

Meeting of BNSSG ICB Board

Date: Thursday 7th December 2023

Time: 12:15 – 15:00

Location: Virtual, via Microsoft Teams

Agenda Number:	6.1	
Title:	BNSSG Procurement Considerations and actions undertaken	
Confidential Papers	Commercially Sensitive	No
	Legally Sensitive	No
	Contains Patient Identifiable data	No
	Financially Sensitive	No
	Time Sensitive – not for public release at this time	No
Purpose: Decision		
Key Points:		
<p>The purpose of this paper is to recommend to the ICB Board considerations for continued improvement in procurements.</p>		
Recommendations:	<p>The ICB Board is asked to note the positives from the commissioning / procurement processes undertaken and to approve the improvements which can be made which fall into five main categories:</p> <ul style="list-style-type: none"> ○ Staff training and awareness including conflict of interest management. ○ Governance. ○ Due Diligence. ○ Questions, scoring and evaluation criteria and the procurement process. ○ Procurement policy and regulation / legislation 	



Previously Considered By and feedback :	N/A
Management of Declared Interest:	N/A
Risk and Assurance:	N/A
Financial / Resource Implications:	N/A
Legal, Policy and Regulatory Requirements:	<p>The Provider Selection Regime (PSR) is intended to come into force on 1 January 2024 and will replace:</p> <ul style="list-style-type: none"> • Public Contracts Regulations 2015 when arranging health care services • National Health Service (Procurement, Patient Choice and Competition) Regulations 2013. <p>The relevant authorities required to follow the PSR when procuring health care services, irrespective of whether the providers they are considering are from the NHS, the independent, or the voluntary sector are:</p> <ul style="list-style-type: none"> • NHS England • Integrated Care Boards (ICBs) • NHS trusts and NHS foundation trusts • Local authorities or combined authorities
How does this reduce Health Inequalities:	N/A
How does this impact on Equality & diversity	N/A
Patient and Public Involvement:	N/A
Communications and Engagement:	N/A
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Report title: BNSSG Procurement Considerations and actions undertaken.

1. Purpose

The purpose of this paper is to share with the ICB Board considerations for continued improvement in procurements.

2. Background

To provide context the ICB has a procurement policy that informs how procurement decisions will be undertaken for health care services, it also outlines where to seek guidance as to the procurement procedure to be applied for new, alternative, or renewed contracts.

This policy sets out existing legal framework for procurement by public bodies in the UK and will be updated in line with any changes to UK legislation, recognising that there will be an up-and-coming change in how relevant authorities will secure services in the future – Provider Selection regime.

Currently there are a range of procurement options that are available which include working with existing providers, contract variations and service development, competitive tendering, utilising existing framework contracts or bespoke “light touch” selection processes in line with the Public Contracts Regulations 2015, all of the above will depend on the nature and value of the contract.

The 2013 Regulations govern the procurement of healthcare services and operate alongside the Public Contracts Regulations 2015.

There are 4 key pieces of legislation which govern procurement in NHS organisations.

These are:

- National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 (which relate to the procurement of healthcare services)
- Public Contracts Regulations 2015 (which covers the procurement of all goods and services above certain financial thresholds)
- Health and Social Care Act 2012 (in relation to patient and public involvement)
- Equality Act 2010. Throughout the production of this policy, due regard has been given to eliminate discrimination, harassment and victimisation, to advance equality



of opportunity, and to foster good relations between people who share a relevant protected characteristic and those who do not share it.

In regard to the above legislation, it is noteworthy that the 2013 Regulations require that, when procuring NHS healthcare services, in all cases ICBs **MUST** act to:

- secure the needs of healthcare service users;
- improve the quality of services; and
- improve the efficiency with which services are provided.

This includes situations where the ICB is seeking to secure the delivery of healthcare services through integration including with other healthcare and social services.

In addition, in all cases the ICB **MUST**

- act in a transparent and proportionate way; and
- treat providers equally and in a non-discriminatory way (showing no favouritism, particularly on the basis of ownership)

This requires the ICB to conduct all procurement activity openly and in a manner which enables behaviour to be scrutinised. Procurement decisions must be proportionate to the value, complexity and clinical risk associated with the provision of the services in question; and commissioners must treat all providers equally, not favouring one provider (or type of provider) over another – differential treatment between providers will require objective justification.

Since COVID the ICB has seen a marked increase in challenges from the market relating to the decisions taken by BNSSG and this has also been seen in other ICBs.

3. BNSSG Procurement Considerations

There are many positives from the processes currently undertaken. When BNSSG leads the commissioning of health care services the procurement process undertaken follows due process, and the governance structure and process that wraps around the commissioning of services and the discussions and approvals via committees and the ICB Board are robust.

Overall, it's clear that processes undertaken have followed our procurement policy in that each of the ethical framework principles were considered equally and given fair consideration.

- **Principle 1** – Rational: Decision-making is rational and based upon a process of reasoning.



- **Principle 2** – Inclusive: Decisions should be arrived at through a fair and non-discriminatory process.
- **Principle 3** – Take account of the value we will get: Decisions will take account of the outcomes we will achieve (for example population health, quality of health, survival rate, extent of recovery, people’s experience, safety) for the resources that we use (for example the amount we pay for a service, salaries, investment in equipment and buildings). This is what we call “value”.
- **Principle 4** – Transparent and open to scrutiny: Decisions and the way they are made should be transparent and easily understood. The information provided to decision makers should be fully documented together with the process followed and the degree of consensus reached.
- **Principle 5** - Promote health for both individuals and the community: Decisions about things that promote health and avoid people becoming ill will be considered alongside things that will cure illness and other interventions. There may be times when it is appropriate to target specific demographic groups or health issues to reduce inequalities in health outcomes.

However, due consideration needs to be considered as to how the process is managed and how it aligns with the commissioning cycle. The procurement process is one element of securing health care services and therefore consideration needs to be given to the input of the process, the resources and training required to support the procurement process including mobilisation and contract award.

BNSSG Procurement Considerations

The ICB as an organisation and also as a system secures many services and the services secured vary in complexity and value.

As an ICB system and also when BNSSG contests services collaboratively across systems there are five main categories of consideration for when services are secured.

- Staff training and awareness including conflict of interest management.
- Governance.
- Due Diligence.
- Questions, scoring and evaluation criteria and the procurement process.
- Procurement policy and regulation / legislation

Staff training and awareness including conflict of interest management.



Procurement and Commercial awareness training, which includes evaluation, moderation, note taking and having an understanding of the skill mix / subject matter experts of evaluators is paramount before any procurement is undertaken. Our Commissioning Support Unit (CSU) provides all evaluator training in how to evaluate bids prior to carrying out evaluation, including how to allocate scores and how to record appropriate comments. Our CSU also runs the procurement process including the moderation events and the development of the Contract Award recommendation report - CARR. All staff involved are to complete, sign and return conflict of interest and confidentiality forms prior to the evaluation of bids.

To ensure impartiality and independence throughout the procurement process, the ICB and partners need to ensure that “appropriate measures” under regulation 24(1) are taken to “prevent, identify and remedy” any conflicts of interest. Therefore, the ICB or indeed any partner / multiagency considering contesting services needs to consider conflict of interest management and where required ensure appropriate ethical walls are in place.

Staff also need to be aware of the sensitivities and the confidential nature of being an evaluator throughout a procurement process and therefore need to be mindful that all emails / correspondence can be accessed under Freedom of Information.

Governance.

BNSSG has clear and strong governance arrangements for all decisions taken in regard to securing services and awarding contracts. However, when presenting complex outcomes of a procurement / commissioning of a service, the team presenting needs to ensure subject specific representation is in attendance and that senior contracting / procurement oversight is provided with senior contribution / advice from the Business and Planning Directorate to support staff undertaking procurements and when presenting the outcomes through each of the committees and ICB Board.

When securing a contestable service having a single senior responsible officer that has oversight within the organisation (even through transition / organisational re-structure) needs to be considered.

Due Diligence.

As part of the commissioning cycle, the ICB needs to consider the population needs, service review, market analysis including any current legislation and guidance as this will inform a commissioning strategy and specification for the services that are to be contested. This will support the need to ensure that when procuring NHS healthcare



services, the ICB secures services that meet the needs of healthcare service users, improves the quality of services; and improves the efficiency with which services are provided.

Included within the due diligence element the ICB needs to consider the completion of financial due diligence to provide assurance that the financial envelope assigned to the specification is affordable and supports the delivery and provision of a future proof sustainable service.

Before contesting services particularly complex services a comprehensive risk assessment of potential routes to market needs to be undertaken – securing feedback from other systems, partners, market players via engagement events and our service users will provide robust decision making in regard to identifying all potential routes to market and or different opportunities/avenues in securing services. The potential options are:

- Contract Variation Process
- Single Tender Action award to a Single Capable Provider
- Any Qualified Provider
- Framework Agreement
- Competitive Tender

(please note that legislation will be changing and once the changes have received parliamentary approval the procurement of health care services by relevant authorities will be removed from the scope of the Public Contracts Regulations 2015, and the NHS Procurement, Patient Choice and Competition Regulations 2013 will be revoked. The new provider selection regime is due to come into force on 1 January 2024)

Please note that when looking to use a framework the ICB and partners will need to ensure any framework used is fit for purpose. This includes how you secure the service via that framework whether a direct award/call off under regulation 33 or a mini-competition and seek advice to ensure that the appropriate route is selected in each circumstance, and is in compliance with all relevant legal and regulatory requirements including that all negotiations under that framework do not depart from the terms and conditions of the framework (specification, commercial conditions, key performance indicators KPIs etc).

Questions, scoring, evaluation criteria and the procurement process.

When contesting services consideration into how questions are phrased is important to ensure that any question that is to be answered by potential bidders is transparent,



proportionate, and non-discriminative. Other considerations are linking the financial envelope with the achievement of on-going efficiencies and the use of any innovative practices to improve quality or reduce cost that would drive innovation, quality, value and sustainability as well as considering the impact on scoring when using the term “must” in questions needs to be deliberated / agreed for each procurement – seeking senior commissioning advice or SRO commitment. The ICB manages varying complexities of procurements and therefore alongside the above the ICB and partners discuss and agrees if it’s applicable for a threshold to be applied against any particular question – i.e. quality, noting that any procurement which states “must” within its questions has already limited the responses and therefore created a threshold.

Throughout any procurement process the commissioner must be open and transparent treating all bidders equally and fairly. All information is to be shared / disclosed with potential bidders and the procurement process itself must be managed comprehensively with rigorous evaluation, moderation processes including contemporaneous note taking of discussions and outcomes of the moderated scores.

When deciding on evaluators, it is important that the evaluators have the technical expertise in the areas that they are evaluating / moderating and that no one person evaluates one element of the bid. It is also important that as a minimum you have one evaluator who is tasked to evaluate the whole bid.

No matter how small the services the ICB secures, the ICB must treat all active market engagement / contestability the same i.e. fair, equitable and transparent.

Procurement policy and regulation / legislation

When contesting a service all organisations need assurance that they have followed their procurement policy, standing financial instructions (SFIs) and have: -

- acted in a transparent and proportionate way; and
- treated providers equally and in a non-discriminatory way (showing no favouritism, particularly on the basis of ownership)
- conducted all procurement activity openly and in a manner which enables behaviour to be scrutinised.
- procured services from providers that:
 - are most capable of delivering the needs, quality and efficiency required; and
 - provide the best value for money.

Whilst following the four key pieces of legislation which currently govern public sector procurement

- National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 (which relate to the procurement of healthcare services)
- Public Contracts Regulations 2015 (which covers the procurement of all goods and services above certain financial thresholds)
- Health and Social Care Act 2012 (in relation to patient and public involvement)
- Equality Act 2010. Throughout the production of this policy, due regard has been given to eliminate discrimination, harassment, and victimisation, to advance equality of opportunity, and to foster good relations between people who share a relevant protected characteristic and those who do not share it.

Noting that from 1 January 2024 relevant public bodies will need to follow the provider selection regime (PSR) when securing relevant services.

4. Actions taken and to be taken

To enhance our processes further the ICB will be taking the following actions and next steps:

Header	Action	Timeline
Training	<ul style="list-style-type: none"> • Establish and run Provider Selection Regime awareness sessions to support all necessary staff making commissioning / procurement / contract modification decisions. • Run regular procurement training sessions, including establishing a checklist. • Provide comprehensive support from the ICB Business and Planning Directorate for NHS commissioned services within the ICB and also across the ICB when required. 	<p>January 24</p> <p>January 24</p> <p>Immediate</p>
Processes / Procedures	<ul style="list-style-type: none"> • Draft and have approved a procurement Standard Operating Procedure. • Update the ICBs Procurement Policy to ensure alignment with new legislation. 	<p>April 24</p> <p>April 24</p> <p>December 23</p>

	<ul style="list-style-type: none"> Implement patient choice provider accreditation process. 	
Engagement	<ul style="list-style-type: none"> Ensure all partners through our system governance are involved in the development of current services / new services and the commissioning of such services 	Immediate
Governance / SRO	<ul style="list-style-type: none"> For all commissioning / procurements of services, enhance and ensure senior / SRO approval within the ICB and across system governance – this includes the South Central and West Commissioning Support Unit (SCWCSU) 	Immediate

5. Recommendation / Next Steps

The ICB Board is asked to note that there are many positives from the commissioning / procurement processes undertaken however there are also improvement considerations of which fall into five main categories:

- Staff training and awareness including conflict of interest management.
- Governance.
- Due Diligence.
- Questions, scoring and evaluation criteria and the procurement process.
- Procurement policy and regulation / legislation

The ICB Board is asked to support the above noted actions and to request any further required actions needed to support the future commissioning and procurement of services.

The Business and Planning Directorate will oversee the delivery of the actions stated in section 4.

