

Awarding Public Contracts Skilfully and Lawfully within the Procurement Rules

Bunching : How do you control - and overcome - the difficulties of bunching and marginal score differentiation and decrease the likelihood of a challenge?

Reference Sheet

The Public Contracts Regulations 2015

URL: <https://www.legislation.gov.uk/uksi/2015/102/contents/made>

Appendix H of the TCC Guide

URL: <https://www.judiciary.uk/guidance-and-resources/technology-and-construction-court-tcc-guide-october-2022/>

Article

Random Effects of Scoring Price in a Tender Evaluation by Michael Bowsher KC

URL: <http://publicsectorblog.practicallaw.com/random-effects-of-scoring-price-in-a-tender-evaluation/>

Cases

Case T- 211/17 Amplexor Luxembourg Sàrl v European Commission

URL: <https://curia.europa.eu/juris/liste.jsf?language=en&num=T-211/17>

Bromcom Computers Plc v United Learning Trust & Anor [2022] EWHC 3262 (TCC)

URL: <https://www.bailii.org/ew/cases/EWHC/TCC/2022/3262.html>

“Production of an average of the relevant scores is no more than a mathematical exercise. It does not constitute a discussion of individual scores as part of an attempt-with give and take-to reach a collective consensus view so that there is a reasoned basis for the scores given by the contracting authority itself.” [180]

“On the other hand, the parties were specifically informed that the scoring would be done in whole numbers. The RWIND would surely expect any ultimate score also to be based on a decision using whole numbers. Whether the scores can then be converted into larger numbers of points thereafter is a different question. Even if

they can, it does not alter the fact that no collective whole numbers score was here reached in the first place.” [183]