

Community benefits & public procurement

Province of East-Flanders, Belgium

The EU-Interreg North Sea project Community Benefits of Civic Energy (COBEN) aimed to implement civic energy projects that deliver certain benefits for the involved civic communities. As illustrative examples of community benefits we can mention the reduction of energy poverty, the uptake of new technologies and consumption patterns and the advance of energy efficiency at household level.

During the project the COBEN-partnership applied public procurement and tendering procedures as an instrument to ensure the implementation of community benefits in public energy projects. In this paper the COBEN-partnership wants to share some insight on how to take into account community benefits and civic energy in public procurement.

Special attention was given to the relationship between community benefits and “enabling structures” such as direct civil participation (both financially and in terms of community self-determination) and the figure of energy communities as established by the EU-directives 2018/2001 and 2019/944.

Following recommendations are valid in cases where a public body tenders for an energy project on its own initiative. Examples are a call for the construction and exploitation of a wind turbine on public land or the exploitation of a PV-installation on public buildings. We assume that the investments projects in renewable energy need to deliver above mentioned community benefits.

Community benefits are a key element in the assignment description.

From a legal point of view it is important to stress that an assignment should not be described in a way that it is *de facto* reserved for energy communities and/or civic energy cooperatives. In this manner a big share of the market is excluded from competing for a public contract. After all, the ratio of public procurement is to enable a competition as broad as possible

If the achievement community benefits are quoted as an essential part of the assignment, the contracting party can more adequately motivate the application of certain restrictions in the selection criteria, award criteria and terms of implementation. For example, the contracting party could demand references of energy projects with direct civic involvement as a minimum threshold if that requirement can obviously be linked with the subject of the procurement.

Direct civil participation in selection criteria

When applying selection criteria the contracting party can only impose conditions that guarantee the technical, legal and financial capacities of the tenderer in order to successfully carry out the assignment. The applied selection criteria should be relevant and in proportion for the subject of the tender. Therefore the adequate description of the subject is that important.

An increasing number of local authorities aspire a direct civil participation in renewable energy projects on their respective territories. A ratio between 20% and 50% is common in council decisions. There exists elaborated and concise criteria that evaluate if a certain organisation of project could be considered as a direct civil participation. One such standard are the ICA-principles, another one is set out by the European legislator by defining the figure of energy communities.

A requirement that each tenderer comply with the ICA-principles or with the definition of an energy community could be problematic since both standards contain requirements that impose rules of internal organisation. The definition of EC's set out rules for example on the degree of control of the different types of shareholders. Each tenderer with the capacity to execute a energy project with direct civil involvement should be able to compete, independent of the internal organisation and/or legal form.

Both standards could, however, be adapted in a way that they guarantee an open access to all tenderers with the demanded capacity.

Selection criteria should not lead to an exclusion of the majority of the relevant market parties. This is especially a concern in an immature civic energy market where only a little share of the market has experience with civic energy projects.

Award criteria

Also award criteria need to be related to the subject of the tender, besides the requirement that award criteria guarantee a transparent assessment that allow effective competition. The ICA-principles and definitions of EC's as such fulfil that requirement. But again, the assignments documents need to motivate why a certain principle or element of the EC-definition contributes to an successful realisation of the assignment.

Conclusion

Tendering procedures are good in organising competition and can challenge an evolving market. It is a less effective instrument in fostering a civic energy market environment that is in a pioneering phase. When community benefits are described as the final objectives of the procured tender, the different qualitative criteria could be more easily related to the subject. A tender that set out clear that the contracting authority not aim for a civic involvement as such, but for some other societal goals (i.e. community benefits) adapted ICA-principles or EC-definitions could be more straightforwardly applied in selection and award criteria.