

## Does the Law Favour the Public Procurement of Value?



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### Conclusions of the Conference Held in Madrid on Value-Based Public Procurement

On June 6<sup>th</sup> 2023, a conference was held on "The Public Sector Contracts Law: Does it favor value-based procurement?", organised by the Subdirectorate General for Public Procurement of the Madrid Health Service, with the collaboration of Impulsa Salud.

The rise of multi-pathologies and chronic diseases, a phenomenon associated with the gradual ageing of the population, leads to an inevitable increase in the demand for health services and products and, therefore, a rise in the cost of public procurement in healthcare.

Given this reality, and as organisers of this conference, we are particularly interested in promoting spaces for reflection and analysis that seek a better understanding of those aspects that seek to strengthen our health system and contribute to improving health care for citizens.

In short, chronicity and ageing force us to "innovate in public procurement".

### Key Points

- The importance of value-based purchasing is to find the balance between the incorporation of innovations and their effectiveness in delivering better healthcare.
- Value in health as a lever for change to a new public procurement paradigm.
- It is necessary to provide care according to the patient's goals and to contribute to health with the participation of society.
- Value-based purchasing has two challenges: promoting strategic alliances between healthcare facilities and suppliers and fostering innovation in patient care.

### The Conference

The day began with a presentation by Elisa Frenz, CEO of Health Proc Europe Association, who presented her vision of the current state of value-based procurement in Europe in the health sector.

After her speech, the first round table of the day, entitled "Advances in value-based procurement" was moderated by Javier Guijarro Hueso, Head of the Logistics and Procurement Area of the Madrid Health Service, with the participation of Vicenç Martínez Ibáñez, Scientific Director of IDISCAM, María Blanco Campanero, Director of the Purchasing and Distribution Policy Management of the Institut Català de la Salut, Dieter Zocholl, Founder of XMED iQ, and Javier Colás Fustero, President of Additum Valor.

The second round table of the day, entitled "Challenges and opportunities of the Contract Law for the development of value-based purchasing", was moderated by Susana Álvarez Gómez, Deputy Director General of Public Procurement of the Madrid Health Service and had as speakers José María Gimeno Feliu, Professor of Administrative Law at the University of Zaragoza, Héctor Durán Vicente, Head of the Legal Service of the Health Department of Madrid, Alfonso Peña Ochoa, President of the Audit Chamber of Aragón and Francisco Javier García Pérez, Public Auditor of the University of Castilla La Mancha.

The speakers reflected on the need to promote value-based public procurement in the healthcare sector, and on the challenges facing the effective implementation of this model in Spain, reaching the **main ideas set out below**.



### **1. Change of Paradigm and Culture in Public Health Sector Contracting**

It is necessary to move towards a sustainable, flexible and efficient public procurement model, aimed at acquiring value and innovative solutions, definitively overcoming the traditional schemes of public procurement of products and services based solely on the lowest price ("price-only decisions").

The aim is to implement a strategic procurement system with value-based award criteria that will enable the public sector to acquire innovative, efficient and quality solutions that meet the needs of the public healthcare system and really result in better patient care.

In other words, public procurement should prioritise the value of the tendered service (in terms of quality, effectiveness, economic efficiency, impact on patient care, innovation and sustainability) over a traditional approach focused exclusively on the purchase of a predetermined product or service at the lowest possible price.

The speakers agreed that the transformation of the model requires a radical change in the existing paradigm and culture in the field of public sector procurement, led by the joint efforts of all the actors and agents involved: Public Administrations, public managers, product and service providers, healthcare professionals and patients.

### **2. The Patient at the Centre of the Model. Efficiency in the Use of Public Resources from the Perspective of Quality Healthcare**

In public healthcare, the individual patient's needs must be placed at the centre of value-based procurement processes. Indeed, value as a criterion for the acquisition of solutions, services and products must always be identified, directly or indirectly, with the satisfaction of the

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individual needs and preferences of the system's users.

To this end, the patient must be integrated throughout the entire value-based procurement process ("value journey"), i.e., from the determination of his or her needs to the execution, monitoring and continuous evaluation of the value of the solutions, services or products purchased.

From this perspective, the value purchasing model should seek the efficiency of public resources by evaluating not only the initial or immediate price of the acquisition, but also its results in terms of quality and improvement of patient health and reduction of the cost of the system as a whole in the medium and long term.

In short, it is necessary to move towards a new culture guided by an inalienable principle of quality of service as a core element of management and planning in public procurement.

### **3. The Success of the Model: Coordination, Uniformity and Digitalisation of Public Administrations**

The speakers stressed that the successful implementation of a new procurement model based on value acquisition will depend to a large extent on the Public Administrations being able to design uniform and coordinated procedures that allow resources and efforts to be pooled in the purchase of innovation.

From this perspective, the necessary independence of management should not be an obstacle to developing instruments for cooperation between the different hospitals in the framework of public procurement of innovation. The European experience has shown that joint tenders between different public entities make it possible to obtain better value for money for the solutions purchased.

On the other hand, the transition to a value-based procurement model will have to be accompanied by the complete and definitive digitisation of public administrations.

### **4. The Public Sector Contracts Law: A Suitable Instrument for the Implementation of the New Model**

All the speakers agreed that the current Law 9/2017, of November 8, on Public Sector Contracts (LCSP) establishes an ideal legal framework to advance in the implementation of value-based public procurement.

This regulation not only offers suitable instruments for this purpose, but also imposes on all Public Administrations to adopt a strategic and value-based procurement model that goes beyond the traditional idea of price as the sole determining factor in public procurement.

The concept of public procurement as a planning and public policy tool capable of driving innovation and long-term economic sustainability is not an option but a requirement of the LCSP.

Notwithstanding the above, the aforementioned regulation offers some application and interpretative difficulties that are unnecessarily delaying the implementation of value-based public procurement.

**In this context, different speakers stressed the need to adjust the rule with a codifying (non-regulatory) spirit, mainly addressing the following objectives:**

- Offer greater legal certainty to public managers and suppliers. The implementation of a value-based procurement approach implies a paradigm shift that demands the articulation of clear and flexible procedures that allow public managers to award value-based contracts in a simpler and more transparent manner.
- Establish clear and objective criteria for the awarding of public contracts that allow the values and results of the solutions acquired to be established and measured in a transparent manner.
- Promote cooperation formulas between the different actors involved that allow sharing the risks inherent to the acquisition of innovation. The risk of this type of contract cannot be assumed in its entirety by the suppliers of services and solutions.
- Design public expenditure control instruments suitable for this type of contract. The current control models are closely linked to traditional contracts based exclusively on price. Therefore, new models of economic control and professionalised contract execution that focus on the control of the value generated are necessary.



## Conclusion

The success of the conference with more than 300 participants from the central services of the regional health services of different autonomous communities, mainly from Madrid, Hospital and Primary Care Managers, economic operators and innovative industry and prominent members of the University, among others, encourages us to continue in this dynamic of advancing in value-based purchasing based on the conviction of the need to share knowledge and develop strategies for the good of the community.

Finally, I would like to thank the speakers for their participation, Javier Garcia Tramón for his contribution as rapporteur of the conference and Impulsa Salud for their support.

From the Madrid Health Service, we will continue to contribute to value-based purchasing in clear synphony with one of the objectives of our LCSP: to procure the best value for money in our public procurement.

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