

QORTI TAL-APPELL

IMĦALLFIN

**S.T.O. PRIM IMĦALLEF SILVIO CAMILLERI
ONOR. IMĦALLEF TONIO MALLIA
ONOR. IMĦALLEF JOSEPH AZZOPARDI**

Seduta ta' nhar il-Ġimgħa 24 ta' Ġunju 2016

Numru 4

Rikors numru 72/16

Owen Borg

v.

**Ronald Bezzina
Il-Kunsill Lokali Santa Luċija**

Dan huwa appell imressaq fit-22 ta' Frar, 2016 minn Owen Borg wara deċiżjoni datata 2 ta' Frar, 2016, mogħtija mill-Bord ta' Reviżjoni dwar il-Kuntratti Pubbliċi (minn hawn 'l quddiem, imsejjaħ "il-Bord") fil-każ referenza SS57/15/03 (każ numru 897).

Dan il-każ huwa marbut ma' sejħa għall-offerti li ħareġ il-kunsill konvenut "*for street sweeping and cleansing services in an environmentally friendly manner*". Għal dan il-kuntratt intefgħu diversi

offerti, fosthom tal-appellant Owen Borg, li, pero`, ma ġiex magħżul, bil-kuntratt jiġi rakkomandat li jingħata lill-konvenut Ronald Bezzina. L-imsemmi Owen Borg appella minn din id-deċiżjoni tal-Bord li b'deċiżjoni tat-2 ta' Frar, 2016, cañad l-appell u ikkonferma d-deċiżjoni tal-awtorita` kontraenti. Id-deċiżjoni tal-Bord hi s-segwent:

“Having noted the Appellant’s *“Letter of Objection”* dated 19 November 2015 and also through the Appellant’s Verbal Submissions during the Public Hearing held on 28 January 2016, had objected to the decision taken by the pertinent Authority, in that:

“a) The Appellant contends that in its *“Letter of Rejection”*, the Contracting Authority did not specify the reasons why their offer was discarded. The omission on the part of the Contracting Authority, hindered the Appellant’s ability to present a specific objection;

“b) The Appellant also maintains that the Recommended Bidder did not possess Euro IV vehicle as stipulated in the Tender Document.

“Having considered the Contracting Authority’s *“Letter of Reply”* dated 24 November 2015 and also their verbal submissions during the Public Hearing held on 28 January 2016, in that:

“a) The Contracting Authority contends that since the decision for the award of tenders was published in their minutes, which were made public, these could be easily accessed by the Appellant;

“b) The Contracting Authority maintains that the Recommended Bidder indicated which vehicle was to be utilised and this was vehicle registration number KBQ 347. The Log Book of this said vehicle had a Euro IV classification.

“1. With regards to the Appellant’s First Contention, this Board has emphasized, on many occasions, that all Contracting Authorities must give the specific reasons, for discarding a Tender, in their *“Letter of Rejection”*.

“It is a known fact that the decision for the award of the Tender is made public, in this particular case, in the minutes of the Local Council, however this Board opines that still, the *“Letter of Rejection”* must include the specific reasons for refusal.

“The Appellant should be clearly made aware as to why his offer was discarded. At the same instance, this Board contends that the

Appellant should base his objection on the reasons given by the Contracting Authority so that the merits of the case are to be treated accordingly.

“This Board recommends that, at least with regards to the “*Letter of Rejection*”, the Contracting Authority, (or in this case, the Local Council), must send a copy of the minutes of the Council Meeting wherein the reasons for the rejection of offers are clearly demonstrated. In this regard, this Board upholds the Appellant’s First Grievance.

“2. With regards to the Appellant’s Second Contention, this Board credibly confirms that the vehicle which the Recommended Bidder was to utilise for this Teneder was vehicle KBQ 347, a refuse disposal vehicle.

“This Board, after Having examined the documentation submitted by the Recommended Bidder with particular reference to the Log Book of Vehicle KBO 347, did in fact state that this Vehicle has a Euro IV Classification. In this regard, this Board justifiably does not uphold the Appellant’s Second Grievance.

“In view of the above, this Board finds against the Appellant with regards to his Second Contention yet at the same instance, this Board recommends that the deposit paid by the Appellant should be reimbursed, in view of the fact that the Appellant was not informed of the specific reasons why his offer was rejected.”

L-imsemmi Owen Borg issa qed jappella mid-deċiżjoni li ħa l-Bord għal quddiem din il-Qorti, u jsostni li s-sentenza hija nulla peress illi darba li kien irriżulta li d-deċiżjoni tal-kunsill konvenut kienet nulla, għax ma kien fiha l-ebda indikazzjoni tar-raġunijiet għad-deċiżjoni tiegħu, id-deċiżjoni tal-kunsill kellha tiġi mwarrba, u l-każ ma kellux jiġi deċiż fil-meritu.

Wara li semgħet it-trattazzjoni tad-difensuri tal-partijiet u rat l-atti kollha tal-kawża u d-dokumenti esebiti, din il-Qorti sejra tgħaddi għas-sentenza tagħha.

Ikkonsidrat:

Din il-Qorti taqbel mas-sentiment li wera l-Bord f'dan il-każ, u cioè, li kull awtorita` kontraenti li tkun sejra tirrifjuta applikazzjoni għall-kuntratt, trid, fl-ittra li tibgħat, tindika fl-istess ittra, ir-raġunijiet għaliex l-offerta ta' dak li jkun ġiet riġettata. Min ikollu l-offerta tiegħu mhux milqugħa, bħala minimu, irid ikun jaf għaliex seħħ dan. Mhux biżżejjed, kif jissottometti l-kunsill konvenut, li r-raġunijiet taċ-ċaħda kienu ġew registrati fil-minuti tal-laqgħa relattiva tal-kunsill, bil-minuti jkunu aċċessibbli *on line* lill-pubbliku in generali. Darba persuna jew soċjeta` impenjat ruħha li titfa applikazzjoni għall-kuntratt partikolari, l-inqas li għandha dritt tippretendi hu li tingħata raġuni indikattiva jekk l-applikazzjoni tagħha tiġi miċħuda. Biex id-dritt ta' din il-persuna li tappella jkun effettiv, din trid tkun taf għaliex l-applikazzjoni tagħha ġiet miċħuda, u din trid tingħata lilha fl-ittra tar-rifjut.

F'dan il-każ, pero`, jirrizulta li l-appellant Owen Borg ma soffra ebda preġudizzju minħabba dan in-nuqqas tal-kunsill konvenut. Hu kien jaf għala ma ġiex magħżul u l-kuntratt ġie rakkomandat li jingħata lil Ronald Bezzina, tant li fl-ittra tal-appell għal quddiem il-Bord ressaq ukoll aggravji fil-meritu, u quddiem il-Bord itratta wkoll l-aggravji fil-meritu kontra l-aġġudikazzjoni tal-kuntratt.

In-nuqqas tal-kunsill konvenut li jimmotiva ċ-ċaħda tal-applikazzjoni tal-appellant, ma twassalx għal xi nullita` assoluta, iżda għan-nullita` jekk u

sakemm tkun ta' preġudizzju għal dak li jkun. F'dan il-każ, l-appellant ilmenta li min ħa l-kuntratt, ma kellux vettura Euro IV kif rikjesta fid-dokumenti tas-sejħa, iżda l-Bord stabilixxa li, fil-fatt, il-vettura ta' dik il-persuna "*had a Euro IV classification*". Hu ċar għalhekk, li l-appellant ma ġiex ippreġudikat bin-nuqqas tal-kunsill konvenut, ressaq debitament l-ilment tiegħu, u dan ġie trattat u deċiż mill-Bord. Dan in-nuqqas tal-kunsill konvenut sejjer, pero`, ikun rifless fil-capo spese.

Apparti dan kollu, l-appellant seta', fit-termini tal-Artikolu 44(3) tal-Legislazzjoni Sussidjarja in materja (numru 174.04) jitlob għar-raġunijiet għala ma ġiex magħżul, bl-awtorita` kontraenti tkun obbligata tagħti raġunijiet fi żmien ħmistax-il ġurnata.

Għaldaqstant, għar-raġunijiet premessi, tiddisponi mill-appell ta' Owen Borg billi tiċċad l-istess u tikkonferma s-sentenza li ta l-Bord ta' Revizjoni dwar il-Kuntratti Pubbliċi fit-2 ta' Frar 2016, bl-ispejjeż ta' dawn il-proċeduri jibqgħu bla taxxa bejn il-partijiet.

Silvio Camilleri
Prim Imhalledf

Tonio Mallia
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Deputat Registratur
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