

19 January 2016

Ms Tess Macrae
Acting Director, Adjudication
Australian Competition & Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Via email: adjudication@acc.gov.au; cc: tess.macrae@acc.gov.au

Dear Ms Macrae,

A91520 COUNCIL SOLUTIONS & ORS – APPLICATION FOR AUTHORISATION OF A COMBINED WASTE TENDER PROCESS, RESPONSE TO INTERESTED PARTY SUBMISSION

Council Solutions, on behalf of the Corporation of the City of Adelaide and the Cities of Charles Sturt, Marion, Tea Tree Gully and Port Adelaide Enfield (**Participating Councils**) (together, the **Applicants**), has been invited to respond to the submission from an interested party regarding the above application.

This response addresses the comments made in the submission made by the South Australian Waste Industry Network (**SAWIN**) dated 8 January 2016.

General

1. **Market definition:** As SAWIN has not looked to comment upon or define the relevant market(s) in their submission, Council Solutions will continue to use the relevant areas of competition for the Service Streams (as defined in the application) to frame the response.
2. **Cost savings concerns:** SAWIN has submitted it is unlikely one service provider would be able to service all five councils, one reason being due to geography and associated transport costs to the service provider's disposal facility. As set out in section 4.1 of the Supporting Submission, prices will be sought from the Suppliers for providing the service on a 'whole of group' basis, a regional or geographic split or to individual Participating Councils. It is not the intention of the Applicants to require only one service provider to service the five Participating Councils but, rather, is expecting the market to determine the best aggregation of the volume offered (including optimisation of collection and transport) through their tender response.

The basis of SAWIN's submission appears to be that a service provider is unlikely to be able to offer a competitively priced service to both the City of Marion and the City of Tea Tree Gully due to high transportation costs. However, Council Solutions observes that for the Waste Collection Service Stream the same provider is already servicing both the City of Marion and the City of Tea Tree Gully, the two most geographically distant councils within the Participating Councils. This fact strongly supports the argument that a competitive tender may be submitted by a service provider across geographically disparate council areas.

In relation to SAWIN's submission that geographical issues and other market dynamics work against the anticipated Public Benefits of the Supporting Submission, Council Solutions responds as follows:

- a. there will still be significant transaction cost savings through the undertaking of one collaborative tender process and the resultant number of negotiations as opposed to five or more individual tender processes and the resultant number of negotiations;
- b. further, as set out in section 4.1 of the Supporting Submission, even if resultant contracts are individual contracts between each Participating Council and the successful Operator or Supplier, they will be on identical or near identical terms;
- c. economies of scale may be achieved through a number of factors, as described in section 8.3 of the Supporting Submission, and transportation costs are only one factor to be taken into consideration; and
- d. further, it is not the intention of the Applicants to require 'one price for all' from a service provider to service the five Participating Councils but, rather, is expecting the market to determine the best construct and resultant pricing, including where any costs can be saved, of the volume offered through their tender response.

For completeness, we respectfully reject SAWIN's underlying assumption that the Participating Councils will split and have to "negotiate solo". Council Solutions has conducted significant preparatory work into identifying synergies between the requirements of the Participating Councils before embarking on this joint procurement process. Further, the negotiation process will provide for all Participating Councils and successful tenderers to negotiate on the basis of identical or near identical terms. Section 4.1 of the Supporting Submission already contemplates that the joint tender process will allow tenderers to provide their response on a 'whole of group' basis, a regional or geographic split or to individual Participating Councils.

3. **Likelihood of a longer term incentivising investment in WtE:** SAWIN has submitted it is "very unlikely that Council Solutions' proposal would encourage or incentivise investment in WtE technology in Adelaide". We observe that SAWIN has not outlined any supporting evidence for this conclusion.

As set out in sections 6.3 and 8.5 of the Supporting Submission, Council Solutions expects that a longer contract term of up to 14 years and potential for engagement by multiple Participating Councils will provide additional certainty and leverage for the successful supplier/s to incentivise investment in infrastructure and/or innovation.

Further, the Applicants are committed to working with the market to encourage innovation both in this field and in AWT. For instance, AWT in the form of mechanical biological treatment may be an option presented by the market which generally requires significant underpinning tonnes for a provider to consider the investment. Council Solutions maintains, however, that a longer term contract may be offered where commercially validated market

assertions regard it as critical to secure innovation, otherwise standard market operating terms will be offered.

Receiving and processing of recyclables

SAWIN submits if one service provider was awarded all of the Participating Councils' recyclable volume, the other service providers in the market may be unable to continue offering their current level of service on the remaining volume which may lead to a longer term monopoly. Council Solutions' response is to reiterate that the Participating Councils' combined recyclable volume is 1.3% of all tonnes of recyclable material in the metropolitan area across all sectors, and 13% of all tonnes of recyclable material offered by all metropolitan councils.¹ Given this level of market share, we consider that there is no real risk that any existing service provider will be excluded from the market, even if a sole service provider is awarded the total recyclable volume.²

SAWIN submits NAWMA is currently only available to constituent councils. Conversely, Council Solutions understands NAWMA does receive recyclables from other councils.

SAWIN submits the awarding of the combined recyclable volumes to SKM would create a risk of Visy being unable to continue offering their current level of service on the remaining volume which may lead to a longer term monopoly. Whilst it is anticipated that an aggregation of the Participating Councils may be large enough to encourage further market participants to become involved, fostering innovation and investment in infrastructure, Council Solutions assert there is still sufficient volume in the market for a long term competitive environment. Council Solutions also notes this outcome may occur even if authorisation is not granted through individual tender and award processes.

Further, whilst the position of specific service providers is outside the scope of Council Solutions' submissions, it is our understanding that for a number of years until 2014, Visy had a monopoly in, at least, Metropolitan Adelaide for municipal recyclables. The entrance of SKM in the last two years has increased competition in a positive manner and resulted in a significant shift in the market dynamics. In our view, the combined volume of recyclables offered under the joint tender may also assist processors to make investment in infrastructure locally by providing underpinning volumes.

Council Solutions submits any broadening of the market by encouraging additional participants through the incentive of combined volumes can only strengthen competition, with little risk of monopoly given the substantial volumes still available outside of the proposed conduct.

¹ Refer Annexure 1 of the Supporting Submission to A91520.

² Council Solutions further notes SAWIN's submission under "Receiving and processing of organics" that the categorisation of the Participating Councils' combined volume as a percent of all metro sectors is not the correct characterisation and, instead, metro kerbside tonnes should be used for the assessment of the Participating Councils' market share. As outlined below, Council Solutions does not agree this different characterisation should be used as it ignores the multitude of other opportunities available to operators in this market. However, for completeness, Council Solutions observes the Metropolitan kerbside recyclables tonnes for 2012-13 as reported by ZeroWasteSA in *South Australia's Kerbside Three-Bin System Waste Report 2012-13* was 114,200. The Participating Council's share of this is 29.4%. As such, Council Solutions submits that its analysis is correct even if SAWIN's characterisation is used. That is, even if a sole service provider was awarded a long term contract for these volumes, other existing service providers would still be able to compete for a significant proportion of the market (i.e. 70%).

Receiving and processing of organics

SAWIN submits Council Solutions' categorisation of the Participating Councils' combined volume as 4.6% of all metro sectors is not the correct characterisation of the market and, instead, metro kerbside green organic tonnes should be used for the assessment of Participating Councils' market share.

Firstly, Council Solutions does not agree that this different characterisation should be used as it ignores the multitude of other opportunities available to operators within this market.

If this approach were used, however, we observe that the Participating Councils' combined volume is approximately 30% of the Metropolitan kerbside green organics tonnes for 2012-13³ (excluding the City of Port Adelaide Enfield as it does not anticipate initially requiring this Service Stream). Council Solutions also notes one supplier currently provides service to three of the Participating Councils, with a combined tonnage of 20% of the Metropolitan kerbside green organic tonnes.⁴ As such, Council Solutions submits that its analysis is correct even if SAWIN's characterisation is used. That is, even if a sole service provider was awarded a long term contract for these volumes, other existing service providers would still be able to compete for a significant proportion of the market (i.e. 70%).

SAWIN submits that if a sole (current) provider was awarded all tonnes for a long term significant damage would be done to the other two current providers as whilst that provider may be able to increase investment in their facility, the other facilities would be unable to 'ride out' the term.

Council Solutions' response is that a longer term contract is not a certain outcome of the joint procurement process. A longer term contract may be offered where commercially validated market assertions regard it as critical to secure innovation, otherwise standard market operating terms will be offered. Council Solutions asserts an increase from 20% to 30% of the market will not have a significant impact and notes this outcome may occur even if authorisation is not granted through individual tender and award processes. Council Solutions further submits any broadening of the market by encouraging additional participants through the incentive of combined volumes can only strengthen competition, with little risk of monopoly given the sizeable volumes of both Metropolitan kerbside green organics and metro organics still available outside of the proposed conduct.

Council Solutions also reiterates it is not the intention of the Applicants to require only one service provider to service the four Participating Councils but, rather, expects the market to respond with the best solution for the aggregated volume offered, which may include multiple providers of processing, through their tender response.

Further to Council Solutions' responses to the receiving and processing of both recyclables and organics, Council Solutions also highlights the South Australian Waste Strategy for 2015-2020 target of 70% diversion of Metropolitan Municipal Solid Waste away from landfill⁵ which will lead to greater tonnes of recyclables and organics being sent to receiving and processing facilities from all

³ *South Australia's Kerbside Three-Bin System Waste Report 2012-13*, ZeroWasteSA, pg. 3.

⁴ Refer Table 2 and Annexure 1 of the Supporting Submission to A91520 and *South Australia's Kerbside Three-Bin System Waste Report 2012-13*, ZeroWasteSA, pg. 3.

⁵ *Waste Strategy 2015-2020*, Consultation Draft 2015, Zero Waste SA.

metropolitan councils. Therefore, in tonnes, the opportunities outside of the proposed conduct should also increase for all market participants.

Other

SAWIN make a number of submissions regarding the counterfactual, at section 10 of the Supporting Submission. Council Solutions responds as follows:

- a. SAWIN submits that it is incorrect that service providers are not responding to opportunities to tender due to the additional administrative burden of answering individual tenders for each service stream, and that each tender is "hotly contested". Council Solutions' response is that whilst the larger of the Participating Councils may receive competitive bids, given the alignment of the needs and the likelihood that the tenders would all be in the market around the same time, there is a possibility market participants with limited resources may prioritise their resources towards the tender responses that will deliver the greatest benefit to the service provider which may be to the detriment of some other Participating Councils.
- b. SAWIN submits investment and innovation occurs regardless of the proposed conduct and by allowing the proposed conduct with a long term contract, investment and innovation will be stifled for the unsuccessful service providers, and that the joint procurement proposal will lead to 3 years of uncertainty for tenderers. Council Solutions respectfully disagrees with this submission for the following reasons:
 - Whilst continual innovation and investment will occur in any market, Council Solutions' submission is that the combined volume and potential for a longer term contract may unlock innovation and investment on a much larger scale than is currently occurring, or may be the catalyst for a 'leap forward'.
 - The joint procurement process is timed to coincide where possible with the existing arrangements of the Participating Councils and, should the authorisation not be granted, each Participating Council will have a procurement process of a similar timeframe. We observe there is some inherent uncertainty during the tender and negotiation phase, which will occur regardless of whether a joint or individual tender process is undertaken.
 - Additionally, this time could provide a suitable window for investment, approval process, construction and commissioning of waste and recycling processing new infrastructure.

We also reiterate that a longer term contract is only likely to be offered where commercially validated market assertions regard it as critical to secure innovation, otherwise standard market operating terms will be offered.

- c. SAWIN submits that if there is no obligation for all Participating Councils to appoint the same service provider the economies of scales cannot be relied upon to deliver value to the Participating Councils.

As described in section 8.3 of the Supporting Submission, there are a number of economies of scale that may be achieved through the joint tendering process, which would simply not be available if the Participating Councils conducted individual tenders. We do not consider

that it is necessary for there to be an obligation for the Participating Councils to appoint a single service provider in order for these benefits to be achieved.

We acknowledge that the benefit linked to economies of scale and efficiencies is limited to the extent a common service provider is appointed by two or more Participating Councils, however also note that given the limited number of service providers in a number of Service Streams it is highly unlikely each Participating Council would appoint a different service provider. Therefore, where more than one Participating Council appoints the same service provider, doing so collaboratively and allowing for streamlining across the arrangements, some economy of scale and efficiency is inevitable.

Council Solutions considers the public benefits that will flow from the proposed conduct will outweigh the concerns raised by SAWIN and does not consider there would be a substantial lessening of competition as demonstrated in the application for authorisation.

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

Kind Regards,



Taryn Alderdice
Contract Management Officer
Council Solutions