

Second thoughts in moderation: *Involve v. DWP* clarifies remoderation, technical expertise and conflict controls in public procurement

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In *Involve Visual Collaboration Ltd v. Secretary of State for Work and Pensions* [2026] EWHC 2209 (TCC), O'Farrell J dismissed a challenge by an incumbent supplier whose technical score in a public procurement process fell from 7 to 1 after remoderation.

The judgment confirms that contracting authorities may reopen completed moderation exercises where there is a genuine concern that published criteria have been misapplied, provided the process remains transparent and consistent. It also provides useful guidance on the use of technical expertise during evaluation and the consequences of breaching agreed conflict-management measures.

Although decided after the Procurement Act 2023 came into force, the procurement was conducted under the legal regime applicable at the relevant time, the Public Contracts Regulations 2015.

Key takeaways

- Contracting authorities may reopen moderation where there is a genuine concern that criteria were misapplied.
- The reasons for reopening moderation should be clearly documented.
- Technical explanations are permissible, but comparisons based on extraneous material are not.
- Incumbent suppliers must comply strictly with agreed conflict-management measures.

Overview

The Department for Work and Pensions (DWP) conducted a procurement for a strategic video channels solution. Involve, the DWP's incumbent supplier of audio-visual services, was excluded after receiving 1 out of 10 on a qualitative question, below the minimum score of 4. The DWP therefore did not evaluate Involve's commercial proposal and awarded the contract to the successful bidder, Accenture (UK) Limited.

The DWP's evaluation panel had initially agreed to give Involve a score of 7 out of 10 for the question concerned. One evaluator subsequently raised a concern that Involve's proposed use of URL masking did not meet the requirement for the service to be integrated into and provided from within DWP or GOV.UK web pages.

The proposed service would look like a GOV.UK page, but would be hosted outside the DWP or GOV.UK domain. The DWP reconsidered every bidder's response to the relevant question, after which the panel agreed to award Involve a score of 1.

Involve challenged the DWP's decision to reopen moderation, as well as the way the second exercise was conducted and the revised score. The DWP argued that Involve would in any event have been excluded for failing to follow conflict of interest measures that had been put in place because of its incumbent position.

The High Court decision

Authorities may reopen moderation in appropriate circumstances

The High Court found that, although the invitation to tender did not contain an express remoderation procedure, this did not prevent the DWP from reopening the exercise. The transparency duty required the DWP to publish the award criteria, marking scheme and overall evaluation process. The DWP did not also have to set out every internal step by which evaluators would assess and moderate bids.

Remoderation may be appropriate in certain circumstances, such as where an evaluator identifies a possible error in applying the award criteria. Reopening simply because the contracting authority dislikes the result, on the other hand, would be arbitrary.

In this case, the DWP discarded the earlier assessments and reconsidered every response to the relevant question afresh, which helped ensure equal treatment. The court nevertheless criticised the DWP's limited written record of how the concern had been raised and discussed internally, and how the remoderation had been approved.

Technical explanation became an impermissible comparison

During remoderation, an evaluator used screenshots and a presentation to explain the technical difference between a service provided from within DWP web pages and one using a masked URL. This was permitted because it helped the panel understand and apply the published requirement, and the explanation was relevant to all bidders.

The same evaluator also compared Involve's proposal with the existing Attend Anywhere service. That comparison was not part of the published criteria and was made only against Involve.

This therefore crossed the line from explaining a technical point into evaluating Involve's bid against outside material. This breached the transparency duty. However, the breach did not change the result because the permitted technical reasoning still supported a score of 1, and there was no evidence that the other evaluators were influenced by the improper comparison.

The revised score was not manifestly erroneous

Question 6.4, for which Involve scored 1 point, contained two requirements. The customer interface had to look like a GOV.UK page, and the service had to be integrated into and provided from within DWP or GOV.UK web pages. Involve's response addressed the GOV.UK appearance requirement, but its proposed use of URL masking did not satisfy the separate hosting and integration requirement.

Alternative methods raised by Involve at trial were not set out in its tender and could not be used to repair the submitted response. The DWP was not required to clarify an already clear requirement or invite bidders to revise their bids.

The conflict measures provided a separate basis for exclusion

Because Involve was the incumbent, its access to information created a risk that it could have had an unfair advantage in the procurement of a new contract.

The DWP and Involve therefore agreed prior to the start of the procurement process that Involve's technical lead could oversee and review its bid but could not take part in its detailed preparation. The technical lead principally drafted the response to Question 6.4 and contributed to six other technical answers. The court held that this went beyond the agreed role. Involve could not decide for itself that the measures were no longer needed. If they had become unworkable, it could have asked the DWP to revise them.

The DWP was entitled to exclude Involve for that breach and showed that it would have done so had it known the position during the procurement. The court held that Involve had not met the high threshold required to show that exclusion would have been manifestly disproportionate. Involve was therefore entitled only to a declaration recording the transparency breach. It was not entitled to damages or an order setting aside the award decision.

Practical implications

Contracting authorities

A notable feature of the judgment is the court's criticism of the limited contemporaneous record explaining why moderation was reopened. Authorities should ensure that decisions to revisit an evaluation are documented clearly at the time.

A completed moderation may be reopened for a proper, recorded reason, particularly where the published criteria may have been applied incorrectly. The fresh process should treat bidders consistently, and contracting authorities should guard against information from later evaluation stages influencing technical judgments.

Evaluators may explain technical matters but should not assess a bid against outside material or comparisons that are not part of the published criteria.

The concern, internal discussion, decision and reasons for reopening should be recorded at the time.

Suppliers

Tender responses must contain the solution on which the supplier relies. Alternatives raised after exclusion are unlikely to assist. Incumbent suppliers should also ensure that everyone involved in the bid understands any agreed conflict controls. If those controls prove unworkable, the supplier should seek an agreed variation before departing from them.

Final thoughts

The case confirms that moderation is not necessarily a one-way process. Contracting authorities may revisit evaluation where there is a genuine concern that published criteria have been misapplied, but must document their reasoning carefully and avoid introducing extraneous considerations. Suppliers, particularly incumbents, should ensure both compliance with tender requirements and strict adherence to agreed conflict controls.

Above all, the judgment demonstrates that while authorities have flexibility to correct perceived evaluation errors, that flexibility depends on a process that is transparent, documented and applied consistently across bidders.

Contacts



Sam Hare

Director, London
T +44 207 655 1154
sam.hare@squirepb.com



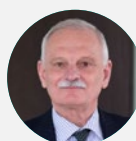
Deborah Polden

Partner, Leeds
T +44 113 284 7227
deborah.polden@squirepb.com



Will Sparks

Director, Brussels
T +324 905 61 719
will.sparks@squirepb.com



Martin H. Rees

Consultant, London
T +44 20 7655 1137
martin.rees@squirepb.com



Dickie Chan

Senior Associate, London
T +44 20 7655 1163
dickie.chan@squirepb.com



Simon Sepesi

Trainee, Brussels
T +32 490 56 17 25
simon.sepesi@squirepb.com