



# Projects and Construction

## "Green" retrofit – something for (almost) nothing?

Many Registered Providers (RPs) are being given the chance to have "green" retrofit measures applied to their stock, such as installation of improved insulation, photovoltaic cells and replacement boilers. This may be free or at a reduced price or with the benefit of grant funding from various environmental funds. The motive for the supplier often includes retaining the benefit of carbon reduction obligations under the Carbon Emissions Reduction Target (CERT) or the Community Energy Saving Programme (CESP) set up under the Climate Change Act 2008.

RPs have great opportunities to reduce fuel poverty and improve the environmental performance of their stock. These schemes can also help create local employment and training opportunities. However there are some legal issues that RPs need to deal with to ensure they are getting the most out of these opportunities.

- **Selection and procurement**

The Public Contracts Regulations are likely to apply if the value of works or supplies is above the Regulations thresholds. Note the value is assessed as the total consideration that might be received by the contractor or supplier, so may include the value of carbon reduction obligations or feed in tariffs.

In any event RPs have an obligation to ensure they are procuring with an appropriate degree of transparency (e.g. following advertisement), and therefore should avoid directly negotiating and/or awarding contracts to a particular contractor or supplier without having ensured sufficient transparency. They also have to be able to demonstrate to the TSA and their tenants that they are achieving value for money as required by the regulatory code.

- **Commercial issues**

If the contractor or supplier is keeping the benefit of carbon reduction obligations and/or feed in tariffs it is obtaining potentially significant value. The RP needs to consider whether it can get a better deal (e.g. a future share of the value of the carbon reduction obligations). Is it cheaper for the RP to procure materials or works itself and retain more of the benefits? Can some of the measures be procured as part of an existing planned works programme or through existing frameworks? The Contract also needs to cover what happens if technology improves in the future – will tenants share the benefit if e.g. it becomes possible to double the amount of electricity fed back in to the grid?



Source: fotolia

- **What other protection do RPs need?**

A contract is still needed to cover issues like surveys, quality of work, duration of work, insurance, indemnities against damage to property or personal injury, work in occupied properties, access

(especially for equipment which may need ongoing maintenance), data protection, IT links, provisions covering subsequent transfer of property and so on.

- **Regulatory issues**

RPs need to make sure that what they want to do complies with the regulatory framework that applies to their organisation. For example, Local Authorities may be prohibited from selling electricity whilst charitable Housing Associations need to make sure they are acting within their powers.

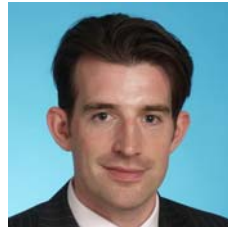
- **Tenancy/property issues**

RPs will need to make sure their tenancy agreements work with the proposed arrangements and ensure that tenants are on board with the plans. Depending on the arrangements for the retrofit equipment lenders may need to be involved – and property checks to ensure compliance with any covenants, planning laws and the like may be necessary.

For further information please contact:



**Andrew Vickery**  
Partner  
Projects and Construction  
t +44 (0)20 7423 8437  
e avickery@trowers.com



**Christopher Paul**  
Partner  
Projects and Construction  
t +44 (0)20 7423 8349  
e cpaul@trowers.com



**Rebecca Rees**  
Partner  
Projects and Construction  
t +44 (0)20 7423 8021  
e rees@trowers.com



**Catherine Hand**  
Partner  
Public Sector Communities and Governance  
t +44 (0)20 7423 8617  
e chand@trowers.com



**Katie Saunders**  
Partner  
Manchester -Projects and Construction  
t +44 (0)161 837 2671  
e ksaunders@trowers.com



**Alan Tate**  
Partner  
Exeter -Projects and Construction  
t +44 (0)1392 221927  
e atate@trowers.com

**June 2010**

© Trowers & Hamblins LLP

**Legal Firm of the Year**

The FDs' Excellence Awards 2010

**buildinginterest@trowers.com**

We provide a monthly email briefing on changes to Projects and Construction law. To obtain a free subscription please email us at buildinginterest@trowers.com. Please quote ref. 0610.