

Our Reference North East and North Cumbria ICB\
FOI ICB 24–382

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By Email

17 January 2025

Dear Applicant

Freedom of Information Act 2000 – Request for Information – NHS North East and North Cumbria Integrated Care Board (NENC ICB)

Thank you for your request received by North of England Commissioning Support (NECS) on 6 January 2025 for information held by NHS North East and North Cumbria Integrated Care Board (the ICB) under the provisions of the Freedom of Information Act 2000.

The ICB covers the areas of County Durham, Gateshead, Newcastle, North Cumbria, North Tyneside, Northumberland, South Tyneside, Sunderland, and Tees Valley (which covers the five local authorities of Darlington, Hartlepool, Middlesbrough, Redcar and Cleveland and Stockton-on-Tees).

Please find the information you requested on behalf of the ICB as follows.

Your Request

This is a Freedom of Information request about the contracts' procurement and supplier processes of the Integrated Care Board. Specifically, I refer to the public award of contract notice **RECOCO.13T.AB.2324.01**, attached.

I notice that it has been awarded under Direct Award C of the Provider Selection Regime, as described in statutory guidance [here](#).

The Executive Summary section of the Statutory Guidance makes reference to the NHS [Long Term Plan](#). Although the preceding link given in the document for the Long Term Plan does not take me directly to the Plan itself, I have managed to locate it [here](#).

I notice that, under Direct Award C, it means, if my understanding of it is correct, that the normal competition rules do not apply and that, subject to it satisfying its previous contract, this is a similar contract, continuing on the same basis.

1. I should like to request this actual contract itself. However, I realize this might not be possible if, for example, it contains information which is commercially sensitive. Therefore, and in the

alternative, the request is for as much detail within it as is possible for you to provide within reason but for the contract itself, which includes the following.

2. Direct Award C does not award contracts under a framework agreement. What is a framework agreement and does one apply here?
3. If so, can I see it?
4. If not, what were the original criteria under which the contract was awarded to satisfy and is there a list of obligations the supplier of this contract has promised to meet that I can see?
5. Is the supplier of the contract also expected to follow the same Statutory Guidance as the procurer of the contract set out in the Provider Selection Regime mentioned above, except when it is a sub-contractor of a contractor under this regime?

The Long-Term Plan discusses the implementation of the government's policies of reducing health inequalities, etc., by not least the setting up of Integrated Care Services, of which I assume the Integrated Care Board is one implementation. It also places great emphasis on openness and accountability in everything it does. (e.g. p.10 of Long-Term Plan: "We recommend changes to create publicly accountable integrated care locally; to streamline the national administrative structures of the NHS; and remove the overly rigid competition and procurement regime applied to the NHS."). To this end, it mentions providing an integration index of an Accountability and Performance Framework. (p. 31: "1.55. A new ICS accountability and performance framework will consolidate the current amalgam of local accountability arrangements and provide a consistent and comparable set of performance measures. It will include a new 'integration index' developed jointly with patients' groups and the voluntary sector which will measure from patient's, carers and the public's point of view, the extent to which the local health service and its partners are genuinely providing joined up, personalised and anticipatory care.")

6. Has such a framework been developed and implemented and if so, can I see it?

Our Response

We can confirm, as per Section 1(1) of the Freedom of Information Act 2000, the ICB holds some of the information you have requested.

1. We can confirm, as per Section 1(1) of the Freedom of Information Act 2000, the ICB does hold some of the requested information. However, on this occasion, it is not possible to satisfy all elements of your request.

The NHS standard contract documentation (shorter form) can be found here:

<https://www.england.nhs.uk/publication/shorter-form-nhs-standard-contract-2024-25-particulars-service-conditions-general-conditions/>

The Freedom of Information Act (FOIA) 2000 contains a number of exemptions that allow a public authority to withhold certain information from release. Some of the requested information is exempt under s.43(2) of the FOIA2000 as disclosure is likely to prejudice the commercial interests of a person as defined by the Act.

The s.43(2) exemption applies to question 1. S.43(2) of the Freedom of Information Act protects against the disclosure of information where it would be likely to prejudice the commercial interests of either a third party or the public authority itself.

The Information Commissioners Office has established a multi criteria test for assessing whether a section 43(2) exemption is applicable to the requested information. The first criteria is to determine if the information relates to or could impact on a commercial activity, the second criteria is if the commercial activity is conducted in a competitive environment, and finally if that information is commercially sensitive. We are of the opinion the release of the specific details would, or would be likely to, prejudice the commercial interests of the third party, Recovery College Collective Ltd, by revealing sensitive trade secrets and therefore putting them at competitive disadvantage.

NENC ICB have released the specification for the service and blank template contract which does not contain sensitive information about the provider.

2. A framework agreement for healthcare services can only be established under The Healthcare Service (Provider Selection Regime) Regulation 2023 (PSR) using the competitive process. A direct award C process cannot be used to establish a framework agreement.

A framework agreement is a form of procurement used to create an 'umbrella' agreement between one or more buyers and a single supplier or multiple suppliers. Individual contracts are therefore awarded under this umbrella agreement via a mini competition or direct award. A framework agreement offers no guarantee of work to any supplier awarded a place on it.

3. Please refer to the response to question 2.
4. The contract has been awarded under The Healthcare Service (Provider Selection Regime) Regulation 2023 (PSR) Regulation 9 Direct Award Process C. This included taking into account the key criteria and applying the basic selection criteria, whether it is content that the existing provider is satisfying the original contract and will likely satisfy the proposed contract to a sufficient standard.
5. The Healthcare Service (Provider Selection Regime) Regulation 2023 (PSR) applies to:
 - NHS England
 - Integrated care boards (ICBs)
 - NHS trusts and foundation trusts
 - Local authorities or combined authorities
6. NHS England are responsible for developing national performance and accountability frameworks. We are not aware of such a framework applicable to integrated care systems. There are performance and oversight frameworks in place covering NHS providers and Integrated Care Boards. These are publicly available on NHS England's website.

In accordance with the Information Commissioner's directive on the disclosure of information under the Freedom of Information Act 2000 your request will form part of our disclosure log. Therefore, a version of our response which will protect your anonymity will be posted on the NHS ICB website <https://northeastnorthcumbria.nhs.uk/>.

If you have any queries or wish to discuss the information supplied, please do not hesitate to contact me on the above telephone number or at the above address.

If you are unhappy with the service you have received in relation to your request and wish to request a review of our decision, you should write to the Senior Governance Manager using the contact details at the top of this letter quoting the appropriate reference number.

If you are not content with the outcome your review, you do have the right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act 2000. Generally, the Information Commissioner cannot make a decision unless you have exhausted the complaints procedure provided by the North of England Commissioning Support Unit.

The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

www.ico.org.uk

Any information we provide following your request under the Freedom of Information Act will not confer an automatic right for you to re-use that information, for example to publish it. If you wish to re-use the information that we provide and you do not specify this in your initial application for information then you must make a further request for its re-use as per the Re-Use of Public Sector Information Regulations 2015 www.legislation.gov.uk . This will not affect your initial information request.

Yours sincerely

S Davies

S Davies
Information Governance Officer