Reports of Cases

ORDER OF THE PRESIDENT OF THE GENERAL COURT

11 March 2013 *

(Application for interim measures — Public services contracts — Tendering procedure — Language training services — Rejection of tender submitted by a tenderer — Application for suspension of operation and interim measures — Loss of opportunity — Lack of serious and irreparable damage — Lack of urgency)

In Case T-4/13 R,

Communicaid Group Ltd, established in London (United Kingdom), represented by C. Brennan, Solicitor, F. Randolph QC and M. Gray, Barrister,

applicant,

v

European Commission, represented by S. Delaude and S. Lejeune, acting as Agents, assisted by P. Wytinck, lawyer,

defendant,

APPLICATION for suspension of operation of decisions of the Commission rejecting the tenders submitted by the applicant in respect of several lots in a call for tenders relating to framework contracts for the provision of language training to staff of the institutions, bodies and agencies of the European Union in Brussels (Belgium) and, further, for an order prohibiting the Commission from entering into contracts for the lots at issue with the successful tenderer,

THE PRESIDENT OF THE GENERAL COURT

makes the following

Order

Background to the dispute, procedure and forms of order sought

1 The applicant, Communicaid Group Ltd, is a company registered in England & Wales which has, for a number of years, provided language course services to several institutions, bodies and agencies of the European Union (the provision of language trainers and materials), currently under a framework contract which is to remain in force until July 2013.

* Language of the case: English.

2 By contract notice published on 6 March 2012 the European Commission launched a call for tenders relating to framework contracts (multiple) for the provision of language training for staff of the institutions, bodies and agencies of the European Union in Brussels (Belgium) (Reference No: HR/R3/PR/2012/002). The contract was divided into a number of lots, and each tenderer could submit a tender for one or more lots. Lots 1 to 9 comprised estimated volumes in numbers of hours or licences for all the services described, whereas Lot 10 was for on-line language courses ('e-learning'). The contract notice provided that, for each lot, a successive multiple framework contract would be entered into with up to three companies or groupings for a maximum term of four years.

3 The contract at issue was subject to the restricted procedure and was to be awarded on the basis of the most economically advantageous tender, assessed according to the criteria stated in the specifications, the aim being to select the candidates who would receive the specifications and who would be invited to tender. In order to be invited to tender, the potential tenderers had, inter alia, to satisfy – in accordance with the contract notice and Article 136(2) of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1) – the necessary requirements as to proof of economic and financial capacity, which failing, they would be excluded from the competition.

4 By letter of 30 May 2012 the applicant was invited to tender in respect of Lots 1, 2, 4, 5, 7, 8, 9 and 10. In response, the applicant submitted separate tenders in respect of each of those lots, with the exception of Lot 10. Thereafter, on 30 October 2012 the Commission sent to the applicant, by separate letters, seven decisions, corresponding to each of the lots in respect of which the applicant had submitted a tender, which indicated that, with the exception of Lot 5 where the applicant was placed first, the applicant had each time been ranked in second place to the tenderer CLL-Allingua, which had therefore been placed first in the six lots at issue ('the contested decisions').

5 Following receipt of the contested decisions, the applicant requested from the Commission, first, information on the characteristics and relative advantages of the tenders of CLL-Allingua and on the assessment of its own tender and, secondly, a full breakdown of CLL-Allingua's pricing responses. Further, the applicant expressed a number of concerns. In particular, the applicant stated that a former Commission member of staff – who had been employed in the human resources unit in the months prior to publication of the contract notice at issue and who had sat on evaluation committees for similar award procedures concerning contracts for language services to the institutions of the European Union in Luxembourg – was now employed by CLL-Allingua, and had played a role in the preparation of the latter's tenders. In those circumstances, the applicant requested from the Commission an explanation of the involvement of that individual in the tendering procedure before and after his leaving the Commission. The Commission stated in its reply that the individual concerned had left the human resources unit before the call for tenders and that he had made no attempt to resume contact with the Commission, and accordingly no conflict of interest had arisen.

6 The applicant also called into question the economic and financial capacity of CLL-Allingua to perform the contract at issue. Since the successful candidate had regularly reported considerable financial losses, it did not satisfy the initial requirements of the contract notice. Lastly, having regard to the evaluation methodology and the scoring matrices prepared by the Evaluation Committee, the applicant claims that it is clear that the contested decisions are vitiated by a number of manifest errors of assessment under each of the criteria which served as the basis for the quality evaluation of the submitted tenders.

7 Since the applicant was not satisfied by the Commission's replies, it brought an action for the annulment of the contested decisions by application lodged at the Registry of the General Court on 9 January 2013. In support of its action, the applicant relies on three pleas in law, namely (i) infringement of the principles of transparency, non-discrimination and equal treatment in the light of

the role played by the former Commission member of staff, as abovementioned (see paragraph 5 above), (ii) failure to comply with the rules relating to the adequacy of tenderers' economic and financial capacity in relation to CLL-Allingua (see paragraph 6 above) and (iii) several errors of assessment made by the Evaluation Committee (see paragraph 6 above).

8 By separate document, lodged at the Registry of the General Court on 10 January 2013, the applicant brought this application for interim measures, in which it claims, in essence, that the President of the General Court should:

— suspend operation of the contested decisions until the General Court has ruled on the main proceedings;

— prohibit the Commission from entering into contracts with CLL-Allingua in relation to Lots 1, 2, 4, 7, 8 and 9, or from implementing those contracts, if they have already been entered into.

9 In its observations on the application for interim measures, lodged at the Registry of the General Court on 1 February 2013, the Commission contends, in essence, that the President of the General Court should:

— dismiss the application for interim measures;

— order the applicant to pay the costs.

10 The Commission states, inter alia, that all the contracts envisaged on the conclusion of the tendering procedure at issue were entered into in December 2012 with the successful tenderers, including the contract relating to Lot 5 with the applicant.

11 By document dated 8 February 2013 the applicant stated its view on the Commission's observations, while the Commission responded by document of 15 February 2013.

Law

12 In accordance with Articles 278 TFEU and 279 TFEU, read in conjunction with Article 256(1) TFEU, the judge hearing an application for interim measures may, if he considers that the circumstances so require, order that application of a measure challenged before the General Court be suspended or prescribe any necessary interim relief. Nevertheless, Article 278 TFEU lays down the principle that actions do not have suspensory effect, since measures adopted by the institutions, bodies, offices and agencies of the European Union are presumed to be lawful. It is therefore only exceptionally that the judge hearing the application may order suspension of operation of such a measure, or other interim relief (see, to that effect, order of the President of 17 December 2009 in Case T-396/09 R *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht* v *Commission*, not published in the ECR, paragraph 31 and case-law cited).

13 Moreover, Article 104(2) of the Rules of Procedure of the General Court provides that an application for interim measures is to state the subject-matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measures applied for. Accordingly, the judge hearing an application for interim measures may order suspension of operation of an act, or other interim relief, if it is established that such an order is justified, prima facie, in fact and in law and that it is urgent in so far as, in order to avoid serious and irreparable harm to the interests of the party applying for relief, the order must be made and produce its effects before a decision is reached in the main action. Those conditions are cumulative, which means that an application for interim measures must be dismissed if any one of them is not met (order of the President in Case C-268/96 P(R) *SCK and FNK* v *Commission* [1996] ECR I-4971, paragraph 30).

14 In the context of that overall examination, the judge hearing an application for interim measures has a wide discretion and is free to determine, in the light of the specific circumstances of the case, the manner in which it must be ascertained whether those various conditions are satisfied, and the order in which this examination is to be carried out, there being no rule of law imposing a pre-established scheme of analysis within which the need to prescribe interim measures must be assessed (order of the President in Case C-149/95 P(R) *Commission* v *Atlantic Container Line and Others* [1995] ECR I-2165, paragraph 23, and order of the President of 3 April 2007 in Case C-459/06 P(R) *Vischim* v *Commission*, not published in the ECR, paragraph 25). Where appropriate, the judge hearing the application must also weigh up the interests involved (order of the President of 23 February 2001 in Case C-445/00 R *Austria* v *Council* [2001] ECR I-1461, paragraph 73).

15 Having regard to the material in the file, the judge hearing the application for interim measures considers that he has all the information needed to rule on the present application for interim measures and that it is not necessary first to hear oral argument from the parties.

16 In the circumstances of the present case, it is appropriate first to examine whether the condition relating to urgency is satisfied.

17 The applicant asserts that there is a real and imminent risk that it will suffer serious and irreparable harm if the requested interim measures are not granted. It is very likely, according to the applicant, that the contracts entered into with CLL-Allingua in relation to the lots at issue will have been performed before delivery of the judgment on the main action. Further, it is highly unlikely that the Commission will organise a new tendering procedure in the event that the contested decisions are annulled, which means that the harm suffered by the applicant cannot be repaired by that means. Referring to the order of the President of 20 July 2006 in Case T-114/06 R *Globe* v *Commission* [2006] ECR II-2627, paragraph 117, the applicant adds that it is very difficult, if not impossible, to quantify the chances of obtaining the contract at issue and to assess with sufficient accuracy the damage resulting from that loss of opportunity.

18 As regards the loss of business which the applicant will suffer as a result of the contested decisions, the applicant claims that the contracts entered into by it with the institutions, bodies and agencies of the European Union have for some time provided around [*confidential*] [1] % of its turnover and therefore represent a major contribution to covering the general overheads of its group. If the contract at issue had been awarded to it, performance of the contracts entered into as a result would have provided [*confidential*] % of its group turnover. As a direct consequence of the contested decisions the forecast group profits for the next three years will fall from [*confidential*] to [*confidential*], in other words a fall of [*confidential*] in profitability and an approximate average annual profit of EUR [*confidential*] per annum ([*confidential*] divided by 3), which is unlikely to be sufficient to [*confidential*].

19 The applicant adds that [*confidential*].

20 The applicant fears that it will also suffer serious and irreparable damage to its reputation. The framework contracts for the provision of language training to the staff of the institutions, bodies and agencies of the European Union in Brussels are considered to be the largest and most prestigious contracts of that type at the European level. When the applicant prepares tenders for other contracts, it draws heavily on the experience and expertise acquired in the context of the language training supplied to the institutions of the European Union, since its group has provided for many years language training services of quality under comparable contracts. Lastly, the applicant claims that it was placed at a competitive disadvantage in relation to CLL-Allingua, since the latter won the contract at issue and can use that fact for competitive purposes, although there are serious grounds for the belief that that contract should not have been awarded to it.

1 — Redacted confidential data.

21 In that regard, it should be borne in mind that, according to settled case-law, the urgency of an application for interim measures must be assessed in relation to the need for interim measures in order to avoid serious and irreparable damage being caused to the party seeking interim relief (order of the President in Case C-213/91 R *Abertal and Others* v *Commission* [1991] ECR I-5109, paragraph 18; orders of the President in Joined Cases T-195/01 R and T-207/01 R *Government of Gibraltar* v *Commission* [2001] ECR II-3915, paragraph 95, and in Case T-181/02 R *Neue Erba Lautex* v *Commission* [2002] ECR II-5081, paragraph 82). However, it is not sufficient to claim that operation of the act of which suspension is sought is imminent; rather, it is for the party seeking such relief to adduce sound evidence that it cannot wait for the outcome of the main proceedings without suffering damage of that kind (order of the President in Case T-34/02 R *B* v *Commission* [2002] ECR II-2803, paragraph 85). While it does not have to be established with absolute certainty that the damage is imminent, its occurrence must nevertheless be foreseeable with a sufficient degree of probability (order of the President in Case C-335/99 P(R) *HFB and Others* v *Commission* [1999] ECR I-8705, paragraph 67, and order in *Neue Erba Lautex* v *Commission*, cited above, paragraph 83).

22 It is also settled case-law that damage of a pecuniary nature cannot, save in exceptional circumstances, be regarded as irreparable or even as being reparable only with difficulty, since financial compensation for that damage can normally be obtained subsequently. In such a case, the interim measure sought will be justified only if it appears that, without such a measure, the applicant would be in a position that could imperil its financial viability before final judgment is given in the main action, or that its market share would be affected irremediably and substantially, regard being had in particular to the size of its business (see order of the President of 28 April 2009 in Case T-95/09 R *United Phosphorus* v *Commission*, not published in the ECR, paragraphs 33 to 35 and case-law cited).

23 As regards the damage of a pecuniary nature claimed in this case, while the applicant does complain that it was placed at a competitive disadvantage in relation to CLL-Allingua, because the latter won the contract at issue, it does not however claim that it has lost its market share in the sector of language training services. In any event, the applicant has not produced any detailed figures on that point nor has it demonstrated that obstacles of a structural or legal nature prevent it from regaining a significant proportion of the lost market share (see, to that effect, order of the President of 24 March 2009 in Case C-60/08 P(R) *Cheminova and Others* v *Commission*, not published in the ECR, paragraph 64). Any damage suffered in this respect cannot therefore be considered to be irreparable.

24 In so far as the applicant claims that, in the event that its application for interim measures is dismissed, it will find itself in a situation [*confidential*], it must be recalled that in order to determine whether the damage claimed is serious and irreparable and therefore justifies, by way of exception, the granting of the interim measures requested, the judge hearing the application for interim measures must have hard and precise information, supported by detailed documents showing the applicant's financial situation and enabling the judge to determine with precision the effects which would probably arise if the measures sought were not granted. Accordingly, the applicant must produce information, supported by documents, capable of producing a true and complete picture of its financial situation (see, to that effect, order of the President of 7 May 2010 in Case T-410/09 R *Almamet* v *Commission*, not published in the ECR, paragraphs 32, 57 and 61, upheld on appeal by order of the President of the Court of Justice of 16 December 2010 in Case C-373/10 P(R) *Almamet* v *Commission*, not published in the ECR, paragraph 24).

25 Moreover, that true and complete picture must be provided in the text of the application for interim measures. Such an application must be sufficiently clear and specific in itself to enable the defendant to prepare its observations and the judge hearing the application to rule on it, where necessary, without other supporting information, it being necessary that the essential elements of fact and law on which it is founded be set out in a coherent and comprehensible fashion in the actual text of the application for interim measures (order of the President of 31 August 2010 in Case T-299/10 R *Babcock Noell* v *Joint Undertaking for Fusion Energy*, not published in the ECR, paragraph 17; see also order of the President of 30 April 2010 in Case C-113/09 P(R) *Ziegler* v *Commission*, not published in

the ECR, paragraph 13). Further, the information providing such a true and complete picture must be supported by detailed documents, certified by an expert who is independent of the applicant and external, on the basis of which it is possible to assess the accuracy of that information (see, to that effect, orders of the President of 15 January 2001 in Case T-241/00 R *Le Canne* v *Commission* [2001] ECR II-37, paragraph 35; of 13 October 2006 in Case T-420/05 R II *Vischim* v *Commission* [2006] ECR II-4085, paragraph 83; and of 15 March 2010 in Case T-435/09 R *GL2006 Europe* v *Commission*, not published in the ECR, paragraph 34).

26 In this case, the applicant has indeed submitted a set of figures intended to demonstrate the scale of the fall in its turnover and its loss of business due to the loss of the contract at issue. However, it failed to provide, in the application for interim measures, full information on the structure of its undertaking. Thus, it omitted to clarify the implications, for its financial situation, of the fact, emphasised by the Commission and not challenged by the applicant, that it employed almost exclusively free-lance language trainers, and not salaried staff on contracts of indefinite duration. Such a structure appears, prima facie, to enable the applicant to adapt to a decline in its commissions without incurring substantial fixed costs, by simply dispensing with the services of free-lance staff during periods of reduced activity. Consequently, the loss of the contract at issue would hardly have to cause it to incur staff costs which would threaten its financial survival. In any event, the applicant ought to have explained, with the support of accounting records certified by an expert who is independent and external, why, notwithstanding the structure of its undertaking, [*confidential*].

27 Further, the applicant expressly admits [*confidential*].

28 In any event, it must be recalled that the damage pleaded by the applicant is said to have been suffered on the occasion of a tendering procedure in respect of the award of a public contract. The object of such a procedure is to enable the authority concerned to select, from a number of competing tenders, that which appears best to conform to predetermined selection criteria, and that authority has, to that end, a wide discretion. Accordingly, an undertaking taking part in a tendering procedure never has an absolute guarantee that it will be awarded the contract, but must always keep in mind the possibility that the contract could be awarded to another tenderer. In those circumstances, the adverse financial consequences which the undertaking in question would suffer as a result of the rejection of its tender have, generally, to be considered to be part of the normal commercial risk which each undertaking active in the market must face (see order of the President of 25 January 2012 in Case T-637/11 R *Euris Consult* v *Parliament*, not published in the ECR, paragraph 19 and case-law cited).

29 It follows that the loss of an opportunity to be awarded and to perform a public contract forms an integral part of exclusion from the tendering procedure in question and cannot be regarded as constituting in itself serious damage, all the more so since even a tenderer whose offer has been accepted must anticipate that, before signing the contract, the contracting authority may, pursuant to the first paragraph of Article 101 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1), either abandon the procurement or cancel the tendering procedure, without that tenderer being entitled, as a general rule, to claim any compensation (order in *Euris Consult* v *Parliament*, paragraph 20). Before the signature of the contract with the successful tenderer the contracting authority is not bound and may therefore, in the context of its responsibilities relating to the general interest, freely abandon the procurement or annul the tendering procedure, without any obligation to compensate that tenderer (see, to that effect, order of 14 May 2008 in Joined Cases T-383/06 and T-71/07 *Icuna.Com* v *Parliament* [2008] ECR II-727, paragraph 59), unless it has induced the latter to believe that he is certain to obtain the contract and has encouraged him to make irreversible investments on that expectation (see, to that effect, Case T-203/96 *Embassy Limousines & Services* v *Parliament* [1998] ECR II-4239, paragraphs 76 and 80).

30 The first paragraph of Article 101 of Regulation No 1605/2002 therefore rules out the possibility that even the successful tenderer can oblige the contracting authority to conclude the contract concerned, by asserting that his financial well-being, or even his economic survival, is dependant on performance of the contract being awarded to him. That insecurity, which is inherent in the legal and economic situation of the undertaking awarded the contract which, notwithstanding the award of the contract concerned, must initially be prepared to lose it without compensation, is but one of the factors which must be taken into account by the judge hearing the application when assessing an application for interim measures brought by a tenderer whose tender has been rejected: no less than in the case of the successful tenderer, the mere fact that the rejection of a tender may have adverse, even serious, financial consequences for the rejected tenderer cannot therefore justify, in itself, the interim measures sought by the latter.

31 Further, under Article 136 of Regulation No 2342/2002, the contracting authority may accept an undertaking's tender only on condition that the undertaking prove, before the award of the contract concerned, its economic and financial capacity satisfactorily to perform the contract. If it is to be accepted that the applicant met that criterion in this case, it seems scarcely conceivable that mere loss of the contract at issue could abruptly affect its economic and financial health, although it employs almost exclusively free-lance language trainers, [*confidential*], the more so when it was awarded Lot 5 of that contract, when it remains party to a number of language training contracts with bodies of the European Union such as [*confidential*] and [*confidential*], and when it has contractual relationships with clients outside the European institutions in such places as London (United Kingdom), [*confidential*] (United Kingdom) and Paris (France).

32 It follows that the applicant has not established to the requisite legal standard that if the interim measures sought are not granted it would be in a situation where its very existence would be jeopardised.

33 As regards whether financial compensation may subsequently be obtained for the pecuniary damage claimed by the applicant, in accordance with settled case-law the award of damages by the Courts of the European Union on the basis of the attribution of an economic value to the damage suffered as a result of loss of business is capable, in principle, of complying with the requirement set out in the case-law that the individual damage actually suffered by the party concerned because of the particular unlawful acts of which it was the victim be fully compensated (Case C-348/06 P *Commission* v *Girardot* [2008] ECR I-833, paragraph 76, and order of the President of 25 April 2008 in Case T-41/08 R *Vakakis* v *Commission*, not published in the ECR, paragraph 66).

34 It follows that, if the applicant were to be successful in the main proceedings, the damage suffered as a result of losing the opportunity to be successful in the tendering procedure at issue could be assigned an economic value, which would enable the applicant to obtain full compensation for the pecuniary damage which it actually suffered. Accordingly, the applicant's argument that the damage it suffered is irreparable because it would be impossible to quantify the loss of its opportunity to obtain the contract at issue cannot be upheld (see, to that effect, order in *Vakakis* v *Commission*, cited above, paragraphs 67 and 68, and order of the President of 15 July 2008 in Case T-202/08 R *CLL Centres de langues* v *Commission*, not published in the ECR, paragraphs 79 and 80).

35 The more recent case-law must therefore be preferred to the order in *Globe* v *Commission*, cited above (paragraphs 117 and 127), which is relied on by the applicant, in that it was held in that order that the loss of the opportunity to be awarded a public contract was very difficult, if not impossible, to quantify and that, accordingly, that loss could be categorised as irreparable damage.

36 It follows that the applicant has not proved that the alleged pecuniary harm would be difficult to quantify.

37 Nor has the applicant shown that it would be unable to obtain financial compensation subsequently by means of an action for damages (see, to that effect, order of the President in Case T-303/04 R *European Dynamics* v *Commission* [2004] ECR II-3889, paragraph 72 and case-law cited). In so far as that harm is not made good merely by the implementation of the judgment in the main proceedings, it can be made good through the means of redress provided for in Articles 268 TFEU and 340 TFEU (see, to that effect, order of the President in Case T-369/03 R *Arizona Chemical and Others* v *Commission* [2004] ECR II-205, paragraph 75 and case-law cited), given that the mere possibility of bringing an action for damages is sufficient to show that such harm is in principle reparable, irrespective of the uncertainty attached to the outcome of the proceedings in question (see, to that effect, order of the President in Case C-404/01 P(R) *Commission* v *Euroalliages and Others* [2001] ECR I-10367, paragraphs 70 to 75, and order of the President in Case T-132/01 R *Euroalliages and Others* v *Commission* [2002] ECR II-777, paragraph 52).

38 Consequently, the arguments presented by the applicant do not justify a finding that the claimed pecuniary damage is irreparable.

39 It follows that the applicant has failed to establish urgency with regard to the claimed pecuniary damage.

40 In so far as the applicant also pleads damage to its reputation, suffice it to note that participation in a public tendering procedure, which is by nature highly competitive, involves risks for all the participants, and the elimination of a tenderer, under the tender rules, is not in itself in any way prejudicial. Where an undertaking has been unlawfully eliminated from a tendering procedure, there is even less reason to believe that it is liable to suffer serious and irreparable harm to its reputation, since its exclusion is unconnected with its competences and the subsequent annulling judgment will in principle allow any harm to its reputation to be made good (see order of the President of 23 January 2009 in Case T-511/08 R *Unity OSG FZE* v *Council*, not published in the ECR, paragraph 39 and case-law cited).

41 In this case, it serves to illustrate how insignificant are the effects of loss of a public contract on the reputation of an unsuccessful tenderer that since 2004 the company CLL Centres de langues and the applicant have taken part in various tendering procedures relating to the provision of language training to European Union staff and although they have alternately been awarded the public contracts concerned or have even shared different lots in those contracts, the alternate failure of one or the other has not been damaging to their respective reputations to the extent that they have not been involved in subsequent procurement. The argument based on damage to the applicant's reputation therefore does not satisfy the requirements of urgency.

42 The same is true of the argument that the contested decisions prevent the applicant from drawing on, for competitive purposes, the experience and expertise acquired in the performance of the contract at issue, while CLL-Allingua, which obtained that contract, can do so. Suffice it to note that the applicant was awarded Lot 5 of the contract at issue and that it is, in addition, a party to a number of language training contracts with European Union bodies, such as [*confidential*] and [*confidential*]. Consequently, far from being entirely excluded from the economic sector in question, the applicant can pride itself on the experience and expertise acquired in the performance of those contracts. In any event, given that none of the other harms claimed by the applicant satisfies the requirements of urgency, the loss of such a competitive advantage, limited to some lots of a public contract, cannot, by itself, be categorised as serious and irreparable harm which would justify granting the interim measures requested.

43 The applicant has therefore also failed to establish urgency as regards the claimed non-material harm.

44 It follows from all the foregoing that the condition of urgency is not satisfied in this case.

45 It must be added, for the sake of completeness, that, even if urgency might – especially in interim measures proceedings in the area of public procurement – reside in the imperative need to provide a remedy as rapidly as possible for what is clearly, prima facie, a flagrant et extremely serious illegality and, consequently, a particularly serious prima facie case (see, to that effect, order of the President in *Austria* v *Council*, cited above, paragraph 110), it is not, prima facie, clear from the court file that the contested decisions are vitiated by an illegality of that kind.

46 As regard the plea alleging an infringement of the principles of transparency, non-discrimination and equal treatment (see paragraphs 5 and 7 above), which is, prima facie, the only plea to merit consideration in that regard, such a flagrant and serious illegality might possibly have been upheld if the applicant had claimed, with supporting evidence, that the award of the contract to CLL-Allingua had been due to the assistance of a Commission member of staff who, as an active member of the evaluation committee set up for the call for tenders at issue, had exercised a decisive influence on the selection of that tenderer or who, before leaving the Commission and obtaining employment with CLL-Allingua, had himself drawn up the call for tenders at issue, thereby ensuring that his new employer, with insider information, was a decisive step ahead of the applicant.

47 However, the applicant's assertions in this context are considerably more vague, in that the applicant does no more than claim that the former staff member in question was employed in the Commission's human resources unit prior to the publication of the contract notice at issue and that he took part in evaluation committees in similar award procedures concerning contracts for the provision of language services to the institutions of the European Union. While the applicant also refers to the statements of a number of its employees, according to whom that former Commission member of staff emphasised, during conversations with them, the important role he had played in the preparation of the call for tenders at issue and the relationships he had with CLL-Allingua, suffice it to state, for the purpose of these proceedings for interim relief, that those statements are not such as to be capable, by themselves, of proving a flagrant and serious illegality. First, their value is diminished because the applicant's employees have an evident interest in the contract at issue being awarded to the applicant and, accordingly, in the success of its application for interim measures. Secondly, according to the court file the former member of staff concerned had made contact with the applicant with a view to obtaining employment with it, which may have led him to exaggerate his importance in order to obtain the post sought, and consequently the import of what he may have said in that context should be viewed with caution.

48 Lastly, in so far as the applicant seeks the grant of the interim measures requested by relying on the general principle of the right to full and effective judicial protection, it must be noted that the applicant chose not to attach to its application in the main proceedings an application for an expedited procedure under Article 76a of the Rules of Procedure. Since it waived that opportunity to obtain expedited treatment of the main proceedings, and therefore urgent judicial protection, the applicant cannot validly maintain that the dismissal of its application for interim measures would, as such, constitute an infringement of its right to such protection.

49 It follows from all the foregoing that the application for interim measures must be dismissed.

On those grounds,

THE PRESIDENT OF THE GENERAL COURT

hereby orders:

1. The application for interim measures is dismissed.

2. The costs are reserved.

Luxembourg, 11 March 2013.

E. Coulon
Registrar

M. Jaeger
President