

# LONDON BOROUGH OF BRENT

Meeting of the Executive  
17<sup>th</sup> January 2005

## Report from the Director of Finance

For Information/Action

Wards affected:  
ALL

**Report Title: AUTHORITY TO INVITE TENDERS FOR THE  
PROVISION OF CREDIT AND DEBIT CARD  
ACQUIRING SERVICES CONTRACT**

Forward Plan Ref: BFS/95

**\*Not for publication ('below the line') - APPENDIX B**

### 1. SUMMARY

1.0 This report concerns the future provision of the Credit and Debit Card Acquiring Services. The nature of the service is set out at Appendix A. This report requests approval to invite tenders in respect of the proposed Credit and Debit Card Acquiring Services contract to start 1 August 2005 and contains the relevant pre-tender considerations, as required by Contract Standing orders 88 and 89.

### 2. RECOMMENDATIONS

- 2.1 The Executive to give approval to the pre-tender considerations and the criteria to be used to evaluate the tenders as set out in 3.9 of this report.
- 2.2 The Executive to give approval to officers to invite tenders and evaluate them in accordance with the approved criteria referred to in paragraph 2.1 above.
- 2.3 That the Executive agrees to delegate authority to the Director of Finance to negotiate terms of the contract provided that any negotiations are in compliance with the Public Service Contracts Regulations 1993 ("EU Regulations").

### **3. DETAIL**

- 3.1 The current credit and debit card acquiring contract is a rolling contract with Streamline Card Services which is part of the Royal Bank of Scotland Group. No tender process was required in 1993 when the contract was signed as the value was below the threshold. Three months' notice is required to terminate this contract
- 3.2 The reason for this contract is to enable the council to accept payment by credit and debit card either at the point of service, i.e. Cashiers, or via the internet for On-line payments.
- 3.3 The contract was previously tendered with the Banking Service contract which was awarded in December 2003. However, the card acquiring service element was not awarded as it was felt that it would be more beneficial to attract tenders from a wider range of card acquirers (i.e. some card acquirers who were not in a position to tender for the Banking Contract, may be in a position to tender for the Credit and Debit Card Acquiring Services).
- 3.4 The amount payable under the contract is based on a commission basis for credit card transactions (i.e. a percentage of the value of each credit card transaction) and a fixed fee per debit card transaction. The percentage of the card acquirer's commission per credit card transaction and the debit card fixed fee are reviewed annually and are based on the volumes and value of the Council-wide transactions. The annual turnover currently stands at approximately £15M.
- 3.5 To improve the range of payment options available to the customer, the Council has begun to take on-line payments. There are plans for more service units to offer the on-line payment option during the coming year. Therefore, the existing arrangements have changed from those originally entered into with the current card acquirer.
- 3.6 A consultant has been appointed to assist with the tender process and to identify any other associated areas where further savings and improvements can be made.
- 3.7 Consultation to identify additional services or changes required for the Credit and Debit Card Acquiring Service will take place with BFS senior management, service users across the Council and external contractors who may be affected.
- 3.8 A further report will be brought before members in July 2005 to seek approval for the award of the contract.
- 3.9 In accordance with Contract Standing Orders 88 and 89, pre-tender considerations have been set out below for the approval of the Executive.

Ref.	Requirement	Response	
(i)	The nature of the service	See Appendix A	
(ii)	The estimated value	See Appendix B	
(iii)	The contract term	The initial contract period will be 3 years with the option to extend for a further 2 years. Both parties will have the option to terminate on 6 months' notice at any time.	
(iv)	The tender procedure to be adopted	European Public Procurement Negotiated Procedure for Service Contracts	
(v)	The procurement timetable	Indicative Dates are:	
		• OJEC Notice & Adverts placed	Before 21/01/05
		• Deadline for PQQ submission	28/02/05
		• Panel evaluation and shortlisting of service providers to be invited to negotiate	Early Mar 05
		• Invitations to Negotiate sent out	Early/Mid Mar 05
		• Submission of Initial Proposals	22/04/05
		• Negotiations over Specification and Terms and Conditions	1 month
		• Submission of Final Offers	approx 25/05/05
		• Panel evaluation of Final Offers and contract recommendation	approx end of May 05
		• Report recommending Contract(s) award circulated internally for comment	Approx Jun 05
		• Executive approval for the award of contract	Approx Jul 05
		• Contract start date	Aug/Sep 05
		• Notice of award despatched to OJEC	Within 48 days after award

(vi)	The evaluation criteria and process	<p>2 stage tender involving the following process: OJEC and other advertisement; submission of pre-qualification questionnaires (“PQQ”); short-listing of those to be invited to negotiate; Invitations to Negotiate sent out; submission of Initial Proposals; negotiation; submission of Final Offers; evaluation of final offers; and recommendation to award</p> <p>Tenderers will be short-listed to be invited to negotiate on the basis that they meet the Council's standards in relation to business probity, economic and financial standing, health and safety and technical expertise which shall be assessed on the information submitted by service providers in the PQQ</p> <p>Initial Proposals will be submitted, and the Council will negotiate these proposals. Once negotiations are complete, the Council will request submission of Final Offers.</p> <p>The Final Offers will be evaluated and the contract awarded on the basis of the most economically advantageous offer. The panel will evaluate the tenders against the following criteria:</p> <ul style="list-style-type: none"> <li>• Price</li> <li>• Proven ability to meet the service requirements</li> <li>• Ability to meet the Council’s standards in relation to management of the working relationship with the Council, quality of the Service (including any relevant quality management certification), and keeping the Council informed of any new developments in the card acquiring sector that affect the Service.</li> <li>• Approach to Service Delivery</li> <li>• Service Providers terms and conditions.</li> </ul>
(vii)	Any business risks associated with entering the contract	No specific risks.
(viii)	The Council’s Best Value duties	The Corporate Best Value Strategy is to provide best value services and to serve our community. The competitive tender for Credit and Debit Card Acquiring Services contract

		will ensure value for money and provide a wide variety of methods for payments to be made by and to our community.
(ix)	Any staffing implications, including TUPE and pensions	None
(x)	The relevant financial, legal and other considerations	See sections 4.0 and 5.0 below

3.10 The Executive is asked to give its approval to these proposals as set out in the recommendations and in accordance with Standing Order 88.

#### **4. FINANCIAL IMPLICATIONS**

4.1 The Council's Contract Standing Orders state that contracts for supplies and services exceeding £500k or works contracts exceeding £1million shall be referred to the Executive for approval to invite tenders and in respect of other matters identified in Standing Order 89.

4.2 The estimated value of the services contract is in excess of £500k.

4.3 The cost for consultant fees, legal assistance and advertising is expected to be in the region of £10,000, for which a budget has been allowed by Brent Financial Services.

4.4 All service units have a budget provision to cover the card acquirer's charges in relation to customer card payments. The card acquirer's charges in relation to card transactions will be covered by the relevant service unit the customer was making the payment to.

#### **5. LEGAL IMPLICATIONS**

5.1 The estimated value of the Credit and Debit Card Acquiring Services contract is higher than the EU threshold for Services and the nature of these services means they fall within Part A of the Public Service Contracts Regulations 1993 ("EU Regulations"). The tendering of the services is therefore governed in full by the EU Regulations as well as the Council's own Standing Orders in respect of High Value Contracts and Financial Regulations.

5.2 Once the tendering process is undertaken, officers will report back to the Executive in accordance with Contract Standing Orders, explaining the process undertaken in tendering the contract and recommending award.

5.3 It is proposed by officers to negotiate the award of this Contract with bidders. The EU Regulations only permit a contracting authority to use the negotiated procedure if the circumstances of the tender fit within one of the exceptions listed in EU Regulation 10(2). The two exceptions which the Council will rely

on to use the negotiated procedure for this tender are stated in EU Regulation 10(2)(b) and (c) as follows:

*“(2) A contracting authority may use the negotiated procedure in the following circumstances: ...*

*(b) exceptionally, when the nature of the work or works to be carried out under the contract is such, or the risks attaching thereto are such, as not to permit prior overall pricing;*

*(c) when the nature of the services to be provided, in particular in the case of ... [financial services], is such that specifications cannot be drawn up with sufficient precision to permit the award of the contract using the open or restricted procedure...”*

5.4 The EU Regulation 10(2)(c) exception applies for the following reasons:

Banks have the bargaining power to insist that customers contract with them on the bank's standard terms and conditions. The Council's card acquiring contract would be a relatively low value, unimportant contract to a bank in comparison with other contracts the bank may hold. Therefore, a bank is not likely to consider the Council's drafted Specification, terms and conditions, and is likely to only enter into the contract on its own standard Specification, terms and conditions. In addition, because of the specialist nature of card acquiring services and the reluctance of banks to deviate from their standard specifications, terms and conditions, it would be difficult to define the minimum requirements of the service and state exactly how tenderers may offer variants on these minimum requirements in the Specification without first obtaining input from the banks. Such input is not possible under the open and restricted procedures.

5.5 The EU Regulation 10(2)(b) exception applies because:

- (a) the Council will not know the exact nature of the services to be provided by each tenderer until each tenderer submits its response to the Specification, which means that it will be difficult for the Council to draft a pricing document to be sent out with the invitations to tender; and
- (b) the terms and conditions which affect price (such as liability, insurance, warranties, exit arrangements, payment terms etc) will not be agreed between the parties at the time the tenderer calculates the prices in its tender.

## **6. DIVERSITY IMPLICATIONS**

6.1 The proposals in this report have been subject to screening and officers believe that there are no diversity implications.

## **7. STAFFING IMPLICATIONS**

7.1 The services are currently provided by a bank and there are no implications for Council staff arising from re-tendering the contract.

## **8. BACKGROUND PAPERS**

- 8.1 Credit and Debit Card Acquiring Services Contract Tender File.
- 8.2 Contract correspondence file
- 8.3 Banking Contract tender file and Executive Reports

## **9. CONTACT OFFICERS**

- 9.1 Any person wishing to inspect the above papers should contact Sarah Cardno, Exchequer Services Manager, the Exchequer and Investment Team, Brent Financial Services, Tel. 020 8937 1161 at Brent Town Hall.

**DUNCAN McLEOD**  
**Director of Finance**

### NATURE OF THE SERVICE

The London Borough of Brent requires credit and debit card acquiring services to enable income to be collected for a wide range of Council services and to comply with e-government targets.

The Council offer customers a wide range of payment methods including payment by credit and debit cards. The card acquirer's duties include:

- To provide Merchant numbers as required
- To provide real-time authorisations of card transactions, receive files of card payments collected and provide settlement direct to the Council's nominated bank accounts
- To provide equipment to process all transactions
- To produce summaries and invoices on a monthly basis
- To have a helpdesk to assist with queries
- To minimise the risk of fraud by continual innovation and prompt response to enquiries.

Merchant numbers are unique references allocated by the acquiring bank that indicates where transactions are processed and to which bank account the income is credited. The Council currently has 15 merchant numbers for on-line services and 14 merchant numbers for various service units for manual transactions. The number of on-line merchant numbers required is expected to increase to 20 as more service units provide on-line payment facilities.

Going forward, the Credit and Debit Card Acquiring Services contract should include the following:

- Improve efficiency, accessibility and adhere to the principles of the E-Government strategy via provision of Web based systems and user access via a secure Internet link.
- Apply changes in legislation with prior consultation and adequate notice.