

# Officer Decision Record

**Title of Report:** Award of Contract for future delivery of an Early Payment Scheme for suppliers.

**Decision of:** Executive Director, Corporate, Customer & Community Services

**Cabinet Member:** Peter Thornton.

## 1) What is the decision about?

The decision is based on the evaluation of options in relation to whether or not the Council should enter into a new four year contract with Oxygen Finance, beginning 16 June 2019.

## 2) Recommendation(s) to the Executive Director

To approve the award of a 4 year contract (with option to extend by 12 months) to Oxygen Finance Limited, for an early payment scheme for suppliers, beginning 16 June 2019.

## 3) Background to the proposals

The Council entered into a direct call-off contract with Oxygen Finance (using a Framework Agreement arranged by Northumbria County Council), in June 2014, for a period of five years, to provide an Early Payment Scheme to its suppliers who saw value in being paid ahead of standard payment terms which ended on 15 June 2019. This initiative has improved year on year (in terms of income and processes), and has proved to be a commercial success. The current commercial net income/gain share is based on 54% Oxygen Finance and 46% Cumbria County Council split (after Oxygen providing the Council with a £0.035m contribution for one Admin support). The 2018/19 outturn, equated to gross income of approximately £1.481m with the net income/gain share for the Council being £0.687m.

However, following commercial negotiations regarding the use of the Oldham Council framework agreement, this percentage income would increase to 74% in favour of the Council, and 26% Oxygen Finance for the first three years (this includes Oxygen contributing the funding for 1.5 Admin support, equating to approximately £0.052m). In Years 4 and 5 the income percentage would increase to 81% in favour of the Council.

Table 1 below shows a summary of the options considered over the past 12-18 months,

### Table 1

If the arrangements continued 'as is' the Council's income/gain share, (based on the 2018/19 in-scope gross income of £1.481m), it is estimated that the Council achieved income in the region of £0.687m, this included the 1 Admin support..

Through the newly negotiated improved commercial terms, the Councils income would increase to approximately £1.089m (74% of the total income/gain share) in years one to three and increase to approximately £1.163m (79% in years four and five. Oxygen Finance would receive income/gain share equating to £392k and £318k respectively (26% and 21%), over the same two periods.

If the Council opted to bring the work 'in-house', (based on the 2018/19 outturn income figures), theoretically, the Council would achieve gross income of £1.481m however it would incur costs of c£0.115m (ie. staffing and ICT costs) to give a net income figure of £1.366m per annum. To enable the service to be brought in-house, and to apply the same discount structure as contractually agreed with suppliers, the Council would need to specify a change to its financial software. The expected lead in time for this is 9-12 months. In addition, it would be prudent to assume the Council may not be as commercially focused/astute as is an experienced niche provider such as Oxygen Finance, therefore, the Council may miss commercial opportunities, (at least in the short-term), and gross income may fall.

#### 4) What options have been considered?

To deliver the service in-house. A lead-in of at least 9-12 months would be required in order to staff-up and train them; introduce new software; test and implement the new system functionality across all existing and new contracts, and make available a suitable dashboard of routine management information, from which to manage the scheme effectively.

Enter into a new contract using a Framework Agreement, via Oldham Council, (Cumbria County Council having agreed improved commercial terms), for a period of up to five years.

#### 5) What risks have been identified?

The potential risks considered were in relation to introducing an in-house model and our ability to deliver optimum value by maximising and sustaining levels of income; reducing missed commercial opportunities, being able to introduce and apply a suitably sensitive payment scheme model, and having the ability to continually identify and implement more creative business processes.

#### 6) What FINANCE considerations are relevant to the decision?

The purpose of this decision is for the Executive Director, Corporate, Customer and Community Services to award a new 4 year contract to Oxygen Finance for the Early Payment Scheme. This would achieve an estimated net income for the Council of £1.089m in years 1 to 3 of the contract and £1.163m in year 4 based on 2018/19 gross income levels.

This is approximately £0.402m pa, increasing to £0.476mpa, of additional income to that received under the current arrangements. However, this is up to £0.277m pa less in years 1-3, £0.203m in year 4, than if the Council was able to deliver this 'in-house' on the same basis achieving the same level of gross income as Oxygen, with immediate effect.

One alternative would be to bring the service in-house. This option has been considered, but the Council currently does not have the software or the staff to undertake this function, as it is anticipated that there would need to be a 9-12 month lead-in time before this could be undertaken.

#### **7) What PROCUREMENT considerations are relevant to the decision and what route to market is being used?**

The opportunity for an early step-in/direct call-off, via Oldham Council's new Framework Agreement is lawful, and the existing commercial relationship with Oxygen Finance is extremely positive.

#### **8) What Legal considerations are relevant to the decision?**

The Framework Agreement is open to all British Authorities to use. The law is unclear on whether such a broad description complies with the Public Contracts Regulations 2015 however, to date such descriptions have not met with any legal challenge. The wording of the Framework Agreement was not well drafted but it permits the contract arrangement proposed in this report as there is only one contractor on the framework.

The wording of the call-off contract was poorly drafted in places however the Council has proposed changes to Oxygen Ltd to address the main concerns which have been accepted. There was an indemnity required from the Council for breach of Intellectual Property law the authorisation for which has been obtained in accordance with the Council Finance Standing Orders.

Due to the value of the proposed framework the decision to award is a Key Decision. Under paragraph 6.37 of the Contract Procedure Rules an Executive Director can take the decision to award this contract.

The previous contract with Oxygen expired in 15 June 2019. However since this date the Council has continued to use Oxygen to deliver the early payment scheme. This combined with the detailed negotiation and behaviour of the Council towards Oxygen over the last 8 months means it is likely the new contract is already in existence despite the paper work not being signed. If the Council was minded not to continue using Oxygen it is very likely that

Oxygen would be entitled to compensation from the Council which could amount to their average loss of income for the remainder of the contract: equating to approximately £1.5m. (JW 2.7.19)

#### **9) Conclusion(s) reached?**

The assessment of provider performance and negotiations in relation to commercial terms began around 18 months ago, well in advance of the contract expiring in June 2019. During such time, consideration was also given to bringing the service in-house. However, it was felt that between the introduction of new corporate initiatives; significant upgrades to E5 and other software packages, in conjunction with little appetite for such at this point, stepping into another external contract for the next 4 years was more pragmatic, but with the intention to bring such back in-house in 4 years' time.

#### **Executive member Consultation**

**Name:** Peter Thornton, Cabinet Member for Finance

**Details of any registrable interest relevant to the decision:** None **Details**

**of any dispensation granted:** None

#### **Key Decisions**

**Notice on Forward Plan?** Yes

**Rule 15 Notice?** NA

**Rule 16 Approval by Chair of Scrutiny Board?** NA  
(Attach Approval)

**Exempt from Call in?** No  
(Attach Approval)

## **Decision**

Signature of the decision record authorises the implementation (following expiry of the Call In period where applicable) of the recommendations in Section 2.

## **Decision**

**Signature of decision maker:**

**Name:** Dawn Roberts

**Post title:** Executive Director – Corporate, Customer & Community Services

**Date:** 18 July 2019

**Delegated authority to make the decision:** Authority to make this decision is granted as per the Procurement Rules set out in part 5H – Section 6.37 of the Constitution.