1 Introduction

1.1 As a GDS Provider the above named contractor has referred the disputes in relation to its GDS contract for dispute resolution under the provision of regulation 8 of the National Health Service (General Dental Services Contracts) Regulations 2005 (the Regulations.)

1.2 The Secretary of State for Health has directed that the NHS Litigation Authority exercise the functions of dispute resolution on her behalf. The Family Health Services Appeal Unit discharges that function for the Authority. I as Chief Officer of the FHS Appeal Unit and authorised officer of the National Health Service Litigation Authority have made this determination.

2 Application for Dispute Resolution

2.1 By letter dated 28 March 2006 the contractor applied to the FHS Appeal Unit of the NHS Litigation Authority, for dispute resolution of the above issues. The matter was initially placed on hold pending local dispute resolution however proceeded in July 2006 following the failure to resolve matters.

2.2 I have had regard to the following documents made available to me in consideration of this matter to ensure the just, expeditious, economical and final determination of this dispute:

2.2.1 Letter from the contractor dated 28 March 2006 together with enclosures (including a copy of the GDS contract signed in dispute);

2.2.2 Letter from the PCT dated 21 April 2006 together with enclosure;

2.2.3 Letter from the PCT dated 14 July 2006 together with enclosures;

2.2.4 Letter from the PCT dated 24 August 2006;

2.2.5 Fax from the PCT dated 4 September 2006.

3 Consideration

3.1 The contractor states that the units of dental activity required under the contract in relation to the contract value are incorrect. The contractor states that the units of dental activity required are higher than they should be.

3.2 I have assumed that the contractor is entitled to payments based on a Calculated Annual Contract Value (CACV) as I have not been provided with any information to suggest otherwise.

3.3 Where a contractor is entitled to payments based on a CACV the baseline calculation of the number of units of dental activity and the calculation of the contractors CACV must be made in accordance with the Regulations and Part 1, paragraph 2 of the General Dental Services Contracts Regulations 2005.
Statement of Financial Entitlements (GDS SFE.) Consideration should also be given to the Department of Health document entitled ‘Implementing Local Commissioning for Primary Care Dentistry: Factsheet 1 – Agreeing Contracts with GDS Dentists.’

3.4 The PCT has confirmed that it has calculated the contract value in accordance with the Regulations and the GDS SFE. The contractor does not seek to challenge this. I determine no amendment to the contract in this regard.

3.5 The contractor states that the baseline year was atypical. I understand that the contractor purchased the practice premises in October 2004, in an advanced state of disrepair. The PCT has the discretion to take into account changes to the configuration of the dental practice in accordance with Part 1, paragraph 2.8 of the GDS SFE. This is not an obligation on the PCT to amend the baseline number of units of dental and / or orthodontic activity however where these are adjusted the PCT must make a parallel adjustment to the contractors CACV. I do not have the power to state how the PCT must exercise its discretion under Part 1, paragraph 2.8 of the GDS SFE. I determine no amendment to the contract in this regard.

3.6 The contractor disputes the hours the practice is required to be open for NHS dental treatment. On the basis that the PCT have refused the contractor’s request for an adjustment due to its atypical income, the contractor wishes to reduce the practice hours to 2 days per week (10:00am to 4:00pm.) The contractor is required to provide 6033 units of dental activity during the financial year. I determine that the contractor’s practice should be open for the same practice hours that it was open during the baseline period, after it had commenced undertaking NHS treatment.

3.7 The contractor has requested an adjustment to the baseline CACV to reward the complex nature of domiciliary dentistry on the elderly. Units of dental activity are accrued as set out at Schedule 2, Part 1 of the Regulations. A contractor which provides domiciliary services or sedation services under the contract may only provide those services to a person to whom it is providing an entire course of treatment, during that course of treatment; or as a referral service as set out at Schedule 1, paragraph 1 of the Regulations. The contract value and units of dental activity must not be adjusted by the PCT in this regard. The contract value and units of dental activity must be calculated in accordance with the Regulations and the GDS SFE.

3.8 Clause 12 of the contract prevents the contractor giving, selling, assigning or otherwise disposing of the benefit of any rights under the contract. Contracts are personal contracts between the parties and cannot be assigned to a successor contractor. I determine no amendment or deletion of clause 12 of the contract.

3.9 The contractor disputes clauses 21 to 24. It is important that the contract includes warranties. I determine no amendment to the contract in this regard.

3.10 The contractor disputes clause 77 of the contract which states the number of units of dental activity the contractor shall provide during each financial year. I determine no amendment to the contract in this regard as set out above.

3.11 The contractor disputes clause 75.1 of the contract which states that the contractor must provide urgent treatment during normal surgery hours which are stated to be Monday to Friday – 9:00 to 17:00. I determine that the contractor’s practice should be open for the same practice hours that it was open during the baseline period, after it had commenced undertaking NHS treatment.

3.12 The contractor disputes clauses 110 of the contract. The contractor states that much of the services it provides are by way of domiciliary treatment. Clause 110 states that the contractor shall provide 2256 courses of treatment in accordance with the regulations that involve the provision of domiciliary care. This is required by Regulation 20 of the Regulations. I determine no amendment to the contract in this regard.
3.13 The contractor disputes clause 112 of the contract which states the hours during which the domiciliary services shall be provided. I determine that the contractor’s practice should be open for the same practice hours that it was open during the baseline period, after it had commenced undertaking NHS treatment.

3.14 The contractor disputes clause 113.2 of the contract. This is a required term as set out at Schedule 1, paragraph 1 of the Regulations. I determine no amendment to the contract in this regard.

3.15 The contractor disputes clause 243 of the contract. This is a required term as set out at Regulation 22(4) of the Regulations. I determine no amendment to the contract in this regard.

3.16 The contractor disputes clause 281 of the contract. This is a required term as set out at Schedule 3, paragraph 54 of the Regulations. I determine no amendment to the contract in this regard.

3.17 The contractor disputes clause 277 of the contract. This is a required term as set out at Schedule 3, paragraph 52 of the Regulations. I determine no amendment to the contract in this regard.

3.18 The contractor disputes clause 281 of the contract. This is a required term as set out at Schedule 3, paragraph 54 of the Regulations. I determine no amendment to the contract in this regard.

3.19 The contractor disputes clause 333 of the contract. This is a required term as set out at Schedule 3, paragraph 73(5) of the Regulations. I determine no amendment to the contract in this regard.

3.20 The contractor disputes clause 243 of the contract. This is a required term as set out at Regulation 22(4) of the Regulations. I determine no amendment to the contract in this regard.

3.21 The contractor disputes schedules 4 and 5 of the contract. The contractor has not set out why it disputes these schedules. Schedule 4 is the Payment Schedule and Schedule 5 is a summary of activity during the baseline period. I have assumed that the reason for the dispute is the same as set out above in relation to the number of units of dental activity required and the contract value. I determine no amendment to the contract in these regards.

Paul Burns
Chief Officer
FHS Appeal Unit