



## QORTI TAL-APPELL

IMĦALLFIN

S.T.O. PRIM IMĦALLEF MARK CHETCUTI  
ONOR. IMĦALLEF GIANNINO CARUANA DEMAJO  
ONOR. IMĦALLEF ANTHONY ELLUL

Seduta ta' nhar l-Erbgħa, 26 ta' Jannar, 2022.

Numru 11  
Appell numru 316/2021/1

Christ Gatt

v.

**Id-Direttur tal-Kuntratti; l-Assoċjazzjoni  
tal-Kunsilli Lokali; u *SRF and Veladrians  
Limited (C-97139)***

1. Dan huwa appell ta' Chris Gatt ["l-appellant"] minn deċiżjoni tas-7 ta' Ottubru 2021 tal-Bord ta' Revizjoni dwar Kuntratti Pubbliċi ["il-Bord ta' Revizjoni"], imwaqqaf taħt ir-Regolamenti tal-2016 dwar l-Akkwist Pubbiku [L.S. 601.03], li ċaħad oġġezzjoni tiegħu kontra deċiżjoni tal-Assoċjazzjoni tal-Kunsilli Lokali ["l-awtorità kontraenti"] li warrbet għax sabitha "*technically non-compliant*" offerta tiegħu wara sejħa pubblika għal offerti ta' kuntratt "*for the service collection of organic waste from commercial establishments in Malta and Gozo tourism areas in an environmentally friendly manner (Lot 2)*".

2. Il-fatti rilevanti seħnew hekk: kienet saret sejħa mill-awtorità kontraenti għal offerti għall-kuntratt fuq imsemmi. Il-kondizzjonijiet tas-sejħa jridu, taħt para. 4.2.1, illi l-kuntrattur ikollu:

»1 truck of 16T GVW<sup>1</sup> and 1 truck not larger than 6T GVW for small and narrow streets, alleys, etc. ... ..«

3. Kondizzjonijiet oħra tas-sejħa jgħidu hekk:

»4.2.2 Other General Requirements

»Article 01 - Vehicles

»Article 1.1 – Service Vehicle Type and Minimum Requirements

»(a) The Contractor shall at all times during the operation of the contract make use of those vehicles approved by the Local Council Association and have been duly registered by the Environment and Resources Authority, by virtue of Legal Notice 106 of 2007 or any other subsequent legislation.

»(b) One RCV<sup>2</sup> per lot must exceed 16 tons GVW (Gross Vehicle Weight) used in carrying out the service must have engines meeting a minimum of EURO VI standards, according to EC Directive 2005/55/EC. Where vehicles are not certified as EURO VI, but technical after-treatment has achieved the same standard, this should be documented in the tender application.

»Verification: The bidder must present the technical sheets of the vehicles where emission standards are defined. For those vehicles where technical upgrade has achieved EURO VI standard the measures must be documented and included in the tender application, and this must be approved by a credible third party.

»(c) Unless otherwise stated, the remaining RCV exceeding 16 tons GVW (Gross Vehicle Weight), used in carrying out the service must have engines meeting a minimum of EURO V standards, according to EC Directive 2005/55/EC. Where vehicles are not certified as EURO V, but technical after-treatment has achieved the same standard, this should be documented in the tender application.

»Verification: The bidder must present the technical sheets of the vehicles where emission standards are defined. For those vehicles where technical upgrade has achieved EURO V standard the measures must be documented and included in the tender application, and this must be approved by a credible third party.

»(d) ... ..

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<sup>1</sup> Gross vehicle weight.

<sup>2</sup> Refuse collection vehicle.

- «(e) Any vehicle used for the collection of organic waste under this contract not falling under these criteria will not be permitted to operate under this contract. The Waste Carrier is obliged to submit a copy of the registration document issued by ERA together with a copy of the vehicle logbook with his offer, failing which the submission will be disqualified. The Local Council reserves the right to inspect the vehicle/s to be used for the service as well as to confirm the submitted information with the original documents.
- »(f) Further to what is stated in the clauses above, as part of the fleet of vehicles to be used, the Contractor must be equipped and provide EURO V refuse collection vehicles or better. It is the intention of the Contractor to have at least one small EURO VI waste carrier or better per lot, not exceeding 6T GVW, to collect all organic waste from the areas in narrow alleys and pathways. Additional vehicles not exceeding 6T GVW used under this contract must comply with the Euro V emission standards. The service of such vehicle during weekends (Saturdays and Sundays).

»... ..

»Article 1.2 – Other Vehicle Requirements

»Number of Vehicles and Usage

»The collection of organic waste from Commercial establishments within 'Tourism Areas' should be carried out using at least 1 truck of 16 T GVW or more and 1 truck not larger than 6T GVW for small and narrow streets, alleys, etc. of which all bidders must take serious account in the financial offer.«

4. Qabel għalaq iż-żmien għall-offerti saru dawn iż-żewġ talbiet għal kjarifika:

»If the contractor do[es] not have small RCVs, will it be acceptable to use a small van for narrow streets and then the waste will be disposed [of] in the large RCV?

»Vehicles exceeding 7 tonnes will also be accepted in this tender?«

5. Id-Direttur tal-Kuntratti wieġeb hekk għaž-żewġ mistoqsijiet:

»As per article 4.2.1 the contractor shall be equipped with a minimum of 6T GCW for small and narrow streets.«

6. L-appellant tefa' l-offerta tiegħu iżda b'ittra tas-16 ta' Lulju 2021 id-Direttur tal-Kuntratti għarrfu illi l-offerta ma setgħetx tintlaqa' għax:

»... .. it is being clarified that the minimum number of service vehicles per lot shall be 1 truck of 16T GVW or more and 1 truck not

larger than 6T GVW or more for small and narrow streets, alleys, etc.  
... for every lot within 'tourism areas'.

»... ..

»... .. it is being clarified that one RCV per lot, must exceed 16 tons GVW (Gross Vehicle Weight) used in carrying out the service must have engines meeting a minimum of Euro VI standards, according to EC Directive 2005/55/EC.

»... ..

»... .. the contractor shall be equipped with a minimum of 6T GVW for small and narrow streets.«

7. Għarrfu wkoll illi l-kuntratt kien sejjer jingħata lis-soċjetà *SRF and Veladrians Limited* ["*SRF*"].
8. B'ittra tat-23 ta' Lulju 2021 l-appellant ressaq oġġezzjoni kontra din id-deċiżjoni quddiem il-Bord ta' Revizjoni, iżda l-bord, bid-deċiżjoni tas-7 ta' Ottubru 2021 li minnha sar dan l-appell, ma laqax l-oġġezzjoni u kkonferma d-deċiżjoni tal-awtorità kontraenti. Il-konsiderazzjonijiet li wasslu lill-bord għal din id-deċiżjoni ġew imfissra hekk:

»This board ... .. having noted this objection filed by Mr Christ Gatt (hereinafter referred to as the Appellant) on 23<sup>rd</sup> July 2021, refers to the claims made by the same Appellant with regard to the tender ... ..  
... whereby, the Appellant contends that:

- »a) The bid offered by *SRF & Velandrians Ltd* was not the cheapest price since the Appellant offered a bid which was nearly €40,000 cheaper;
- »b) The offer was primarily rejected on the basis that the proposed vehicles to be used were inadequate and thus ineligible in terms of the tender instructions.
  - »i. In accordance with article 4.2.2 (b) the vehicle that exceeds 16 tonnes must have a minimum of Euro VI standards. More importantly "vehicles that are not certified as Euro VI, but technical after-treatment has achieved the same standard", are allowed. The Appellant presented the relevant documents in the tender application certifying that the vehicle in question was upgraded, and emissions were effectively reduced by 47%, reaching the emission levels of Euro VI vehicles. The Director General held that since the logbook was not updated by Transport Malta from Euro V to Euro VI then such vehicle cannot be used. There is no mention of Transport Malta being the sole credible third party;

any other credible third party may certify the upgrade from Euro V to Euro VI.

- »ii. With regards to 7 tonne Euro V vehicle, it is alleged that the vehicle is ineligible since it exceeds the capped criterion of 6 tonnes. In fact, the vehicle in question is 7 tonnes; however from the Appellant's vast experience in the field of swill collection, there were instances whereby the Appellant's 7 tonne vehicles were used in small and narrow streets in places such as Mdina. Appellant contends that although the vehicle marginally exceeds the established tonnage criteria, it is still adequate to carry out the required operation.

»This board also noted the Contracting Authority's reasoned letter of reply filed on 2<sup>nd</sup> August 2021 and its verbal submissions during the virtual hearings held on 5<sup>th</sup> October 2021, in that:

- »a) the Contacting Authority submit that the objectors are wrong in claiming that they have submitted all the relevant and necessary documentation together with their offer. Reference is made to the Service Vehicle Type and Minimum Requirements under heading 4.2.2. The objectors try to argue that the word used is "should" and not "must", thereby creating the possibility that it may be submitted at a later stage. What the objectors fail to note, is that the tender application is classified as a Note 3 document. Therefore, had the objector read the tender document in its entirety, it would have become evident that, once the tender application is submitted, it could not be changed. Therefore, since the tender requested that the after-treatment should be documented in the tender application, it is obvious that it was being requested;
- »b) the argument with regard to the 7 tonne Euro V vehicle as submitted in their offer is inadmissible. The technical requirements made it absolutely clear that for narrow alleys and pathways and streets the vehicle is not to exceed 6 Tonnes GVW and must comply to Euro V standards. Moreover, this was subsequently confirmed by the Director General that the vehicle shall not be larger than 6 tonnes GVW or more for small and narrow streets, alleys, etc. Notwithstanding this second confirmation, the objector submits that his 7 tonne vehicle satisfies the technical requirement. The Contacting Authority contend that the technical requirements was unambiguously clear in stating that the vehicle shall not exceed 6 tonnes, and this was further confirmed by the Director General following a request to clarify made by the objector themselves. That said, the objectors decided to submit their technical offer with a 7 tonne vehicle (clearly different to that requested in the technical requirement) and opted to justify this by arguing that, based on the objector's vast experience, this vehicle of 7 tonnes still passes.

»This board also noted the preferred bidder's reasoned letter of reply filed on 6<sup>th</sup> August 2021 and its verbal submissions during the virtual hearings held on 30<sup>th</sup> September [*recte*, 5<sup>th</sup> October] 2021, in that:

- »a) the fact that the Appellant had the cheapest offer does not mean that it should be awarded to him. This due to the fact that his bid was deemed non compliant in the technical evaluation stage on several points that fall under Note 3;
- »b) the 16 tonnes vehicle is still registered as Euro V while the requirements were for a Euro VI vehicle. Regarding the 6 tonne vehicle, the argument that a 7 tonne vehicle can also be used does not hold water. That is an argument which could have been brought forward under regulation 262 of SL. 601.03.

»This board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witnesses duly summoned, will consider Appellant's grievances as follows:

- »a) cheapest price offered
  - »b) 16 tonnes vehicle
  - »c) 7 tonnes vehicle
- »a. cheapest price offered – with regards to this first grievance this board opines that since the evaluation committee deemed the offer of the Appellant to be technically non-compliant, then no financial evaluation has been carried out on its bid. Therefore, no arguments can be raised on the financial aspect of the bid.
- »This board does not uphold Appellant's first grievance.
- »b. 16 tonnes vehicle – reference is made to Section 3 'Specification / Terms of Reference' (Note 3) whereby "Where in this tender document a standard, brand or label is quoted, it is to be understood that the Contracting Authority will accept equivalent standards, brand or labels. However, it will be the responsibility of the respective bidders, at tendering stage, to prove that the standards, brands or labels they quoted are equivalent to the standards requested by the Contracting Authority".
- »i. This board opines that the reference of "at tendering stage" in the quote above is there since this section, *i.e.* Section 3 'Specification / Terms of Reference' falls under Note 3, hence no rectifications are allowed. Only clarifications on the submitted information may be requested.
  - »ii. This board notes that the Appellant did submit in its original bid a certificate, issued by Mr Carmel Brinciau, with a result of 'Test Emission Reduction of 47%'. This was however not followed with a submission of the official regulator of Malta, in this particular case, Transport Malta.
  - »iii. This board notes that, if Appellant was in doubt as to which certificate had to be submitted, they had the possibility to make use of the clarifications tool and resolve this issue, prior to submission of their offer. No remedies of the sort were availed of.
  - »iv. As already noted, this board opines that, as mentioned in the top part of Section 3, it is the responsibility of the bidder to prove that the standards, brands or labels they quoted are

equivalent to the standards requested by the contracting authority.

»After having considered the points above, this board does not uphold Appellant's second grievance.

»b. 7 tonnes vehicle – the board notes that the tender dossier was very clear and unequivocal in its descriptions provided.

»i. Reference is made to Section 3 'Specification / Terms of Reference' (Note 3), sub-section 4.2.2, article 1.1(d) whereby 'The contractor bidding for this contract must be equipped with all requested vehicles to be of a Euro VI standard waste carrier not exceeding 6 tonnes or better per lot, suitable to manoeuvre in narrow strait streets, where such equipment must be ready available prior commencement of the contract. Additional vehicles not exceeding 6T GVW used under this contract must comply with the Euro V emission standards.

»ii. Reference is made to Section 3 'Specification / Terms of Reference' (Note 3), sub-section 4.2.1, sub-title 'Period and Frequency', whereby, "1 truck of 16T GVW or more and 1 truck not larger than 6T GVW for small and narrow streets ... ..".

»iii. The board deems that the argument brought forward by Appellant that he has vast experience using a 7 tonne vehicle in narrow streets and alleyways is inadmissible in his objection under regulation 270 of the Public Procurement Regulations. Such an argument could have been brought forward under regulation 262, Call for Remedies, during the stipulated time-frames.

»After having considered the points above, this board does not uphold Appellant's second grievance.

»The board, having evaluated all the above and based on the above considerations, concludes and decides:

»i. does not uphold Appellants' letter of objection and contentions;

»ii. upholds the contracting authority's decision in the recommendation for the award;

»iii. directs that the deposit paid by appellants not to be reimbursed.«

9. L-appellant ressaq appell minn din id-deċiżjoni tal-Bord ta' Reviżjoni b'rikors tas-26 ta' Ottubru 2021. Għal dan ir-rikors wiegħbu d-Direttur tal-Kuntratti fit-12 ta' Novembru 2021, *SRF* fis-16 ta' Novembru 2021 u l-awtorità kontraenti fid-19 ta' Novembru 2021.

10. Fir-rikors tal-appell l-appellant talab illi l-qorti:

»... .. tħassar ... .. id-deċiżjoni tal-Bord ta' Revizjoni dwar Kuntratti Pubbliċi ... .. publikata nhar is-7 ta' Ottubru 2021 u tagħti dawk id-direttivi kollha li jidhrilha opportuni fil-każ, inkluż iżda mhux biss li t-*tender* in kwistjoni ... .. jiġi mogħti lill-esponenti bħala l-irħas offerent li jissodisfa l-kriterji amministrattivi u tekniċi, bl-ispejjeż ... .. «

#### 11. L-aggravji tal-appell huma erbġha:

- »i li fl-ewwel lok il-bord kien erronju meta irrjtjena li l-vettura ta' 18-il tunnellata ma kinitx konformi mal-istruzzjonijiet tas-sejħa;
- »ii. li fit-tieni lok, u mingħajr preġudizzju għall-ewwel aggravju, il-bord kien erronju meta saħaq illi l-vettura ta' 7 tunnellati ma kinitx konformi mal-istruzzjonijiet tas-sejħa;
- »iii. li fit-tielet lok, u mingħajr preġudizzju għat-tieni aggravju, il-bord kien erronju meta ċaħad l-ilment tal-esponenti abbażi tal-interpretazzjoni żbaljata tiegħu dwar il-kriterju ta' kif tiġi magħżula l-aħjar offerta, dak li jissejjah iċ-*cheapest price offered*;
- »iv. li fir-raba' lok, u mingħajr preġudizzju għat-tielet aggravju, l-appellant ma kienx ħaqqu jitlef id-depożitu li ħallas biex ressaq l-ilment tiegħu quddiem il-bord.

#### 12. L-ewwel aggravju jgħid hekk:

»L-ewwel aggravju – il-vettura ta' 18-il tunnellata

»*Ai termini* ta' klawnsola 4.2.1 u 4.2.2 ta' *Section 3 – Specifications /Terms of Reference (Note 3)* vettura trid teċċedi 16-il tunnellata, jrid ikollha magna ta' *standard* mhux inqas minn *Euro VI* u fil-każ ta' vettura li tkun inqas minn *Euro VI* però tiġi ammeljorata għal dan l-*istandard* iridu jiġu ippreżentati dokumenti ta' tali ammeljorament fl-applikazzjoni tat-*tender* iċċertifikati minn "*a credible third party*".

»Fl-applikazzjoni tat-*tender*, l-appellant ippreżenta vettura ta' 18-il tunnellata però l-magna ta' tali vettura skont il-*logbook* hekk kif ippreżentat nhar id-9 ta' Ġunju 2021 ma kinitx *Euro VI* iżda *Euro V*. F'din l-applikazzjoni l-appellant ippreżenta ċertifikati maħruġa mis-Sur Carmel Brincau fejn dan jiċċertifika li sistema ta' *LPG* ġiet installata fil-vettura in kwistjoni, l-emissjonijiet ta' tali vettura naqsu b'47% u għalhekk iċċertifika l-vettura bħala *Euro VI*. Hekk kif jixdhu dawn iċċertifikati s-Sur Brincau huwa persuna kompetenti u saħansitra approvata minn *Transport Malta* bħala rappreżentant akkreditat sabiex joħroġ dan it-tip ta' ċertifikati.

»Il-*logbook* innifsu maħruġ minn *Transport Malta* ġie aġġornat tmint ijiem biss wara l-għeluq ta' din is-sejħa jiġifieri nhar it-18 ta' Ġunju 2021, fejn fis-sezzjoni msejjaħa 'NOTI' hemm imniżżel is-segwent:

»"Transfer to be authorised by Transport Malta VEH with Hddf SYS with reduced EMISS-U ECE REG143"

»Dan effettivament jindika l-ammeljorament tal-vettura ta' 18-il tunnellata hekk kif iċċertifikata mis-Sur Carmel Brincau.



»Waq t is-smiġ tal-ilment l-awtorità se jhet is-Sur Mario Fava li kien membru tal-kumitat tal-evalwazzjoni (il-“kumitat”) fejn ġie mistoqsi dwar il-validità *o meno* ta’ dawn iċ-ċertifikati f’għajnejn l-kumitat. Danstqarr illi l-unika entità regolatorja li l-kumitat jagħraf hija *Transport Malta*; għalhekk l-unika ċertifikat validu huwa *logbook* aġġornat. Peress li l-*logbook* ma kienx aġġornat sal-ġurnata tal-għeluq tas-sejha, skond ix-xhud il-kumitat ma kellux evidenza valida li turi li l-vettura ġiet ameljorata għal *Euro VI*.

»Huwa minnu hekk kif deċiż mill-bord illi hija r-responsabilità’ tal-offerenti li fl-istadju tas-sejha dan juri b’evidenza li “*standards, brands or labels they quoted are equivalent to the standards requested by the Contracting Authority*”, però daqstant huwa minnu wkoll li l-appellant waqt l-istadju tal-applikazzjoni tat-*tender* ipprezenta dokumenti ċertifikati minn persuna approvata mill-unika entità regolatorja li skond l-kumitat jagħraf bħala “*a credible third party*”.

»Minhabba nuqqas jew svista tal-kumitat li jiċċekkja sew iċ-ċertifikati pprezentati fl-applikazzjoni tat-*tender* li wrew biċ-ċar li ċ-ċertifikati nħargu minn “*a credible third party*” m’għandux għalfejn jahti l-appellant. *Oltre* minn hekk il-kumitat u l-bord misshom ħadu in konsiderazzjoni l-fatt ukoll illi l-*logbook* li juri li kien ġà seħħ dan l-ameljorament ġie aġġornat tmint ijiem biss wara l-għeluq tas-sejha. Fid-dawl ta’ dan, id-deċiżjoni tal-kumitat u tal-bord kellha tkun aktar proporzjonata u b’hekk taċċetta dan id-dokument aġġornat ftit tard milli suppost.«

13. Id-Direttur tal-Kuntratti wieġeb illi taht l-Att dwar ir-Registrazzjoni u l-Liċenzjar ta’ Vetturi bil-Mutur [“Kap. 368”] *Transport Malta* hija l-awtorità kompetenti f’dan il-qasam u għalhekk hija biss *Transport Malta* li tista’ tiċċertifika vettura bħal konformi mal-*EURO VI standard*.

14. Id-dokument tas-sejha iżda ma jgħidx illi l-awtorità kontraenti tistrih biss fuq ċertifikat maħruġ minn *Transport Malta*; li jgħid id-dokument tas-sejha hu dan:

»For those vehicles where technical upgrade has achieved EURO V standard the measures must be documented and included in the tender application, and this must be approved by a credible third party.«

15. Bla ma nidhlu fil-kwistjoni li d-dokument isemmi *upgrade* għal *EURO V* mhux *EURO VI* għax dan jidher li hu żball billi mill-bqija tad-dokument jidher li l-vetturi kellhom ikunu *EURO VI*, id-dokument tas-

sejha jgħid ċar illi ċertifikat minn *a credible third party* jkun biżżejjed; li kieku l-kondizzjonijiet tas-sejha riedu biss lil *Transport Malta* ma kinux jintużaw termini ġeneriċi bħal “*a credible third party*”. Tassew li fuq l-offerent huwa l-oneru li juri li ċ-ċertifikat inħareġ minn persuna kwalifikata, iżda ċ-ċertifikat innifsu juri li nħareġ minn “*duly accredited representative*” u juri wkoll l-“*approved TM code number*”, u l-fatt illi ċ-ċertifikazzjoni saret minn persuna kwalifikata u magħrufa għalhekk ġie konfermat meta *Transport Malta* aġġornat il-*logbook* relativ.

16. Dan l-aggravju għalhekk għandu jintlaqa’.

17. Dan iżda ma huwiex biżżejjed biex jintlaqa’ l-appell, għax il-kondizzjonijiet tas-sejha riedu wkoll illi l-kuntrattur ikollu “*1 truck not larger than 6T GVW for small and narrow streets, alleys, etc.*”, u dan huwa l-meritu tat-tieni aggravju li ġie mfiesser hekk:

»It-tieni aggravju – il-vettura ta’ 7 tunnelli

»Ai termini ta’ klawwola 4.2.2 (l)(f), “*the Contractor bidding for this contract must be equipped with all requested vehicles to be of a Euro VI standard waste carrier not exceeding 6 tonnes or better per lot, suitable to maneuver in narrow strait streets, where such equipment must be ready available prior commencement of the contract*”.

»Din il-klawwola mhijiex ċara peress li tista’ tiegħu diversi tifsiriet, fosthom li vettura minnhom trid tesa’ mhux aktar minn 6 tunnelli jew vettura minnhom ma trid tesa’ 6 tunnelli jew aħjar, sabiex tkun kapaċi tgħaddi minn toroq dojoq. *Prima facie* wiegħed jinnota li l-vettura li giet ippreżentata fl-applikazzjoni tat-*tender* kienet tesa’ 7 tunnelli. Il-kumitat u l-bord erronjament qabdu u kkonkludew illi peress li l-vettura marġinalment qabżet is-6 tunnelli allura din ma kinitx konformi mal-kriterji tas-sejha u għalhekk kaħdu l-offerta.

«Minhabba din l-ineżattezza l-appellant staqsa għal kjarifikazzjoni ta’ dawn l-istruzzjonijiet. F’żewġ risposti mid-Direttur tal-Kuntratti datati id-19 ta’ Mejju 2021 intitolati *Clarification Note N° 1* ġie elenkat is-segwenti;

»“... *the contractor shall be equipped with a minimum of 6T GVW for small and narrow streets.*”

»Id-Direttur tal-Kuntratti hawnhekk kien ċar u qal li vettura trid tesa' mill-anqas 6 tunnellati u trid tkun tista' tgħaddi minn toroq żgħar u dojoq.

»*Oltre* minn hekk il-bord naqas milli jieħu in konsiderazzjoni l-element l-aktar importanti illi l-vettura ta' 6 tunnellati trid tkun kapaċi tgħaddi minn toroq dojoq. L-iskop aħħari ta' din il-parti tas-sejha kienet illi l-vettura tkun kapaċi tgħaddi minn toroq dojoq.

»Fl-ilment u waqt is-smiġħ tal-istess quddiem il-bord, l-appellant ta ezempju prattiku kif il-vettura tiegħu ta' 7 tunnellati hija kapaċi tgħaddi minn toroq dojoq. Fil-fatt din il-vettura tiġbor l-iskart mit-toroq tal-iMdina li hija lokalità magħrufa ħafna għat-toroq dojoq tagħha. Għalhekk jekk tali vettura hija kapaċi tgħaddi mit-toroq tal-iMdina, allura din żgur tkun tista' tgħaddi mum kwalinkwe triq dejqa f'Malta.

»... ..

»L-istruzzjonijiet tas-sejha ma kinux ċari liem element ser ikun l-aktar importanti u deċiżiv waqt l-evalwazzjoni. *Inoltre*, il-piż li tesa' l-vettura hija sempliċiment indikazzjoni ta' kemm għandha tesa' vettura sabiex tkun tista' tgħaddi minn toroq dojoq però l-għan aħħari ta' din l-indikazzjoni hija li l-vettura effettivament tkun tista' tgħaddi minn toroq dojoq, li fil-każ odjern il-vettura ta' 7 tunnellati hija kapaċi li tagħmel dan. Ficl-dawl ta' dan, id-deċiżjoni tal-bord kellha tkun aktar proporzjonata u għalhekk dan it-tieni aggravju għandu jiġi milqugħ.«

18. It-tifsira tal-kondizzjoni fid-dokument tas-sejha dwar ħtieġa ta' vettura ta' sitt tunnellati jew anqas hija ċara; fil-fatt it-talbiet għal kjarifika ma talbux tifsira tal-kondizzjoni iżda jekk setax kien hemm eċċezzjonijiet partikolari. It-tweġiba għal dawn il-mistoqsijiet ta' kjarifika setgħet – anzi kellha – tkun “iva” jew “le” iżda sfortunatament id-Direttur tal-Kuntratti flok wieġeb ċar u tond għal mistoqsija ċara tfixxkel fi kliemu u t-tweġiba għet tista' tfisser l-oppożt.
19. Madankollu l-qorti tgħid illi t-tifsira ta' x'riedu l-kondizzjonijiet tas-sejha hija ċara: il-kuntrattur għandu jkollu mill-anqas vettura waħda li tkun (i) sitt tunnellati jew anqas u (ii) tista' tgħaddi minn toroq dojoq. Tassew li jagħmel ħafna sens l-argument tal-appellant illi t-tieni kondizzjoni hija biżżejjed, għax sakemm jintlaħaq il-għan li l-vettura tgħaddi minn toroq dojoq il-piż jista' jkun indifferenti, iżda s-sejha riedet li jiġiharsu ż-

żewġ kondizzjonijiet, u jekk jinbidlu l-kondizzjonijiet f'dan l-istadju jista' jiġi żvantagġjat min ma tefax offerta għax deherlu li kellu jħares skruplożament il-kondizzjonijiet kollha tas-sejha. Sewwa tgħid l-awtorità kontrenti fit-tweġiba tagħha li għall-ilment tiegħu l-appellant kellu jfittex rimedju qabel l-għeluq tas-sejha u mhux f'dan l-istadju.

20. Dan l-aggravju għalhekk ma jistax jintlaqa'.
21. Fit-tielet aggravju l-appellant jgħid illi l-offerta tiegħu kienet l-orħos u għalhekk kellha tintlaqa'.
22. Tassew illi, jekk l-offerta tal-appellant kienet l-orħos, kellha tintlaqa', iżda biss jekk dik l-offerta tħares il-kondizzjonijiet kollha tas-sejha. Rajna iżda illi l-kondizzjoni dwar il-vettura ta' mhux aktar minn sitt tunnelli ma tħarsitx, u għalhekk ladarba l-offerta ma kinitx konformi mal-kondizzjonijiet tas-sejha ma setgħetx tintlaqa', għalkemm setgħet kienet l-orħos.
23. It-tielet aggravju huwa għalhekk miċħud.
24. Ir-raba' aggravju jolqot id-deċiżjoni tal-Bord ta' Reviżjoni li jordna li ma jintraddx lill-appellant id-depożitu minnu mħallas biex seta' jressaq l-oġġezzjoni quddiem il-bord. L-appellant igħid illi din id-deċiżjoni hija msejsa fuq "id-deċiżjoni żbaljata u erronja li l-bord ħa billi ċaħad l-ilment tal-appellant".
25. Tassew li l-qorti taqbel mal-appellant li d-deċiżjoni tal-bord dwar il-vettura ta' tmintax-il tunnellata kienet żbaljata, iżda ma kinitx din biss ir-raġuni għala ma ntlaggħetx l-oġġezzjoni tal-appellant; ukoll li kieku l-

bord qabel miegħu dwar dik il-parti tal-ilment, xorta ma setax jingħata r-rimedju li ried.

26. Madankollu, billi d-Direttur tal-Kuntratti kkontribwixxa xi ftit għall-ekwivoku li nħoloq – għalkemm il-qorti temmen li l-appellant fittex li japprofitta ruħu mis-sitwazzjoni – huwa xieraq li jintradd sehem minn erbgħa ( $\frac{1}{4}$ ) tad-depożitu.

27. Għal dawn ir-raġunijiet il-qorti tiddisponi mill-appell billi, għalkemm tilqa' l-ewwel aggravju, tiċċhad l-appel fil-meritu flief illi tordna li jintradd lill-appellant sehem minn erbgħa ( $\frac{1}{4}$ ) tad-depożitu li ħallas biex seta' ressaq oġġezzjoni quddiem il-Bord ta' Revizjoni.

28. L-ispejjeż ta' dan l-appell jinqasmu hekk: tliet ishma minn erbgħa ( $\frac{3}{4}$ ) jħallashom l-appellant u sehem minn erbgħa ( $\frac{1}{4}$ ) jħallsu d-Direttur tal-Kuntratti.

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Prim Imħallef

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