



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, 20 ta' Marzu, 2023.

Numru 1

Appell numru 549/2022/1

Princess Operations Limited (C-86415)

v.

**L-Aġenzija għas-Servizzi tal-Qrati u d-Direttur
tal-Kuntratti**

1. Dan huwa appell ta' *Princess Operations Limited* ["*Princess*" jew "l-appellanti"] minn dik il-parti ta' deċiżjoni tat-8 ta' Novembru 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 sabet illi l-offerta finanzjarja tal-appellanti ma kinitx fattibbli u ordnat illi d-depożitu mħallas mill-appellanti biex setgħet tressaq oġġezzjoni quddiem l-istess bord ma tintraddx lilha. Il-fatti rilevanti huma dawn:
2. L-Aġenzija għas-Servizzi tal-Qrati ["l-aġenzija"] għamlet sejha għal offerti "*for the Lease of 48 Plug-in Hybrid Vehicles for the Members of the*

Judiciary”. Fost il-kondizzjonijiet tas-sejha taht *technical and professional ability* kien hemm dik li tgħid illi kull oblatur kellu jissottometti:

»List of principal supplies of a similar nature being leasing of cars during the years 2019 and 2020 and 2021, the minimum value of which must not be less than €1,000,000.00 in total for the quoted period«¹

3. *Princess* tefgħet offerta iżda l-kumitat tal-għażla warrab din l-offerta għax qiesha “*administratively non-compliant*” għal raġunijiet li fissirhom hekk:

»Following an exercise carried out by the evaluation committee related to the list of contracts provided by the bidder ... it emerged that the parameters of the tender in terms of eligibility requirements were not met. This exercise was done to determine whether the contracts listed by the bidder are of a similar nature as stipulated in article 5 (B)(c) of Section 1 of the tender document. The exercise was based on: the value of contracts, thus eliminating small value contracts from the list which are deemed not proportionate to the magnitude of this call for tenders; time duration of contracts, thus eliminating shorter contract periods from the list which are deemed not comparable to the requirements of this call for tenders; and a commensurate daily rates of the contracts. These tests concluded that the bidder did not have sufficient contracts of similar nature which meet the €1,000,000 threshold and was therefore deemed as being administratively non-compliant.«

4. *Princess* ressqet oġġezzjoni quddiem il-Bord ta’ Reviżjoni iżda l-bord bid-deċiżjoni tat-8 ta’ Novembru 2022 li minnha sar dan l-appell ċaħad l-oġġezzjoni u ordna illi d-depożitu mħallas minn *Princess* ma jintraddx lilha. Ir-raġunijiet għal din id-deċiżjoni ġew imfissra hekk:

»The board ... having noted the objection filed by *Princess Operations Limited* (hereinafter referred to as the Appellant) on 30th September 2022, refers to the claims made by the same Appellant ... whereby, the Appellant contends that:

»a) Tender Parameters Testing –

»The committee based its decision of non-compliance on 3 factors, namely: (a) that the value of the majority of the contracts submitted by the company were deemed “not proportionated to the magnitude of this call for tenders”; (b) the short term contracts (less than 1 year) submitted by the company were “not comparable to the requirements of this call for tenders”; (c) the

¹ Para. 5(B)(c) tal-*Instructions to Tenderers*

daily benchmark rate of less than €12.11 submitted by the company was deemed not realistic since the company would be “financially and operationally unable to meet the extent of such contractual obligations and requirements”.

»In examination of all the above-mentioned 3 factors, the committee has used as basis for its justification that the lists of suppliers provided by the company were in their majority not of “similar nature” as stipulated in article 5(B)(c) of Section 1 of the tender document.

»... the use of the criteria of “similar nature” applied by it is nowhere explained or described in the article quoted above as related to either the magnitude of the present tender or to the duration of over 1 year of the list of other contracts in the company’s history or to the daily rate applied by the company in its list of suppliers’ contracts.

»The term “supplies of a similar nature”, as expressed in the tender document, can only be deemed to relate to the tenderer’s history of car leasing contracts during the period from 2019 to 2021 and nothing else. Consequently if the committee had in mind to apply such restrictions or qualifications, such intention should have been expressed *a priori* in its tender document. Once such restrictions or qualifications were never mentioned in the tender document, the committee was not justified to apply them in their consideration of the company’s bid once such bid was within the parameter of the sum of €1,000,000 stipulated in the said article.

»Without prejudice to the above, the principle of magnitude of the present tender which the committee decided to unilaterally adopt in order to exclude the company’s contracts below the threshold of €10,000 does not hold logic as all car leasing contracts import the same obligations, conditions and exigencies which any bidder is in duty bound to observe whatever the amount of the contract. In such context what should have been relevant to the committee was to enquire from the company or examine its capability to perform the undertakings it was offering in its bid – something which the committee never required from the company as it was entitled to do in terms of note 2 of article 5(B)(c) of Section 1 of the tender document which entitled it to request “to either clarify, rectify any incorrect and/or incomplete documentation, and / or submit any missing documents within five (5) working days from notification”.

»Without prejudice to the above, the company submits that there is also no justifiable logic in the committee’s decision to rule out the company’s supply of contracts with a maximum duration of 1 year on the basis that such short term contracts “do not pose the same conditions and requirements of those long-term contracts”. From the records there does not exist any request by the committee to the company to exhibit a copy of its so called short-term contracts (as it was entitled to request under the said article 5(B)(c) 1) and consequently it was not in any position to presume that the company’s obligations and commitments under its short-term contracts was not commensurate to the same

onerous obligations which would apply to long-term contracts as envisaged by the tender in question.

»Without prejudice to the above, the company also contests the committee's decision/conclusion regarding the exclusion by the committee of the contracts in the company's list where the daily rate is below that of €12.11. Besides the fact that the tender document never mentions any minimum daily rate, the said document also never mentions that the committee would be excluding any list supplied by the company where the daily rate would be less than the said rate. In such event therefore, the committee was obliged, and indeed entitled (as per said article), to require the company to explain how it was able to operationally meet its obligations with such rates and not to simply presume its inability to do so and exclude such contracts from its evaluation. In such context, the company submits that, should the committee have required clarification on such issue, the company would have shown that its operation of roughly about 1,500 vehicles for car-rentals and leasing enables it to have insurance rates at preferential rates and to be able to apply different rates and costings in order to be able to quote daily rates which in the context of car leasing are better than those of its competitors in the market.

»In its decision the committee refers to its findings where it tables a list of the contracts supplied by the company. First of all the company wishes to observe that in the said findings, although the committee lists a total of 121 contracts supplied by the company, in actual fact the list supplied comprises 142 contracts. The total value of the contracts submitted by the company is €1,110,310.27 which amount is therefore compliant with the minimum of €1,000,000 stipulated as the threshold for the bid.

»b) Due Diligence Exercise –

»Under the due diligence exercise mentioned in the committee's decision, it states that 4 of the suppliers (Agency for the Welfare of Asylum Seekers, Wasteserv Malta Ltd, commissioner of Police and Malta Enterprise) were not supplied by the company. While this is technically correct since said contracts were contracted with Christian Borg, it should be noted that said Christian Borg is the ultimate sole shareholder of the company and, had the committee requested clarification, the company would have provided proof that, although the contracts were contracted with Christian Borg, the income was applied to the accounts of the company which is the reason why the company declared such contracts as its own. In any event, the total of such 4 contracts was circa €61,000 and, consequently, the deduction of such amount from the total value of contracts between 2019 and 2021 would still leave an amount of circa €1,049,000 - *i.e.* €49,000 above the minimum stipulated amount of €1,000,000.

»The committee also mention that the amounts of LESA and the OPM do not tally with the amounts stated. Had the committee requested verification about such issue, it would have resulted

that the discrepancy regarding LESA (€57,832 as opposed to €67,100 in the issued invoices) is €9,268 more while the difference between the quoted €25,267 and the actual €21,118 invoiced is €4,149 less. Consequently the calculation regarding the minimum stipulated would have resulted in €1,049,000 - €9,268 + €4,149 = €1,043,881 - an amount still in excess of the minimum stipulated and therefore compliant to the minimum tender requirement.

»This board also noted the contracting authority's reasoned letter of reply filed on 10th October 2022 and its verbal submission during the virtual hearing held on 3rd November 2022, in that:

»a) List of principal supplies of similar nature for a minimum value of €1,000,000 –

» Section 1 - Instruction to Tenderers, point 5(B)(c) - Technical and professional Ability, for this supply contract the following is being required "List of principal supplies of a similar nature being leasing of cars during the years 2019 and 2020 and 2021. The minimum value of which must not be less than €1,000,000.00 in total for the quoted period. This information is to be submitted online through the prescribed tender response format (tender structure)".

»In the evaluation of this administrative part of the tender, the evaluation committee deemed that in order to be able to make a comprehensive analysis a clarification be issued for the bidder to provide a list of contracts that make up the required list of principal supplies of similar nature for the sum indicated covering the targeted years.

»A rectification request was issued to the bidder to provide this list of principal supplies contracts including their contract value for each for the years 2019, 2020, and 2021. A reply was submitted including a list of 142 contracts. The list included client name, a start and end date and the contract value.

»The evaluation committee considered the data provided by the bidder meant to provide the necessary information to substantiate the required list of principal supplies of similar nature. The evaluation committee had therefore to analyse the submitted list as being in conformity with the requirements of the tender document in the sense that this list of supplies would be in line with the requirements under Section 1 - Instruction to Tenderers, point 5(B)(c):

»a. leasing of cars of a similar nature; and

»b. covering the years 2019, 2020 and 2021;

»c. the total of such list must not be less than €1,000,000.

»By applying these requirements to the list submitted the evaluation committee would not only be abiding by the tender document prescriptions but it would be applying the basic principles of public procurement of level-playing field and non-discrimination.

»In analysing point (b) and (c) above the evaluation committee had to rely on the declaration of the bidder according to his submissions under the rectification. However some reservations cropped up during the due diligence exercise as will be described further on. On the other hand, point (a) required some further elaboration by the evaluation committee in order to assess that the presented list refers to contracts that is similar to the tender scope. In this latter case the evaluation committee is duty bound to analyse the data as submitted by the bidder and any condition imposed by the tender document such as in this case the qualifier of the contracts being of similar nature, such qualifier need to be substantiated by the evaluation committee's scrutiny of the bid information. For this reason the evaluation committee devised three kinds of tests which could be carried out on the data as submitted by the bidder, for which in all three tests the bidder failed to satisfactory achieve a list of contracts for the value of at least €1,000,000.

»All the analysis carried out by the evaluation committee is conducive to the administrative requirement under Section 1 - Instruction to Tenderers, point 5(B)(c). The objective tests therefore (contract value, contract duration and daily rates) have been applied in a non-discriminatory fashion and in an equal level playing field among bidders manner. The evaluation committee is the responsible selection organ during evaluation of tenders and has to abide by the principle of self-limitation wherein the evaluation carried out has to be directly linked to the tender requirements and solely based on the tender criteria.

»In the opinion of the defendant, the tests applied by the evaluation committee are in line with the basic principle of public procurement of proportionality and their application has been carried out in proportion to the magnitude of this tender, to the duration of this tender and a daily rate prevalent for this tender process. All tests are in relation to the fulfilment of Section 1 - Instruction to Tenderers, point 5(B)(c), therefore the evaluation committee had every right due to its inherent nature to conduct such tests in order to reach a decision for the administrative part of the tender evaluation.

»The tests invoked for the analysis of the requirement under Section 1 - Instructions to Tenderers, point 5(B)(c) of the tender are sufficiently described in the letter sent to the unsuccessful bidder on the 20th September 2022. Therefore apart from being in line with public procurement regulations the evaluation committee did provide all justifications for its workings and therefore also in line with the principle of transparency.

»b) Due diligence exercise as per General Rules –

»With reference to the due diligence exercise which has been invoked through the application of article 16.2 of the General Rules Governing Tenders states that “evaluation committee reserves the right to verify the information and documentation provided, by contacting directly the respective clients mentioned by the tenderer”. After that the evaluation committee had targeted government contracts for this due diligence exercise, a

list of inaccuracies of the bid information emerged. This meant that the list of contract as submitted by the bidder may be prone to further inaccuracies which were not sampled by the evaluation committee. Having said this, the evaluation committee posed this finding as an added ground to the administrative non-compliance of the bidder, which in any case had not fulfilled the tender requirement as dealt by in the previous paragraphs of this reply.

»The findings of the due diligence exercise are fully explained in the letter to bidder of the 20th September 2022 and the extents of which are explained.

»The objector through this appeal procedure is trying to justify the results of the incongruent information found through this due diligence exercise. This is not acceptable and any additional information cannot be entertained at this stage. Moreover, there was no hinderance for the objector to 'come clean' *ab initio* during the rectification exercise at evaluation stage and provide the explanations to his own supplied information in the list of contracts. The additional information presented at appeal stage is inadmissible as it breaches the basic principles of public procurement such as transparency and level playing field among bidders. The application of the due diligence exercise was albeit envisaged in the General Rules governing Tendering also in line with the basic principles of public procurement.

»In this instance the evaluation committee could not opt for a further rectification of the submission since it would involve a change in offer following a first time round rectification exercise. This is not possible under the tender document. In these circumstances the evaluation Ccommittee had little leeway and its conclusions are based purely on the submitted information by the bidder. Any derogation from this conduct would only result in a breach of the basic principles of public procurement.

»This board also noted the DoC's reasoned letter of reply filed on 5th October 2022 and its verbal submission during the virtual hearing held on 3rd November 2022, in that:

»a)

»b)the DoC submits that the evaluation of tender offers and decisions issued thereupon is governed by the procedure laid down in rule 16 of the General Rules Governing Tenders and *inter alia* regulations 53 and 232 of the Public Procurement Regulations, 2016. Furthermore, since the award criteria is based on the best price quality ratio, the tender evaluation committee appointed by the contracting authority is vested with discretion.

»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 witness duly summoned, will now consider appellant's grievances.

»a) The main bone of contention of this appeal revolves around the wording used in Technical and Professional Ability criteria as per Section 1 – Instruction to Tenderers, paragraph 5(B)(c) of the

tender dossier which states “List of principal supplies of similar nature of a similar nature (*sic*) being leasing of cars during the years 2019 and 2020 and 2021. The minimum value of which must not be less than €1,000,000”.

- »b) Therefore, what needs to be ascertained is whether the evaluation committee ‘exceeded’ its powers, duties and responsibilities by the way it went through the evaluation process.
- »c) By her own words, Ms Laura Desira, under oath, confirmed that the three (3) tests ‘used’ by the evaluation committee to assess this specific administrative criteria were duly carried out on the bids of all bidders / economic operators taking part in the tender process.
- » d) Moreover, this Board also refers to the explanations provided by Ms Laura Desira, under oath, which are also re-produced in writing in the Letter of Rejection dated 19th August 2022, whereby the rationale used and adopted when formulating these tests is, in the opinion of this Board, reasonable and sound. One example is the figure of €10,000 adopted for ‘Test 1’ whereby only the contracts provided by Appellant exceeding €10,000 were deemed ‘relevant’ and ‘of a similar nature’ to this tender procedure. This Board in fact considers this €10,000 figure to be somewhat extremely conservative, considering that the estimated procurement value amounts to €3,155,328. It is also in line with public procurement whereby, for amount of less than this figure, no open tender procedure is required. The rationales used in ‘Test 2’ and ‘Test 3’ are also deemed to be reasonable and conservative.
- »e) This board also notes that the evaluation committee correctly made use of tools available to it, *i.e.* clarifications and rectifications, to obtain further information from the economic operator, now Appellant on these criteria.
- »f) Therefore, this board opines that, when considering all of the above, the evaluation committee when adopting these three (3) tests still managed to keep a level playing field between all economic operators, while also acting in a proportionate manner in line with the principle of self-limitation kept intact.
- »g) This board notes that the grievance entitled ‘Due Diligence Exercise’ is deemed to be irrelevant following the paragraphs above, as the Appellant company would still not pass the requirements of criteria 5(B)(c) of Section 1 of the tender document.

»Hence, this Board does not uphold the Appellant’s grievances.

»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 recommending the cancellation of the tender,
- »c) directs that the deposit paid by Appellant not to be reimbursed.«

5. *Princess* appellat b'rikors tat-28 ta' Novembru 2022. L-aġenzija wiegħbet fl-20 ta' Novembru 2022 u d-Dipartiment tal-Kuntratti wiegħeb fl-20 ta' Diċembru 2022.

6. L-aggravji tal-appell ġew imfissra hekk:

»Is-soċjetà esponenti f'assitha aggravata minn dik il-parti tad-deċiżjoni fejn il-Bord ta' Revizjoni dwar il-Kuntratti Pubbliċi (hawn isfel riferut b'hal "Il-Bord") iddeċieda li l-kumitat kien korrett fl-applikazzjoni minnu ta' dak imsejjaħ it-tielet ^{tes²} u minn dik il-parti fejn il-Bord iddeċieda li d-depożitu m'hallas għall-appell li sar quddiemha ma għandux jiġi rifiuż lill-istess soċjetà appellanti.

»Kif jirriżulta mill-istess deċiżjoni appellata mogħtija fit-8 ta' Novembru 2022, sabiex is-soċjetà esponenti intavolat l-appell quddiem il-Bord hija ddepożitat is-somma ta' f'mistax-il elf seba' mija, sitta u sebgħin euro u erbgha u sittin ċenteżmu (€15,776.64).

»L-appell quddiem il-Bord kien dirett dwar kif kien wasal il-kumitat sabiex jiskwalifika l-offerta tas-soċjetà appellanti meta kkunsidra li (a) il-valur tal-maġġoranza tal-kuntratti fil-lista provduta mis-soċjetà appellanti tqiesu "*not proportionate to the magnitude of this call for tenders*"; (b) il-kuntratti għal termini ta' inqas minn sena fil-lista ta' kuntratti provduti mis-soċjetà esponenti tqiesu "*not comparable to the requirements of this call for tenders*"; u (ċ) ir-rata ġornaliera ta' tna-x-il euro u f'dax-il ċenteżmu (€12.11) offruta mis-soċjetà esponenti tqieset b'hal waħda mhux realistika għaliex b'tali rata l-kumpanija offerenti kienet tispicca "*financially and operationally unable to meet the extent of such contractual obligations and requirements*".

»Dwar l-evalwazzjoni tal-kumitat li wassluha sabiex tiehu d-deċiżjonijiet imsemmija fis-subparagrafi (a) u (b) tal-paragrafu preċedenti, is-soċjetà esponenti tixtieq tosserva li fid-dokument tat-tender l-unika gwida li ngħatat lill-offerenti kienet is-segħenti:

»"Section 1 - Instruction to Tenderers, point 5(B)(c) - Technical and professional Ability, for this supply contract the following is being required "List of principal supplies of a similar nature being leasing of cars during the years 2019 and 2020 and 2021. The minimum value of which must not be less than €1,000,000.00 in total for the quoted period. This information is to be submitted online through the prescribed tender response format (tender structure)"

»Mill-qari ta' dawn l-struzzjonijiet ma hemm imkien indikat li l-lista ta' kuntratti li kellu jissottometti l-offerent (a) ma kellhiex tinkludi kuntratti ta' kiri li l-valur tagħhom ma kienx jissupera l-għaxart elef euro (€10,000); u (b) ma kellhiex tinkludi kuntratti ta' kiri li kienu ngħataw għal massimu ta' sena. Tali limitazzjonijiet ġew applikati għall-ewwel darba mill-kumitat waqt l-eżami tiegħu tal-offerti magħmula fejn għażel

² "Daily rates"

li jinterpretata il-frazi “*similar nature*” billi applika l-parametri fuq imsem-mija.

»Il-Bord fid-deċiżjoni tiegħu wasal għall-konlużjoni li l-kumitat “*when adopting these three (3) tests still managed to keep a level playing field between all economic operators, while also acting in a proportionate manner in line with the principle of self-limitation kept intact*”. Is-soċjetà esponenti għalkemm mhijiex qegħda tappella mid-deċiżjoni tal-Bord li qies korrett l-eżami tal-kumitat dwar l-ewwel żewġ tests, però tissottometti li l-bord ma kellux iqis li l-kumitat kien ġustifikat jew korrett li jidhol jeżamina r-rata ta' kuljum ta' €12.11 li offriet is-soċjetà esponenti – dak imsejjah it-test 3. F'dan il-kuntest is-soċjetà esponenti tagħmel riferenza għas-sentenza mogħtija minn din il-qorti fis-26 ta' Ottubru 2022 fil-kawża fl-ismijiet Koperattiva Għawdxija tal-Indafa Pubblika Limitata v. (i) Kunsill Reġjonali Għawdex (ii) Dipartiment tal-Kuntratti³ fejn ġie osservat:

»“Mhux kompitu tal-awtorità kontraenti tidhol fid-dettal u tivverifika f'istadju tal-evalwar tal-offerta jekk l-oblaturi jistgħux jiffinanzjaw il-prestazzjoni tal-kuntratt. L-importanti hu li ssir dikjarazzjoni f'dan is-sens, bil-konsegwenzi għal min iqarraq bl-awtorità, u jforni “*a statement by a recognised bank or any licensed credit institution certifying such credit facilities*”. Ovvjament, min jieħu l-kuntratt u jsir kuntrattur, jintrabat b'*performance condition* li biha jintrabat għat-tweġġ tal-kuntratt kif stipulat fl-istess kuntratt.”

»Għalkemm dan ma hu ser ibiddel xejn mill-fatt li l-konferma tal-Bord dwar l-ewwel żewġ tests mhumiex ser ibiddu l-konkluzjoni aħħarija dwar *non-compliance*, tali l-qiegħ tal-appell fuq dan il-punt kif ukoll il-konsiderazzjoni tal-Bord li bil mod kif ġie redatt id-dokument tat-*tender* u bil-frazi “*list of supplies of similar nature*”, dan seta'z svijja lill-offerenti, kif fil-fatt ġara fir-rigward tas-soċjetà esponenti u għalhekk kellu żgur iwassal lill-Bord sabiex jikkonkludi li d-depożitu preżentat mal-appell lil Bord kellu jiġi rifiuż.

»Għaldaqstant is-soċjetà esponenti ... titlob li din il-qorti jogħgobha tirriforma s-sentenza appellata billi tirrevoka d-deċiżjoni tal-Bord ta' Reviżjoni dwar il-Kuntratti Pubbliċi mogħtija fit-8 ta' Novembru 2022 f'dik il-parti fejn il-Bord iddecieda li l-kumitat ta' evalwazzjoni kien korrett fl-adozzjoni tat-tielet test kif ukoll billi tiddeciedi li d-depożitu ta' ħmistax-il elf seba' mija sitta u sebgħin euro u erbgħa u sittin ċenteżmu (€15,776.64) imhallas mis-soċjetà esponenti għandu jiġi rifiuż lura lilha *in toto*, jew sussidjarjament *in parte*.

7. IL-appellanti ma hijiex tikkontesta r-raġonevolezza tal-eskluzjoni ta' kuntratti ta' anqas minn sena jew anqas minn għaxart elef euro (€10,000), u lanqas li minħabba f'hekk l-offerta tagħha titwarrab; qiegħda biss tgħid illi dawn iż-żewġ kriterji kellhom ikunu mgħarrfa minn qabel, u mhux jinholqu mill-kumitat tal-għażla waqt l-evalwazzjoni wara li jkunu ntefgħu l-offerti.

³ »Rikors numru 369/22/1 «

Għalhekk l-oġġezzjoni tagħha dwar dawn il-kriterji ma kinitx waħda fiergħa li tiġġustifika t-telf tad-depożitu.

8. Huwa minnu illi dawn il-kriterji kellhom ikunu mgħarrfa lill-oblaturi minn qabel u mhux wara l-evalwazzjoni. Madankollu huwa minnu wkoll illi kirjiet ta' ftit jiem jew ftit ġimgħat ma jistgħu b'ebda mod jitqiesu li huma "of a similar nature" bħall-kuntratt li għalih saret is-sejħa. Dan kellu jkun evidenti mill-bidu. Fil-fatt, kif rajna, l-appellanti ma hijiex qiegħda tikkontesta r-raġonevolezza tal-kriterji, tant illi ma hijiex qiegħda tappella mid-deċiżjoni li titwarrab l-offerta. Iżda din ir-realizzazzjoni messha, għall-istess raġunijiet li ġietha issa, tiġiha wkoll qabel ma ressqet l-oġġezzjoni quddiem il-Bord ta' Revizjoni u mhux tidhol għall-ispejjeż ta' proċess illi hija stess taf illi ma jstax ikollu eżitu pożitiv għaliha.
9. Ladarba l-offerta tal-appellanti kellha titwarrab fuq l-ewwel żewġ kriterji, ma jibqax utli li nqisu wkoll it-tielet wieħed, għax, ukoll jekk għandha raġun fuq dan, xorta kienet taf li l-offerta tagħha ma setgħetx tintlaqa' u li għalxejn toġġezzjona quddiem il-Bord ta' Revizjoni.
10. Għal dawn ir-raġunijiet il-qorti tiċhad l-appell u tikkonferma d-deċiżjoni appellata. L-ispejjeż tal-appell tħallashom l-appellanti *Princess Operations Limited*.

Mark Chetcuti
Prim Imħallef

Giannino Caruana Demajo
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Deputat Reġistratur
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