

City of Ryde

ABN 81 621 292 610

Civic Centre

1 Devlin Street Ryde

Locked Bag 2069

North Ryde NSW 1670

DX 8403 Ryde

cityofryde@ryde.nsw.gov.au

www.ryde.nsw.gov.au

TTY (02) 9952 8470

Facsimile (02) 9952 8070

Telephone (02) 9952 8222

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 1199
DICKSON ACT 2602

27 July 2004

Our Ref: S8611-03
S230-13

Dear M/s Sylvan

NSROC/SHOROC Joint Tender – Pre-Decision Conference

Following receipt of the notification from the Australian Competition and Consumer Commission (ACCC) that Waste Service NSW and the Waste Contractors and Recyclers Association of NSW (WCRA) had requested a pre-decision conference, the Northern Sydney Regional Organisation of Councils (NSROC) has requested advice from the respective parties as to their concerns with the ACCC's draft determination. Waste Service NSW has responded with the **ATTACHED** correspondence dated 23 July 2004. Unfortunately no response has been received from WCRA.

The purpose of this letter is to summarise NSROC/SHOROC's position on the issues raised in the correspondence from Waste Service NSW.

Environmental Outcomes:

The tender documentation is comprehensive and requires the completion of a number of mandatory schedules. Schedule 10 (a copy is **ATTACHED**) requires the provision of information by each prospective tenderer on environmental due diligence and impact associated with their proposal. The evaluation criteria which is summarised in Part A under Section 16 and Part B under Section 8 clearly indicates that the environmental aspects of the proposal and the technical aspects of the proposal are a significant component of the evaluation of the respective tenders.

In developing the selection criteria NSROC has drawn heavily on the assessment methodology developed by the NSW Department of Environment and Conservation for alternative waste treatment technologies.

The tender documentation provides the prospective tenderers with the weightings for the primary criteria. At the pre-tender meeting held on 10 May 2004 prospective tenderers were advised that the tender price was not the dominant criteria and that a comprehensive assessment of the environmental impacts of the tender proposal needed to be documented with the tender submission in accordance with Schedule 10.

I have provided the ACCC with a copy of the Evaluation Criteria Matrix which details the weightings for the primary and secondary evaluation criteria. Clearly the matrix itself is of a

confidential nature and should not be released to the public as it may result in an inappropriate advantage to a prospective tenderer. An analysis of the matrix clearly demonstrates the significance in the evaluation process in respect of consideration of environmental and technical aspects of the tender proposal. This approach will address the issues of concern raised by Waste Service NSW in regard to appropriate environmental outcomes being achieved in the awarding of the contract.

Form of the Tender:

To some extent the tender which has been advertised is a market-driven instrument. The tender clearly requires that prospective tenderers provide a tender price which relates to the letting of the contract on an individual basis to each participating council (Schedule 2.1). The schedule also provides for the provision of a number of alternate tender price offers on a cluster-based arrangement with the contract being let as a single contract servicing a number of councils. Obviously the market forces will determine whether a collective arrangement would operate within the market or alternatively whether a contract is let on an individual council basis.

Market Entry:

As detailed in NSROC's comprehensive application to the ACCC for authorisation to progress with the Joint Tender, NSROC detailed that the expression of interest that was processed in November 2003 clearly indicated that for other service providers other than Waste Service NSW and Collex Waste Management to enter the market required a tender of the nature of the NSROC/SHOROC tender. The critical aspect for new entrants to the waste transfer processing and disposal service industry is the need for a long-term contract of 15 years that would permit secure cash flows to achieve capital recovery associated with the infrastructure requirements of the industry.

Should you have any further enquiries in this matter please contact me on 995 8102.

Yours sincerely



Tony Reed
Group Manager – Public Works & Services

WASTE SERVICE NSW

23 July 2004

Ref. F2744.2

Mr Dominic Johnson
Executive Director
Northern Sydney Regional **Organisation of Councils**
PO Box 20 LANE COVE NSW 1595

Fax (02) 9911 3651

Dear Dominic,

Re: **ACCC AUTHORISATION -
NSROC/SHOROC JOINT TENDER FOR WASTE PROCESSING AND DISPOSAL**

Further to our telephone conversation yesterday, I would like to clearly set out our position.

We support a competitive market for waste processing and disposal. We also support councils undertaking joint tenders in the interests of ratepayers and we support the ACCC authorising the NSROC/SHOROC application, although we have suggested some amendments.

As you know, councils need authorisation for these joint tenders, The ACCC applies a public interest test to these matters. The Commission has generally required quite strong evidence of public interest to authorise joint tenders which are for a long period of time.

The authorisation process is a public one and all interested parties are encouraged to give their view.

In this particular case, our view is that there is strong public interest in a long term (15 years) joint tender to support the introduction of new and better technologies (AWT), however, authorisation for a long term contract for landfilling is not as clear cut

Our view is that the path to both better environmental outcomes and ultimately a more competitive market (with a significant number of players) lies in alternatives to landfilling. If a large amount of Sydney's waste was committed to landfill for a long period the likely development of further AWT facilities in Sydney (by any player) would have lessened, therefore leading to not only inferior environmental outcomes, but also less competition (We say this even though we are Sydney's largest landfill service provider).

We are also concerned about the flow-on impacts of this authorisation to other regional tenders, thus potentially escalating the environmental and competition issues.

For this reason, our submission to the ACCC suggests that the authorisation be modified by.

- ❖ Distinguishing between landfilling and AWT by inserting a definition (at least 70% diversion from landfill),
- ❖ Authorising the joint tender for 15 years where it is for a transition to AWT:
- ❖ Authorising the joint tender for 3 years if it is predominantly for landfill services.

I trust this clarifies our position, I would ask that this letter be circulated to the General Managers of participating councils and I am happy to discuss our submission with any or all of the councils, should they wish to do so,

Yours sincerely

Ken Kanofski
Chief Executive Officer

WASTE SERVICE NSW
Zenith Centre Level 4, 821 Pacific Highway Chatswood NSW 2067
Locked Bag 7699, Chatswood DC 2067
Phone: (02) 9934 7000 Fax: (02) 9934 7185

Fortnightly or monthly accounts itemising each transaction with the above details are required to be sent by both hard copy and electronic transfer to each Principal. This information needs to be compatible with current software applications (for example, Excel).

16.0 EVALUATION CRITERIA

Environmental considerations need to be addressed in the disposal of Waste. The evaluation criteria will address the financial, environmental, technical and social outcomes. An evaluation matrix will be used to assist in the evaluation of Tender bids. The evaluation matrix will allocate weightings against each selection criterion as part of the analysis – Refer Conditions of Tender Section 8.0.

The weightings for the primary evaluation criteria are as follows:

| Primary Criteria | Weighting |
|------------------|-----------|
| Financial | 30% |
| Environmental | 25% |
| Technical | 30% |
| Social | 15% |

17.0 TENDER DEPOSIT

Each Tenderer shall lodge a preliminary deposit of \$5,000 (Five thousand dollars) (“Tender Deposit”) with the NSROC. If a Tenderer delays, neglects, or refuses to sign the Contract agreement within a period of fourteen (14) days of the notification of acceptance of the Tender, that Tenderer’s Deposit shall be absolutely forfeited for the sole benefit of NSROC. NSROC shall also be at liberty to accept another Tender without any notice being given to the original Tenderer.

Without limiting the above, should a Tenderer be unsuccessful with its bid, NSROC will refund the Deposit within twenty eight (28) days of execution of the Contract with the successful Tenderer.

18.0 SECURITY DEPOSITS

When signing the Contract, the Contractor shall lodge over and above the Tender Deposit, further cash deposits of 5% of the estimated annual Contract value (“5% Contract Value”) plus another \$10,000 (ten thousand dollars) (“Security Deposit”) to be held by NSROC as security.

In lieu of the 5% Contract Value, the Contractor may, with the approval of each Principal, arrange for a suitable irrevocable bank guarantee from a Bank or other financial organisation acceptable to all Principals (“Bank Guarantee”).

If a Cluster arrangement is accepted within the Tender bid, then;

- (i) the 5% Contract Value shall be dispersed to the Principals in the Cluster on a pro rata basis linked to the value of service delivered to each Principals and held by each of those Principals pursuant to the Contract; or
- (ii) the Bank Guarantee must be for the benefit of each Principal calculated on a pro-rata basis determined by the value of service delivered to each of those Principals pursuant to the Contract;

according to whichever of those forms of security is applicable.

19.0 RETENTION

Upon termination of the Contract, the Principal will be entitled to retain the sum of fifteen thousand dollars (\$15,000) of the security deposits described in clause 15.0 above and will refund the difference to the Contractor. The sum retained by the Principal will be held for a maximum period of twelve (12) calendar months for the purpose of adjusting for disposal, administration fees, disputed services and forfeits for any failure to render the Service in accordance with the Contract.

20.0 CONTRACT DOCUMENTS

The Contractor will be required to enter into a Deed of Agreement which embodies the Contract. The Deed is included in the Contract Conditions Section of this RFT.

21.0 COSTS OF TENDERING

All costs associated with the preparation and lodgement of a Tender will be borne by the relevant Tenderer.

(ii) detailed description of the benefits likely to accrue to relevant Member Councils in the event of the alternative Tender being accepted.

The Member Council may but is not obliged to consider any Tender which does comply with the requirements of the proposed contract and the conditions of Tendering.

6.0 INFORMAL TENDERS

The Tenderers should submit a conforming Tender. Tenders which do not comply with any requirements of, or which contain certain conditions or qualifications not required or not allowed by the Tender Documents may be passed over by the Principal.

7.0 PROPERTY IN TENDER DOCUMENTS

All documents submitted by the Tenderer, as part of the Tender, will become the property of the Member Councils upon receipt of them.

8.0 EVALUATION OF TENDERS

Tenders will be evaluated on the basis of the criteria specified in these Conditions of Tender and the information provided by Tenderers in the Returnable Schedules. Tenderers should not place any significance on the order in which the criteria are listed nor should it be assumed the criteria have equal weight or significance. As part of the Tender Evaluation, the Member Councils may require the opportunity to inspect the operational facilities that are associated with one or more Tenders.

In addition one or more Tenderers may be invited by the Member Council to attend an interview, at that Member Council's premises, concerning the FRT. There is no obligation on the Member Council, legal or otherwise, to invite any Tenderer to attend an interview.

The Member Councils are not bound to accept the lowest Tender or any Tender submitted. One or more Member Councils, at their discretion, may accept the Tender that, in the opinion of one or more of them, provides the most advantageous result. An evaluation matrix will be used to assist in the evaluation of Tender bids. The evaluation matrix will allocate weightings against each of the following selection criteria as part of the analysis:

- **Financial**
 - Tender Price
 - Rise & Fall Calculation
 - Financial Capacity of Tenderer

- **Environmental**
 - Global Warming Potential
 - Air Emissions
 - Water Emissions
 - Resource Conservation

- **Technical**
 - Methodology and Operational Procedures for Service Delivery
 - Operational Reliability
 - Proven Technology / Reference Facilities
 - Process Control
 - Alignment with Resource Recovery Strategy
 - Efficiency in Waste Reduction
 - Flexibility in feedstock Quality
 - Modularity of System
 - Staff Requirements

- **Social**
 - Individual and Family Impacts
 - Residential Amenity
 - Employment
 - Natural and Cultural Heritage Impacts
 - Occupational Health and Safety
 - Labour Relations
 - Community Relations

SCHEDULE – 10: ENVIRONMENTAL DUE DILIGENCE AND IMPACT

The Tenderer shall provide evidence that it is fully aware of the requirements of the Environmental Planning and Assessment Act 1979 and all other associated legislation, particularly in regard to pollution control and waste disposal. The Tenderer shall demonstrate that it will operate with due diligence for the duration of the Contract so as to prevent harm to the environment and will not dispose of waste contrary to the Protection of the Environmental Operations Act 1997 (NSW) or other law.

The Tender shall address the following :

- a. the system that the Tenderer has or will put in place to ensure compliance with all statutory environmental requirements;
- b. the system that the Tenderer has or will put in place to obtain and comply with approvals and licences from statutory authorities, including the Environment Protection Authority; and
- c. the system and procedures that the Tenderer has or will put in place to ensure adequate human resourcing, supervision, training and monitoring of the works.
- d. the potential for global warming as a consequence to the delivery of the service. The submission should provide an assessment expressed in CO₂ equivalents for both transport, transfer, processing and disposal activities incorporated in the service delivery process.
- e. the extent of air emissions that will adversely impact on air quality as part of the service delivery process.
- f. the extent of water pollutant emissions that will be discharged as part of the service delivery process.
- g. the extent of resource conservation brought about by the recovery of resources from waste or from the operation of the service delivery process.

Confidentiality has been granted for attachments marked Confidential.



NSROC JOINT RFT

- RFT Evaluation
 - The RFT will be evaluated utilising a weighted attribute matrix.
 - Beneath the four (4) Primary Criteria are 23 Secondary Criteria.
 - Clearly, the Tender Price should not be considered to be the dominant Criteria in the Evaluation Process.
 - Tenderers are advised to provide comprehensive data in respect to all Schedules.



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