

## Electricity Procurement Focus on the Product & Contract - Best Market Price Will Follow

Market volatility, environmental concerns, and continuous growth in demand have thrust energy management into the spotlight. As a result, developing and implementing an effective electricity procurement strategy is a vital part of overall corporate competitiveness.

Despite its importance and regardless of how the procurement process is conducted (email, RFP, online bid posting, or auctions), **have you ever said:**

- **Apples-to-apples comparisons of price, products, and contracts are difficult to achieve.**
- **We missed locking in an attractive rate because the legal review was not complete.**
- **We got sticker shock after receiving initial bills because the awarded supplier's bid did not include a critical price component.**
- **We had an unplanned increase to our electricity budget because the awarded contract included a clause that exposed us to volatile market pricing.**

Energy teams are in a Catch 22 position. In-house counsel rarely reviews electricity contracts, and when they do, they only have time to review one or two contracts selected by the energy manager; but energy managers cannot accurately narrow supplier bid prices until this legal review is performed. Also, electricity brokers are little help in this area because they often lack the necessary legal background.

Because all emails, phone calls, spreadsheets, and supplier bids (manual, auction, or otherwise) must be reduced to writing, organizations need to streamline and perform legal reviews in parallel with product and price analysis. This can be accomplished by (i) legal/energy resources "redlining" finalist supply agreements with an eye towards legal, price, and product ramifications and (ii) presenting to in-house counsel typical "market" terms and conditions. This approach enables in-house counsel to quickly and effectively review multiple redlined electricity contracts in light of defined market conditions rather than scouring these agreements from scratch.

The result will be not only Best Market Price on bid day, but also Best Product and Terms throughout the life of the awarded electricity contract.



**Reference Contract & Product Checklist (next page) to assist in a true "Apples-to-Apples" bid comparison and realizing best product, contract and price**

## Contract Checklist

### Legal T&C's

- Term (Start/End) (**Evergreen**)
- Renewal Term (Holdover)
- Late Payment Interest & Penalty
- Late Payment (Supplier's Right to Early Termination)
- Buyer's Right to Early Termination
- Early Termination Charge
- **Forward Contract (FAS 133 Mark-to-Market Risks)**
- Indemnification and Limitation of Liability
- Applicable Law
- **Creditworthiness**  
**Supplier Discretion vs. Commercially Reason Std**
- Point of Risk (Delivery Point)
- **Confidentiality (One Way vs. Mutual)**
- Advertising Rights of Supplier
- **Assignment (Rights & Assignee Creditworthiness)**

### Billing

- Invoice (Dual vs. Consolidated)
- **Payment Due Date (Typically 15 to 20 days)**

### Change in Law, Market Structure, & Usage

- Change in Law/Market Structure  
**Rather than holding Capacity fixed, some contracts treat known and scheduled changes in Capacity price as a "Change in Market Structure," thereby triggering unexpected price changes**
- Customer Reporting Material Change in Usage
- **Material Change in Usage**  
**Triggers Price Change Independent of Product BW**

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**"Gotchas" that prevent Apples-to-Apples Bid Comparison and if not properly addressed will result in problematic surprises on bid day and post award.**

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## Product Checklist

### Component Definitions

- Line Loss (**Grossed Up Pricing vs. Grossed Up Usage**)  
Grossed Up Pricing is most transparent  
With Grossed Up Usage, bid price is artificially low
- **Bandwidth (BW)**  
Options: +/-10%, 25%, 100%, Unlimited  
BW based on a fixed 12 months or rolling 12 months

### Components Typically Included in Bid Price

- Energy (includes Congestion)
- Transmission
- Capacity
- Line Loss
- Ancillaries
- Admin Fees
- Renewable Portfolio Standard (RPS)

### Components Typically Not Included in Bid Price - Pass Thru

- Distribution Charges
- Taxes - Sales Use Tax (SUT) & Gross Receipts Tax (GRT)

### State Nuances

Identify all applicable state nuances, for example

- Buyer Rescission Rights (Mass)
- Nodal Congestion Management System Charges (Texas)
- SUT/GRT as high as 7% in PA and NJ

## **About Energy Enablement, LLC**

Energy Enablement is a professional services firm that operates as an owner's representative and provides energy procurement and legal services. Our firm consists of attorneys and energy market experts that have decades of experience in negotiating contracts and sourcing energy supply. Our in-depth knowledge of energy agreements ensures contractible bids. It also enables us to streamline client legal reviews and to directly interface with the legal department and pricing desk of energy suppliers.

As contracted energy and legal resources, our firm moves beyond the traditional broker model and has proven to be a trusted advisor that advocates our client's best interest and delivers unprecedented value to customers ranging from mid-size organizations to Fortune 100 companies.