

Waste & Recycling Association of South Australia Inc.

Submission by Waste and Recycling Association of South Australia

Identified Issues with the Tender Documents re Application AA1000414
Kerbside Collection Services

October 3, 2018

Council Solutions have released the tender documents for all 3 Applications simultaneously, all tenders close on the same day and they openly invite alternative tenders for combinations up to 6 of the 7 services across the 3 Applications. This directly undermines the conclusions from the ACCC's rejection of Council Solutions' 2016 application.

WRASA have reviewed the documents and have attached a version which includes notations throughout that highlight the main concerns with the Collection Services specification

We note that the annotated documents attached identify numerous issues that in our opinion will result in net public detriment, in particular with regards to transaction cost savings, efficiencies in collection and contract management and lessening of competition.

We note the most significant points of concern include:

1. Tender Price Schedule – Pricing for each Council to north and south centroids independent of the other Councils does not recognise that the depot and management arrangements required (likely across 2 depots) will vary depending on whether each Council decides to go to the north or south. Upwards pressure on tendered prices results from respondents having to allow for possible variations in the extent of work from each depot.
2. The alternative facility rate does not adequately address both (a) the outside centroid 1 and 2 area and (b) the need for pricing if any of the initial disposal facilities changes. There are many scenarios where Council will pay more when the total transport required by the contractor is less. This would result in a net detriment if the alternative facility is required.
3. Contract extensions are entirely at the Councils' option. For the collection tender this means that respondents must assume both the risk of a longer 10 year term and higher amortisation rates of a 7 year term. For the recyclables processing tender, the 4+3+3 year term, with extension options at the Councils' discretion, will require recyclables processors to assume they may be required for a 10 year term and price in the increased risk accordingly. On the other hand only a 4 year term is guaranteed which is insufficient for new capital investment undermining Council Solutions' claim of attracting new participants or new technology to Adelaide. We note that the 10 year term follows a lead time of 18-30 months, which in itself recyclables processors would not guarantee in the current climate without full benchmark pricing.

4. Regarding bins, a bin rollout is specified as a possibility but details are unknown. However prices are required now, which as described in the annotated tender documents, could result in a significant public detriment. Also given the age of the bins, high bin attrition rates will be factored into tender pricing but there is no mechanism to remove them should a new bin rollout be completed during the term, at which point attrition rates and bin maintenance costs would be reduced for the contractor to the detriment of individual Councils and their ratepayers.
5. FOGO frequency from fortnightly to weekly – there are requirements in the price schedule for pricing for a FOGO service weekly and Residual Waste fortnightly. However the tender documents are silent with regards to any details including timing of this service. The Councils may end up applying a price later in the contract that was submitted with no information and high risk. A clear public detriment.
6. Bank guarantee – there are no bank guarantee amounts specified in the Annexures of the respective contracts. Council Solutions has specified, “\$TBA.” As the only clause in the tender documents that is TBA (to be advised) we highlight that the likely multimillion dollar bank guarantee has been a key concern of Industry and State and Federal Small Business Commissioners throughout the ACCC authorisation process. It is a straightforward figure to determine and there is no substantive reason why Council Solutions would not know its proposed Bank Guarantee. It is unprecedented for a waste tender specification to be released without this basic information. [REDACTED]
[REDACTED]
[REDACTED]
7. Lead time for pricing and rise and fall – Pricing by respondents to the tenders must hold prices for 270 days, longer than standard and longer than, for example, bin companies state that their prices are applicable for (180 days). In addition, the first service rate review does not take place until 21 to 42 months after submissions are made, depending on the index and the respective Council’s commencement date. This is an unusually long period for tenderers to hold prices and will see risk premiums priced into base prices at submission in December, 2018. This aspect of the tender documents, together with other relatively high risk elements of the tender specification, is likely to result in higher prices and net public detriment.
8. Risk – Parties other than Council Solutions have not known until now what the risk profile of the contract will be. Now that the tender documents have been released we note the tender specification does not provide certainty to tenderers with regard to the basis for payment as Council Solutions does not guarantee the number of scheduled services on which payment is to be based and in fact the specification infers payment will be based on a ‘per lift’ basis i.e. per bin actually collected. This is unprecedented in the Industry and is likely to result in higher prices due to the significant risk. We further note that Council Solutions has placed risk for force majeure (government action), market fluctuations (such as China National Sword), contract document precedence and the cost of contamination on the contractor. All of these factors are likely to put upwards pressure on prices, reduce

competitive participation in the tender and result in submissions of lower value to the Councils and their ratepayers.

9. Disposal invoices evidence – the tender documents are clear in several places that the quantities of tonnes for each stream for each load for each Council must be accurately reported and evidence of quantities provided (in the form of weighbridge docketts). This creates difficulty for contractors should they attempt to collect material from more than 1 Council in a single load, as promoted by Council Solutions. Aside from crossing boundaries creating a number of operational detriments, it also conflicts directly with one of the key requirements of the tender specification.

Based on our members extensive experience, the tender documents released by Council Solutions are incomplete, lacking in necessary detail and clarity and are likely to result in pricing from any respondents that does not represent best value for individual Councils and their ratepayers.

We also reiterate that the 3 tenders have been released on the same day, close on the same day and encourage submissions that incorporate services from all 3 Applications. **This directly undermines the conclusions from the ACCC's rejection of Council Solutions' 2016 application.**

Yours sincerely



Scott Geer
WRASA