

Our Reference North East and North Cumbria  
ICB\FOI ICB805

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By Email

08/04/2024

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 17/03/2024 for information held by NHS North East and North Cumbria Integrated Care Board (NENC ICB) under the provisions of the Freedom of Information Act 2000.

NENC ICB covers the areas of County Durham, Gateshead, Newcastle, North Cumbria, North Tyneside, Northumberland, South Tyneside, Sunderland, and Tees Valley (which covers the 5 councils that make it up – Darlington, Hartlepool, Middlesbrough, Redcar & Cleveland and Stockton-on-Tees).

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

**Your Request**

NECS496 Integrated Urgent Care Service for and on behalf of NHS North East and North Cumbria Integrated Care Board.

1. Suppliers who applied for inclusion on each framework/contract and were successful & not successful at the PQQ & ITT stages.
2. Please provide a copy of the successful tender that was awarded.
3. Please detail any challenges that we made during any standstill periods.
4. Actual spend on this contract/framework (and any sub lots), from the start of the contract to the current date.
5. Start date & duration of framework/contract?
6. Who is the senior officer (outside of procurement) responsible for this contract?

**Our Response**

We can confirm, as per Section 1(1) of the Freedom of Information Act 2000, the ICB does hold the requested information. However, on this occasion, it is not possible to satisfy all elements of your request. Some of the requested information (Questions 1 & 2) 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 questions 1 to 2 in their entirety. Questions 4, 5 & 6 are exempt under s.21 of the FOIA2000 as the information is accessible by other means.

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. We are of the opinion the release of the specific details would, or would be likely to, prejudice the commercial interests of the unsuccessful bidders, North Tees and Hartlepool NHS Foundation Trust and NHS North East and North Cumbria ICB.

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.

Section 43(2) is a prejudice based 'qualified' exemption and is subject to the public interest test. This means that not only does the information have to prejudice one of the purposes listed, but before the information can be withheld, the public interest in preventing that prejudice must outweigh the public interest in disclosure.

#### Public Interest Test

Considerations in favour of disclosure:

- Transparency of functions; procurement and services to NHS
- Encourage and instil trust and confidence.

Considerations against disclosure:

- Bidder(s) have declared their bid submission as commercially sensitive and does not want any of the bid to be shared with a third party.
- Could prejudice the bidder(s) position and put them at Competitive disadvantage.
- Could prejudice the Authority's purchasing position.
- NENC ICB being able to work within competitive markets where results in a financial or resource benefit is put to the wider public interest.

Conclusion:

The ICB recognises that there is a public interest in the disclosure of information which facilitates the accountability and transparency of public bodies for decisions taken by them. However, there is also a public interest in the ICB being able to work within competitive markets where results in a financial or resource benefit is put to the wider public interest. Having undertaken the balancing exercise, the ICB has concluded that the public interest in maintaining the exemption outweighs the public interest in disclosing the requested information having regard to the effect that disclosure would not be in the public interest. We consider given that the definition of 'public' under the Act is considered to be the public at large, rather than just the individual applicant or a small group of people and that 'public

interest' is not necessarily the same as what interests the public, it is considered that to release this information into the public domain is likely to result in prejudice to the commercial interests of the ICB and tendering parties which is not outweighed by the wider public interest for disclosure.

2. As above.
3. Nil. However, in the interest of openness and transparency NENC ICB can confirm that a challenge was made outside the standstill period.
4. 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. In accordance with s.21 of the FOIA, we are not required to provide information in response to a request if it is reasonably accessible to you by other means. This is publicly available on the Gov.uk Find a tender website: 2024/S 000-000136 <https://www.find-tender.service.gov.uk/Notice/000136-2024?>
5. As above.
6. 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. In accordance with s.21 of the FOIA, we are not required to provide information in response to a request if it is reasonably accessible to you by other means. This is publicly available on the ICB's Register of Procurement Decisions and Contracts Awarded: <https://northeastnorthcumbria.nhs.uk/media/uwshenia/ropd-icb-march-2024.pdf>

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](http://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](http://www.legislation.gov.uk) . This will not affect your initial information request.

Yours sincerely

*Ehren Smith*

**Ehren Smith**  
**Information Governance Officer**