

### **The risks of a photo finish evaluation<sup>3</sup>**

A bidder who missed out on a £245m highways contract by just 0.03% has brought a procurement challenge to the decision.

Amey Highways Limited (**Amey**) has challenged the decision of West Sussex County Council (**Council**) to award a ten-year contract for highway construction and maintenance to Ringway Infrastructure Services Limited (**RIS**).

The winning tenderer in this procurement was awarded a score of 85.51%, with Amey coming second with a score of 85.48%.

Amey therefore challenged the Council's award to RIS on the basis that its score should have been higher and it should have been awarded the contract.

In a preliminary hearing, the court made a number of rulings in relation to time and rejected an application by the Council to strike-out certain elements of the claim. In particular, the court exercised its discretion to grant an extension of time for Amey to bring its challenge beyond the usual 30 day time limit, as there had been an agreement in place between Amey and the Council that the Council would not take a point on limitation for three days after it issued a substantive response to Amey's pre-action correspondence.

The Council has since decided to conduct a fresh procurement process and therefore put a halt to the legal proceedings.

### **Comment**

This case highlights the risks for contracting authorities in awarding a contract where there is a very small margin in scores between the winner and the loser. In this instance, Amey arguably had little to lose by bringing the proceedings as any error in evaluation which could become evident during a trial could result in a potential increase in their score, making them the successful tenderer.

---

<sup>3</sup> *Amey Highways Ltd West Sussex County Council* [2018] EWHC 1976 (TCC)