



# Conference Record

Application for Authorisation – AA1000419

Lodged by Council Solutions (processing)

**Scheduled: 10:00am Adelaide time, 10:30am AEDT  
22 October 2018**

**Cliftons  
Level 1, 80 King William Street  
Adelaide SA**

**and**

**ACCC office  
Level 2, 23 Marcus Clarke Street  
Canberra ACT**

**and**

**ACCC office  
Level 17, 2 Lonsdale Street  
Melbourne VIC**

The information and submissions contained in this conference record are not intended to be a verbatim record of the conference but a summary of the matters raised. A copy of this document will be emailed to each of the interested parties who attended the conference.

## Attendees

### **Australian Competition and Consumer Commission**

- Sarah Court, Commissioner (conference Chair)
- Joanne Palisi, General Manager, Adjudication
- Gavin Jones, Adjudication
- John Rouw, Adjudication
- Imogen Hartcher-O'Brien, Merger and Authorisations Legal Unit
- Tanya Hobbs, Adjudication (attended by video from Canberra)
- Tessa Cramond, Adjudication (attended by telephone from Melbourne)
- Sophie Mitchell, Adjudication (attended by telephone from Melbourne)

### **Applicants**

#### ***Council Solutions***

- Clare Coupar, Acting CEO
- Bruce Wright, Senior Procurement Officer
- Kyffin Thompson, Partner, BDO Australia

#### ***City of Charles Sturt***

- Darren Birbeck, General Manager, Corporate Services
- Fiona Jenkins, Coordinator, Waste and Sustainability
- Loren Mercier, Acting Coordinator, Waste and Sustainability

#### ***City of Marion***

- Colin Heath, Unit Manager, Contracts

#### ***City of Port Adelaide Enfield***

- Mark Withers, CEO

### **Interested parties**

#### ***Australian Organics Recycling Association (AORA)***

- Uma Preston, SA Secretary and Policy Officer

#### ***City of Onkaparinga***

- Gary Herdegen, Manager, Fleet, Civil and Waste Operations

#### ***Cleanaway***

- Arthur Garas, Commercial Finance Manager
- Josh Hull, Business Development Manager

### ***East Waste***

- Rob Gregory, General Manager

### ***IWS***

- Stephen Avers, General Manager, Operations

### ***Jeffries***

- Paul Haysman, Chairman

### ***Local Government Association of South Australia***

- Emily Heywood-Smith, Senior Policy Officer

### ***Northern Adelaide Waste Management Authority***

- Eddie Christopoulos, Collections and Processing Manager
- Danial Dunn, Resource Recovery Manager

### ***Office of the Australian Small Business and Family Enterprise Ombudsman (ASBFE0)***

- Sonia Jimenez Malfaz, Research Leader, Advocacy (attended by video from Canberra)

### ***Office of the Small Business Commissioner of South Australia***

- John Chapman, Commissioner
- Steph Burke, Project Manager and Policy Analyst

### ***Peats Soil and Garden Supplies***

- John Hogarth, Commercial Manager

### ***Scouts Recycling Centres***

- Warren Stone, General Manager

### ***Solo Resource Recovery***

- Rob Richards, Managing Director
- Adrian Rose, State Manager

### ***Waste & Recycling Association of South Australia (WRASA)***

- Scott Geer

### ***Waste and Recycling Industry Association of South Australia (WRISA)***

- Chris Brideson, Executive Officer

Conference commenced: 10:00am Adelaide time, 10:30am AEDT

## Introduction

**Commissioner Court** welcomed the attendees, introduced ACCC staff present, made some introductory remarks outlining the purpose of the conference and provided an overview of how the conference would be conducted.

**Commissioner Court** explained that the conference was in relation to the draft determination in respect of the authorisation application lodged by Council Solutions in respect of joint tendering, negotiating and contracting for the supply of waste processing services to Adelaide City Council and the Cities of Charles Sturt, Marion and Port Adelaide Enfield.

**Commissioner Court** explained that a separate conference about the ACCC's draft determination for the authorisation application lodged by Council Solutions in respect of joint tendering, negotiating and contracting for the supply of ancillary waste services to Adelaide City Council and the Cities of Charles Sturt, Marion and Port Adelaide Enfield would be held directly following this conference about the waste processing application.

**Commissioner Court** then opened the conference for discussion.

## Opening statements

**Commissioner Court** invited WRASA, as the party that called the conference, to make a statement.

**Scott Geer**, member of and spokesperson for WRASA, stated that as with Council Solutions earlier application for joint procurement of kerbside collection services, WRASA is concerned that the proposed joint tender for waste processing services is likely to reduce competition and lead to higher tendering costs, inefficiencies in contract management and worse environmental outcomes compared with each Council tendering separately for waste processing services.

Mr Geer said that at the time of the kerbside collections application pre-decision conference the industry did not have access to the tender documents. Now that the tender documents have been released WRASA has identified a number of deficiencies in the documents:

- The Councils are currently using better combinations of suppliers across the three processing service streams than will be the case under the joint procurement process. Changing this will lead to worse environmental outcomes.
- Depending on the outcome of the ancillary service stream tender process, processors of kerbside waste may also need to accept waste collected by ancillary service stream collectors. Waste from different sources incur different costs to process. For example, there are higher contamination rates in waste from bulk bins and street bins but there is no capacity in the tender documents to price the processing of waste from different services streams separately. This will likely lead to higher prices for all waste processed.
- The options for renewal of contracts in the tender are at the Councils' discretion, the lead times are long and the processing specifications don't necessarily align with those listed in the collections and ancillary tenders.
- The contracts for each Council have a different start date, leading to increased complexity in setting prices, which will result in higher prices.

- The tender documents do not specify whether the waste levy payable in respect of waste received by the processor will be reimbursed by the Councils.
- The tender document terms stipulate that there will be targets for the amount of recyclables recovered, but the targets are not specified, they will be set by the Councils. The consequence of not meeting the targets set is that the processing facility may need to reimburse the Councils, but at the time of tendering the processors won't know what the targets are. This uncertainty will discourage participation in the tender process and result in higher prices.
- The use of centroids makes tendering very unclear as there are facilities that could be used that are not in either centroid area. These facilities are disadvantaged in the tender process.
- The data in the tenders on which the bidding is to be based is dated and there are no guaranteed tonnages. Councils can increase and decrease volumes of waste to be processed at their discretion. This uncertainty will make it difficult for processors to tender. There could be a significant decrease in tonnes or for example a change in the frequency of Food Organics and Garden Organics (FOGO) collected.
- Tonnage brackets are also the same for all three streams (recyclables, organics and residual waste) even though very different volumes of waste are generated for each stream.
- Prices tendered need to be held for 270 days before a decision about which tenderer(s) to appoint will be made. Industry standard is that prices must be held for 180 days and having to hold prices for 270 days will require tenderers to factor in a proportionally higher risk premium.
- The tender document definitions of what constitutes a change of circumstance or force majeure specifically exclude government actions. This means that, for example, issues relating to the China National Sword policy and any future industry changes as a result of government action would not fall within these definitions. The specific exclusion of changes beyond the control of the contractor will likely reduce participation in the tender process and increase prices. WRASA estimates that 72.5 percent of the contract risk will be borne by suppliers, which is likely to increase the base prices tendered.
- The tender documents contemplate that successful tenderers across all three streams, and Council representatives, will be brought together for meetings in relation to delivery of service, meaning up to 10 representatives will attend such meetings. This will make coordination difficult and increase contract management costs.
- Required bank guarantees are not specified. Rather, bank guarantees are to be advised. Bank guarantees are a key piece of information required in order to tender. Determining bank guarantees is a straight forward process and required bank guarantees should have been resolved before the tender documents were released. Excluding this information from the tender documents prevents potential tenders from developing best value prices.
- Processors have to receive waste as delivered, they have no control over the level of contamination and there is no provision in the tender documents for them to vary their prices based on levels of contamination. This increases the risk for processors which will be reflected in tenders submitted.
- Service rate reviews do not take place till 2.5 to 3.5 years after lodging tenders. When reviews do occur, they will be based on changes in the Consumer Price Index rather than relevant measures of costs incurred by processors such as electricity prices and wage rates. To account for this risk, tenderers will need to submit higher base prices.

- The tender documents provide that audits will be conducted every three years. More frequent auditing than this is likely to be necessary. The tender documents provide that Councils can require more frequent audits and the processor must bear the cost of additional audits. The additional cost of these audits will be reflected in prices tendered.
- In summary, the tender documents have been written to remove risk from the Councils and put risk on suppliers in unfair and uncertain ways. This will reduce the attractiveness of the tenders and the number of tenderers, discourage potential new entrants and result in higher prices.

**Commissioner Court** thanked Mr Geer and sought clarification on the following issues:

- Mr Geer had said there was a relationship between the processing service streams application and the ancillary service streams application. **Mr Geer** responded that under the ancillary service streams request for tender (RFT) Council Solutions and the Participating Councils may appoint suppliers to collect and process waste, or just to collect the waste, in which case the Participating Councils will use the suppliers appointed under the processing service streams RFT to process the waste. This creates uncertainty for tenderers for the processing service streams about the volume and sources of waste they will be receiving for processing.
- Were the concerns Mr Geer raised about the tender documents related to the fact that the Councils were proposing to jointly procure waste processing services? **Mr Geer** said that the complexities of the tender process would make comparing bids across service streams difficult and that the Councils will gravitate towards choosing one supplier.
- **Commissioner Court** noted that there are three separate tender processes (for recyclables, organics and residual waste). Does the fact that they will be assessed separately address the concerns raised? **Mr Geer** said that on paper the tender processes were separate but in practice the tenders were advertised on the same day, tender responses are due on the same day, and Council Solutions is encouraging tenders across streams.

**Commissioner Court** invited the other attendees to make opening statements.

**Chris Brideson**, Executive Officer, WRISA, said WRISA had no comments other than to ask that those points made in its original submission continue to be taken into account.

**Uma Preston**, SA Secretary and Policy Officer, AORA, said that AORA's members included organics processors Peats Soil and Gardening Supplies (Peats) and Jeffries; and AORA's interest is in the quality of garden organics. Recent case studies have demonstrated the benefits of gardening organics. However, such products can only be produced if the quality of the source product is maintained. At present organic waste received for processing in Adelaide is of high quality (low contamination).

Continued effective kerbside collection services are crucial to maintaining the quality of organic waste received for processing. AORA is concerned that, under the proposed joint procurement, education programs and contamination management practices will be generalised across the Councils, leading to higher contamination rates. In particular:

- The more people involved in managing and responding to these issues, the less responsive to the specific circumstances across the Councils they will be.
- Interactions with the kerbside collections provider are also better managed council by council.

**John Hogarth**, Commercial Manager, Peats, said that:

- Having had the opportunity to review the tender documents, it is apparent that Council Solutions will add another layer of costs to contract management.
- A one percent increase in contamination rates reduces the processor's margin by five percent. The proposed tender documents do not include provisions that allow processors to manage the risk of variations in contamination rates.
- Different council areas have different contamination rates. Under the joint tender, tenderers will need to price based on a worst-case scenario with respect to contamination levels. This will mean that Councils with lower contamination rates will be penalised.
- The cost of additional audits, over which processors have no control, are borne by the processor. Prices tendered will reflect this.

**Paul Haysman**, Chairman, Jeffries Group, stated that Jeffries was a member of AORA, WRASA and WRISA and it supported their submissions. Mr Haysman said that there is ample evidence that the market is currently working well, with good outcomes in terms of pricing, innovation and contamination levels. Therefore, there would need to be a very good reason before the existing arrangements were changed.

**Sonia Jimenez Malfaz**, Research Leader – Advocacy, ASBFEO, stated that ASBFEO wished to reiterate the concerns expressed in its submission. The risks suppliers will be required to carry under the proposed tenders may preclude small businesses from tendering.

**Warren Stone**, General Manager, Scout Recycling Centres, said that Scout Recycling Centres was concerned that, if an interstate operator was appointed to process recyclables, they may transport waste interstate for processing. Mr Stone said that this would impact South Australia's beverage container deposit scheme. If beverage containers are transported interstate, then beverage container return rates will fall, impacting the viability of the container deposit scheme.

**Commissioner Court** asked **Bruce Wright**, Senior Procurement Officer, Council Solutions, if he wished to address the conference. Mr Wright stated:

- A lot of the issues raised at the conference related to the tender documents, rather than the public benefits and public detriments of the Participating Councils jointly procuring waste processing services. These concerns could still arise if the Councils tendered individually.
- The proposed joint procurement will result in a net public benefit. Benefits of the joint procurement process include:
  - the removal of duplication of resources
  - aggregation of waste volumes, which can increase purchasing power, lower prices to Councils and encourage innovation in delivery of service
  - efficiencies in contract management and data collection and reporting, and
  - environmental benefits through improved diversion of waste from landfill.
- Council Solutions will not add a layer of bureaucracy; Council Solutions will play the role of contract manager.
- Collaborative procurement will increase competition for the supply of waste processing services. The proposal will be attractive to resource-recovery organisations and waste-to-energy organisations.

- All potential suppliers will be able to compete to supply processing services. Potential suppliers can tender for one service stream or more than one service stream. Potential suppliers can also submit different prices for different volumes (bands) of waste and two suppliers will be appointed for the processing of recyclables and the processing of organics if tender responses reflect that this is the most efficient way to structure the arrangements.
- Historically, bank guarantees required for processing service stream suppliers have been minimal, or have not been required at all, and this is likely to continue to be the case under the proposed tender. Required bank guarantees are listed in the tender documents as to be advised because the level of risk, and therefore the required bank guarantees, will be assessed based on tender responses.
- With respect to the proposed length of the initial contract for processing of recyclables, some people have submitted that it is too short and others that it is too long. The initial term will be able to be negotiated with the successful tenderer(s). If a large capital investment is required, a longer term can be negotiated. However, the inherent volatility in the recyclables market at the moment is unrelated to the proposed joint procurement process.

**Mark Withers**, CEO, City of Port Adelaide Enfield said the Councils' desire is to achieve social, environmental and financial benefits for their ratepayers. It is not unusual for the Councils to collaborate to achieve these aims. The proposed joint procurement has raised concerns for some in the industry, but the Councils want to work with industry to provide services to their communities.

**Commissioner Court** opened the conference for discussion and invited additional comments in relation to the issues raised.

**Mr Geer** said that Council Solutions' 2016 authorisation application related to a request for proposal (RFP), rather than an RFT. Mr Geer said that listening to Council Solutions comments, it appeared that the current proposal was similar in nature to an RFP - for example: the ability to tender for tonnages brackets; and the ability for contract terms, including length of contract and required bank guarantees, to be negotiated.

**Commissioner Court** then called for any further comments. None were made.

## Concluding remarks

**Commissioner Court** invited further submissions by **2 November 2018**. Commissioner Court explained that the ACCC must make a final decision by no later than **6 December 2018** or the ACCC is deemed to have granted the authorisation. The ACCC expects to make a final decision by the end of November. Therefore, it is important that submissions are received by 2 November 2018 if parties want the ACCC to have regard to them.

Commissioner Court noted that the ACCC would provide participants with a record of the conference, which would also be placed on the ACCC's public register.

Commissioner Court explained that the ACCC will consider the matters raised at the conference and any further submissions before deciding whether or not to grant authorisation.

Conference ended 11:05am Adelaide time, 11:35am AEDT.