

	<p style="text-align: center;"><b>Executive</b> <b>18 October 2010</b></p> <p style="text-align: center;"><b>Report from the Director of Finance Corporate Services</b></p>
For Action	Ward Affected: All
<p><b>Authority to award contracts for banking services, card acquiring and bill payment services</b></p>	

**Appendices 2 and 4 of this report are not for publication**

## **1.0 Summary**

- 1.1 This report requests authority to award three contracts for the provision of Banking, Card Acquiring and Bill Payment services as required by Contract Standing Order 88. This report summarises the procurement process undertaken by the Council to procure suppliers to provide the services and, following completion of the evaluation of tenders, recommends to whom the contract should be awarded.

## **2.0 Recommendations**

- 2.1 That Members award a contract for the provision of banking services for five years with an optional two year extension to National Westminster Bank Plc, to commence on 1 April 2011.
- 2.2 That Members award the contract for Card Acquiring for 5 years 3 months with an option to extend for 2 years to National Westminster Bank Plc to commence on 2 January 2011.
- 2.3 That Members award a contract for Bill Payment Services for 5 years with an option to extend for two years to allpay Limited to commence on 1 April 2011.

## **3.0 Background**

- 3.1 The Executive gave authority to tender three contracts for the provision of Banking, Card Acquiring and Bill Payment services on 19<sup>th</sup> October 2009. The Banking Service contract provides for a comprehensive banking service to the Council. The current Banking Service contract commenced in 2004 and is due to expire on 31 March 2011. The Card Acquiring contract enables

the Council to accept payment by credit and debit card. The current contract commenced in January 2006 and is to expire in January 2011. The Bill Payment Services contract enables the Council to use bar codes on its invoices so customers can pay at retail outlets and Post Offices. The current contract was awarded in January 2007 and is due to expire on 31 March 2011. Further details regarding all these contracts can be found in the Executive report dated 19 October 2009 (see Background Papers).

### **The Tender Process and Council's Contract Standing Orders**

- 3.2 All the three contracts were to be procured using the Open Procedure (single stage process) in accordance with the Public Contract Regulations 2006 (the "EU Regulations") as required by the Executive.
- 3.3 On 11 December 2009 the contract notice was placed in the Official Journal of the European Union (OJEU) to seek initial expressions of interest. The notice specified the Council's requirement to procure providers for Banking, Card Acquiring and Bill Payment Services, in three separate lots for each of the services. The decision to procure the contracts as separate lots but as part of single procurement process was made as Officers considered that the Council may achieve economies by letting more than one contract to the same service provider, with tenderers being asked to indicate any discounts that apply if being appointed for more than one lot, or all three lots. In the event, no tenderer offered a discount based on being awarded more than one lot.
- 3.4 Expressions of interest were invited, to be received by 12 February 2010. Seven organisations subsequently expressed an interest in tendering for 1 or more of the lots.
- 3.5 The Open Procedure does not allow any negotiations once the Invitation to Tender has been issued and through out the process to contract award. Due to the complexity and regulatory requirements of these services, a draft contract containing the terms and conditions for the relevant lot was sent to each organisation who expressed interest in tendering, for comment. The intention of this was to determine any common issues that could result in non compliant tenders being returned. All the organisations were advised that the purpose of doing this was for clarifications purposes only and that the Council was not bound to accept their changes.
- 3.6 Several clarification issues were raised by organisations in connection with all three contracts. Following full consideration of clarification issues, a contract was then issued to all organisations who had expressed an interest in tendering, the council observing time limits required under EU Regulations.
- 3.7 The Invitation to Tender pack which included a qualification questionnaire and tender documentation was sent to all seven organisations expressing an interest in tendering on 26 February 2010. The tendering instructions stated that contracts would be awarded on the basis of the most economically advantageous tender to the Council and that in evaluating the tenders the Council would use the evaluation criteria and weightings for each lot set out in the Evaluation Matrix at Appendix 1 of this report.
- 3.8 During the tender period, several clarifications were raised in respect of all the three lots. These were recorded and distributed to all the tenderers in writing. Due to the number and complexity of clarifications received from the tenderers , and two of the tenderers requesting an extension of time to submit

their tenders , it was agreed to extend the tender time from 26 April 2010 to 12 noon on May 7.

- 3.9 The council received tenders from four different organisations for the three contracts (see Appendix 2); two tenders were received for the Banking lot; two tenders were received for the Card Acquiring lot; and three tenders were received for the Bill Payment lot.
- 3.10 The Open Procedure has no separate pre-qualification stage, however Officers used the information provided by tenderers in a qualification questionnaire to assess issues such as financial viability, technical ability business probity, etc of the tenderer to ensure suitability to deliver the contract .
- 3.11 Following the assessment of matters outlined in paragraph 3.10 above, the Senior Category Manger within the Strategic Procurement Unit checked each tender for compliance. The tenders received for the Bill Payment Services lot were compliant. None of the tenders received for either the Banking or Card Acquiring lots were compliant however. Each tender that was received for these lots made specific reference to changing or seeking further negotiation to the conditions of contract.
- 3.12 The lack of compliant bids received for both the Banking and Card Acquiring lots was raised with the Councils Legal Services Unit. In accordance with the EU Regulations, should no compliant bids be received during the Open Procedure, then it is possible to instead use the Negotiated Procedure without the need to readvertise.
- 3.13 All the tenderers who submitted tenders for the Banking and Card Acquiring lots were advised of the council's intention to this change to the Negotiated procedure in writing; however it was made clear that the conditions of the contract only were subject to negotiation and only to the extent that the conditions of contract would not be substantially altered. Officers subsequently had discussions with the tenderers regarding suggested changes to the conditions of contract before receiving final offers from tenderers,.
- 3.14 Evaluation of all parts of the tender submission for all three lots was carried out by a panel of officers. Each panel member evaluated the tenders independently, thereafter the panel then met to review their scores and to reach a consensus. This was overseen by the Strategic Procurement Unit.
- 3.15 Each tenderer was invited to a clarification session and to give a short presentation on their proposals. These sessions took place on 13<sup>th</sup> and 14<sup>th</sup> of July 2010. Panel members asked a series of pre set clarification questions at the end of the session. Prior to the presentations all tenderers were advised that these presentations would not be scored as part of the tender process but merely used to clarify the tenders received. The tenderers were advised that the clarifications responses could result in their scoring being revisited.
- 3.16 The presentations and clarifications sessions did raise the need for the panel to issue some further clarifications. These were raised with a return date of August 6.

- 3.17 The clarifications were all received back on time and the panel decided then that there was no need to re-visit the scoring.
- 3.18 The detailed evaluation results for each of the three lots are set out in Appendix 3. The estimated pricing for each contract based on predicted usage is set out in Appendix 4. It will be noted from Appendix 3 that the most economically advantageous tender for both the Banking and Card Acquiring lots is Tenderer 3 namely National Westminster Bank Plc which is part of the Royal Bank of Scotland of UK Corporate Banking, 9<sup>th</sup> Floor, 280 Bishopsgate, London. The most economically advantageous tender for the Bill Payment lot is Tenderer 4, namely allpay Limited of Whitestone Business Park, Whitestone, Hereford.

#### **4.0 Financial Implications**

- 4.1 As the contract price for both Card Acquiring and Bill Payment Services exceeds £500k, the council's Contract Standing Orders require the award of contract to be referred to the Executive for approval. The estimated contract price for the Banking contract is under £500k and therefore Chief Officers do have delegated powers to award this contract. As the Banking Services contract formed part of the same procurement exercise however, Executive authority is sought to award this contract also.
- 4.2 A full assessment of the financial standing of each of the tenderers was made as part of the procurement process.
- 4.3 The value of the three contract recommended for award is within the budget detailed in the report to the Executive of 19 October 2009.

#### **5.0 Legal Implications**

- 5.1 The estimated value of each of the three contracts over their lifetime is in excess of the EU threshold for services contracts and the nature of the services means they fall within Part A of the EU Regulations. The procurement of these contracts is therefore governed in full by the EU Regulations.
- 5.2 The estimated value of the contracts for both Card Acquiring and Bill Payment Services exceeds £500k and the award of the contracts is consequently subject to the Council's Contracts Standing Orders in respect of High Value contracts and Financial Regulations. As a result Executive approval is required for the award of these contracts. The estimated value of the contract for Banking services is under £500k and is consequently subject to the Council's Contracts Standing Orders in respect of Medium Value contracts and Financial Regulations but for the reasons given in paragraph 4.1, Executive authority is also sought for the award of this contract also.
- 5.3 As outlined in paragraph 3.2, all three contracts were to be procured using the Open Procedure (single stage process) in accordance with EU Regulations. Despite attempts to ensure compliance with tender instructions by seeking views from organisations before final contract terms and conditions were issued to organisations, only tenders for the Bill Payment contract were found to be compliant. Whilst Officers continued the procurement of the Bill Payment contract using the Open Procedure, this was not possible in relation to the Banking and Card Acquiring contracts as all tenders received in

connection with these contracts were irregular. As a result, Officers chose not to discontinue the procurement and re-tender under the Open Procedure but instead invite all organisations that originally submitted tenders under the Open Procedure to negotiate under the negotiated Procedure. This is permitted in accordance with Regulation 14 of the EU Regulations provided that the original terms of the proposed contract offered in the discontinued procedure have not been substantially altered. It is understood that final offers received from organisations did not have the effect of substantially altering the original terms of the proposed contract.

- 5.4 In considering the recommendations, Members need to be satisfied on the basis of the information set out in the report that the appointment of the recommended service providers will represent best value for the Council and will mean that the tenderer appointed has offered the most economically advantageous tender. In order to decide on the most economically advantageous tender, tenders have been evaluated in accordance with the evaluation criteria notified to tenderers in the ITT.
- 5.5 As this procurement is subject to the full application of the EU Regulations, the Council must observe the requirements of a mandatory minimum 10 calendar day standstill periods before the contracts can be awarded. Therefore once the Executive has determined which tenderers should be awarded contracts, all those who expressed an interest in tendering, will be issued with written notification of the award decision. A minimum 10 calendar day standstill period will then be observed before the appointment is concluded, and additional debrief information will be provided in accordance with the EU Regulations.
- 5.7 Following contract award, a contract award notice will need to be placed in the European Journal.

## **6.0 Diversity Implications**

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

## **7.0 Staffing / Accommodation issues**

- 7.1 There are no implications for Council staff arising from tendering the contract as the services are currently outsourced.

## **Background papers**

- Report to Executive 19 October 2009:- Authority to Tender

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