



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

GINO CAMILLERI

Seduta tat-28 ta' Marzu, 2014

Appell Civili Numru. 30/2012

J.F. Security and Consultancy Services Limited (C13768)

vs

**Dipartiment tal-Kuntratti u il-Kulleġġ Malti ta' l-Arti, Xjenzi u
Teknologija**

Il-Qorti

Rat li l-Public Contracts Review Board ippronunzja s-segwenti sentenza bl-Ingiliz fil-kaz numru 416 fl-ismijiet premissi rigwardanti t-“Tender for the Provision of Security Services to all MCAST sites”:-

“This call for tenders was published in the Government Gazette on the 28th October 2011. The closing date for this call – which attracted no fewer than six (6) tenderers - with an estimated budget of € 360,000 was the 20th December 2011.

JF Security and Consultancy Services Ltd filed an objection on the 30th March 2012 against the decision of the Contracts Department to recommend the award of the tender to Kavallier Security Services Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr. Carmel Esposito and Mr Joseph Croker as members convened a public hearing on Monday 21st May, 2012 to discuss this objection.

Present for the hearing:

JF Security and Consultancy Services Ltd

<i>Dr Adrian Delia</i>	<i>Legal Representative</i>
<i>Not. Matthew Paris</i>	<i>Representative</i>
<i>Mr Peter Formosa</i>	<i>Representative</i>
<i>Mr Matthew Formosa</i>	<i>Representative</i>

Global Security Services Ltd

<i>Dr Jan Karl Farrugia</i>	<i>Legal Representative</i>
<i>Mr Mario Cardona</i>	<i>Representative</i>
<i>Ms Patricia Borg</i>	<i>Representative</i>

Kavallier Security Services Ltd

<i>Dr Paul Farrugia</i>	<i>Legal Representative</i>
<i>Mr Joseph Debono</i>	<i>Representative</i>

Malta College of Arts, Science and Technology

Dr Peter Fenech

Legal Representative

Evaluation Board

Mr Oscar Borg

Chairman

Mr Stephen Vella

Member

Mr Mr Saviour Grech

Member

Mr Stephen Caruana

Member

Contracts Department

Ms Joelle Mifsud Bonnici

After the Chairman's brief introduction, the appellant company's representative was invited to explain the motives of his company's objection.

Dr Adrian Delia, legal advisor of JF Security & Consultancy Services Ltd, the appellant company, submitted that:-

- i. by letter dated 23rd March 2012, the Department of Contracts had informed his client that (a) his offer was not successful because it was not the cheapest offer and (b) the tender was recommended for award to Kavallier Security Services Ltd as the cheapest priced offer satisfying the administrative and technical criteria;*
- ii. it is his client company's contention that of all the tenderers participating in this tendering process, its offer was the cheapest permissible at law;*
- iii. para 3 of Form 1 'Statement on Conditions of Employment' of Volume 1 Section 4 (page 21 of the tender document) stated that:*

"MCAST reserves the right not to award the bid to the cheapest tenderer if, after a verification exercise, it transpires that the hourly rate proposed to be paid by the bidder to its employees either is less than the

minimum wage when including in it the payment for pro rata benefits and entitlements or the hourly basic rate does not include payment for pro rata benefits and entitlements”;

and

- iv. *it was correct that the recommended offer of €5.90 and the cheapest offer of €5.60 were both cheaper than his client's offer of €6.31 but it was equally correct to declare that those offers were below the minimum hourly rate established by legislation.*

Dr Peter Fenech, legal representative of the Malta College of Arts, Science and Technology, submitted that:-

- a. *one had to keep in view a number of variables in the computation of the hourly rate, e.g. the engagement of full-timers or part-timers, sub-contracting and the like;*
- b. *the contracting authority deemed that the responsibility to ensure that employees were paid their wages according to legislation rested with the employer and not with the contracting authority and the public entity that was charged with that supervision was the Department of Industrial and Employment Relations;*
- c. *the contracting authority would, however, terminate the contract should it result to it that the contractor was not meeting the legal obligations towards the employees in the payment of wages – Form 1 at page 21;*
- d. *the appellant company was not correct to state that his client's offer at €6.31 was the cheapest offer allowed by regulations because, according to the workings undertaken by the adjudicating board, the following data emerged the year basis 2012:*

€

3.95 – i.e. €158.11 minimum wage per week which included vacation leave;

0.25 – €512.46 annual bonuses

0.39 – €822.17 National Insurance Contributions (NI) per annum

4.59 or €9,556.35/52/40 = €4.59

- e. *on the basis of the 2012 minimum wage, which included the annual bonuses and NI, the resulting pro rata minimum hourly rate was €4.95, and, as a consequence, the recommended offer of €5.90 was above the minimum permissible by legislation.*

Dr Paul Farrugia, legal advisor of Kavallieri Security Services Ltd, the recommended tenderer, submitted that:-

- i. *at appeal stage one had to stick to the documentation which was available to the adjudicating board and the provision of fresh documentation was inadmissible at that stage;*
- ii. *in its letter of objection the appellant company simply declared that its offer was not compliant but did not indicate in which manner the recommended offer of €5.90 was not compliant;*
- iii. *the adjudicating board based its workings on the 2012 minimum wage whereas the basis year should have been 2011, which would be more favourable to his client's case, besides, he argued that the adjudicating board went beyond its call of duty in going into these calculations.*

Dr Delia offered the following explanations:-

- i. *whilst it was correct to state that it was the responsibility of the tenderer to ensure that labour legislation was adhered to as per tenderer's statement at Form 1, Volume 1, Section 4 (page 21), yet, if it would result to the contracting authority that the quoted hourly rates did not cover the minimum requirements for the payment of wages to employees then the contracting authority reserved the right to reject those offers;*
- ii. *one had to establish the minimum hourly rate according to regulations applicable for 2011 - the closing date of this call for tenders was December 2011 - which amounted to €5.94 broken down as follows:-*

*€
3.84 - basic rate
0.35 – vacation leave*

0.25 – statutory bonuses
0.21 – public holidays
0.38 – national insurance
5.03
0.91 – VAT
5.94

iii. *the comparable applicable hourly minimum rate for 2012 was €5.19 and, including VAT, €6.12;*

and

iv. *his client stood by these workings and, if need be, the Department for Industrial and Employment Relations could be asked to either confirm or dismiss them*

Dr Peter Fenech remarked that:-

a. *the workings of the appellant company basically matched those of the contracting authority except for the inclusion of public holidays and vacation leave;*

b. *with regard to vacation leave he insisted that that was already included in the basic rate whereas he had to see what the pertinent legal notice provided for with regard to public holidays;*

and

c. *whilst, during the adjudication process, the contracting authority carried out a prima facie analysis, yet it was up to the employer to observe labour legislation because there were a number of variables at play, for example commercial risks and economies of scale.*

Dr Delia put forward the following arguments:-

i. *the workings undertaken by the contracting authority took into account the wages of an employee as if that employee was on secondment with the contracting authority by dividing the annual wages of €9,556.35 by 52 weeks*

and by 40 hours giving an hourly rate of €4.59 thus excluding vacation leave and public holidays which, in the computation of the hourly rate, one had to take them into account since the contractor would have to provide a substitute whenever that employee would be on vacation leave;

- ii. *the contracting authority was requesting the hourly rate and not the services of an employee on secondment;*
- iii. *a cursory look at the 'Financial Schedule' one would note 6 offers ranging from €5.60 to €11.80 per hour and all 6 bidders were experienced firms providing security services;*
- iv. *it was not up to the contracting authority to go into the profit margin of the bidders but since one was dealing with public procurement then the minimum wage hourly rate established by law had to be respected;*
- v. *the items being contested were whether or not to include vacation leave and public holidays in the minimum wage hourly rate since the contracting authority considered only the annual cost of an employee on the minimum wage whereas his client's workings included also the cost of the employee's substitute whenever the employee would be on vacation leave or on public holidays especially once this contract called for a 24x7 services;*
- vi. *the call for tenders requested the hourly rate and not the secondment of employees;*
and
- vii. *as far as public procurement was concerned, a public entity should not award a tender at a rate below that establish by law.*

Dr Paul Farrugia pointed out that:-

- a. *the statement signed by the tenderer in Form 1 of Volume 1 Section 4 concerned the company's commitment to pay wages to its employees according to labour regulations in force so much so that para. 3 referred to 'the hourly rate proposed to be paid by the bidder to its employees' but did not concern the hourly rate that the bidder would charge the contracting authority and so this*

form referred to the relationship between the bidder and his employees not between the bidder and the contracting authority;

- b. if a tenderer undertook to abide by labour regulations in the payment of wages to its employees then the tenderer was compliant according to the tender document;*
 - c. the rate offered by the bidder to the contracting authority had nothing to do with the bidding company's undertaking to pay its employees according to statutory rates as per Form 1 in Volume 1 Section 4;*
 - d. at no point did the tender document require the contracting authority to go into the details of the hourly rate payable by the tenderer to its employees;*
 - e. whilst the fact that one was taking 2011 as the basis year to arrive at the hourly rate was itself defective because this was a 3 year contract and the minimum wage could increase in the next 3 year period, yet no allowance was being made to cover such likely wage increases as the bidder was bound by the price offered;*
- and*
- f. such variables as future wage increases were risks taken by the bidder when submitting the company's offer which offer was binding for the duration of the contract period.*

Dr Fenech pointed out that (a) it was very difficult to work out a rate as a benchmark for such a contract given the number of variables at play and (b) the various arguments put forward during the hearing were quite valid and could be included in the equation and that one could also make an allowance for the number of days that an employee could be on sick leave or for other such entitlements during which, the contractor would have to provide a substitute.

Dr Delia on his part:-

- i. *shared the concerns raised by the contracting authority but added that once the contracting authority or the Public Contracts Review Board detected from the very beginning that the hourly rates quoted by the bidders were in violation of labour laws, then they were entitled, or were even obliged, to take action at tender evaluation stage;*
- ii. *amendments had recently been introduced so as to prevent 'employees' from being registered as self-employed unless they satisfy certain criteria;*
and
- iii. *requested the Public Contracts Review Board to seek a confirmation from the Department of Industrial and Employment Relations, especially with regard to the inclusion of vacation leave and public holidays in the computation of the minimum hourly wage rate in connection with a 24x7 contract*

The Chairman Public Contracts Review Board remarked that:-

- a. *whilst in the past the Public Contracts Review Board had taken the stand in similar instances that it was the responsibility of the contractor to see to it that he observed labour legislation vis-a-vis the payment of wages to one's employees, with the Industrial and Employment Department exercising its supervisory role in that respect, yet, certain circumstances were emerging which necessitated a review of that stand so as to at least safeguard the minimum wage standard;*

and
- b. *one should not eliminate the commercial risk taken by bidders but, then again, the tender document itself seemed to condition, to a certain extent, the commercial risk by linking it to the observance of labour legislation, namely the commercial risk should come into play with the departing point being the minimum wage standard;*

At this point the Public Contracts Review Board conceded a few days for JF Security and Consultancy Services Ltd to obtain from the Industrial and Employment Relations Department a confirmation of the breakdown of the 2011 minimum wage hourly rate.

At the point of drawing up this report no such confirmation was forthcoming from JF Security and Consultancy Services Ltd.

Dr Paul Farrugia expressed his objection to the provision of additional documentation at appeal stage because at that stage one had to review what had already been submitted by the bidders, which evidence was at the disposal of the adjudicating board during the evaluation process.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their 'letter of objection' dated 1st March 2012 and also through their verbal submissions presented during the hearing held on the 21st May, 2012, had objected to the decision taken by the pertinent authorities;*
- having noted all of the appellant company's representative's claims and observations, particularly, the references made to the fact that (a) by letter dated 23rd March 2012, the Department of Contracts had informed the appellant company that (1) its offer was not successful because it was not the cheapest offer and (2) the tender was recommended for award to Kavallier Security Services Ltd as the cheapest priced offer satisfying the administrative and technical criteria, (b) it is the appellant company's contention that of all the tenderers participating in this tendering process, its offer was the cheapest permissible at law, (c) para 3 of Form 1 'Statement on Conditions of Employment' of Volume 1 Section 4 (page 21 of the tender document) stated that "MCAST reserves the right not to award the bid to the cheapest tenderer if, after a verification exercise, it transpires that the hourly rate proposed to be paid by the bidder to its employees either is less than the minimum wage when including in it the payment for pro rata benefits and entitlements or the hourly basic rate does not include payment for pro rata benefits and entitlements", (d) it was correct that the recommended offer of €5.90 and the cheapest offer of €5.60 were both cheaper than the appellant company's offer of €6.31 but it was equally correct to declare that those offers were below the minimum hourly rate established by legislation, (e) whilst it was correct to state that it was the responsibility of the tenderer to ensure that labour legislation was adhered to as per tenderer's statement at Form 1, Volume 1, Section 4 (page 21), yet, if it would result to the contracting authority that the quoted hourly rates did not cover the minimum requirements for the payment of wages to employees then the contracting authority reserved the right to reject those offers, (f) one had to*

establish the minimum hourly rate according to regulations applicable for 2011 - the closing date of this call for tenders was December 2011 - which amounted to €5.94, (g) the comparable applicable hourly minimum rate for 2012 was €5.19 and, including VAT, €6.12, (h) the workings undertaken by the contracting authority took into account the wages of an employee as if that employee was on secondment with the contracting authority by dividing the annual wages of €9,556.35 by 52 weeks and by 40 hours giving an hourly rate of €4.59 thus excluding vacation leave and public holidays which, in the computation of the hourly rate, one had to take them into account since the contractor would have to provide a substitute whenever that employee would be on vacation leave, (i) the contracting authority was requesting the hourly rate and not the services of an employee on secondment, (j) a cursory look at the 'Financial Schedule' one would note 6 offers ranging from €5.60 to €11.80 per hour and all 6 bidders were experienced firms providing security services, (k) it was not up to the contracting authority to go into the profit margin of the bidders but since one was dealing with public procurement then the minimum wage hourly rate established by law had to be respected, (l) the items being contested were whether or not to include vacation leave and public holidays in the minimum wage hourly rate since the contracting authority considered only the annual cost of an employee on the minimum wage whereas the appellant company's workings included also the cost of the employee's substitute whenever the employee would be on vacation leave or on public holidays especially once this contract called for a 24x7 services, (m) the call for tenders requested the hourly rate and not the secondment of employees and (n) as far as public procurement was concerned, a public entity should not award a tender at a rate below that establish by law;

- *having considered the contracting authority's representatives' reference to the fact that (a) one had to keep in view a number of variables in the computation of the hourly rate, e.g. the engagement of full-timers or part-timers, sub-contracting and the like, (b) the contracting authority deemed that the responsibility to ensure that employees were paid their wages according to legislation rested with the employer and not with the contracting authority and the public entity that was charged with that supervision was the Department of Industrial and Employment Relations, (c) the contracting authority would, however, terminate the contract should it result to it that the contractor was not meeting the legal obligations towards the employees in the payment of wages – Form 1 at page 21, (d) the appellant company was not correct to state that his client's offer at €6.31 was the cheapest offer allowed by regulations, (e) on the basis of the 2012 minimum wage, which included the annual bonuses and NI, the resulting pro rata minimum hourly rate was €4.95, and, as a consequence, the recommended offer of €5.90 was above the minimum permissible by legislation, (f) the workings of the appellant company basically matched those of the contracting authority except for the inclusion of public holidays and vacation leave, (g) with regard to vacation leave that was already included in the basic rate whereas one had to see what the pertinent legal notice provided for with regard to public holidays, (h) whilst, during the adjudication process, the contracting authority carried out a prima facie analysis, yet it was up to the employer to*

observe labour legislation because there were a number of variables at play, for example commercial risks and economies of scale, (i) once the contracting authority or the Public Contracts Review Board detected from the very beginning that the hourly rates quoted by the bidders were in violation of labour laws, then they were entitled, or were even obliged, to take action at tender evaluation stage and (j) amendments had recently been introduced so as to prevent 'employees' from being registered as self-employed unless they satisfy certain criteria;

- *having considered the recommended tenderer's representatives' reference to the fact that (a) at appeal stage one had to stick to the documentation which was available to the adjudicating board and the provision of fresh documentation was inadmissible at that stage, (b) in its letter of objection the appellant company simply declared that its offer was not compliant but did not indicate in which manner the recommended offer of €5.90 was not compliant, (c) the adjudicating board based its workings on the 2012 minimum wage whereas the basis year should have been 2011, which would have been more favourable to the recommended tenderer's case, (d) the adjudicating board went beyond its call of duty in going into these calculations, (e) the statement signed by the tenderer in Form 1 of Volume 1 Section 4 concerned the company's commitment to pay wages to its employees according to labour regulations in force so much so that para. 3 referred to 'the hourly rate proposed to be paid by the bidder to its employees' but did not concern the hourly rate that the bidder would charge the contracting authority and so this form referred to the relationship between the bidder and his employees not between the bidder and the contracting authority, (f) if a tenderer undertook to abide by labour regulations in the payment of wages to its employees then the tenderer was compliant according to the tender document, (g) the rate offered by the bidder to the contracting authority had nothing to do with the bidding company's undertaking to pay its employees according to statutory rates as per Form 1 in Volume 1 Section 4, (h) at no point did the tender document require the contracting authority to go into the details of the hourly rate payable by the tenderer to its employees, (i) whilst the fact that one was taking 2011 as the basis year to arrive at the hourly rate was itself defective because this was a 3 year contract and the minimum wage could increase in the next 3 year period, yet no allowance was being made to cover such likely wage increases as the bidder was bound by the price offered, (j) such variables as future wage increases were risks taken by the bidder when submitting the company's offer which offer was binding for the duration of the contract period and (k) one could not but express one's objection to the provision of additional documentation at appeal stage because at that stage one had to review what had already been submitted by the bidders, which evidence was at the disposal of the adjudicating board during the evaluation process,*

reached the following conclusions, namely:

1. *The Public Contracts Review Board opines that whilst one should not eliminate the commercial risk taken by bidders, yet, the tender document itself seemed to*

condition, to a certain extent, the commercial risk by linking it to the observance of labour legislation and, as a consequence, the commercial risk should come into play with the departing point being the minimum wage standard. This Board contends that the responsibility to ensure that employees were paid their wages according to legislation rested with the employer and not with the contracting authority and the public entity that was charged with that supervision was the Department of Industrial and Employment Relations.

- 2. The Public Contracts Review Board agrees with the argument raised by the recommended tenderer, namely that the statement signed by the tenderer in Form 1 of Volume 1 Section 4 concerned the company's commitment to pay wages to its employees according to labour regulations in force so much so that para. 3 referred to 'the hourly rate proposed to be paid by the bidder to its employees' but did not concern the hourly rate that the bidder would charge the contracting authority and so this form referred to the relationship between the bidder and his employees not between the bidder and the contracting authority where, inter alia, the terms submitted by a tenderer could include other variables such as risks and economies of scale.*
- 3. This Board also agrees with the fact that if a tenderer undertook to abide by labour regulations in the payment of wages to its employees then the tenderer was compliant according to the tender document.*
- 4. This Board acknowledges the fact that at no point did the tender document require the contracting authority to go into the details of the hourly rate payable by the tenderer to its employees.*

In view of the above, this Board finds against the appellant company and recommends that the deposit paid by the latter should not be reimbursed."

Rat li s-socjeta' J.F. Security and Consultancy Services Limited (C 13768) hasset ruhha aggravata bl-imsemmija sentenza u ghalhekk interponit appell minnha quddiem din il-Qorti.

Rat ir-rikors tal-appell tal-imsemmija socjeta' appellanti J.F. Security and Consultancy Services Limited fejn gie premiss:-

- 1. Ili l-appellant de quo jiggstixxi kumpanija bis-sede taghha gewwa Malta li inter alia tipprovdi servizzi ta' sigurta, kif ukoll servizzi ohrajn li huma lkoll relatati.**

2. Illi l-istess appellant, flimkien ma' diversi offerenti ohra, issottometta l-proposta tiegħu għall-kuntratt hekk imsejjah - "Tender for the provision of Security Services to all MCAST Sites – CT/2169/011" (minn hawn il-quddiem "l-Offerta"),

Bil-hsieb li eventwalment jibda jipprovdi s-servizzi rikjesti fis-siti tal-Kulleġġ Malti ta' l-Arti, Xjenza u Teknologija, wara sejha pubblika għall-offerti mahruga mid-dipartiment tal-kuntratti nhar it-28 ta' Ottubru 2011 (minn hawn il-quddiem "Is-Sejha").

3. Illi fit-23 ta' Marzu 2012 l-appellanti gew notifikati permezz ta' ittra mid-dipartiment tal-kuntratti li gew esklużi mill-process peress li - "...the tender submitted by you was not successful as it was not the cheapest offer..."(kopja ta' din l-ittra qed tigi hawn annessa bhala "Doc 1").
4. Illi dan wassal lill-kumpanija appellanti sabiex tintavola appell quddiem il-Bord ta' Revizjoni dwar Kuntratti Pubblici (minn hawn il-quddiem "il-Bord") nhar it-30 ta' Marzu 2012, fejn intalab sabiex jagħmel ezami mill-gdid u dettaljat tar-ragunijiet migħjuba mill-awtorita kontraenti għat-twarrib tal-offerta koncernata, in dana ai termini tal-avviz legali 296 ta' 2010 (kopja ta' dan qed tigi hawn annessa u mmarkata bhala "Doc 2").
5. Illi l-Bord fl-4 ta' Gunju 2012 ta' decizjoni (kopja ta' dan qed tigi hawn annessa u mmarkata bhala "Doc 3"), liema giet notifikata nhar it-28 ta' Gunju 2012, mill-appell sottomess mill-appellanti fejn wara li l-istess Bord dahal fil-mertu ikkonkluda li - "... this Board finds against the appellant company and recommends that the deposit paid by the latter should not be reimbursed".
6. Illi d-decizjoni tal-Bord qed tigi appellata permezz ta' dan ir-rikors, liema appell qed jigi intavolat fil-hin koncess mill-ligi, peress li l-appellant iħossu aggravat mid-decizjoni tal-4 ta' Gunju 2011 (416/2012) minhabba r-raguni segwenti:-

Il-Bord qiegħed jisanzjona illegalita

Illi huwa magħruf u accettat li l-ebda kuntratt pubbliku m'għandu jifacilita illegalita fil-mod ta' kif offerent jimpjega l-impjegati tiegħu.

Illi s-suespost huwa ukoll abbract mis-sejha, peress li hemm indikat espressament li "...MCAST reserves the right not to award the bid to the cheapest tenderer if, after a verification exercise, it transpires that the hourly rate proposed to be paid by the bidder to its employees either is less than the minimum wage when including in it the payment pro rata benefits and entitlements or the hourly basic rate does not include payment for pro rata benefits and entitlements." (pg 21/td) (kopja ta' dan qed tigi mmarkata bhala "Doc 4").

Illi minkejja l-fatt li ghal diversi drabi gie spjegat lill-Bord li, l-iskeda ta' prezzijiet provduta mill-offerent rekomandat tammonta ghall-hlasijiet li jiksru d-disposizzjoni tas-sejha, l-Bord qal li - "... the responsibility to ensure that employees were paid their wages according to legislation rested with the employer and not the contracting authority and the public entity that was charged with the supervision was the Department of Industrial and Employment Relations" (pg 9/bd).

Illi b'kull rispettt dovut lejn il-hsibijiet u l-konkluzjonijiet tal-Bord, tali huma inkwetanti u f'certu ottika perikoluzi u dana minhabba l-fatt li hemm ksur lampanti ta' zewg elementi importanti, u cioe li primarjament qieghed jezenta lid-dipartiment tal-kuntratti milli jiverifika jekk effettivament qieghed isir il-ksur indikat o meno u dana minkejja li s-sejha qed tghid xorta ohra, u sussegwentement qieghed jivvinta principju legali gdid li jinjora kompletament id-duttrina li l-entitajiet kollha tal-Gvern huma meqjusa fil-ligi bhala entita wahda, u minflok qed isostni li d-dipartiment tal-kuntratti mhux fl-obbligu li jivverifika.

Illi fi kliem semplici l-Bord qieghed jimplika li, hawn Malta jezistu Gvernijiet daqs kemm hawn dipartimenti governattivi, u li dawn il-Gvernijiet kollha m'ghandhom x'jaqsmu xejn ma xulxin.

Illi l-kostituzzjoni tal-pajjiz tirrikonoxxi gvern wiehed, u cioe' "Il-Gvern ta' Malta", u jekk il-funzjonijiet tal-Gvern huma mqassma b'mod dipartimentali, xorta jibqa' l-fatt li l-Gvern ta' Malta ghandu obbligu li jara li l-ebda illegalita ma sehh, u fil-kaz odjern il-Gvern ta' Malta qed jigi raprezentant mid-dipartiment tal-kuntratti u ghaldaqstant ghandu jassumi tali obbligu.

Illi di piu l-fatt li l-Bord qiegħed jisanzjona l-illegalita, qiegħed ipoggi offerenti ohra f'posizzjoni ahjar li jingħataw l-kuntratt, u għaldaqstant l-principju fundamentali tas-sejhiet pubblici u cjoe' dak ta' level playing-field bejn l-offerenti, qiegħed jinkisser.

Għal dawn ir-ragunijiet is-socjeta' rikorrenti qed titlob li din il-Qorti thassar u tirrevoka d-decizjoni tal-bord ta' l-4 ta' Gunju 2012 fl-ismijiet JF security and Consultancy Services Limited kontra d-Dipartiment tal-kuntratti, magħrufa ahjar bhala Case No. 416 u b'hekk tilqa' dan l-appell billi, jekk hemm bzonn, tordna li l-atti tal-kawza jmorru lura quddiem il-Bord sabiex il-kaz jitkompla quddiem l-istess Bord.

Bl-ispejjez kontra l-appellati.

Rat ir-risposta tad-Dipartiment tal-Kuntratti fejn gie sottomess:-

1. Illi f'din l-istanza l-esponent sejjer iwiegeħb għar-referenza li għoġobha tressaq is-socjeta' appellanti ai termini tar-regolament 85 (5) tar-Regolamenti dwar il-Kuntratti Pubblici (Legislazzjoni Sussidjarja 174.04).
2. Jidher pjuttost ċar mir-rikors ta' riferenza mressaq mis-socjeta' appellanti, li hija qed titlob it-thassir tad-decizjoni tal-Bord ta' Reviżjoni dwar il-Kuntratti Pubblici għaliex skont hi l-offerta li giet rrakkomandata biex tikseb il-kuntratt publiku, mertu tas-sejħa pubblika bin-numru ta' riferenza CT 2169/2011, ma tharsitx il-liġi li tirregola l-paga minima tal-ħaddiema. Għalhekk fil-fehma tas-socjeta' appellanti meta l-Bord ta' Reviżjoni qies din l-offerta finanzjarja bħala waħda tajba, huwa kien qiegħed fi kliemha, "jissanzjona illegalità";

3. Id-Dipartiment appellat minnufih jisħaq li d-deċiżjoni meħuda mill-Bord ta' Reviżjoni dwar il-Kuntratti Pubbliċi hija waħda sostanzjalment ġusta u għalhekk tixraq li tiġi kkonfermata u dan kif ser jiġi muri aktar 'l isfel f'din it-tweġiba;
4. Iżda qabel ma jgħaddi biex jesponi l-argumenti tiegħu b'opposizzjoni għal-lanjanzi tas-soċjetà appellanti, l-esponent iħoss li huwa opportun li l-ewwel jiġu rikapitolizzati l-ftit fatti li jsawru din il-vertenza tallum;
5. Jirriżulta li fit-28 ta' Ottubru 2011, l-MCAST, tramite d-Dipartiment tal-Kuntratti, kien ħareġ sejħa pubblika għall-offerti għal provvista ta' servizzi ta' sigurtà fl-ambjenti mmexxija mill-MCAST. Għal din is-sejħa pparteċipaw ħames operatori ekonomiċi, fejn fosthom kien hemm ukoll is-soċjetà appellanti;
6. Il-kriterju tal-aġġudikazzjoni skont l-artikolu 32 tal-Instructions to Tenderers kien il-prezz. Jiġifieri it-tender kienu ser jirbħu dak l-offerent li kellu l-orħos offerta li kienet teknikament konformi mar-rekwiziti tas-sejħa;
7. Fost il-kundizzjonijiet tas-sejħa, l-offerent kellu jimla u jiffirma dikjarazzjoni fil-Volume I Section 4 Form1 Statement on Conditions of Employment (Dok 4 esibit mar-rikors tas-soċjetà appellanti) fejn fiha kellu jiddikjara li l-impjegati li kien ser iħaddem fuq dan il-kuntratt kellhom igawdu l-istess kundizzjonijiet tax-xogħol kif sanciti mil-liġi. Sinjifikanti wkoll, li fl-istess dikjarazzjoni, fl-aħħar paragrafu tagħha, l-offerent kien qed jagħraf ukoll li l-MCAST kellha l-jedd li ma tagħtix il-kuntratt lill-orħos offerent jekk minn eżerċizzju ta' verifika jirriżultalha li r-rata fis-siegħa proposta mill-offerent hija taħt il-paga minima;
8. Fit-22 ta' Marzu 2012, il-Kumitat Ġenerali tal-Kuntratti rrakkomanda li l-kuntratt pubbliku jingħata lis-soċjetà Kavallier Security Sevicees Limited peress li din kellha l-orħos offerta li kienet teknikament konformi mas-sejħa pubblika. Ir-rata tal-kuntratt kienet ser tkun ta' €5.90 fis-siegħa għal kull gwardjan, inkluż bil-VAT;

9. Sussegwentement, id-Dipartiment tal-Kuntratti kien bagħat jgħarraf lis-soċjetà appellanti, permezz ta' ittra li ggħib id-data tat-23 ta' Marzu 2012, li l-offerta tagħha ma kinitx intagħżlet għaliex din ma kinitx l-orħos waħda. F'din l-istess korrispondenza, id-Dipartiment tal-Kuntratti għidilha l-attenzjoni wkoll dwar il-jedd tagħha li tikkontesta din ir-rakkomandazzjoni quddiem il-Bord ta' Revizjoni dwar il-Kuntratti Pubbliċi;
10. Aggravata b'din ir-rakkomandazzjoni, is-soċjetà rikorrenti ressqet ilment quddiem il-Bord ta' Revizjoni dwar il-Kuntratti Pubbliċi iżda dan gie miċhud skont deċizzjoni mogħtija fl-4 ta' Ġunju 2012;
11. Fil-proċeduri quddiem il-Bord ta' Revizjoni dwar il-Kuntratti Pubbliċi, is-soċjetà appellanti kienet sostniet li l-offerta rebbieħa tas-sejħa, jiġifieri dik magħmula mis-soċjetà Kavallier Security Services Limited, ma kellhiex tiġi magħżula peress li r-rata proposta minnha kienet taħt il-paga minima u għalhekk bi ksur tal-liġi. Però l-Bord ta' Revizjoni dwar il-Kuntratti Pubbliċi ma laqax dan l-argument tas-soċjetà rikorrenti minħabba għadd ta' raġunijiet fosthom: -
- (i) li strettament l-obbligu li jħares il-liġi tal-impjieg hija mixħuta fuq il-prinċipal tax-xogħol li jhaddem in-nies miegħu u mhux fuq l-awtorità kontraenti li kienet qed tikseb is-servizzi mingħand dak il-prinċipal;
 - (ii) li l-entità governattiva responsabbli mit-tħaris tal-liġi tal-impjieg hija d-Dipartiment tar-Relazzjonijiet Industrijali u Impjieg;
 - (iii) li d-dikjarazzjoni sottoskritta mis-soċjetà Kavallier Security Services Limited fil-Form 1 ta' Volume 1 Section 4 fejn intrabtet li tħallas lill-ħaddiema tiegħu skont ir-regolamenti tax-xogħol m'għandhiex tintrabat mar-rata finanzjarja għal kull siegħa li din is-soċjetà offriet lil MCAST biex tikseb il-kuntratt pubbliku, peress li r-relazzjoni negozjali bejn din il-kumpannija u l-MCAST hija differenti mir-relazzjoni bejn il-kumpannija u l-impjegati tagħha;

- (iv) li mir-rata finanzjarja offruta mis-soċjetà Kavallier Security Sevices Limited wieħed ma jistax jiddeċifra b'mod eżatt x'kien ħa jkun is-salarju tal-ħaddiema tagħha minħabba li din hija soġġetta għal diversi permutazzjonijiet bħalma huma riskji u economies of scale;
- (v) li ladarba s-soċjetà Kavallier Security Sevices Limited intrabtet li li tobdi r-regolamenti tax-xogħol allura dan tagħmel l-offerta tagħha konformi mad-dokument tas-sejha pubblika; u
- (vi) li d-dokument tas-sejha ma jitlobx lill-awtorità kontraenti li toqgħod tidhol fid-dettalji tar-rati ta' kemm il-ħaddiema sejr in jithallsu fis-siegħa;

12. Evidentement mhux sodisfatta b'din id-deċiżjoni meħuda mill-Bord ta' Revizjoni dwar il-Kuntratti Pubbliċi, is-soċjetà rikorrenti għażlet li tirreferi dan il-każ quddiem din l-Onorabbli Qorti tal-Appell skont kif jinsab imsemmi fir-regolament numru 85(5) tar-Regolamenti dwar il-Kuntratti Pubbliċi (Legislazzjoni Sussidjarja 174.04;

13. In suċċint l-aggravju li gie interpost mis-soċjetà appellanti, jinsab suddiviż fuq dawn l-argumentazzjonijiet li ġejjin: -

- i. Li skont il-kundizzjonijiet tas-sejha l-MCAST kellha d-dritt li ma tagħtix il-kuntratt lill-irħas offerent jekk jirriżultala li r-rata ta' ħlas għal kull siegħa li l-offerent se jħallas lil impjegati tiegħu kienet anqas minn kif stabbilit fil-liġi. Issa fil-fehma tagħha, fil-każ inkwistjoni l-offerta finanzjarja ta' €5.90 fis-siegħa għal kull gwardjan, inkluż bil-VAT li giet sottomessa mis-soċjetà Kavallier Security Sevices Limited hija waħda bi ksur ta' din il-liġi. Għalhekk il-Bord ta' Revizjoni meta żamm ħajja din l-offerta gie li kien qiegħed jissanzjona jew aħjar jippermetti lil din is-soċjetà biex tħaddem lin-nies tagħha b'mod irregolari;
- ii. Li d-Dipartiment tal-Kuntratti qed jiġi ingustament eżentat milli jivverifika jekk il-ħlasijiet lil ħaddiema tal-kuntrattur humiex skont il-liġi. F'dan ir-rigward, is-soċjetà appellanti tiċċensura d-deċiżjoni tal-Bord meta tenna li l-entità governattiva responsabbli mit-tħaris tal-liġi tal-impjieg hija d-Dipartiment tar-Relazzjonijiet Industrijali u Impjieg. Dan issostnih għaliex skont hi l-entitajiet kollha tal-Gvern iridu jerfgħu r-responsabbiltà kollha tal-amministrazzjoni flimkien. Fi kliemha stess l-Bord kif iddeċieda implika

li hawn Malta jeżistu Gvernijiet daqskemm hawn Dipartimenti governattivi; u

iii. Li l-Bord permezz ta' din id-deċiżjoni kiser il-prinċipju ta' level playing field bejn l-offerenti;

14. Naturalment, qabel kull konsiderazzjoni oħra, is-soċjetà appellanti biex tirnexxi f'din l-azzjoni tagħha għandha l-oneru fuqha li tipprova dak minnha allegat u ċjoè li verament l-offerta magħmula mis-soċjetà Kavallier Security Sevices Limited hija illegali. Dan kollu fid-dawl tal-prinċipju, "ei qui allegat incumbit probatio", kif affermat f'dak kontenut fl-artikolu 562 tal-Kap 12 tal-Liġijiet ta' Malta, fejn hemm espressament stipulat li, "l-obbligu ta' prova ta' fatt imiss dejjem lil min jallegah";

15. Bla dubju ta' xejn, l-oneru tal-prova huwa mixtut fuq min jallegah u mhux fuq min jinnegah. Għalhekk biex tkun tista' tishaq li l-Bord ta' Revizjoni dwar il-Kuntratti Pubbliċi ssanzjona xi forma ta' illegalità fid-deċiżjoni tiegħu meta żamm fis-seħħ l-offerta mitfugħa mis-soċjetà Kavallier Security Sevices Limited, is-soċjetà apellanti neċessarjament trid turi li tassew dik l-offerta ma kinitx iżżomm mal-liġi dwar is-salarji tal-impjegati. Dan qed jingħad għaliex kif tajjeb gie mtenni mill-Qorti tal-Appell fis-sentenza John Mary sive Jimmy Vella nomine vs. Bernard Hotel Limited, mogħtija fis-17 ta' Ottubru 2008, "fejn tonqos l-insuffiċjenza ta' prova għas-sostenn tad-dritt pretiż, jew fejn dik il-prova mhix waħda ċara u univoka, raġonevolment, din is-sitwazzjoni tivverbera negattivament fuq min hu hekk mgħobbi bl-oneru li joffri ċ-ċertezza ta' l-allegazzjoni tiegħu, bil-konsegwenza li jsib ruħu rinfaċċjat bir-riġett tad-domanda. Identiku, minn dejjem, hu l-ħsieb traċċjat f'bosta deċiżjonijiet fuq dan il-punt in omagġ tal-prinċipju magħruf li min jallega, jrid jipprova";

16. Appuntu fil-każ in speċje, għalkemm is-soċjetà appellanta fir-rikors tagħha tadduċi li l-offerta tas-soċjetà Kavallier Security Sevices Limited kienet waħda illegali, hija fl-ebda ħin ma wriet quddiem il-Bord ta' Revizjoni fuq liema bażi jew fuq liema kriterji kalkulatorji hija waslet għal din il-konklużjoni;

17. Tassew, minkejja li l-appell odjern, is-soċjetà appellanti tibnih fuq allegat rati ta' ħlas anqas milli titlob il-liġi, din baqgħet ma kkonfermatx il-kalkoli tagħha mad-

Dipartiment tar-Relazjonijiet Industrijali u tal-Impjeg. Saħansitra, il-Bord ta' Revizjoni dwar il-Kuntratti Pubbliċi kien anke taha l-opportunità biex tikkonferma l-kalkoli tagħha mad-Dipartiment tar-Relazjonijiet Industrijali u tal-Impjeg iżda hi naqset milli tagħmel dan. Mis-silta meħuda minn paġna 6 tas-sentenza tal-Bord insibu dan li ġej, “The Public Contracts Review Board conceded a few days for JF Security and Consultancy Services Limited to obtain from the Industrial and Employment Relations Department a confirmation of the breakdown of the 2011 minimum wage hourly rate. At the point of drawing up this report no such confirmation was forthcoming from JF Security and Consultancy Services Limited”;

18.Fi żgur, is-soċjetà appellanti ma tistax tinqeda b'dawn il-proċeduri ta' revizjoni biex terġa' tidhol f'aprezzament mill-ġdid tal-provi jew biex tittanta tressaq provi godda. Dan għaliex biex tajjeb ġie mtenni dan l-aħħar fis-sentenza tal-Qorti tal-Appell, fl-ismijiet John Haber vs. Nutar Dr. Emmanuele Cefai deċiża fil-31 ta' Jannar 2011, “Kif ta' spiss kellha l-okkażjoni tirribadixxi din il-Qorti, dan l-istadju huwa wieħed ta' revizjoni u din il-Qorti ma jidhrilhiex li għandha tiddisturba l-iter tal-proċess kif stabbilit bil-liġi, billi tippermetti l-produzzjoni ta' xhieda u provi oħra. Kien jispetta lill-appellant li jutilizza l-mezzi kollha ta' difiża lilu mogħtija fil-liġi fil-mument opportun. Jekk dan l-iter proċesswali jiġi issa ddisturbat din il-Qorti tħoss li ma tkunx saret ġustizzja ma' min mexxa korrettement, u din il-Qorti m'għandhiex tippermetti li dan isir bil-barka tagħha”;

19.Għalhekk kemm –il darba s-soċjetà appellanti ma rnexxielhiex tiskarika minn fuqha l-piż li tipprova l-allegazzjoni tagħha quddiem il-Bord ta' Revizjoni dwar il-Kuntratti Pubbliċi, dan iġib bħala konsegwenza ċ-ċaħda tal-pretensjonijiet tagħha

20.Fuq kollox imbagħad, jekk mingħajr preġudizzju, wieħed kellu joqgħod jixtarr kif imiss l-offerta finanzjarja redatta mis-Kavallier Security Services Limited, wieħed isib li din tidher li hija pjenament konformi mal-liġi li tirregola l-paga minima tal-ħaddiema fis-settur li jipprovdu servizzi ta' sigurtà;

21. Tassew, jekk wieħed imur fuq il-Legislazzjoni Sussidjarja 452.71 intitolata Ordni ta' Standard Nazzjonali dwar l-Inqas Paga Nazzjonali¹ wieħed isib fl-iskeda li tinsab mehmuża ma' din l-ordni, li b'effett mill-1 ta' Jannar 2012, l-inqas paga fil-ġimgħa li għandha tithallas lill-impjegati whole-time (i) li jkollhom età minn 18-il sena u fuqhom hija dik ta' €158.11, (ii) għal dawk li jkollhom età ta' 17-il sena hija ta' €151.33 u (iii) għal dawk li jkollhom età taħt is-17-il sena hija ta' €148.49;
22. Issa jekk nieħdu r-rata fil-ġimgħa ta' €158.11 li hija l-paga minima ta' impjegat whole time li għandu aktar minn tmintax –il sena u niddividuwha b'erbgħin (rappreżenanti l-erbghin siegħa li ħaddiem whole-time jaħdem kull ġimgħa) dan iġibna għar-rata bażi fis-siegħa ta' €3.95. Miżjuda ma' dan l-ammont, pro rata b'bażi fis-siegħa, il-bonus annwali ta' €0.25, il-kontribuzzjonijiet tas-sigurtà soċjali ta' €0.39 u l-VAT bit-18%, dan iwassalna għall-ammont totali ta' €5.42 fis-siegħa, ammont li hija inqas mill-offerta finanzjarja ta' €5.90 fis-siegħa, li giet sottomessa mill-kumpannija li giet rakkomandata biex tieħu t-tender;
23. Għalhekk fid-dawl ta' dan kollu, jinzel ċar li mill-offerta ta' €5.90 fis-siegħa magħmula mis-soċjetà Kavallier Security Services Limited, wieħed ma jistax jiddeduċi jew aħjar jikkonkludi li din il-kumpannija kienet ser tħallas lill-ħaddiema tagħha taħt il-paga minima nazzjonali. Inversament, ladarba r-rata finanzjarja indikata fl-offerta hija għola mill-inqas paga mitluba mil-liġi u din ir-rata saħansitra jidher li tinkludi fiha wkoll ċertu margini ta' profitt, dan għandu juri li l-pretensjoni tas-soċjetà appellanti fir-rigward tal-illegalità ta' din l-offerta ma hijiex mistħoqqa;
24. Mingħajr hsara għal premiss, indipendentement minn kull eżerċizzju matematiku dwar il-validità jew invalidità tal-offerta rakkomandata, l-esponent iħoss ukoll li r-raġunamenti li fl-aħħar mill-aħħar induċew lil Bord ta' Reviżjoni dwar il-Kuntratti Pubbliċi biex jiskarta l-appell dedott mis-soċjetà appellanti huma wkoll vulevoli;

¹ Il-Legislazzjoni Sussidjarja 452.75 intitolata Ordni tal-Kunsilli tal-Pagi għas-Settur li jipprovdi Servizi ta' Sigurtà mhijiex applikabbli għaliex ir-rata settimanali stabbilita fl-artikolu 4 ta' din l-Ordni hija inqas mir-rati li tinsab fl-iskeda tal-Legislazzjoni Sussidjarja 452.71 intitolata Ordni ta' Standard Nazzjonali dwar l-Inqas Paga Nazzjonali – ara l-artikolu 3 ta' din l-aħħar Ordni.

25. Ibda biex, tajjeb qal il-Bord ta' Revizjoni, li fil-fażi ta' aġġudikazzjoni, l-awtorità kontraenti ma kinitx mistennija li toqgħod tidhol f'kalkoli matematiċi studjati biex tistharreg jekk l-offerta rakkomandata kinitx ha tkun bi tħaris tal-liġi jew le. Infatti, fl-ebda ħin la d-dipartiment tal-kuntratti u lanqas l-MCAST ma' kellhom l-obbligu li joggħodu jidhlu fil-mertu ta' kif il-kuntratturi kellhom jimpjegaw il-ħaddiema tagħhom. Diversament, l-unika dover li kellu l-kumitat ta' evalwazzjoni fl-istadju tal-aġġudikazzjoni tal-kuntratt pubbliku kien li jivverfika jekk prima facie l-offerta kinitx tidher in konformità mal-liġi. Propriju f'dan il-każ, l-awtoritajiet aġġudikattivi wettqu l-verifika neċessarji skont kif hemm imsemmi fid-dikjarazzjoni riportata fil-Volume I Section 4 Form1 Statement on Conditions of Employment, u eżaminaw jekk ir-rata tal-irħas offerent kinitx tkopri l-paga minima tal-ħaddiema skont il-liġi. Minn din il-verifika ħareġ li ma kien hemm xejn fl-offerta finanzjarja tas-soċjetà Kavallier Security Seviles Limited li setgħet tindika li l-ħaddiema tagħha kienu sejrin jithallsu paga li tiġi taħt il-minimu espressa mil-liġi u dan għaliex ir-rata offruta kienet taqbeż il-paga minima speċifikata fil-liġi;

26. Hekk ukoll, ġaladarba din is-soċjetà kienet iffirmit din id-dikjarazzjoni miġbura fil-Form 1 ta' Volume 1 Section 4, fejn fiha ntrabtet li kienet sejra tħallas lill-ħaddiema tagħha skont ir-regolamenti tax-xogħol, allura l-awtorità kontraenti u warajha l-Bord ta' Revizjoni dwar il-Kuntratti Pubbliċi, ma kellhom l-ebda raġuni valida għalbiex fl-istadju pre-kontrattwali jiddubitaw mill-validità u/jew ġenwinità ta' din l-offerta u dikjarazzjoni. Tabilhaqq, mingħajr suspett raġonevoli, l-offerta tas-soċjetà Kavallier Security Seviles Limited ma setgħetx tiġi mwarrba – dana naturalment mingħajr ħsara għad-dritt tal-awtorità kontraenti u/jew tad-Direttur tal-Kuntratti li jwaqqfu l-kuntratt jekk jirrizultalhom waqt it-tmexxija tal-kuntratt li din il-kumpannija tkun qed tħallas nies għal dan il-kuntratt taħt l-inqas paga nazzjonali;

27. Marbut sfiq ma' dan, kif ġustament gie rikonoxxut ukoll mill-Bord ta' Revizjoni, l-offerta finanzjarja registrata mis-soċjetà Kavallier Security Seviles Limited strettament kienet tindika biss kemm hija kienet qed tippretendi bħala ħlas mingħand l-MCAST, għal kull siegħa, għal kull warden impjegat minnha. Ifisser b'hekk, li din ir-rata kienet qed tidentifika biss il-ħlas mistenni mill-Kavallier Security Seviles Limited fl-eventwalità li hija tiegħu l-kuntratt de quo u mhux kemm din il-kumpannija kienet ser tħallas lil ħaddiema tagħha. Għal dak li jiswa', jista' jkun li din il-kumpannija kienet ser tħallas lill-ħaddiema tagħha rata superjuri għal

din li giet sottomessa minnha fis-sejha pubblika. Għaldaqstant wieħed irid jifhem li r-rata finanzjarja indikata mill-kumpannija Kavallier Security Sevices Limited fl-offerta tagħha, jekk aċċettata, kellha l-potenzjal li tkun vinkolanti biss vis-à-vis l-MCAST u mhux vis-à-vis l-impjegati tagħha;

28. Huwa għal din ir-raġuni li l-Bord ta' Revizjoni dwar il-Kuntratti Pubbliċi tenna fid-deċiżjoni tiegħu li minn din l-offerta finanzjarja wieħed ma setax jasal jiddeċifra b'mod eżatt x'kien ħa jkun is-salarju tal-ħaddiema tagħha. Dan mhux biss għaliex din l-offerta kienet torbot lill-offerent unikament mal-MCAST iżda minħabba wkoll għaliex minn din ir-rata wieħed ma setax jikkostata l-konsiderazzjonijiet u l-aspettattivi kummerċjali (economies of scale) magħmula mill-kumpannija Kavallier Security Sevices Limited fil-ħdim ta' din l-offerta. F'dan il-kwadru, wieħed ma jridx jinsa wkoll li t-tender document kien qiegħed jitlob rata ta' ħlas lil kuntrattur għal 3 snin, bil-kuntrattur mistenni jieħu 'commercial risk'. Kemm hu hekk, il-Bord qal dan li ġej, "the tender document itself seemed to condition, to a certain extent, the commercial risk by linking it to the observance of labour legislation, namely placing a more than subtle emphasis on the fact that the commercial risk should come into play with the departing point being the minimum wage standard set at national level";

29. Għalhekk dan kollu jfisser, li ma kienx possibbli għall-awtoritajiet li qabel l-eżekuzzjoni tal-kuntratt, jaraw kemm kienu ser jithallsu l-ħaddiema, kemm –il darba f'dan l-istadju, ma setax ikun magħruf xi klassi ta' ħaddiema kienu sejrjn jiġu impjegati għal dan il-kuntratt, jekk hux ħaddiema part-time jew whole-time jew taħlita mit-tnejn. Fin-nuqqas ta' tali tagħrif, għalhekk min kien qiegħed jikkunsidra l-offerti ma setax jgħid fil-konkret kemm effettivament kienu sejrjn jiġu mħallsa l-ħaddiema. L-unika ħaġa li seta' jsir huwa li jiġi verifikat jekk mad-daqqa t'għajn l-offerta kinitx taħt il-limiti tal-inqas paga jew le. Din il-verifika saret min-naħa tal-kumitat ta' aġġudikazzjoni u fiha nstab li l-offerta tas-soċjetà Kavallier Security Sevices Limited kif magħmula ma kinitx qed tindika li kien ser ikun hemm kundizzjonijiet żvantaġġużi għall-ħaddiema tagħha. Għalhekk minn dan l-aspett, il-kejl aġġudikattiv adoperat mill-kumitat ta' aġġudikazzjoni fir-rakkomandazzjoni tiegħu li jagħti l-kuntratt lis-soċjetà Kavallier Security Sevices Limited ma jistax jiġi ċċensurat;

30. Issa jekk imbagħad wara li jingħata l-kuntratt lis-soċjetà Kavallier Security Services Limited din tibda ma tħallasx lill-ħaddiema tagħha kif suppost, dan naturalment jista' jwassal għall-ħall tal-kuntratt inkwantu s-soċjetà tkun kissret dik il-kundizzjoni fil-kuntratt fejn kellha tosserva l-liġijiet relatati mal-kundizzjonijiet tal-impjieg tal-ħaddiema. Fis-sewwa, huwa f'dan il-kuntest, li l-Bord ta' Revizjoni dwar il-Kuntratti Pubbliċi qies li l-obbligu li jħares il-liġi tal-impjieg hija mixħuta fuq il-prinċipal tax-xogħol li jhaddem in-nies miegħu u mhux fuq l-awtorità kontraenti li kienet qed tikseb is-servizzi mingħand il-kuntrattur. Dan għaliex fil-verità huwa l-kuntrattur li jrid jara u joqgħod attent li jimxi mad-dikjarazzjonijiet mogħtija minnu dwar il-liġijiet li jirregolaw il-kundizzjonijiet tax-xogħol tal-impjegati tiegħu;
31. Mill-banda l-oħra, fejn jidhol l-infurzar tal-liġi marbut mal-impjieg, għalkemm l-awtorità kontraenti għandha kemm jista' jkun tassikura li min qiegħed jipprestalha s-servizzi ma jkunx qiegħed jikser il-liġi, madanakollu ma huwiex l-irwol tal-awtorità kontraenti (f'dan il-każ l-MCAST) jew tad-Dipartiment tal-Kuntratt, li joqgħodu jagħmlu l-għassa lill-kuntrattur biex jiżguraw li huwa qed iżomm ad unguem mad-dispożizzjonijiet tal-liġi. Dan anke għaliex kif tajjeb rimarkat mill-Bord ta' Revizjoni, dan il-kompitu skont kif inhija organizzata l-amministrazzjoni pubblika jinsab fdat fir-responsabbiltà tad-Dipartiment tar-Relazzjonijiet Industrijali u Impjieg u mhux f'idejn l-MCAST jew id-Dipartiment tal-Kuntratti li għandhom irwoli u kompiti differenti;
32. Wisq loġikament, u hawn niġu għat-tieni punt imqajjem mis-soċjetà appellanti dwar l-unitarjetà tal-Gvern, bid-diversità ta' rwoli fid-dipartimenti tal-Gvern, ma huwiex qed jiġi mxellef l-kunċett ta' unitarjetà inerenti fil-Gvern, kif donnu qed jiġi implikat mis-soċjetà appellanti. Kif inhu magħruf, l-Amministrazzjoni Pubblika ma titmexxiex sic et simpliciter minn dipartiment wieħed iżda minn korpi u organizzazzjonijiet varji appożitament krejati fi ħdan l-Amministrazzjoni Pubblika, kif regolati minn liġijiet speċjali. Hu tassew notorju illi dawn l-istess korpi u awtoritajiet amministrattivi fid-diversi setturi tal-ekonomija pubblika jikkomponu l-kompleksità tal-Istat modern. Ovvjament kull dipartiment jew entità governattiva għandha l-funzjonijiet u d-dmirijiet rispettivi tagħha li ma jestendux fuq il-funzjonijiet u d-dmirijiet ta' dipartiment jew entità governattiva oħra;

33. Fil-każ tad-Dipartiment tal-Kuntratti, ir-responsabbiltà tiegħu huwa li jmexxi l-proċess tal-għoti tal-kuntratt u li jipproċedi b'mod ġust u trasparenti skont ma' jitolbu r-Regolamenti dwar il-Kuntratti Pubblici u l-kundizzjonijiet tas-sejha għal offerti kif ippublikati. Ċertament huwa ma jistax jirrappreżenta lill-Gvern fir-responsabilitajiet kollha tiegħu iżda jirrapprezentah biss f'dak li għandu x' jaqsam mal-għoti tal-kuntratti pubbliċi biss. Dan jikkonċilja ruħu perfettament ma' dak li insibu dispost fl-artikolu 181B tal-Kap 12 tal-Liġijiet ta' Malta, li jitkellem propriju dwar ir-rappreżentazzjoni ġudizzjarja tal-Gvern;
34. Naturalment, kull dipartiment tal-Gvern irid jerfa' r-responsabbiltà kif ipprovdut fil-liġijiet li jirregolawh jew mill-ordnijiet amministrattivi li jingħatawlu. Infatti l-ebda Kap ta' Dipartiment ma jista' japplika liġi jekk ma jkollux l-awtorità jew il-vires neċessarja. B'dan ma jfissirx li hawn numru ta' Gvernijiet differenti imma jfisser li kull Dipartiment jerfa' responsabilitajiet differenti li lkoll flimkien jiffurmaw il-Gvern ta' Malta. Fuq kolloxx din hi sistema ta' Amministrazzjoni li teżisti fid-dinja kollha;
35. Propriu fil-każ tad-Dipartiment tal-Kuntratti, il-liġi li tirregolah huma r-Regolamenti dwar il-Kuntratti Pubbliċi u fihom minn imkien ma jirriżulta li d-Direttur tal-Kuntratti għandu xi obbligu li jirregola l-kundizzjonijiet tal-ħaddiema jew li jirrappreżenta lil Gvern ta' Malta f'kull qasam;
36. Fi kliem sempliċi, għalkemm id-dipartimenti governattivi kollha kemm huma jirrapprezentaw entità waħda u ċjoè lill-Gvern, dan ma jfissirx li d-dipartimenti jistgħu jaqbd u jagħmlu x-xogħlijiet ta' xulxin. Hekk pereżempju, wieħed ma jistax jimmagina lill-Pulizija tagħmel ix-xogħol tad-dipartiment tat-taxxa jew viċe-versa, jew li f'dan il-każ l-MCAST jew id-Dipartiment tal-Kuntratti jwettqu l-funzjonijiet li amministrattivament huma mogħtija lid-Dipartiment tar-Relazzjonijiet Industrijali u Impjeg għaliex inkella jsaltnu d-diżordni u l-kaos;
37. B'daqshekk mhuwiex qiegħed jingħad li jekk l-MCAST, qua l-awtorità kontraenti, jew id-Dipartiment tal-Kuntratti jintebħu jew jiskopru li l-kuntrattur magħżul minnhom qiegħed iħallas lill-impjegati tiegħu bi ksur tal-liġi, dawn m'għandhomx

prevja li jikkonsultaw mad-Dipartiment tar-Relazzjonijiet Industrijali u Impjieg, jieħdu azzjoni mill-ewwel biex iwaqqfu din l-istat ta' illegalità billi anke jipproċedu jekk ikun il-każ biex iħassru l-kuntratt inkwistjoni. Li qed jingħad huwa li skont l-istruttura amministrattiva tal-Gvern il-kompitu marbut mal-infurzar tal-liġi attinenti mal-paga minima huwa mitfugħ proprjament fuq id-Dipartiment tar-Relazzjonijiet Industrijali u Impjieg u mhux fuq l-MCAST jew id-Dipartiment tal-Kuntratti. Wara kolloxx, għal fini u skopjiet ta' din is-sejha pubblika u tal-liġi li jirregolaw il-kuntratti pubbliċi, id-dmir inkombenti fuq l-awtorità kontraenti u fuq id-dipartiment tal-kuntratti ma huwiex li joqgħodu jinforzaw il-liġi li tirregola l-kundizzjonijiet tal-impjieg, iżda li fl-għażla tal-kuntrattur joqgħodu attenti li ma jagħtux il-kuntratt lil min potenzjalment seta' jikser il-liġi – eżerċizzju li kif fuq muri ġie mwettaq b'mod diligenti mill-awtoritajiet aġġudikattivi;

38. In riassunt għalhekk u biex anke tiġi mwiegħba l-preokkupazzjoni ewlenija tas-soċjetà appellanti, tajjeb li jiġi preċiżat li l-irwol tal-awtoritajiet aġġudikattivi fl-ipproċessar ta' din is-sejha pubblika, fejn kellu x'jaqsam mal-kundizzjonijiet tal-impjieg, kien li jivverifikaw jekk l-offerti finanzjarji sottomessi lilhom kienux indikattivi tal-fatt li l-ħaddiema impjegati f'dan il-kuntratt kienu ser jithallsu taħt il-paga minima. Fil-każ tal-offerta tas-soċjetà Kavallier Security Services Limited, dan l-eżerċizzju ta' verifika mwettaq mill-awtoritajiet aġġudikattivi wera li ma kien hemm prevalenti l-ebda suspett raġonevoli fl-ammont tal-offerta li b'xi mod seta' jindika li kien ha jkun hemm ksur tal-liġi pertinenti mal-inqas paga nazzjonali;

39. Konsegwentement ladarba din l-offerta tas-soċjetà Kavallier Security Services Limited ma kienet tnissel l-ebda ħjiel ta' xi potenzjali ksur tal-liġi u anke rriżultat li kienet l-orħos offerta teknikament konformi mal-ispeċifikazzjonijiet tas-sejha pubblika, allura l-awtoritajiet aġġudikattivi għamliu sew li rrakkomandaw l-għoti ta' dan il-kuntratt pubbliku lil din il-kumpannija u l-Bord ta' Revizjoni dwar il-Kuntratti Pubbliċi kien ġust li jiċċad l-ilment li ġiet interpost quddiemu mis-soċjetà appellanti;

40. L-esponent jagħlaq b'referenza għat-tielet ilment prospettat mis-soċjetà appellanti dwar il-ksur tal-prinċipju ta' level playing field bejn l-offerenti, billi jišhaq li apparti li dan l-ilment bl-ebda mod ma ġie mfiesser u sostnut mis-soċjetà appellanti, għandu jirriżulta lil din l-Onorabbli Qorti, li l-Bord ta' Revizjoni fl-ebda waqt ma kiser dan il-

prinċipju għaliex kull offerent għie stmat indaqs. Kemm hu hekk, kull minn haas li ma qabilx mar-rakommandazzjoni ta' kif għandu jingħata dan il-kuntratt, kellu l-opportunità li jressaq l-ilment tiegħu. Tassew kif anke jirrizulta mill-kitba tad-deċiżjoni stess, fil-proċeduri quddiem il-Bord, kullhadd seta' jittellem u jagħmel is-sottomisjonijiet tiegħu u l-Bord wasal għal konkluzjoni tiegħu wara li sema' lil kulhadd. Saħansitra kif fuq imsemmi, is-soċjetà appellanti għet anke anke mogħtija l-fakoltà biex tissostanzja l-pretensjonijiet tagħha mad-Dipartiment tar-Relazzjonijiet Industrijali u Impjeg. Għalhekk zgur ma tistax tilmenta li hija b'xi mod għet żvantaġġjata meta mqabbla ma' t-*"Tender for the Provision of Security Services to all MCAST sites"*:-

"This call for tenders was published in the Government Gazette on the 28th October 2011. The closing date for this call – which attracted no fewer than six (6) tenderers - with an estimated budget of € 360,000 was the 20th December 2011.

JF Security and Consultancy Services Ltd filed an objection on the 30th March 2012 against the decision of the Contracts Department to recommend the award of the tender to Kavallier Security Services Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr. Carmel Esposito and Mr Joseph Croker as members convened a public hearing on Monday 21st May, 2012 to discuss this objection.

Għalhekk l-appellati qed jitolbu li din il-Qorti tiċċad ir-rikors imressaq mis-soċjetà appellanti bl-ispejjeż kontra tagħha.

Rat l-atti l-oħra kollha tal-appell u l-atti kif kompilati quddiem il-Bord ta' Revizjoni.

Rat id-dokumenti esibiti.

Semghat it-trattazzjoni orali tad-difensuri tal-partijiet.

Rat li l-appell gie differit sabiex tinghta s-sentenza.

Ikkonsidrat:-

Il-presenti hu appell interpost mis-socjeta' appellanti J.F. Security and Consultancy Services Limited (minn hawn il-quddiem maghrufa bhala "is-socjeta' appellanti") kontra l-appellati Dipartiment tal-Kuntratti (minn hawn il-quddiem maghrufa bhala "d-Dipartiment") u kontra l-appellati l-ohra l-Kullegg Malti ta' l-Arti, Xjenzi u Teknologija (MCAST) (minn hawn il-quddiem maghrufa bhala "l-Kullegg"). L-appell hu minn decizjoni tal-Bord ta' Revizjoni dwar il-Kuntratti Pubblici li kienet tittratta dwar it-tender maghrufa bhala "Tender for the Provision of Security Services to all MCAST sites" (minn hawn il-quddiem maghrufa bhala t-"tender"). It-tender kienet giet aggudikata mill-appellati Dipartiment, pero' kienet inharget fuq it-talba tal-imsemmija appellati l-ohra l-Kullegg.

L-appellati Kullegg naqsu li jippresenraw ir-risposta tal-appell miktuba pero' d-difensur taghhom kien presenti fl-awla meta l-appell gie ttrattat u ghalhekk huwa ghamel is-sottomissjonijiet kollha li kellu jaghamel.

Is-socjeta' appellanti kienet ghamlet l-offerta taghha ghall-imsemmija tender. In effett l-istess tender kienet giet aggudikata lil terzi u minhabba f'hekk is-socjeta' appellanti kienet oggezzjonat lid-Dipartiment in vista ta' tali aggudikazzjoni. Kwindi l-Bord tar-Revizjoni ta' Kuntratti Pubblici beda jinvestiga tali oggezzjoni u eventwalment iddecieda l-kwestjoni billi cahad l-oggezzjoni tas-socjeta' appellanti u inoltre billi rrikmanda li d-depositi imhallas mill-istess socjeta' ma jigix rifuz.

Fil-presenti rikors tal-appell taghha s-socjeta' appellanti tissottometti illi kienet giet notifikata mid-Dipartiment li, stante li l-offerta taghha ma kienitx l-irhas kienet giet eskluza mill-process tal-aggudikazzjoni. Ghalhekk l-istess socjeta' appellanti rrikorriet

ghand l-imsemmi Bord sabiex jerga jezamina r-raguni li kienet inghatat ghat-twarrib tal-offerta taghha.

L-ewwel aggravju tas-socjeta' appellanti hu li bl-aggudikazzjoni in kwestjoni kienet qed tigi sanzjonata illegalita' stante li t-terzi li lilhom kienet qed tigi aggudikata t-tender kienu ser ihallsu lill-haddiema taghhom rata ghal kull siegħa ta' xogħol li kienet inqas mill-paga minima u lanqas ma kienet tinkludi l-beneficci kollha previsti mill-ligi.

Is-socjeta' appellanti tissottometti, f'dan ir-rigward, li l-Bord ta' Revizjoni rritjena, skorrettement, li r-responsabilita' biex jigi zgurat li l-haddiema jigu remunerati mill-offerent rebbiegh skond kif trid il-ligi hi eskusivament ta' min ihaddem lill-istess haddiema u mhux ta' min jaggudika t-tender. Għall-appellanti din il-konkluzjoni tista tkun perikoluza stante li, skond huma, l-Bord qed jidher li qed jezenta lid-dipartiment milli jagħmel verifika rigwardanti kemm ser jithallsu l-hadiema li ser jahdmu fuq il-progett, u dan nonostante li fis-sejha għall-offerti hemm espressament stipulat il-kuntrarju. Dejjem skond l-appellanti il-Bord bl-imsemmija konkluzjoni qed johloq principju legali għid fis-sens li l-varji dipartimenti tal-Gvern huma entita' wahda għaliha u indipendenti minhabba li qed isostni li d-dipartiment in kwestjoni m'għandux l-obbligu li jagħmel l-imsemmija verifika u cioe' qed jigi implikat li daqs kemm hemm dipartimenti governattivi hemm gvernijiet li m'għandhom x'jaqsmu xejn ma xulxin.

Fl-opinjoni ta' din il-Qorti dinis-sottomissjoni tal-appellanti ma tistax titqies li hi kollha kemm hi gusta. Fl-ewwel lok m'għandhux jitqies li hi kondizzjoni tat-tender li jsiru l-verifiki dwar kemm kienu ser jithallsu l-haddiema mill-varji offerenti. Effettivament it-tender kienet tispecifika li l-ahjar offerta, cioe' l-orhos, setghet tigi skartata jekk jirrizulta li l-offerent rebbiegh kien ser ihallas paga inqas minn dik minima lill-haddiema tieghu. Ma hemmx dubju li qabel ma ssir l-aggudikazzjoni minn naha tad-Dipartiment, trid ssir l-imsemmija verifika. Isegwi li d-Dipartiment kellu l-obbligu li jivverifika jekk il-haddiema li jitqabbd u mill-offerent magħzul kienux ser jithallsu paga skond kif trid il-ligi.

In effett sottomissjoni simili bħal din, li qed tigi trattata presentement, saret mill-appellanti fil-kors tal-proceduri quddiem il-Bord ta' Revizjoni, li jidher li ezamina l-kwestjoni b'mod dettaljat u fil fond.

Il-Bord ta' Revizjoni, fid-decizjoni appellata, rrefera ghal kwestjoni tal-paga minima u spjega li d-Dipartiment, fl-aggudikazzjoni tat-tender, ikkalkola l-paga minima fuq il-figuri relattivi ghas-sena basi 2012 u inkluda ukoll il-bonus annwali, l-leave u l-kontribuzzjonijiet tas-sigurta' nsazzjonali. Fuq dawn il-kakoli d-Dipartiment ikkonkluda li l-offerta rebbieghha kienet fil-fatt tissupera l-paga minima permissibbli skond il-ligi u kien korrett meta ghadha sabiex jagjudika t-tender lill-istess offerta rebbieghha.

Inoltre t-Bord irrileva li s-socjeta' appellanti, fl-oggezzjoni taghha quddiemu, ssottomettiet biss li l-offerta rebbieghha ma kienitx skond il-ligi pero' naqset li tindika ghaliex. Dan jindika u ghalhekk jista jinghad li din is-sottomissjoni tal-appellanti hi semplicement pretest sabiex seta sar il-presenti appell.

Hu minnu dak li gie sottomess mill-appellati Kullegg li hemm diversi kondizzjonijiet li jvarjaw fil-kalkolu ta' x'ghandha tkun il-paga minima. Hawnhekk, pero', il-kwestjoni mhux kemm hi l-paga minima bhala ammont, izda jekk kellix isir il-verifika dwar il-paga minima qabel ma giet aggudikata t-tender. Ghalhekk ukoll kwestjonijiet dwar kif id-Dipartiment wasal ghall-kalkolu tieghu tal-paga minima huma kwestjonijiet ta' fatt u din il-Qorti ta' revizjoni m'ghandix tittratta tali kwesjonijiet ta' fatt, li gew ttrattati u decizi b'mod korrett mill-Bord.

Fil-fatt dak li ddikjara l-Bord ta' Revizjoni hu li min qed jagjudika t-tender mhux tenut li jivverifika kemm ser ikun il-profitt tal-offerent. M'hemmx dubju li dan hu ragjonament korrett. Inoltre l-Bord ma ddikjarax, kif isostnu l-appellanti, li min jagjudika t-tender mhux tenut li jivverifika jekk il-haddiema ser jithallsu almenu l-paga minima stabbilita mill-ligi jew le. Ma jidhirx li tali dikjarazzjoni qatt saret mill-Bord. Hu, pero', indubju li l-offerent ghandu jassigura li l-haddiema tieghu jigu trattati u mhallsa bhala paga skond kif trid il-ligi. Inoltre d-Dipartiment tal-Gvern kompetenti ghandu l-poteri kollha skond il-ligi biex jassigura dan u cioe' li min ihaddem qed jimxi mal-haddiema b'mod regolari u legittimu. Inoltre f'dan ir-rigward il-Bord irrileva li fuq kollox l-offerent rebbiegh kien intrabat li joqod ghar-regolamenti relattivi ghall-kondizzjonijiet tax-xoghol inkluz li jhallas il-haddiema tieghu skond il-ligi. Hawn il-Bord kien korrett meta kkonkluda li, ghal finijiet tat-tender in kwestjoni, l-imsemmija obligazzjoni da parti tal-offerent kienet bizzewjjed sabiex finalment it-tender seta jigi aggudikat lill-istess offerent.

Ghalhekk il-Bord ta' Revizjoni ttrattata l-kwestjoni sollevata mill-appellanti dettaljatament u d-Dipartiment li kellu l-obbligu li jaghmel il-verifiki dwar il-paga minima ukoll agixxa korrettement u regolarment stante li qabel ma aggudika ghamel dak li kien rikjest minnu.

Jirrizulta ghalhekk li l-Bord ta' Revizjoni ma ssanzjona l-ebda illegalita' u lanqas ma kkommetta rregolarita' meta wasal ghall-imsemmija konkluzjonijiet tieghu. In effetti it-tender bhala kondizzjoni ma impona ebda obbligu fuq l-agjudikaturi li jaghmlu l-imsemmija verifiki dwar il-paga minima.

Fil-fehma ta' din il-Qorti, ukoll in vista ta' dak kollu li gie premess, f'dan il-kaz giet pjenament imharsa l-ligi li tirregola l-paga minima tal-haddiema u gew imharsin ukoll il-kondizzjonijiet tat-tender. Inoltre jirrizulta ukoll li d-decizjoni appellata hi sostanzjalment gusta u ghalhekk timmerita li tigi kkonfermata.

Il-Bord ikkonsidra ukoll li s-socjeta' appellanti ma ghamlitx il-prova tal-allegazzjoni taghha cioe' li l-haddiema mqabdin mill-offerent rebbieghh ma kienux ser jithallsu l-paga minima. L-appellanti lanqas ma urew fuq liema kriterji huma kienu qed jibbazaw l-istess allegazzjoni. Hu zgur li Qorti ta' revizjoni m'ghandix terga tezamina il-fatti involuti f'dawn il-kwestjonijiet, una volta jirrizulta li d-decizjonini mehuda kemm mill-agjudikaturi kif ukoll mill-Bord ta' Revizjoni huma regolari u legittimi.

Il-Bord dwar il-kwestjoni jekk kellux id-Dipartiment jaghmel il-verifika in kwesjoni qal, korrettement, li f'dan r-rigward kien bizzejjed li l-istess Dipartiment jara jekk prima facie kienx jidher li l-offerent kienx ser joqod ghar-regolamenti relattivi ghall-pagi li kienu ser jithallsu l-haddiema. Ghalhekk, f'dan ir-rigward ma kienx hemm ghalfejn isiru kalkoli precizi, dettaljati u matematici, izda kien bizzejjed li jsiru verifiki jekk l-offerta kinitx tidher in konformita' mal-ligi. Inoltre l-Bord ikkonkluda li kien jidher li tali verifiki saru f'dan il-kaz.

Dwar is-sottomissjoni tal-appellanti li Dipartiment wiehed tal-Gvern m'ghandux jagixxi b'mod indipendenti minn Dipartimenti ohra. Kull dipartiment iwettaq dak li gie

fdat lilu mill-ligi. Ma jidhirx li dan il-kuncett gie injorat fil-fatti li huma rilevanti f'dan il-kaz. Kull Dipartiment ghandu l-funzjoni tieghu li kollettivament mal-funzjonijiet ta' Dipartimenti ohra jikkostitwixxu l-makkinarju li permezz tieghu jiffunzjona l-Gvern. Id-Dipartiment, in effett, hu fdat bit-tmexxija tal-process tal-aggregazzjoni tal-kuntratti. Hu importanti f'dan il-kaz li jirrizulta li tali process sar b'bod gust u kif jirrikjedu r-regolamenti relattivi kif ukoll skond il-kondizzjonijiet tat-tender.

L-appellanti finalment jaccennaw li f'dan il-kaz kien hemm ksur tal-principju maghruf bhala ta' "level playing field." Dan il-principju jimplika li kull offerent ghandu jinghata l-istess drittijiet u obbligi fil-fazi meta jkunu qed isiru l-offerti. Il-kondizzjonijiet ghandhom japplikaw bl-istess mod fir-rigward ta' kull offerent. F'dan il-kaz jidher li l-offerenti gew kollha ttrattati bl-istess mod. Inoltre l-appellanti bl-ebda mod ma sostnew din l-allegazzjoni taghhom.

Fid-dawl ta' dak kollu li gie premiss it-talbiet tas-socjeta' appellanti jimmeritaw li jigu rigettati u fl-istess hin d-decizjoni appellata jisthoqq li tigi konfermata fit-totalita' taghha.

Ghal dawn il-motivi kollha:

Tiddeciedi billi tichad l-appell tas-socjeta' J.F. Security and Consultancy Services Limited filwaqt li tikkonferma fl-intier taghha d-decizjoni appellata tal-Bord ta' Revizjoni tal-Kuntratti Pubblici (Appell numru 30/12) - kaz numru 416 rigwardanti t-"Tender for the Provision of Security Services to all MCAST sites."

Kopja Informali ta' Sentenza

Spejjez kollha ta' dan l-appell jithallsu mis-socjeta' appellanti.

< Sentenza Finali >

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