

**The Adjudicator,  
Attn: Tanya Hobbs  
ACCC  
GPO Box 3131  
Canberra ACT 2601**

**22 May 2020**

**Your ref: Contract No. AA1000458**

**Our ref: 20200522 ACCC MWRRG**

**Re: 'AA1000503 – Metropolitan Waste and Resource Recovery Group (Organic Waste Processing) – submission'**

Dear Sir/Madam,

I refer to your email dated 28 April 2020 inviting comments on a MWRRG application to revoke Authorisation AA1000458 and substitute a new authorisation to add four councils to the South Eastern Organics Group being: Melbourne, Port Phillip, Yarra, and Whittlesea councils.

This business OBJECTS to the proposal on the following grounds:

1. It is understood that Mornington Peninsula Shire (MPS) was not a part of the MWRRG region when the South East Organics (SEO) tender took place so it is reasonable to assume that once the Council became part of metropolitan Melbourne that it would, at least from a geographical perspective, become part of the South Eastern Organics contract cluster.
2. It is believed that all relevant councils should have been named as participants in any MWRRG regional tendering process at the time of tendering.
3. What MWRRG is endeavouring to achieve here is not strictly in line with its business activities (as cited in 1.3 of the submission) insofar as: this submission is not a 'joint procurement' per se, it is not planning for resource recovery infrastructure nor is it facilitating a contract for joint procurement as this application is retrospective.
4. This business has over the past 4 years expended significant time, resources and funds to secure the relevant approvals to be able to receive and process food and green organics and their subsequent composting. If this MWRRG application is approved, this business will be denied natural justice to tender for part or all of this organic material from the 4 councils.

5. Historically (between 2010-2020), MWRRG has had the opportunity to engage and include any 'outstanding' councils (ie. Melbourne, Port Phillip, Yarra, Whittlesea, Stonnington and Boroondara) in the North West Organics (NWO), the South East Organics (SEO) or the Eastern Organics (EO) tender processes or otherwise proceed with another collective tender. These council's could have resolved at the time to participate and commit at the expiration of any existing council organics contracts. The fact that the councils did not get on board at the time of tendering should preclude them from retrospective inclusion. The quantum of the retrospective inclusion of these councils (inclusive of MPS) and their quantities of organics in an existing contract such as the SEO contract is restrictive to this business and therefore anticompetitive as I estimate it will potentially add over 50% more organics to the SEO cluster of processors. The question also arises could there later be a subsequent retrospective submission to include either Stonnington or Boroondara in an existing organics contract ie. SEO?
6. It is noted that Whittlesea council is in a high residential growth corridor and it is not unreasonable to expect a doubling in its green organics quantities in say the next 5-8 years ie. it can achieve a tonnage similar to Casey council. Coupled with this growth the current move by councils to mandate including food (currently estimated as 40% of the garbage bin volume) in the garden organics collection will also substantially increase Whittlesea's organic tonnes. It is anticipated that all metropolitan councils will be moving to include food in their organic collections in the next few years and so substantial increases will also be apparent in Melbourne, Port Phillip and Yarra council organic collections. As such the tonnages provided by MWRRG are notional only and don't reflect the effect of compulsory food collection.
7. In the light of the above, the MWRRG submission statement 4.2 (Relevant volumes are insubstantial) appears out of context and flawed. The argument is predicated on the total number of metropolitan tonnes, an amount that is distributed amongst 3 MWRRG contract regions with the balance being with individual councils. More importantly all of the proposed organics in the submission, and not allowing for the inclusion of food, is to go to one MWRRG contract region. In this context it is a substantial change to what was presented at tendering. Based on the supplied council tonnes, the original tender proposed 132,243 tonnes. Addition of MPS (25,000 tpa) is an increase of 18.9% on the quantity of organics out to tender. Addition of Melbourne, Port Phillip, Yarra, Whittlesea (31,500 tpa) then presents an increase of 20.0% to the organics on the 157,243 tpa inclusive of MPS. From another perspective, the 'incremental' addition of MPS (25,000 tpa) and now Melbourne, Port Phillip, Yarra, Whittlesea (26,500 tpa) then presents an increase of 42.7% on the 132,243tpa of organics originally out to tender. In this context, and excluding the inclusion of food in collections, the relevant change in volume is substantial and is the result of 2 submissions to ACCC within the space of less than a year! In this context the preparation of separate ACCC authorisation applications (AA1000458 and AA1000503) should have been better managed.

8. Other processors would have tendered for the South Eastern Organics contract at the time of public advertising had it been known that the engaged contractors would have access to more organic material as evidenced by retrospective applications for the addition of 5 more council applicants to the original tender process, namely Mornington Peninsula Shire, Melbourne, Port Phillip, Yarra, and Whittlesea. This application also effectively stymies local metropolitan organics processing competition and growth which by its nature spreads any risk.
9. The issue of risk is also apparent from the SKM recycling debacle last year where due to there only being 3 principal recycling processors in Melbourne, thousands of tonnes of council recyclables were sent to landfill.
10. Retrospectively annexing additional councils to existing contracts is anticompetitive by shutting other processors out from growing their businesses and tendering their services, particularly now when government funding is available to grow smaller organic recycling businesses as we strive for a circular economy.
11. The submission acknowledges in 4.2 (No change to services or infrastructure) that there will be no change to processor facilities or infrastructure. From a risk-based perspective it would appear more prudent to nurture current capacity for the inclusion of food as well as organic growth as set out in the original tender documents and seek to secure more capacity via separate tender. This business submits a separate tender is the appropriate outcome to foster competition between organics processors.
12. The MWRRG submission is reducing market share and is cutting out the existing council processors from an opportunity to respond to a tender to keep or grow their arrangements from currently servicing one or more of the 4 councils.
13. The assertion in Section 7 (Public Benefits) of the MWRRG submission “..... investment in improved technologies .....” has already taken place predicated on the quantum of organics reported as being available at the time of tendering so no significant change on this front is apparent. Councils had the opportunity to be involved in the initial collective public tender process therefore the assertion “..... reducing transaction and service delivery costs for the additional councils as a result of the collective bargaining of MWRRG .....” is also questioned as it then relates to a ‘closed market’ which is with the SEO contracted processors. The proposal does not consider haulage distances and closer proximity to other MWRRG organics contract clusters such as NWO and EO. The reference to ‘.... Economic efficiencies .....’ is also unsubstantiated whilst “..... Environmental and health benefits ....” relates to the initial authorisations and does imply additional benefits from securing additional councils within the SEO contract cluster.

14. Geographically it also doesn't add up to include Whittlesea in the SEO collective.

We request your consideration of the above concerns in your evaluation of the MWRRG submission and further request you deny the application.