

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Working Party No. 2 on Competition and Regulation**

**Designing publicly funded healthcare markets – Note by Spain**

**26 November 2018**

This document reproduces a written contribution from Spain submitted for Item 4 of the 66<sup>th</sup> OECD Working Party 2 meeting on 26 November 2018.

More documents related to this discussion can be found at

<http://www.oecd.org/daf/competition/designing-publicly-funded-healthcare-markets.htm>

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**JT03438790**

## *Spain*

1. In 2011, the CNMC published a [Guide to Public Procurement and Competition](#). The Guide is addressed to procuring authorities and contains recommendations to improve the design of public tenders and to facilitate detection of anti-competitive practices.
2. In light of a series of outsourcing processes by the public sector in the healthcare sector, ranging from the construction of hospitals to the outsourcing of the management of healthcare services in hospitals, the CNMC conducted a Study on such outsourcing processes, applying the principles and recommendations of Guide to Public Procurement and Competition<sup>1</sup>. The Study does not imply a positioning of the CNMC in favour of or against any model of public provision managed by private organisations.

### **1. Brief description of the Spanish public healthcare system**

3. The provision of healthcare services, whether public or private, involves varied sectors such as land, construction, production of medical and pharmaceutical material, maintenance and cleaning services, hospital management and training and recruitment of healthcare personnel.
4. The National Health System (NHS) in Spain is structured at two levels of care: Primary Care<sup>2</sup> and Specialist Care<sup>3</sup>.
5. The Healthcare system in Spain is, almost entirely, a decentralized public service. That means that the autonomous regional governments are responsible for organising healthcare resources in their respective regions, and therefore also for designing and implementing the outsourcing of these resources. The national government has competences on basic regulation (including specific services which will be included in the publicly financed system) and general coordination.
6. Under the traditional organisational model, the NHS centres and services are directly managed by the healthcare institutions of the Spanish social security system. The General Health Act also regulated special conventions and contracts with general hospitals in the private sector for the provision of healthcare services with third-party resources, giving priority to non-profit organisations.

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<sup>1</sup> Application of the Guide to Public Procurement and Competition to the provision of public healthcare in Spain.

<sup>2</sup> Primary Care provides a number of basic services available to the public (health promotion and disease prevention). The main points of delivery are the Health Centres, staffed by multi-discipline teams of family doctors, paediatricians, nursing staff and administrative personnel and, in many cases, social workers, and physiotherapists

<sup>3</sup> Specialist Care is provided in Specialists Centres and hospitals, on an out-patient or admission basis. Post-care, the patient and the corresponding clinical information return to the primary care doctors, who take responsibility for the clinical view and overall treatment, since they have the whole medical history.

7. With a view to widening the range of organisational management models for healthcare centres, in the late 1990s a new management formula of the Spanish NHS were recognised: the indirect management of public healthcare services healthcare centres “by means of agreements, conventions or contracts with public or private persons or entities”.

8. In addition, some regions have used the legal figure of concessions for the construction and operation of hospitals. Another typical contract for healthcare outsourcing processes is the public-private cooperation contract<sup>4</sup>.

9. In fact, in the beginning of the 2000 decade, there was an increasing trend for adopting indirect management of healthcare services, namely in the regions of Valencia and Madrid. However, this process has recently reversed<sup>5</sup>.

10. Finally, it is worth mentioning that in Spain Public hospitals are mainly financed by taxation (over 90% of their financing), healthcare not being subject to separate contribution, and 49% of Spanish private hospitals have a contract to care for patients from the public network.

## 2. The CNMC position in healthcare system of outsourcing and procurement

11. In the 2013 Study, the CNMC analysed the bidding processes for **procuring healthcare infrastructure and outsourcing of management** in the healthcare sector between 2000 and 2013, applying the principles of the 2011 guide to public procurement and competition.

12. The following table summarises the total number of bids taken into account by CNMC for its analysis:

NATIONAL TOTAL	
Construction and comprehensive management of hospitals	14 bidding processes
Construction and non-healthcare management of hospitals	22 bidding processes
Healthcare management	5 bidding processes
Non-healthcare management	bidding processes

13. One of the main findings of the Study was the **small number of participants**. A high number of outsourcing processes only recorded one bidder, especially where healthcare and non-healthcare management services alone were involved. Where construction of infrastructure was also involved, the average number of bidders was still low but increased up to 1.5.

<sup>4</sup> A specific case is the one of the Autonomous Region of Valencia, with a private public partnership, known as “Sistema Alzira”. Although it was contested before the courts on the basis of the alleged illegality of administrative concession as a means of managing the public healthcare service, the Supreme Court of the Autonomous Region of Valencia (Ruling 1925/2000) confirmed the legality of the system, finding that there was no legal impediment to indirect management of healthcare services by means of a concession and that the public nature of the system was not called into question by the initiative of formulas of private management or responsibility. However, very recently, the Regional Government has led the reversion of the concession, thus reorganizing the system to a direct healthcare provision.

<sup>5</sup> In Valencia, the regional government decided deliberately not to renew the system in 2018 while in Madrid a Regional Court Ruling in 2013 suspended the process and curb the political will.

14. This could be linked to overly restrictive requirements for participation in bidding processes, potential bidders perceiving excessive risk in respect of the future revenue and expenditure associated with running the centre, or undertakings having advantages in terms of information.

15. Some other issues identified in the Study were the systematic lack of relevant data to prepare the bids, the short time for bidders to prepare their bids, and the lack of strategic thinking and *ex post* evaluation of the bidding processes.

16. The Study also identified a **poor design of the remuneration formulas**, which discouraged efficiency, quality and investment.

17. Another concern identified was the fact that **contracts often gave bidders a substantial advantage over its rivals** in related markets. For example, the awardee of a healthcare bidding process may increase its purchasing power for supplies or equipment or, in the case of an insurance company, its portfolio of services.

18. The Study identified a number of **real examples of malpractices** by procuring authorities in outsourcing processes. The following box presents some of these real-life examples of malpractices:

#### As regards the general design of the outsourcing process

- Addition of services during the performance of the contract
- Lots with similar size favouring collusion
- Excessively long duration of contracts
- Mandatory extensions of the contract up to the public administration discretion.

#### As regards the procurement procedure

- Disproportionate technical and economic requirements for access to the bidding process (e.g. previous record of profits, previous experience)

#### As regards the access to relevant information for preparing the bid

- Insufficient publication of bidding process
- Tight timeframes for preparing the bids
- Modifications to the terms of the contract during the timeframe for preparing the bids, without an extension of the deadline to prepare the bids
- Uncertainty regarding the costs at the time of presenting the bids.

#### As regards the award criteria

- Reduced weight of the economic criteria
- Criteria with little relevance to invoicing
- Inappropriate valuation formulas
- Caps to price reduction
- Excessive discretion of the contracting authority
- Prior knowledge of the threshold for abnormally low tenders

#### As regards the development of the contract

- Quality control measures up to administrative discretion

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- Lack of economic incentives to improve the quality of the service
  - Availability of the assets of the concession for private usage of the contractor
  - Mandatory subcontracting percentages of the contract
  - Absence of subcontracting evaluation and follow up
  - Unexpected modifications in the contract terms
  - Lack of definition of future services
  - Uncertainty as regards the contract price
  - Excessive use of the price review rule
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