THE HIGH COURT

[2017 No. 150 M.C.A.]

IN THE MATTER OF THE REVIEW OF THE AWARD OF A PUBLIC CONTRACT PURSUANT TO THE EUROPEAN COMMUNITIES (PUBLIC AUTHORITIES CONTRACTS) (REVIEW PROCEDURES) REGULATIONS 2010

AND

ORDER 84A OF THE RULES OF THE SUPERIOR COURTS (AS AMENDED)

BETWEEN

WORD PERFECT TRANSLATION SERVICES LIMITED

APPLICANT

AND

THE MINISTER FOR PUBLIC EXPENDITURE AND REFORM

RESPONDENT

JUDGMENT of Mr. Justice Noonan delivered on the 11th day of January, 2018

1. These proceedings concern the award of a public contract for interpretation services in the State's immigration authorities and in the Legal Aid Board. This application is brought by the respondent ("the Minister") for an order lifting the automatic suspension of the execution of a contract for these services with a third party imposed by the relevant regulations in consequence of a legal challenge brought by the applicant ("WP") to the award of that contract.

Factual Background

2. In October 2015, the Office of Government Procurement ("the OGP") initiated a tender request for interpretation services over a range of public bodies divided into some eight different lots. Lot 4, which is in issue in these proceedings, concerns a number of entities comprised in the State's immigration service and also the Legal Aid Board. WP submitted a tender to be included on the proposed framework and on the 25th January, 2016, the Interpretation Services Framework Agreement was initiated. Three suppliers were nominated to Lot 4 which included WP and another service provider called Translation.ie. On the 27th April, 2016, a supplemental request for tenders ("SRFT") for a 12 month contract was issued by way of mini competition to the three service providers concerned. The result of the mini competition was published to the tenderers on the 5th August, 2016, by way of a voluntary standstill letter. WP's tender was unsuccessful and as a result, in a pre-action letter dated the 12th August, 2016, it indicated that it intended to bring a legal challenge to the SRFT.

3. This prompted the OGP to review the SRFT and conclude that the process was flawed. Accordingly, on the 31st August, 2016, the OGP cancelled the SRFT.

4. On the 7th December, 2016, the OGP issued a new SRFT to the three service providers on the framework with a closing date of the 6th January, 2017, which was later extended to the 17th January, 2017. The rules of the mini competition provided for a maximum word count in respect of each relevant submission. In the category entitled "Management Plan", the maximum permitted word count was 2,000. This was exceeded by WP although complied with by the other tenderers.

5. This lead to lengthy correspondence between the OGP and WP's solicitors which included demands by WP that it be permitted to submit a new edited version of its tender. This proposal was rejected by the OGP as representing an unlawful breach of the rules. Instead the OGP proposed to consider WP's submission on a pro rata basis in respect of each of the categories concerned so that it would comply with the word count limit.

6. On the 18th April, 2017, a voluntary standstill letter was issued to each tenderer notifying them that Translation.ie was the preferred bidder. In response, WP issued the within proceedings on the 8th May, 2017, challenging the proposed award of the contract. This was followed by the Minister, as the contracting party, issuing the motion currently before the court on the 28th June, 2017.

The Remedies Regulations

7. The Remedies Regulations comprise the European Communities (Public Authorities Contracts) (Review Procedure) Regulations 2010 (S.I. 130 of 2010) as amended by the European Communities (Public Authorities Contracts) (Review Procedures) (Amendments) Regulations 2015 (S.I. 192 of 2015).

8. The Regulations that are relevant to this application are as follows:-

> 8 - (1) An eligible person may apply to the Court—
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> (a) for interlocutory orders with the aim of correcting an alleged infringement or preventing further damage to the eligible person's interests, including measures to suspend or to ensure the suspension of the procedure for the award of the public contract concerned or the implementation of any decision taken by the contracting authority, or
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> (b) for review of the contracting authority's decision to award the contract to a particular tenderer or candidate.
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> (2) If a person applies to the Court under paragraph (1), the contracting authority shall not conclude the contract until—
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> (a) the Court has determined the matter, or
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> (b) the Court gives leave to lift any suspension of a procedure, or
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> (c) the proceedings are discontinued or otherwise disposed of,

but this is subject to paragraph (2A).

(2A) Notwithstanding that—

(a) an application has been made under paragraph (1), and

(b) the matter concerned has not been determined by the Court,

The contracting authority may conclude the contract if, on application to the Court under Regulation 8A, the Court so orders."

In addition to (2A) above, the 2015 Regulations added the following:-

"Exception to prohibition in Regulation 8(2)

8A.(1) On application made to it under this Regulation by the contracting authority, the Court may, notwithstanding the matters referred to in Regulation 8(2A)(a) and (b), make an order permitting the contracting authority to conclude the contract referred to in Regulation 8(1).

(2) When deciding whether to make an order under this Regulation—

(a) the Court shall consider whether, if Regulation 8(2)(a) were not applicable, it would be appropriate to grant an injunction restraining the contracting authority from entering into the contract, and

(b) only if the Court considers that it would not be appropriate to grant such an injunction may it make an order under this Regulation.

(3) The Court may, if it considers just to do so, specify in the order it makes under this Regulation that the order shall operate subject to there being satisfied one, or more than one, condition that it determines to be appropriate and specifies in the order."

9. Regulation 9, which deals with powers of the court, and is not amended by the 2015 Regulations, provides *inter alia*:-

"9…

(4) When considering whether to make an interim or interlocutory order, the Court may take into account the probable consequences of interim measures for all interests likely to be harmed, as well as the public interest, and may decide not to make such an order when its negative consequences could exceed its benefits…

(6) The Court may award damages as compensation for loss resulting from a decision that is an infringement of the law of the European Communities or the European Union, or of a law of the State transposing such law."

The Underlying Proceedings

10. In its grounding statement, WP seeks to set aside the award of the contract to Translation.ie on a substantial number of grounds which allege that the OGP's decision to award the contract to Translation.ie was unlawful and *ultra vires*. Without seeking to exhaustively set out these grounds, it seems to me that for the purposes of this judgment, they can broadly be summarised as grounds relating to (a) a failure to give adequate reasons for the decision, (b) manifest error in a number of areas and (c) alleged concerns about the integrity and transparency of the process which seem to centre on the involvement of an OGP official, Mr. Bill Byrne.

11. Mr. Byrne was involved in the first SRFT, which was cancelled, and WP's complaint appears to revolve around a concern that he may have been in some way involved in the second SRFT which WP claims would have been improper because of views Mr. Byrne may have formed as a result of the dispute surrounding the first SRFT. The Minister denies that Mr. Byrne was in any way involved in the second SRFT.

The Evidence

12. WP has been in business in Ireland since 2001 and has for a number of years been providing interpretation services to the Irish immigration service. It currently does so on an *ad hoc* basis. It is evident that for some considerable period of time, there have been issues with WP's performance. Although these issues are canvassed at great length in the parties' respective affidavits, they can generally be characterised as those relating to quality of interpretation, late arrival at appointments and a failure to produce ID badges which are said by the Minister to be essential to prove that the interpreters are who they say they are and have thus been subject to Garda vetting.

13. Whilst it is not disputed by WP that these issues have arisen, there is however a major dispute between the parties as to the extent and seriousness of these problems. The OGP says that these are serious and ongoing problems which are impacting in a very significant way on the operation of the immigration services, particularly in relation to appeals. WP on the other hand says that the complaints are historical and relatively minor, largely resolved and contrived for the purposes of these proceedings.

14. A number of lengthy affidavits have been sworn on behalf of the Minister by Ms. Anne Lannon, a procurement portfolio manager in the OGP and on behalf of WP by Mr. Agim Gashi, a director and the operations manager of WP.

15. In her first affidavit grounding this application sworn on the 27th June, 2017, Ms. Lannon sets out the background and chronology to the Lot 4 of the SRFT. She says that WP have been providing interpretation services to a variety of entities within the immigration authority on an *ad hoc* basis since January 2016. She sets out details of the issues arising with the service being provided by WP and

avers that there is a significant risk of harm to these services if the suspension is not lifted. She points to the fact that national security concerns are involved and one of the biggest problems of the current *ad hoc* arrangement is that there is no adequate contract management mechanism in place. She further avers that WP's claim herein raises no serious issue to be tried and damages are in any event an adequate remedy.

16. In a lengthy and detailed replying affidavit of 31st July, 2017, however Mr. Gashi deals extensively with significant delays that have occurred not only with Lot 4 of the SRFT but also throughout all other lots within the framework stretching over several years. He said that this demonstrates clearly that there is no urgency in the Minister's application such as would require the lifting of the suspension. He disputes in detail the complaints made about the quality of WP's service and comments on the motivation as he sees it for these complaints. He points to the fact that WP have been providing the services now for several years and if there were substance to these complaints, the Minister would have terminated the arrangements. He contests the suggestion that there are no serious issues to be tried. He further says that if the Minister were permitted to proceed with the contract, this would cause irremediable reputational damage to WP.

17. Further, he contests the assertion by Ms. Lannon that damages would be an adequate remedy for WP. In a section of his affidavit entitled "Adequacy of Damages" from paras. 99 to 104 inclusive, Mr. Gashi avers that if the suspension is lifted, it would result in WP's existing turnover being reduced by between €500,000 and €800,000 which he says represents a very substantial portion of that turnover. He says that the consequence of this would be that certain positions within WP would become redundant including six head office positions and in excess of 100 interpreter positions.

18. Those positions include what are described as "rare" language interpreters for whom there would be little or no work if the suspension was lifted. Mr. Gashi also suggests that the reduction in turnover would have a negative impact on WP's ability to attract international business which has minimum turnover threshold requirements. WP plans to expand its business into the United States. This could also be impacted by the lifting of the suspension given the reduction in turnover. Finally, on the issue of adequacy of damages, as already noted, Mr. Gashi says that the loss of the contract would cause significant reputational harm to WP. This in turn would harm its capacity to attract further business and recruit staff.

19. In a replying affidavit sworn on the 12th September, 2017, Ms. Lannon takes issue with all of Mr. Gashi's assertions concerning complaints about the service, security issues and urgency. Further she says that it is not open to the immigration service to employ a third party on an *ad hoc* basis in lieu of WP. She contests that there would be any significant reputational damage to WP as a result of not getting what is after all a twelve month contract only and it would be free to tender for any further contract thereafter. She avers that all the forms of loss contended for by Mr. Gashi could be compensated by an award of damages, including for loss of opportunity.

20. Mr. Gashi swore a supplemental affidavit in reply on the 2nd November, 2017. Again this focuses extensively on the issue of the seriousness of the complaints about WP's service and their extent. He also revisits in detail his alleged concerns about the integrity of the process and the involvement of Mr. Byrne.

21. In a section of his supplemental affidavit entitled "Adequacy of Damages" Mr. Gashi provides a much more expansive treatment of the issue than previously between paras. 56 and 73. In this affidavit, for the first time Mr. Gashi suggests that the loss of the rare language interpreters in the context of the immigration services would constitute a loss of 17% of WP's turnover but more importantly, would ultimately result in a loss of over 90% of its turnover by virtue of the unavailability of rare language interpreters for all other contractual commitments of WP.

22. In this affidavit, Mr. Gashi goes considerably further than his first affidavit in now suggesting that the loss of the rare language interpreters in consequence of lifting of the suspension would mean that WP will go out of business. Thus at para. 68, he says:-

> "On any objective assessment, the abrupt loss of so great a proportion of the applicant's business would be unmanageable and would, as a matter of high probability, render the applicant's business unsustainable …"

He goes on at para. 71 to say:-

> "Put simply, the applicant will not be in a position to sustain its business for twelve months, without revenue, in the hope or expectation that a new mini tender will be organised in twelve months' time."

23. In a final affidavit, sworn by Ms. Lannon on the 17th November, 2017, she again takes extensive issue with Mr. Gashi's previous affidavit and reiterates her belief that damages would be an adequate remedy for WP whereas from the Minister's perspective, damages would not be an adequate remedy if WP's claim fails. On the question of loss of rare language interpreters, Ms. Lannon says that there can be no guarantee to any provider of interpretation services of continuing business from State entities with the attendant commercial risks. She points to the fact that WP still retains a need for rare language interpreters to fill existing obligations with other entities as well as tendering for new framework business.

The Arguments

24. Counsel for the Minister whilst submitting that there was no serious issue to be tried ultimately appeared to accept that it would be difficult for the court to come to this conclusion in a claim such as this. He contended that the guiding principles to applications of this kind were to be found in the recent judgments of this Court in BAM *PPP PGGM Infrastructure Cooperative UA v. National Treasury Management Agency and another* [2015] IEHC 756, *Beckman Coulter Diagnostics Ltd. v. Beaumont Hospital* [2017] IEHC 537 and in particular *Powerteam Electrical Services Ltd. v. ESB* [2016] IEHC 87.

25. He submitted that these cases establish that the court must apply the test appropriate for interlocutory injunction applications recognised by the Supreme Court in *Campus Oil v. Minister for Industry and Energy (No. 2)* [1983] I.R. 88. This meant that the onus rested on WP to show that (a) there is a fair issue to be tried, (b) damages would not be an adequate remedy, and if not then (c) that the balance of convenience was in favour of granting the injunction. He argued that the Remedies Regulations expressly provide that the court can award damages and the headings of potential damage identified by WP are all compensatable in damages.

26. This included loss of reputation and making staff redundant as the authorities showed. He contended that the balance of convenience was in favour of discharging the injunction where there were serious human rights issues at stake as well as issues of national security. The fact that these services were being provided without any proper contractual basis was a serious matter from the public interest perspective and should weigh in favour of the discharge of the suspension.

27. Counsel for WP placed emphasis on the fact that there was absolutely no urgency demonstrated by the Minister in this case and

that all of the issues which were canvassed were ongoing for years. She further pointed to the fact that despite the complaints about problems of continuing the *ad hoc* arrangement with WP, the reality was that such arrangements were continuing and had continued for years in relation to all of the other lots within the Framework Agreement. In fact, no other lot had yet proceeded to a concluded SRFT. She suggested that it could not seriously be argued that there was no fair issue to be tried in these proceedings.

28. In the context of the adequacy of damages, counsel stressed the importance of the European jurisprudence and approach to this issue which strongly favoured the pre-contractual remedy such as the automatic suspension in this case. In particular, she contended that there was a real issue surrounding the availability of damages as a remedy which was yet to be finally determined in procurement cases in this jurisdiction. The European approach as evidenced by cases such as *Francovich & Ors v. Italian Republic* (Judgment of the Court of 19 November, 1991, Joined cases C-6/90 and C-9/90) and *Spijker Kwasten B.V. v. Commission of the European Communities* (Judgment of the Court (Third Chamber) of 14 July, 1983, Case 231 /82) suggested that damages could only be available where the breach complained of could be shown to be sufficiently serious and that it caused the loss complained of.

29. The damage to reputation and loss of chance to participate in a properly run contract competition could not be adequately and fairly assessed from the applicant's point of view. She submitted that WP was in an analogous position to the applicant in *Powerteam* where the court held, on the issue of adequacy of damages, that damages would not be sufficient in circumstances where the applicant's business would be terminally affected by the loss of its speciality skilled workforce. The same applied in this case. She relied on English authorities to like effect.

30. She further contended that the State had not adequately made out the case that it required to put contracts in place immediately to ensure adequate service and all of the evidence pointed to that conclusion. No genuine national security issue had been established and the balance of convenience was strongly in favour of preserving the status quo pending the trial of the application.

Discussion

31. *BAM* concerned the award of a contract to build a new university campus for which the applicant had tendered unsuccessfully. BAM's challenge resulted in an automatic suspension of the contract. Barrett J. in the course of his judgment noted that the Supreme Court had concluded in *OCS v. DAA* [2015] IESC 6 that the original Remedies Regulations did not permit the court to lift a suspension and in consequence, the 2015 Regulations were enacted expressly empowering the High Court to lift such an automatic suspension. Barrett J. noted with regard to applications of this nature (at para. 11):-

> "[11.] Because one is dealing in these proceedings with an exclusively Irish-law matter, i.e. whether or not to lift an automatic suspension that was not required to arise as a matter of European Union law, there is no reason to consider that anything other than the usual *Campus Oil* criteria ought to apply when determining whether the circumstances presenting are circumstances in which, absent reg. 8(2)(a) it would be appropriate to grant an injunction."

32. Barrett J. went on to consider the availability of damages in public procurement cases and considered arguments advanced by BAM in that regard not dissimilar to those put forward by WP in this case. He noted BAM's submission that the case law is not uniformly supportive of the notion that damages are an adequate remedy in procurement cases observing that BAM had pointed to divergence in the English authorities on the adequacy of damages in procurement cases. However, he felt that divergence in the authorities was merely a manifestation of the *Campus Oil/American Cyanamid* principles which in some cases lead to the conclusion that damages were adequate and in others not.

33. It is notable that BAM advanced a very similar argument in terms of reputational damage as WP put forward in this case. The court rejected this contention:-

> "[19.] The court is unconvinced by BAM's contentions in this regard. When it comes to tendering for contracts, to use a colloquialism, 'you win some, you lose some'. Yes, a lot of time and effort may have been expended on tendering for the DIT project, but losing it is not the end of days. BAM has won in other State-sponsored procurement exercises in Ireland since these proceedings were commenced and doubtless may do so again. Moreover, it does not seem to the court that any of the types of loss mentioned above are beyond the ability of a competent accountant to quantify. And although the DIT project is very large by Irish standards, and undoubtedly a prestigious tender for the eventual victor to win, the court is not convinced that it is in the 'super-league' of tendering that was at play in the *Eurostar* case in which the victor was to supply trains on what was perhaps the most significant rail-project in Britain since George Stephenson's day, as well as being a project of international significance.
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> [20.] Third, BAM points to the fact that the main reason European lawmakers took action to strengthen pre-contractual remedies was that they considered damages to be, in general, an inadequate remedy in public procurement cases. The types of concerns with which European lawmakers were occupied also present in the Irish context, and concern the integrity of the award process.
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> [21.] Having regard to all of the foregoing, the court is coerced to the conclusion that damages are an available and suitable remedy for BAM, albeit not, from its perspective, the most desired of remedies."

34. *Powerteam* was another application to lift an automatic suspension. The contract in issue there was for installation, maintenance and repair of the ESB's national electricity supply infrastructure in respect of which it required contractors to supplement its own workforce. On the issue of adequacy of damages, *Powerteam* alleged that if the suspension was lifted, it would lose most if not all of its highly trained workforce to competitors and its position in the market would thereby be damaged irretrievably and probably terminally. Importantly, in that case, the respondent did not contest this evidence. This lead the court to conclude that damages would not be an adequate remedy but nonetheless, the court concluded that the balance of convenience favoured the lifting of the suspension.

35. In the course of her judgment, Costello J. considered the Remedies Regulations and how they should be applied to applications to lift a suspension. She identified the effect of the regulations in the following terms (at p. 8):-

> "Thus, the court must first determine an applicant's notional application for an injunction to restrain the awarding of the contract in question. Once the court has determined that it would refuse to grant such an injunction, then, and only then, may the court consider whether or not to lift the suspension provided by Regulation 8(2)(a), though, as was pointed out by Barrett J. in [*BAM*]:-
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> > '… it is difficult to conceive of circumstances in which the court would conclude that they were not circumstances

in which it would be appropriate to grant an injunction but they were nonetheless circumstances in which it would be appropriate to maintain a suspension in place'."

36. Costello J. then went on to consider where the onus of proof lay in applications under Regulation 8A(2) and concluded that the onus of proof lay upon the party seeking to maintain the suspension. She took the view, as Barrett J. had done in *BAM*, that the *Campus Oil* principles were to be applied. Notably, she considered that these principles were not to be modified by reference to the provisions of Article 9(4) of the Remedies Regulations. She explained her reasoning as follows (at p. 11):-

> "[21.] The applicant argues that the test be applied to an application under Regulation 8A(2) is that set out in Regulation 9(4) of the Remedies Regulations, cited above. It emphasises that there is no scope for a test assessing the adequacy of damages as a remedy as this would be contrary to the policy of the Remedies Directive to strengthen pre-contract remedies.
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> [22.] In my opinion the correct approach is to employ the *Campus Oil* principles for the following reasons. Regulation 8A(2)(a) enjoins the court to frame its considerations by reference to the granting of an injunction. On the other hand, no reference is made to having regard to the matters set out in Regulation 9(4). In my opinion this leads to the conclusion that the Oireachtas requires the court to consider those matters which are habitually balanced by the courts when deciding whether or not to grant injunctions when dealing with an application to lift the automatic suspension of the right of a contracting entity to award a contract. The Oireachtas did not refer the courts specifically to the provisions set out in Regulations 9(4) when it was clearly open to the Oireachtas to do so. It is therefore to be inferred that this was not its intention."

37. She noted that Barrett J. in *BAM* had reached a similar conclusion. She also dealt with an argument by Powerteam that the Remedies Directives required the court to disapply the *Campus Oil* principles and rejected it. She was of the opinion that it was clear that the Oireachtas had, in the Remedies Regulations, enjoined the court to employ the *Campus Oil* principles in applications to lift a suspension.

38. It is also evident from the judgment that the court was required to deal with arguments advanced by Powerteam that damages would not be an adequate remedy because of the reputational damage it would suffer and also because of the loss of staff. She rejected this argument, holding that reputational damage arising from the loss of a tender competition *per se* could not warrant the conclusion that damages are an inadequate remedy because this would be inconsistent with the existence of damages as a remedy in procurement cases expressly provided for in the Remedies Directive. As Barrett J. had concluded in *BAM*, Costello J. also took the view that there was no reason to think that an unsuccessful tenderer in a public procurement competition would necessarily be inhibited in any subsequent competition.

39. She was also of the view of that the fact that calculating damages for matters such as loss of chance might be difficult could not, of itself, be a ground for concluding that damages were inadequate. She approved the dicta of McCloskey J. in *Lowry Brothers Ltd. v. Northern Ireland Water Ltd*. [2013] NIQB 23 where he said (at para. 38):-

> "In commercial cases generally, expert forensic accountants, duly aided by discovered documents, rarely display any inhibitions in constructing and advocating a claim for financial loss. I accept that, from the court's perspective, there would be several shades of grey in the exercise. However, courts are well used to grappling with all kinds of claims for damages. … While damages may not be easily assessed, this does not give rise to the proposition that damages would be inadequate."

40. Despite those conclusions however, the court took the view that in the particular circumstances of Powerteam, damages would not in fact provide an adequate remedy for the following reason:-

> "[42.] Finally, there is the applicant's argument that if the automatic suspension is lifted the company will cease to carry on business in the State. *Prima facie* if a business will probably cease to trade if an injunction is withheld, damages are not an adequate remedy. The applicant says it *"will lose most, if not all, of its highly trained resources and management to competitors, such that its' position in the overhead line market will be damaged irretrievably, and probably, terminally." While it has other work, this is miniscule compared with the volume of work previously performed for the respondent. It will be forced to cease operations in Ireland."*
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> [43.] This evidence was not contested by the responded (*sic*)."

41. As previously noted, despite that conclusion the court went on to consider that the balance of convenience favoured lifting the suspension even though this was likely to put Powerteam out of business.

42. These authorities are at one in demonstrating that the *Campus Oil* principles are to be applied in this case and the onus of proof rests upon WP to justify the continuation of the suspension. Despite what was urged on behalf of WP, I do not accept the proposition that these domestic law principles require in some sense to be modified by European jurisprudence or to be inconsistent with that jurisprudence. In both *BAM* and *Powerteam*, the court dealt with similar arguments that in procurement cases damages might not be available and thus were not an adequate remedy, and discounted them.

43. As I am satisfied that WP have raised a fair issue to be tried, I must therefore consider in the first instance whether damages would be an adequate remedy for WP.

44. As I have already noted, it must be borne in mind that the contract in issue in these proceedings is for the limited duration of twelve months only. In his first replying affidavit, Mr. Gashi suggested that this would result in a loss of turnover of between €500,000 and €800,000 to WP. Whatever loss of profit that may ultimately cause to WP, it does not seem to me to be something that cannot be assessed, and readily assessed, by way of damages.

45. On the question of reputational damage, I find myself in agreement with the views expressed in *BAM* and *Powerteam* that it is somewhat difficult to accept the proposition that any reputational loss could accrue to WP merely from being an unsuccessful tenderer for a twelve month contract for interpretation services in only one of a larger number of lots across various State entities requiring such services. That must surely be a standard hazard that any commercial entity competing for State business has to take on board. If there is any loss of chance arising, then as Costello J. noted in *Powerteam*, there is ample authority for the proposition that such loss can be assessed by way of damages.

46. On the issue of loss of staff, here again it seems to me that the cases demonstrate a willingness on the part of the courts to undertake a damages assessment in respect of any loss that may be said to arise from such an event. These were all the matters identified in Mr. Gashi's first affidavit which were said to be those that could not be remediated by an award of damages.

47. However, as I have already pointed out, in Mr. Gashi's second affidavit sworn some two months after the first, he makes an entirely new case for the first time. Instead of attributing a monetary sum to the loss of immigration interpretation business of between €500,000 and €800,000 he says that this amounts to 17% of WP's turnover. However, he now advances the proposition that the loss of turnover will not be confined to that percentage but will, due to the loss of rare language interpreters, actually result in a 91% loss of turnover, effectively rendering WP's business unsustainable.

48. Thus, Mr. Gashi appears in effect to be saying that such is the fragility of WP's long established business and its dependence on rare language interpreters that if it fails to obtain this twelve month contract, its business will be terminally affected. It is somewhat surprising, to say the least, that such a dramatic state of affairs appears to have entirely escaped Mr. Gashi's attention when he swore his first affidavit, running to some 38 pages.

49. I am therefore driven to the conclusion that WP has not discharged the onus that rests upon it of establishing that damages would not constitute an adequate remedy in this case.

50. Conversely from the Minister's perspective, I am satisfied that damages could not be regarded as an adequate remedy in circumstances where what is in issue includes such matters as the immigration status and human rights of applicants for international protection and in some circumstances, where the security of the State may be concerned. The importance of these matters, which can hardly be overstated, must in my view also bear directly on any questions of balance of convenience which I am satisfied lie in favour of the Minister. The public interest clearly favours having the best possible interpretation services available to the immigration bodies concerned for reasons that are self evident.

51. For these reasons therefore, I propose to lift the suspension and grant an order in the terms of paragraph 1 of the notice of motion herein.