

3-WATERS MAINTENANCE CONTRACT EXTENSION

To: Infrastructure Committee

Meeting Date: Tuesday 6 December 2022

From: Pete Nolan, Manager – Infrastructure Operations

Approved: Erin Moogan - Group Manager - Infrastructure Services

Approved Date: Friday 25 November 2022

Open Agenda: No

Public Excluded Agenda: Yes

Reason(s) for the Public Excluded (choose – can be more than one)

Section of the Act	Subclause and Reason under the Act	“Plain English” Reason	When Report Can Be Released
7 (2) (b) (ii)	would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information		Sunday 30 June 2024
7 (2) (i)	enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations);		

Purpose and Summary

Invercargill City Council (ICC) holds a contract for maintenance services on the water, stormwater and foul sewer pipe networks which supports Council's in-house 3-Waters Operations team. It includes periodic, routine, and emergency maintenance.

This report provides options for the future provision of these services.

Recommendations

1. That the Committee receive the report "3-Waters Maintenance Contract Extension".

Recommend to Council:

2. That in light of the advice from the National Transition Unit (NTU), contracts transitioning to the new entity are to expire no earlier than 1 July 2025 and no later than 30 June 2026, Council approve:
 - a. Continuing with the water maintenance contract procurement process (option 1);
or
 - b. Working with the existing contractor, Downer, to develop an extension to their existing contract to 30 June 2026 (option 2); or
 - c. Working with the existing contractor, Downer, to develop an extension to their existing contract for an initial period of 12 months. During this 12 month period, a contract amendment would be developed to transition towards a more performance based contract for a further 2 year period to 30 June 2026 (option 3);
3. That if either 2 (b) or 2 (c) are chosen, Council approve a variation to ICC's procurement policy.

Background

Supporting the in-house 3-Waters Operations team, Council holds a contract for maintenance services on the water, stormwater and foul sewer pipe networks. It includes periodic, routine, and emergency maintenance.

The current contract provides for a potential term of 5 +1+1 years. The contract has previously been extended by one year, which means that there is an opportunity to extend for a second year. In the event that the contract is extended for the second year, the contract will expire 30 June 2024.

The proposed water reforms mean it is highly likely that the operations and maintenance of Invercargill's water assets will be transitioned to the central government Water Entity D as of 1 July 2024. This is the date the contract, including extensions, would be due to expire.

The NTU has advised that contracts transitioning to the new entity are to expire no earlier than 1 July 2025 (2 years post entity go live) and no later than 30 June 2026.

Issues and Options

Analysis

Entering into a new operational maintenance contract is a significant undertaking, ideally requires formal review under s17A of the Local Government Act, development of a new contract model, a public procurement process, contract finalisation and transition to a new

contract/contractor. This is generally an 18 month process which is resource intensive to get right and typically requires external consultant support.

There is approximately 18 months remaining before ICC's water assets and operations are expected to transfer to the new Entity D. The constraints placed by the NTU around any new contracts makes them unattractive due to the maximum 3 year term and would attract a price premium. ICC would also be investing significant time and money into developing a new contract that may not ultimately meet the needs of the new entity.

Officers have given consideration to an extension of the existing contract held by Downer beyond the one year currently provided as an alternative to taking the contract to market.

Downer has confirmed it has an appetite to remain the 3-Waters maintenance contractor. They have also expressed interest in working with Council to identify and implement a different contract model which could bring better collaboration with work programmes and delivery of works. This could mean we would still realise some of the benefits we would have been seeking in taking a new contract to the market.

As an extension beyond 1 year is not provided for in the contract a variation under Council's Procurement Policy would be required.

Significance

Continued provision of contracted 3-Waters maintenance support is consistent with the objectives and funding provided for in the Long Term Plan.

Options

Option 1

Continue with the water maintenance contract procurement process. This is a resource intensive process and comes with cost of up to \$100,000. There is a risk due to the NTU transition it will not provide value for money nor an optimised contractual relationship.

This option is not viable because ICC will not realise the benefits for the remaining one year under ICC. Additionally, the form of contract may not align with the NTU requirements. Finally, market validation shows that the short length of the contract period is not attractive for new contractors and will attract a price premium.

Option 2

Work with the existing contractor, Downer, to develop an extension to their existing contract to 30 June 2026 noting it requires an approved variation to ICC's procurement policy and the NTU.

The current form of contract is a measure and value maintenance contract with an emphasis on reactive repairs. This form is not customer centred nor network centred because it focuses on repairs after failure rather than a pro-active planned preventative maintenance. It will also not meet the form of collaborative contract required by the NTU.

Option 3

Work with the existing contractor, Downer, to develop an extension to their existing contract for an initial period of 12 months. During this 12 months a contract amendment would be developed to transition towards a more performance based contract for a further 2 year period to 30 June 2026 (anticipated cost up to \$40,000). The subsequent two year extension would also require an approved variation to ICC's procurement policy.

This is the preferred option by staff because it moves toward a collaborative (partnering with performance measures) form of contract that focuses on pro-actively maintaining and improving the condition of the network, which satisfies the NTU requirement. This collaborative form of contract is also the preferred form of contract of ICC staff, in the event that the 3-Waters transition does not proceed.

Implications and Risks

Strategic Consistency

All options are consistent with Council's Long Term Plan. As noted above Options 2 and 3 require an approved variation to Council's Procurement Policy.

Financial Implications

It is expected that the recommended course will provide better value for money given the indicated short life of the contract.

Legal Implications

The additional 2-year extension beyond 30 June 2024 will satisfy the legal transitional requirement - subject to the NTU's approval.

Risk

The major risk is other contractors that have not had the opportunity to tender bring an action against ICC. Given the unusual circumstance presented by the 3-Waters transition and the fact the proposed approach is not inconsistent with that taken in other areas of the country, the risk is considered to be low.

Next Steps

Staff will negotiate the option approved by Council, bringing any final contract or extension back to Council for approval.

Attachments

None