

10<sup>th</sup> March 2016

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The General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

Attention: Ms Tess Macrae – Assistant Director, Adjudication

Dear Ms Macrae,

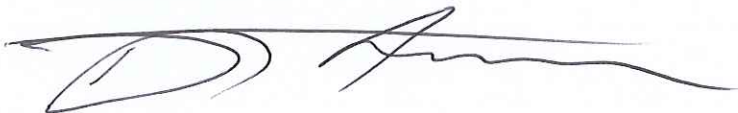
## **COUNCIL SOLUTIONS AND ORS A91520**

We refer to the ACCC's Draft Determination and Interim Authorization released on 11<sup>th</sup> February 2016 regarding the above application.

J.J. Richards provides comments on the following pages in relation to this matter. In summary, we submit that allowing the Councils to jointly tender and contract for the waste collection and processing services would lesson competition and this would not be outweighed by any public benefit.

Thank you for your consideration of our submission.

Yours faithfully,  
J.J. Richards & Sons Pty Ltd



Don Thomason  
Associate Director



## **Submission – A91520 – Council Solutions and Ors.**

***References are to the draft determination dated 11<sup>th</sup> February 2016. Please note that our comments below are specific to collection services.***

### **Item 6 – Operating Term of 14 years.**

This is an abnormally long term for a collection contract. A 14 year contract term will introduce considerable uncertainty and does not align with the economic life of collection vehicles and will result in higher tender prices which will disadvantage the consumer. The best price will be received for a minimum 8 year term and a maximum 12 year term which aligns with the economic life of collection vehicles.

Being locked out of a substantial percentage of the Adelaide market for an extended period of time will result in companies having to evaluate their viability to continue operating in the City. Smaller tenders for shorter terms with varying start dates encourage ongoing participation in the market. Long term, larger contracts may encourage a competitive bid for that one contract but will have an adverse impact immediately on remaining contracts whether small or large.

### **Item 8 – Contracts can be awarded to multiple operators or suppliers.**

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

### **Item 10 – Daily administration of the contracts.**

The process of establishing working groups from various Councils to conduct activities will add 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.

### **Item 11 – Council Solutions.**

Further expansion of Council Solutions activities to involve other Council's in joint tender processes will further exacerbate the anti competitive outcomes and negatively impact public benefit for the reasons outlined in this submission and submissions by other parties.

### **Item 15 – Similar Authorisations**

We have made submission to the ACCC in relation to other joint tenders for similar reasons expressed in this submission. While one off approvals in markets may only result in diluted anti competitive outcomes and negative public benefit, we believe that further approvals will definitely result in higher prices and lower quality of service to the detriment of the public. With larger contracts and fewer competitors it is possible Councils will have to put up with a poor performing contractor as there is no alternative. This would render the ultimate penalty of terminating a contract for poor performance as unrealistic. Such an outcome is not the case with smaller contracts that still achieve the maximum benefit afforded by economy of scale.

### **Item 22 and 24 – Claimed public benefits.**

Transaction Cost Savings - While some documentation may be similar 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. There are likely unique service requirements for individual Councils that will have to be encompassed in one document. In addition to the meetings that would normally be held within each Council, there will need to be combined meetings to resolve issues. Therefore it is likely overall transaction costs will increase.



**Item 22 and 24 – Claimed public benefits (Continued).**

Improved Purchasing Power Leading to Lower Costs. - There is no benefit for the consumer via this joint tender process. Each local government is individually large enough to solicit tender prices that benefit from economies of scale. Pricing obtained jointly or separately should be the same. If this is not the case then consumers in one local government area will be subsidising the cost to the other at their detriment.

Greater Economies of Scale and Efficiency - The scale of the works and the complexity of the joint tender process will potentially result in fewer tenders being submitted, notwithstanding the ability to tender for separable portions for each local government area. Some companies that participate in waste collection tenders for smaller contracts may not participate in larger processes. Based on the many tenders throughout Australia each year, the number of tender responses received by a Council for a waste collection contract does not correlate to the size of the LGA. The price outcome is also impacted by a multitude of other factors.

Potential for Increased Competition – For reasons stated above, there is an equal possibility the number of tenders received could reduce. In broader market terms, a reduction in the total number of contracts available and a reduction in variation in start dates and contract terms will lead to a reduced number of skilled, experienced service providers over time leading to reduced competition and increased costs. Granting authorisation will be to the detriment of surrounding LGA's, long term, sustainable competition and the positive impact this has on long term pricing, service quality, innovation and environmental outcomes.

**Item 26 – Mitigation of Public Detriment**

Maximum Number of Suppliers – as previously stated, it is possible the large scale of this process will result in less tenders submitted. Evidence from around Australia shows there is no correlation between number of respondents to a tender and the size of the LGA.

Individual Councils Retain the Right to Accept or Reject Bids – See comments at Item 8.

Pre Tender Briefings – We appreciate the opportunity to participate in briefings. As was evidenced at the December 21 briefing, no individual company will speak up in front of their peers or lodge a private objection about a tender process to the party that will be assessing their bid. Consequently we do not believe any conclusion can be reached about the industry's acceptance of the process or otherwise from the briefings.

Free to Compete for Other Clients – Authorisation of this and similar processes dramatically reduces this opportunity.

Suppliers can Provide Services to Individual Participating Councils – This outcome seems to contradict the intent of this process and its stated benefits. Tenderers wanting to provide services to an individual Council will be faced with a more complex and expensive tender process.

**Item 28 – Participating Councils 35% of Metro Adelaide, Numerous other Councils**

We note Council Solutions is looking to involve other Councils in this consortia and the ACCC has approved similar joint tender processes in recent times. This activity will reduce the number of other tender opportunities in future with a lowering of competition and available expertise to provide services.

**Item 29 – Individual Councils could offer contracts for 14 years.**

We acknowledge this is possible. However with more numerous contracts and varying completion dates it would mean opportunities to tender would be far more frequent and this would incentivise service providers to maintain an interest and the necessary skills to remain in the market.

**Item 30 – Limit to Public Detriment**

We contend that any cost benefit received by one Council will be to the detriment of another Council due to confusion of cost allocation between LGA boundaries in bids for multiple Councils. Each Council is of sufficient size in its own right to receive economy of scale for collection services. Larger contracts do not necessarily receive lower prices as larger jobs can be perceived to have a larger risk profile, particularly where pricing is fixed (other than adjustment via Rise and Fall formula) for the long term.

If the proposed conduct is allowed to occur and is also approved for other Councils, there will be a substantial reduction in opportunities for unsuccessful bidders which will lead to less competition and higher prices over time.

**Item 36 – Contract terms**

A 14 year contract term will introduce considerable uncertainty and does not align with the economic life of collection vehicles and will result in higher tender prices which will disadvantage the consumer. Please refer to further comments at Item 6.