



Conference Record

Application for Authorisation – AA1000414

Lodged by Council Solutions (kerbside collection)

**Scheduled: 10:00am ACST, 10:30am AEST
27 August 2018**

**Cliftons
Level 1, 80 King William Street
Adelaide SA**

and

**ACCC office
Level 2, 23 Marcus Clarke Street
Canberra ACT**

The information and submissions contained in this conference record are not intended to be a verbatim record of the conference but a summary of the matters raised. A copy of this document will be emailed to each of the interested parties who attended the conference.

Attendees

Australian Competition and Consumer Commission

- Sarah Court, Commissioner (Chair of conference)
- Scott Gregson, Executive General Manager, Mergers and Authorisation Review Division
- Joanne Palisi, General Manager, Adjudication (attended by video from Canberra)
- Helen Anness, Acting Deputy General Counsel, Mergers and Authorisation Law Unit
- Gavin Jones, Adjudication Branch
- Tanya Hobbs, Adjudication Branch (attended by video from Canberra)
- Tessa Cramond, Adjudication Branch

The Applicant

Council Solutions

- Bruce Wright, Senior Procurement Officer
- Kerrie Jackson, CEO
- Lisa Jarrett, Partner, Minter Ellison
- Paul Howlett, Joint Managing Director of Wright Corporate Strategy

Interested Parties

Waste and Recycling Association of South Australia (WRASA)

- Scott Geer, WRASA member, Solo Resource Recovery Contracts and Communications Manager
- John Fitzpatrick, WRASA Public Officer
- Mike O'Reilly

Waste and Recycling Industry Association of South Australia (WRISA)

- Chris Brideson, Executive Officer
- Michael Brixton, Member, Managing Director - Mastec Australia

Office of the Australian Small Business and Family Enterprise Ombudsman (ASBFEO)

- Jill Lawrence, Director Advocacy team (attended by video from Canberra)
- Adam Matthews, Advisor (attended by video from Canberra)

Small Business Commissioner SA

- John Chapman, Small Business Commissioner
- Stephanie Burke, Project Manager & Policy Analyst

Solo Resource Recovery

- Robert Richards, Managing Director
- Idwall Richards, Director
- Adrian Rose, State Manager
- Barry Cosier, Tendering Manager
- Mike Ritchie, Managing Director, MRA Consulting Group

City of Adelaide

- Danielle Arnfield, Team Leader Procurement and Contract Management
- Tracie Dawber, Associate Director, Finance
- Peter Patterson, Associate Director, Public Realm
- David Bland

City of Charles Sturt

- Paul Sutton, CEO
- Jan Cornish
- Darren Birbeck
- Loren Mercier

City of Marion

- Vincent Mifsud, General Manager, Corporate Services
- Colin Heath, Unit Manager, Contracts

City of Port Adelaide Enfield

- Leanne McEwan, Manager Community & Environment Health

Australian Organics Recycling Association (AORA)

- Peter Wadewitz Director, Managing Director of Peats Soil and Garden Supplies

Cleanaway

- Conan Hookings, Acting General Manager
- Arthur Garas, Commercial Finance Manager
- Josh Hull, Business Development Manager

East Waste

- Rob Gregory, General Manager

Jeffries Group

- Ben Randall-Smith

J.R. Richards & Sons

- Paul Welch, General Manager

Local Government Association of South Australia

- Emily Heywood-Smith, Senior Policy Officer

National Waste Recycling Industry Council (NWRIC)

- Alex Serpo, Secretary

PAR Recycling Services

- Graham Knowles, Chief Operating Officer

Peats Soil and Garden Supplies

- John Hogarth (nominal Spokesperson), Commercial Manager
- Peter Wadewitz, Managing Director, Director of AORA

Polytrade Recycling

- Colin Tsang, Project Manager

SA Composters Pty Ltd

- Matt Quinn, Managing Director

Scout Recycling Centres

- Warren Stone, General Manager

SKM Recycling

- Uelese Mika, State Manager

SUEZ Recycling and Recovery

- Paul Haslam, State General Manager, South Australia

Trevor Hatch Waste and Recycling

- Trevor Hatch

Waste-Away SA

- David Eames, Company Director
- Jenny Pattison

Waste Contractors & Recyclers Association of NSW (WCRA)

- Greg Turner, Treasurer, Chief Operating Officer JR Richards

Conference commenced: 10:10am ACST, 10:40am AEST

Introduction

Commissioner Court welcomed the attendees, introduced ACCC staff present, made some introductory remarks outlining the purpose of the conference, provided an overview of how the conference would be conducted and then opened the conference for discussion.

Opening statements

Commissioner Court invited WRASA, as the first party to call the conference, to make a statement.

Scott Geer, member and spokesperson for WRASA, stated that:

- Council Solutions plans to run separate tender processes for collection services, processing services and ancillary services. However, Council Solutions intends to advertise all three tenders at the same time and will encourage tenders encompassing all three services streams. This means that the concerns that led the ACCC to reject Council Solutions' 2016 application for authorisation remain.
- It would be more efficient to include some of the ancillary service streams in the collections tender, so that a single supplier could provide both these services.
- The processing tender should be run first so that collections tenderers will know the disposal or processor locations and requirements.
- The correct market within which to examine the impact of the proposed collections tender is the Adelaide metropolitan region rather than the wider Greater Adelaide region argued by Council Solutions. The reasons for this include that the same 3-bin system is used in this region, it aligns with state waste planning, data collection and comparison regions and depot and processing locations.
- If the proposed joint tender goes ahead, Tea Tree Gully and Onkaparinga will also likely join the Council Solutions Group. If it does not go ahead, geographically adjacent councils will be likely to group together in smaller groups, realising efficiencies without lessening competition for the supply of collection services.
- The joint tender is unlikely to realise transaction cost savings because of the complexity of the tender process, for tenderers and the participating councils, and because of the ongoing involvement individual councils will still need to have in the process.
- Efficiencies through contract management will not be realised because Council Solutions has no experience in waste management and because the ongoing involvement of both Council Solutions and the participating councils means that there will be duplication of administrative tasks.
- Efficiencies in waste collection will not be realised because of the geographic spread of the councils and because costs per household increase as contracts get larger. In this respect, the councils individually already have the critical mass necessary to realise efficiencies in waste collection.

- The participating councils do not need to jointly tender to implement effective waste diversion education campaigns. Individual councils can and do have customised education programs allowing for targeted initiatives. Waste diversions rates are typically higher for smaller contracts.
- The proposed joint tender is likely to receive less responses than if each council tendered individually, or paired with a neighbouring council. The greater the number of properties to be serviced, the fewer tenderers that bid.
- The capital requirements, and bank guarantee for a contract of the size proposed are beyond the reach of small and medium size businesses, meaning that only a few, larger companies, will be able to bid for the contract.
- The long lead time, size and proposed duration of the contract will make it difficult for potential suppliers to price the tender, especially given the uncertain state of the industry. Tenderers will therefore need to build risk premiums into their pricing.
- Other than Council Solutions and its participating Councils, there have been no submissions supporting the application and many against or neutral.

Commissioner Court invited the other parties who had called the conference to make opening statements.

Chris Brideson, Executive Officer, WRISA:

- Contrasted the level of financial planning and documentation required of waste businesses to win grants and contracts worth hundreds of thousands of dollars to the level of evidence of financial planning and documentation supplied by Council Solutions to date in support of an application for authorisation to run a tender for a \$25 million per annum contract for 10 years.
- Questioned Council Solutions' substantiation of its claimed public benefits and how it would return its claimed savings to ratepayers.

Alex Serpo, Secretary, National Waste Recycling Industry Council (NWRIC), stated that:

- NWRIC supports joint tendering by councils for waste contracts if they have the following features, which are important to the realisation of public benefits:
 - opportunities are frequent and spread out to maximise competition
 - the transparency and availability of tender documentation is maximised
 - market approaches occur frequently and evenly to encourage innovation (to allow businesses that wish to innovate frequent opportunities to test innovations on a small scale)
 - the size of the tenders matches the efficient scale of the assets.
- NWRIC opposes joint tenders such as the present one proposed by Council Solutions that do not meet these criteria.

Paul Welch, General Manager, JR Richards and Sons, stated that:

- JR Richards and Sons does not operate in South Australia, they have been in business for 60 years and have around 30 collection contracts in New South Wales.
- They would look to enter the South Australian market but the size and risk profile of the proposed Council Solutions tender would deter them from tendering.
- They have the capacity and capital to tender for a contract of the size proposed but would not do so because of the risk involved. The main risks are:
 - the significant capital requirements in an industry in a great deal of flux, it would be better to invest capital elsewhere, in less risky contracts
 - management of smaller contracts is much easier and less risky, especially if things go wrong
 - the duration of the proposed contract, as pricing a longer contract is difficult, meaning a higher risk premium would need to be built into the contract price.
- Their experience with large contracts elsewhere is that servicing multiple councils through a single contract makes managing the provision of the collection service more difficult.

John Hogarth, Commercial Manager, Peats Soil and Garden Supplies, stated that:

- He has a similar view to previous speakers about the benefits of smaller contracts. In particular, smaller contracts make it easier to manage problems as there are fewer layers to negotiate.
- Peats Soil and Garden Supplies is an organics receiver and processor. Small changes in contamination levels have large impacts on managing waste receipt and processing and Peats is concerned that there will be no incentive on Council Solutions to manage contamination issues proactively.

Peter Wadewitz, Director, Australian Organics Recycling Association (AORA), stated that:

- There are two organic reception composters in Adelaide. One tender incorporating four Councils will mean that the losing composter suffers a substantial business loss.
- In their experience, smaller councils strive harder to decrease contamination, with improved processing and environmental outcomes.

Warren Stone, General Manager, Scout Recycling Centres stated that he agreed with the concerns about the proposed joint tender others had raised.

After hearing from all parties present who had called the conference, **Commissioner Court** invited opening statements from other interested parties.

Robert Richards, Managing Director, Solo Resource Recovery stated that:

- The proposed tender will be the second largest in Australia. In particular, 180 000 tenements means the capital outlay (trucks and mobile garbage bins) will be around \$55-\$60 million. Such a large capital outlay, and the associated bank guarantee, is beyond the reach of most small to medium businesses. The comment in the ACCC's

draft determination that these capital costs are not incurred until after the tender is awarded suggests that companies, regardless of size, could scale up if they won the tender. However, tenderers have to demonstrate that have the capacity and capital to service a contract before they tender.

- While the proposal has been split into three waste streams, Solo's understanding is that Council Solutions intends to call the tenders for all three at the same time and openly invite tenders to cover some or all waste streams. This means that the concerns that led the ACCC to reject Council Solutions 2016 application for authorisation remain.
- Solo wishes to correct some statements made in the ACCC's draft determination and Council Solutions' application for authorisation:
 - both the ACCC and Council Solutions appear to assume that Solo would be one of six large waste companies in Adelaide that could bid for the Council Solutions contract. However, Solo does not consider itself a large waste company despite its 80 years of experience. It has around 650 staff compared to larger operators who are multination companies with between 5,000 and 160,000 staff. Solo will not be able to bid for the collection tender as proposed by Council Solutions and neither will other similar sized companies
 - the assertion that small to medium sized companies shut out of the Council Solutions contract can find work elsewhere is an oversimplification. For example, Solo has tried to expand into Perth. However, Perth is a very concentrated market and Solo has been successful in only one of the 17 tenders they have participated in. The tender they were successful in is a very small one, Cottesloe, 3,000 properties. Even if small suppliers can tender elsewhere that does not preserve competition in Adelaide
 - the participating councils are big enough individually to entice large companies to tender. Three large companies have previously tendered for their contracts including the previous incumbent
 - larger tenders are unattractive to suppliers, including large companies.
- Solo's cornerstone of competition, like all small to medium size companies in the industry, is innovation. For example, Solo introduced robotic arm side lifting trucks into Australia which decreased kerbside collection costs by nearly half.
- Solo expanded out of its Northern NSW base through a series of contracts that were straight forward, servicing a manageable number of properties. Solo was able to enter the Adelaide market by securing the contract for the City of Marion and has been able to expand on the back of that.

Commissioner Court noted that Solo already provides collection services to three of the four participating councils and asked whether there would be an issue in servicing one additional council? **Mr Richards** stated that tendering for four smaller contracts, staggered over time, is very different to tendering for one contract for the same number of properties. The risk is much greater, both in terms of the capital commitment and managing the delivery of service.

Mr Richards also stated that:

- Incremental expansion allows a supplier to gain and draw on experience and manage risk, both in terms of capital requirements and managing delivery of service.
- Solo would like to see other small and medium size suppliers competing to supply collection services in Adelaide, the more potential suppliers competing to supply services the better. But a contract of the size proposed will limit their opportunities to do so. If the trend to larger contracts continues the market will become heavily concentrated and once that happens it cannot be undone. Competition is best promoted by providing a regular stream of opportunities for contracts of a manageable size.

Scott Gregson, Executive General Manager, Merger and Authorisation Review Division, asked what Solo's largest current contracts are? **Mr Richards** stated that Solo has contracts of varying size from a couple of thousand properties up to 88,000 properties but for contracts above this size, the risks in managing the contract are too great for a business like Solo.

John Chapman, Small Business Commissioner SA stated that:

- No real public benefits have been substantiated by Council Solutions.
- While Council Solutions proposes to tender separately for each waste stream, the three tender processes will be run concurrently which will create difficulties for suppliers in meeting the tender requirements.
- The proposal will reduce competition for the reasons other speakers have already raised.
- The bank guarantees required for a contract of the size proposed mean that small businesses will be unable to bid.

Mr Chapman also questioned how Council Solutions will manage the process given the substantial resources required to do so, when it is not proposing to charge an administration fee.

Jill Lawrence, Director Advocacy Team, The Office of the Australian Small Business and Family Enterprises Ombudsman, stated that they support the views put by the Small Business Commissioner SA and also stated that it was unrealistic to treat the three tenders as separate processes if they will be run concurrently.

Conan Hookings, Acting General Manager, Cleanaway stated that he supported the statement made by WRISA.

Greg Turner, Treasurer, Waste Contractors and Recyclers Association of NSW (WCRA) stated that:

- WCRA supports the statement of JR Richards and Sons.
- WCRA often supports joint tenders, particularly where there are synergies between the Councils and where aggregation is necessary to reach a critical mass of tenements. However, large complex contracts of the size proposed by Council Solutions are likely to reduce competition.

Mike Ritchie, Managing Director, MRA Consulting Group, stated that he has been engaged as a consultant by Solo but that he had provided a submission in his own right and that he would be speaking to that submission. He stated that:

- Based on his experience in the waste industry, he understands what Council Solutions is trying to achieve. However, Council Solutions has misunderstood the relationship between scale and price. In processing and treatment of waste including energy collection, scale is needed. However, this is not the case for collection services.
- The capital requirement to service the Council Solutions contract would be in the range of:
 - \$23 million for trucks
 - \$10 million for a depot
 - \$24 million for 540,000 mobile garbage bins.
- These capital requirements, along with the necessary bank guarantees would preclude small and medium size businesses from bidding.
- The more properties serviced through a single contract, the less knowledge about local factors and additional risks in servicing the contract the successful tenderer will have. This additional risk has to be factored into pricing.
- MRA's research, as summarised in their written submission shows that:
 - small tenders attract more bidders and once the size of the contract gets above around 80,000 properties, the number of bidders drops off
 - prices increase the larger the contract due to issues around knowledge of the area being serviced and increased risk.
- It is unlikely that trucks can work across council boundaries as claimed by Council Solutions because each council is invoiced separately based on volumes. If trucks operated across more than one council, during a single run, each bin would need to be weighed as collected for the purpose of invoicing the council.

Commissioner Court asked Bruce Wright, on behalf of the applicant, Council Solutions, if he wished to address the conference.

Bruce Wright, Senior Procurement Officer, Council Solutions, stated:

- Council Solutions is wholly owned by six councils, CEOs from each council sit on the board. Council Solutions has engaged in collaborative procurement for over 20 years. It manages over \$60 million of contracts per annum for its member councils and sometimes, other councils. Council Solutions has a team of procurement specialists. Councils identify potential collaborative procurement opportunities and engage Council Solutions to handle the process. The participating councils have identified waste services as one such opportunity.
- Council Solutions has addressed the concerns that led the ACCC to deny authorisation to their 2016 proposal by: separately tendering for each of the three waste streams; issuing requests for tenders with common specifications across

Councils rather than a request for proposal; and simplifying the bidding process, allowing small and medium size businesses to tender to supply ancillary waste services by running discrete request for tenders for each ancillary service, separate from the kerbside collections request for tender.

- The request for tenders will be released concurrently so that potential tenderers can assess all the available opportunities, but each request for tender will be assessed separately.
- The proposed joint tenders will realise transaction cost savings, efficiencies in contract management and environmental benefits.
- With respect to concerns raised about weighing bins when a collection route covers properties in adjoining councils, pricing will be based on a per bin collection rate.
- Efficiencies in service delivery will be achieved by optimising collection routes across council boundaries, in maintenance, back up trucks, purchasing power for the supplier in purchasing trucks and greater productivity in support staff.
- With respect to capital requirements:
 - for mobile garbage bins, Council Solutions is not intending to replace all 540,000 bins. Rather, bins will be replaced as needed, for example, when they are damaged
 - the successful tenders will need to purchase a new fleet of trucks and will need to establish a depot if they do not already have one.

Commissioner Court asked whether representatives of the participating councils wished to address the conference.

Paul Sutton, CEO, City of Charles Sturt, spoke to a prepared statement which is available on the ACCC public register from the following [link](#). The main points Mr Sutton made were:

- The proposed collaborative approach between the councils will lead to the best value for money outcome for them.
- The City of Charles Sturt supports the assessment in the ACCC's draft determination about the likely public benefits of the proposed joint tender and that the likely public benefits will outweigh the likely public detriment.
- The City of Charles Sturt has 25 years' experience in collaborative procurement and based on this previous experience they are confident the benefits and cost savings they have identified will be achieved. In recent times the City of Charles Sturt has collaborated with other Councils on a number of waste related projects delivering savings of \$1.2 million per annum compared to previous contracted prices.
- In relation to transaction costs, past experience has been that collaborative procurement has resulted in significant savings. In relation to the current proposal, collaboration means that tasks that would otherwise have to be done four times will only need to be done once.
- Cost saving have already been realised in relation to the current proposal through use of joint expert technical and commercial expertise and joint legal support. For

bidders, dealing with consistent specifications in responding to a single tender will result in cost savings.

- Efficiencies are likely to be achieved in contract management, data management and evaluation, optimising collection routes, and reducing the number of spare trucks required.
- Council Solutions' role will be funded by contributions from the councils. Council Solutions is a not for profit organisation.
- The assertion that smaller councils have better waste contamination rates is more likely to be related to socio-economic factors. Smaller communities are generally more engaged in community education programs. This illustrates the importance of combined education campaigns.

Danielle Arnfield, Team Leader Procurement and Contract Management, Adelaide City Council, spoke to a prepared statement which is available on the ACCC public register from the following [link](#). The main points Ms Arnfield made were:

- Adelaide City Council supports the conclusions in the ACCC's draft determination.
- Councils have specific obligations to deliver value to ratepayers and the joint tender supports that. If Council Solutions were unable to obtain the best value for money outcome then the CEOs of the Councils on its board would take it to task.
- Adelaide City Council's previous experience with other contracts is that joint tendering increases efficiencies and decreases costs. In addition, it is easier for one central manager to deal with issues that arise across council areas.
- The resourcing that would go into a waste tender, should the council undertake it itself, is significantly higher than its current resourcing for the Council Solutions combined project.
- There will be improved efficiencies through combined contract management. Whilst councils will continue to have a day to day involvement in the operational aspects of the contract the support Adelaide City Council has received from Council Solutions on other collaborative procurements has driven efficiencies and allowed it to focus on operational rather than administrative and performance management issues.
- There will be improved efficiencies in the provision of the services through optimisation of collection routes.
- The proposed joint tender will lead to stimulation of competition and encourage innovative solutions that have been lacking in municipal waste collection to date. It is arguable that the concern about a lessening of competition is driven by the current market structure which is resulting in less than competitive rates and a lack of innovation. The real concern of some opposed to the proposal is an increase in competition, demonstrated by approaches to councils by individual market players to enter into direct negotiations for future contracts, which is contrary to supporting an open and transparent competitive market.

Vincent Mifsud, General Manager, Corporate Services, City of Marion, stated that the City of Marion supports the views expressed by the other councils. Mr Mifsud also stated that:

- The council's sole focus is on providing ratepayers value for money and the proposed joint tender will achieve this.
- Savings will be passed on to ratepayers. The City of Marion's rate increases over the last four years have been less than CPI. This has been achieved, in part, by passing on the savings realised in collaborative tender processes.

Sarah Court opened the conference for discussion and invited additional comments in relation to the issues raised.

Scott Geer, member and spokesperson for WRASA, questioned how Council Solutions can know that they will get the setting right in specifying the collections tender if arrangements for the processing of waste had not been determined.

Commissioner Court asked whether Mr Geer's view was that the processing tender process should be run first to address this issue?

Mr Geer stated that it is common for processing arrangements to be finalised first and that this would resolve some issues but not others.

In relation to mobile garbage bins Mr Geer noted that the successful tenderer would sub-contract for a provider, but this did not address concerns about a single supplier being awarded the contract for such a significant proportion of mobile garbage bins in Adelaide.

Mr Geer also stated that, as the onus is on the applicants to establish that the test for authorisation is met, it would be useful to know what resources they are expending on the joint procurement process.

Adrian Rose, Managing Director, Solo Resource Recovery stated, in relation to mobile garbage bins, that the bins in the three Council areas serviced by Solo are past their use-by date. Some are already 20 years old and therefore the capital required to maintain/replace bins over the life of the contract will be significant.

Jill Lawrence, Director Advocacy Team, The Office of the Australian Small Business and Family Enterprises Ombudsman asked about Council Solutions' capacity to manage a contract of the size proposed.

Bruce Wright, Senior Procurement Officer, Council Solutions, stated that Council Solutions' largest contract is a five year facilities and cleaning contract involving six councils worth \$3.5 million per annum. They received a 10% improvement in contract prices through joint tendering. Council Solutions led the coordination of the tendering with input from councils including their facilities managers. The day-to-day management of the contract is managed by the councils with overarching management by Council Solutions.

Commissioner Court then called for any further comments. No further comments were made.

Concluding remarks

Commissioner Court invited further submissions by **12 September 2018**. Commissioner Court explained that the ACCC must make a final decision by no later than **22 October 2018** and expected to make a final decision in early to mid October. Therefore, it is important that submissions are received by 12 September 2018 if parties wanted the ACCC to have regard to them.

Commissioner Court noted that the ACCC would provide participants with a record of the conference, which would also be placed on the ACCC's public register.

Commissioner Court explained that the ACCC will consider the matters raised at the conference and any further submissions before deciding whether or not to grant authorisation.

Conference ended 12:50pm ACST, 1:20pm AEST.