



MALTA

QORTI TA' L-APPELL

S.T.O. PRIM IMHALLEF

SILVIO CAMILLERI

ONOR. IMHALLEF

TONIO MALLIA

ONOR. IMHALLEF

JOSEPH AZZOPARDI

Seduta tat-30 ta' Mejju, 2014

Appell Civili Numru. 42/2014/1

Strand Electronics Limited C8393

v.

Direttur tal-Corporate Services fil-Ministeru

Qrati tal-Gustizzja

Pagna 1 minn 8

tal-Gustizzja, Djalogu u Familja; u
Office Group Limited C-39197

Il-Qorti:

Dan hu appell imressaq fit-13 ta' Mejju, 2014, mis-socjeta` Strand Electronics Ltd. wara decizjoni datata 27 ta' Jannar, 2014, moghtija mill-Bord ta' Revizjoni dwar Kuntratti Pubblici (min hawn 'l quddiem imsejjah "il-Bord") fil-kaz numru 634/13 (Tender nru. T1/2013).

Dan il-kaz huwa marbut ma' sejha ghall-offerti li harget id-Direttorat tal-Corporate Services fi hdan il-Ministeru tal-Gustizzja, Djalogu u Familja *"for the leasing of thirty seven (37)A4 energy efficient black & white multifunction printing devices including full service and maintenance agreement (FSMS) over a period of three years"*. Dan it-tender kien originarjament gie rrakkomandat li jinghata lis-socjeta` Strand Electronics Ltd.

Is-socjeta` kompetitrici Office Group Ltd. oggezzjona quddiem il-Bord, li cahad l-oggezzjoni. Tressaq appell quddiem din il-Qorti li b'sentenza tas-16 ta' Settembru, 2013, laqghet l-appell ta' Office Group Ltd u baghtet l-atti lura lid-Direttur *"sabiex dan jiehu decizjoni fuq l-offerti b'dan illi ghandu jqis biss dawk l-offerti li jilhqu l-ispecifikazzjonijiet tas-sejha ghall-offerti"*.

Wara din is-sentenza, id-Direttur ipproceda biex jerga' jqis l-offerti fid-dawl tad-decizjoni ta' din il-Qorti, u fil-31 ta' Ottubru, 2013, is-socjeta` Strand Electronics Ltd. giet infurmata li l-kuntratt kien rakkomandat li jinghata lil Office Group Ltd.

Is-socjeta` Strand Electronics Ltd. appellat minn din id-decizjoni tad-Direttur ghal quddiem il-Bord, li permezz ta' decizjoni moghtija fis-27 ta' Jannar, 2014, cahad l-appell u ddecieda hekk:

“This Board,

“Having noted the Appellant’s objection, in terms of the ‘Reasoned Letter of Objection’ dated 6th November 2013 and also through the Appellant’s verbal submissions during the hearing held on 21st November 2013, had objected to the decision taken by the pertinent Authority, in that:

- “a) The Appellant contends that the product offered by the Preferred Bidder does not meet the required technical specifications as laid out in the tender document.
- “b) The product offered by the Appellant was capable of meeting the technical requirements as stipulated in the tender document and was capable of carrying out the necessary tasks as required.

“Having considered the Contracting Authority’s verbal submissions during the hearing held on 21st November 2013, in that:

- “a) In so far as technical specifications are concerned the Evaluation Board was in duty bound to adhere to the decision taken by the Court of Appeal.
- “b) The Evaluation Board requested clarifications from all Bidders to ensure conformity with the technical requirements as specified in the decision given by the Court of Appeal.
- “c) The Appellant's bid did not conform with the technical specifications as stipulated in the decision taken by the Court of Appeal.

“Reached the following conclusions:

- “1. This Board notes that this is the second time this appeal is brought in front of the same Board. Due to the fact that on the 16th September 2013, the Court of Appeal decided that this Board should adjudicate on the decision of the revised technical specifications as decided by same, this Board has to honour the same decision taken by the Court of Appeal.
- “2. Due to the established technical specifications as decided by the Court of Appeal, this Board opines that the Appellant's bid is technically non compliant.

“In view of the above, this Board finds against the Appellant Company and recommends that the deposit paid by the Appellant should not be reimbursed.”

Is-socjeta` Strand Electronics Ltd. ressqet issa dan l-appell quddiem din il-Qorti, bl-aggravju taghha jkun li wiehed mill-aggravji li ressqet ghal quddiem il-

Bord ma giex deciz; qed tallega li l-Bord flok iddecieda dwar l-istampanti tas-socjeta` Office Group Ltd., iddecieda biss fuq l-istampanti tas-socjeta` Strand Electronics Ltd. Ghal dan l-ilment wiegbu d-Direttur tal-Corporate Services fil-Ministeru tal-Gustizzja, Djalogu u Familja u Office Group Ltd. li ma qablux mal-interpretazzjoni li s-socjeta` Strand Electronics Ltd. trid taghti lis-sentenza tal-Bord.

Is-socjeta` Office Group Ltd. tissottometti wkoll li s-socjeta` Strand Electronics Ltd. ma ghandhiex l-interess guridiku mehtieg biex tattakka l-aggudikazzjoni favur taghha, darba li gie deciz li s-socjeta` appellanti ma tikkwalifikax ghax ma offrietx prodott bl-ispecifikazzjonijiet mehtiega. Din il-Qorti ma tistax taccetta dan l-argument ghax ir-regolament 21(5) tar-Regolamenti dwar il-Kuntratti Pubblici (Avviz Legali 296 tal-2010), applikabbli ghal dan il-kaz, jidher li jaghti dritt ta' appell mill-aktar wiesa. Fil-fatt jipprovdi hekk in materja:

“(a) Kull offerent jew kandidat li ma jkunx sodisfatt bid-decizjoni moghtija mill-Bord ta' Revizjoni jista' jappella quddiem il-Qorti tal-Appell (Gurisdizzjoni Superjuri) kif kostitwita skont l-Artikolu 41(1) tal-Kodici ta' Organizzazzjoni u Procedura Civili permezz ta' rikors pprezentat fir-registru ta' dik il-qorti fi zmien ghoxrin gurnata kurrenti mid-decizjoni li fiha d-decizjoni finali ssir pubblika.”

Huwa car mill-premess illi s-socjeta` appellanti ghandha dritt li tappella mid-decizjoni tal-Bord. Jekk l-appell taghha jigi eventwalment milqugh, u jigu skawlifikati z-zewg offerenti, is-socjeta` appellanti tista' terga' tidhol in xena,

ghax id-Direttur ikollu, f'dan il-kaz, jipprocedi jew bil-hrug ta' sejha ghall-offerti gdida, jew billi jaghmel *call for quotations* jew billi jipprovdi b'*direct order* wara li jottjeni l-awtorizzazzjoni tal-Ministru tal-Finanzi. Kwindi, is-socjeta` appellanti ghandha interess tara li l-kompetitur taghha ma jigix vantaggjat ingustament, u wkoll li l-prodotti taghha jigu maqbula ma' dawk ta' ohrajn "*on an equal footing*".

Issa f'dan il-kaz, is-socjeta` Strand Electronics Ltd., fl-appell taghha quddiem il-Bord, espressament appellat mid-decizjoni tad-Direttur li s-socjeta` Office Group Ltd. titqies "*the preferred bidder*", u dan peress li skont hi, l-offerta ta' din is-socjeta` "*does not meet the required technical specifications as laid out in the tender document*". Il-Bord pero`, la ttratta u lanqas iddecieda dan il-punt. Il-Bord iddecieda li l-offerta tas-socjeta` appellanti "*is technically non compliant*", izda ma qal xejn dwar jekk l-offerta ta' Office Group Ltd. kienetx jew le konformi mal-ispecifikazzjonijiet tas-sejha ghall-offerta, li kien il-meritu principali tal-appell imressaq quddiemha mis-socjeta` Strand Electronics Ltd. Il-fatt li l-Evaluation Board kien sodisfatt illi l-offerta tas-socjeta` Office Group Ltd. kienet fil-fatt konformi, huwa immaterjali, ghax l-appell, fil-fatt, sar kontra din is-sejba, u kien dover tal-Bord li hu stess janalizza l-offerta ta' Office Group Ltd. u jiddeciedi b'decizjoni motivata, jekk l-offerta kienetx jew le *technically compliant*.

F'dawn ic-cirkostanzi, hemm kaz car ta' *omissa decisione*, u kif mitlub, anke fl-interess tal-pretensjoni legittima tal-partijiet ghad-*doppio esame*, l-atti qed jigu rimessi lill-Bord biex din tiddeciedi, – wara li tezamina d-dokumenti opportuni u, tispera, bid-dettal adegwat – fuq l-ewwel aggravju tas-socjeta` appellanti fir-*“Reasoned Letter of Objection”* taghha tas-6 ta' Novembru, 2013, kif anke elenkat mill-Bord fid-decizjoni taghha.

Din il-Qorti, fl-ahhar nett, tirreleva li fis-sentenza li tat din il-Qorti fis-16 ta' Settembru 2013, ma bidlet ebda *specification* tat-tender, kif qal il-Bord. Kulma ghamlet din il-Qorti kien li qrat l-*ispecifications* fis-sens logiku u naturali taghhom, billi osservat, fost hwejjeg ohra, illi *“Li riedet is-sejha ghal offerti kien illi l-istampanti jiehdu karti kemm ta' sittin gramm kull metru kwadru (60g/m2), kemm ta' mitejn gramm kull metru kwadru (200g/m2), u kif ukoll ta' kull grammagg iehor bejn iz-zewg estremi, u mhux li jkun bizejjed li jiehdu biss xi grammagg li jkun bejn iz-zewg estremi. Li kieku kienet tajba l-interpretazzjoni tal-Bord tal-Arbitragg, kien ikun bizejjed li kieku l-kxaxen kienu jifilhu karti ta' tmenin gramm kull metru kwadru (80g/m2) biss, ghax ‘80g/m2 falls within the range ta' 60-200g/m2’. Dan huwa absurd u ovvjament mhux dak li riedet is-sejha.”*

Huwa fid-dawl ta' din l-interpretazzjoni li l-atti ntbghatu lura lill-Bord, u huwa ghal kollox barra minn loku u spropostu kbir li wiehed ma jistenniehx mill-Bord,

apparti li hu ingust, il-kumment tal-Bord li din il-Qorti bidlet l-ispecifikazzjonijiet tat-*tender* jew ipprovdiet xi “*revised technical specifications*”. Il-Bord kien obligat jqis il-kaz fid-dawl ta’ din l-interpretazzjoni u skont l-ilmenti li jittresqu quddiemu (li f’dan il-kaz huma tnejn).

Ghaldaqstant, ghar-ragunijiet premessi, tiddisponi mill-appell tas-socjeta` Strand Electronics Limited billi tilqa’ l-istess in parte, u tibghat l-atti lura lill-Bord ta’ Revizjoni dwar Kuntratti Pubblici biex dan jiddeciedi l-lanjanza tas-socjeta` appellanti fis-sens illi “the product offered by the preferred bidder does not meet the required technical specifications as laid out in the tender document”.

L-ispejjez marbuta ma’ din id-decizjoni jibqghu bla taxxa bejn il-partijiet.

< Sentenza Finali >

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