

## CONFIDENTIAL MEMORANDUM

**TO:** Council

**MEETING DATE:** 3 March 2021

**TITLE:** Tender Award - Contract 3938 Roothing Maintenance, Renewal and Minor Capital Services - 2021-24

**PRESENTED BY:** Robert van Bentum, Manager - Transport and Infrastructure

**APPROVED BY:** Sheryl Bryant, General Manager  
Stuart McKinnon, Chief Financial Officer

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It is recommended that this report be considered with the public excluded, as permitted by the Local Government Official Information and Meetings Act 1987 under clause:

**s7(2)(b)(ii) Third Party Commercial - The withholding of the information is necessary to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information**

### RECOMMENDATION FOR PUBLIC RELEASE

2nd April 2021 following award of tender and contract signing

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### RECOMMENDATION(S) TO COUNCIL

1. That Council approves the award of Contract 3938 for the Palmerston North Roothing Maintenance, Renewal and Minor Capital Services – 2021-2024 to Fulton Hogan for the period of 3 years for a sum of \$37,829,440.77 excl GST subject to satisfactory conclusion of pre-letting negotiations.
2. That Council gives the Chief Executive the delegated authority to vary the contract sum by a maximum amount of 10% of the contract sum to reflect the budgets for maintenance, renewal and minor capital works as may approved as part of the LTP 2021-31 and RLTP 2021-31 processes.
3. That Council gives the Chief Executive the delegated authority to vary the contract sum by a maximum amount of 10% of the contract sum to enable additional works comprising maintenance, renewal or minor capital works to be undertaken through the contract through any additional programme budgets which may be approved by Council during the term of the contract.
4. That the confidential memorandum titled 'Tender Award - Contract 3938 – Palmerston

**North Maintenance, Renewal and Minor Capital Services' presented to Council on 3 March 2021, be released from Part II following formal signing of the contract.**

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**1. ISSUE**

- 1.1 In compliance with the approved PNCC NZTA Joint Roading Procurement Strategy – dated July 2020 and in line with the approach outlined in the report to the August 2020 meeting of Council entitled “Procurement of Road Maintenance, Renewal and Capital Improvement Services’, Officers have progressed the re-tender of Council roading services.
- 1.2 As endorsed by Council, at the 5 August 2020 Infrastructure Committee meeting, the re-tender process was designed with the objective of achieving:
- a step change in the level of service provided to network users through a focus on collaboration to achieve best for network outcomes and use asset data to incentivise contract performance
  - greater efficiency and improved coordination of activities by combining work currently undertaken within 10 different contracts into a single contract covering maintenance, renewal and minor capital works
  - incentivising greater investment in capacity and capability by the contract provider through providing greater certainty in respect of the value of works (Engineer’s Estimate of \$14.375 m/annum) and a maximum contract duration of 9 years (3 x 3yrs)
  - greater clarity in terms of performance and outcomes through simplifying the contract, improved specification of the KPIs focused on auditable data and the provision of an at-risk performance incentive payment
- 1.3 In line with NZTA procurement policy and Council’s Roading Procurement Strategy a two-stage tender process was adopted. An initial open market Registration of Interest (RoI) stage was followed by a formal Request for Tender (RFT) invitation to the respondents short-listed through the RoI. The RFT provided for tender evaluation using a two-step method using the Supplier Quality Method to determine supplier quality premium based on non-price attribute scores.
- 1.4 Responses to the RoI were received from [REDACTED], Fulton Hogan Ltd and [REDACTED], and all three respondents were invited to prepare tender submissions. All three respondents submitted complying tenders. The tender evaluation included a half-day culture workshop with each of the tender teams. Feedback from these workshops was included in the non-price attribute scoring.
- 1.5 The Tender Evaluation Team (TET) have completed their non-price and price assessments and confirmed a preferred tenderer. Negotiations have been initiated

with the preferred tenderer to confirm several aspects of their tender submission with a view to reaching agreement on the final contract scope, conditions and schedule of rates.

- 1.6 The tender process has identified a new contract partner with the skills and commitment to deliver on the outcomes set out in the contract. The establishment of a second roading services contractor in the region will help to address the delivery capacity and competitive market challenges currently faced by Council.
- 1.7 This report seeks Council approval for the award of Contract 3938 to the preferred tenderer subject to satisfactory conclusion of pre-letting negotiations. The report includes only a brief overview of the key elements, findings and outcomes of the tender process. Further detail is provided in the following attachments:
  - Attachment 1 - Summary of Tender Assessment
  - Attachment 2 – Budget Comparison Summary

## 2. BACKGROUND

- 2.1 Beginning in 2019, Officers have been working on a strategy to renew and update the Council's contract for the maintenance, resurfacing and rehabilitation of Council's roading network which will come to an end in June 2021. Officers started the journey by initiating a process of engagement with neighbouring Territorial Authorities to develop a shared understanding of the procurement challenges and determine the best approach to procurement for PNCC and region. The current contract, which ends in June 2021 is with [REDACTED]
- 2.2 Informed by assessments of the state of the local market and a consideration of the range of alternative contracting and procurement models, the four Councils (Horowhenua, Manawatu, Rangitikei and Palmerston North) signed an MOU in December 2019 to advance work on a joint procurement strategy. A final version of the Joint Procurement Strategy was approved by NZTA in June 2020 and adopted by Council.
- 2.3 The procurement strategy highlighted two issues with the current contracting of roading services in the region namely:
  - the lack of a second major provider to create more healthy market tension
  - the need for the scope of any tendered work to be of sufficient value to attract a second provider to support the investment in the resources and capability required to deliver on the contract outcomes, and support investment in innovation, data sharing and asset management

- 2.4 While the other TAs in the region (Manawatu, Rangitikei and Horowhenua) acknowledged the challenges, they all opted to extend their roading maintenance contracts for a further 3 years from 1 July 2021, rather than seeking a combined solution from that date. PNCC Officers supported by external consultants concluded that the option of a hybrid contract built around a traditional model with enhanced performance measures and a focus on outcomes would best deliver on Council's goals and aims as describes in the Strategic Transport Plan.
- 2.5 Prior to the tender process, Officers engaged with all potential suppliers to understand their specific aspirations and to understand their issues which might prevent them from participating in and responding to a tender process. Officers also identified the contract utilised for the Northern Alliance (north of Auckland collaboration between NZTA and local councils) as the base for the new tender, recognising that simply modifying the current contract would not deliver on the outcome objectives.
- 2.6 Council endorsed the approach outlined at the August 2020 Infrastructure Committee meeting.

### 3. TENDER PROCESS

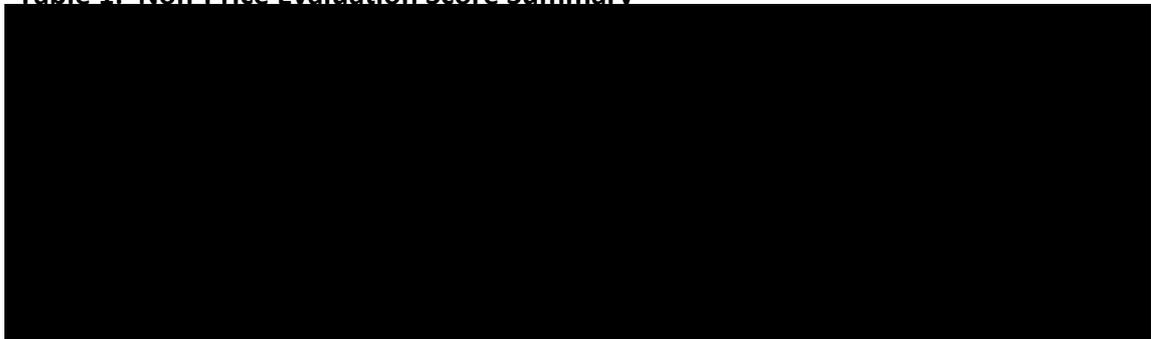
- 3.1 The tender process adopted was a two-stage process with a Registration of Interest followed by a formal Request for Tender (RFT) invitation to the respondents short-listed through the RoI. The key stages and dates for the different steps in the tender process are listed as follows:

- Registration of Interest – Opened - 13 Aug 2020
- Registration of Interest – Closed - 27 Aug 2020
- Short listed Tenderers confirmed - 5 Oct 2020
- Request for Tender – Initiated - 20 Oct 2020
- PNCC Presentation to Tenderers - 2 Nov 2020
- Interactive meetings with tenderers - 23/ 24 Nov 2020
- Request for Tender – Closed - 23 Dec 2020 – 10.00am
- Culture Workshops - 3-5 Feb 2021
- Preferred tenderer – advised - 18 Feb 2021

- 3.2 Registrations of interest were received from three potential tenderers namely [REDACTED] Fulton Hogan Ltd (FH) and [REDACTED]. All three tenderers were short listed and invited to submit tenders. All three tenderers attended the PNCC presentation and opted to participate in the interactive meetings. All three provided submissions by the tender closing date.

- 3.3 The ROI process included an assessment of Health and Safety and Quality Systems. All three potential tenderers were considered to have robust systems and processes and deemed to be suitable to progress to the formal tender stage.
- 3.4 The RFT evaluation was based on the NZTA Price Quality Method with the attributes and weighting for tender evaluation as set out in Attachment 1. A total of nine (9) Notices to Tenderers (NTT) were issued during the tender period providing a range of clarifications and amendments to specific items in the tender.
- 3.5 The overall non-price attribute scores are summarised in Table 1 while a breakdown of the attribute scores is included in Attachment 1.

**Table 1: Non-Price Evaluation Score Summary**

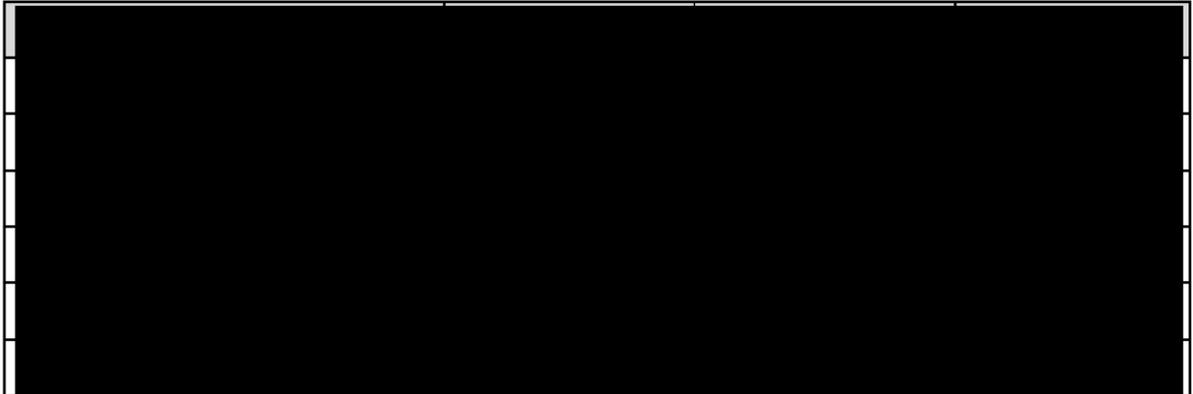


- 3.6 Tags: A total of (14) tags and/or clarifications were received in the [REDACTED] tender, compared to two (2) in the [REDACTED] tender and none in the Fulton Hogan tender. Most of the tender tags relate to specific conditions of contract and amendments or interpretations to these. None of the tags were considered by the TET to fundamentally change the risk profile although a number were unacceptable and would have had to be discussed in any pre-letting meetings depending on the preferred tenderer.
- 3.7 The TET therefore agreed to instruct the Tender Administrator to open and distribute to the TET the price files of all the tenderers.

#### **4. PRICE AND OVERALL TENDER EVALUATION**

- 4.1 Tender prices were assessed by the TET on 16 February 2021 following the TET's completion of the non-price attribute evaluations, and its endorsement by PNCC's Sponsor. The tender prices together with the engineer's estimate and supplier quality premium comparison are summarised in Table 2. The tender price is for 3 years of work and based on a 3 x multiplier of the scope of work outlined in year 1 of the contract. The Engineer's Estimate for the scope of work is \$14,375,000 per annum and \$43,125,000 for the 3 year term.

**Table 2: Price Submission Summary and Comparison**



- 4.2 Based on the Supplier Quality Method and the assessment of price, Fulton Hogan Ltd. were identified as the preferred tenderer. Fulton Hogan provided the highest quality tender and the lowest price.
- 4.3 The Fulton Hogan tender was fully compliant with all requirements of the RFT with no tender tags or clarifications. The TET have not identified any material issues with either their non-price or the price submissions. Whilst their price is lower than other tenderers, and the engineer's estimate, by a significant margin, the TET have completed their due diligence and are comfortable it reflects a sustainable price to complete the contract works.
- 4.4 A tender pre-letting process will now be undertaken with Fulton Hogan to confirm the commitments made in their tender, and to provide further confidence in their ability to comply with all the requirements of the contract.
- 5. **LOCAL MARKET CONSIDERATIONS**
  - 5.1 Council has signalled through resolution of its requirement that for all tenders exceeding \$240,000 in value, tender evaluation processes should include consideration of the local contribution of the tender submission. As NZTA's approved procurement plan does not allow for local contribution to be a specific non-price attribute, Officers sought to give effect to the intent of Council's requirement by incorporating criteria related to sustainable market and capability development as part of the methodology attribute assessment. Tenderers were also required to commit to a minimum of 20% of the value of the contract to be delivered using sub-contractors. All tenderers confirmed the nature of these sub-contract undertakings.
  - 5.2 Given the scale and scope of the work to be completed under the contract, no successful tenderer would be able to deliver on the contract requirements without having a significant local base. All three tenderers already operate local depots which undertake significant maintenance and capital project work in the area. It is

envisaged that each tenderer would need to increase the level of local resourcing to deliver the contract.

- 5.3 The 20% sub-contractor requirement was designed to ensure that those contractors with an existing contracting relationship with Council would have an opportunity to sub-contract to a head contractor. The tender evaluation has confirmed that several specialist sub-contractors have been included in the resources proposed to deliver the contract.

## **6. PROCUREMENT COMPLIANCE AND PROBITY ASSURANCE**

- 6.1 Council's Procurement Manager [REDACTED] and Procurement Adviser [REDACTED] were involved in the tender evaluation processes providing advice and oversight of the tender evaluation process and ensuring compliance with best practice and Council's procurement policy.
- 6.2 Council also engaged Brimblecombe Consultancy Limited (BCL) to provide independent Probity advice and audit services. Their involvement commenced from the first tender evaluation panel meeting and concluded with the meeting to confirm identification and nomination of the preferred supplier was identified. In total BCL attended the following meetings:
- key parts of the initial non-price panel evaluation meeting,
  - all three of the cultural workshop sessions with the individual tenderers,
  - the post workshop panel meeting to confirm the lead tenderer following the non-price evaluation, and
  - the final panel meeting after the pricing had been disclosed to the TET at which the preferred supplier was confirmed
- 6.3 Any potential probity issues were resolved during these sessions.

## **7. FUNDING ASSESSMENT**

- 7.1 The funding for the work included in Contract 3938, is sourced from a range of operating and maintenance, renewal and capital new programmes approved by Council. The maintenance and operational programmes are considered to MSL or maintaining service levels, while the renewal and capital programmes are associated with specific Council approved programmes of work.
- 7.2 As the contract starts on 1 July 2021 and has an initial term of three years, the funding commitments relate to programmes of work and budgets that are subject to confirmation as part of the process of approving the LTP and RLTP. A conservative approach has therefore been taken when determining the contract value. The Engineer's Estimate for the annual scope of work is \$14,375,000 per annum. The scope of work is based on delivery of Council's 2020-21 approved maintenance,

operational and renewal budgets and approximately 75% of the value of additional capital new works included in year 1 of the draft LTP.

- 7.3 If the requested additional funding for maintenance, operations, renewals and minor capital new works included in the draft LTP and RLTP submissions is approved by both Council and NZTA then the scope of works and contract value would be increased accordingly. In addition, the scope of capital new work has been limited to minor safety, safety network improvements and urban cycleway capital works. There is scope to deliver a range of other capital renewal and new programmes of work through the contract where the work elements and scope are the same as or like items within the schedule.
- 7.4 The contract value is well within current and expected Council approved budgets. A comparison of the Engineer's Estimate, the current 2020-21 budget and year 1 of the draft LTP budget is provided as Attachment 2. It is expected that the contract will result in a net saving to Council compared to the current contract and so enable more work to be undertaken for the same value.

## 8. RISK ASSESSMENT

- 8.1 Officers have completed a brief risk assessment to inform this tender award report and to highlight that beyond the tender award stage there are additional key requirements if the desired step change in performance and network outcomes are to be achieved.
- 8.2 Incumbent Contractor Engagement: There is a risk with a transition to a new contractor, that the level of focus by the incumbent contractor on continuing to deliver on the contract outcomes until 30 June 2021 will wane. Staff will seek to mitigate this risk by engaging openly and frankly and clarifying explicitly the programme of work for the remainder of the contract duration. Where work cannot be undertaken due to resourcing constraints, formal agreement to assigning outstanding work to other contractors will be sought.
- 8.3 Mobilisation Plan Adequacy: There is a risk that the incoming contractor will not be able to mobilise their team and required level of resources to initiate work from 1 July 2021. To mitigate this risk Council have sought to provide a long lead in period and will also require a detailed plan from the Contractor around mobilisation and establishment as well as set-up of key supporting systems. This will include scope to trial and test systems and processes in the lead up to day 1 of the contract.
- 8.4 Council Management Capacity: There is a risk that that the benefits of the new contract will not be realised if Council does not have the necessary resources of the appropriate level of skill in place to manage and effectively collaborate on the contract. This is a significant risk as the assigned Transport Contract Manager role is

vacant. It is also assessed that a second full-time staff member will be required to support RAMM data and physical works auditing functions. Resolving these gaps in a timely manner will be critical to contract success.

## 9. SUMMARY

- 9.1 Officers have completed a robust two stage tender process to identify a preferred tenderer for Contract 3938. The three major roading contractor operating in the local market all registered as part of the RoI process and all submitted complying tender submissions by tender close on 23rd December 2020.
- 9.2 The four person TET, comprising two PNCC staff and two external consultants, completed an assessment of the non-price attributes including consideration of individual interactive culture workshops, to determine Supplier Quality Premiums. The TET considered all three tenders to be compliant including allowing for any tags which were considered to not materially impact on the scope or value of the submissions.
- 9.3 Following formal opening of the price submissions, and checking for completeness and accuracy, the TET confirmed the preferred Tenderer to be Fulton Hogan given they had the highest non-price attribute score and the lowest tender price. TET members identified several areas for further clarification with the preferred tenderer as part of pre-award negotiations. At the time of preparing the report, negotiations were on-going and several individual items of scope, price and team composition were still being confirmed.
- 9.4 The scope of work and value of the tender are at the level of the current approved maintenance, renewal and capital programme budgets for 2020-21 and well within those proposed for year 1 of the draft LTP 2021-31. It is anticipated that there will be savings under the new contract to carry out the current scope of work which has been included in the bundle.
- 9.5 The performance-focussed contract will ensure the cost—effective on-going delivery of road maintenance, renewal and capital new services and ensure the establishment of improved market competition with benefits for PNCC and the wider region.
- 9.6 Officers therefore recommend the award of the tender for Contract 3938 for an initial term of three years from 1 July 2021 to 30 June 2024 to Fulton Hogan for \$37,829,440.77 excl GST subject to satisfactory conclusion of pre-letting negotiations. Officers also recommend that Council give delegated authority to the Chief Executive to approve an additional 10% in contract value to cover the lift in maintenance and capital spending proposed in the draft LTP 2021-31 and a further 10% for any additional programme work which may be approved by Council during

the term of the contract provided all variations are within approved programme budget limits.

**10. NEXT STEPS**

- 10.1 Should Council approve the award of tender, Officers will proceed to finalise agreement with the preferred tenderer on the final scope and value of the contract.
- 10.2 Officers will also engage with the contractor to finalise the transition plan and agreed the various management plans required to be submitted by the Contractor.
- 10.3 Officers will seek to advance approval for staffing and recruitment of the necessary PNCC staff in a timely manner to enable them to engage with the preferred Contractor during the mobilisation phase. Monthly governance meetings as provided for within the contract will be initiated in April 2021 ahead of the scheduled contract start date.

**11. COMPLIANCE AND ADMINISTRATION**

Does the Committee have delegated authority to decide? If Yes quote relevant clause(s) from Delegations Manual <Enter text>	<b>Yes</b>
Are the decisions significant?	<b>No</b>
If they are significant do they affect land or a body of water?	<b>No</b>
Can this decision only be made through a 10 Year Plan?	<b>No</b>
Does this decision require consultation through the Special Consultative procedure?	<b>No</b>
Is there funding in the current Annual Plan for these actions?	<b>Yes</b>
Are the recommendations inconsistent with any of Council’s policies or plans?	<b>No</b>
The recommendations contribute to Goal 1: An Innovative and Growing City and Goal 2 A Creative and Exciting City	
The recommendations contribute to the outcomes of the City Development Strategy and the Creative and Liveable Strategy	

The recommendations contribute to the achievement of action/actions in the Strategic Transport Plan and the Active and Public Transport Plan

The actions contributed to are many and include:

- Deliver roading and parking maintenance and renewal in a cost-effective way
- Undertake remedial work in areas with high crash or safety concerns
- Maintain street lighting and other conditions for people with the greatest accessibility and mobility needs across the network
- Maintain and renew active and public transport
- Upgrade on a prioritised basis pedestrian routes, connections and road crossings
- Update on a prioritised basis, cycle route interconnections and intersections
- Complete the footpath extension programme for areas without footpaths
- Maintain the road corridor environment

Contribution to strategic direction and to social, economic, environmental and cultural well-being

This implementation of this contract will be pivotal in delivering on a wide range of outcomes in the active and strategic transport areas as it will enable a step change both in the effectiveness and level of service achieved in the maintenance and renewal of existing roading and active transport assets and corridors. The contract will also enable the delivery of an enhanced programme of low complexity capital work in a way which will be optimised and integrated with the delivery of maintenance and renewal services.

The award of the contract to a new provider at a very competitive price will help to address the current constraints of capacity market competition so enabling Council to more efficiently and effectively deliver on programmes of work in the transport and active transport areas with benefits for the wider region.

**ATTACHMENTS**

1. Attachment 1 - Summary of Contract 3938 Non-Price and Price Attributes (withheld 3<sup>rd</sup> party confidential)
2. Attachment 2 - Comparison of Engineers Estimate with Current and LTP Budget (withheld 3<sup>rd</sup> party confidential)