

# EASTERN SHIRES PURCHASING ORGANISATION

A Local Authority Purchasing and Distribution Consortium

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14<sup>th</sup> February 2012

Dear Ms Rensburg

## Review of the Non-Domestic Retail Market Consultation

Thank you for the opportunity to comment on the Review of the Retail Market Non-Domestic consultation. As the category lead for energy, ESPO is writing to you on behalf of the Pro5; the principal Central Purchasing Bodies in the Local Government Sector – namely, Eastern Shires Purchasing Organisation (ESPO), North Eastern Purchasing Organisation (NEPO), Yorkshire Purchasing Organisation (YPO), West Mercia Supplies (WMS), and Central Buying Consortium/Laser working together to deliver best value procurement solutions specifically to meet the needs of local authorities. Collectively, the Pro5 accounts for 9.5 TWH of gas consumption across 40,000 supply points, and over 5 TWH of electricity across 100,000 supply points.

ESPO is a Joint Committee of seven local authorities, formed under The Local Government Act 1972 in which section 101(5) says that Local Authorities can exercise their functions together and that they can put together a joint committee to discharge certain functions. ESPO is constituted as a joint committee to act on behalf of its member authorities, and also undertakes energy procurement on a collaborative basis for a further 50+ local authorities and other public sector organisations on a 'cost recovery' (not for profit) basis.

We understand the Chartered Institute of Purchasing and Supply is also responding to the Consultation and as we have submitted comments to CIPS in relation to the consultation questions 1-12 and 18-22, will not repeat those comments here. We do, however, wish to take the opportunity to respond on a specific issue of particular relevance to ESPO, and to its partners in Pro5 i.e. questions 13-17 in relation to Third Party Intermediaries (TPIs).

We agree that the introduction of a new supply licence condition focussed on sales activities (Question 13) is a suitable method to help prevent harmful sales and marketing activities in the non-domestic sector – particularly if this includes within its scope the activities of TPIs acting as agents of the supplier. Such a condition is considered necessary if Ofgem decides not to proceed with its proposals in relation to Codes of Conduct for TPIs (Question 14).

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Cont'd.....

**Louise van Rensburg**

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Pro5 welcomes the proposal to introduce an accreditation scheme for Codes of Practice covering TPIs, and considers this would be a progressive step in reducing harmful TPI activities (Question 15). However, as this would to a large extent amount to self regulation, in some cases it is anticipated material impact could prove hard to realise.

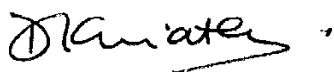
It is assumed the proposal is intended to apply to TPIs operating on the basis of a customer agent model (although the Consultation document states Ofgem wishes to avoid pushing TPIs to adopt this model). This could, therefore, include within its scope Central Purchasing Bodies as defined in the Public Contracts Regulations 2006 (e.g. Government Procurement Service, Local Authority Purchasing Consortia etc.) As is the case of the members of Pro5, these generally operate on a 'not for profit' trading model for public sector organisations (the scope of which may itself be defined in legislation such as the Local Authorities (Goods and Services) Act 1970, among others) - and as such are aligned to what Ofgem describe as the "customer agent" or "customer sales agent" model. As 'not for profit' organisations operating on a cost recovery model, we would also be concerned that the cost of accreditation and compliance should not be a barrier to adoption of the scheme and Codes.

In relation to Questions 16 and 17, we believe it is essential that TPIs

- disclose to the customer their full remuneration including fees payable by suppliers to access TPI systems, how the fees are determined, and the mechanism for recovery in such a way that the service cost can be quantified (i.e. not expressed as a share of "savings").
- Suppliers are authorised to disclose commissions paid to TPIs in respect of a customer's contract either by way of a statement or by disclosure through invoices
- disclose whether they are working as an agent of one or more suppliers and whether the fees/remuneration vary by supplier
- confirm whether they have any links or associations with particular suppliers, or are able to engage with all suppliers
- provide accurate information in relation both to the service provided, and to offers/proposals from suppliers i.e. that they do not make misleading claims
- ensure customers have an understanding of the offers being presented to them, that the offers are appropriate to the customer, and the customer has been made aware of any particular risks to which they would be exposed

We trust you have found our comments helpful but, should you wish to clarify any point or require further information, please do not hesitate to contact us.

Yours sincerely



Interim Commercial Manager  
On behalf of Director, ESPO

