

White Paper Conference on Procurement 2020

“In complex, multi-lot tenders, how do you square the use of technology as an evaluation tool with transparency requirements, (1) pre-tender and (2) post-tender?”

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AbbVie

- *Abbvie Ltd v The NHS Commissioning Board (Operating Under the Name of Nhs England)*
- (Technology & Construction Court)
- [2019] EWHC 61 (TCC)
- Before: Mr Justice Choudhury
- Date: 18 January 2019

Clue

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Broad discretion in design of procurement

- Arrowsmith at para 7-195:

"Another issue is the extent to which the directive restricts the freedom to choose, or not to choose, particular award criteria for contracts, or to choose the weightings that are attached to each criterion. Since the choice of award criteria reflects the decision on what to buy, in the sense of how to allocate national financial resources between benefits such as quality of services, environmental benefits, etc., and it is not a concern of the directive to regulate these matters, it seems clear that the choice and weightings, etc. are not in principle constrained by the directive."

Artificial Intelligence

- Independent High-Level Expert Group on Artificial Intelligence, *Ethics guidelines for Trustworthy AI*: <https://ec.europa.eu/futurium/en/ai-alliance-consultation/guidelines>
- European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe's '*European Ethical Charter on the Use of Artificial intelligence (AI) in Judicial Systems and their Environment*': <https://www.coe.int/en/web/cepej/cepej-european-ethical-charter-on-the-use-of-artificial-intelligence-ai-in-judicial-systems-and-their-environment>

Open Contracting Data Standard

Public Procurement:

- The Open Contracting Data Standard (**OCDS**) enables disclosure of data and documents at all stages of the contracting process by defining a common data model. It was created to support organizations to increase contracting transparency, and allow deeper analysis of contracting data by a wide range of users.
- <https://standard.open-contracting.org/latest/en/>

European Ethical Charter on AI in Judicial Systems

- Principle of non-discrimination: specifically preventing the development or intensification of any discrimination between individuals or groups of individuals
- Principle of transparency, impartiality and fairness: making data processing methods accessible and understandable, authorising external audits

Prozorro = “transparent”

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Thank You

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