



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. 49/2014/1

United Equipment Co. (UNEC) Limited

v.

1. Korporazzjoni Enemalta;

2. Dipartiment tal-Kuntratti;

3. L-offerent rakkomandat li gie deskritt bhala F&R Ventures

Il-Qorti:

Dan hu appell imressaq fit-18 ta' Frar 2014 mis-socjeta` United Equipment Co. (UNEC) Ltd wara decizjoni datata 4 ta' Frar 2014, moghtija mill-Bord ta' Revizjoni dwar Kuntratti Pubblici (minn hawn 'il quddiem imsejjah "il-Bord") fil-kaz numru 650 (GN/DPS/T/4006/PC1/2012, CT2015/2013).

Dan il-kaz huwa marbut ma' sejha ghall-offerti li hareg id-Dipartiment tal-Kuntratti ghal hrug ta' *"Framework Contract for the Supply and Delivery of Sodium Bicarbonate"* ghall-power station ta' Delimara, Birzebbugia. Permezz ta' ittra mibghuta lis-socjeta` United Equipment Co. (UNEC) Ltd fis-6 ta' Dicembru 2013, din is-socjeta` giet infurmata li l-offerta taghha ma kinitx sejra tigi rakkomandata stante li ma kinitx l-orhos offerta, u li l-kuntratt kien rakkomandat li jinghata lis-socjeta` F&R Ventures. L-istess socjeta` United Equipment Co. (UNEC) Ltd ressqet oggezzjoni quddiem il-Bord, li b'decizjoni tal-4 ta' Frar 2014, ma laqghax l-oggezzjoni tas-socjeta` appellanti u rakkomanda t-telf tad-depozitu. Il-Bord ta s-segwenti decizjoni:

"This Bord,

“Having noted the Appellant’s objection, in terms of the ‘Reasoned Letter of Objection’ dated 12th December 2013 and also through the Appellant’s verbal submissions during the hearing held on the 14th January 2014, had objected to the decision taken by the pertinent Authority, in that:

“a) After having received notification from the Contracting Authority, that the Appellant’s bid had been discarded, same could not object to the decision, since the tender was a three package tender and in this regard the Appellant had to wait for the final adjudication.

“b) Although the Appellant requested the Contracting Authority to submit details of the legal constitution of the Preferred Bidder, none was forthcoming from the Contracting Authority.

“c) In any case, it was confirmed that the Preferred Bidder was not a registered legal entity with MFSA.

“Having considered the Contracting Authority’s verbal submissions during the hearing held on 14th January in that:

“a) The Contracting Authority was not in duty bound to divulge any information regarding the ownership of the Preferred Bidder.

“b) Nevertheless, the Contracting Authority did confirm to the Appellant that the Preferred Bidder’s legal constitution was the result of a Joint group of commercial entities.

“c) At the same time, the Contracting Authority was legally empowered to verify the Appellant’s self declaration statements.

“Reached the following conclusions:

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“1. This Bord opines that the present system relating to the Public Procurement Regulations is not a perfect one and certain regulations need to be amended to avoid unnecessary bureaucracy, litigation and be friendly formulated.

“2. However, this Bord also emphasises the golden rule that was a mandatory in a tender document must be respected and submitted. The Adjudicating Board of the Contracting Authority must assess the particular tender on the submissions made by the particular tenderer. This is a cardinal principle.

“3. Unfortunately, this Board also notes, according to the present regulations of the Public Procurement Regulations restricts the Authority and Discretion of the Evaluation Board appointed by the same Authority and this is not on. This deficiency undermines the administrative and technical capabilities of the same appointed Board.

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

Is-socjeta` United Equipment Co. (UNEC) Ltd ressqet issa dan l-appell quddiem din il-Qorti u ressqet zewg aggravji, u cioe`, li d-decizjoni tal-Bord hija nulla peress li tiddifetta serjament min-nuqqas ta' motivazzjoni, u n-nullita` wkoll tal-istess decizjoni appellata stante li hija kontradittorja u inkoerenti.

Fil-kuntest tal-ewwel aggravju, din il-Qorti tirrileva li ghal fini tal-adempiment tal-obbligu tal-motivazzjoni, il-Bord adit mhux mistenni jew tenut li jaghti ragunament elaborat jew li jikkonfuta kull singolu argument prospettat mill-parti, imma kien jibbasta li jindika dawk l-elementi li fuqhom iffonda l-

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konvinzjoni tieghu proprja. Il-motivazzjoni tista' wkoll tkun wahda skematika, basta tkun tista' tigi individwata r-raguni li titqieghed ghab-bazi tad-decizjoni (ara **Frank P. Borg Ltd v. Camilleri**, deciza minn din il-Qorti fit-28 ta' Mejju 2010, u **Mercieca v. Water Services Corporation**, deciza minn din il-Qorti, Sede Inferjuri fis-27 ta' Frar 2009).

F'dan il-kaz, id-decizjoni, tal-Bord hi ftit xotta, pero` minn qari tad-decizjoni kollha hu car li d-decizjoni tal-Bord hi fis-sens li d-Dipartiment u l-Bord stess huma marbuta bil-ligi u t-tender documents u darba rrizulta li l-process regolamentari kien qed jigi segwit (tant li gie registrat quddiem il-Bord mis-socjeta` appellanti "*that the process was correct*"), allura l-ilment tal-istess socjeta` appellanti ma setax jigi milqugh. Is-socjeta` appellanti riedet tkun taf min huma l-individwi/entitajiet li kienu wara l-offerent rakkomandat F&R Ventures, u rrizulta li l-informazzjoni li nghatat, ghalkemm limitatissima, kienet konformi mal-ligi in materja. Il-Bord esprima l-hsieb tieghu li jkun ahjar jekk jigu emendati r-Regolamenti relattivi, pero`, stqarr li r-Regolamenti huma li huma, u ma jidhirx li saret xi haga rregolari; l-oggezzjoni tas-socjeta` appellanti giet ghalhekk michuda.

Din il-Qorti tirrimarka li mhux l-ewwel darba li tressaq ilment marbut man-nuqqas ta' motivazzjoni fid-decizjoni tal-Bord, u din il-Qorti, sa issa, dejjem sabet mezz kif issalva dak li hu salvabbli. Tfakkar lill-Bord, pero`, li hu dmir u

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obbligu taghha li timmotiva d-decizjoni taghha fid-dettal u bi spjegazzjoni cara ta' x'wassalha ghall-konkluzjoni taghha u ghaliex waslet ghal dik il-konkluzjoni, u dan billi tikkumenta u tqis bid-debita reqqa s-sottomissjonijiet li jkunu ghamlu l-partijiet. B'hekk, forsi, jigu evitati hafna appelli zejda u dan f'materja li, skont il-ligi, jridu jigu determinati fiz-zmien qasir.

L-ewwel aggravju tas-socjeta` appellanti qieghed jigi michud.

Fil-kuntest tat-tieni aggravju, l-allegata kontradizzjoni li qed tirraviza s-socjeta` appellanti mhijiex bejn il-motivazzjoni u d-*decide* tas-sentenza, izda bejn il-motivazzjoni u dak li beda jghid ic-Chairman tal-Bord matul is-smiegh pubbliku tal-kaz. Fil-fehma tal-Qorti, imbilli c-Chairman, waqt it-trattazzjoni tal-kawza, jkun ghadda certu rimarki, ma jfissirx b'daqshekk la li l-istess Chairman hu marbut b'dak li qal, lanqas li l-Bord, fl-ghoti tas-sentenza, ghandu jibqa' marbut ma' dawk ir-rimarki jew kummenti. Il-fatt li l-Bord ikun tbieghed minn certu riffsjonijiet maghmula mic-Chairman, ma jfissirx b'daqshekk li s-sentenza hija wahda illogika jew kontradittorja. Skont ir-regolament 84(a) tar-Regolamenti dwar il-Kuntratti Pubblici (Avviz Legali 296 tal-2010), mhijiex id-decizjoni tac-Chairman wahdu li torbot, izda d-decizjoni maggoritarja tal-Bord.

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Barra minn dan, ma tirrizulta ebda kontradizzjoni bejn dak li qal ic-Chairman *en passant* (li l-verifiki li jsiru mid-dipartiment qabel ma effettivament jinghata l-kuntratt hija wahda *fool proof*) u d-decizjoni tal-Bord.

Dan ma qalx li s-sistema mhijiex kif irrimarka c-Chairman, izda qal li din tista' tkun ahjar biex jigi evitat litigazzjonijiet 'il quddiem. Ghal Bord kien ikun ahjar li kieku l-verifiki mad-dipartimenti jsiru mal-fazi bikrija tal-evalwazzjoni milli, f'dak l-istadju, toqghod biss fuq id-dikjarazzjonijiet tal-offerent. Il-Bord qal, pero`, li huwa ghandu joqghod fuq dak li jghid id-dokument tas-sejha, u darba l-offerent rakkomandat wettaq dak li kellu jwettaq skont dan id-dokument, il-Bord ma setax jiskwalifikah. Ma jistax jinghad, allura, li s-sentenza tal-Bord hija wahda inkogruwenti u kontradittorja.

It-tieni aggravju tas-socjeta` appellanti qieghed ukoll jigi michud.

Ghaldaqstant, ghar-ragunijiet premissi, tiddisponi mill-appell tas-socjeta` United Equipment Co (UNEC) Ltd billi tichad l-istess u tikkonferma d-decizjoni tal-Bord ta' Revizjoni dwar Kuntratti Pubblici tal-4 ta' Frar 2014, bl-ispejjez jithallsu mill-istess socjeta` appellanti.

< Sentenza Finali >

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