

Due diligence pays off

Jan Ashworth, head of Official Journal of the European Union, Inspired Energy



Compliant procurement is an important part of what we at Inspired Energy, parent company of STC Energy, do. Following the transposition of the 2014 EU regulations governing public procurement into UK law, the process for adopting the new rules appears to have acted as a catalyst for the public sector to review wider market opportunities for compliant purchasing solutions.

Procurement teams across the public sector have the duty of purchase management for a wide range of supply categories. External specialist support for complex categories can add value and bring relief to often overburdened procurement teams.

Energy procurement is often considered a complex subject, but is a category in which the right partner can bring a wealth of knowledge and experience to support business goals. While some might prefer to place energy procurement via one of the traditional framework solutions, an increasing number have seen the recent legislative changes as an opportunity to review the wider marketplace and consider the products, services and compliance solutions on offer via third-party intermediaries (TPIs).

In general terms, well-established TPIs can offer a broad range of energy procurement solutions and strategies, as well as an extensive set of associated services such as bill validation, reporting, online portals, and operate that across a broad sector base.

A public sector body is unlikely to be reviewed any differently to any other business and key elements such as budgets, targets and objectives will be factored into any recommendations. This means the primary concern for procurement heads is likely to be who can demonstrate a strong business solution that is fully compliant. In order to protect the buyer and ensure this mandatory

requirement is satisfied, the buyer should consider undertaking a due diligence exercise.

As well as measuring TPI capability, the due diligence process should include specific elements in order to expose any potential liabilities and/or financial risks to the business. Claims of well-established frameworks and/or being listed on compliant frameworks should be validated against the associated contract award notices. Check that frameworks are well devised and that any associated contract notices have been completed properly. In particular, review key sections, such as the contracting authority, framework period and user directories, to ensure they have the correct information and that the framework is accessible.

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TPI service charges should be fully transparent with safeguards in place to protect a business from rollover contracts and undisclosed or hidden commissions. Ask for written undertakings regarding service charges that will provide an extra level of safeguarding.

A due diligence process will provide a pool of suitable candidates that can meet all the main requirements of the buyer.

Finally, like any commodity market, wholesale energy prices can go up and down, having an impact on costs. So cost difference between supplier offers is not only due to supplier and consultant margins, but also product type and structure. Innovative product ranges, procurement solutions and added value services have become more imperative in today's competitive market. The energy market can be complicated, but with the right energy partner it can be much easier to navigate through.

Article written by:



Inspired Energy is the parent company of STC

Stamp of approval

Landlords can navigate complex European procurement rules by outsourcing, says Birmingham Council's **Bill Mealey**

Procurement can be a complex subject area at the best of times, not least when considering the need to comply with Official Journal of the European Union (OJEU) requirements.

When procuring goods or services over a financial threshold, a public authority must do so under the Public Contracts Regulations 2015 introduced in England, Wales and Northern Ireland from February 2015. Buying organisations, such as Birmingham Council, must therefore advertise any financial requirement over certain thresholds in the OJEU, rather than just advertising it nationally. Under OJEU, buying organisations, such as Birmingham Council, must advertise any financial requirement.

As a public authority, we are legally obliged to be compliant with OJEU regulations. In the area of energy procurement, because you are traditionally dealing with high-value contracts, any commodity or service that is procured falls within the remit of the procurement directives concerning public sector procurement. Therefore, it is imperative that we comply with it, because otherwise we would be breaking UK statutory requirements and rules governing EU legislation.

Financial penalties

The outcomes from not working in line with OJEU requirements can be severe. It can result in the local authority being fined, or even worse, possibly have to cancel contracts that have been awarded and have to redo the entire process again. This would present a huge problem, especially for the client and the end users - imagine that if after many months of tendering and organising the procurement process you found out something, somewhere along the line was not compliant. It would be a disaster. You would have to go back to square one.

Partly in order to help mitigate this risk, we took the decision several years



ago to work with an external partner that organised energy procurement frameworks on behalf of the public sector.

Our local authority had limited expertise in this area. It considered doing the work in-house, but this was deemed to not be financially viable. The amount of money that we would have to put up front to gain all the experience, nous and expertise was prohibitive. It would have taken a long time to recover that initial outlay. And why re-invent the wheel when there are already people out there who have done it?

What's more, I would argue the key advantage for us in working with an external provider is the cost-saving benefit. We initially took the decision to go down this route and form a relationship with an outside partner because we felt we were not able to access the wholesale market as well on our own, compared with being a

member of a framework with the aggregated volumes to trade.

The providers we looked at that were organising frameworks on behalf of the public sector were combining the volumes and aggregating together to make it easier to access the wholesale market. This allows them to procure in a more flexible and robust manner using the volumes to lever better value.

As a result, they were able to monitor and mitigate any situations in the market in order to achieve the best value contracts. This route was much more preferable given the difficulties we had encountered previously.

Actually, the OJEU requirement aspect of working with an external broker was almost secondary - we expect the framework provider to be OJEU compliant. The primary reason we went down that route was value for money because we

believed that using the framework was the best method at the time. As a result of that, to deliver on their promised level of service, our view is that it is the job of our external partner to make sure they are compliant with all the relevant regulations, although this was a criteria that was checked.

No re-adjustments

The benefit of this was that when the new procurement regulations were introduced in 2015, we did not actually have to do to anything as an organisation, because compliance was handled entirely by our external provider.

It is easy to have mixed feelings on OJEU requirements given their complex nature. What it boils down to, though, is the fact that we are legally obliged to use the procedures and processes that comply with OJEU.

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Although it can be regarded as a very onerous, procedural process by some, it is here to stay.

Unfortunately there is limited room for manoeuvre within the process, and as a result it can seem to be very restrictive, especially if you do not see a great deal of immediate benefit for the effort that is initially required.

However, would the markets that are available through this process be accessed otherwise?

Whether it could be improved or streamlined or made more user-friendly is open to debate, however the nub of it is, it has got to be used and there are benefits too, which if addressed properly, can be of benefit to both the market and the public sector who have to comply with it.

Bill Mealey, category officer contract management, Birmingham Council ►