

## **NORTH LINCOLNSHIRE COUNCIL**

### **CABINET**

## **COMMERCIAL POLICY**

### **1. OBJECT AND KEY POINTS IN THIS REPORT**

- 1.1 To consider and approve a commercial policy for the council
- 1.2 The key points in this report are as follows:
- Our vision is to be a dynamic, high performing customer focused council, giving the best possible value for money and changing outcomes for all people living and working in North Lincolnshire.
  - Developing an enhanced commercial capability is key to achieving this vision.
  - A commercial policy has been produced to set out the framework and strategic direction for commercial and income generating activities.

### **2. BACKGROUND INFORMATION**

- 2.1 The council has a track record of income generation through enterprising approaches in specific service areas. Moreover, the schools academies agenda has led to a shift in our approach resulting in an increasing need to provide an intelligent, commercial and joined up approach to the market.
- 2.2 The current economic climate and changing local government landscape provide opportunities for the council to become more enterprising and commercial in outlook. In response to this a commercial policy for the authority has been developed. See appendix 1.
- 2.3 Currently the policy for pursuing commercial activities is unclear and this policy has been developed to provide a coherent framework and drive significant change in the council's approach to commercial and trading activity. As set out within the policy's principles the overarching strategy for commercial activity will be informed by our one council commissioning statement of intent.

- 2.4 It sets out a framework and strategic direction for commercial and income generating activity across North Lincolnshire Council and includes:
- 2.5 The benefits of pursuing commercial opportunities include:
- Maintain, grow, or limit the loss of, employment opportunities in North Lincolnshire
  - Optimise fixed running costs, thereby reducing overall costs of delivering council services
  - Enhance the reputation of the council as a dynamic, high performing and entrepreneurial organisation that is committed to providing excellent services to customers
  - Provide new income streams to help mitigate the effect of funding reductions
  - Proactively respond to the the changing environment for local authorities e.g. academies agenda
  - Provide a return for reinvestment and improvement in core service delivery
- 2.6 The Local Authority (Supply of Goods and Services) Act 1970 and the Local Government Act 2003 permitted local authorities to charge for services on a cost recovery basis.
- 2.7 The Localism Act 2011 introduces a new General Power of Competence (GPC), which explicitly gives councils the power to do anything that an individual can do which is not expressly prohibited by other legislation. This activity can include charging or it can be undertaken for a commercial purpose, and could be aimed at benefiting the authority, the area or its local communities.
- 2.8 Under the current legislative framework the council would need to establish an arms length trading company if it wants to enable profits to be generated.
- 2.9 The policy is a 'live' document and will be kept under constant review to ensure it remains fit for purpose and facilitates creativity and innovation across the council. The policy includes the following:
- Policy statement
  - Scope
  - Legal framework
  - Timetable for implementation
  - Priority areas for commercial activity
  - Linkages to other policies and strategies
  - Statement of principles
  - Initial procedure and checklist for pursuing commercial opportunities
- 2.10 The Business Support Team within Policy and Resources is currently undertaking a staffing review with the aim of developing a commercial

lead unit including the permanent position of commercial manager plus a relationship development role to support business retention. The unit will also lead on commercial intelligence and will be established by March 2013.

- 2.11 A key performance indicator (KPI) has been introduced as part of the corporate performance framework that will measure the amount of new income received through commercial activity.

### **3. OPTIONS FOR CONSIDERATION**

- 3.1 Option 1 – Approve the commercial policy
- 3.2 Option 2 – Do not approve the commercial policy and request changes be made

### **4. ANALYSIS OF OPTIONS**

- 4.1 Option 1 – Not approving the the commercial policy could result in a decline in income generation and/or a fragmented approach to income generating opportunities
- 4.2 Option 2 – Approving the commercial policy would provide a clear framework for responding to and monitoring income generating opportunities

### **5. RESOURCE AND OTHER IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)**

- 5.1 The business support review that is currently in progress is seeking to establish a commercial unit allied to the procurement team to identify and respond to commercial opportunities. Income generated will support the costs of this unit.

### **6. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17- CRIME AND DISORDER, RISK AND OTHER)**

- 6.1 An integrated impact assessment has been undertaken and impacts identified have helped shaped the policy. Both the policy and the integrated impact assessment will be kept under constant review.

### **7. OUTCOMES OF CONSULTATION**

- 7.1 Consultation has taken place with the Cabinet member for Policy and Resources, council management team, legal services, procurement and directorate staff as appropriate to develop this policy.

## **8. RECOMMENDATIONS**

- 8.1 It is recommended that Cabinet approve the commercial policy
- 8.2 Subsequent amendments to the policy be approved by the Cabinet Member for Policy and Resources

### **DIRECTOR OF POLICY AND RESOURCES**

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#### **Background papers used in the preparation of this report:**

Enterprising councils: getting the most from trading and charging, 2012 Edition, LGA

Integrated Impact Assessment: Commercial Policy (September 2012)

North Lincolnshire Council Commercial Policy (October 2012)



# Commercial Policy



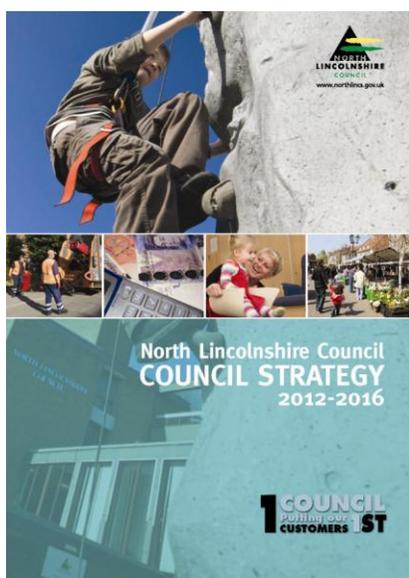
[www.northlincs.gov.uk](http://www.northlincs.gov.uk)

## 1. Introduction and purpose

The purpose of this policy is to drive a transformational shift in the council's approach to commercial and trading activity. It sets out a framework and strategic direction for commercial and income generating activity across North Lincolnshire Council. Specifically the policy details:

- Our council-wide commitment for enhancing our commercial capabilities
- The principles underpinning our commercial activity
- Services identified for income generation and trading
- Target customers
- Together with other related commercial considerations

**It is an essential enabler for achieving the council's vision as set out in the Council Strategy 2012-16:**



### VISION

*“A dynamic, high performing, customer focussed council, giving the best possible value for money and changing outcomes for all people living and working in the area”*

- 1.1 The council has a history of responding to social, economic and environmental challenges. As set out above the council aspires to be a dynamic organisation giving the best value for money. Developing an enhanced commercial capability is key to achieving that objective.
- 1.2 It is important to clearly articulate some of the benefits of pursuing income generating opportunities. They can:-

- Help sustain existing services at an optimum level through economies of scale
- Support the attainment of specific council policies and priorities
- Demonstrate a dynamic approach and showcase organisational excellence
- Maintain service viability and avoid loss of skills
- Provide a return for reinvestment and improvement in council services
- Maintain, grow, or limit the loss of, employment opportunities in North Lincolnshire
- Increase resources available to deliver core services to local people
- Optimise fixed running costs, thereby reducing overall costs of delivering council services
- Exploit existing skills and expertise to a wider market
- Utilise surplus capacity and support business continuity arrangements
- Deliver staff development and retention of skills
- Enhance the reputation of the council as a dynamic, high performing and entrepreneurial organisation that is committed to providing excellent services to customers
- Inform the councils strategic commissioning decisions as a result of increased market knowledge and insight to ensure the best pathways are used to meet local needs/desired outcomes
- Provide the opportunity for service and commissioning improvements through to open market challenge and market testing
- To support the growth of new and existing small and medium sized enterprises in the area
- Provide new income streams to help mitigate the effect of government cuts
- Proactively respond to the changing environment for local authorities e.g. academies agenda

## Statutory Framework

- 1.3 Specific powers to charge for services are contained in a variety of local government statutes. Any trading and charging for services activity shall be undertaken in accordance with the statutory framework. However, this should not be seen as a barrier to offering services to customers where it is appropriate to do so within the boundaries of the legislative framework.
- 1.4 In addition, the Localism Act 2011 introduced a new General Power of Competence (GPC), which explicitly gives councils the power to do anything that an individual can do which is not expressly prohibited by legislation. Where in the exercise of a general power the Authority does things for a 'commercial purpose' which would include making a profit, the Authority must do them through a company. This activity can include charging for services or can be trading for commercial purposes to benefit the communities of North Lincolnshire. Profits and surpluses generated through trading activities can be used to help hold down council tax/and or can be directed into frontline services. Income generated from charging for the costs of supplying discretionary services can also help the council's financial position. The Localism Act 2011 supplements and strengthens the statutory powers of councils to offer alternative solutions. ***However, it needs to be noted that generally the council cannot make a profit from such activities unless it establishes a trading company but legislation does enable it to recover costs.***

## Scope

- 1.5 The council's constitution makes it clear that the council exists to serve the public interest and that its main purpose is to improve the social, economic and environmental well being of the area. Any commercial services should be undertaken such as to positively contribute to achieving these aspirations. Otherwise, they should be viewed as ancillary to this main purpose and include:
- Provision of services for a chargeable fee
  - Provision of service concessions e.g. catering concessions at leisure centres
  - Advertising
  - Sponsorship

- Hire of equipment/assets
- Retail sales
- Provision of expertise, advice and consultancy

1.6 The following services and functions are excluded from this commercial policy:

- Sale and disposal of land and property
- Other activities as directed by legal services

1.7 The council will proactively monitor its initial performance. The potential benefits of establishing a trading company will be considered within the first 12 months of the implementation of this policy.

### **Policy Statement**

1.8 The council will proactively explore and consider any material potential and lawful income generating opportunities that do not compromise the primary functions and purpose of the council in accordance with this policy. Any activities subsequently pursued will be to achieve the benefits outlined above, and will be monitored accordingly.

## Timeline for implementation

Activity	Target date
Introduction of a 'commercial tracker' to proactively identify commercial opportunities	Achieved June 2012
Establish 'virtual' project team to respond to specific commercial opportunities (pending the appointment of interim commercial manager)	Achieved October 2012
Cabinet approval and implementation of commercial policy	November 2012
Appointment of an interim commercial manager	November 2012
Establish a in-house commercial unit to lead the approach within the council to proactively seeking out and securing new market opportunities	January 2013
Proactively review progress of income generation KPI	April 2013
Establish panel to review policy and consider whether to produce an outline business case for the establishment of an arms length trading company	April 2013
Annual review of commercial policy and identification of recommendations for further development	September 2013

## 2. Priority areas for commercial activity

- 2.1. The council has already set out its positive commitment to providing services on a commercial basis to North Lincolnshire's Schools & Academies in '**Common Goals: Shared Services**'.
- 2.2 Consideration has been given to the range of services that the council currently deliver and below is a list of areas where there is thought to be a potential for trading:

A. Professional back office functions	Information Technology, Business Support Legal, Human Resources, Financial Services, Professional Consultancy
B. Technical and	Property design and facilities

facilities management	management, construction, land and property
C. Environmental services	Catering, cleaning, waste management, grounds maintenance
D. Community services	Sport, leisure and culture, civic services e.g. registrars
E. Commercial and business management services	Advertising and sponsorship, retail outlets, venue and equipment hire, sales and disposals, design and reprographics
F. Schools, academies and multi academy trust specific services	Leadership and management, curriculum enrichment, behaviour and inclusion, and business and facilities management services as set out in 'Common goals, shared futures', (2011)

- 2.3 The above list is not exhaustive and any potential commercial trading opportunities will be explored as they arise, within the terms of this policy, this includes entering new markets.
- 2.4 In developing this policy the following hierarchy for actively pursuing commercial opportunities has been agreed. The council will tender for trading opportunities as advertised or invited to:



Priority	Market	Services
1	<b>Schools, Academies and Multi Academy Trusts in North Lincolnshire</b>	A-F
2	<b>Town and Parish Councils in North Lincolnshire</b>	A-E
3	<b>Public sector bodies in North Lincolnshire</b>	A-E
4	<b>Schools, Academies, Multi Academy Trusts &amp; Town and Parish Councils in neighbouring authority areas</b>	A-F
5	<b>New and existing small and medium sized enterprises in North Lincolnshire</b>	A,B,C & E

6	Public sector bodies in neighbouring authority areas	A-E
7	Public sector bodies	A, B, E
8	Private sector bodies elsewhere in the UK	A, B, E

- 2.5 The above list is not prescriptive and in determining whether to enter markets a full analysis considering the geographic, practical and logistical implications will be undertaken before proceeding. For example, selling data server space to national organisations may be achievable, whereas providing grass cutting services to a local authority in North Yorkshire may not be due to logistical limitations unless suitable sub-contracting arrangements can be developed. The council will not pursue any commercial activity outside of the UK.
- 2.6 The council will not pursue any commercial activity where the risk of failure is considered to be unacceptably high so as to potentially cause reputational damage, financial loss and/or potential detriment to maintaining service standards to our core customer base.

#### **Links to other council policies and strategies**

- 2.7 This commercial policy sits amongst a suite of core council strategies and documents and should not be considered in isolation:
- One Council Commissioning: Statement of Intent
  - Market Position Statement 2012-13
  - Contract Procedure Rules
  - Finance Manual
  - Disposals policy

## **Review and update of the policy**

- 2.8 The council's approach to tendering is developmental and we need to be able to respond quickly to the changing external environment. The council will periodically review the resources it allocates to business development to ensure that all potential opportunities to secure additional business are maximised. As stated, consideration will be given to the potential benefits or otherwise of establishing an arms length trading organisation to enable profits to be generated.
- 2.9 As an initial step we will develop a discrete commercial unit within the council to undertake the following activities:-
- Proactively identify commercial opportunities
  - Consult and engage with directorates responsible for the provision of services
  - Coordinate and provide support in developing competitive bids aimed at securing future service contracts etc
  - Co-ordination and quality assurance
  - Proactive marketing of the council as a service provider of 'first choice'
  - Horizon scanning and research
  - Feedback on successes and failures including developing a clear debriefing framework in order to support the development of a commercial intelligence capability, in particular the strengths and weaknesses of our tender compared to the winning bid both in respect of cost and quality.
  - Initiate improvement action to ensure that learning from feedback is implemented.
- 2.10 This policy will be kept under constant review to ensure it remains fit for purpose and facilitates creativity and innovation across the council. The council's achievement of the benefits outlined in 1.2 will depend upon allocation of appropriate level of resource, operational leadership and a proactive coordinated approach to engaging with the market.

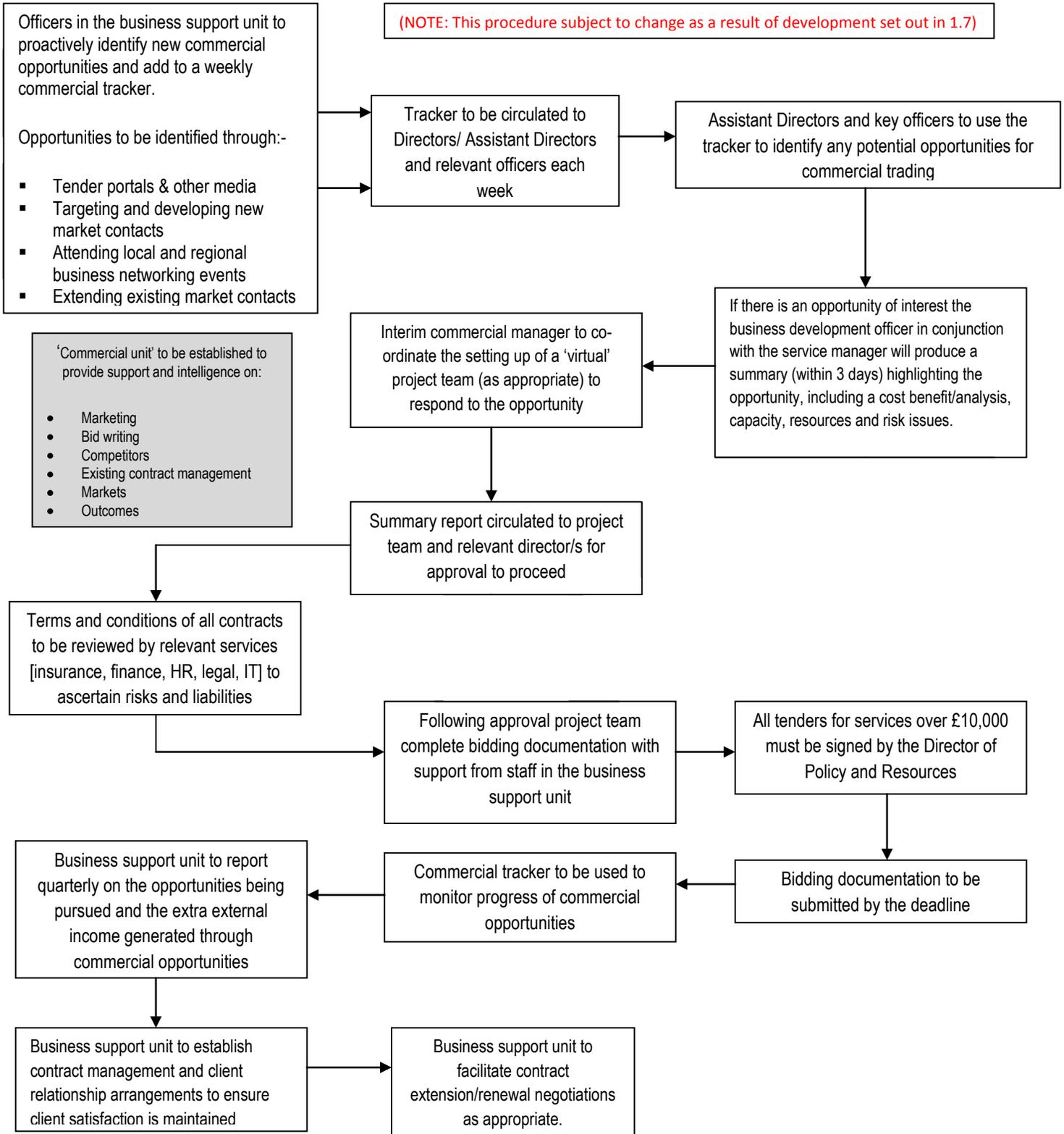
### 3. Statement of Principles

1. The council will progress commercial trading opportunities for the services identified at paragraph 2.2 and where clear benefit can be demonstrated, in line with paragraph 1.2
2. The council will have due regard to the competitive impact of its activities on the wider market as part of its social, economic and environmental well being duties.
3. The council will utilise commissioning principles to support its decision making on commercial issues.
4. The council will cost and price its services competitively and commercially within legal boundaries in particular the requirement to cover costs. (The council will consider the development of a commercial accountant to enhance this capability including consideration of acceptable pricing strategies).
5. The council will comply with all relevant industry standards, fair trading and competition legislation.
6. The council may participate in any joint venture partnerships or other collaboration with a third party to progress commercial trading opportunities, subject to legal advice.
7. The council will ensure that it preserves its reputation and only pursues trading activities that maximise the benefits to the tax payers of North Lincolnshire
8. Before embarking on new trading activities the council will take a proportionate approach to the assessment by paying particular attention to the size and scale of the activity concerned, costs, risks, liabilities and benefits.
9. We will continue to develop lean and agile processes including making further efficiency improvements to our back office to maximise our competitiveness.
10. The council will not subsidise its commercial activities
11. All activity undertaken will be able to demonstrate relevant benefits detailed on pages 2-3.
12. The council will seek to build active intelligence on market activity and will actively seek debriefing where it is unsuccessful.

13. Where service concessions are considered or supply chain/joint venture partners are required, the council's contract procedure rules (CPR's) must be complied with.
14. The council will establish arrangements for marketing and pro-actively selling services.
15. Commercial activity will be pursued in line with the process map in section four and appendix 1 of this policy.
16. All bids for contracts over £10,000 to be signed by the Director of Policy and Resources.
17. All services will consult and co-operate with the commercial manager to ensure that the required outcomes are achieved.

## 4. Initial procedure for pursuing commercial trading opportunities

(NOTE: This procedure subject to change as a result of development set out in 1.7)



## Appendix 1 – Checklist for pursuing commercial opportunities

Please summarise below the tender opportunity and identify how it will benefit the council (see pages 2-3)

**Please use the checklist to ensure compliance with this policy**

Question	Please ✓ to confirm	Comments
<b>Expression of interest (PQQ)</b>		
Does the potential trading opportunity comply with the scope and general principles of this policy?		
Are we confident in the integrity and ability of the contracting authority?		
Has a business case with selected options been produced?		
Is partnering/sub-contracting needed to deliver the required services?		
If so, have arrangements been made to determine which partners/sub-contractors?		
Has approval by the relevant director been given to proceed with bidding?		
Has a 'virtual' project team been established including HR, legal etc and briefed on the trading opportunity?		
Has engagement with staff in the business support unit been undertaken?		
Have all risks and liabilities been considered and plans put in place to minimise where possible?		
Have capacity and resource issues been considered and plans put		

in place to deal with any where possible?		
Has consultation with potentially affected services been undertaken e.g. HR, legal, insurance, finance?		
Has all appropriate tender documentation been gathered and clearly understood i.e evaluation/selection criteria?		
Has finance support been sought on the costings (cost benefit analysis) of the bid and potential liabilities?		
<b>Invitation to Tender</b>		
Are there clear arrangements for completing documentation, editing and ensuring the tender is submitted in advance of the deadline?		
Has the relevant Director and the Director of Policy and Resources approved the completed tender prior to submission?		
If successful, have staff in finance, legal and HR been consulted to ensure compliance with contract terms and conditions before contract is signed?		
Is there clear understanding of exactly what is required to meet the specification?		
<b>Pre Award</b>		
Arrangements have been put in place to track progress of the bid and to feedback to staff in the Business Support Unit on a regular basis?		
If unsuccessful, has feedback been sought and fed into the business support unit so that lessons can be learned for future tendering?		
If successful has the project team put in place all measures to enable contract commencement?		
<b>Contract signing</b>		
Has the Director of Policy and Resources signed the contract?		
<b>Post Award</b>		
Have arrangements been put in place to ensure the contract is managed and monitored throughout?		