the Department of Health. Similarly for the first time, a comprehensive structure of what is involved in commissioning, and importantly, what is expected from each Primary Care Trust in commissioning, is clearly delineated.

Where nurses *are* able to influence the commissioning agenda at a local level, they now have a clear understanding of where there are local weaknesses in those functions. Where a Primary Care Trust Board begins to debate whether to contact the Department of Health for a supplier for a commissioning function, nurses will now be in a position to be informed in advance about the merits of such an approach.

This new clarity around the commissioning function of PCTs allows nurse educators and policy makers to more clearly identify opportunities for further training and development for the future nurse commissioners.

### **Procurement and Proposals for Tender changes at Department of Health**

The Department of Health website itself has been radically amended in format and there is now a new substantive main folder called "procurement and proposals" which is now placed next to, and given equal importance with, the tab for "consultations".

Under this new part of the main DH website, the "procurement and proposals" is itself divided in different sections:

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- Investment Guidance 'Route map'
- Project Management (with Gateway Project Review details)
- 'ProCure21' - the "innovative method of capital procurement for the NHS" which aims to cut a year from the usual time of tendering for capital investment

In addition, there is now Procurement and Policy Advice Unit based at Skipton House (see *RCN Policy Unit 'Glossary of Terms'* for further details of some of the above<sup>2</sup>):

### **Commissioning Policy**

Health reforms create a different environment for commissioning through practice based commissioning, payment by results and the choice policy. Further details of this approach are set out in the policy document *Health Reform in England: Update and Commissioning Framework*<sup>3</sup>.

### **Provider Policy**

This OJEU relates only to the commissioning function and makes no assumptions about, nor does it have any implications for, the provider function. For the avoidance of doubt, the services in question are commissioner services, not provider services.

### **Commissioning Services Framework**

The Commissioning Services Framework will provide PCTs with a group of suppliers who have specific and well-defined skills and competencies, from whom the PCTs will be able to call off services.

Commissioning is the means by which the best value for patients and taxpayers is secured. Best value means the best possible health outcomes, including reduced health inequalities, the best possible health care, and within the money made available by the taxpayer.

### **Primary Care Trust Commissioning Functions and Skills**

The supporting document lays out the primary functions of Primary Care Trusts as follows:

- Improve the health of the community and reducing health inequalities
- Securing the provision of safe, high quality services

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<sup>2</sup> <http://www.rcn.org.uk/downloads/policy/briefings/NHSReformsGlossary.pdf>

<sup>3</sup> <http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en>



- Contract management on behalf of their practice and public
- Engaging with local people and other local service providers to ensure patient's views are properly heard
- Coherent access to integrated health and social care services is provided
- Emergency planning

Therefore PCTs will need excellent skills in

- Actuarial and population risk assessment
- Data harvesting and analysis
- Social marketing
- Opinion surveys Service redesign
- Service evaluation
- Service procurement

PCT boards may decide on behalf of the patients and the public that these skills can be best bought in from companies with a particular expertise. Buying in skills (population risk assessment, data analysis, and IT support) will address some but not all gaps in capacity and capability of PCTs. Therefore management and support services will need to include expertise in:

- Identifying population health needs
- Data collection, analysis and distribution to managers and clinicians
- Designing care pathways
- Implementing and managing contractual arrangements in accordance with those needs

This out-sourcing can be carried out on different levels by bidders:

- Micro (a particular service, e.g. social marketing or population risk assessment)
- Macro (assessment and planning, or commissioning mean



capability by providing a list of similar contracts on which they have worked over the past 3 years where the contract is for populations of over 90 000.

Bidders who are proposing to use financial and legal advisors are required to give details of those advisors, and their relevant or other experience in healthcare commissioning.

### **Pre-Qualification Questionnaire**

This 27 page document sets out the minimum requirements for bidders in order to qualify for the commissioning contract in the NHS. Those bidders who qualify will be invited to engage with a competitive dialogue process at which there will be better understanding and information of the types of services the Department of Health is seeking. The timetable is as follows:

<b>21 August 2006</b>	Deadline for PQQ response
<b>September 2006</b>	Invitation to participate in a dialogue
<b>September 2006 onwards</b>	Final tender submission
<b>Early 2007</b>	Contract signature

The selection criteria being used to assess bidders are

- Capability and capacity
- Economic and financial standing
- Eligibility

### **RCN commentary**

The Department of Health approach to creating and holding a central list of approved commercial and independent suppliers of individual or package components of commissioning is a measure of national regulation in that the Department is retaining a central control over the quality and expertise of the successful bidders.

It is unclear how far the Department of Health can give any assurance about the extent of the contract available to any successful bidder if the decision is truly to rest with the individual Boards of the Primary Care Trusts.

The Department of Health has set out the range of functions that make up the whole of the commissioning responsibility, but given that individual Primary Care Trusts carry out these functions on a day to day basis, it is unclear how much expertise the Department itself has in knowing the type

of commercial contractor needed, when it has given this responsibility to PCTs.

The process for the tender contains elements of confidentiality that are not easy to square in the context of a publicly funded service. Bidders can mark parts of their submission as confidential, and while the Department points out that the Freedom of Information Act may apply, there is no secured guarantee that the tender process itself will be open to independent scrutiny.

In this process, the Department of Health is now a state department that is engaging in contractual discussion with private companies, and the lack of democratic scrutiny is not clearly defined. As a further demonstration of this, the Department of Health confirms in the tender documentation that it will only issue final tenders once it has decided who the providers are going to be. This indicates that a round of debate about the nature and value of the contract will be conducted in private following which a tender will be issued to a company that has already been told it is successful. There is no indication in the documentation that the final tender documents will be available for public view.

Recent research into the implementation of PbR has repeatedly highlighted the difficulties posed by PCTs and Trusts not having robust data management systems in place. The tender document reinforces this with a great deal of emphasis placed on commissioning technical support services for PCTs to help them navigate the new contracting arrangements under PbR.

The DH asks each bidder to set out where they have experience of providing these services in the UK – is this a realistic question? Does anyone other than NHS have this experience? US organisations do have experience in this field but within a totally different health economy context. EU companies have similar experiences but the question remains – is there a vast untapped pool of expertise waiting to be tapped or should the money being invested in this approach be put to developing existing capacity within the NHS?

The RCN published a set of Principles which we believe should underpin all health and social care reforms. When set against these principles, it is clear that this tender announcement may offer a more sustainable model of contracting as opposed to every PCT developing its own tender specifications and contracts. However, in terms of Transparency and Involvement, we have great concerns that the true value for money of these contracts will be hidden from scrutiny as it will be a commercially





sensitive process<sup>4</sup>. Whilst we are clear that the contracts are likely to clearly specify the level of performance, the extent of public involvement in the decision to adopt this approach seems questionable.

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**July 2006**

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<sup>4</sup> For further information on the RCN Principles for health and social care policy reform, please see [http://www.rcn.org.uk/publications/pdf/rcn\\_principles.pdf](http://www.rcn.org.uk/publications/pdf/rcn_principles.pdf) or order from 'RCN Direct' on 0845 772 6100 (publication code 003 034)



## **Annexe - Detailed Commissioning Functions available for tender**

The tender specification paper (*Memorandum of Information*) sets out the commissioning functions of the PCT as follows:

	1. Assessment of health needs	<ul style="list-style-type: none"><li>○ risk stratification</li><li>○ demand analysis</li><li>○ health equity audit</li></ul>
	2. Reviewing service provision (jointly with local authority)	<ul style="list-style-type: none"><li>○ identification of gaps and over provision</li><li>○ horizon scanning</li><li>○ assessing the implications of clinical policy development</li></ul>
	3. Deciding priorities	<ul style="list-style-type: none"><li>○ local delivery planning, including integrated benefits planning</li></ul>
	4. Designing services	<ul style="list-style-type: none"><li>○ care pathways of development and service redesign</li><li>○ development of service specification</li><li>○ support for evidence based service redesign</li></ul>

<b>Contracting and Procurement</b>	1. Commissioning of primary care services	<ul style="list-style-type: none"> <li>○ management of services provided through GMS and PMS contracts</li> </ul>
	2. Procurement for extended primary care services	<ul style="list-style-type: none"> <li>○ assessment of PBC plans</li> <li>○ management of the designated enhanced payment system</li> <li>○ business case assessment</li> <li>○ agreement of service charges</li> </ul>
	3. Contracting and procurement for secondary care services	<ul style="list-style-type: none"> <li>○ identification of local requirements</li> <li>○ identification of local incentives</li> <li>○ negotiation of contracts within national template</li> <li>○ fit with arrangements for commissioning of specialised services</li> </ul>

## Key questions

- What opportunities exist here for extending nurse influence in commissioning? Whilst this section of activity seems largely technical, there are clear in-roads for nurses here with specialist

	<p>1. Performance management, settlement and review</p>	<ul style="list-style-type: none"> <li>○ Billing and invoicing</li> <li>○ Analysis of PbR claims</li> <li>○ Information management</li> <li>○ Dispute resolution</li> <li>○ Reconciliation and settlement</li> <li>○ Implementation of local changes to NHS Tariff</li> <li>○ Unbundling of care pathway charges</li> </ul>
	<p>2. Budget and activity management</p>	<ul style="list-style-type: none"> <li>○ Modelling forecasting and risk analysis</li> </ul>
	<p>3. Performance management</p>	<ul style="list-style-type: none"> <li>○ information collection and analysis</li> <li>○ provider contract compliance</li> <li>○ analysis of KPIs</li> <li>○ audit of quality and outcomes</li> <li>○ benchmarking</li> </ul>
	<p>4. Practice based commissioning processes</p>	<ul style="list-style-type: none"> <li>○ budget setting</li> <li>○ financial control</li> </ul>

<b>Public and Patient Engagement</b>	1. Compilation and publication of PCT prospectus	
	2. Referrals and advice on choices (inc. Choose and book)	
	3. Responding to patient initiated petitions to review service provision and quality	
	4. Development of effective strategies for patient, public and community engagement	
	5. Development and implementation of communications strategies	
<b>Other</b>	1. Bidder to specify	

## Key questions

- Unlike other sections, this part does not contain any more specific detail about what public and patient engagement might look like in practice. This may be because this area of reform is underdeveloped and Government is turning to others for the answers.
- The final section is a curious addition to the document and does appear to leave an invitation to tender for *any other aspect* of PCT function. Does this mean provider function? Probably not, but it does leave room for further development.