



**ALTERNATIVE WASTE
TREATMENT WORKING GROUP**

Care of:
NSW BRANCH
WASTE MANAGEMENT
ASSOCIATION OF AUSTRALIA
PO Box 994
ROCKDALE NSW 2216

Ph: +61 (0)2 9599 7511
Fax: +61 (0)2 9599 6032
Email: admin@wmaa.asn.au
www.wmaa.asn.au

FAXED
20/8/04

BY FAX AND MAIL

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

20th August 2004

FILE No:
DOC:
MARS/PRISM:

Re: Authorisation No A30231 for Northern Sydney Councils and A90886 for South Western Sydney Councils.

Dear Sir,

The Alternative Waste Treatment Working Group (AWTWG) of the Waste Management Association of Australia appreciates the opportunity to present this submission to the Commission for its deliberation on the subject of regional waste disposal tenders.

The AWTWG includes representatives of all the major operators and potential suppliers of Alternative Waste Treatment (AWT) facilities in Australia. The purpose of these facilities is to recover reusable materials and products from the waste stream and to convert waste to other reusable products. In the process these facilities reduce waste to landfill.

It is in relation to the proposed structure of the contracts that AWTWG raises its strong concerns with the ACCC.

In particular the "Request for Tenders – Provision of Waste Transfer, Processing and Disposal Services for NSROC member Councils and Participating Shoroc Councils" includes clauses which the AWTWG believe are anti-competitive and may result in abuse of market power, either wittingly or otherwise.

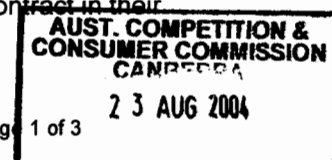
Specifically the Request for Tender requires:

"The successful Tenderer must be in a position to commence delivery of Service by the 1st April 2005. Where a Tenderer proposes to construct infrastructure as part of their solution to the long term delivery of the Service that Tenderer's Tender must include an explanation of how delivery of the Service will be accommodated between the 1st April 2005 and the date on which the construction of the new infrastructure will be completed."

For the information of the ACCC, the planning, approval and construction of an AWT plant requires at least 24 months and most commonly, up to 4 years to complete.

The practical effect of the above condition therefore is that any of the say 25 AWT providers wishing to tender will need to seek pricing for the disposal of the putrescible waste for the interim period from the only two companies able to provide landfill services for this interim period.

These are Waste Service NSW and Collex. Both are and will be potential bidders for this contract in their own right for both landfill and AWT services.





ALTERNATIVE WASTE TREATMENT WORKING GROUP

Care of:
NSW BRANCH
WASTE MANAGEMENT
ASSOCIATION OF AUSTRALIA

It is therefore a practical requirement of the request for tenders, that every AWT provider seek a price for the landfilling of the waste during the interim approval and commissioning phase of the AWT. The tender asks the tenderer "to be in a position to commence delivery of the service" and expands this requirement by asking for an "explanation of how delivery of the service will be accommodated" in the interim. It therefore makes AWT providers beholden to the two landfill operators for the interim period.

Furthermore, the tender documents, in requiring that the successful tenderer take responsibility for the waste material from 1st April 2005, in effect require that the successful tenderer utilise the existing waste transfer station infrastructure. There is no possibility that a new transfer station could be approved and constructed before the 1st April 2005. Therefore, the practical effect of the tender specification is that all such waste must be taken to the existing Waste Service NSW transfer station. This gives Waste Service NSW excessive market influence in both the tendering process and the operational delivery of the service contract. The only other available transfer station is owned by Collex which is outside the geographical limits specified in the NSROC tender for transfer station locations.

All AWT tenderers need to obtain that pricing and access to facilities before submitting their response to the tender.

The Trade Practices Act prohibits a company with a substantial degree of power in a market from taking advantage of that power for any of the following anti-competitive purposes:

- Eliminating or substantially damaging a competitor
- Preventing a person from entering a market; and
- Deterring or preventing someone from competing in a market.

There is nothing in the contract preventing either of the two duopoly landfill providers from utilising their market power [Waste Service currently has 100% market share (2 million tonnes per annum), Collex is expected to have 20% market share within a few years (400,000 tonnes per annum)] to price their interim landfill services at a level for the interim period which makes the total AWT bid (inclusive of this interim price) uncompetitive.

Collex and Waste Service are both AWT providers or potential providers. The AWTWG is not suggesting that either of these companies would engage in anti-competitive conduct, but the tender should be restructured to remove the perception that such could occur.

AWT providers should not be beholden to the only two landfill providers for a component of their tender pricing or for their operational delivery during the interim period. That is open to abuse.

To mitigate the potential for abuse, or the perception thereof, the AWTWG recommends that the provision of services between the 1st April 2005 and the "date on which the construction of new infrastructure will be complete" should not be part of the tender. This should be uncoupled from the remainder of the service contract, post the commissioning of the AWT or other infrastructure.

In other words the NSROC and partner Councils should retain responsibility for disposal of waste until the AWT or other infrastructure is commissioned.

The Councils could suggest a realistic maximum period for that commissioning to occur to minimise delays etc. The AWTWG would endorse the Councils letting a short term landfill disposal contract for this interim period.

In relation to the environmental outcomes and objectives of the tender, the AWTWG notes recent determination of the ACCC section 5.37 which states:

"The development of Alternative Waste Technology would lead to a reduction in the use of landfill as a means of waste disposal with associated environmental benefits which the Commission consider would constitute a public benefit. However, the Commission notes that it is likely that Alternative Waste Technology will be introduced in the Sydney metropolitan area regardless of whether the Councils collaboratively tender."



**ALTERNATIVE WASTE
TREATMENT WORKING GROUP**

Care of:
NSW BRANCH
WASTE MANAGEMENT
ASSOCIATION OF AUSTRALIA

The AWTWG notes that this will only occur where the environmental and social benefits of AWT are appropriately accounted for and incorporated into the tender evaluation process. The AWTWG raises its concern with the ACCC, that the environmental costs and benefits of AWT as compared to landfill are generally not currently being adequately accounted for in these types of tender processes. For example, there are no specifications of the minimum environmental outcomes expected in this contract in regards to waste minimisation, resource recovery and operational performance.

Furthermore, the AWTWG suggests that the environmental standards being required of AWT's do not necessarily reflect the same environmental standards being applied to the approvals of some landfills. This introduces a significant cost element to AWT, which may result in a cost and price bias towards landfill.

The establishment of standard and agreed environmental outcomes both in terms of resource recovery, diversion of waste and operational conditions of facilities (irrespective of which technology is chosen) should be specified in the tender documentation prior to calling for tenders. In this way all technologies, whether AWT or landfill, compete on a level playing field and against known and specified outcomes. This will remove a significant existing bias in the tender document in favour of landfill over other technologies. In the absence of specific and pre-determined resource recovery standards, the one way disposal of materials to existing Sydney landfills will always be the cheaper option.

The AWTWG strongly supports the move by Councils, both individually and collectively, to explore alternative waste treatment technologies. What we need in return is a playing field in which the environmental, economic and social benefits can be presented openly and in clear contrast to other options.

Yours sincerely

Dr. Marc R. Stambach
Chair
Alternative Waste Treatment Working Group
NSW Branch
Waste Management Association of Australia.

CC.
Dr. Tony Wilkins, Chair NSW Branch WMAA
AWT Working Group