DELEGATED POWERS REPORT NO. **1876**

SUBJECT: Merchant Acquiring Machines and the Processing of Debit and Credit Card Transactions

Control sheet

All of the following actions MUST be completed at each stage of the process and the signed and dated report MUST be passed to the Governance Service for publishing

All reports		
1. Governance Service receive draft report	Name of GSO Date	Andrew Charlwood 03/12/2012
3 Governance Service cleared draft report as being constitutionally appropriate	Name of GSO Date	Andrew Charlwood 19/12/2012
2. Finance clearance obtained *(report author to complete)*	Name of Finance officer Date	John Hooton 05/12/2012
3. Staff and other resources issues clearance obtained *(report author to complete)*	Name of Resource officer Date	N/A
4. Strategic Procurement clearance obtained *(report author to complete)*	Name of SPO Date	Lesley Meeks 02/12/2012
5. Legal clearance obtained from *(report author to complete)*	Name of Legal officer Date	Sheila Saunders 21/12/12
6. Policy & Partnerships clearance obtained *(report author to complete)*	Name of P&P officer Date	Julie Pal 21/12/12
7. Equalities & Diversity clearance obtained *(report author to complete)*	Name of officer Date	Julie Pal 2112/12
8. The above process has been checked and verified by Director, Head of Service or Deputy	Name Date	John Hooton 02/01/13
9. Signed & dated report, scanned or hard copy received by Governance Service for publishing	Name of GSO Date	Andrew Charlwood 10/01/2013
10. Report published by Governance Service to website	Name of GSO Date	Andrew Charlwood 10/01/2013
11. Head of Service informed report is published	Name of GSO Date	Andrew Charlwood 10/01/2013
Key decisions only:		
12. Expiry of call-in period	Date	N/A
13. Report circulated for call-in purposes to Business Management OSC members & copied to Cabinet Members & Head of Service	Name of GSO Date	

ACTION TAKEN BY CABINET MEMBER (EXECUTIVE FUNCTION)

Subject	**Merchant Acquiring Machines and the Processing of Debit and Credit Card Transactions**
Officer taking decision	Leader of the Council
Date of decision	10 January 2013

Summary	This report seeks authority to (1) re-procure the contract for Merchant Acquiring Machines and the Processing of Debit and Credit Card Transactions through the Government Procurement Scheme (GPS), under their Framework Agreement; and (2) enter into a contract with Barclaycard for Merchant Acquiring Service for a period of three years on the basis of the Framework Agreement which includes a provision for the Council to terminate on six months' notice.

Officer Contributors	Catherine Peters – Head of Finance, Closing & Monitoring Mahomed Ladha – Procurement Manager
Status (public or exempt)	Public
Wards affected	Not Applicable
Enclosures	None
Reason for exemption from call-in (if appropriate)	Not Applicable
Key decision	No

Contact for further information: Catherine Peters, Head of Finance, 020 8359 7142

Serial No. 1876

1. RELEVANT PREVIOUS DECISIONS

1.1 8 November 2011, Delegated Powers Report, no 1505, authorised the Deputy Chief Executive & Chief Finance Officer to award the contract to Barclaycard for the supply of merchant machines and to process debit and credit card transactions.

2. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

2.1 The Strategic objective of 'an efficient council, with services designed to meet the changing needs of residents', and reducing the costs of providing services and giving better value for money underpins the Corporate Plan 2012-13 priority of 'Better services with less money'.

3. RISK MANAGEMENT ISSUES

3.1 Where contractual agreements are not in place, there is an increased risk of inadequate service provision or legal proceedings in the event of a dispute over the terms of the agreement.

3.2 If the existing contract is allowed to continue for the period of time for which further contractual arrangements for the Merchant Acquiring Machines and the Processing of Debit and Credit Card Transactions need to be in place, the contract value will exceed the relevant European threshold, resulting in a risk of contravention of the European procurement rules. In order to address this risk, this decision is being taken to secure the provision of Merchant Acquiring Machines and the Processing of Debit and Credit Card Transactions by utilising the Government Procurement Service (GPS) Framework.

3.3 Officers are aware that the Service is being outsourced and whilst the Council is required to enter a 3 year contract under the terms of the Framework Agreement, there is an option to terminate the contract on 6 months notice. The contract can be novated and Capita will have the option to continue with the Contract or terminate it by giving such a notice.

4. EQUALITIES AND DIVERSITY ISSUES

4.1 Under the Equality Act 2010, the council and all other organisations exercising public functions on its behalf must have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- advance equality of opportunity between those with a protected characteristic and those without;
- promote good relations between those with a protected characteristic and those without.

The ‘protected characteristics’ referred to are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation. It also covers marriage and civil partnership with regard to eliminating discrimination.

4.2 When first tendered the Council was satisfied that Barclaycard met equalities obligations that were addressed in Barclays ‘Corporate Conduct and Ethics’ and ‘Diversity Strategy’. This service is currently being provided by Barclaycard so there are no specific equalities and diversity issues directly generated as this should not impede the quality of the customer experience. The provision of this facility provides the public with an additional method by which they can make payment and hence, greater choice in public services.

5. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

5.1 There are no ICT or property implications

5.2 The GPS Framework Agreement for Merchant Acquiring Service PS/09/93 will be used to procure the service. The Framework Agreement has a single provider, Barclaycard, who is also the Council’s existing provider for this service. The current spend with the provider is £161,000 per annum. The cost, under the new contract, is expected to be approximately £166,000 per annum and a total estimated cost of £498,000 if the contract is run over three years.

5.3 The funding of the cost exists within the Central Expenses budget.

6. LEGAL ISSUES

6.1 The existing contract between the Council and Barclaycard was procured on the bases that: (i) its value was below the, relevant, European threshold; and (ii) it would be a one year contract.

6.2 However, the contract is, in fact, a ‘rolling’ contract which commenced on 6th January 2012. If the contract is permitted to ‘roll’ on for the, further, period of time for which the service is required, the contract value will exceed the, relevant, European threshold. To address this risk the existing, rolling, contract will be terminated by giving the, required, one month’s notice and a new contract entered into on the basis of the GPS Framework.

6.3 A new three year contract, ‘called-off’ from the GPS Framework, will run beyond the ‘go-live’ date for the New Support Customer Service Organisation contract between the Council and Capita. Capita will have the option to terminate by giving six months notice.

6.4 The GPS Framework contains a provision for the Council to '… assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement and any Call-Off Contracts or any part thereof to:

- any private sector body which substantially performs the functions of the Council, provided that any such assignment, novation or other disposal shall not increase the burden of [Barclaycard]'s obligations under the Framework Agreement and any Call-Off Contracts.

6.5 The 'Call-Off' contract must be completed and executed on behalf of the Council and Barclaycard, in accordance with the Council's Contract Procedure Rules.

7. CONSTITUTIONAL POWERS

7.1 Council Constitution, Part 3, Responsibility for Functions, paragraph 3.3 (3) details that Cabinet Members general powers which include 'To authorise inviting tenders for and acceptance of tenders or quotations in accordance with the Contract Procedure Rules. Section 3.1 (3) also states that acceptance of tenders or quotations must be following consultation with the Cabinet Member for Resources or the Leader in cases where the Cabinet Member for Resources is the appropriate portfolio holder . As the responsible Cabinet Member is the Deputy Leader/Cabinet Member for Resources and Performance, acceptance in this instance rests with the Leader of the Council.

7.2 Council Constitution, Contract Procedure Rules (CPR) – 5 – Authorisation and Acceptance Procedures – Table 5-1 delegates authority to a Cabinet Member to authorise a tender/quotation where the value of the contract does not exceed £499,999. As the contract value is below, £499,999, the Cabinet Member can also accept a tender/quotation where it is the lowest or where the tender/quotation represents value for money and is the best available option for the Council.

7.3 Council Constitution, Contract Procedure Rules, Section 6.11 states that before promoting the procurement of a new or joining a pre-existing framework agreement, the Director of Commercial Services must be satisfied that such an approach represents the most economically advantageous solution for a service, work, or supply provision and complies with the relevant EU Regulations on the use of such agreements.

Before procuring or entering into a framework agreement, the Director of Commercial Services shall be satisfied that:

6.11.1 the term of the arrangement shall be or is for a period of no longer than four years duration;

6.11.2 the terms and conditions of the arrangement do no compromise the Council's contractual requirements;

6.11.3 the parties to the arrangement are recognised public bodies or providers from the private sector;

6.11.4 full, open and proper competition in respect of the creation of the framework agreement has taken place or will take place in accordance with the relevant EU Regulations and/or relevant Contract Procedure Rules;

6.11.5 the framework is to be accessed in accordance with the procedures defined by the framework contract owner;

6.11.6 Preference should be given to use of any Government Procurement schemes e.g. Government Procurement Service (GPS), formerly OGC/Buying Solutions

The criteria above have been met and the Director of Commercial Services has confirmed that such an approach represents the most economically advantageous solution.

8. BACKGROUND INFORMATION

8.1 In November 2011, delegated powers report (DPR) number 1505 approved the acceptance of a quotation from Barclaycard to supply merchant machines and to process debit and credit card transactions.

8.2 The original evaluation was based on estimated transactions in 2010/11 with an estimated contract value between £50,000 and £72,000. It was made clear at the time of accepting the quotation that the final cost was dependent on the number of machines in use, the type and value of transactions processed .The procurement was made after requesting quotations using non OJEU route for a period of one year, as at that time, it was felt the service was going to be out sourced and a year's contract would be sufficient.

8.3 Since the commencement of the contract there has been an increase in usage due to pay by phone and parking which account for majority of transactions. This has increased income to almost £4,000,000 being processed on the merchant machines at a cost of £130,000.

8.4 The Service has recently tested the market by obtaining a quotation from the Government Procurement Scheme (GPS), previously Buying Solutions, under their Framework Agreement for Merchant Acquiring Service, to establish value for money. An analysis of the figures provided by GPS concluded that there was a marginal difference in cost between the current Barclaycard contract and the available GPS Framework. Re-procuring under this Framework Agreement is estimated to cost an additional £5,000 per year.

8.5 Procuring through the GPS is being requested as this is the best available option for the Council. The GPS Framework enables all UK Public sector organisations to benefit from a pre-negotiated contract that has been fully tendered through the OJEU process

9. LIST OF BACKGROUND PAPERS

9.1 None.

10. DECISION OF THE CABINET MEMBER(S)

I authorise the following action

10.1 The re-procurement of the contract for Merchant Acquiring Machines and the Processing of Debit and Credit Card Transactions, using the Government Procurement Scheme (GPS) and their Framework Agreement for Merchant Acquiring Service

10.2 To enter into a contract with Barclaycard (in accordance with the GPS Framework Agreement for Merchant Acquiring Service) for a period of three years, with provision to terminate by giving six months notice, the Agreement to commence on 6 January 2013 or the earliest date possible for the provision of Merchant Acquiring Services.

Signed	**Councillor Richard Cornelius** **Leader of the Council**
Date	**10th January 2013**