

1 December 2021

Ms Connie Wu
Assistant Director
Mergers, Exceptions & Digital
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 3131

General Counsel Dan Pearce
Direct Line [REDACTED]
Email [REDACTED]
Our Ref DSP 19480069

By email connie.wu@acc.gov.au

Dear Ms Wu

**Metropolitan Waste and Resource Recovery Group – Recycling
Submission by Great Southern Waste Technologies**

Thank you for sending through the submission from Great Southern Waste Technologies (GSWT).

We provide the following responses on the un-redacted dot points in the submission. We ask that the sections that are highlighted be redacted from the version of this letter that is placed on the public register given they contain confidential content.

It is noted that a number of assertions are made regarding other projects being undertaken in the waste and resource recovery sector. These assertions are [REDACTED] irrelevant to the project that is the subject of this application. The allegations entirely ignore the transparent and independently advised processes that are being undertaken on those projects (as discussed in further detail below) and are likely to have the effect of undermining the confidence in, and progress of, those separate procurements.

In relation to the first dot point, the assertions regarding Metropolitan Waste and Resource Recovery Group (MWRRG) management of the Advanced Waste Processing project are not accepted, and it is noted that that procurement is being overseen by independent probity advisers and legal advisers. The assertion that MWRRG cannot run the process fairly is incorrect and ignores MWRRG's status as a public sector entity with deep experience and expertise in undertaking such projects and the engagement of multiple independent advisers to ensure that the process is transparent and fair. The assertions made regarding changing rules and non-disclosure are incorrect and rejected. The assertions that MWRRG is unnecessary and should not be paid fees ignore the benefits that MWRRG brings to councils in co-ordinating procurements, [REDACTED]

[REDACTED] In any event, the AWP project is not relevant to the Recycling Collaborative Procurement panel contracts.

Melbourne . Canberra . Sydney . Brisbane . Cairns

Level 8 555 Bourke Street Melbourne VIC 3000 DX 422 Melbourne
GPO Box 2154 Melbourne Vic 3001 T +61 3 9321 9999 www.holdingredlich.com

ABN 15 364 527 724

In relation to the second dot point, the context for GSWT's comment is unclear, but in relation to the concluding comments, MWRRG does have regard to the Government's aims in the waste sector, as it is required to under its governing legislation.

In relation to the third dot point, a panel will not exclude more environmentally friendly offers or other innovation. The greater certainty provided to suppliers via the panel, together with assessment criteria that recognise innovation in the responses, is expected to encourage a commitment by suppliers to better outcomes compared with a piecemeal response to individual councils. The waste volumes from the councils involved in this application are less than those approved in the original ACCC authorisation, and the design of the panel guards against larger suppliers having any inherent advantage.

In relation to the fourth dot point, the changes to local government procurement processes are not as asserted (including as certain contracts were the subject of Ministerial extension), and it remains that councils are legally required to undertake a process to obtain contestability of pricing, which must be done thoroughly and professionally.

In relation to the fifth dot point, the proposed transition of the Waste and Resource Recovery Groups (WRRGs) into a new waste and recycling business unit within the Department of Environment, Land, Water and Planning (DELWP) – Recycling Victoria, is a normal transition of government agencies, and consistent with the broader government policy as most recently updated. The new business unit is expected to take on the arrangements put in place by the WRRGs, and so ensure seamless ongoing management of those arrangements. Importantly, these arrangements need to be put in place by June 2022, given the due dates for expiry of existing contracts - making it impractical to wait for the new business unit to be established before proceeding with the procurement. The proposed term of the panel reflects the timing of various changes to the regulatory environment and the expected lead time required to establish a further procurement to source the next generation of recycling services. Whilst the term sought in the application for authorisation is up to seven years, there may be scope for this to be shortened, [REDACTED] particularly if it is apparent that the changes flowing from the policy reform can be implemented more quickly than initially anticipated.

In relation to the sixth dot point, it is the case that suppliers remain free to deal with councils that are not participating in the procurement. On the supplier side, we note that in the absence of a collaborative procurement, three large incumbent operators have a significant negotiating advantage when dealing with individual councils, particularly those with smaller populations or more distant from the metropolitan area. Finally, a number of the existing suppliers, and potential new suppliers, have operations in multiple states (or even countries) and can draw on skills and expertise from a wide range of operations.

In relation to the eighth and ninth dot points, the redaction means that the context is not entirely clear. However, a common gate fee (CGF) mechanism, if used, will not inhibit competitive tendering. A CGF only applies to councils, therefore suppliers remain able to offer the terms that they wish to and be confident in knowing they will receive payment of the prices submitted. Suppliers also remain free to propose innovation and enhanced environmental benefits in the services they offer. The reference to the landfill tender is not clear and in any event is not relevant to this project.

In relation to the tenth dot point, the explanation above (in response to the fifth dot point) is also relevant here as regards the transition to a new waste and recycling business unit within DELWP. The assertions regarding the organisational capability of MWRRG are rejected. The eight month period proposed is appropriate for the scale and complexity of the procurement involved. It reflects sensible periods for the submission of offers by suppliers, the evaluation of those offers by the WRRGs, and the consideration of the evaluated offers by the councils - including compliance with their own internal processes. On the assertion of potential collusion, it is noted that the procurement is being overseen by probity advisers, and that any such behaviour would be subject to legal challenge in any event. In relation to the assertion of unfair advantage to those "prepared and solution ready" the procurement will be conducted openly and fairly, and expeditiously given the services being sought. Further, the WRRGs have statutory obligations to perform their duties appropriately and efficiently, and any suggestion of wastefulness is rejected.

We thank you for the opportunity to respond to this submission.

Yours sincerely

A grey rectangular box redacting the signature of the sender.

Holding Redlich