



## **QORTI TAL-APPELL**

### **IMĦALLFIN**

**S.T.O. PRIM IMĦALLEF MARK CHETCUTI  
ONOR. IMĦALLEF JOSEPH R. MICALLEF  
ONOR. IMĦALLEF TONIO MALLIA**

**Seduta ta' nhar l-Erbgħa, 26 ta' Ottubru, 2022.**

**Numru 35**

**Rikors numru 221/22/1**

**Executive Security Services Limited (C-45125)**

**v.**

- 1. Aġenzija għas-Sistema ta' Infurzar Lokali;**
- 2. Direttur Ġenerali (Kuntratti); u**
- 3. Kerber Security Limited (C-37233)**

**Il-Qorti:**

1. Dan hu appell li ressqet is-soċjeta` Executive Security Services Ltd fl-1 ta' Ġunju, 2022, wara deċiżjoni li ta l-Bord ta' Reviżjoni dwar Kuntratti Pubbliċi (minn hawn 'il quddiem imsejjaħ "il-Bord") fit-13 ta' Mejju, 2022 fil-każ referenza SPD2/2021/050 (każ numru 1721).

2. Dan il-każ jitratta sejha għall-offerti li ħarġet l-aġenzija intimata bl-isem “*framework agreement for the provisions of security services for the local enforcement system agency*”, għal liema sejha pparteċipat is-soċjeta` rikorrenti flimkien ma’ offerenti oħra. Is-soċjeta` rikorrenti ġiet mgħarrfa li hija kienet ġiet skwalifikata mis-sejha u l-kuntratt ġie mogħti lis-soċjeta` intimata Kerber Securities Ltd. L-iskwalifika seħħet peress illi s-soċjeta` rikorrenti ppreżentat dikjarazzjonijiet li ma kinux iffirmati. Is-soċjeta` rikorrenti ressqet appell għal quddiem il-Bord li b’deċiżjoni tat-13 ta’ Mejju, 2022, ċaħad l-oġġezzjoni tas-soċjeta` rikorrenti. Id-deċiżjoni tal-Bord hija s-segweni:

“Whereby, the Appellant contends that:

- a) The Contracting Authority in all five criterion, being A(A1)(a); A(A1)(b); A(A1)(c); C(C2)(f); C(C2)(g); specify the same reason for technical non-compliance. This being ‘*Criteria not met. Declaration must be signed. Unsigned declaration is not a declaration. The signatures required in bids for tenders are important because a tender is a form of a contract and the signature makes those parts of the tender binding*’.
- b) The Contracting Authority is making ‘post award’ criteria as if they are the same as those at ‘tendering stage’.
- c) Nowhere in the tender dossier was it a pre-requisite that signatures were a requirement.
- d) If one were to go through what the tender dossier listed in these criterion, nowhere is a signature mentioned.

This board also noted the Contracting Authority’s Reasoned Letter of Reply filed on 4<sup>th</sup> April 2022 and its verbal submission during the virtual hearing held on 10<sup>th</sup> May 2022, in that:

- a) The offer made by an economic operator is part of the contract and the signature is what makes it binding.
- b) The Contracting Authority would not be acting proportionately if it were to assume that such criteria are to be implemented if the economic operator is not binding himself through such signed declarations.
- c) These declarations fell under Note 3 hence no rectifications were possible.

This Board also noted the Preferred Bidder's Reasoned Letter of Reply filed on 19<sup>th</sup> April 2022 and its verbal submission during the virtual hearing held on 10<sup>th</sup> May 2022, in that:

- a) nowhere does the Appellant challenge the statement made by the Evaluation Committee in its Rejection Letter.
- b) The appellant in their very own Letter of Appeal, recognises the fact that the Contracting Authority requested such declarations to ascertain that certain parameters would be met by the economic operators.
- c) Without the necessary and relevant signature, the declaration is not binding on the economic operator.
- d) The criteria that made the Appellant's bid technically non-compliant were all listed as 'mandatory criteria' i.e. *'For Mandatory requirements, if the Declaration/Proof/List/Picture/Template (or any other information as requested in each criterion) is not provide or else it is not in line with the specified requirements, automatically a score of '0' shall be allotted and the bidder shall be disqualified'*. Hence, the Evaluation Committee's hands were tied and they were obliged to confirm a score of '0'. These also fell under Note 3.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, will consider Appellant's grievances as follows:

- a) This Board opines that the declarations requested in criteria A(A1)(a); A(A1)(b); A(A1)(c); C(C2)(f); C(C2)(g) are documents wherein the prospective bidder is confirming that the relevant parameters will indeed be provided and met. A declaration is not the same as a pre-prepared template or form where the Contracting Authority would provide guidance on what information is to be filled in, such as the requirement or not of a signature. Therefore, in the opinion of this Board an unsigned declaration is not a declaration.
- b) The argumentation brought forward by the Appellant that digitalisation has reduced the amount of paperwork does not impinge on the requirement of a signature. With today's technology, electronic signatures are very much readily available.
- c) Once it was decided that the declarations as provided by the appellant did not meet the requirements of the tender dossier, and considering that all these requirements are listed as 'Mandatory', then the evaluation committee had no other option than to disqualify the bid of the appellant as per page 11 of the tender dossier which stated *'For Mandatory requirements, if the Declaration/Proof/List/Picture/Template (or any other information as requested in each criterion) is not provide or else it is not in line with the specified requirements, automatically a score of '0' shall be allotted and the bidder shall be disqualified'*.

Hence, this Board does not uphold the Appellant's grievance.

**The Board,**

Having evaluated all the above and based on the above considerations, 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,
- c) Directs that the deposit paid by Appellant not to be reimbursed."

3. Is-soċjeta` Executive Security Services Ltd. issa qed tappella minn din id-deċiżjoni għal quddiem din il-Qorti u qed targumenta, fl-ewwel lok, li t-*tender dossier* imkien ma jgħid li d-dikjarazzjonijiet kellhom ikunu ffirmati, u, fit-tieni lok, f'kull każ, l-awtorita` kontraenti kellha ssejjaħ lill-istess soċjeta` issa appellanti biex tiffirmahom.

4. Issa li semgħet dak li kellhom xi jgħidu d-difensur tal-partijiet u wara li rat l-atti kollha tal-kawża u d-dokumenti esebiti, tinsab f'pożizzjoni li tgħaddi għas-sentenza tagħha;

Ikkunsidrat:

5. Illi dan hu appell li kellu jsir minħabba l-intransiġenza tal-kumitat evalwattiv u tal-Bord. Kieku dawn isegwu l-ġurisprudenza ta' din il-Qorti kien jigi ffrankat ħafna ħin lil kulħadd. Din il-Qorti sejra tagħmel referenza għas-sentenza ta' din l-istess Qorti li turi b'mod ċar kemm hu żbaljat l-argument tal-appellati. Fil-kawża "**PR20JV v. Id-Direttur Ġenerali tad-**

**Dipartiment tal-Kuntratti et**” deċiża fil-31 ta’ Awwissu, 2021, intqal hekk

fir-rigward:

- “13. Għandu raġun il-Bord ta’ Reviżjoni jqis illi dak id-dokument huwa parti tar-rabta kuntrattwali u għalhekk għandu jkun iffirmat bħala prova tal-inkorporazzjoni tiegħu fil-ftehim; ma huwiex biżżejjed li ssir referenza għalih f’dokument kuntrattwali ieħor għax il-firma hija l-prova li d-dokument iffirmat huwa dak li dwaru sar il-ftehim, u li dak id-dokument ma nbidilx sussegwentement.
14. Fejn il-qorti ma taqbilx mal-bord huwa fejn qal illi *“the tender evaluation committee could not ask the appellants to rectify their submission in order to add or change any details contained therein as this is accompanied by note 3”*. Il-firma kienet isservi biss biex tawtentika d-dokument u ma tibdel xejn mill-kontenut tiegħu; għalhekk ma titqiesx bħala “rettifika” tal-offerta għax l-offerta tibqa’ dik li kienet.
15. Dan l-aggravju għalhekk għandu jintlaqa’ fis-sens lin-nuqqas ta’ firma ma kellux iwassal *ipso facto* biex titwarrab l-offerta iżda l-appellant kellu jissejjaħ biex jiffirma d-dokument, u l-offerta titwarrab biss jekk l-appellant jibqa’ ma jiffirmax fiż-żmien li jingħatalu.”

6. Din il-Qorti ma hi sejra żżid xejn aktar!

Għaldaqstant, għar-raġunijiet premessi, tiddisponi mill-appell ta’ Executive Services Ltd. billi tilqa’ l-istess, tħassar u tikkancella d-deċiżjoni li ħa l-Bord ta’ Reviżjoni dwar il-Kuntratti Pubbliċi fit-13 ta’ Mejju, 2022, kif ukoll id-deċiżjoni tal-Awtorita` kompetenti relattiva għal dan il-każ, u tordna li l-offerta tas-socjeta` appellanti tiġi reintegrata fi proċess ta’ rivalwazzjoni ġdid, b’kumitat evalwattiv kompost mill-ġdid.

Id-depożitu mħallas mis-socjeta` appellanti biex setgħet tressaq oġġezzjoni quddiem l-imsemmi Bord għandu jintradd lura lilha.

L-ispejjeż ta' dan l-appell jitħallsu mit-tlett appellati *in solidum*.

Mark Chetcuti  
Prim Imħallef

Joseph R. Micallef  
Imħallef

Tonio Mallia  
Imħallef

Deputat Reġistratur  
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