Reports of Cases

ORDER BY THE JUDGE HEARING THE APPLICATION FOR INTERIM MEASURES

4 February 2014*

(Interim proceedings — Public procurement — Tendering procedure — Rejection of a tender — Application for suspension of operation — Prima facie case)

In Case T-644/13 R,

Serco Belgium SA, established in Brussels (Belgium),

Bull SA, established in Brussels,

Unisys Belgium SA, established in Brussels,

represented by V. Ost and M. Vanderstraeten, lawyers,

applicants

v

European Commission, represented by S. Delaude, L. Cappelletti and F. Moro, acting as agents,

defendant,

APPLICATION for, first, the suspension of operation of the decision of the European Commission of 30 October 2013 rejecting the tender submitted by the consortium formed by the applicants in the public tendering procedure DIGIT/R2/PO/2012/026 – ITIC-SM concerning the IT service management for the integrated and consolidated IT desktop environment of the European Commission and awarding the contract to another consortium, second, an order that the Commission refrain from concluding the framework contract at issue and from concluding specific contracts under the said framework contract and, third, the grant of any other appropriate interim measures,

THE JUDGE HEARING THE APPLICATION FOR INTERIM MEASURES,

replacing the President of the General Court, in accordance with Article 106 of the Rules of Procedure of the General Court,

makes the following

* Language of the case: English.

Order

Background to the dispute

1 The present proceedings relate to the public call for tenders DIGIT/R2/PO/2012/026 – ITIC-SM concerning the IT service management for the integrated and consolidated IT desktop environment of the European Commission ('the ITIC-SM call for tenders'). According to the summary of the Tendering Specifications, the purpose of the ITIC-SM call for tenders is to conclude one single framework contract to provide the IT support services for the ITIC Desktop environment of the European Commission. The introduction to the general requirements of the Tendering Specifications provides that the framework contract is intended to generate specific contracts with the Commission for various service components of IT support, which are divided into essential service components (to be implemented at the start of the framework contract) and additional service components (to be implemented at a later stage).

2 According to the technical evaluation questionnaire (section 2-4-0 of the Tendering Specifications), the technical evaluation of the tenders would be based on the following weighted quality criteria accompanied by minimum thresholds applicable at overall result as well as at criterion and sub-criterion level:

Criterion	Maximum points	Minimum to obtain
Management Services	200	120 (60%)
Essential Service components	600	360 (60%)
Front Office Services	450	270 (60%)
Logistic Services	150	90 (60%)
Optional Service Components	200	120 (60%)
Back Office Services	160	96 (60%)
Miscellaneous Services	40	24 (60%)
OVERALL RESULT	1000	700 (70%)

3 To that effect, amongst various other issues, the technical evaluation questionnaire asked the tenderers, under chapter 4.1.5., to define the required number of staff to be assigned to each Front Office service element taking into account the relevant Default Service Requirement and Default Service Level Variables, which specified, according to chapters 4.11 and 4.12 of section 1-2-0 of the Tendering Specifications, average or default values for various parameters of the services and minimum quality targets respectively. In the same vein, the tenderers were asked, under chapters 4.2.5 and 5.1.5 of the technical questionnaire, to define the number of staff to be assigned to Logistic Support services as well as to every Back Office Support service element respectively. According to the above chapters, the financial offer had to be based on the same figures for assigned staff taking into account the Service Requirement Variable of 30 000 users which, according to chapter 5.5 of the Technical Specifications, is the estimated number of personnel to be served under the framework contract in year 4 of its operation.

4 In a reply to a question asked by the applicants, Serco Belgium SA, Bull SA and Unisys Belgium SA, the Commission indicated, on 7 May 2013, that the tenderers had to describe their general approach to determining the number of staff (in terms of Full Time Equivalents) required to provide a service

based on the Service Requirement and Service Level Variables for the call for tenders. According to the Commission's answer, the proposed staff numbers did not themselves create a legal obligation but should be sufficient to provide the service and as such would be subject to evaluation.

5 The applicants' consortium as well as a second consortium submitted tenders within the deadline set by the Commission.

6 By letter dated 31 October 2013, the Commission informed the applicants that, in the technical evaluation phase, their tender had failed to reach the minimum of 60% for one criterion and one sub-criterion as well as the minimum of 70% in terms of the overall result, and that the tender would not therefore proceed to the financial evaluation phase. However, the Commission informed the applicants that it would not sign the contract with the successful tenderer during a standstill period of 10 calendar days.

7 Following a request made on behalf of the applicants, the Commission provided, by letter of 6 November 2013, additional information on the evaluation of both tenders as well as a spreadsheet featuring the respective marks for every criterion.

8 By letter of 19 November 2013, the Commission informed the applicants that the award decision had been taken on 30 October 2013 and provided minutes of a debriefing meeting with the applicants held on 8 November 2013.

9 Following a request submitted by the applicants on 11 November 2013 under Article 171 of Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ 2012 L 362, p. 1), the Commission communicated to the applicants, by letter of 28 November 2013, the assessment of the awarding officer, who confirmed his initial decision after reviewing the applicants' claims.

Procedure and forms of order sought

10 By an application lodged at the Registry of the General Court on 4 December 2013, the applicants brought an action seeking annulment of the decision of the European Commission of 30 October 2013 communicated to the applicants by the letter of 31 October 2013 (paragraph 6 above) rejecting the tender submitted by the applicants' consortium and awarding the contract to another consortium.

11 By separate document, lodged at the Court Registry on 4 December 2012, the applicants initiated the present interim proceedings, in which they claim, in essence, that the President of the General Court should:

— suspend the operation of the decision rejecting the applicants' tender and awarding the contract to another consortium ('the contested decision') until the General Court has ruled on the main action;

— order the Commission not to conclude the framework contract and not to conclude any specific contracts thereunder, in the event the framework contract had already been concluded, until the General Court has ruled on the main action;

— order any other interim measures deemed appropriate;

— order the Commission to pay the costs.

12 By order of 12 December 2013 adopted under Article 105(2) of the Rules of Procedure of the General Court, the Judge hearing the application for interim measures suspended the operation of the contested decision until the making of the order terminating the present proceedings and ordered the Commission not to conclude the framework contract and, in the event that it had already done so, not to execute the said framework contract until after the final order in these proceedings.

13 In its observations on the application for interim measures, lodged at the Registry of the General Court on 6 January 2014, the Commission contends, in essence, that the President of the General Court should:

— dismiss the application;

— reserve the costs.

14 The parties presented oral argument on 20 January 2014.

Law

15 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.

16 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. Where appropriate, the judge hearing such an application must also weigh up the interests involved. 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).

17 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).

18 Within this framework, it is appropriate to take into account the particular role of interim relief proceedings in public procurement procedures. To that effect, regard must also be had to the legal framework put in place by the European legislature which is applicable to contract award procedures organised by Member States' contracting authorities. In particular, as provided in recital 40 of Regulation No 1268/2012, substantive rules on procurement should be based on Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2012 L 134, p. 114).

19 Moreover, as stated in recitals 1 to 3 of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33), in order to ensure the effective application of such rules, the legislature has deemed it necessary to put in place a set of procedural requirements making available speedy remedies at a stage where infringements can meaningfully be corrected. Bearing in mind the short duration of award procedures, the role of interim relief is such that the legislature deemed it appropriate, by virtue of Article 2(1) of Directive 89/665, that it be made available so far as award procedures within the remit of Member States are concerned, independently of the bringing of any prior substantive action (judgment in Case C-236/95 *Commission* v *Greece* [1996] ECR I-4459, paragraph 11, and opinion of Advocate General Léger under the same case, point 15).

20 Furthermore, as is apparent from recitals 2, 3 and 5 and from Article 2(1) of Directive 89/665, within the particular context of public procurement, interim measures are not only conceived as a means to suspend the award process but at least equally as a means to correct an apparent infringement, which would otherwise fall within the scope of the main proceedings.

21 Even if such considerations cannot call into question the application of Article 104(1) of the Rules of Procedure which gives effect to Articles 278 TFEU and 279 TFEU and requires the main action to be lodged before a request for interim relief is brought, taking them into account is justified by the fact that, as is the case at national level, interim measures under Title 3 of the Rules of Procedure have as their purpose, in public procurement cases, the ensuring of effective judicial protection with regards to the application of procurement rules applicable to EU institutions and bodies which are, in essence, based on Directive 2004/18 (see paragraph 18 above).

22 Correlatively, although, in the context of interim proceedings, the judge hearing the application for interim measures is not required, as a rule, to undertake as detailed an assessment as in the context of the main proceedings, that finding cannot be interpreted as meaning that a detailed assessment is absolutely prohibited (order of the President in *Vischim* v *Commission*, paragraph 17 above, paragraph 50).

23 It is thus appropriate, in the present case, to examine first whether the applicants' submissions create a prima facie case in the sense that, taking into account the observations of the other parties, they create a serious impression that the contested decision is legally flawed. In the event that this requirement is considered as satisfied, this fact may also, for the reasons stated in paragraphs 18 to 21 above, be taken into account within the framework of the analysis relating to urgency (see, to that effect, order of the President in Case C-445/00 R *Austria* v *Council* [2001] ECR I-1461, paragraphs 100 and 110).

24 The applicants put forward four grounds which, in their view, create a prima facie case of invalidity of the contested decision.

25 Firstly, they contend that the evaluation of the tenders so far as the staffing approaches of the Front Office, the Logistic Support and the Back Office are concerned (see paragraph 3 above) was wrongly based on tenderers' declarations that were not binding.

26 Secondly, they claim that the above sub-criteria relating to staffing are by their nature selection criteria and could not therefore be evaluated within the award but only within the selection framework.

27 Thirdly, they claim that the Commission did not give sufficiently precise indications as to the way in which it would evaluate the part of the tenders relating to the said sub-criteria which thus gave rise to an unpredictable result.

28 Fourthly, they contend that, if the Commission had any doubts as to the ability of the applicants' consortium to perform in compliance with the Tendering Specifications, it should have sought clarifications before rejecting the applicants' tender, which was significantly cheaper than the one lodged by the winning consortium.

29 Having regard to the nature of the above allegations, it is necessary first to examine, for the purpose of assessing the existence of a prima facie case, the second ground (see paragraph 26 above), followed by the first, the third and the fourth grounds.

30 Concerning the nature of the criteria referred to in paragraph 25 above, it is well-established case-law that, although the examination of the tenderers' suitability on the basis of selection criteria under Articles 146 to 148 of Regulation No 1268/2012 on the one hand and the award of the contract on the basis of award criteria under Article 149 of the said regulation on the other may take place simultaneously, those two procedures are distinct and are governed by different rules. It follows that the contracting authority's examination in the context of the award phase must relate to the quality of the tenders themselves in order to identify the tender which is economically the most advantageous and not to the selection criteria, which are linked to the evaluation of the tenderers' ability to perform the contract in question, such as a criterion for assessing a tenderer's capacity to make a team available to the contracting authority from its own resources (see, to that effect, judgment of 17 October 2012 in Case T-447/10 *Evropaïki Dynamiki* v *Court of Justice*, not published in the ECR, paragraphs 34 to 39 and 41 and the case-law cited).

31 However, as the Commission contends, it appears that the information that the tenderers had to supply under chapters 4 and 5 of the Technical Evaluation Questionnaire (see paragraph 3 above) did not aim at assessing their general ability to provide sufficient staff in terms of competence and numbers in order to perform the contract but rather at evaluating the concrete staffing approaches set out by the tenderers with a view to delivering the services as described in the Technical Specifications.

32 This distinction appears even clearer when comparing the nature of staffing information provided under the said award criteria with the nature of staffing information provided under the selection criteria in the Technical Selection Questionnaire. The latter requires tenderers to state their total annual manpower accompanied by profile breakdowns and sets general minimum thresholds without any requirement that appears to be related to their staffing approach so far as the framework contract at issue is concerned.

33 Invited to comment on the Commission's observations on the issue, the applicants did not seek to rebut them but indicated orally that the present ground was merely ancillary to their first ground.

34 In these circumstances, the second ground invoked by the applicants does not establish a prima facie case.

35 With regards to the first ground (see paragraph 25 above), the applicants' arguments appear to rest on a false premiss.

36 In particular, as is apparent from paragraph 49 of the application, the applicants challenge the evaluation made by the Commission so far as three staffing sub-criteria are concerned. These relate to staffing of the Front Office, the Logistic Support and the Back Office Support respectively (see paragraph 3 above).

37 According to the applicants' line of argument, staff numbers provided in tenders under these chapters do not give rise to contractual obligations in terms of the exact number of personnel that the successful tenderer will have to make available. Rather, the successful tenderer and future contractor will be bound by performance indicators relating to the quality of the service defined in Service Level Agreements. If the successful tenderer is able to perform in compliance with the relevant indicators

while making available fewer staff than is stated in the Technical Evaluation Questionnaire its decision to withdraw excess staff will neither be in breach of contractual obligations nor will it give rise to a revision of the fixed price. In fact, the staff numbers stated in the Technical Evaluation Questionnaire serve as a basis for the calculation of the fixed price of the tender. Conversely, if the number of staff proposed by the tenderer proves insufficient, then the Commission may enforce liquidated damages clauses with a view to bringing the contractor into compliance with its qualitative obligations. In these circumstances, it would be unacceptable, according to the applicants, for an awarding authority to grant low marks to the staffing part of a tender on the mere ground that a competing tender stated much higher numbers of staff which could subsequently be withdrawn as and when they proved unnecessary.

38 The applicants appear indeed to be correct in submitting that, where staffing statements do not give rise to a contractual obligation, the mere fact that a competing tender proposes a method culminating in larger numbers of personnel is not a legally valid ground for the awarding authority to grant a lesser mark to the tender that involved fewer staff. Indeed, if that were to be acceptable, a tenderer would be indirectly incited to propose staffing methods giving rise to exceptionally high numbers of staff, while hoping that its competitors will not do so, thereby considerably raising the chances of excluding them from the financial evaluation phase, whilst knowing at the same time that if it is awarded the contract it will be able to withdraw excess staff without affecting the fixed price of the contract.

39 However, it appears from the evidence produced that the low marks of which the applicants complain are not the result of a mere comparison between the staff numbers they proposed and those proposed in the competing tender. Rather, the said marks appear to have been based on assessments by the Commission relating to the objective inadequacy of their staffing approach for the services subject of the Tendering Specifications.

40 More particularly, as is apparent from chapter 2 of section 1-5-0 ''Staffing Method – Financial Aspects' of the Tendering Specifications, the method proposed by the tenderers for determining the required number of staff in order to perform according to the Service Requirement and Service Level Variables is applicable both for generating the financial offer for the service components and elements initially defined and for determining the cost of any additional service component and element as well as for the cost in case of any change in the above variables. Moreover, given that the method in question must correspond to a 'base scenario' of 30 000 Commission staff in year 4 of the execution, the service cost for any request premissed on that level of staff must be identical to the one proposed in the tender.

41 These provisions of the Tendering Specifications suggest that, as the Commission indicated during the tendering procedure (see paragraph 4 above), proposed staff numbers are not binding as such, in the sense that the execution of the contract may prove that more or fewer staff are needed in order to comply with the quality obligations and that the contractor will ultimately have to abide by these obligations. Moreover, the method used in the staffing approach does appear to be binding for the contractor in the sense that, if the 'base scenario' materialises, the contractor is required to 'propose' the number of staff as in the tender (see also Introduction of section 1-1-0 'Requirements for Management Services' of the Tendering Specifications). This obligation does not, however, appear to affect the possibility of withdrawing staff should their numbers prove to be excessive during execution of the contract.

42 Additionally, contrary to what the Commission suggested in its oral argument, chapter 2.3.2 of section 1-0-0 'General Requirements' of the Tendering Specifications appears to concern only the case where the characteristics or the operating conditions of a service component change beyond normal evolution and require a contract amendment, or where a new service element is added. This chapter merely states that, in such cases, the Commission will have to present an update request with additional specifications. Moreover, the Commission did not explain satisfactorily why this provision also grants it the right, should the numbers of the staff proposed prove to be excessive, to raise the

service level requirements while maintaining the excess staff without the extra cost that would be generated by a new service request concerning either an additional service component or element or reflecting a change in the Service Requirement or Service Level Variables.

43 Nevertheless, notwithstanding the doubts as to the Commission's interpretation of the Tendering Specifications, it appears from the correspondence between the applicants and the Commission (see paragraphs 7 to 9 above) that the low marks attributed to the various staffing approaches resulted in fact from what the Commission assessed as objective insufficiencies in the applicants' tender.

44 In particular, concerning Front Office services, the Commission stated in its letter of 6 November 2013 that, with the exception of one service element, for all the other service elements the number of staff was inadequate to assure the required level of service. The Commission went on to point out that a staffing level of 33.37 Full Time Equivalents distributed to over 30 Proximity Concentration Points was clearly inadequate in order to carry out the required tasks. The same held true, according to the Commission, for the proposal of 1.8 Full Time Equivalents to cover the services provided by Competence Groups. In the same letter, the Commission also criticised the proposed number of Full Time Equivalents for Logistic Support services as well as the unclear methodology and the proposed number of Full Time Equivalents concerning Back Office services.

45 These criticisms were reiterated, and apparently substantiated by examples at the debriefing meeting held on 8 November 2013, according to the relevant minutes communicated to the Applicants by letter of 19 November 2013.

46 Lastly, in its letter of 28 November 2013, the Commission indicated that the applicants' tender was premissed on the assumption that the number of 1.1 Proximity Concentration Points per 1 000 users could be reduced. However, this assumption was incorrect. Therefore, the 33.37 Full Time Equivalents for 33 Proximity Concentration Points in the base scenario involving 30 000 users resulted, given the high number of Full Time Equivalents allocated to Proximity Concentration Points providing platinum service, to an average of less than 1 Full Time Equivalent for every remaining Proximity Concentration Point. Moreover, after enumerating the most important tasks to be carried out by the Competence Groups, the Commission repeated that the figure of 1.84 Full Time Equivalents for Competence Groups was unrealistic. It was only for the sake of comparison that the Commission referred to the 20.85 Full Time Equivalents allocated by the competing consortium to Competence Groups.

47 The Commission's arguments with regard to the number of Proximity Concentration Points appear to be soundly based. According to point 5 of chapter 4.11 of section 1-2-0 'Requirements for Front Office Services' to the Tendering Specifications, the default number of Proximity Concentration Points is indeed 1.1 per 1 000 users, which results in 33 Proximity Concentration Points for the base scenario of 30 000 users. The Commission's contentions as to the fixed and unnegotiable character of this parameter are moreover not challenged by the applicants. Invited to clarify whether their tender was indeed premissed on fewer than 1.1 Proximity Concentration Points per 1 000 users, the applicants indicated that this was not the case, but they did not present any part of their offer or any other element in order to substantiate this statement.

48 In these circumstances, the applicants' point of view according to which the contested decision is vitiated because it rests on a comparative assessment limited to non-binding declarations on staffing does not appear to be well founded. It follows that, contrary to the applicants' contention at paragraph 37 of their application, it would indeed be necessary for the Court to assess whether the Commission erred in finding that the staffing levels, as proposed in the applicants' tender, were indeed insufficient and whether the reasons underlying that conclusion were correctly stated. However, as set out in paragraph 37 of their application, the applicants do not raise such a plea.

49 Finally, in this context, it is necessary to consider the applicants' contention in paragraph 80 of the application, according to which the Commission misunderstood the basic principle of their staffing approach, which, in fact, consisted in making available larger numbers of staff during the first one or two years of operation with a view to reducing them substantially in years 3 and 4 following important efficiency gains through innovative consolidation approaches. In so far as this contention can be understood as a challenge to the findings in paragraphs 44 to 46 above, it can only be dismissed. In particular, although it cannot be excluded that an innovative consolidation effort during the first years might result in fewer staff supporting a higher number of users in later years, and might thus put into question the appropriateness of a model according to which the tenderers are required only to state staff numbers for year 4, with numbers for years 1, 2, and 3 being automatically calculated in proportion to a lesser number of users, the applicants refrained from adducing any evidence to demonstrate that they did indeed propose such methods in their tender, which were moreover transparent, logical, coherent, auditable, complete and practical, as required by the Tendering Specifications (section 1-5-0 'Staffing Method – Financial Aspects', chapter 2.2). The only efficiency enhancing element the applicants referred to in their oral submission was the fact that they proposed a system whereby users would request IT equipment through an online platform instead of using other means of telecommunication. However, in so far as an argument of this type can be assessed without precise supporting evidence, it seems that, if such measures could enhance efficient time-management for users of the service, they do not appear, in the absence of further substantiation, to affect to an appreciable degree the efficiency of the tenderer's staff, not least since no particular innovation was alleged so far as their task to make available the requested equipment is concerned.

50 It follows that the first ground also does not establish a prima facie case.

51 So far as the third ground is concerned (see paragraph 27 above), it suffices to point out that, contrary to the applicants' submissions, the Commission does not appear to have evaluated their staffing approach merely on the basis that they failed to divine the optimal staff numbers that the Commission had in mind. Rather, it appears from the analysis relating to the first ground that the Commission focused its assessment on evaluating whether the applicants' staffing approach objectively met the criteria established in the Tendering Specifications. In that regard, the reference in section 1-5-0 'Staffing Method – Financial Aspects', chapter 2.2, to the 'optimal number of Full Time Equivalents' is clearly made in order to set the scope of the method that the tenderer has to propose while the evaluation of that method is conducted on the basis of criteria set in the same chapter. Consequently, the applicants have not been able to point to any element contained in the Tendering Specifications or in the subsequent correspondence with the Commission supporting their contention that the evaluation of their offer was merely based on a supposed failure to second-guess the Commission's ideas of the optimal number of staff.

52 The third ground is thus also unable to establish a prima facie case.

53 Regarding the fourth ground (see paragraph 28 above), the applicants seek to draw a parallel with the case of abnormally low tenders. In particular, the applicants contend that the grounds underlying the rejection of their tender are of a similar nature to the grounds on which an abnormally low offer may be rejected. It would thus follow that, before rejecting their tender, the Commission was required to request details of the relevant constituent elements thereof and to verify those elements, after taking account of the explanations received in accordance with Article 151 of Regulation No 1268/2012.

54 However, this ground is also based on a false premiss.

55 In particular, as stated in paragraph 77 of the application, a tender that appears abnormally low raises a suspicion that the tenderer will not be able to perform according to the terms offered. This can be, for the sake of example, because the price offered appears too low or because the technical solutions proposed appear beyond the tenderer's competence. Nevertheless, a basic feature in these

circumstances is that the terms of the tender are deemed by the awarding authority as meeting the criteria of the call for tenders, the suspicions of the latter concerning another part of the evaluation, namely the ability of the tenderer to perform according to those specific terms. This concern is moreover distinct from the evaluation of the general ability of the tenderer, which has to be conducted at the selection phase.

56 However, as is apparent from the analysis relating to the first ground, in the present case the Commission considered that the terms offered were unacceptable so far as the staffing approach of Front Office, Logistics Support and Back Office services were concerned, since they did not meet the technical criteria for the evaluation of the relevant methods. No parallel with the case of abnormally low tenders can therefore be drawn in the case at hand.

57 Consequently, the fourth ground also does not establish a prima facie case.

58 It also follows from the analysis of all the grounds invoked by the applicants that the criteria at issue, as established in the Tendering Specifications, do not appear to suffer from any legal flaw.

59 Hence, the present application must be dismissed since no prima facie case has been established without it being necessary to address the issues of urgency or balance of interests.

On those grounds,

THE JUDGE HEARING THE APPLICATION FOR INTERIM MEASURES

hereby orders:

1) The application for interim measures is dismissed.

2) Costs are reserved.

Luxembourg, 4 February 2014.

E. Coulon
Registrar

N.J. Forwood
Judge hearing the application for interim measures