



Our Ref: MSR:JLM:211066
Your Ref: AA1000596
Reply to: ALBURY OFFICE

2 February 2022

Attention: Robert Janissen
Acting Assistant Director of Competition Exemptions
Mergers, Exemptions & Digital
Australian Competition & Consumer Commission
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Email Transmission

Dear Sir,

AA1000596 Albury City and Others Response to Submissions

As previously advised, we act on behalf of Albury City Council, as tender lead on behalf of the applicant councils (**Applicants**) in relation to an Application for Authorisation to Jointly Procure Waste Collection and Resource Recovery (**Application**).

We refer to the submission of JJ. Richards & Sons Pty Ltd (**JJR**) as an interested party in respect of the Application (**Submission**).

In responding to the Submission, this letter does not seek to repeat information already provided to the ACCC by the Applicants.

1. The Proposed Conduct

1.1 Current Arrangements

“This seems to contradict the supposed benefit of the whole process.”

The Applicants submit that being open to alternative proposals enhances the efficiency of the procurement process, increases the likelihood of savings in the contract, increases the likelihood of higher quality and more diverse bids, and provides a benefit to smaller Councils who may not attract competition for their waste services if tendered on an individual basis.

“It also means tender bids have to be prepared as though for individual Councils or groups and adds significant cost to participate in the tender process. These costs have to be recovered and will add to the service price. It may prevent some companies from participating in the process at all.”

The proposed conduct does not require tenderers to prepare bids for individual Councils. The proposed conduct merely allows for smaller operators to bid for individual Councils in the event that they are not in a position to bid for all the activities required, increasing competition.

1.2 Project Control Group

“The process of establishing the ‘Regional Kerbside Contract Working Group’ to oversee the procurement process adds significantly to the cost of administering the contracts. It is likely meetings would need to be convened between the various participating Councils to establish common ground prior to meetings with the contractor. Issues may be peculiar to one or other Councils resulting in lost time for other participants.”

Contrary to the view expressed by JJR, the Applicants submit that the Working Group will provide significant cost savings for the Councils by preventing duplication of work, which the Applicants submit will far outweigh any lost time due to niche issues with particular Councils. Furthermore, the Applicants submit that the Working Group structure will not preclude any individual council from communicating directly with prospective waste contractor on issues specifically related to that council.

1.3 Independence of Decision making and Individual Contracts

“If any Council does not choose to enter into a contract, they will have to go through the tender process again and these costs have to be recovered by the Contractor and will ultimately add to the service price. For example, a regional group of 5 Councils in Victoria was approved by ACCC to jointly tender, but the tender process was so complicated due to the different contract terms and individual Council requirements, that no contracts were awarded, and each Council had to individually re-tender.”

The Applicants submit that the risk of not receiving an appropriate tender is significantly greater if the Applicant Councils were to tender individually. Furthermore, the cost to the tenders, and resultant service price to the Councils would be greater under individual tenders.

There have been several successful joint tender processes for kerbside waste collection contracts approved by the ACCC, and 5 of the 8 participating Councils have previously successfully managed a joint tender process for kerbside waste collection.

2. Public Benefit

2.1 *“... we believe that further approvals will definitely result in higher prices and lower quality of service to the detriment of the public...”*

Contrary to the view expressed by JJR, the Applicants submit that jointly tendering will lead to lower prices and a higher quality of service. The NSW Department for Primary Industry & Environment has released Stage 1 guidance on its Waste and Sustainable Materials Strategy (**DPIE Guidance**¹). The DPIE Guidance, at page 24, provides *“By consolidating local government waste volumes and approaching the market with scale, we can attract investment in new infrastructure and services. This can help remove barriers to entry for new investors, increase competition in the waste services sector and put downward pressure on costs for councils and households.”*

¹ https://www.dpie.nsw.gov.au/__data/assets/pdf_file/0006/385683/NSW-Waste-and-Sustainable-Materials-Strategy-2041.pdf

Without the ability to jointly procure services, small regional Local Government Areas (**LGA**s) will struggle to attract competitive bids, and even larger LGAs will struggle to attract investment in waste and resource recovery infrastructure. The DPIE Guidance, at page 19, provides that joint procurement of waste services at scale “*will underpin investment in new infrastructure[,]*” and again at page 23 “*[g]iven the environmental and commercial complexity of [waste and resource recovery infrastructure] facilities, particularly high impact projects like putrescible landfills or energy recovery facilities, the planning lead time is often close to 10 years.*”

“... this application includes waste collection services as well as processing of different waste streams...”

By aligning the tendering of waste collection and processing services, the Applicants are able to provide certainty for tenderers that they may invest long term in significant waste processing assets, benefiting the public through better environmental outcomes and efficiencies.

“With larger contracts and fewer competitors, it is possible Councils will have to put up with a poor performing contractor...”

The Applicants reject the assertion that larger tenders will result in fewer competitors. To the contrary the Applicants anticipate more substantive tenders will attract greater competition for tendering. As identified above, advanced waste processing facilities require significant investment, and the Applicants anticipate significant investment in organics processing facilities, which would otherwise be commercially unviable, will result from jointly tendering.

“... smaller waste collection contracts that still achieve the maximum benefit afforded by economy of scale.”

The Applicants reject the assertion that small waste collection contracts for individualised services will achieve the benefits of economies of scale.

2.2 Transaction Cost Savings

“it is anticipated each individual Council will still have input to all aspects of the tender process and will need to involve the same amount of internal and external resources in the process.”

The Applicants experience in jointly tendering for waste collection services does not support this view. Councils are able to significantly scale down their internal resources, and jointly procure external resources, as they have done with this Application.

“The result is an extremely complicated tender bid for service providers to prepare and for Councils to evaluate, potentially resulting in confusion and thereby increasing the risk that individual Councils will opt out of the process and have to re-tender.”

The Applicants have sought to be flexible in allowing prospective tenderers to bid for services at the scale they are reasonably able to accommodate, to maximise competition whilst providing for economies of scale. As per the application “*The [Request for Tender] will permit the Tenderer to [...] submit individual prices for each participating Council [or] elect to submit a price for all participating Councils, or any combination of participating Councils, subject to a minimum*

requirement that the Tenderer must submit a collective Response for both Albury City and City of Wodonga.”

The Applicants reject any assertion that this process will be onerous for tenderers, and that there is any appreciable risk of any participating Councils needing to re-tender.

“The complexity of the joint tender process will potentially result in fewer tenders being submitted”

This view is not supported by the Applicants prior experience with joint tenders, nor by the DPIE Guidance.

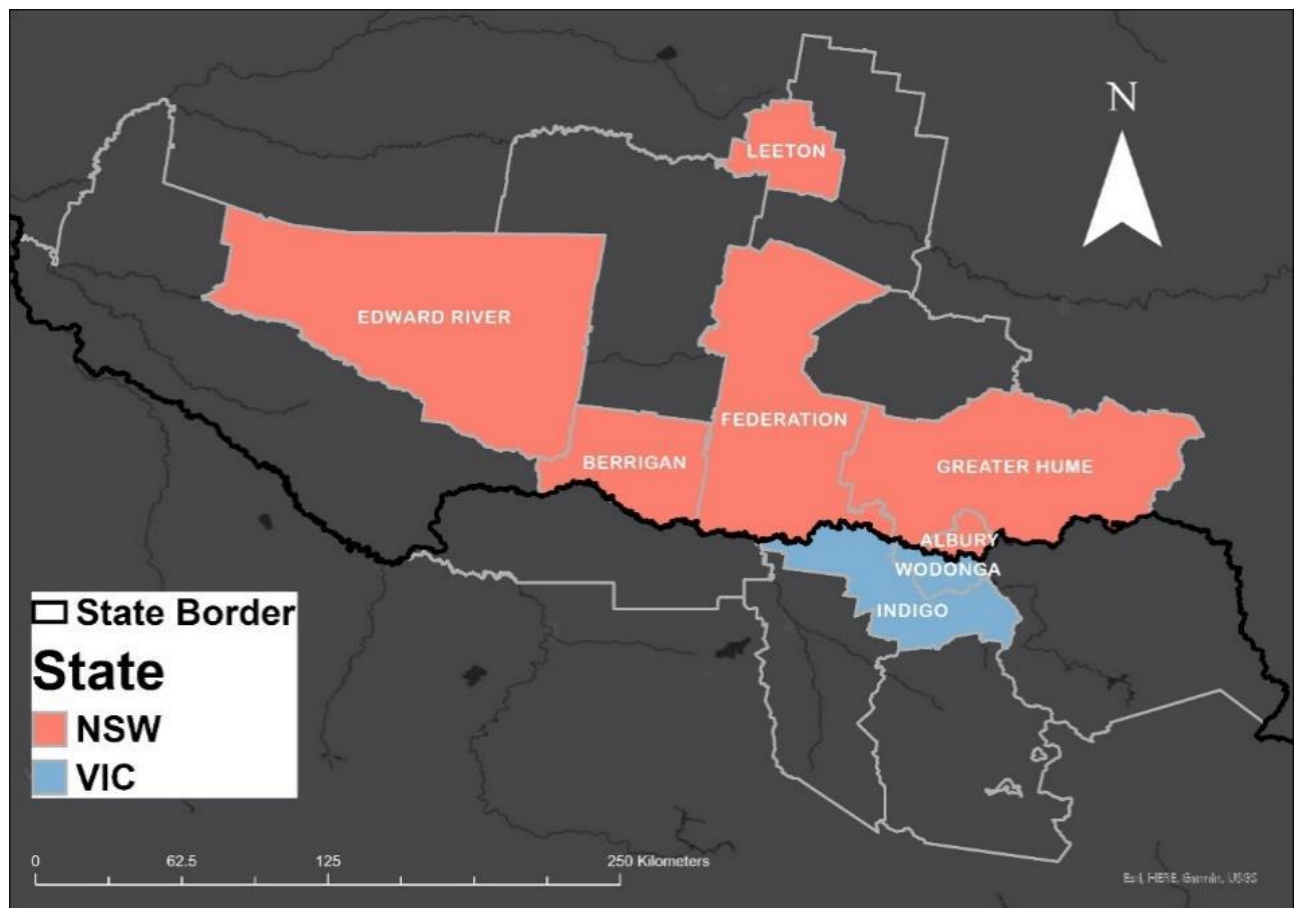
“Some companies that participate in waste collection tenders for smaller contracts may not participate in larger processes.”

The Applicants proposed RFT processes, as mentioned above, is specifically designed to allow these tenderers to bid at a scale that is suitable for them.

2.3 Increased Efficiency

“Three (3) of the new Councils (Leeton, Berrigan and Edward River), are not located near the major LGA’s of Albury and Wodonga, nor does Leeton share a boundary with any other Councils in the application. Therefore if larger processing facilities for organics or recycling are located in the major LGA’s of Albury and Wodonga, the distances travelled outside the LGA’s will reduce the efficiency of collections and increase cost for these three (3) Councils.”

Berrigan Shire Council and Edward River Council form a contiguous area with Albury City, Wodonga City, Indigo Shire, Federation and Greater Hume Shire Councils. Although Leeton Shire Council is not contiguous with this area, its boundary is within 25 kilometres of Federation Council. For clarity, we have reproduced a map of the relevant LGAs from the Application below.



“The joint procurement process is likely to increase the incentive for service providers to invest in new technology” [quoting the Application]

This statement is true for the processing of organics and recyclables as infrastructure costs are dispersed over large volumes of waste.”

Importantly, this admission strongly supports the rationality for, and approval of, the Application.

“However, efficient collection and transportation services will be available to Councils without a joint tender process due to the vehicle technology being able to be written off over a long contract term.”

Aligning the waste collection services with the above infrastructure investments unpins the value for potential tenderers. Without the joint tender process, the Applicants would be unable to assure tenderers that the aforementioned, and admitted by JRR, significant infrastructure investments would be supported by sufficient volumes of waste material to justify the expenditure.

2.4 Increased Competition

“For reasons stated above, the number of tenders received are highly likely to be reduced, particularly from smaller operators, as is stated on page 9 of the application: ‘The participating Councils have a strong preference for a single provider to be appointed to service all participating Councils in the interest of achieving value for money and economies of scale.’”

The quoted statement does not state that the Applicants expect a reduction in tenderers. The Applicants, in fact, expect that tenderers who would otherwise not have tendered, particularly with regard to smaller LGAs, are more likely to be enticed to tender. The statement quoted by JJR merely indicates a preference for the Applicants to select, from the tenders received, a single provider .

Furthermore, page 21 of the Application provides that “[i]t is intended that the RFT will be tailored to enable smaller waste companies to compete for individual Council’s services, whilst larger waste companies may elect to tender for all or grouped Councils. This will increase competition for the Councils services, both on an individual and collective basis.”

“Granting authorisation will be to the detriment of surrounding LGA’s in terms of long term, sustainable competition and the positive impact this has on long term pricing, service quality, innovation and environmental outcomes.”

This view is clearly contrary to the DPIE Guidance as outlined above. In line with that guidance, the Applicants expect joint procurement to *“promote innovation in waste service delivery by providing opportunities to trial and scale up new ideas and provide a forum to test standardisation of services where appropriate,”* per page 24.

2.5 Environmental Benefits

“A larger vehicle depot in one part of the region means trucks have to travel further than if multiple depots existed across different Councils through individual contracts, increasing costs and environmental emissions. Local employment will also be limited to that part of the region, restricting jobs and employment opportunities across the other LGAs.”

Per pages 17-18 of the Application, “[t]he Applicants submit that by jointly procuring these services, the service providers are likely to become more efficient as they will be able to operate a larger scale of operation than if they were to service each Council individually. This will include the ability to utilise more efficient truck routes when travelling significant distances on rural road networks.”

The most appropriate method of locating truck depots, and coordinating truck routes, will be a matter for the tenderers, however, the Applicants submit that any rational, sophisticated tenderer, will endeavour to reduce its costs, and thereby maximise its profitability, by rationally allocating its assets and routes in a manner that reduces transportation time and fuel usage, thereby minimising greenhouse gas emissions.

3. Public Detriment

“Each of the eight (8) Councils will have numerous small businesses within their LGA that rely on or are a part of the local waste and recycling supply chain.”

The Applicants anticipate, and submit that it is self-evident that, any successful tenderer will engage with, and rely upon, local supply chains for delivery of the tendered contract.

“These small collection and transport businesses may not have the expertise to bid for a complex joint tender and not be willing to partner with another supplier.”

As addressed above, small businesses will be able to tender to service individual LGAs.

The willingness of any business to engage with a successful tenderer is a matter for that business.

4. **Conclusion**

The concerns raised by JJR were addressed by the original Application and are not supported by the facts of the proposed content, nor the available evidence before, and experience of, the Applicants.

As noted by JJR, the ACCC has approved numerous similar applications, and JJR has failed to raise any novel concerns with this Application.

Finally, the NSW Department for Primary Industry & Environment has released guidance, and is in the process of developing strategies, to further promote joint tendering of waste collection services between Councils, making the concern of JJR that approval would lead to further conduct of a this nature moot.

Yours faithfully
KELL MOORE

Per:

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