

AA1000414 Submission 12 June 2018

The following submission outlines how the Proposed Conduct under AA1000414 (Application for authorisation for Waste Collection Services) is distinct and different from A91520 and addresses the concerns of the ACCC when denying authorisation of A91520.

Application AA1000414 seeks authorisation of the Proposed Conduct with regard to undertaking a Request for Tender for the provision of Waste Collection Services. As foreshadowed in AA1000414, Council Solutions has also submitted discrete and separate applications to the ACCC for Proposed Conduct associated with conducting Request for Tenders for the:

- Processing Service Streams (AA1000419); and
- Ancillary Service Streams (AA1000420).

Each of these applications has also been developed to address the concerns expressed in the ACCC's Final Determination for A91520, however the focus of this submission is the Proposed Conduct under Application AA1000414.

Council Solutions is happy to provide any additional information should it be required by the ACCC.

Proposed Conduct: AA1000414 vs A91520

Council Solutions notes the ACCC will assess AA1000414 on its merits as a new application pertaining to the Proposed Conduct and not as an 'update' or 'response' to the determination given to A91520. However, Council Solutions takes this opportunity to outline where the concerns of the ACCC in denying authorisation for the conduct proposed in A91520 have been addressed in the Proposed Conduct outlined in AA1000414.

The Proposed Conduct in AA1000414 is straightforward. That is, to undertake a public Request for Tender (**RFT**) on behalf of four Greater Adelaide Region Councils to award a contract to a sole supplier for Waste Collection Services (collection of the 3-Bin System only) and undertake contract management of the resultant contract.

Council Solutions highlights the following differences in the Proposed Conduct in AA1000414 to the conduct proposed in A91520:

1. So far as A91520 led to a finding there would not be a net public benefit in the form of transaction cost savings due to the larger number of Councils and service streams and the greater complexity of the Request for Proposal (**RFP**) process.
 - a. There are four Participating Councils in AA1000414 rather than five in A91520.¹
 - b. In AA1000414 there is only one service stream, being Waste Collection Services (comprising the collection of the kerbside 3-Bin System only (including provision and maintenance of MGBs)).

Comparatively, in addition to the collection of the 3-Bin System, the RFP process under A91520 also included six additional service streams:

- Hard waste collection;

¹ Council Solutions notes in the Determination made 1 February 2018 for applications A91596 & A91597 Loddon Mallee Waste and Resource Recovery Group & Ors (**Loddon Mallee**), the ACCC determined transaction cost savings could be found with eight participating councils; AA1000414 is half the size.

- Bulk bin/multi-unit bin collection;
 - Street and footpath litter bin collection;
 - Processing of recyclables;
 - Processing of organics; and
 - Processing and/or disposal of residual waste.²
- c. There will be a single Request for Tender in AA1000414 rather than the previously proposed Request for Proposal in A91520.³
- d. The result of AA1000414 will be one supplier awarded a contract for all four Participating Councils for a single service stream (Waste Services Collection).

In contrast, A91520 proposed a single Request for Proposal be released to the market for all seven waste service streams with the option for suppliers to submit proposals offering the provision of any one or more waste service streams to any one or more of the five Councils participating, with the option for contracts to be awarded to one or multiple suppliers, resulting in the potential for a large number of possible service stream and supplier combination scenarios to be analysed as part of the RFP evaluation process⁴.

- e. The Proposed Conduct in AA1000414 is also less complex and more certain for suppliers than A91520 as they will tender for provision of a single service to all four Participating Councils.

Further, in the future without the Proposed Conduct in AA1000414, each Participating Council will undertake their own individual procurement processes for provision of Waste Collection Services (i.e. four separate procurement processes). Council Solutions has provided detail at paragraph 6.1 of the application of the work required to conduct an individual tender and how the single RFT process under the Proposed Conduct will lead to a significant reduction for each individual Participating Council by applying the Roles and Responsibilities outlined in Table 2 at paragraph 4.3.4.

2. So far as it led to a finding there would only be a small public benefit of improved environmental outcomes as a result of improved community education.

- a. As per paragraph 6.1.2 of the application, the education programs proposed in AA1000414 will be more targeted and consistent across the Participating Councils. As also pointed out in the same paragraph, South Australia's waste diversion outcomes are **decreasing**, even from A91520. Therefore the current education programs are not working as efficiently as required. The increased focus on data capture and reporting, together with the commitment to feed the results into Green Industries SA will also allow the statewide education programs they facilitate to become more effective.

Council Solutions acknowledges the change from individual education programs to collaborative programs may seem small, but the impact is exponentially larger, especially in the current diversion situation and notes this is supported by the submissions with regard to AA1000414 made by the SA EPA and Green Industries SA.

² Council Solutions notes the ACCC determined transaction cost savings could be found with five service streams in Loddon Mallee.

³ In Loddon Mallee, the ACCC determined transaction cost savings could be found where multiple RFTs occurred in one set of proposed conduct.

⁴ Cf Loddon Mallee where the proposed conduct allows providers to bid for "one or multiple services for each, or several, of the participating councils" with the ACCC determining transaction cost savings could be found.

3. So far as it led to a finding the proposed conduct would likely result in some public detriment constituted by a lessening of competition by deterring or preventing some suppliers from participating in the tender process or submitting competitive bids due to the increased scope and complexity of the RFP process.

- a. As outlined above, A91520 proposed a single RFP to be released to the market for all seven waste service streams with the option for suppliers to submit proposals for provision of any one or more service streams to any one or more of the five Councils participating, with the option for contracts to be awarded to one or multiple suppliers.

In contrast, the Proposed Conduct of AA1000414 outlines:

- A traditional RFT;
- A single service stream, being Waste Collection Services; and
- A requirement to service all four Participating Councils (i.e. a sole supplier will be appointed).

This significantly reduces the perceived complexity of the tender process.

- b. Council Solutions has identified at Annexure 2 of AA1000414 existing and potential suppliers for Waste Collection Services. All suppliers that Council Solutions met with to discuss the Proposed Conduct of AA1000414 indicated that the opportunity presented by the proposed RFT process was attractive. No concerns were expressed by the existing or potential suppliers to Council Solutions regarding the complexity of the Proposed Conduct.

- c. In A91520, the length of time between tendering and contract award, and the potential for various combinations of councils and service streams led the ACCC to determine there was a risk of sub-optimal pricing as this uncertainty would be factored into the prices submitted.

The Proposed Conduct in AA1000414 has removed this uncertainty in the following ways:

- The time from contract award to contract commencement will be nine to 12 months, which is required by the industry to allow for the purchase and commissioning of new trucks, therefore is already what the potential suppliers work with when submitting pricing.
- The pricing will be for a single service stream, being Waste Collection Services, and to service all Participating Councils. The requirement to provide a price for each Council is only necessitated by the topographical and density differences found between any Councils and to ensure best value outcomes for all. The pricing will be evaluated holistically, therefore there is no requirement to tender as though a potential supplier would only be awarded one, two, three or all of the Participating Councils.

4. So far as it led to a finding the proposed conduct would likely result in fewer providers of waste services in metropolitan Adelaide leading to some public detriment constituted by reduced competition in the long term.

- a. The RFP outlined in A91520 allowed a potential outcome for one supplier to be awarded one contract for all five participating Councils across all seven service streams.

Under the Proposed Conduct in AA1000414, a single supplier will be appointed for the provision of one service stream only being Waste Collection Services for the four Participating Councils.

- b. More broadly with regard to the Waste Management Services Project as a whole (as outlined in paragraph 4.2.1 of the application), Council Solutions confirms that separate RFT processes are planned for the Processing Service Streams (as per AA1000419) and the

Ancillary Service Streams (as per AA1000420).

The proposed conduct of these two additional applications is discussed within the respective applications, however for context Council Solutions confirms the approach to market separates the service streams into three discrete Request for Tenders to:

- reduce the complexity of the procurement process by simplifying the bidding process for suppliers and the tender evaluation process for the Participating Councils;
- group the waste services to align with the supply market capabilities and specialisations; and
- allows the small to medium enterprises, who typically deliver the Ancillary Service Streams, the opportunity to more easily participate in the procurement process by releasing a discrete RFT for these services.

AA1000419 RFT 2: Processing Service Streams consists of:

- Receipt and processing of recyclables;
- Receipt and processing of organics; and
- Receipt and processing or disposal of residual waste.

Tenderers may bid for one, two or all Service Streams. If bidding for more than one Service Stream each offer of a Service Stream must be separable.

AA1000420 RFT 3: Ancillary Service Streams consists of:

- Multi-unit collection of Bulk Bins and processing or disposal of the waste (including the supply and maintenance of the bins);
- Kerbside collection and processing or disposal of Hard Waste; and
- Collection of park and footpath litter and/or recycling bins and disposal or processing of the waste.

Tenderers may bid for one, two or all Service Streams. If bidding for more than one Service Package each offer of a Service Stream must be separable.

- c. Council Solutions further confirms the same provider **will not** be awarded all service streams for all three RFTs.
- d. As per paragraph 6.2.2 in AA1000414, the same supplier is currently contracted by three out of the four Participating Councils for provision of Waste Collection Services. This concentration in the market has been occurring without the Proposed Conduct, and without the realisation of the associated public benefits.

Under the conduct proposed in AA1000414, the only outcome where one provider would have a greater market share than the current market leader currently enjoys is if that market leader won the Waste Collection Services contract under the Proposed Contract, in which case their market share would grow by **one Council**. Additionally, as the current market share analysis shows, this outcome could occur even should the Participating Councils conduct individual tender processes and does not affect the 'future with and without' assessment.

In closing, Council Solutions is confident the simplified Proposed Conduct under AA1000414 and the detailed information provided in the application will provide the ACCC with confidence the public benefits will be realised under the Proposed Conduct and any detriments have either been removed or minimised.