



Australian Government



Australian  
**Small Business and  
Family Enterprise**  
Ombudsman

20 August 2018

Mr Gavin Jones  
Director, Adjudication  
ACCC  
GPO Box 520  
MELBOURNE VIC 3001

By email: [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au)

*Gavin*  
Dear Mr Jones

### **AA1000414, AA1000419, AA1000420 – COUNCIL SOLUTIONS**

Our submissions from 21 October 2016 and 18 June regarding competition issues relating Council Solutions' joint procurement proposals (AA1000414, AA1000419 and AA1000420) remain pertinent. We are concerned with the proposed Draft Determination on Council Solutions Application (the Draft) will limit competition in the market and preclude Small to Medium-size Enterprises (SMEs) participating.

#### Procurement size

- The inclusion of four councils for an amalgamated contract will preclude any SME being competitive. The level of capital investment required to fulfil such contract is unattainable for the vast majority of SMEs.
- Even where an SME may have access to the required capital, the burden to complete a complex tender document is disproportionate on an SME due to its limited resources. Unlike large business, SMEs do not have separate legal or procurement teams to prepare complex tenders.
- Awarding a substantial contract to a single provider will decrease significantly competition. Even where the prime contractor subcontracts to current incumbents, when contracts are up for renewal, only the prime contractor, or a large business, will be in a position to tender.
- The four councils seeking joint procurement represent 75 per cent of the market for waste collection. This removes competition from 75 per cent of the market and impedes competition in the remaining 25 per cent of the market. Incumbent SMEs will now compete against each other for 25 per cent of the market (alongside larger businesses), unable to tender for 75 per cent.

#### Procurement term and process

The ACCC proposes to grant authorisation until 30 June 2031 in the Draft, allowing for the tender process, commissioning of collection trucks and a proposed contract length of up to 10 years (seven years with a three-year extension option).

- While we note that the term of the contract has been reduced from 17 to 10-13 years, that term means that SMEs will be locked and off the market for a prolonged period and it would be unlikely that they survive in the region until 2013. This will result in several of the incumbent SMEs closing due to the reduced size of market they can compete for.

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- While the Draft is for kerbside collection only, it appears that applications for processing/disposal and ancillary services will be tendered at around the same time. It is expected that large businesses that tender under the Draft will be able to take advantage of cost benefits, and tender on the basis of the wider work. The fact that all three contracts are effectively tendered together means that a large business is far more likely to be successful.

#### Procuring to all geographically challenged Councils

The combination of the various kerbside collection areas of the participating Councils into a single large contract across a very large geographical terrain prevents SMEs tendering:

- SMEs will usually have only one depot in a single region due to the participating Councils being spread geographically. Smaller businesses will be at an immediate disadvantage to bigger companies with multiple locations in the region.
- SMEs involved in the waste industry in Adelaide generally have depots or operations in either the south of Adelaide (near Marion Council) or the north of Adelaide (near Port Adelaide Enfield Council), but not in both.

SMEs are able to provide efficient services by geographical area, demonstrated in some kerbside contracts elsewhere<sup>1</sup>. SMEs can provide the same custom designed vehicles and data gathering/Radio-Frequency Identification (RFID) systems as larger companies, in individual councils at the same cost, as stated by the Australian Competition and Consumer Commission during our discussions.

We are concerned that large, centralised tenders make it harder for SMEs to tender. As tenders become large and complex the greater the imbalance between the large and small suppliers being resourced to tender. Also, the geographical spread severely limits the ability of SMEs to effectively tender. There is a need to ensure that SMEs have a real opportunity to tender for this important regional work.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Jill Lawrence on 02 6263 1558 or at [jill.lawrence@asbfeo.gov.au](mailto:jill.lawrence@asbfeo.gov.au).

Yours sincerely



**Kate Carnell AO**

Australian Small Business and Family Enterprise Ombudsman

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<sup>1</sup> Example: Solo - responsible for introducing or growing much of the innovation in the South Australian collection market (introducing recycling in divided bins), food waste in organics bins, GPS in trucks, started in Adelaide as a small business from northern NSW with the Marion City contract and took Marion City Council from last to first position on the Recycle 2000 council scorecards for waste diversion overnight