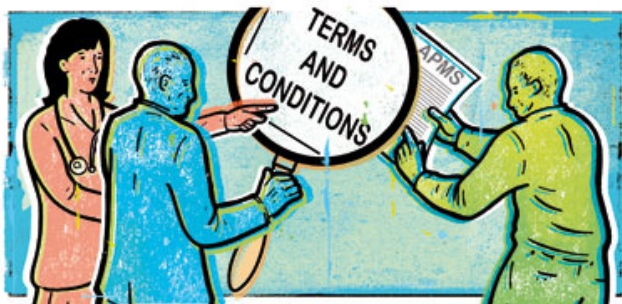


## **BIDDING FOR NHS CONTRACTS – APMS CONTRACT TERMS AND CONDITIONS**

**ENSURE YOU KNOW EXACTLY WHAT YOU WILL BE SIGNING UP TO IF  
YOUR BID SUCCEEDS.**

At one level an APMS contract is like any other contract to provide services. When you are considering the terms of the contract proposed by the PCT in the tender documentation, you need to ensure that you fully understand all the requirements and their consequences - all 100 pages plus the schedules. You also need to find out what scope there is to negotiate those terms.



### **Non-Negotiable Clauses**

But some terms are non-negotiable because, unlike a normal commercial contract, they are laid down by Parliament and set out in the Alternative Provider Medical Services Directions 2008. Each time a new set of directions are issued (2008 is the fourth set), your APMS contract terms will change accordingly.

This is a big difference from a commercial contract where the terms can only be changed by agreement. You can terminate the contract if you do not like the changed directions, but that is a big step to take, possibly not long after all the hard work of winning the contract and setting up the service.

The required elements of an APMS contract are very similar to those of a PMS contract, and the directions include large numbers of the provisions which are in the PMS agreements regulations.

First, check that you do qualify to be an APMS contract holder. Unlike GMS and PMS, there is no GP requirement. So the contractor does not have to be an individual, or a company directed and owned by, or a partnership consisting only of registered general medical practitioners and qualifying healthcare workers.

APMS contracts are the private sector's gateway to providing primary health care to NHS patients, and an opportunity for GPs to be more creative in the way they deliver services. People disqualified from holding APMS contracts include convicted murderers or employees dismissed from a health service body - unless this is due to redundancy or found to be unfair dismissal - or someone who has been formally made bankrupt.

### **Services to be provided**

When signing up to the contract, make sure that the services are precisely what you are expecting to provide.

If you think premises and equipment are to be provided by the PCT, ensure that this is in the contract - or that there are separate licensing agreements entered into at the same time.

If you are taking over an existing service, you will probably have to take on employees under the Transfer of Undertakings (Protection of Employment) Regulations. You need to identify these employees and the terms and conditions on which they are being employed. This important issue will be covered in this series soon.

**10 CRUCIAL QUESTIONS:**

1. Is the term of the contract (usually three or five years) sufficiently long to see a return on your investment?
2. Is the information you have provided to the PCT true and accurate? If not, provide corrected information because otherwise you may be giving grounds for the PCT to terminate the contract early.
3. Have you got the facilities, equipment and staff to meet the contract terms in line with the tender requirements at the price you have quoted?
4. Do you intend that some other person/provider will carry out part(s) of the contracts? If so make sure that you have the PCT's agreement before sub-contracting.
5. If you have a registered patient list, and believe the service you are going to provide will create a goodwill value, have you taken proper account of the regulations prohibiting the sale of goodwill? You may be able to structure the provision of the services so that in the future you are able to sell the goodwill.
6. If patients on your NHS list will be referred to the APMS service, have you put in place strict protocols to ensure that they are aware of your connection with the APMS service and are offered the choice of receiving their treatment from another provider?
7. Have you put in place all the necessary insurance to cover liabilities that may arise from providing the services?
8. Are the contract termination provisions appropriate? What will you do about premises you have acquired if you no longer supply the services? How will you ensure that staff are transferred - so you are not faced with redundancies and potential unfair dismissal claims? Have you checked that you will be paid for any handover period during which you are providing the services?
9. Are you able to meet the liabilities arising out of you breaching or terminating the contract? Look at limiting the level of any claims that the PCT can make against you before signing a contract.
10. How will you monitor your performance as a provider? You should keep under constant review any contract elements that you consider you might be at risk of breaching. Review the whole contract periodically to ensure that you are complying with its terms, so that preventive action can be taken in good time to avoid a breach.

*This article appeared in GP Magazine in October 2009. You can find all the articles from GP magazine's Bidding for NHS contracts series at [www.healthcarerepublic.com/bidding](http://www.healthcarerepublic.com/bidding)*

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