NHS
Lancashire and South Cumbria
Integrated Care Board

ICB Primary Care Commissioning Committee

Date of meeting	20 July 2023
Title of paper	Primary Care Procurement Review & Recommendations
Presented by	Peter Tinson, Director of Primary Care
Author	Greg Reide, Procurement Assurance Procurement Manager, NHS Shared Business Services (SBS
Agenda item	2.1
Confidential	No

Purpose of the paper

The purpose of this paper is to present a series of recommendations for approval in relation to the future Primary Care Procurement Evaluation Strategy (PES).

Executive summary

A PES is developed following a decision to procure a service. It includes:

- Procurement objectives
- Procurement methodology
- Procurement timetable
- Evaluation strategy
  - Evaluation questions
  - Evaluation scoring criteria
  - Financial evaluation methodology
- Financial thresholds/tariffs and contract term
- Potential procurement risks and mitigations

The development and agreement of a PES is a critical part of the wider procurement process. The ICB stated its intent to review the current inherited standard PES and apply the learning from recent procurement exercises.

The ICB secured support from NHS Shared Business Services (SBS) to independently undertake the review, which involved senior representatives from all ICB Directorates, current procurement support partners, and focused on the evaluation strategy.

Recommendations

The Committee is asked to approve the recommendations and the continued support from NHS SBS to implement (within existing resources).

Governance and reporting (list other forums that have discussed this paper)

Meeting	Date	Outcomes
PES Development Workshop	19 May 2022	Directly informed recommendations included within this report.

ICB Executives	27 June 2023	Endorsed the recommendations and requested several associated actions

Conflicts of interest identified
Not applicable.

Implications				
If yes, please provide a brief risk description and reference number	**Yes**	**No**	**N/A**	**Comments**
Quality impact assessment completed			N/A	
Equality impact assessment completed			N/A	
Privacy impact assessment completed			N/A	
Financial impact assessment completed			N/A	
Associated risks			N/A	
Are associated risks detailed on the ICS Risk Register?			N/A	

Report authorised by:	Craig Harris, Chief of Strategy, Commissioning & Integration

ICB Primary Care Commissioning Committee

Primary Care Procurement Review & Recommendations

1. Introduction

1.1 This report is to present recommendations on the future Primary Care Procurement Evaluation Strategy (PES).

1.2 The recommendations have been made following a review by NHS Shared Business Services of the PES used in the recent Withnell Practice procurement ("the Withnell procurement").

1.3 NHS SBS is an organisation which provides strategic procurement support and advice to a range of NHS customers across the UK, it is independent from NECS who manage clinical procurement for the ICB.

1.4 NHS SBS facilitated a workshop on 19 May 2022 involving senior representatives from all ICB Directorates and current procurement support partners to playback the key findings from the review and to discuss and agree the key differentiators of quality in the provision of primary care services to meet the needs of patients, the ICB, and other stakeholders.

1.5 The outputs from the review and subsequent workshop form the basis of the recommendations in this report.

1.6 If approved, the recommendations shall be adopted for all Primary Care Service procurements from the point of approval.

2. Review of the PES

Scope of Review

2.1 NHS SBS undertook a review of the PES. The review did not cover any other Invitation to Tender (ITT) documents.

2.2 The review covered the entirety of the document with a particular focus on some of the key areas outlined below.

Findings of Review

2.3 In general, the review found that the award criteria adopted for primary care procurements was broadly similar to that you would find for other procurements of similar services by any other NHS commissioner. This is based on the national experience of NHS SBS in conducting primary care procurements in line with guidance and legal advice communicated to Clinical Commissioning Groups (CCGs).

2.4 Each award criteria were in the form of an overarching question a bidder was required to provide an answer to. The bidder was expected to explain how it would provide a given element of the service (including patient facing service delivery and supporting 'back office' functions) and to respond in detail against multiple (often lengthy) bullet points.

2.5 The review resulted in several observations cutting across the following themes:

- General observations
- The (quality) award criteria and weightings
- The evaluation criteria
- The financial evaluation

General Observations

Observation 1: No overarching theme or common thread of what a high-quality primary care service should be.

2.6 Within the award criteria, there was a lack of a common thread linking criteria back to any ICB objectives when commissioning primary care.

2.7 This could mean that a bidder's response to a given question could address all of the requirements of a question but without demonstrating how that translated into a quality primary care service but would nevertheless achieve a high grade.

2.8 A purposeful common thread could be built upon the concept of a patient-focused and partner-focused integrated service. This was discussed and agreed as real improvement at the workshop.

Observation 2: There was relatively little focus on continuity of care for patients currently using the practice.

2.9 Under the regulations within the Public Contracts Regulations 2015 relevant to healthcare services, the ICB is entitled to use, amongst other things, continuity of service provision as award criteria.

2.10 In the case of procurements of primary care services, it is very likely that continuity of service or continuity of care are very important to patients using those services.

2.11 In the PES there was only a brief mention of continuity of care for the patient population as one of ten bullet points to the 'CSD01 -Accessibility' question. It could have been given much more prominence, weighting and therefore focus for the bidders.

Observation 3: There appeared to be some inconsistency in relation to Direct Enhanced Services

2.12 The question CSD01 Accessibility included a bullet point asking bidders *How you plan to support Enhanced Access within the Primary Care Network Directed Enhanced Service (DES).*

2.13 The Financial Evaluation information suggested that at the point of tender submission a bidder could opt-out of providing the DES in its tender.

2.14 In the circumstances where an existing practice already provides Enhanced Access under a DES, the criteria should seek to ensure that continuity of those services is provided by any bidder to be awarded the contract.

Lack of clarity or optionality on the inclusion of DES makes a consistent and fair evaluation difficult to demonstrate.

Observation 4: The permitted word limits for each question were relatively high and not always aligned with the weight for that question.

2.15 In total, the maximum permitted number of words for the entire bid was 37,500. This represents around 75 pages of A4.

2.16 In some cases, the permitted word limit for questions with the same weight was different.

2.17 This feature makes it difficult for bidders to focus their response efforts, especially for smaller providers, which in turn makes it difficult to weight the areas which are quality differentiators.

Observation 5: The permitted word limits for each question were relatively high whilst the procurement was only open for 30 days.

2.18 The procurement timetable at Section 7 of the PES suggested that the procurement would be open for 30 days.

2.19 Under the PCR2015 there is no defined minimum period however, the tighter the response timescales, the more difficult it is for small providers to produce and submit the best response which in turn provides a competitive advantage for larger providers.

2.20 This is aligned to the legal minimum so whilst compliant, it was not supportive of a level playing field to give small providers the time to respond.

Observations on Award Criteria and Weightings

Observation 6: In total, only 44% of the weighted marks were allocated to Clinical Service Delivery elements.

2.21 The marks allocated for elements labelled as Service Delivery *(Accessibility, Equity of Service and Equality, Partnership Working, Integration and Collaboration, Clinical Governance, Medicines Management, Referrals, Patient Involvement and Engagement)* were in total worth 44% of the marks.

2.22 These elements are most connected to the absolute essence of the service and include some of the **key service differentiators,** therefore the marks allocated to these elements would ideally represent most of the weighted marks.

2.23 There is an opportunity to re-align the weightings across the overall criteria, whilst ensuring all aspects are appropriately evaluated.

Observation 7: Weighted marks allocated to contractual and / or legal compliance elements.

2.24 The PES allocated marks to certain elements which are contractual and / or legal obligations that any provider would need to meet to a minimum standard, in this case Information Governance and Business Continuity Plans.

2.25 Such elements, whilst important, are not the critical differentiators of what a quality primary care service looks like. It would be more appropriate to score these elements on an effective Pass / Fail basis so long as a bidder can demonstrate meeting at least a minimum standard acceptable to the ICB in accordance with its contractual and / or legal obligations.

2.26 This would give way for greater weighting and dominance of the clinical service elements described in observation 6.

Observation 8: The wording and direction of questions was prescriptive.

2.27 The format and wording of each question generally asked a bidder how they would deliver a given element of the service or relevant back-office function.

2.28 The questions included extensive bullet points which indicated information that the ICB expected a bidder to include in its answer.

2.29 It can be difficult to balance giving bidders a clear indication of requirements against creating too much of a prescriptive answer. In the case of the current PES, there was arguably too much prescription which left limited room for a high-quality bidder to differentiate itself by showing that it understood the relevant areas related to a given question and how it would respond to them.

2.30 A less prescriptive question would give more opportunity for high quality providers to show case their knowledge and ability to deliver the best service offer.

Observation 9: The criteria overall covered all of the elements you would expect to see but lacked focus on the added value differentiators.

2.31 The phrasing of the questions generally asked bidders how they would provide a given element of the service but did not articulate on what the desired outcomes of the element of the service could be and ask the bidders how the way in which they chose to operate would achieve those outcomes.

2.32 For example, CSD03 asked bidders to describe *how you will work collaboratively to deliver primary medical care at scale and to ensure effective and relevant partnership working with all stakeholders.* The question then provided a list of relevant organisation types that the bidder should include in its answer.

2.33 The question did not seek to get from bidders that they understand their role in the system and who the relevant key partners are specific to that practice, how they'd work with them and the benefits in terms of outcomes of doing so.

Observations on Evaluation Criteria

Observation 10: The evaluation criteria did not allow for easy differentiation.

2.34 The Evaluation Criteria (Page 34) was similar to other criteria used across the NHS for procurement of similar services.

2.35 The definition of the scores for 3 (High Degree of Confidence) and 4 (Excellent) are quite similar, to the extent that an evaluator is likely to have difficulty determining what the appropriate grade is for a bid response. This difference of one represents 25% of the weighted marks overall so could have a significant impact on the procurement outcome.

2.36 In such cases in the experience of many procurement evaluations, evaluators will tend to err on the side of the lower grade due to being concerned about being able to clearly articulate, as required by the PCR2015, the reasons why one bid scored a 4 and another scored a 3.

2.37 The grade labels are also inconsistent switching from a description of a level of confidence to an adjective.

2.38 There should be clearer delineation between grades so that evaluators can find it easier to award the appropriate grade to a response, which should allow for easier differentiation between bidders.

Observations on Financial Evaluation

Observation 11: The financial evaluation did not need to be weighted.

2.39 The funding of Primary Care services under an Alternative Provider Medical Services (APMS) contract is for the vast majority of practices a standard multiplication of the weighted patient list size, in other words the same per capita funding regardless of the bidders' proposal.

2.40 In this case, weighted marks were given to a bidder's ability to draw on and / or manage cash flow at the outset of the contract.

2.41 Whilst recognising that financial sustainability is important, it is not necessarily a key differentiator of a quality primary care provider – it just needs to be evaluated as viable and therefore acceptable.

2.42 It is something that can be assured in a procurement process outside of the weighted marks, using either standard due diligence provisions in an ITT or pass / fail requirements to gather the desired assurance through narrative questions.

Summary of Review

2.43 The evaluation criteria would benefit from a common thread or overriding objective to identify the best proposal in relation to patient-centred services.

2.44 The procurement of primary care services should seek to maximise the weight given to the key service differentiators which give focus to the quality aspects of a proposal.

2.45 In the case of the existing PES, removing weight from financial and compliance and / or legal requirements would create an additional 20% of marks to be allocated to the key service differentiator elements.

2.46 Using less prescriptive questions based on eliciting from bidders their understanding and ability to provide the key service differentiators, should allow for easier differentiation between bidders' strengths, and help to mitigate against inadvertently awarding to the most competent bid writer.

3. Patient Engagement and Involvement in PES

3.1 One of the key lessons from recent procurements is that proper two-way patient involvement is of critical importance when procuring primary care services, to support procuring services that meet the needs of patients and overall stakeholder buy-in to award decisions.

3.2 Patients can be involved in the development of award criteria and the execution of the evaluation. Under Reg 76 (8) (b) of the current PCR2015 legislation the ICB is allowed to take into account *(b) the specific needs of different categories of users, including disadvantaged and vulnerable groups;*

3.3 The Procurement Bill due to become law in 2024 as currently drafted appears to strengthen those provisions to make the views of a service recipient relevant award criteria for a healthcare contract.

4. Evaluating Bidder Past Performance

4.1 Discussions with commissioners and patients have concluded that the existing PES may not sufficiently evaluate past bidder performance on other contracts.

4.2 This is a particularly thorny issue in procurement regulated by public procurement law as award criteria based on past performance could be considered discriminatory and in breach of the principle of equal treatment.

4.3 However, there are ways in which past performance can be addressed in an overall procurement evaluation to be described below.

Selection Criteria

4.4 Selection Criteria as manifested in the Selection Questionnaire (SQ) is used to evaluate a prospective bidder's:

suitability to pursue a professional activity;

economic and financial standing;

technical and professional ability.

4.5 The SQ includes discretionary reasons for excluding a bidder which include where the bidder has:

Shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions.

4.6 However, in relation to 4.5 bidders must be allowed to attempt to demonstrate the measures they have subsequently taken to demonstrate their suitability to be awarded a contract for the ICB to consider.

4.7 Further, it is reasonable to include within an SQ questions relating to bidder's past performance on similar contracts with a request for them to name one or more similar contracts they have performed in the past three years and name an individual with another commissioning organisation from whom confirmation of contract performance can be obtained but this must be only a factual statement and not an opinion.

Award Criteria

4.8 It is more difficult to incorporate past performance into award criteria without risk of breaching the principle of equal treatment. However, there are some ways in which past performance can be requested as supporting evidence of any assertions the bidder makes in relation to how it will provide the services subject to the procurement.

4.9 This may include, for example, requesting evidence of where members of the bidder's proposed service delivery team, has, for example, supported achievement of a given target or initiative. This must be very carefully worded though so as not to breach the principle of equal treatment.

4.10 In summary, there are some ways in which the PES can draw on past performance, but these are relatively limited. The key is to understand what bidder activities lead to good performance and build the award criteria around them.

5. Identifying the Key Service Differentiators

5.1 Attendees at the workshop event that took place on 19 May took part in group activities tasked with identifying the key service differentiators across four areas:

- System Working & Collaboration (What do we expect in relation to system working and collaboration?)
- Digital Enablement (How can services be improved with digital technology?)
- Service Quality (What does real quality look like as a service differentiator?)
- Patient Centred (What does a truly patient-centred service look like?)

5.2 The potential key service differentiators listed by the groups can be found at Appendix C.

6. Conclusion

6.1 The existing PES can identify a provider capable of competently providing a primary care service. However, the PES could go further to allow for better differentiation

between providers to maximise competition and to award to those who really make a difference aligned to the needs expressed by patients through their engagement throughout the entire process. Price should not be scored on a weighted basis but may incorporate different strategies according to different circumstances.

7. Recommendations

7.1 The committee is asked to agree the following recommendations for immediate translation into an updated ICB 'standard' PES for primary care procurements.

1. The existing PES can identify a provider capable of competently providing a primary care service. However, the PES could go further to allow for better differentiation between providers to maximise competition and to award to those who really make a difference aligned to the needs expressed by patients through their engagement throughout the entire process.
2. The ICB should develop and publish a set of core cross cutting objectives for the procurement of primary care which are underpinned by patient-centred service design and used consistently for all future procurements.
3. There should be a clear rationale for the ICB asking each question that can be shared with bidders and other stakeholders alike linked to the key differentiators of service quality.
4. The service quality criteria should be consistent across all procurements, with an additional layer of criteria which is shaped by the local context and developed in consultation with local service users/patient representatives in accordance with the principles outlined in Appendix B.
5. Most of the weighted marks should be allocated to the service differentiators, the things that really make a difference and identify the best service available [based on workshop findings at Appendix C].
6. Policy or legal requirements should be set out as standards to be achieved. Responses should be evaluated as marked as pass/fail – they are important standards to be met but they are not differentiators of quality to the extent that the service delivery model / approach is.
7. The phrasing of questions should look to understand not only how a bidder would provide each part of a proposed service, but also require detail about how they would demonstrably meet the stated ICB's objectives particularly around patient engagement, care and system working for overall service improvement to improve patient outcomes.
8. The phrasing of questions should provide bidders with sufficient room to demonstrate their understanding of the needs and enable them to articulate how they would meet those needs, rather than prescribe how they should respond to each question (i.e overly spoon feeding and not allowing providers to demonstrate their knowledge which would evidence existing knowledge or effective research and understanding to indicate a high quality service provider.)
9. The phrasing of questions should consider whether appropriate to seek evidence of past performance from members of the bidder's proposed delivery team.
10. Contractual or compliance obligations should not be weighted but scored on an effective pass / fail basis based on meeting a minimum standard

11. The weightings for individual service delivery elements should be considered in respect of the requirements for a given locality in recognition of the broad demographics covered by the ICB
12. Where there is no competition on price, there is no need to weight financial scoring. Financial sustainability can be dealt with by using standard due diligence provisions in an ITT and / or the use of gateway questions to provide assurance – as in pass/fail (acceptable or not).
13. The standard financial evaluation for procurement of primary care services should focus on ensuring bidder financial models (costs) are affordable and tested to include all necessary costs within an affordability envelope only. This should be on a pass / fail basis.
14. Where there are practice procurements for practices where there are clear exceptional circumstances that apply to that practice that materially affect the ability to provide services within the envelope, there should be detailed market engagement prior to commencing any procurement exercise to thoroughly test any assumptions in relation to transitional or ongoing additional funding requirements with interested potential bidders.
15. Consider the use of bidder interview processes and patient involvement in these.

7.2 It is also recommended that these recommendations are shared with the ICB Commissioning Resource Group to consider how they can inform and shape other (non-primary care) ICB procurements.

Greg Reide

29 May 2023