



**Southern Sydney Regional Organisation of Councils
(SSROC) Inc submission on the**

Joint Procurement of Waste Services Options Paper

To the NSW Environment Protection Authority (NSW EPA) via email at:
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Introduction to SSROC

The Southern Sydney Regional Organisation of Councils (SSROC) is an association of 11 councils spanning Sydney's southern suburbs, eastern suburbs, CBD, and inner west, covering a third of Greater Sydney's population of 1.8m people. Our councils manage around 655,000 tonnes of household waste each year, which is about 20% of all NSW household waste.

SSROC provides a forum through which our member councils can interact, exchange ideas and work collaboratively to solve regional issues and contribute to the future sustainability of the region. We advocate on behalf of our region to ensure that major issues are addressed by all levels of government.

Responses

- 1. The proposed options are intended to address several challenges and opportunities related to local government procurement of waste services. In your experience, what challenges or opportunities should a state-led joint procurement facilitation service target?**

Challenges:

Procuring individual or joint waste collection and processing services are some of the most complex, highest value and risk-prone procurements that local government undertakes. Communities in NSW are highly impacted and engaged by their councils' waste and recycling collection services with waste enquiries comprise some of the highest volumes of enquiries received annually through customer service centres. When contractual arrangements go wrong, it is council, not the service provider, who bears the public reputational risk.

Designing a state joint procurement service requires careful consideration of a number of challenges including:

- State support and funding programs should complement, and not duplicate or compete with existing services. There are already organisations, including Regional Organisations of Councils (ROCs), Joint Organisations (JOs), lead councils and commercial services, specialising in joint procurement and panel contracts for some products and services. SSROC coordinates several joint waste procurements and training, and organisations such as Local Government Procurement, Procurement Australia, and NSW Government State Panel also provide panel contracts for some products and services.
- Address and eliminate real or perceived conflicts, or duplication of efforts with State services that support joint procurement. These business models and resourcing structures offer services to clients/members, and organisations derive income for these services.
- The needs of metro Sydney councils accessing joint procurement services through a ROC are likely to be different to individual regional and rural councils. Therefore, the most equitable way to administer the funding is likely to be via an application process for financial support and the ability to access expert advice.
- The service needs to clarify how it will identify gaps in procurement support services across NSW, and which councils are impacted by those gaps. For example, are there some areas of NSW that do not have a ROC, JO or similar to support joint procurement, and are they resourced adequately to support more complex waste collection and processing contracts? For some councils, it could be a hollow exercise

for the State to advocate and fund joint procurement efforts without aligning those councils with strategic and coordinating bodies to facilitate complex joint waste tenders and contracts.

- A gap analysis is needed to collate and identify the types of panel contracts related to waste and resource recovery already on the market for councils.
- State-driven procurements risk the trust and local connections that councils and ROCs have built with communities over time through waste and resource recovery services. The State service should explain how it will remain behind the scenes, and allow ROCs and councils to retain these connections.
- Staffing, coordination and project management should not be overlooked. Typically, joint procurement of complex waste collection or processing contracts takes years to plan before going to market, requiring extensive hours from staff as well as additional costs in expert advice. Whilst some planning elements may fit the requirements of a funding program, it is often staffing, coordination and project management that is required.
- The service's five-year time period is likely to limit groups of councils that have recently entered into long term waste contracts. The complexity of the challenges mentioned in the options paper may also be difficult to shift over a period of 5 years. Large and complex joint procurements often take longer than 5 years overall.
- Procurement approaches to joint tendering of waste collection or processing services can cause perverse outcomes, and practitioners should carefully consider if a large contract will lead to further concentration in the market and/or disadvantage smaller or new enterprises from participating.

Opportunities:

There is an opportunity to think beyond the confines of traditional procurement (i.e., the buyer specifies its requirements then seeks tenders from the market to deliver them). The real benefits of joint procurement are in the opportunities that the scale presents, driving the need for different operational approaches, addressing infrastructure gaps and influencing markets. The service should seek to avoid being 'all things for all buyers.' It should assist the coordinating procurement body (ROCs, JOs, lead councils and commercial groups) to build a case for scalable opportunities and the cost-benefit case for individual councils.

SSROC recommends that once the submissions from this consultation have been analysed that DPIE meets in good faith with organisations already involved in joint procurement to discuss the gaps in services and potential conflicts with competing services in more detail.

There is insufficient detail in the options paper to adequately assess the options provided and the likely impact they will have. Therefore SSROC asks that DPIE runs another round of consultations once the design of the service/program is more progressed.

Applications to the Australian Competition and Consumer Commission (ACCC) on requirements for notification for Collective Bargaining Agreements can be the most onerous part of the joint procurement process, and not all councils are aware of their responsibilities. With forewarning from the facilitating body, the EPA could assist councils with ACCC applications, legal advice for councils if needed, and ensuring applications are dealt with in a timely manner.



To this end, SSROC recommends that the EPA should explore with ACCC a blanket authorisation for NSW councils to jointly procure waste services subject to the necessary probity and scrutiny measures.

Further consultation with councils will be needed if this funding is to be specifically targeted towards assisting councils with joint tendering or contracting for new FO/FOGO services to meet the state mandate. SSROC's regional FOGO/FO feasibility study indicates that FOGO/FO implementation will cost on average \$15.54 million per council in year 1, whereas the EPA's Organics Collection Grant program appears to offer at most \$0.76 million per council (TBC) (by averaging the total \$65 million available between all councils that have not yet adopted FOGO). Funding towards joint tendering for FOGO/FO services may help with the significant costs in procuring these services.

Similarly, this service's efficiency and effectiveness could be compounded by targeting it at recycled or circular goods and assisting council groups to apply circular economy principles in their own procurements. This would help councils meet WaSM targets and save time and costs associated with sourcing and contract development.

2. The EPA has proposed options to stimulate discussion on the design of a joint procurement facilitation service. The options are neither exhaustive nor mutually exclusive. Considering the proposed options, what services would be valuable to you?

Addressing the proposed options, SSROC provides the following advice.

Option 1 – Funding pool – High Priority

It is critically important that any funding application or Expression of Interest process is simple and time-effective. The funding pool needs to support applications for funding for any aspect of the procurement and contracting process where reasonable and appropriate. This may include project planning and risk management, coordination, procurement and probity planning, business case development, market sounding, development of procurement documents (specifications, RFPs, RFTs, EOIs), establishing monitoring and evaluation and reporting, outcomes-based service agreements, support for negotiation and dispute resolution.

It may also need to include supporting governance processes when needed such as the creation of a joint entity (e.g. heads of agreement or some form of joint venture). This can be a very difficult element, especially if legally binding, such as if the procurement involves capital investment by council/s.

In summary, the actual procurement is only one part of the overall procurement process, and many different elements could require expert advice.

SSROC ranks Option 1 as a high priority with the following considerations:

- The pool of \$16 million should be used to create an integrated and holistic service as opposed to a series of distinct or stand-alone resources.
- Make support available to the ROC, JO or other coordinator's specialised procurement and project management staff, so that they can coordinate with councils and plan for large joint procurement and contracts management. Significant effort is needed to plan, align multiple councils' services and contract needs, manage risk, undertake market analysis, procurement, agree benefits realisation plans, draft and execute contracts. These tasks are very staff resource-intensive, and can take multiple years for large joint waste procurements.

- Funding for consultants (such as lawyers, waste contract specialists, probity auditors etc.) should be available to advise on complex joint procurements, and would be very valuable (tied in with Option 4 Expert Advice service).
- Any coordinating entity, whether a Council, ROC, JO or something else, should be able to apply for funding for expert advisory services.
- Panel contracts for the range of required expert advisory services would be very helpful, comprising suppliers that have pre-qualified in their field. The NSW EPA could consider pre-approving funding for consultants on the panel contract, while requiring applications for funding for other consultants or services.
- Funding should be non-contestable and not time-limited to allow all councils the opportunity to receive support. This is particularly important for equity between councils who may require more time to access funds because of existing contractual agreements. The five-year timeframe for this funding could be a severe limitation for some councils that have recently commenced contracts and restricts the number and type of joint procurement services that can be achieved.
- If funding is to be contestable, councils may support that funding only be available to ROCs and JOs, in order to limit councils competing for the same funding. SSROC and its member councils work closely, so this would create efficiencies.
- Criteria, eligibility, and conditions of funding should be discussed and agreed with councils prior to finalising (see earlier recommendation to provide a second round of consultation with more details on services proposed).
- Option 1 may best assist councils who are already jointly procuring, but could be used to reduce overall costs of tendering and contract management.
- At SSROC, there are non-waste joint procurements (e.g., stationery, construction materials, pavements, gross pollutant traps etc.) that provide resource recovery outcomes and help deliver NSW Government targets for recycled products. The state support services should clarify whether a funding pool could also support non-waste oriented joint procurement of services that meet councils needs and assist with meeting NSW targets for circular economy (avoidance, reuse, re-purposing, remanufacturing) and resource recovery (energy, recycling, diversion from landfill).

Option 2: Information Service – Low priority

Information on available products with recycled materials, visibility of end-to-end material flows and end markets, assistance with cost-benefit analysis for more complex procurements would be useful.

Some councils may also benefit from the development of standard clauses, commercial principles, and template risk assessments to consider in contracts. However, model contracts may have limited use to many councils that have already developed their own procurement and contract templates. Model contracts would also need to be flexible enough to accommodate innovations, such as new risk-sharing arrangements, or outcomes-related incentives. Risks to this option include:

- Information is often too broad or confidential, and therefore not relevant to individual councils.
- Information is often extensive and not available to be collated, analysed, and shared.
- Information is resource-intensive to put together and quickly outdated.
- Commercial information is often closely guarded but is critical to understanding accurate processing costs and risks.

- Councils have often gone through many iterations of procurement and contract templates tailored to their appetite for risk, and may not invest the time required to review a model contract or similar resource and adapt their own council templates accordingly.
- Some information out of context could contribute to asymmetries in understanding local markets.

SSROC ranks Option 2 low priority, and proposes alternatives:

1. Option 2 could be combined with Option 4 as it pertains to an expert advice service.
2. A third-party organisation could retain and manage commercial-in-confidence information from industry organisations and peak bodies, and manage conflicts of interest. This platform could collate and share information about data flows and pricing, facility gate fees, tonnage throughputs and actual recovery rates anonymously. This independent organisation could provide customised responses to enquiries from councils planning joint procurements, which would be valuable to councils and help to address the current asymmetry in understanding the viability of proposed commercial terms.
3. An independent assessment of market health as it pertains to contestability factors could be delivered annually to councils in the form of a short, digestible report card or similar. The assessment could cover regulatory concerns, risk factors, challenges to fair pricing, barriers to new development and new market entrants, insights from suppliers, and risks and challenges for both buyers and suppliers. Initially, the framework for this assessment should be codesigned with councils and industry associations to reflect priority concerns and supply chain realities. It should distinguish between specific waste streams (residual waste, commingled, FOGO/FO, e-waste, textiles, bulky waste, commercial and industrial) that contribute to WaSM targets and council priorities. However, abovementioned risks in collating this information need to be prevented such as confidentiality, keeping information from becoming outdated quickly, and relevance to metro and regional councils.

Option 3: Training in best-practice procurement – Moderate priority

Across NSW, councils and council groups have varying experience and access to complex joint procurement approaches. Councils also have an inconsistent range of in-house expertise in procurement, legal, technical and finance advice. State-led training provision should accommodate not only for the least-resourced councils but also for those with substantial experience and in-house expertise, so that any council can build its organisational capacity over time regardless of their history with joint procurement.

The LGNSW and NSW EPA's Professional Development Survey (December 2017), identified that training in waste contract management was listed as the second-highest need by council staff in waste teams across NSW,¹ signaling that there is demand across the state, but unfortunately it has not been delivered for multiple councils since that survey was undertaken.

Many individual councils already provide introductory procurement training for staff. If training were coordinated at a state level, it could be informed directly by councils' training needs and tailored to address them.

¹ In the LGNSW survey in Dec 2017, the highest identified training need was in behaviour change programs. Third highest was in waste planning and development, which WSROC and SSROC have addressed for Sydney metropolitan councils through courses in assessing the waste and recycling provisions in development applications.



Training should provide a balance between consistency and adapting to changing times, new insights and technological innovations. There should also be guiding principles for short and long-term contracts.

SSROC, WSROC and the NSW EPA are trialling and jointly funding contestability training for waste collection and processing contracts in 2022 that aims to improve skills in waste and resource recovery procurement and contracting. The training will particularly focus on applying commercial principles to waste contracts, improving how risks are allocated and managed, as well as different approaches to negotiate and incentivise innovation in waste contracts. Insights and training materials will be available for the NSW EPA to extend delivery to other NSW councils.

SSROC ranks Option 3 a moderate priority, and proposes the following recommendations:

- Consult with individual councils across NSW to identify the training and resource materials gaps.
- Do not provide funding for councils to develop their own training unless this can be facilitated by ROCs, JOs or regional waste groups or expanded across the state.
- Include in the training program topics such as allocating and managing risks, contract negotiation skills, dispute resolution and supply chain management (including scope 3 emissions and material efficiency).

Option 4: Expert advice service – High priority

SSROC believes Option 4 is a uniquely important function of a state-led procurement service, and may be linked to Option 1 (Funding Pool). It would be critical that this service is not too difficult or time-consuming to attain, and is equitable and accommodating to all councils regardless of experience or in-house resourcing.

SSROC ranks Option 4 high priority, and makes the following recommendations:

- A variety of consultancy and advisory services be made available, with expertise in the waste sector, waste in the circular economy, and local government sectors. Services should be available for all phases of procurement planning and contract management. For example:
 - Specialist legal advice for contract development, joint venture structures, contract negotiation and dispute resolution.
 - Commercial advice for market analysis, business case development, risk allocation and innovative contract frameworks.
 - Technical advice for technology viability assessments.
 - Regulatory advice where licensing and/or planning approvals are needed etc.
- Development of a contract services framework in consultation with councils and industry to allow for greater transparency and equity across council contracts.
- Panels could be created for smaller, difficult or specialised waste streams that are not already covered by state government contracts. This would not only reduce the time and effort of tendering, but would also alleviate the need for full scale tendering, which can sometimes be ill-suited for small-scale, specialised services. Suppliers' keenness to be approved onto a panel would spur innovation, reduce the supplier's cost of tendering, and build a foundation for a more competitive and diverse market.

- Long term advisory expectations, such as for procurements that combine infrastructure with service provision, are likely to be difficult and challenge stakeholder relationships. The service must provide clarity about how councils, ROCs and JOs would engage a long-term advisory service with different types of content, and distinguish how accessing this is different from a fixed-hour arrangement.
- The approaches that joint-tendering councils take to market will drive the contract design. An advisory service would need to be prepared to assist councils with this stakeholder journey.
- Cost-benefit analysis assistance could be included in this option, potentially similar to the fixed number of expert hours provided to Remanufacture NSW grant recipients.
- Some of the most difficult elements such as developing governance agreements (e.g. MOUs, joint ventures or heads of agreement) can become more legally complex if the procurement involves capital investment by councils.

Option 5: Strategic infrastructure analysis – Should be funded from other sources

SSROC's position is that a state-led approach to planning and supporting critical waste and recovery infrastructure **should not be funded through a joint procurement service**. This should be a core function of DPIE, not an adjunct service by the regulator that uses money set aside for local government capacity-building.

Strategic infrastructure analysis is critical but should be funded instead by the Strategic Infrastructure Investment fund (\$24 million).

The focus of the \$16 million set aside for this service should remain focused on strengthening local government leverage, information, capacity and innovation using procurement as a tool.

3. Considering the proposed options, what services would not be valuable to you?

SSROC and its member councils have considerable experience with joint procurement. Therefore, introductory training, templates or broad options analysis would not be useful for SSROC.

Option 2 should be combined with Option 1 or 4, unless amended as suggested above.

Regarding Option 5, SSROC recommends that the NSW Government should focus on building the capacity within council to deliver the strategic targets in the WaSM strategy. For example, DPIE recently undertook a material flow analysis to inform the WaSM strategy and delivered an infrastructure needs paper. Material flows analyses should be done every two years to feed into WaSM targets and monitor progress **but not at the expense of limited funding for joint procurement**.

4. Are there other services that would be valuable to you that are not included in the proposed options?

- Greater emphasis on capital investment models and ownership approaches either separately, or as part of a resource recovery or collections tender. Because of the significant gap in organics transfer capacity in the Sydney Metropolitan Area, councils may jointly consider options to invest in some combination of a partnership or design-build-own-operate-manage facility solution.



- Increased volumes and advantageous joint contracts may narrow the number of market players and create an environment for larger players to dominate. Depending on the robustness of the marketplace, this perverse outcome may need to be addressed preventatively. An advisory service (and any contestability health analysis, as suggested by SSROC in Option 2) should be able to foresee this.
- Large joint contracts may give confidence to drive the capital investment and start-up costs for a new service, but may not significantly reduce shared and ongoing costs such as education, bin replacement/purchasing, human resourcing, communications and advertising. A procurement service may need to understand the extent of the impacts and benefits are of 'breaking up' tendered services for hard and soft infrastructure.
- ACCC competition requirements and processes can sometimes impede effective joint procurement, or even lead to councils avoiding joint procurement due to the perception of this as a barrier. Support for councils in relation to ACCC authorisation for joint procurement could include written guidance on the process and requirements (potentially prepared in collaboration with the ACCC), providing expert advice specific to competition matters, and considering a NSW EPA advocacy role to ensure ACCC requirements align with their objectives when it comes to local government shared tendering.
- Assistance to councils in the process of identifying partner councils to form joint procurement partnerships would be useful. Such a program could provide resources to assist with connecting and building relationships between councils experiencing the same challenges and constraints.

Thank you for the opportunity to comment on the Joint Procurement of Waste Services Options Paper. SSROC looks forward to participating in any further consultations on this important area.

Yours faithfully,

A handwritten signature in black ink that reads "H. Sloan".

Helen Sloan
Chief Executive Officer
Southern Sydney Regional Organisation of Council