Council Solutions
improved outcomes
25 Pirie Street, Adelaide, SA
GPO Box 2252, Adelaide
SOUTH AUSTRALIA 5001

Phone: 08 8203 7173
Email: taryn.alderdice@councilsolutions.sa.gov.au

14 November 2016

Ms Elizabeth Batten
Senior Project Officer, Adjudication
Australian Competition & Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Via email: elizabeth.batten@accc.gov.au; **cc:** darrell.channing@accc.gov.au; natalie.morton@accc.gov.au

Dear Ms Batten,

A91520 COUNCIL SOLUTIONS & ORS – APPLICATION FOR AUTHORISATION OF A COMBINED WASTE TENDER PROCESS, FURTHER INFORMATION REQUESTED AND RESPONSE TO LATE SUBMISSIONS

I refer to your email dated 7 November 2016 in regards to the ongoing assessment of the application and the request for further information. The ACCC has requested Council Solutions provides further information to the queries below. Council Solutions is happy to do so and confirms this may be placed on the Public Register.

1. *Information on the individual volumes for each of the councils is currently confidential, although the aggregated volumes for the five councils is publicly available. However, we understand that only 4 out of the 5 councils are anticipated to require organics processing and 3 out of the 5 councils are anticipated to require waste disposal services.*

    a) *Are you able to provide the individual volumes for each of the councils for each of the streams on a public basis? Alternatively, are you able to provide the aggregated volumes for the 4 participating councils in relation to organics (i.e. excluding Port Adelaide Enfield) and the 3 participating councils in respect of waste disposal (i.e. excluding Port Adelaide Enfield and Marion).*

Council Solutions has spoken with the Participating Councils and are happy to make this information publically available. Please refer to Annexure A.

    b) *Can you comment on the reason/s why Port Adelaide Enfield does not anticipate that it will require organics processing and waste disposal services?*

The City of Port Adelaide Enfield is currently in contractual arrangements for their receiving and processing of organics and waste disposal which will run until June 2024. As such, they do not have the need to approach the market with the other Participating Councils in 2018 for these services However, they may elect in the future (during the requested authorised period) to be involved in a collaborative market approach for these Service Streams with the Participating Councils, hence the need for them to have authorisation for the Proposed Conduct in its entirety.

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2. *At page 6 of Council Solutions' Supporting Submission, dated 30 November 2015, you state: 'The proposed conduct will also allow for a unified strategy and education program which will maximise the improvement possible in diversion rates in the shortest time.' At page 14 of Council Solutions' Supplementary Submission to the ACCC dated 30 June 2016, you state in respect of claimed environmental benefits and waste diversion rates that: 'Collaboration in this space to streamline policy, service delivery and education will provide a real opportunity for diversion and reduction in generation targets to eventuate.'*

   Please provide any additional information about how the proposed conduct would be likely to unify, streamline or otherwise improve education of households with the aim of achieving better environmental outcomes, including:

   a) *Whether Council Solutions, councils or contracted waste providers would be responsible for education programs.*

This is something that will be explored fully through the RFP as the Applicants will request the respondents to propose programs, however it is generally the case that the Participating Councils and contracted waste providers work together to deliver education programs. Through the Proposed Conduct, this can be centralised through Council Solutions, which will reduce the duplication by the contracted waste provider in having to potentially deliver different education programs for each Participating Council.

   b) *What opportunities the proposed conduct would create for councils or contracted waste providers to improve household waste diversion practices.*

Generally, please refer to paragraph 3.1 in the submission made on 4 October 2016 made in confidence (a public version is provided with this submission as per question 6 below) which outlines the increased diversion that can occur with meaningful data collection. It will also allow the Participating Councils to target education programs to those areas of their communities that are not achieving the desired diversion rates. Where a larger scale education program is proposed by a respondent, there is also the opportunity to receive funding from Green Industries South Australia (formerly Zero Waste) to support the implementation which could see more innovative education programs, such as school visits to educate the new generation, better take-up of benchtop food waste bins to improve diversion of food waste into the organics stream from landfill and any other proposal received from the market.

A consistent message throughout the Participating Councils' communities will create more certainty as to which receptacle is appropriate for each waste type, especially for visitors and new residents, improving the likelihood the waste will be diverted from landfill.

3. *Can you please comment on how participating councils plan to achieve cost savings and more efficient messaging in education.*

Cost savings can be achieved by the Participating Councils by sharing the costs of aligned education material, such as flyers. Where the education program proposed requires the employment of an education officer, this resource can be shared between the Participating Council and ensure messaging is consistent and efficient.

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If bin alignment is a preferred option please comment on whether:

a) Bins would be due for replacement in 2021 regardless and therefore no additional alignment cost; or

b) The cost of bin alignment would outweigh the cost savings that could be achieved from economies of scale for the printing of educational materials and other media messaging costs.

The rollout of new bins to each Participating Council is still under strategic review. Currently, some Participating Councils' assets are reaching the end of their useful life and there is an allocated budget to replace, allowing for alignment where inconsistent. For other Participating Councils, recent replacement of assets makes a full rollout less likely. However, as the majority of the Participating Councils already have relatively consistent assets, bin alignment may require no more than retro-fitting existing bins to match (e.g. changing the lids for the waste disposal bins in the City of Charles Sturt from blue to red). Where technology such as RFID tags is rolled out, the Participating Councils will investigate the most cost efficient method for doing so for each community (i.e. retro-fitting compared to complete asset change). Where further alignment is desired (e.g. common 'stamping'), for those Participating Councils where complete asset replacement is not reasonable, replacement bins requested due to damage, loss or new home construction can provide an avenue for a gradual rollout of the aligned design.

4. *At page 11 of Council Solutions' Support Submission, dated 30 November 2015, you state: 'In relation to the Waste Collection Service Stream, a successful Supplier will have a greater area to service and a greater number of residences, resulting in efficiencies and economies of scale in the delivery of the services. Where the Participating Councils share common boundaries there are geographical synergies and, even where there is no common boundary, the close proximity of all the Participating Councils provides the potential to share trucks and employees across the council areas to cover for truck break downs.'*
   Please state whether the proposed conduct would allow any efficiencies in respect of reducing the total number of depots that would be required to service participating councils, and whether there would be any resulting efficiencies from a release of council land otherwise supplied or leased to contracted waste collection service providers for these purposes.

There may be a consolidation of the number of depots servicing the Participating Councils if a single Provider is awarded a contract for this Service Stream as they may be able to more centrally locate their base. However, the Participating Councils do not currently supply or lease any land to their current Contractors as part of their waste management services – this is something the Contractors source themselves. Other non-participating councils may have arrangements like this, but the Participating Councils do not. However if a service provider was able to consolidate depots resulting in cost efficiencies to the service provider, it could reasonably be expected that the Participating Councils could benefit from some of these cost efficiencies being passed on.

5. *In its submission dated 21 October, the ASBFEO stated that it is aware of instances of prime contractor poor behaviour, where prime contractors expand their service offering to exclude sub-*

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contractors from future work. To what extent will participating councils factor the potential impacts of this behaviour into their assessment of tender bids?

It is standard practice when conducting procurement processes to request the respondents to provide details of any sub-contractor arrangements, which can sometimes include requesting a copy of the sub-contract (removing pricing) to ensure fair and equitable terms. As part of the evaluation process, the Applicants will carefully evaluate any proposed sub-contracting arrangements to ensure the Participating Councils will receive the service delivery requested, as well as ensuring the sub-contractor is a reputable organisation the Participating Councils would wish to be in a contractual arrangement with. As such, the procurement process will factor in the proposed arrangements between the 'prime contractor' and its sub-contractors. Further, 'prime contractors' will only be entitled to sub-contract to pre-approved subcontractors, so future changes to sub-contracting arrangements would in most circumstances require approval.

However, Council Solutions also submits that Council Solutions and Participating Councils are not in a position to oversee or control the internal business decisions of 'prime contractors'. For instance, during the course of the term, a 'prime contractor' may organically grow its service offering or decide to move a previously sub-contracted service in-house. Such conduct would not necessarily comprise "poor behaviour". However, if the 'prime contractor' did engage in anti-competitive or unlawful conduct in doing so, then such conduct could be investigated by the ACCC at that time and such a breach could also be grounds for termination of the 'prime contractor's' contract.

For completeness, if a 'prime contractor' proposed to change its sub-contractor arrangements in a manner that affected the service offering or service scope, then that change would require the prior approval of the Participating Councils.

The ASBFEO has also raised concerns that small businesses are uncertain about whether and to what extent the proposed conduct may impact small businesses. How will Council Solutions communicate more effectively with small business in the future, in particular in relation to separable portions of the RFP or separate tender processes for services which predominately affect small business (e.g. medical waste collection, bin cleaning, hard waste and park and footpath)?

The RFP will clearly state which portions of each Service Stream are separable. If the Applicants decide that for the best commercial outcome separate tender processes should be run for these portions (e.g. supply of bins, hard waste, park and footpath), it will clearly be stated in the RFP they are excluded from the scope and will be separately advertised. Additionally, Council Solutions has committed to early notification to the supply market of the upcoming release of the RFP, which may include details of any elements that predominately affect small business being called out to ensure awareness, as well has industry briefing session/s that will allow the market to ask clarifying questions.

6. *Are you able to provide a public version of your submission on likely benefits / detriments dated 4 October?*

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Council Solutions is happy to provide a public version of this submission which will be provided with this submission.

Further to the questions above, Council Solutions understands the ACCC is also seeking further information on the following topics. Council Solutions submits the subsequent response.

Minimum efficient scale for facilities servicing the Service Streams.

Council Solutions is unable to provide *minimum efficient scale* (as understood as an economic measure), however can provide the average processing capacities for MSW as per *South Australia's Waste and Resource Recovery Infrastructure Plan*[1] (**Infrastructure Plan**). The nominated average processing capacity used in this report is based on typical operating capacity for Adelaide. It does not preclude infrastructure from being larger or smaller, but it would be up to the operator to determine if a substantially different size would be cost effective in the market it's designed to be implemented in.

(All measurements are tonnes per year)	**Waste collection**	**Receiving and processing of recyclables**	**Receiving and processing of organics**	**Waste disposal**		
				EfW – combustion	**MBT**	**EfW – anaerobic digestion**
Nominated average processing capacity	10,400 (per vehicle)	50,000	50,000	100,000	100,000	20,000
Participating councils	216,785	33,580	45,880	74,970		
All Adelaide metro sectors (including non-municipal)	3,590,000	2,591,000	997,000	914,000		

There is no equivalent average processing capacity for landfill in the Infrastructure Plan. This is, in part, due to the aims of the Infrastructure Plan, namely "to provide guidance for the future infrastructure planning and investment in the waste sector".[2] There is a moratorium on landfill development in South Australia, with no further landfills to be created. The existing landfills have sufficient capacity to service the long-term future of the State, therefore there is no need for them to be included in the Infrastructure Plan. Where existing landfills do need to assess incoming volume, however, is when an existing cell in the landfill comes to the end of its life and the operator needs to open a new cell. This would be based on contracted incoming volumes.

[1] Green Industries SA, Consultation Draft September 2016, Appendix A, available at http://www.zerowaste.sa.gov.au/About-Us/waste-resource-recovery-infrastructure-plan-consultation-draft
[2] Ibid, page 3.

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Council Solutions notes that for the non-collection Service Streams, the aggregated volume of the Participating Councils is less than the average processing capacity. However, the combined volumes are at least 65% of the average processing capacities. This is a substantial proportion of the 'required' volume for a processor which reduces the additional contracts that will need to be won to ensure continued operation; in most cases, those contracts are already in place.

Where a processor is looking to invest in new infrastructure, such as the establishment of waste to energy, the Proposed Conduct will allow a processor the opportunity to secure nearly 50% of the required volume[3] through one procurement process. Without the Proposed Conduct, processors will need to participate in multiple procurement processes to try and secure the volumes required and will be unlikely to have the certainty to propose the same level of infrastructure investment.

As per the submission lodged by Phoenix Energy Australia Pty Ltd, contracts with councils are attractive to the industry generally as they provide more certain volumes and longer term contracts, which in turn makes the financiers for investment infrastructure more attracted to the opportunity. Some technology, such as MBT, is specifically geared towards MSW where the composition is more stable, with a more predominate organics composition than other streams.

Increase of the Solid Waste Levy to a price comparable with Waste to Energy

The recent announcement of increases to the Solid Waste Levy (**levy**), increasing to $103 per tonne in 2019/2020, demonstrates a drive to use the levy to "positively influence the financial viability of resource recovery activities … e.g. energy from waste proposals".[4] The economic effects of doing so, including the positive influence on employment, is outlined in the Australian Council of Recycling's report *Economic effects of the South Australian solid waste levy*.[5] This report outlines that MBT is on the threshold of being viable at $100 per tonne and Energy from Waste at $133 per tonne.[6]

Please do not hesitate to contact me if there are any queries regarding this.

Kind Regards,

Taryn Alderdice
Contract Management Officer
Council Solutions

[3] Excluding the Cities of Marion and Port Adelaide Enfield's volumes.
[4] *Reforming waste management – Creating certainty for an industry to grow*, August 2015, Environment Protection Authority SA, page 52
[5] Deloitte Access Economics, July 2015, available at http://www.acor.org.au/publications-policies--submissions.html under Publications.
[6] Ibid, page 3.

ANNEXURE A:

Data for Participating Councils, Metropolitan Adelaide & All Metropolitan Source Sectors

Council	Estimated quantity residual waste				Estimated quantity recyclables		Estimated quantity organics			
	Tonnes	% of All Metropolitan Sectors	Tonnes (excl. CoM & CPAE)	% of All Metropolitan Sectors	Tonnes	% of All Metropolitan Sectors	Tonnes	% of All Metropolitan Sectors	Tonnes (excl. CPAE)	% of All Metropolitan Sectors
Corporation of the City of Adelaide	4,253	0.47%	4,253	0.47%	1,849	0.07%	474	0.05%	474	0.05%
City of Charles Sturt	23,396	2.56%	23,396	2.56%	10,276	0.40%	15,444	1.55%	15,444	1.55%
City of Marion	17,251	1.89%			7,918	0.31%	11,474	1.15%	11,474	1.15%
City of Tea Tree Gully	18,474	2.02%	18,474	2.02%	8,468	0.33%	10,236	1.03%	10,236	1.03%
City of Port Adelaide Enfield	11,595	1.27%			5,068	0.20%	8,252	0.83%		
TOTAL	**74,970**	**8.20%**	**46,124**	**5.05%**	**33,580**	**1.30%**	**45,880**	**4.60%**	**37,628**	**3.77%**
All Metropolitan Councils	262,228	**17.59%**	262,228	**17.59%**	258,087		126,121	**36.38%**	126,121	**29.83%**
All Metropolitan Sectors*	914,000		914,000		2,591,000		997,000		997,000	

* Municipal, Commercial & Industrial and Construction & Demolition; Recyclables excludes Fly Ash and Clay, Fines, Rubble & Soil

Data Sources:

Tonnes of waste Participating Councils:	Office of Green Industries SA, supplied 11/09/15.
Total tonnes of waste:	*South Australia's Recycling Activity Survey: 2013-14 Financial Year Report* , February 2015, Zero Waste SA.