



QORTI TAL-APPELL

IMĦALLFIN

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

Seduta ta' nhar it-Tnejn, 10 ta' Ottubru, 2022.

Numru 2

Appell numru 159/2022/1

General Cleaners Co. Ltd (C-14053)

v.

***Heritage Malta; Apex Community
Services Ltd; Dipartiment tal-Kuntratti***

1. Dan huwa appell ta' *General Cleaners Co. Limited* ["l-appellanti"] minn deċiżjoni tal-11 ta' April 2022 tal-Bord ta' Reviżjoni dwar Kuntratti Pubbliċi ["il-Bord ta' Reviżjoni"], imwaqqaf taħt ir-Regolamenti tal-2016 dwar l-Akkwist Pubbiku ["L.S. 601.03"], li ċaħad oġġezzjoni tagħha kontra deċiżjoni tad-Dipartiment tal-Kuntratti ["id-Dipartiment"] li ma laqax offerta tagħha għal servizz ta' tindif f'mużewijiet u siti ta' *Heritage Malta* fil-Belt Valletta għax ma kinitx l-aħjar offerta u laqa', minflok, l-offerta ta' *Apex Community Services Limited* ["Apex"].

2. Il-fatti rilevanti seħnew hekk: saret sejħa minn *Heritage Malta* [“l-awtorità kontraenti”] għal offerti għal kuntratti għal servizz ta’ tindif f’mużewijiet u siti ta’ *Heritage Malta* f’sitt inħawi jew *lots* f’Malta u Għawdex, b’dan li jingħataw kuntratti separati għal kull *lot*. Il-kondizzjonijiet tas-sejħa iġġiddu *inter alia* hekk:

»Section 1 – instructions to tenderers

»3.1 This tender is divided into lots. Tenderers may submit a tender for several lots (one or more lots).

»... ..

»Economic operators (tenderers) have to submit an offer for one, several or all lots; however the contracting authority is limiting the number of lots that may be awarded to one service provider to a maximum of 3 lots in total.

»... ..

» 6.1 The contract will be awarded to the tenderer submitting the offer with the best price/quality ratio (BPQR) in accordance with the below.

»Each technical offer will be evaluated in accordance with the award criteria and the associated weighting as detailed in the evaluation grid of this tender document. No other award criteria will be used. The award criteria will be examined in accordance with the requirements as indicated in the technical specifications.

»The (BPQR) is established by weighing technical quality against price on a 60/40 basis respectively.

»This is done by multiplying:

»• the technical scores awarded to the offers by 0.60

»• the financial scores awarded to the offers by 0.40

»• the financial scores awarded to the offers by 0.40

»Tenderers must achieve an average technical score of (60). The average technical score is arrived at by adding the individual weighted scores of each evaluator divided by the number of evaluators. Those tenderers that do not obtain the minimum set average technical score will be eliminated.«

3. Tefgħu offerti, fost oħrajn, l-appellanti u *Apex*. B’ittra tal-4 ta’ Jannar 2022 id-Dipartiment tal-Kuntratti għarraf lill-appellanti illi għal *lots 1* sa *5* – fosthom dak relattiv għall-Belt Valletta (*lot 1*) – l-aħjar offerta kienet ta’ *Apex*. L-offerta tal-appellanti għal *lots 3* u *4* iggradwat fit-tieni post, u għal

lot 1, dak li dwaru sar l-appell, l-offerta tal-appellanti iggradwat fit-tielet post. Għalhekk, il-kuntratt għal *lots 1, 2, u 5* kellu jingħata lil *Apex*, u, peress illi ma setgħux jingħataw aktar minn tliet kuntratti lill-istess oblatur, il-kuntratt għal *lots 3 u 4* – iżda mhux dak relattiv għall-Belt Valletta – kellu jingħata lill-appellanti.

4. L-appellanti ressqet oġġezzjoni quddiem il-Bord ta' Revizjoni b'ittra tat-13 ta' Jannar 2022. L-appellanti oġġezzjonat dwar l-għoti tal-kuntratt relattiv għal *lot 1*, dak għall-Belt Valletta, u talbet illi l-bord:

- »1. suspend the tender process;
- »2. declare the notice dated 4th January 2022 as null;
- »3. reinstate the appellant in the position which it was in prior to the issuance of the notice dated 4th January 2022;
- »4. re-assess the appellant's scores allotted to its tender submission;
- »5. declare the costs of the appeal at the charge of the contracting authority.«

5. Il-bord iddeċieda hekk:

- »... .. this board concludes and decides:
- »a) does not uphold appellant's letter of objection and contentions,
- »b) upholds the contracting authority's decision in the recommendation for the award of the tender to *Apex Community Services Ltd*,
- »c) directs that the deposit paid by appellant not be reimbursed.«

6. Ir-raġunijiet li wasslu lill-bord għal din id-deċiżjoni ġew imfissra hekk:

- »... .. the appellants, in their letter of objection, contend that:
- »a) Evaluation Criteria B.2 – Contingency Plans: Sick Personnel
»For this criterion, marks were deducted for the following reason:-
"Bidder submitted adequate measures to cater for sickness including transport from a 3rd party. However, response time in 1 hour was not mentioned". In this regard, the appellant submitted a policy document concerning sick personnel. Therefore the basis of the non-award of points on the basis that "response time in 1 hour was not mentioned" is factually incorrect. The appellant has submitted that the response time is between 15 and 30 minutes, which obviously are within 1 hour.

Hence, the appellant insist that full points ought to be awarded for this criterion.

»b) Evaluation Criteria B2: Contingency Plans: Industrial Actions

»For this criterion, marks were deducted for the following reason:- 'Adequate submission with client communication included. Response time mentioned is 1-2 hours". With respect, this criterion on the tender document does not state that points will be deducted if a possible response time of over one hour is indicated. The tender document requires that a detailed write-up is provided, which write-up was indeed provided. In any case, a response time of one to two hours should be considered favourably in a scenario where business is disrupted as a result of industrial action. It is therefore the appellant's firm belief that the deduction of points for this criteria [*recte*, criterion] is wholly unjustified when considering the level of detail provided in its submission as required by the tender and also when considering the efficiency committed to by the appellant and the honest time frame indicated for mitigating such a situation. One can hardly think of any other situation wherein a disruption of business results from industrial action the situation is mitigated within such a short time frame unless such industrial action is put off. Therefore, the appellant holds firm that the full award of points would be fair for this criteria.

»c) Evaluation criteria B2: Contingency Plans: Special Events Cleaning and Preparation of Area

»For this criterion, marks were deducted for the following reason:- "Good submission as regards to human resource allocation and procedure, However, did not mention, any details as regards to planning of the event area and the implementation of the cleaning service before and after the event takes place". For such a requirement, the tender document simply required that the bidder submits a write-up that demonstrates how the bidder will achieve the goal of setting up and cleaning the area. With respect, the appellant cannot understand how its submission does not adequately address this requirement. The appellant's submission clearly demonstrates that it is well equipped and prepared to cater for such special events.

»d) Evaluation criteria B.4: Methodology: Work Method

»For this criterion, marks were deducted for the following reason:- "Very good and well-explained work method submission including ISO Standards although generic. Specific mention to museum sites would have been better".

»e) Evaluation criteria B.4: Methodology: Resources

»For this criterion, marks were deducted for the following reason:- "Same document as for work method submitted. Whilst this includes some resource distribution solutions, it does not mention resources such as equipment and material. Also, this is a generic submission with no detail to museums (actually, it may be for a *Jobsplus* contract)".

»f) Evaluation criteria B4: Methodology: Risks

»Marks were deducted for this criterion for the following reasons:- "Same document for other criteria incorporating mainly company quality policy (and relating to a contract at *Jobsplus*). What was

required was a list of perceived risks to the Museums cleaning contract as well as specific mitigation actions". The appellant is making the below submissions for all of the above three (3) criteria.

»It is humbly but firmly being submitted that the operator cannot be expected to make submissions specific to museum sites at submission stage. As clearly indicated on the tender document even with reference to the terms of reference indicated therein, no requirement was asked of prospective bidders to provide a method statement or particular detail in connection with museum sites. Rather, the tender document clearly stipulates in article 4.2.5 of its terms of reference that "The cleaning system to be employed in the particular spaces in the various sites and museums shall be agreed beforehand with *Heritage Malta*".

»g) Evaluation criteria C.2: Employment Conditions: (VII) Collective Agreement

»Marks were deducted for the following purpose:- "Bidder submitted a valid collective agreement however no DIER¹ registration proof was submitted". The appellant humbly remarks that its collective agreement has long been registered with DIER. However, despite several requests demanding proof of such registration, such as a registration certificate, DIER has repeatedly informed the appellant that it does not produce such proof but simply has a record of registration of such certificates.

»h) Criterion C.2: Employment Conditions: (VIII) Transport Allowance

»Marks were deducted for this criterion for the following reason:- "Submission states such provision will be only if necessary, which means it is not being provided". With respect, the evaluation committee's conclusion that since the submission state that such provision will be made only if necessary cannot be interpreted as if though it is "not" being made. The interpretation of such a submission should be interpreted to mean that it is being made, but only where necessary. What the evaluation committee seems to have missed is that, through its submissions, the appellant has indicated various times that transportation, even free, is catered for.

»i) Evaluation Criterion C.2: Employment Conditions: (IX) Health and Safety Resources

»Marks for this criterion have been deducted on the basis that:- "Submitted detailed and generic health and safety report. No reference is made to *Heritage Malta* environment, museums and sites". This criterion is being challenged on the same grounds mentioned above applicable to method statements. It is humbly but firmly being submitted that the operator cannot be expected to make submissions specific to museum sites at submission stage.

»This board also noted the contracting authority's reasoned letter of reply filed on 24th January 2022 and its verbal submission during the virtual hearing held on 24th March 2022, in that:

¹ *Department of Industrial and Employment Relations*

»a) Evaluation Criteria B.2 – Contingency Plans – Sick Personnel

»In their submission, *General Cleaners Co Ltd* submitted a description of their policy in such cases. Policy states that employees are to report sick at least 3 hours prior to start of shift (although same submission states that policy “depends on when the employee feels sick and it could be that reporting is acceptable closer to the start of the shift”). Policy also states that a replacement is identified and replacement process continues. Policy states that this process is triggered within 15 - 30 minutes of report. In fact, the wording of the appellant’s submission states that the “time to initiate the plan” is 15 - 30 minutes. Although truly in the same sentence there are the words “response time”, this conflicts with the words immediately preceding this. “Response time”, as requested in the tender document, refers to the response time for “complete execution”, so much so, that the tender requires that the contractor “effect[s] immediate replacement(s) within a maximum of 1 (one) hour”. The wording provided by the appellant indicates that the response time of 15 - 30 minutes refers solely to the time required to initiate (as expressed) the plan, rather than to execute a replacement.

»b) Evaluation Criteria B.2 – Contingency Plans: Industrial Actions

»The contracting authority abided by the letter of the tender document in the sense that any service affected due to industrial action must be replaced and on site within a maximum of two (2) hours. In their submission, *General Cleaners Co Ltd* explain their action plan in such an emergency, which plan includes identification of workers who are not participating in the industrial action, with the purpose of allocation as substitute to the absent workers. The only specific time frame that the evaluation committee found in this particular submission was that the action plan would initiate between 1 and 2 hours from start of industrial action. There is no indication when the substitute workers would actually be on site as requested by the criteria. Once again, it is the sole responsibility of the tenderer to submit clear information which is not subject to any interpretation. Whilst the contracting authority deems the information submitted to clearly exclude one of the requisites indicated in the tender document (since it excludes an execution response time), even if, in the worst case scenario and without prejudice, [sc. it] should have referred to the execution response time, the appellant certainly did not explain this in a clear and uninterpretable manner.

»c) Evaluation Criteria B.2: Contingency Plans: Special Events
Cleaning and Preparation of Area

»During its evaluation, the evaluation committee could only conclude that this criterion required submission of a list of measures an eventual contractor would take in the eventuality of a (one-off) special event organised by *Heritage Malta* to be held on one of its premises. Such preparation would include organisation and management of the contractor’s resources on this site in these special circumstances. Such list could include need to be sure of employing the right number of personnel and making sure of cleaning material and equipment availability and other such needs. In their submission, *General Cleaners Co Ltd* submitted a contingency plan for a situation where the contracting authority would require flexibility in working hours,

describing how the contractor would go about to resolve this need. Thus, the evaluation committee deemed that the economic operator did not interpret the requirement as per criterion and did not understand the criterion fully. The minimum marks allocated to this criteria (.25 marks out of a maximum of 5 marks) reflected this interpretation. Such allocation also reflects a quality evaluation process between the various bids, undertaken by the evaluation committee, in the process of establishing the grade of quality submission. The fact that the submission by *General Cleaners Co Ltd* did not (once again) mention either “museum” or “site” or “*Heritage Malta*” potential needs, again weighed against generic submissions by economic operators and awarded more those submissions which included such specifics.

»d) Evaluation Criteria B.4: methodology – Work Method

» Evaluation Criteria B.4: methodology – Resources

» Evaluation Criteria B.4: methodology – Risks

»*General Cleaners Co Ltd* submitted their general operations manual, which the evaluation committee evaluated as being very comprehensive but also noted that the submission is generic and did not include any references specific to this tender. Being a BPQR award criteria, the evaluation committee was not solely looking at compliance with the requirement but also what added value each bidder could demonstrate in its submission and how submissions can be implemented in museums and sites envisaged in this contract. It is quite clear that, although cleaning services do not include “rocket science”, method statements regarding cleaning in, for example, a block of apartments is certainly different to cleaning services to be performed in a hall filled with priceless artefacts at *MUŻA*. The contracting authority could certainly conclude, from *General Cleaner’s* submissions, that, whilst its submission certainly concerned “cleaning services”, it did not mention, let alone address, the specific requirements of cleaning services required for the museums and sites pertaining to *Heritage Malta*.

»e) Evaluation criteria C2 (VII) – Collective Agreement

»In its appeal, appellant states that its collective agreement has long been registered with DIER and that, despite several requests demanding proof of such registration, DIER has repeatedly informed the appellant that it does not produce such proof but simply has a record of registration of such certificates. During the evaluation process the evaluation committee interpreted the criterion as requiring submission of a collective agreement and that such agreement is registered with the DIER. It also required the submission to include a) a copy of the collective agreement and b) valid proof that the agreement was registered with the DIER. Since the appellant’s submission included only a copy of the collective agreement, only 50% of the 3 points allocated could be awarded. All other economic operators’ bids were similarly evaluated and scored. It is not within the remit of the evaluation committee to comment on appellant’s remarks referring to other tenders’ evaluations. Moreover, it is forbidden at law that the contracting authority reveals or discloses information pertaining to other economic operators.

»f) Criterion C.2. Employment Conditions (VIII) Transport Allowance

»This was an add-on criterion and the evaluation committee, in its evaluation, looked for evidence that was to be provided by the economic operators that employees are paid a transport allowance by either submitting a copy of the payslip or through the contract agreement. In their submission, *General Cleaners* submitted an extract from their contract agreement which states that company will provide transport if employee requires transport and that only in absence of such provision and with the consent of the employee will the employee's transport be used. The evaluation committee could not find the evidence of a transport allowance through this submission. The minimum (add-on) markings were allocated to bidder for this non-conformance.

»g) Evaluation Criterion C.2: Employment Conditions: (IX) Health and Safety Resources

»The evaluation committee had evaluated the submission and found a very well presented generic document. This tender was awarded on Best Price/Quality Ratio criteria. A generic document could be evaluated as being compliant, but for a quality document the evaluation committee expected the tenderer to make specific reference to the tender subject. In the document submitted by *General Cleaners Co Ltd*, the word "museum", "artefact", "museum visitor" "heritage" or "*Heritage Malta*" are never mentioned, and it is clear that the submission was not made in line with the requirements of the tender, but it was merely replicated from other cleaning services bids.

»This board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, will now consider appellant's grievances.

»The board notes that there are a number of grievances in this appeal which deal with similar issues. Therefore, initially, this board will deal with the specifics of two (2) specific grievances. Finally, this board will delve into the legal argumentation with references to past PCRB cases and Court of Appeal case law.

»a) Specific Grievances

»i. Evaluation Criteria B.2 – Contingency Plans – Sick Personnel

»The tender dossier, in paragraph 6.1.1 of section 3, stated "In the event that any of the contractor's personnel and / or direct management staff report sick at short notice and / or for any reason fail to report for duty, the contractor shall effect immediate replacement(s) within a maximum of 1 (one) hour". The board opines that this requirement is clear and unambiguous when it states "within a maximum of", *i.e.* the process would need to be finalised. The wording of the appellant within its bid refers to the initiation process and not the completion of the process. Hence, this board finds itself in agreement with the evaluation committee.

»ii. Evaluation Criteria B.4: methodology

»This board notes that the award criterion for this tender is the BPQR method, *i.e.* quality matters! The appellant company was comprehensive in its submission, but the methodology provided was lacking in specifics. When submitted [*recte*, submitting] a bid which is being

awarded by BPQR, it is essential to be specific. The tender dossier makes numerous references to the sites and museums which need to be cleaned including references to the artefacts and exhibits on show which require special treatment for their “conservation” needs. If other bidders were more specific in their submissions, it is the true nature of BPQR evaluation that bids meeting the minimum criteria are not awarded the most points on technical matters.

»b) Past PCRB and Court of Appeal cases:

»i. In PCRB Case 1583, this Board stated:

»“ii. It must be noted that the evaluation and eventual award of such tender was to be based on the BPQR method of evaluation.

»“iii. In this method of evaluation, the evaluation committee is to be ‘afforded’ an element of ‘leeway’ in the way it proceeds with its business of evaluation. It is after all their main responsibility for such an appointment in this respective committee. As per previous PCRB case (Ref: 1577) this element of ‘leeway’ needs to be exercised “... in a professional, detailed and meticulous manner and always within the remit of the Public Procurement Regulations and the specific tender document in question”. Hence the evaluation committee still must proceed with the appropriate diligence in full cognisance of its rights, powers, duties and obligations. In this regard, the board opines that no specific evidence has been brought forward to show the contrary.”

»ii. The above argumentation was upheld on appeal in Court of Appeal case 205/21/1 whereby the court stated:

»“Kollox ma’kollox, din il-qorti tqis li l-bord ta raġunijiet korretti u suffiċjenti biex jimmotiva d-deċiżjoni tiegħu. Wieħed ifakkar li l-pjan ta’ kontinġenza f’każ ta’ azzjoni industrijali huwa allokat f’ames punti u dawk il-punti kellhom jiġu allokat diskrezzjonalment mill-kumitat evalwattiv minn punt wieħed sal-massimu ta’ f’ames punti. Dan ifisser li jeżisti element ta’ suġġettività mogħti lill-kumitat evalwattiv mid-dokument tas-sejfa għall-offerti stess. Din il-qorti ma tara xejn irragonevoli fid-deċiżjoni li għal dan il-pjan tal-appellanti ngħataw żewġ punti u nofs, u din il-qorti ma tarax li għandha tiddisturba d-diskrezzjoni kif użata mill-kumitat evalwattiv f’dan il-każ.”

»Therefore, this board does not uphold appellant’s grievances.«

7. *General Cleaners Co. Limited* appellat b’rikors tad-29 t’April 2022 li għalih wieġbu d-Direttur tal-Kuntratti fl-10 ta’ Mejju 2022, *Apex* fl-24 ta’ Mejju 2022 u *Heritage Malta* wkoll fl-24 ta’ Mejju 2022.

8. L-ewwel aggravju ġie mfisser hekk:

»Huwa manifestament ovvju u ampjament ċar illi l-eżerċizzju ta’ stħarriġ li għamel il-bord kien wieħed superfiċjali u, *di più*, il-bord naqas milli jippronunzja ruħu dwar l-aggravji kollha mressqa mis-soċjetà appellanti.

»Wieħed ma jistax ma jiddubitax jekk fil-fatt sarx stħarriġ tal-aggravji kollha mressqa mis-soċjetà appellanti. Donnu illi l-bord, minflok ma wettaq l-eżerċizzju mistenni minnu tal-apprezzament tal-provi *in vista* tad-dokumentazzjoni li ġiet ippreżentata meta saret is-sejħa għall-offerti, donnha straħet [*recte*, il-bord ... donnu straħ] totalment fuq is-sottomissjonijiet ta' waħda mill-partijiet fl-appell quddiem il-bord – f'dan il-każ, fuq is-sottomissjonijiet tal-awtorità kontraenti *Heritage Malta*, u għaġnithom [*recte*, għaġanhom] bħallikieku kienu l-apprezzament tal-istess bord.

»Fil-fatt, fid-deċiżjoni tal-bord jingħad:

»“The board notes that there are a number of grievances in this appeal which deal with similar issues. Therefore, initially, this board will deal with the specifics of two (2) specific grievances. Finally, this board will delve into the legal argumentation with references to past PCRB cases and Court of Appeal case law.”

»Filwaqt li huwa minnu li kien hemm numru żgħir mill-aggravji li huma – sa ċertu punt – ta' natura simili (iżda mhux identiċi u allura kull aggravju huwa uniku), huwa manifestament ċar illi hemm numru ferm akbar ta' aggravji li kienu jimmeritaw investigazzjoni dedikata għal kull aggravju separat. M'huwiex il-każ illi kien hemm xi aggravji li kienu ripetuti.

»Lanqas wieħed ma jista' jgħid li l-bord ġabar l-aggravji kollha b'mod konċiż fi tnejn u ttratta kollox f'daqqa għaliex, kif johroġ mid-deċiżjoni stess hawn appellata, il-bord illimita ruħu għal żewġ aggravji. Ċertament illi l-aggravji sollevati ma kinux jimmeritaw illi jiġu skartati bil-mod li ddeċieda li jagħmel il-bord.

»B'konnessjoni ma' dan, is-soċjetà esponenti dejjem tapprezza illi hija s-sustanza illi tgħodd u li tiegħu preċedenza fuq il-forma. Iżda minkejja dan, meta wieħed jikkunsidra n-natura u l-ammont ta' aggravji sollevati mis-soċjetà appellanti, l-appellant ma jistax jifhem kif appell imsejjes fuq disa' aggravji varji u mifruxa fuq seba' faċċati setgħu b'xi mod jiġu fil-maġġor parti skartati.

»... .. il-bord kellu d-dmir illi jifli kull aggravju, wieħed wieħed, u:-

- »i. jissindika dak li qiegħda tgħid is-soċjetà appellanti fl-appell tagħha u tikkuntrastah mad-dokumenti prodotti minnha;
- »ii. jikkuntrasta dak li jirriżultala ma' dak sottomess mill-awtorità kontraenti; u fuq kollox
- »iii. jiżen dak kollu li jirriżultalu fid-dawl ta' dak li ġie rikjest jew mitlub fis-sejħa għall-offerta u fid-dokumentazzjoni li tirregola l-offerta.

»... .. kien ikun hekk biss illi s-soċjeta appellanti kienet tkun tista' sserraħ rasha illi l-appell tagħha ġie miżun kif wieħed jistenna minn bord tat-tali portata sabiex jiġi assigurat li fil-fatt ir-riżultat finali jkun wieħed ġust u meritat. Iżda, evidentement, dan ma seħħx għaliex il-bord iddeċieda li jinvestiga żewġ aggravji biss, u dan bl-iskuża illi l-aggravji huma ta' natura simili – li, jerga' jingħad, m'huwiex il-każ.

»*Di più*, is-soċjetà appellanti tapprezza illi l-prinċipju regolatur huwa li din l-onorabbli qorti ma tiddisturbax deċiżjoni tal-bord jekk il-bord seta' raġonevolment u legalment jasal għal dik id-deċiżjoni. Iżda f'dan il-każ, tenut kont dak li ġie hawnhekk sollevat taħt dan l-aggravju u

cioè li l-bord ma dañalx fid-dettal ta' kull aggravju kif kien jimmerita l-appell, is-soċjetà esponenti temmen li dak il-bord ma setax raġonevolment jew legalment jasal għall-konklużjoni li wasal għaliha. «

9. L-oġġezzjonijiet tal-appellanti quddiem il-bord essenzjalment kienu dawn:
- i. taħt *criterion B.2* dwar *response time* meta impjegati jimirdu;
 - ii. taħt *criterion B.2* dwar *response time* meta jkun hemm azzjoni industrijali;
 - iii. taħt *criterion B.2* dwar tnejn għal okkażjonijiet speċjali u tindif wara;
 - iv. taħt *criterion B.4* dwar metodu ta' xogħol;
 - v. taħt *criterion B.4* dwar riżorsi;
 - vi. taħt *criterion B.4* dwar riskji;
 - vii. taħt *criterion C.2* dwar ftehim kollettiv;
 - viii. taħt *criterion C.2* dwar *transport allowance*; u
 - ix. taħt *criterion C.2* dwar saħħa u sigurtà fuq il-post tax-xogħol.
10. Il-konsiderazzjonijiet tal-Bord ta' Revizjoni jolqtu l-kwistjoni ta' *response time* taħt *criterion B.2* (para. 9.i u ii, *supra*) u l-kwistjoni dwar metodu ta' xogħol, riżorsi u riskji taħt *criterion B.4* (para. 9.iv, v u vi *supra*) iżda effettivament ukoll l-oġġezzjonijiet imsemmija f'para. 9.iii u 9.ix *supra* peress illi l-kummenti negattivi tal-kumitat ta' evalwazzjoni – dwar nuqqas ta' tifsir ta' metodi speċifiċi – kienu tista' tgħid l-istess għal dawn il-fatturi kollha. Dan ifisser illi l-bord ma qiesx l-oġġezzjonijiet dwar ftehim kollettiv u *transport allowance*.
11. L-aggravju tal-appellanti huwa fis-sens illi l-Bord ta' Revizjoni (i) ma qiesx l-oġġezzjonijiet kollha tagħha u illi (ii) dawk li qies qieshom b'mod superfiċjali.
12. Dwar it-tieni parti tal-aggravju l-qorti tosserva illi, għalkemm huwa minnu li l-bord kien pjuttost spiċċattiv f'dawk l-oġġezzjonijiet illi qies, madankollu qal dak kollu li kellu jgħid. Effettivament l-osservazzjoni tal-kumitat ta'

evalwazzjoni kienet illi fl-esposizzjoni tal-metodi ta' xogħol fl-offerta tal-appellanti t-tifsira kienet generika wisq u l-bord qabel illi l-appellanti kellha t-fisser il-metodu ta' xogħol tagħha b'aktar attenzjoni għall-ħtiġijiet speċifiċi ta' siti differenti.

13. Il-qorti għalhekk ma tarax illi l-appellanti għandha raġun fit-tieni parti tal-ewwel aggravju.
14. Dwar l-ewwel parti iżda l-appellanti għandha raġun. Li kieku l-kriterji l-oħra fejn l-appellanti ma ngħatax raġun kienu biżżejjed biex tiġi eliminata u biex l-offerta tagħha titwarrab, ma kienx ikun hemm għalfejn il-Bord ta' Reviżjoni jqis l-oġġezzjonijiet l-oħra tagħha. Iżda l-kumitat tal-evalwazzjoni ma qalx illi l-appellanti kellha tiġi eliminata minħabba fin-nuqqasijiet fil-kriterji l-oħra, iżda biss li tingħata marki anqas. U lanqas ma ntwera illi, ukoll likieku l-appellanti ngħatat raġun fuq dawk l-oġġezzjonijiet li ma tqisux, xorta ma kienx ikun biżżejjed biex tibdel il-gradwazzjoni tagħha, u għalhekk inutli li jitqiesu.
15. Fil-fehma tal-qorti għalhekk il-Bord ta' Reviżjoni għamel hażin illi ma qiesx l-oġġezzjonijiet kollha tal-appellanti, u din il-parti tal-aggravju għandha tintlaqa' billi l-atti jintbagħtu lura lill-bord sabiex iqis l-oġġezzjonijiet kollha tal-appellanti.
16. Il-qorti għalhekk tiddisponi mill-appell billi tħassar id-deċiżjoni tal-Bord ta' Reviżjoni u tordna illi l-bord, b'kompożizzjoni differenti minn dik li tat id-deċiżjoni appellata, jisma' u jqis l-oġġezzjonijiet kollha tal-appellanti.

17. L-ispejjeż quddiem il-bord jiġu regolati fid-deċiżjoni li għad trid tingħata mill-istess bord; l-ispejjeż ta' dan l-appell iħallsuhom *Heritage Malta* u d-Dipartiment.

Mark Chetcuti
President

Giannino Caruana Demajo
Imħallef

Anthony Ellul
Imħallef

Deputat Reġistratur
gr