

28 November 2016

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

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

Dear Ms Batten,

A91520 COUNCIL SOLUTIONS & ORS – APPLICATION FOR AUTHORISATION OF A COMBINED WASTE TENDER PROCESS, FURTHER SUBMISSION REGARDING IMPACT OF LENGTH OF CONTRACT TERM ON PROPOSED BENEFITS

Council Solutions is providing a written submission in response to WRASA's submission dated 28 September 2016 regarding the reduction of the maximum operating term to ten years (including any extensions). This submission only addresses this specific point; Council Solutions maintains its position regarding all other matters raised in the submission. Council Solutions confirms this may be placed on the Public Register.

WRASA has made three statements regarding the concession made in the Supplementary Supporting Submission dated 30 June 2016 that the Applicants will only approach the market for a standard operating term of up to a maximum of 10 years, including all extensions. These are:

- i) *Also, their revised timeframe for the commissioning of an AWT would normally require a commitment of 20 years plus to a contractor. This cornerstone of their argument for innovation and joint tendering is now at loggerheads with their revised maximum contract period of 10 years. For example, Phoenix in Perth has contracted for 20 years. Due to the need for differing terms that align to specific services, we believe a public detriment will result from a single term for all service types that ignores proven industry optimally efficient terms. (On page 3 of the submission).*
- ii) *We understand the concession that Council Solutions have made however it is not in the best interests of the individual Councils and the public. Our main concern is the conglomeration of all services and the longer term's ability to extend a collection contract, for example, for convenience, to align with the same contractor's term for their processing or disposal. What is required is a specific tender for each service for the appropriate term, as has been done successfully by other ACCC applicants. For example, the Melbourne Metro groups successfully tendered for a processing facility for the standard term with no negative impact on their collection contracts. Each Council can assess each tendered site based on its distance from the Council centre of density. This is why we stress that a clustered set of Councils is imperative for achieving efficiencies.*

With regards to alternate waste treatment facilities, by restricting itself to 10 years for this service, Council Solutions is halving the required term for this service. This change shows that Council Solutions are modifying their application in the hope of having it approved rather than listening to the industry's advice on fundamental contract features. We have no confidence that Council Solutions have grasped the complexity of their proposal nor that it can successfully deliver a raft of solutions that deliver net public benefit. (On page 7 of the submission).

- iii) *... As mentioned above, new alternate waste disposal or processing facilities typically enter into a 20 year agreement or longer. Council Solutions has now limited itself to 10 years (including any extensions) which makes it impossible for a new alternate waste facility provider to, for example, provide the most economical price to Councils and the ratepayers. As highlighted by MRA, NSW now limits landfill tender terms to 5 years to ensure they do not lock out the development of Waste to Energy facilities. (On page 20 of the submission)*

Council Solutions makes the following points in response.

1. Not a single term for all services

Council Solutions has been clear in all submissions that the approach to market will be based upon standard operating terms for each Service Stream.¹ This will allow for optimally efficient terms to be awarded based on the responses received and the Service Streams. If one respondent offers a proposal for more than one Service Stream *and* this offers the best outcome for the Participating Councils, there may be alignment of the operating terms, but this is up to the market and is not a *requirement* of the Proposed Conduct.

For three of the Service Streams (Waste Collection, Receiving and Processing of Recyclables and Receiving and Processing of Organics), the standard operating terms have been seven years plus up to three years extension² whereas for Waste Disposal for landfill it is generally five years plus up to three years extension. However, Waste Disposal is where a proposal for Alternative Waste Technology is most likely to occur, hence the ability to offer a maximum of a ten year contract where linked with infrastructure investment, environmental initiatives or economic development will allow for these alternatives to traditional disposal to be investigated.

2. Alternative Waste Technology is not the 'cornerstone' of the argument for innovation and joint tendering.

Council Solutions rejects the suggestion that the application relies on the potential for Alternative Waste Technology to be achieved for the public benefits to outweigh any public detriments. Council Solutions has submitted a number of public benefits that will occur as a result of the Proposed

¹ See e.g., paragraph 6.2 of the Supporting Submission, paragraph 3 of the submission in response to the submission from SAWIN pre-draft determination and paragraph 3.3.2 of the Supplementary Supporting Submission.

² See paragraph 6.2 of the Supporting Submission.

Conduct, including Transaction Cost Savings, Improved Purchasing Power, Greater Economies of Scale and Efficiency, Environmental Benefits and Improved Incentive for New Market Entrants or Expansion.

Even where innovation as a result of the Proposed Conduct has been argued, this has not been limited to Alternative Waste Technology, nor exclusively to a longer term contract.

a. Waste Collection

In the submission made on 4 October 2016 regarding the likely benefits / detriments (**Public Benefits Submission**), Council Solutions outlined innovation that could be brought forward as a result of the Proposed Conduct. In particular, at paragraph 3.1, the leveraging of the size of the contract to require the provision of innovative data collection was outlined. This innovation does not require a longer than standard operating term but, rather, the aggregation of demand. A standard operating term, with a maximum term of ten years, will still allow for innovation in Waste Collection.

b. Receiving and Processing of Recyclables

The Supporting Submission outlined a number of innovations that could occur as a result of the Proposed Conduct in the Receiving and Processing of Recyclables Service Stream. At paragraph 8.4, the need to modernise existing infrastructure was outlined, while at paragraph 8.5 the enticement to invest in building a new or upgrading existing MRF infrastructure, utilising the latest technology, as a result of the Proposed Conduct was stated. With newer technology comes the opportunity to increase resource recovery including, for example, soft plastics. This investment, leading to innovation through the utilisation of the latest technology, is not reliant on a longer than standard operating term but, rather, the combined volumes of the Participating Councils. A standard operating term, with a maximum term of ten years, will still allow for innovation in Receiving and Processing of Recyclables.

c. Receiving and Processing of Organics

In paragraph 8.5 of the Supporting Submission, it is stated that the Proposed Conduct would provide an opportunity to support the existing organics processing industry through investment in infrastructure, allowing for the most modern technology to be implemented. As a result, new innovation can occur, both in an increase in the types of material collected and in the end products that are produced as a result of the new treatment systems. Again, this investment and can be supported by the Proposed Conduct through the aggregation of the volumes of organics collected, even within the standard operating term with a maximum of ten years.

If there is a 'cornerstone' to the 'innovation and joint tendering arguments', it is the collaboration and aggregation of volume which will lead to the five key public benefits as listed above. These all still occur in standard operating terms, and will be looked for as part of the procurement process. Longer operating terms helps the suppliers to amortise the cost over a longer period, but

guaranteed volumes provides assurance they will have the feedstock to make investment economically viable.

3. Alternative Waste Technology does not require a 20 year term, nor does offering a maximum 10 year term make it impossible for a new facility to offer the most economical price to Councils.

As outlined at paragraph 2.1.3.2 of the Public Benefits Submission, two collaborative procurements have successfully resulted in AWT outcomes for their ratepayers with ten year contract terms. SSROC and NSROC both achieved outcomes utilising Mechanical Biological Treatment and Refuse Derived Fuel with ten year contract terms. A ten year contract term does not *automatically preclude* AWT as an option the market may offer as a result of the Proposed Conduct. Where a supplier is already investigating the potential to establish in Adelaide, the guaranteed volumes for a ten year term, when added to other volumes they may secure from other local government sources for longer periods, may be the 'tipping point' that turns the investigation into action.

4. Reasoning for reducing the maximum contract term offered.

Rather than a decision to ensure Authorisation was granted, the Participating Councils made the decision to offer a limit to the maximum contract term offered as a result of the feedback provided by the industry since the draft determination. The Applicants do not wish to have any barriers to innovation in any Service Stream. The feedback from the market, through the written submissions and the pre-decision conference, indicated a longer than standard operating term would most likely be used by the market to secure business and shore up market share and not to provide any further innovation than would otherwise be provided via the aggregated volumes under a standard operating term. The Applicants have been clear in all submissions that longer than standard operating terms would only be entered into where linked with infrastructure investment, environmental initiatives or economic development, therefore if the market can offer these without the longer term, a longer term is not required. The Participating Councils are committed to innovation and investment in the waste industry and look to support that with the Proposed Conduct by allowing the market to offer solutions that will promote this.

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

Kind Regards,



Taryn Alderdice
Contract Management Officer
Council Solutions