



# Conference Record

Application for Authorisation – AA1000420

Lodged by Council Solutions (ancillary services)

**Scheduled: after 11:00am Adelaide time, 11:30am AEST (once preceding conference for Application for Authorisation AA1000419 finished)**

**22 October 2018**

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

**and**

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

**and**

**ACCC office  
Level 17, 2 Lonsdale Street  
Melbourne VIC**

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 (conference Chair)
- Joanne Palisi, General Manager, Adjudication
- Gavin Jones, Adjudication
- John Rouw, Adjudication
- Imogen Hartcher-O'Brien, Merger and Authorisation Law Unit
- Tanya Hobbs, Adjudication (by video from Canberra)
- Tessa Cramond, Adjudication (by telephone from Melbourne)
- Sophie Mitchell, Adjudication (by telephone from Melbourne)

### **Applicants**

#### ***Council Solutions***

- Clare Coupar, Acting CEO
- Bruce Wright, Senior Procurement Officer
- Kyffin Thompson, Partner, BDO Australia

#### ***City of Charles Sturt***

- Darren Birbeck, General Manager, Corporate Services
- Fiona Jenkins, Coordinator, Waste and Sustainability
- Loren Mercier, Acting Coordinator, Waste and Sustainability

#### ***City of Marion***

- Colin Heath, Unit Manager, Contracts

#### ***City of Port Adelaide Enfield***

- Mark Withers, CEO

### **Interested parties**

The conference in relation to the draft determination in respect of application for authorisation AA1000420 was held immediately after a conference in relation to the draft determination in respect of application for authorisation AA100419. The list below indicates those parties who signed the attendance record for the two conferences. Some of those parties left before the conference in respect of application for authorisation AA1000420 began.

#### ***Australian Organics Recycling Association (AORA)***

- Uma Preston, SA Secretary and Policy Officer

### ***City of Onkaparinga***

- Gary Herdegen, Manager, Fleet, Civil and Waste Operations

### ***Cleanaway***

- Arthur Garas, Commercial Finance Manager
- Josh Hull, Business Development Manager

### ***East Waste***

- Rob Gregory, General Manager

### ***IWS***

- Stephen Avers, General Manager, Operations

### ***Jeffries***

- Paul Haysman, Chairman

### ***Local Government Association of South Australia***

- Emily Heywood-Smith, Senior Policy Officer

### ***Northern Adelaide Waste Management Authority***

- Eddie Christopoulos, Collections and Processing Manager
- Danial Dunn, Resource Recovery Manager

### ***Office of the Australian Small Business and Family Enterprise Ombudsman***

- Sonia Jimenez Malfaz, Research Leader, Advocacy (by video from Canberra)

### ***Office of the Small Business Commissioner of South Australia***

- John Chapman, Commissioner
- Steph Burke, Project Manager and Policy Analyst

### ***Peats Soil and Garden Supplies***

- John Hogarth, Commercial Manager

### ***Scouts Recycling Centres***

- Warren Stone, General Manager

### ***Solo Resource Recovery***

- Rob Richards, Managing Director
- Adrian Rose, State Manager

### ***Waste & Recycling Association of South Australia (WRASA)***

- Scott Geer

### ***Waste and Recycling Industry Association of South Australia (WRISA)***

- Chris Brideson, Executive Officer

Conference commenced: 11:10am Adelaide time, 11:40am AEST

## Introduction

**Commissioner Court** welcomed the attendees, 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 party that called the conference, to make a statement.

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

- The tender price schedule for the ancillary service streams asks for prices for the collection of bulk bins and also smaller two wheel bins which are normally collected as part of kerbside collections contracts. This puts kerbside and ancillary collectors in competition as tenderers for ancillary waste collection can submit prices to collect bins that would normally be covered by the kerbside collections contract. Both will be submitting prices to collect two wheel bins from, for example, blocks of flats that use both bulk bins and two wheel bins.
- Each of the Participating Councils is currently serviced by different suppliers. Under the joint tender a single supplier could be appointed for each service stream. This will lessen competition compared to each Council tendering separately. **Commissioner Court** noted that the Councils could appoint two suppliers for some of the service streams if tender responses reflect that they will get a better deal by doing so. **Mr Geer** replied that they could, but it is also possible that a single supplier will be appointed for each service stream.
- The three service streams covered by the ancillary services tenders – bulk bins, street litter and hard waste, are distinct service streams not amenable to being considered through a single request for tender (RFT). It is unprecedented and inefficient that these three service streams would be grouped together in one tender. For example, there are natural synergies between street litter collection and kerbside collection and it would be more efficient to group kerbside and street litter collection services together.
- It is unclear from the tender documents whether suppliers will be required to collect and process waste, or just to collect the waste, with processing to be undertaken by suppliers appointed under the separate processing service streams RFT. This creates uncertainty, and risk for potential suppliers, which will deter some potential suppliers from bidding and increase the base prices submitted by those who do tender.
- The tender document price schedules have no option for suppliers to submit different prices for collection and delivery of waste to the northern centroid and southern centroid. This uncertainty about where the disposal facilities will be located creates uncertainty about transport costs for suppliers, which will be reflected in bid prices.
- Contract extensions are at the discretion of the Councils. This creates uncertainty and risk for suppliers. For example, collections contractors will have to purchase trucks but will not have certainty about the period over which they can amortise the trucks. Further, the tender documents do not specify whether individual Councils will

be able to extend contracts or whether all Participating Councils will need to agree to contract extensions.

- The tender documents do not provide for reimbursement by the Councils of the waste levy payable in respect of recyclables and organics waste processing.
- While the ancillary services tender is the lowest value of the three (kerbside, processing and ancillary), it is the most complicated. The tender documents do not specify which pricing schedules that tenderers can submit are mandatory and which are optional. This will also make assessing tender responses difficult as tenderers will not be providing consistent responses.
- Tenderers require a guaranteed base level volume of work on which they can base tender responses. However, the tender documents are unclear on this point, which creates uncertainty for tenderers. There is also significant potential for the volumes of work to vary significantly over the life of contracts.
- There are a number of small businesses currently supplying ancillary services to Adelaide Councils and the size of the proposed contracts will mean that some of these businesses are unable to bid.
- Required bank guarantees are not specified. Excluding this information from the tender documents prevents potential tenderers from developing best-value prices.
- Prices tendered need to be held for 270 days before a decision about which tenderer(s) to appoint will be made. It is unprecedented to have to hold prices for this long and it is onerous for tenderers to have to do so.
- Service rate reviews do not take place for several years after the contracts commence. When reviews do occur, they will be based on changes in the Consumer Price Index rather than relevant measures of costs incurred by suppliers such as electricity prices and wage rates. This will increase risk for tenderers, which will be reflected in tender prices.
- The tender document definitions of what constitutes a change of circumstance or force majeure specifically exclude government actions. This means that, for example, issues relating to the China National Sword policy and any future industry changes as a result of government action would not fall within these definitions. The specific exclusion of changes beyond the control of the contractor will likely reduce participation in the tender process and increase prices.
- The tender documents contemplate that successful tenderers across all three streams, and council representatives, will be brought together for meetings in relation to delivery of service, meaning up to 10 representatives will attend such meetings. This will make coordination difficult and increase contract management costs.
- Councils can increase or decrease the volumes of waste suppliers are required to collect, and potentially process, at any time and the risk of changes in volumes is borne by the contractor.
- Ancillary service providers bear the risk of any change to the disposal facility where waste is delivered. For example, if the Councils change suppliers used to process waste, this may increase the cost of transporting ancillary waste to the disposal facility. While such changes are beyond the control of the ancillary service stream contractors, they carry the risk of such changes being made.
- In summary, the tender documents are very complex, and most of the risk in delivering services will be borne by the contractor. This will increase prices tendered, add complexity for the Councils in managing the contracts and lessen competition for the supply of ancillary waste services to the Councils.

- The waste industry in South Australia has followed this process closely. The industry is well placed to assess the tender documents. Submission have been made outlining the industry's concerns and the industry is unanimous in the view that the proposed joint procurement will not result in a net public benefit or increase competition for the supply of ancillary waste services.

**Commissioner Court** invited the other attendees to make opening statements.

**Chris Brideson**, Executive Officer, WRISA, said WRISA had no comments other than to ask that those points made in its original submission continue to be taken into account.

**Sonia Jimenez Malfaz**, Research Leader, Advocacy, Office of the Australian Small Business and Family Enterprise Ombudsman, said that her comments in the conference about the processing service streams application for authorisation were also relevant to the ancillary service streams application. Specifically, the risks suppliers will be required to carry under the proposed tenders may preclude small businesses from tendering.

**Uma Preston**, SA Secretary and Policy Officer, AORA, said that she had nothing to add to her comments in the conference about the processing service streams application for authorisation.

**Commissioner Court** asked **Bruce Wright**, Senior Procurement Officer, Council Solutions, if he wished to address the conference. Mr Wright stated that:

- A lot of the issues raised at the conference related to the tender documents, rather than the public benefits and public detriments of the Participating Councils jointly procuring ancillary waste services.
- Some interested parties appeared to be using the conference as a tender document briefing session. Anyone with questions about the tender documents should raise them with Council Solutions. If there is any ambiguity around particular clauses in the tender documents, Council Solutions is happy to provide clarification, including clarification in writing that can be publicly disseminated, so that all potential tenderers fully understand the tender documents.
- With respect to whether ancillary service providers will be required to collect and process waste, or just collect waste, Council Solutions is keeping its options open in order to encourage a range of businesses to tender.
- The reason prices need to be held for 270 days is practical necessity. The tenders opened in September 2018 and successful tenderers will be appointed in May 2019.
- The reason for tendering for each of bulk bins collection, hard waste and street litter separately from each other, and separately to other service streams such as kerbside collection, is to encourage greater competition. For example, when street litter collection is bundled with kerbside collection, the tender is generally won by a large supplier who then sometimes sub-contracts a smaller supplier to provide street litter collection. Under the proposed tender structure, these smaller suppliers will be able to tender directly. Similarly, a supplier of bulk bin collection to commercial and industrial customers may be able to tender to supply bulk bin collections to the Councils, supplementing its existing operations.
- Bank guarantees are not generally required from suppliers of ancillary services and, subject to undertaking risk assessments based on tender responses, this is likely to be the case with the proposed contracts.

- The benefits from joint tendering will include:
  - transaction cost savings from reduced duplication of tasks and shared technical, legal and probity advice
  - improved capturing of data
  - optimisation of collection routes, shared garages and depots and customer service centres across Councils and
  - improved waste diversion resulting from larger-scale, targeted waste diversion education programs.
- The aggregated volumes of the Participating Councils will be desirable to some suppliers, increasing the Councils' purchasing power and increasing competition to supply ancillary services, which will result in lower prices and improved quality of service.

**Commissioner Court** then called for any further comments. None were made.

## Concluding remarks

**Commissioner Court** invited further submissions by **2 November 2018**. Commissioner Court explained that the ACCC must make a final decision by no later than **6 December 2018** or the ACCC is deemed to have granted the authorisation. The ACCC expects to make a final decision by the end of November. Therefore, it is important that submissions are received by 2 November 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 11:45pm Adelaide time, 12:15pm AEDT.