Reports of Cases

JUDGMENT OF THE GENERAL COURT (Second Chamber)

29 January 2013*

(Public service contracts — Tender procedure — Shuttle service in Italy and Europe — Tenderer's bid rejected — Decision to award the contract to another tenderer — Non-contractual liability — Access to documents — Regulation (EC) No 1049/2001 — Bid of the successful tenderer — Access refused — Exception relating to the protection of the commercial interests of a third party)

In Joined Cases T-339/10 and T-532/10,

Cosepuri Soc. Coop. pA, established in Bologna (Italy), represented by F. Fiorenza, lawyer,

applicant,

v

European Food Safety Authority (EFSA), represented by D. Detken and S. Gabbi, acting as Agents, and J. Stuyck and A.-M. Vandromme, lawyers,

defendant,

APPLICATION for annulment relating to tender procedure CFT/EFSA/FIN/2010/01 for the award of a shuttle service contract in Italy and Europe (OJ 2010/S 51-074689), together with a claim for damages (Case T-339/10), and an application for annulment of EFSA's decision of 15 September 2010 refusing to grant the applicant access to the bid of the successful tenderer in the tender procedure in question (Case T-532/10),

THE GENERAL COURT (Second Chamber),

composed of N.J. Forwood, President, F. Dehousse (Rapporteur) and J. Schwarcz, Judges,

Registrar: S. Spyropoulos, Administrator,

having regard to the written procedure and further to the hearing on 8 May 2012,

gives the following

* Language of the case: Italian.

Judgment

Background to the dispute

1 By notice published in the Supplement to the *Official Journal of the European Union* of 13 March 2010 (OJ 2010 S 51), the European Food Safety Agency (EFSA) launched call for tenders CFT/EFSA/FIN/2010/01 for the award of a shuttle service contract in Italy and Europe ('the call for tenders').

2 Part IV.2.1 of the call for tenders stated that the contract was to be awarded to the most economically advantageous tender in terms of the criteria stated in the specifications, in the invitation to tender or to negotiate or in the descriptive document. The specifications laid down the following award criteria: financial proposal (50 points) and technical quality (50 points). The contract was to be awarded to the tender obtaining the highest score achieved by adding together the marks for the financial proposal and the technical quality of the tender.

3 The time-limit for receipt of tenders or requests to participate was 19 April 2010. Four tenders were submitted within the period prescribed, including that of the applicant, Cosepuri Soc. Coop. pA.

4 On 31 May 2010, the tender evaluation committee ('the evaluation committee') proposed that the contract be awarded to a tenderer other than the applicant; that tenderer received a total of 88.62 points, made up as follows: 48.62 points for the financial proposal and 40 points for technical capacity. The applicant was placed second, with a total of 87 points, made up as follows: 50 points for the financial proposal and 37 points for the technical quality of the tender.

5 Also on 31 May 2010, EFSA decided to award the contract to the tenderer proposed by the evaluation committee ('the successful tenderer') and sent a letter to the applicant informing it of the decision not to accept the bid submitted by it. In the letter to the applicant, EFSA gave the reasons for which its bid had been rejected, providing a comparison of the applicant's bid and that of the successful tenderer and the name of the latter.

6 On 11 June 2010, the applicant requested EFSA to grant it access to the file relating to the contract award procedure.

7 EFSA replied to that request by undated letter received, according to the applicant, within the period prescribed in Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2011 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43). Referring to 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) ('the Financial Regulation'), EFSA stated, first of all, that it had provided to the applicant, by letter of 31 May 2010 (see paragraph 5 above), the reasons for the rejection of its tender, the characteristics and advantages of the successful tenderer's bid and the name of that tenderer. Moreover, referring to Regulation No 1049/2001, EFSA sent to the applicant a copy of the evaluation report and of the contract signed with the successful tenderer. On the other hand, EFSA refused to grant the applicant access to the successful tenderer's bid and that of the other tenderers on the basis that such access would undermine the protection of the commercial interests of those tenderers. EFSA referred in that regard to Article 4(2) of Regulation No 1049/2001. EFSA also indicated that the applicant could submit to it a confirmatory application within 15 working days from receipt of that letter.

8 On 3 August 2010, the applicant notified EFSA that it intended to have access to the file relating to the award of the contract, fixing a date and time for an appointment for that purpose.

9 On 9 August 2010, the applicant clarified that the purpose of its request of 3 August 2010 was to secure a change in EFSA's decision not to grant it access to the documents in question. The applicant contested in particular the refusal to grant it access to the successful tenderer's bid.

10 On 13 August 2010, EFSA took the view that the applicant's letter of 9 August 2010 clarified the confirmatory nature of its request of 3 August 2010 and indicated to the applicant that it intended to extend the time-limit for replying to its request by 15 working days, in accordance with Article 8(2) of Regulation No 1049/2001.

11 On 15 September 2010, EFSA confirmed to the applicant its refusal to grant it access to the bids submitted by the tenderers in connection with the call for tenders in question. EFSA relied, in that regard, on Article 4(2) of Regulation No 1049/2001 and Article 100(2) of the Financial Regulation.

Procedure and forms of order sought by the parties

12 By applications lodged at the Registry of the General Court on 9 August (Case T-339/10) and 13 November 2010 (Case T-532/10), the applicant brought the present actions.

13 By order of the President of the Second Chamber of the General Court of 15 March 2012, Cases T-339/10 and T-532/10 were joined for the purposes of the oral procedure and the judgment, pursuant to Article 50 of the Rules of Procedure of the General Court.

14 Upon hearing the report of the Judge-Rapporteur, the General Court (Second Chamber) decided to open the oral procedure.

15 The parties presented oral argument and gave their replies to the questions asked by the Court at the hearing on 8 May 2012.

16 At the hearing, in the light of the circumstances of the case and on the basis of Article 65 and Article 67(3) of the Rules of Procedure, the Court adopted a measure of inquiry requiring the production of the financial bid of the successful tenderer. EFSA immediately complied with the measure of inquiry and indicated at the hearing that it accepted that that financial bid should be disclosed to the applicant.

17 In Case T-339/10, the applicant claims that the Court should:

— annul the tender procedure to the extent that it provides for the evaluation of the financial bids to be conducted in secret;

— annul the decision to award the contract to another tenderer and any act resulting therefrom;

— order EFSA to pay damages;

— order EFSA to pay the costs.

18 In Case T-339/10, EFSA contends that the Court should:

— dismiss the action for annulment as inadmissible or, in the alternative, unfounded;

— dismiss the claim for damages as inadmissible or, in the alternative, unfounded;

— order the applicant to pay the costs.

19 In Case T-532/10, the applicant claims that the Court should:

— annul EFSA's decision of 15 September 2010;

— order EFSA to produce the confidential documents;

— order EFSA to pay the costs.

20 In Case T-532/10, EFSA contends that the Court should:

— dismiss the action for annulment as inadmissible or, in the alternative, unfounded;

— dismiss the request for the production of documents;

— order the applicant to pay the costs.

Law

1. *The action in Case T-339/10*

The claims for annulment

21 The applicant puts forward three pleas in law in support of its claims for annulment. The first plea alleges breach of Article 89 of the Financial Regulation, the principles of sound administration and transparency and the principle of public right of access to documents. The second plea alleges breach of Article 100 of the Financial Regulation, Regulation No 1049/2001, the obligation to state reasons and the principles of transparency and the right of access to documents. The third plea alleges breach of Article 100 of the Financial Regulation, breach of the tender specifications and, in essence, failure to state adequate reasons.

22 It should be noted, first, as regards the law applicable to procedures for the award of public service contracts initiated by EU institutions and bodies, that those procedures are governed by the provisions of Title V in Part 1 of the Financial Regulation and the provisions of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of the Financial Regulation (OJ 2002 L 357, p. 1) ('the Implementing Rules'), in the version applicable at the material time.

Admissibility of the claims for annulment

23 The applicant states that the following measures are contested in the present action: EFSA's letter of 31 May 2010 (see paragraph 5 above), the call for tenders, the tender specifications, the report of the evaluation committee and the contract concluded between EFSA and the successful tenderer.

24 At the hearing, the applicant indicated that it was no longer seeking annulment of the tendering specifications or the report of the evaluation committee and formal note of this was taken.

25 Moreover, EFSA stated at the hearing that it was no longer pursuing the objection of inadmissibility raised in its written pleadings in respect of the applicant's action for annulment in so far as, by its second head of claim, the action relates to the decision to award the contract to another tenderer.

26 As to the remainder and in so far as the applicant includes among the contested measures the contract concluded between EFSA and the successful tenderer, it is sufficient to point out that the measure in question produces and exhausts all its effects in the context of the contractual relationship between the parties to the contract, to which the applicant is a third party. No evidence has been produced on the basis of which it could be concluded that the measure in question produces legally binding effects such as to affect the interests of the applicant by significantly altering its legal situation. It follows that, in so far as it relates to the contract concluded between EFSA and the successful tenderer, the applicant's action for annulment is inadmissible. It should be added that Article 266 TFEU provides that the institution whose act has been declared void is required to take the necessary measures to comply with the judgment of the Court. Accordingly, it cannot be precluded that, in the event of annulment of the decision to award the contract to another tenderer, EFSA may be directed to bring the contract at issue to an end (see, to that effect, the order of the President of the General Court in Case T-447/04 R *Capgemini Nederland* v *Commission* [2005] ECR II-257, paragraphs 95 to 97).

27 Moreover, in so far as the applicant includes among the contested measures the 'call for tenders', that application must be regarded as indistinguishable from the second head of claim, which seeks the annulment of the decision to award the contract to another tenderer.

28 Lastly, in so far as the applicant seeks, in its second head of claim, the annulment of the decision to award the contract to another tenderer and of 'any act resulting therefrom', it should be recalled that, under the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union, applicable to the procedure before the General Court by virtue of the first paragraph of Article 53 thereof and Article 44(1)(c) of the Rules of Procedure of the General Court, an application must set out the subject-matter of the proceedings and a summary of the pleas in law on which it is based. The information given must be sufficiently clear and precise to enable the defendant to prepare his defence and the Court to exercise its review, if necessary without other supporting information. In order to ensure legal certainty and the sound administration of justice, if an action is to be admissible the essential facts and law on which it is based must be apparent from the text of the application itself, at the very least summarily, provided that the statement is coherent and intelligible (see, to that effect, Case T-387/94 *Asia Motor France and Others* v *Commission* [1996] ECR II-961, paragraphs 106 and 107, and Case T-209/01 *Honeywell* v *Commission* [2005] ECR II-5527, paragraphs 55 and 56 and the case-law cited). In the present case, with the exception of the contract signed by EFSA and the successful tenderer, in respect of which the action for annulment must be dismissed as inadmissible (see paragraph 26 above), the applicant fails to specify which 'act[s]' its second head of claim is directed at or to put forward any argument in support of its application. Consequently, the second head of claim must be dismissed as inadmissible, in so far as it is directed at 'any act resulting from' the decision to award the contract to another tenderer.

29 In the light of all the foregoing considerations, the examination of the action in Case T-339/10 must be confined to the application for annulment of EFSA's decision to reject the applicant's tender and award the contract at issue to another tenderer whose bid was considered to be better.

Substance

– The first plea, alleging breach of Article 89 of the Financial Regulation, the principles of sound administration and transparency and the principle of public access to documents

30 The applicant criticises Part II.8 of the tender specifications, which states that the procedure for the evaluation of the financial bids is confidential. The applicant submits that the financial bid cannot be regarded as confidential information. EFSA therefore erred in not allowing the tenderers to participate in the opening and financial assessment of the bids. Moreover, EFSA ensured that it would not be

possible for any subsequent verification to be carried out by redacting from the evaluation report the price offered by the successful tenderer. The applicant claims that it would have had no interest in taking action in respect of the tender specifications before they had adversely affected it.

31 EFSA disputes the applicant's arguments.

32 First, the applicant calls into question the fact that Part II.8 of the tender specifications provided that the tender evaluation procedure was to be confidential. It should be noted in that regard that the applicant has the right to challenge, as an incidental plea, the lawfulness of the specifications in the present action (see, to that effect, Case T-495/04 *Belfass* v *Council* [2008] ECR II-781, paragraph 44). The applicant clarified, at the hearing, that it was challenging only the fact that it was not able to participate at the procedure for the evaluation of the financial bids. It does not maintain that it was prevented from participating in the opening of the bids.

33 Article 89(1) of the Financial Regulation provides that all public contracts financed in whole or in part by the budget are to comply, inter alia, with the principle of transparency. In the present case, it must be noted that Part II.8.2 of the specifications, which provides that the procedure for the evaluation of the tenders is to be conducted in secret, satisfies the requirement of preserving the confidentiality of the tenders and the need to avoid, in principle, contact between the contracting authority and the tenderers (see, on this point, Article 99 of the Financial Regulation and Article 148 of the Implementing Rules). The principle of transparency, referred to in Article 89(1) of the Financial Regulation, which is invoked by the applicant, must be reconciled with those requirements. Accordingly, there is no basis on which it can be concluded that Part II.8 of the specifications is vitiated by unlawfulness.

34 Second, the applicant challenges the fact that it was not able to ascertain the price proposed by the successful tenderer. In particular, the applicant states that EFSA ensured that it would not be possible for any subsequent verification to be carried out by redacting from the evaluation report the price offered by the successful tenderer. In that regard, without there being any need to rule in the present case on whether the price proposed by the successful tenderer formed part of the information which the contracting authority should have communicated to the unsuccessful tenderers, it is clear from the evidence submitted that the applicant was in a position to ascertain the price in question. It is apparent from Section 2.4 of the evaluation committee report that the applicant and the successful tenderer offered the same price in respect of points 2 to 7 of the financial bid, both obtaining the maximum score of 15 points. The price offered by the successful tenderer in respect of points 2 to 7 of the financial bid is therefore abundantly clear from the evaluation committee report. Moreover, with regard to point 1 of the financial bid, the evaluation committee report indicated the price offered by the applicant and the mark obtained. Although it does not expressly refer to the price offered by the successful tenderer, that report specifies the mark obtained by it. Taking account of those factors, it was possible to calculate, without any difficulty, the price proposed by the successful tenderer in respect of point 1 of the financial bid, as submitted by EFSA in connection with the second plea. Furthermore, the Court has been able to verify, by way of the measure of inquiry adopted at the hearing (see paragraph 16 above), that the price mentioned by EFSA in its written pleadings was in fact the price proposed by the successful tenderer. In view of all the foregoing considerations, the Court considers that, even if EFSA had erred by failing to indicate expressly to the applicant the price proposed by the successful tenderer, such an error would have had no effect on the lawfulness of EFSA's decision to reject the applicant's tender and award the contract at issue to another tenderer whose bid was considered to be better, since the applicant was in a position to ascertain that price. The applicant's arguments in that regard must therefore be rejected.

35 Third, with regard to the principle of sound administration relied on by the applicant, according to case-law, guarantees afforded by the European Union legal order in administrative proceedings include, in particular, the principle of sound administration, which entails the duty on the part of the competent institution to examine carefully and impartially all the relevant aspects of the individual case

(see the judgment of 15 September 2011 in Case T-407/07 *CMB and Christof* v *Commission*, not published in the ECR, paragraph 182 and the case-law cited). In the present case, the arguments put forward by the applicant in the first plea, which essentially consist in criticising the fact that it was not granted access to the financial bid of the successful tenderer, do not demonstrate that EFSA failed to examine carefully and impartially all the relevant aspects of the case. In the absence of more detailed evidence, the applicant's arguments in that regard must be rejected.

36 Lastly, in so far as, by its arguments, the applicant alleges breach of Regulation No 1049/2001, it must be noted that, at the time when the action for annulment was brought in Case T-339/10, EFSA had not provided a definitive answer to the applicant's request for access to documents under that regulation, as the applicant itself acknowledges at paragraph 10 of the application. The response to the initial request for access is only an initial statement of position, conferring on the persons concerned the right to request the institution concerned to reconsider that position. Consequently, only a measure adopted by that institution which is a decision and which entirely replaces the previous statement of position is capable of producing legal effects such as to affect the interests of the applicants and, accordingly, capable of being the subject of an action for annulment (see, to that effect, Joined Cases T-391/03 and T-70/04 *Franchet and Byk* v *Commission* [2006] ECR II-2023, paragraph 48, and Case T-437/05 *Brink's Security Luxembourg* v *Commission* [2009] ECR II-3233, paragraph 71). In the circumstances, the applicant's argument alleging breach of Regulation No 1049/2001 in the application for annulment in Case T-339/10 is inadmissible.

37 In the light of all the foregoing, the first plea must be rejected.

– The second plea, alleging breach of Article 100 of the Financial Regulation, Regulation No 1049/2001, the obligation to state reasons, and the principles of transparency and the right of access to documents

38 The applicant criticises EFSA's decision to refuse its request for access to the successful tenderer's bid and the bids of the other tenderers (see paragraph 7 above). In its view, granting access to the tenderers' technical bids would not affect any commercial interest. The denial of access to those documents meant that it was not possible to understand the evaluation committee report. Moreover, EFSA's failure to disclose the price offered by the successful tenderer amounts to a failure to state reasons. The Court has already recognised that the price offered by the successful tenderer constitutes one of the characteristics and one of the relative advantages of the tender accepted.

39 EFSA contests the applicant's arguments.

40 First, it should be noted that although the applicant pleads the principle of transparency and the right of access to documents in the heading of its second plea, the objective of the arguments set out in the application is to demonstrate failure to state reasons, on account of the refusal to disclose the bids of the other tenderers, in particular that of the successful tenderer.

41 In particular, the applicant states at paragraph 26 of the application that 'the refusal to grant access and the fact that the evaluation committee … did not provide [to it] the bid submitted by the successful tenderer had the effect of rendering the procedure unlawful since it is not possible, on the basis of the limited information set out in the evaluation report, to understand the significant differences between the two tenders and to ascertain whether the requirements which were positively assessed by the evaluation [committee] were in fact satisfied'. Furthermore, at paragraph 27 of the application, the applicant states that 'the effect of the non-disclosure of the price proposed by [the successful tenderer] was to render the award procedure defective on account of failure to state reasons, since the number of points awarded to the successful tenderer in respect of that part was not provided'.

42 It is clear from Article 100(2) of the Financial Regulation and Article 149 of the Implementing Rules that the contracting authority fulfils its obligation to state reasons if, first of all, it immediately informs each unsuccessful tenderer of the reasons for the rejection of its tender and if, secondly, it informs tenderers who have submitted an admissible tender and who so request of the characteristics and the relative advantages of the selected tender, together with the name of the successful tenderer, within 15 calendar days of receiving a written request (judgment of 10 September 2008 in Case T-465/04 *Evropaïki Dynamiki* v *Commission*, not published in the ECR, paragraph 47, and *Brink's Security Luxembourg* v *Commission*, paragraph 36 above, paragraph 160).

43 Such a manner of proceeding is consistent with the purpose of the obligation to state reasons laid down in Article 296 TFEU, according to which the reasoning followed by the authority which adopted the measure in question must be disclosed in a clear and unequivocal fashion so as, on the one hand, to make the persons concerned aware of the reasons for the measure and thereby enable them to defend their rights, and, on the other, to enable the Court to exercise its powers of review (*Evropaïki Dynamiki* v *Commission*, paragraph 42 above, paragraph 48).

44 Furthermore, the obligation to state reasons must be evaluated in accordance with the circumstances of the individual case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations (see Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63 and the case-law cited).

45 In the present case, first, EFSA informed the applicant of the reasons for the rejection of its tender, the characteristics and advantages of the successful tenderer's bid and the name of that tenderer and provided a copy of the evaluation report and a copy of the contract signed with the successful tenderer (see paragraphs 5 and 7 above).

46 Second, the claim that, without access to the successful tenderer's technical bid, the evaluation committee report would be incomprehensible must be rejected as unfounded. Indeed, it is apparent from the evaluation committee report that the committee identified, for each of the sub-criteria for the technical evaluation of the tenders, the reasons for the marks given to the tenderers concerned. In particular, as regards the first technical evaluation sub-criterion, which is the subject-matter of the third plea, the evaluation committee report gives sufficiently precise information as to the qualities of the bids submitted, in particular that of the successful tenderer. The applicant was also able to advance arguments before the Court based on the evaluation committee report relating to the comparative advantages of the bids in question and the bid submitted by the successful tenderer.

47 Third, with regard to the fact that EFSA did not disclose the price offered by the successful tenderer, even if it were accepted that that price formed part of the characteristics and relative advantages of the successful bid which the contracting authority was obliged, in the present case, to communicate under Article 100(2) of the Financial Regulation, it is in any event clear from the evidence submitted that the applicant was in a position to ascertain the price in question (see paragraph 34 above).

48 In the light of those considerations, the Court considers that EFSA did not fail in the present case to comply with its obligation to state reasons arising, in particular, under Article 100(2) of the Financial Regulation.

49 In any event, in so far as the applicant's arguments, in particular the argument based on the principle of transparency, may be interpreted as challenging the refusal itself to grant access to the tenderers' technical and financial bids, in particular those of the successful tenderer, it should be noted that the principle of transparency, referred to in Article 89(1) of the Financial Regulation, must be reconciled with the requirements of protection of the public interest, of the legitimate business interests of public or private undertakings and of fair competition: that is the reason for the provision made in the second subparagraph of Article 100(2) of the Financial Regulation, under which it is possible to

refuse to disclose certain details to a rejected tenderer, where non-disclosure is necessary to ensure that those requirements are satisfied (Case T-195/08 *Antwerpse Bouwwerken* v *Commission* [2009] ECR II-4439, paragraph 84). That is the context in which the first subparagraph of Article 100(2) of the Financial Regulation provides that, where appropriate, only the characteristics and relative advantages of the successful tender and the name of the tenderer to whom the contract is awarded are to be disclosed. The first subparagraph of Article 100(2) of the Financial Regulation does not provide that all the details of the successful tender are to be disclosed (see, to that effect, the order of 13 January 2012 in Case C-462/10 P *Evropaïki Dynamiki* v *EEA*, not published in the ECR, paragraph 39 and the case-law cited). Moreover, it should be recalled that, in the present case, EFSA informed the applicant of the reasons for the rejection of its tender, the characteristics and advantages of the successful tenderer's bid and the name of that tenderer and provided a copy of the evaluation report and a copy of the contract signed with the successful tenderer. In the light of those factors, the Court considers that EFSA did not fail to comply with the duty of transparency laid down in Article 89(1) of the Financial Regulation. Moreover, with regard specifically to the economic bid of the successful tenderer, it should be recalled that the applicant was in a position to ascertain that bid from the documents communicated by EFSA (see paragraph 34 above).

50 Lastly, in so far as the applicant's arguments may be interpreted as alleging breach of Regulation No 1049/2001, they must be rejected on the same grounds as those set out at paragraph 36 above.

51 In the light of all the foregoing, the second plea must be rejected as unfounded.

– The third plea, alleging breach of Article 100 of the Financial Regulation and of the specifications and failure to state reasons

52 The applicant criticises the comparative evaluation carried out of its bid and that of the successful tenderer, as regards the first technical evaluation sub-criterion. In particular, the applicant points out that even though it has a significantly greater number of vehicles than the successful tenderer, the technical evaluation is the same in that regard. Furthermore, the evaluation committee was wrong to take the view that the applicant provided little information concerning, first, the effective monitoring of flights and, second, the flexibility of the service and its added value for passengers. The applicant also criticises the successful tenderer's bid by reference to the Italian legislation applicable to the services in question. In particular, the applicant is of the view that the successful tenderer's undertaking to keep a vehicle permanently parked close to EFSA's car park is unlawful since, first, hire cars may be parked only in authorised locations, and, second, the guarantee that a vehicle will always be available is at variance with the obligation to respond to the demands of private clients. The applicant points out in that regard that the Court has recognised that the conditions laid down in an invitation to tender should not induce tenderers to infringe national legislation. Lastly, the applicant claims that the evaluation committee failed to have regard to the fact that the applicant had a partnership agreement to provide services in any town or city in Italy. The contents of the evaluation committee report are therefore vitiated on account of failure to state reasons.

53 EFSA disputes the applicant's arguments.

54 As a preliminary point, it should be noted that, according to consistent case-law, the contracting authority has a broad discretion with regard to the factors to be taken into account for the purpose of deciding to award a contract following an invitation to tender, and any review by the Court must be limited to checking that the rules governing the procedure and statement of reasons are complied with, the facts are correct and that there is no manifest error of assessment or misuse of powers (Case T-211/02 *Tideland Signal* v *Commission* [2002] ECR II-3781, paragraph 33; Case T-148/04 *TQ3 Travel Solutions Belgium* v *Commission* [2005] ECR II-2627, paragraph 47; and Case T-89/07 *VIP Car Solutions* v *Parliament* [2009] ECR II-1403, paragraph 56).

55 In the present case, the first technical evaluation sub-criterion related to the arrangements for the provision of the service by a suitable fleet of vehicles, the availability and flexibility of the service and the monitoring of flights. The successful tenderer was awarded a mark 7 points higher (out of a total of 25) than that of the applicant.

56 With regard to the applicant, the evaluation committee found that the fleet of vehicles proposed was very large, the number of vehicles being greater than was required and the vehicles being on permanent standby. The evaluation committee also referred to the paucity of information provided as to the effective monitoring of flights, the flexibility of the service and the added value for passengers (assistance to passengers in the event of delay, loss of baggage and diverted flights).

57 With regard to the successful tenderer, the evaluation committee also found that the fleet of vehicles proposed was very large, the number of vehicles being greater than was required and the vehicles being on permanent standby. The evaluation committee also observed that the service proposed was highly flexible and readily accessible. In particular, the committee referred to an association agreement for drivers to be on standby in other locations such as Lombardy (Italy) and Parma (Italy), the fact that a car was to be permanently available close to EFSA's car park, as well as assistance in the event of loss of baggage, the existence of a technical contract for the ongoing maintenance of software and an undertaking for the ongoing and systematic monitoring of flights.

58 First, as regards the evaluation of the fleet of vehicles, it is common ground that the applicant and the successful tenderer each had more vehicles than was required by the specifications. In those circumstances, the fact that the applicant had a larger fleet of vehicles than the successful tenderer is irrelevant for the purposes of the comparative evaluation of the tenders in that regard.

59 Second, as regards the claim that the evaluation committee was wrong to state that little information was provided by the applicant with regard to the effective monitoring of flights, it should be noted that the applicant's tender, to which it draws attention in its written pleadings in support of its arguments, is worded in the following terms:

'Cosepuri has new software which may be linked to the sites of the main Italian airports in order to upload in real time all information concerning departures and arrivals of national and international flights. By that means, the operators of our centre of operations dedicated to EFSA who are responsible for the distribution of services will be in a position to monitor and check the times of flight arrivals and departures for the airports concerned by the contract. In that way, Cosepuri may foresee any flight delays or diversions in the event of unforeseen adverse weather conditions, unexpected strikes or mechanical problems.'

60 It must be held in that regard that, as essentially found by the evaluation committee, the applicant's bid was not in fact very detailed. The applicant's bid simply stated that it would have a flight monitoring system but did not specify the technical characteristics of that system. Moreover, the applicant's bid stated that the new software which it uses (the name of which is not mentioned in the passage quoted by the applicant) 'may' be linked to the sites of the main Italian airports, but does not provide any further details. Taking those factors into account, there can be no basis for the view that the evaluation committee committed a manifest error of assessment in concluding that little information was provided by the applicant with regard to the effective monitoring of flights.

61 Third, with regard to the claim that the evaluation committee was wrong to find that little information was provided by the applicant concerning the flexibility of the service and the added value for passengers, it should be noted that the applicant simply stated in its bid, as it indicated in its written pleadings, that an operations centre was to be dedicated to EFSA, an individual being allocated for that purpose and a replacement in the event of absence. However, as the evaluation committee observed in its report, the applicant failed to provide any information which would enable a more in-depth assessment of the flexibility of the service proposed to be carried out. In particular, no

information was provided on the subject of assistance to passengers in the event of delay, loss of baggage or diverted flights, a fact which was pointed out by the evaluation committee in its report and is not disputed by the applicant. In those circumstances, there can be no basis for the view that the evaluation committee committed a manifest error of assessment in concluding that little information was provided by the applicant as regards the flexibility of the service and the added value for passengers.

62 Fourth, there is no factual basis for the applicant's claim that the evaluation committee failed to take account of the fact that the applicant had a partnership agreement to provide services in any town or city in Italy. As correctly pointed out by EFSA in its written pleadings, the applicant's bid simply stated, in the introduction, that it had established new undertakings that were active only in the regions of Emilia-Romagna (Italy) and Tuscany (Italy), without providing any great detail as to the services actually offered by those undertakings or as to the territory concerned. Furthermore, the applicant's bid referred briefly, again in the introduction, to the possibility available to clients, through a hire service called 'Busclick', to make reservations in 'all towns and cities'. However, in addition to the fact that little detail is provided concerning the service proposed, it is not clear from that presentation whether the words 'all towns and cities' refer to the geographical location of the services proposed or that of the clients using the services in question. It follows that EFSA could not reasonably rely on that partial information in order to infer that the applicant was in fact able to provide services 'in any town or city in Italy', as the applicant nevertheless claims in its written pleadings.

63 Fifth, with regard to the claim that the successful tenderer's bid is incompatible with Italian legislation, even if the interpretation of the legislation in question proposed by the applicant were correct, it should be noted, first, that the specifications did not provide, as a technical requirement, that one or more vehicles were to be kept parked close to EFSA's premises. It cannot therefore be maintained, in the present case, that the conditions laid down in the call for tenders induced tenderers to infringe national legislation which may be applicable to the contract in question. Next, as correctly pointed out by EFSA in its written pleadings, the successful tenderer's bid could be construed as meaning that that tenderer had or would have an authorised parking space close to EFSA's premises. Lastly, as regards the claim that the undertaking to keep a vehicle parked close to EFSA's premises would preclude the possibility of responding to the demands of private clients, it is sufficient to note that the evaluation committee merely referred to the successful tenderer's undertaking that a vehicle would be kept parked close to EFSA's premises. That undertaking may be interpreted as meaning that if a private client books the vehicle in question, the tenderer undertakes to replace it. It cannot, in any event, be inferred from that undertaking that the vehicle concerned could not be made available, if necessary, to clients other than EFSA. Given those factors, the applicant's arguments provide no basis for the conclusion that the evaluation committee report is vitiated by a manifest error of assessment. Moreover, even if the evaluation committee had committed a manifest error of assessment, there is no basis for the view that the successful tenderer's mark would necessarily have been 1.62 points lower (out of a total of 25) as regards the first technical evaluation sub-criterion, which would have given the applicant the best overall mark. It should be recalled in that regard that the specifications did not provide, as a technical requirement, that one or more vehicles were to be kept parked close to EFSA's premises.

64 In the light of all the foregoing, the third plea must be rejected as unfounded.

65 It follows from all the foregoing considerations that the claims for annulment must be dismissed in their entirety.

The claims for damages

66 The applicant submits that, in view of the unlawful nature of EFSA's action, it should be ordered to pay compensation to the applicant for the costs incurred by it in participating in the tender procedure and for loss of profit, such sum to be not less than 10% of the consideration for the provision of the service for which the tender procedure was launched, together with the interest accrued from the date on which the contract was awarded until payment of the sums due.

67 EFSA contends, as a preliminary point, that the application does not comply with Article 44(1)(c) of the Rules of Procedure and, in any event, contests the applicant's arguments.

68 The Court has consistently interpreted the second paragraph of Article 340 TFEU as meaning that the non-contractual liability of the European Union and the exercise of the right to compensation for damage suffered depend on the satisfaction of a number of conditions, relating to the unlawfulness of the conduct of which the institutions are accused, the fact of damage and the existence of a causal link between that conduct and the damage complained of. In so far as the three conditions giving rise to liability laid down in the second paragraph of Article 340 TFEU must be satisfied cumulatively, the fact that one of them has not been satisfied is a sufficient basis on which to dismiss an action for damages. Moreover, there is no requirement that those conditions be examined in any particular order (see Case C-419/08 P *Trubowest Handel and Makarov* v *Council and Commission* [2010] ECR I-2259, paragraphs 40 to 42 and the case-law cited).

69 In the present case, as is apparent from the considerations pertaining to the claims for annulment, no unlawful conduct is disclosed by the examination of the applicant's pleas and arguments. It follows that the requirement that the conduct of which EFSA is accused must be unlawful is not satisfied.

70 It follows that, since one of the three conditions for incurring liability on the part of the European Union is not satisfied, the claim for damages must be dismissed as unfounded. It is therefore unnecessary to determine whether the claim for damages meets the requirements as to precision imposed by the first subparagraph of Article 21 of the Statute of the Court of Justice, applicable to the procedure before the General Court in accordance with the first subparagraph of Article 53 of that statute and Article 44(1)(c) of the Rules of Procedure.

71 It follows from all the foregoing considerations that the action in Case T-339/10 must be dismissed in its entirety, without there being any need to allow the application for measures of organisation of procedure lodged by the applicant seeking to obtain a copy of the successful tenderer's technical bid, since the Court considers that it has sufficient information from the documents in the case-file.

2. *The action in Case T-532/10*

Admissibility of the action

72 EFSA submits that the action in Case T-532/10 must be dismissed as inadmissible since its purpose is the same as that of Case T-339/10.

73 The applicant disputes EFSA's arguments.

74 The purpose of the action in Case T-339/10 is the annulment of EFSA's decision to reject the applicant's tender and to award the contract at issue to another tenderer, whose bid was considered to be better (see paragraph 29 above). The purpose of the action in Case T-532/10 is the annulment of EFSA's decision of 15 September 2010 refusing to grant access to certain documents (see paragraph 19 above). It follows that the actions in Cases T-339/10 and T-532/10 do not have the same purpose.

75 EFSA's arguments must therefore be rejected and the action in Case T-532/10 be upheld as admissible.

Admissibility of the second head of claim

76 By its second head of claim in Case T-532/10, the applicant requests the Court to order EFSA 'to produce the confidential documents'. The applicant's claim must be construed as requesting the Court to order EFSA to grant access to the documents at issue.

77 The General Court has no jurisdiction to issue directions to the EU institutions (see, inter alia, the order in Case T-47/96 *SDDDA* v *Commission* [1996] ECR II-1559, paragraph 45, and the judgment in Case T-127/98 *UPS Europe* v *Commission* [1999] ECR II-2633, paragraph 50). The only possibility open to the Court under Article 264 TFEU is to annul the measure concerned. It is for the institution concerned, pursuant to Article 266 TFEU, to take the measures necessary to comply with the Court's judgment (Case T-74/92 *Ladbroke Racing* v *Commission* [1995] ECR II-115, paragraph 75).

78 Consequently, the second head of claim in Case T-532/10 must be dismissed as inadmissible.

Substance

79 The applicant relies on a single plea in support of its action, alleging breach of Article 100 of the Financial Regulation, Regulation No 1049/2001, the obligation to state reasons and the principles of transparency and the right of access to documents, as well as misuse of powers.

80 First, the applicant refers to the facts and points of law relied on in the second plea in Case T-339/10. In particular, the applicant submits, in essence, that, as a result of the lack of transparency on the part of EFSA and the lack of reasoning in the documents forwarded to it, it is not possible for it to ascertain whether the procedure was complied with or whether the tender accepted was the best. Moreover, in the reply, the applicant argues that the response sent by EFSA on 15 September 2010 was received after the 15-day time-limit laid down in Article 149(2) and (3) of the Implementing Rules. With regard specifically to the right of access to the documents at issue, the applicant maintains, in essence, that the documents submitted by a tenderer in connection with a call for tenders form part of the comparative assessment in which a tenderer's bid is compared with those of the other tenderers. The successful tenderer's right to confidentiality is secondary to the other tenderers' rights of defence. In particular, the applicant criticises the fact that it was not granted access to the economic bid submitted by the successful tenderer. In the applicant's view, that constitutes a failure to state reasons and a manifest error of assessment. It was not possible on the basis of EFSA's decision of 15 September 2010 to determine specifically what damage might be done to the successful tenderer's expertise if access to its bid were granted. The refusal to grant access also constitutes a misuse of powers. The approach of EFSA, which protected only the interests of the successful tenderer, was not consistent with the criteria of neutrality and impartiality, which should have prevailed. Moreover, the approach adopted by EFSA in the present case conferred a temporal advantage on the successful tenderer and was contrary to the principles of freedom to provide services and freedom of establishment and the rules on transparency governing public procurement. As regards EFSA's assertion that Regulation No 1049/2001 is not applicable, the applicant adds that the conditions of the tender procedure must ensure that the successful candidate is chosen on the basis of objective criteria and that the procedure is conducted in a manner consistent with the rules established at the outset. In the present case, according to the applicant, EFSA always referred to Regulation No 1049/2001 as the relevant legal framework.

81 EFSA contests the applicant's arguments. In particular, with regard specifically to the right of access to the documents at issue, EFSA submits that Regulation No 1049/2001 is inapplicable and that it is necessary to refer to the provisions of the Financial Regulation.

82 As a preliminary point, it should be noted that, in its decision of 15 September 2010 (see paragraph 11 above), EFSA referred to Article 4(2) of Regulation No 1049/2001 and Article 100(2) of the Financial Regulation.

83 First, in so far as, in relation to certain arguments, the applicants alleges breach of the Financial Regulation, those arguments must be rejected on the same grounds as those set out in Case T-339/10 (see paragraphs 32 to 35 and 40 to 49 above).

84 As regards the applicant's arguments to the effect that the response sent by EFSA on 15 September 2010 was received after the 15-day time-limit laid down in Article 149(2) and (3) of the Implementing Rules, without there being any need to rule on the tardiness of those arguments, which were put forward at the reply stage, the Court finds that they are manifestly unfounded. The purpose of Article 149(2) and (3) of the Implementing Rules, which follows on from Article 100(2) of the Financial Regulation, is, inter alia, to enable unsuccessful tenderers to obtain, within no more than 15 calendar days from the date of receipt of a written request, additional information on the grounds on which their bid was rejected, the characteristics and relative advantages of the successful tender and the name of the tenderer to whom the contract was awarded. In the present case, it is common ground that EFSA communicated to the applicant on 31 May 2010 (see paragraph 5 above), that is, even before the applicant approached EFSA, the reasons why its bid had not been chosen, a comparison of its bid and that of the successful tenderer and the name of that tenderer. Moreover, the applicant also received, upon its request and within the time-limits laid down in Regulation No 1049/2001 according to the applicant, a copy of the evaluation report and of the contract signed with the successful tenderer (see paragraph 7 above), documents which are not referred to in Article 149(2) and (3) of the Implementing Rules. In the light of those factors, the Court considers that EFSA did not fail to fulfil its obligations under Article 149(2) and (3) of the Implementing Rules. The applicant's argument that it was not possible, on the basis of the information provided by EFSA, to understand the reasons for EFSA's decision to award the contract to another tenderer overlaps with that already advanced in the second plea in Case T-339/10 and must be rejected on the same grounds (see paragraphs 40 to 49 above).

85 Second, EFSA's argument to the effect that Regulation No 1049/2001 is not applicable in the circumstances of the present case must be rejected. Even if, as EFSA maintains, Article 100(2) of the Financial Regulation contained a specific rule concerning access to documents, it is common ground that Regulation No 1049/2001 and the Financial Regulation have different objectives and do not contain any provision expressly giving one regulation primacy over the other. Therefore, it is appropriate to ensure that each of those regulations is applied in a manner which is compatible with the other and which enables a coherent application of them. Furthermore, it should be noted that, in the present case, EFSA expressly relied in particular on Regulation No 1049/2001 in refusing to grant access to the documents at issue.

86 Third, with regard specifically to whether Regulation No 1049/2001 is applicable in the present case, it should be noted that, in accordance with the first recital in the preamble thereto, that regulation reflects the intention expressed in the second paragraph of Article 1 EU – inserted by the Treaty of Amsterdam – of marking a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen. As is stated in recital 2 in the preamble to Regulation No 1049/2001, the right of public access to documents of the institutions is related to the democratic nature of those institutions (see Case C-506/08 P *Sweden* v *MyTravel and Commission* [2011] ECR I-6237, paragraph 72 and the case-law cited).

87 To that end, Regulation No 1049/2001 is intended, as is apparent from recital 4 in its preamble and from Article 1, to give the fullest possible effect to the right of public access to documents of the institutions (see *Sweden* v *MyTravel and Commission*, paragraph 86 above, paragraph 73).

88 However, that right is none the less subject to certain limitations based on grounds of public or private interest. More specifically, and in reflection of recital 11 in the preamble thereto, Article 4 of Regulation No 1049/2001 provides that the institutions are to refuse access to a document where its disclosure would undermine the protection of one of the interests protected by that provision (see *Sweden* v *MyTravel and Commission*, paragraph 86 above, paragraph 74 and the case-law cited).

89 Nevertheless, since they derogate from the principle of the widest possible public access to documents, those exceptions must be interpreted and applied strictly (see *Sweden* v *MyTravel and Commission*, paragraph 86 above, paragraph 75 and the case-law cited).

90 Thus, if the institution concerned decides to refuse access to a document which it has been asked to disclose, it must, in principle, explain how disclosure of that document could specifically and effectively undermine the interest protected by the exception – among those provided for in Article 4 of Regulation No 1049/2001 – upon which it is relying. Moreover, the risk of that undermining must be reasonably foreseeable and not purely hypothetical (see *Sweden* v *MyTravel and Commission*, paragraph 86 above, paragraph 76 and the case-law cited). However, it is, in principle, open to that institution to base its decisions in that regard on general presumptions which apply to certain categories of documents, as considerations of a generally similar kind are likely to apply to requests for disclosure relating to documents of the same nature (see Case C-139/07 P *Commission* v *Technische Glaswerke Ilmenau* [2010] ECR I-5885, paragraphs 53 and 54 and the case-law cited).

91 Furthermore, in the circumstances referred to in Article 4(2) of Regulation No 1049/2001, the institution must ascertain whether there is any overriding public interest justifying disclosure of the document concerned (Joined Cases T-355/04 and T-446/04 *Co-Frutta* v *Commission* [2010] ECR II-1, paragraph 123; see also, to that effect, Joined Cases C-39/05 P and C-52/05 P *Sweden and Turco* v *Council* [2008] ECR I-4723, paragraph 49).

92 In the present case, it should be borne in mind that, after examining the documents at issue, EFSA partially granted the applicant's request for access by sending to it a copy of the evaluation report and of the contract signed with the successful tenderer (see paragraph 7 above). The disclosure of those documents was in addition to that of the reasons for which the applicant's tender had been rejected, the characteristics and advantages of the successful tenderer's bid and the name of that tenderer, which had been previously provided pursuant to the Financial Regulation (see paragraph 5 above).

93 EFSA's refusal to disclose certain documents relates specifically to the bids submitted by the other tenderers in the tender procedure in question. EFSA relies in that regard on the exception set out in the first indent of Article 4(2) of Regulation No 1049/2001 concerning the protection of the commercial interests of a natural or legal person.

94 It is apparent from the written pleading submitted to the Court that the applicant specifically contests EFSA's decision not to grant it access to the successful tenderer's bid. In particular, the applicant states, in its written pleadings, that its request for access related to 'elements of the bid submitted by [the successful tenderer] that are relevant to the award in question'. Moreover, that applicant claims that the refusal to grant access to the successful tenderer's bid formed the 'subject-matter of the present proceedings'. The applicant's heads of claim in Case T-532/10 must therefore be interpreted as seeking the annulment of EFSA's decision of 15 September 2010, in so far as it refused to grant the applicant access to the successful tenderer's bid.

95 First, it should be noted that the documents for which an exception is invoked may fall within the scope of the exception relating to the protection of commercial interests. That is apparent, inter alia, from the economic and technical information to be found in the tenderers' bids.

96 Second, it is necessary to ascertain whether EFSA examined whether disclosure of documents covered by the exception relating to the protection of commercial interests would have specifically and effectively undermined the interest protected.

97 EFSA emphasised, in its decision of 15 September 2010, that the terms in which tenders are drawn up, the language used and the characteristic presentation and expertise of undertakings in the preparation of tenders are specific and entail investment in financial terms and in terms of human resources. EFSA states that that conclusion was applicable in the present case, in so far as the congruity of the services proposed and EFSA's needs was of vital importance. Consequently, the tenderers had a legitimate interest in preventing public disclosure of the documents at issue, especially disclosure to actual or potential competitors. On that latter point, EFSA added that the services concerned by the call for tenders in question may be proposed to other bodies or undertakings, including to EFSA itself, in the future.

98 It is apparent from the terms used in the decision of 15 September 2010 that EFSA considered there to be a general presumption that access by the tenderers to the bids submitted by the other tenderers would, in principle, undermine the interest protected.

99 It should be noted in that regard, first, that the specifications set out EFSA's specific requirements, which called for a response from the tenderers that was tailored to the needs in question, as EFSA correctly observed, in essence, in its decision of 15 September 2010. That is also apparent from the applicant's tender, which is annexed to the application in the present action. That tender is structured in such a way as to respond specifically to EFSA's call for tenders, is based on a specific presentation and contains information particular to the undertaking which enables it to exhibit its expertise. In that context, it must be found that, as a result of their specific terms, the presentation used and the expertise exhibited, the tenders in question bear witness to the specific skills of the tenderers and contribute to the individual nature and appeal of the tenderer's bids in procedures such as that at issue, the purpose of which was to select a bid at the conclusion, inter alia, of a comparative examination of the bids submitted (see, to that effect, concerning a call for proposals, the judgment of 21 October 2010 in Case T-439/08 *Agapiou Joséphidès* v *Commission and EACEA*, not published in the ECR, paragraph 127). Moreover, as EFSA also pointed out in its decision, the services at issue in the present case may be offered to other bodies, including EFSA itself, since the contract concluded with the successful tenderer is for a fixed period. The possibility cannot therefore be ruled out that the applicant will once again be in competition with the other tenderers, in particular the successful tenderer, in connection with a new call for tenders launched by EFSA relating to similar services. The tenderers' bids, in particular that of the successful tenderer, cannot therefore be disclosed to actual or potential competitors, as EFSA correctly observed in its decision.

100 Next, it must be noted that the requirement to protect tenderers' bids vis-à-vis other tenderers is consistent with the relevant provisions of the Financial Regulation, in particular Article 100(2) thereof – also referred to by EFSA in its decision of 15 September 2010 – which does not provide for the disclosure of the tenders submitted, even after written application by the unsuccessful tenderers (see, with regard to disclosure of the tender accepted, the order in *Evropaïki Dynamiki* v *EEA*, paragraph 49 above, paragraph 39 and the case-law cited). That restriction is integral to the objective of EU rules on public procurement, which is based on undistorted competition. In order to attain that objective, it is important that the contracting authorities do not release information relating to contract award procedures which could be used to distort competition, whether in an ongoing procurement procedure or in subsequent procedures. Furthermore, both by their nature and according to the scheme of EU legislation in that field, contract award procedures are founded on a relationship of trust between the contracting authorities and participating economic operators. Those operators must be able to communicate any relevant information to the contracting authorities in the procurement process without fear that the authorities will communicate to third parties items of information whose disclosure could be damaging to them (see, by analogy, Case C-450/06 *Varec* [2008] ECR I-581,

paragraphs 34 to 36). It should also be noted that, in the light of Article 100(2) of the Financial Regulation, unsuccessful tenderers are able to obtain the characteristics and relative advantages of the successful tender and the name of the tenderer to whom the contract was awarded.

101 It follows from all the foregoing that EFSA did not err in considering, in essence, that there was a general presumption that access to the bids submitted by the other tenderers would, in principle, undermine the interest protected. The applicant has not put forward any evidence to justify the conclusion that, in the present case, that presumption did not apply to the documents disclosure of which was requested.

102 Furthermore, with regard specifically to the economic bid submitted by the successful tenderer, which, the applicant complains, it was unable to ascertain, it should be noted, as established in Case T-339/10, that the applicant was able to ascertain that bid from the documents communicated to it by EFSA (see paragraph 34 above). The applicant's argument in that regard to the effect that EFSA's decision is vitiated by a failure to state reasons or that EFSA committed a manifest error of assessment must also be rejected.

103 Third, the applicant has not put before the Court any detailed argument to show that EFSA erred in taking the view that there was no overriding public interest justifying disclosure of the document concerned under Article 4(2) of Regulation No 1049/2001. In any event, EFSA correctly stated, in its decision of 15 September 2010, that the applicant's interest in public disclosure and transparency had been fully satisfied in the present case as a result of the provision of the documents referred to in paragraphs 5 and 7 above. As regards the breach of the principle of equal treatment alleged by the applicant before EFSA, suffice it to state that such a claim cannot succeed because the successful tenderer's bid was not disclosed to the other unsuccessful tenderers.

104 Fourth, with regard to the applicant's claim alleging misuse of powers, on the ground that the protection of tenderers' bids has the effect of protecting their 'dominant position' on the market, in addition to the fact that no detailed evidence has been produced to substantiate that claim, it is at odds with the fact that non-disclosure of information relating to contract award procedures is consistent with the objective of ensuring that competition remains undistorted (see paragraph 100 above). The applicant's claims in that regard must therefore be rejected.

105 In the light of all the foregoing, the Court finds that EFSA's decision not to disclose to the applicant the successful tenderer's bid is not in any way vitiated by unlawfulness.

106 As a consequence, the single plea relied on by the applicant must be rejected and the action in Case T-532/10 therefore dismissed in its entirety.

Costs

107 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by EFSA.

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby:

1. Dismisses the actions;

2. Orders Cosepuri Soc. Coop. pA to pay the costs.

Forwood Dehousse Schwarcz

Delivered in open court in Luxembourg on 29 January 2013.

[Signatures]

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