



QORTI TAL-APPELL

IMHALLFIN

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

Seduta ta' nhar it-Tnejn 20 ta' Lulju 2020

Numru 19

Rikors numru 97/20

SaniClean Joint Venture

v.

**St Vincent de Paul Long Term Care Facility,
Dipartiment tal-Kuntratti u X Clean Limited**

Il-Qorti:

1. Dan hu appell imressaq fil-25 ta' Mejju, 2020, mis-socjeta` rikorrenti X Clean Limited wara decizjoni datata 15 ta' Mejju, 2020, moghtija mill-Bord ta' Revizjoni dwar il-Kuntratti Pubblici (minn hawn 'l hemm imsejjah "il-Bord) fil-kaz referenza CT 2374/2018 (kaz numru 1438).

2. Dan il-kaz huwa marbut ma' sejha ghall-offerti "*for the provision of environmentally friendly cleaning and ancillary services in an environmentally friendly manner to Saint Vincent de Paul Long Term Facility*". Ghal dan il-kuntratt intefghu diversi offerti, fosthom wahda mis-socjeta` rikorrenti, u ohra mis-socjeta` Sani Clean Joint Venture. Fl-4 ta' Frar, 2020, il-bord ta' evalwazzjoni nnotifika lis-socjeta` X Clean Limited li hija kienet rebhet iz-zewg lots fit-tender inkwistjoni. Is-socjeta` SaniClean Joint Venture resqet appell quddiem il-Bord, u dan ta d-decizjoni tieghu fil-15 ta' Mejju, 2020, li fis-succint, laqa' whud mill-ilmenti li resqet din il-Joint Venture, hassret ir-rakkomandazzjoni li l-kuntratt jinghata lill X Clean Limited, u ordnat li l-process tal-ghazla jsir mill-gdid, mehud in konsiderazzjoni l-osservazzjonijiet li ghamel il-Bord.

3. Id-decizjoni ta l-Bord hija s-segwent:

"having noted this objection filed by Saniclean JV (hereinafter referred to as the Appellants) on 14 February 2020, refers to the claims made by the same Appellants with regard to the tender of reference CT 2374/2018 Lot 1 listed as case No. 1438 in the records of the Public Contracts Review Board awarded by Saint Vincent De Paul Long Term Facility (hereinafter referred to as the Contracting Authority).

"Appearing for the Appellants: Dr John Bonello

"Appearing for the Contracting Authority: Dr Franco Agius

"Whereby, the Appellants contend that:

a) "The preferred bidder's offer should have been discarded outright due to the fact that they were not compliant with regard to VAT and Social Security requirements as dictated in the tender document.

b) "The allocation of marks to Appellants' offer was carried out in an erroneous and subjective manner by the Evaluation Committee, with particular reference to the following mandatory issues:

i) "Timekeeping measures

- ii) "Adequate Level of Service
- iii) "Rostering Methodology
- iv) "Contingency Plan
- v) "Monthly Reports
- vi) "Proposed Methodology

This Board also noted the Contracting Authority's 'Letter of reply' dated 21 February 2020 and its verbal submissions during the virtual hearings held on 23rd and 28th April 2020, in that:

a) "The Authority insists that it had received all the necessary certification to confirm that the preferred bidder was in compliance with all the mandatory requirements regarding VAT and Social Security contributions.

b) "With regard to Appellants' claims on the allocation of points on their offer concerning the mandatory items mentioned, the Authority contends that, the marks allotted on these requirements reflected the quality of presentation of such documentation so that, under the BPQR system, the points were objectively awarded.

"This same Board also noted the testimony of the witnesses namely:

"Mr Manfred Barbara from VAT Department, duly summoned by Public Contracts Review Board (PCRB)

"Ms Mariella Orlando from VAT Department, duly summoned by the PCRB

"Mr Joseph Attard from VAT Department, duly summoned by the PCRB

"Ms Karen Muscat from Evaluation Committee, duly summoned by the Public Contracts Review Board

"Mr Giulio La Scala duly summoned by Saniclean JV

"This Board, after having examined the relevant documentation to this appeal and heard submissions made by the interested parties, including the lengthy testimony of witnesses duly summoned opines that, the issues that merit consideration are two-fold namely:

a) "The preferred bidder's compliance with respect to VAT and Social Security obligations and

b) "The allocation of marks on mandatory items namely, timekeeping, level of service, rostering, contingency plan, monthly report and proposed methodology.

1. "With regard to Appellants' first contention, this Board would respectfully refer to clauses 7 (B)(b) iii) and iv), which dictate the following:

"iii) Certificate or Proof from the VAT department that all money due to the VAT department are paid and no amounts are due (Note 2)

iv) Certificate or Proof from the Social Security department or Inland Revenue Department that all Social Security Contributions, class 1 (employee & employer) and class 2, are fully paid and no amounts are due (Note 2)"

“Appellants, in their submission, are claiming that the preferred bidder did not comply with such a requirement as they were sued by the VAT Department on the 9 July 2019 for unpaid tax amounting to €148,21. In this regard, officials from the VAT department were duly summoned and same confirmed that, as at closing date of the offers, the preferred bidder had no outstanding liabilities with the VAT Department, viz:

“Dr Bonello : Mela ghandek il-parameters kif tista’ tixhed

Xhud : Dakinhar, jigifieri ghall-habta ta’ Lulju 2019 iva kien hemm dejn dovut tal- ammont li hemm miktub f’dik l-ittra ufficjali. U nharget dik l-ittra ufficjali, iva nikkonferma

Dr Bonello : Issa x’gara wara dik l-ittra ufficjali?

Xhud : Wara dik l-ittra ufficjali kien gie d-Dipartiment id-direttur tal-kumpanija, konna ghamilna repayment programme. Dan ir-repayment programme inzamm imma imbghad ghal xil-ewwel gimgha ta’ Awwissu, kien hemm pagament. Id-dejn kien tela’ xi ffit ukoll, pero ghad-9 ta’ Awwissu kien sar lump sum payment fejn gie cleared id-dejn kollu. Jekk tippermettili nispejja, l-ittra ufficjali ghadha hemm sempliciment minhabba spejjez tal-Qorti ghaliex ahna nghidu li jekk irid inehhaha mill-Qorti, jaghmilha t-tax payer stess ghax inkella ma jhallsuniex l-ispejjez. Allura jekk hu jrid jirtira l-ittra ufficjali, hu jaghmel rikors hu jekk irid u jirtiraha. Pero sad-9 ta’ Awwissu, id-dejn fuq VAT kien thallas kollu

“From the above testimony and corresponding documentation, this Board is comfortably convinced that the preferred bidder was compliant with clauses 7 (B)(b) iii) and iv) of the tender document, so that Appellants’ first grievance is not upheld.

2. “With regard to Appellants’ second grievance regarding the alleged erroneous allocation of marks on items indicated in Appellants’ objection, this Board, prior to considering the merit on each grievance, would respectively point out that, the BPQR system has been proved to be the most objective mode of assessing offers and it has also been established, through its application, that it if correctly used justly provides an objective conclusion to select the most advantageous offer possible.

“Needless to mention, there is always the human subjective element in the weighting of the offers, but the formula itself suppresses the subjectivity element in the evaluation process and in this respect, this Board will consider the merit of the allocation of points on each of the items mentioned in Appellants’ objection as follows:

2.1. With regard to timekeeping measures, the Authority insists that apart from the electronic software system, there is no other back-up facility provided by Appellants. On the other hand, Appellants maintain that, the system is backed by having cleaners’ worksheets signed and countersigned by nurses and security personnel on the ward, so that

there will be verification of such attendance, apart from physical supervision by Appellants' supervisors.

"From the evaluation report, this Board notes that 3 points were deducted from Appellants' offer due to the non-submission of a back-up system. In this respect, same reason was given by the Evaluators on 'Adequate Level of Service'.

"In this regard, this Board would point out that, it is the responsibility of the economic operator to ensure that the employees are properly accustomed in the use of the electronic system of the timekeeping and that the same system provides an adequate level of service. Apart from the electronic timekeeping system, there will be physical supervision of staff that will ensure that each employee is fully occupied with its duties. In this respect, an extract from Mr La Scala's testimony will illustrate such a methodology, as follows:

" And what are the systems? First, for sure is the software application. But then there is personal observation because the responsible of the services shall be over there and approve the time of the people of attendance. And also the supervisor and also the foreman and then they will show you where. So there is time keeper observations. So there are people that are in charge of that specifically, there are time keepers observation. So it is not only the system electronical but there are people assigned to the task and are called time keepers observation

Chairman : Mr La Scala, was that made clear in your offer?

Witness : Yes it is written here. And then there is checking data against other independent sources. What does it mean? It means that for instance once the cleaner go to the ward and working to the ward, she will have a sheet that will be signed and counter signed by the nurse in charge. Because when I go in my office, sign the attendance and they are going to the ward, I do not know where it is. She can disappear somewhere in the hospital. So we must ensure that the people are going to the ward. So the additional information that is very important is that there are independent sources, there are nurses but also security people that will be in charge to verify if the people are going somewhere else, the people are hiding in the corner to play games so this source for us is important. And this is written in the offer because we have to also verify with this people which is the attendance of the people. If we go to criterion E.7 in my offer, page 3, criterion E7, we have a form that shall be signed by the foreman to verify the attendance of the people on cleaning duties. So there is a form to sign to verify the area. So there is a very deep investigation about that. So timekeeping is not only made by electronic system but made physically by on site inspection of the people."

"In this regard, after taking into consideration the testimony of Mr La Scala and reviewing Appellants' offer, this Board considers the 'Timekeeping' issue is well described in detail and provides the necessary information to the Authority together with the provision of

assured control over the timekeeping of the economic operator's employees, so that any deduction of points in this regard is not justified.

3. "With regard to 'Rostering Methodology' the Authority contends that Appellants' offer did not provide for onsite inspections by supervisors to confirm that the required tasks have been executed.

"In this respect, this Board would refer to an extract from the testimony of Mr La Scala who identified the supervision methodology to be applied, as follows:

"Witness : This point is referring to the offer into the criterion E.5 which show how the use of resources will ensure timely delivery of the task maximum points will be allotted if the rostering timetable methodology is exhaustive in line with the requirement established in the terms of reference. So this is what is requested in the tender. I would like to point out that in the paragraph is written how, it is not written how will I inspect. Because the inspection is requested in the previous paragraph where there is written timekeeping and adequate level of services. And also specifically in paragraph 1.8 where is reporting the level of services again, over there I explain how I will inspect the resources. Here is requesting how I will use the resources. So how I will put the resources in place to face the activities. But, notwithstanding that, in the paragraph of my offer is written, there is a long explanation about the organisation chart, because the resources shall be organised in a chart. So the people shall not have no organisation. So in the organisation chart is written that there is responsible for the contract, there are 3 supervisor, so there are more supervisor than requested in the tender, because the tender is requesting only two and we are assigning 3 supervisor, so one more, and then there is a long line of foreman that is in charge to make also the daily activity of checking and inspection in all the hospital. Because 3 supervisor for an entire hospital will be under my personal inspection not enough to check what is happening to the hospital. So in addition to that, we have a long line of foremen that will be responsible to go around in the hospital and to be every day to control each cleaner. But onsite inspection is provided in criterion 1.5 here

Chairman : Ok

Witness : The supervisor will be composed by 3 people and to be always present in the Saint Vincent de Paule site during working hours to ensure that the best levels of cleanliness prescribed by this contract are met. So this is not the softer system. This is people that is going around. Then in addition to that, we have also always as I said before forms to be filled by the foreman and there is the signature of the foreman. So the foreman has to fill this table to verify who is where and who is cleaning what and he has to sign. As indicated in criterion 1.5, the proposed structure include foremen who will be responsible to ensure that will carry out the cleaning activities at the hospital and so there are foreman that are providing inspection. Then there is always this table that is providing also check on compliance on the proper execution of the work methodologies, checks on the completion of the planned operation, check on the proper use of respect of security

system adopted, check on the correct use of PPE as shown. So this is all the checks that have to be done. Then the last one,

Dr Bonello : Are you in a position to conclude on this point?

Witness : Yes. The other point that I would like to show is this one, so we have made all the roster of all the hospital already. On here there are all the roster and all the areas with all the people. So the roster methodology has been already explained and provided into the offer. Very deeply.”

“In this regard, this Board, after having heard the testimony of Mr La Scala and Ms Karen Muscat, Chairperson of the Evaluation Committee and after having examined Appellants’ offer opines that, the ‘Rostering Issue’ submitted by Appellants did not contain sufficient information to assure the Authority that the methodology that will be applied by Appellants will render a workable solution, so that deduction of points in this respect is justified.

4. “With regard to the contingency plan to cater for sick personnel, industrial action and breakdown of public transport, this Board would consider each item under review separately, although points were awarded on a global assessment of the mandatory items together.

4.1. “With regard to sick personnel, Appellants’ are claiming that in the event of sick employees, these can be replaced by extending the hours of available personnel, transferring people from other sites or from a dedicated pool that is available for this eventuality and an extract from the testimony of Mr La Scala will elaborate on this particular issue, as follows:

“Witness: Another objection that has been made is in relation to the use of the replacement of the cleaner because they objected that we are providing a replacement of the people extending the hour of the present people. It is not true. Because in the offer it is a very easy process, that is this one

Chairman : Which says?

Witness : Which says that if there is some people available on site will be use people available on site. If there is people available on other site, will be use people available on other site, if not there is a specific team of people that is in charge on making replacement and this team of people is reported in the organisation chart. In the last line you will see that there is people to replace. So this is a dedicated pool of people that will be in charge to provide replacement of the sick people, absent people, for any reason the people may be absent. The cleaning operators assigned to replacement will be always available to replace the absent ordinary and specialised cleaning operators.”

“The Authority’s main concern, in this regard, is that replacement of sick personnel from other sites might create a problem due to the simple fact that such replacements are not normally used to carry out cleaning

services in such a delicate environment such as St Vincent De Paul. In this respect, an extract from Ms Muscat's testimony will highlight this particular issue:

“Dr Bonello : Inti ghamilt referenza wkoll għall-fatt li l-proposta fejn jigu estizi working hours għalikom mhix accettabli għax intom ma tistgħux testendu l-hinjiet tal-haddiema għax inkella jkunu deklin filgħaxijiet

Xhud : Le le jestendu għax filgħodu jekk ikollhom xi hadd bis-sick, bil-lejl ma jkollniex nies biex jestendulhom is-sighat. So minn fejn ser jestendu. Dik kienet. Għax ahna night m'għandniex servizz ta' cleaners. Għalhekk semmejnha dik

Dr Bonello : Biss naqblu illi l-proposta tal-extension kienet parti minn flow chart illi tispjegalek li wahda mill-options f'kaz li jista jkun hemm extension issegwi certu rotta? Wrieha dalgħodu

Xhud : Iva għandek yes jew no. Għandi hawn. Pero xorta kienet listed bhala wahda mill-options

Dr Bonello : Jekk ma tahdimx dik

Xhud : Imma ahna li nkwetajna li l-ohra kienet from other worksites. Li jgib in-nies minn postijiet ohra. Il-postijiet ohra issa liema huma? Dawn x'esperjenza għandhom? Kif semmejt qabel? Jahdmu go lukanda? Go ufficini? Ser jigu jahdmu San Vincenz. Għandhom esperjenza?

Dr Bonello : Again imma naqblu illi t-training tal-haddiema hija responsabbilta tal-employer u mhux responsabbilta

Xhud : Agreed pero xorta importanti li ssir għax ser teffettwa l-operat tagħna. U s-servizz hux. Bhala standards. Jigifieri jiema xorta rrid nara li jekk ser iggib haddiem inti minn ufficini li dan jaf kif jahsel go San Vincenz”

“In this regard, after taking into consideration the fact that, any replacement of personnel must be knowledgeable enough to carry out cleaning services in Hospitals and Old People's Homes, it is imperative that this responsibility and onus of replacement should be carried by the economic operator himself and the latter should prove to the Authority that he will be responsible for such a task of replacing sick personnel with others well versed in the operation of their duties in such an environment. In this regard, this Board opines that on this issue, points, should only be deducted if the economic operator, in his submission indicated otherwise, always bearing in mind that the responsibility in providing adequately trained staff, at all times, is his under any circumstances.

4.2. “With regard to the provision of alternative transport in case of Industrial Action, the Authority contends that Appellants did not indicate any agreement with any local company to provide transport and no mention was made who is to pay for such service. In this particular regard, it is the responsibility of the economic operator to make his own

arrangements to ensure that in the eventuality of a transport strike, the employees are ferried to their place of work, without fail and on time, for the execution of their normal duties. In this regard, after having examined Appellants' submission, this Board considers that sufficient information was given to guarantee that personnel will attend at their place work in case of a transport strike. At the same instance, it should not be the Authority's concern whether the operator owns or leases the vehicles, as long as the bidder is cognisant of the fact that he is totally responsible for such an eventuality. Moreover, the issue of who is to bear the cost of such transport, whether the contractor will bear the costs or the employees themselves will contribute, is irrelevant to the terms of the tender and on this particular issue, this Board opines that Appellants were compliant.

4.3. "With regard to the eventuality of industrial action, such an issue will not happen overnight so that, it is a normal and democratic approach to avoid such a situation, as much as possible, by holding discussions with the unions involved to come to an amicable solution. If unsuccessful, the contractor can only issue an alternative plan after discussions with the Authority. This Board cannot find a justifiable alternative solution except that it is in the interest of the contractor to avoid such a situation by providing decent working conditions. In this regard, this Board opines that the information submitted by Appellants should be sufficient to comply with the requirements, in the event of industrial action. After considering the above, this Board opines that the contingency plan presented by Appellants was compliant except for the provision for 'Rostering Methodology' and the points to be awarded should reflect these considerations.

5. "With regard to 'Monthly Reports', Appellants maintain that they had submitted what was requested in the tender document and their submission consisted of a monthly time sheet for each cleaner only, as duly explained through the testimony of Mr La Scala, as follows:

"Chairman : Monthly reports?"

Dr Bonello : This is page 13 of your rationale. Can you please explain and reply to the comments of the evaluation committee?"

Witness : Yes. In this respect, it is reporting copy of draft report as per clause 7 of the technical specification. The record shall include time sheets to illustrate the number of hours rendered in cleaning services performed for the respective months. So in the objection, it is said that there was no mention of incident reporting, health and safety issues and recommendations for improvement. But this is not requested by the tender. Here the list of the cleaner, the ward, the hour and the timesheet so the record is reporting as requesting the hours rendered for cleaning services per ward and for the respective months. So the record is over there.

Chairman : In other words, what the tender has requested, in your offer, you have included those items, am I right?"

Witness : Correct.”

“At this particular stage of consideration, this Board must point out that, during the evaluation process and the allocation of points, some form of comparison must be made so that, the most informative and comprehensive report will attain the highest score, under this requirement. From submissions made and the evaluation report, it is evidently clear that there were submitted reports superior to that of Appellants so that, a deduction of one point was effected and the score awarded to Appellants’ was commensurate with the contents of the report so submitted. In this regard, this Board opines that, the points so allocated relating to ‘Monthly Reports’ were proportionally just and fair. An extract from the testimony of Ms Muscat Chairperson of the Evaluation Committee explains what other bidders included in their ‘Methodology Reports’, as follows:

“Dr Agius : Kien hemm bidders ohra li taw draft reporting ahjar minn dan il-bidder?

Xhud : Kulhadd kellu dawk l-hours on a monthly basis imma kien hemm ohrajn li bhala kwalita kienu ahjar. Kien hemm min semma any incident reporting li kien hemm matul ix-xahar. Any issues li ghandhom li jekk jinqala xi haga you have to discuss. Any issues fuq health and safety. Kien hemm min qal li ser izid any other things li kien hemm matul ix-xahar li rajnieha bhala kwalita ahjar minn ta’ dan is-sinjur, ta’ din il-kumpanija. Bhala kwalita qed nghidu. Ghalhekk il-marks ftit naqqasna. Xorta hemm kienu s-sighat bhala monthly basis. Just xtaqna li bhala reporting billi s-servizz hu kif inhu, not just about the hours u bhala sighat, kien hemm iktar affarijeit mieghu, speci bhala kwalita kienet ahjar minn affarijiet ohra.”

6. “With regard to the proposed methodology, the Authority contends that the overall input duration and completion of tasks is alerted of any shortcomings only through the SW system and not by daily routine on-site inspections and at the same instance, the inputted data can be manipulated intentionally. In this regard, from submissions made various methods were highlighted by Appellants in that, there will be on site supervision so that proof and verification of attendance of personnel will not depend only on the system.

6.1. “With regard to the issue of ‘Audits’ the Authority maintains that the gap between the various types of report was too vast; however, Appellants in their submission, did quote that “*Or as agreed by the Contracting Authority*” so that, such a commitment must also be taken into consideration, in the allotment of marks.

7. “After taking the above-mentioned issues into consideration, this Board opines that:

7.1. “With regard to Appellants’ claim that the preferred bidder should have been disqualified as he was not compliant with clauses 7 (B)(b)

iii) and iv) of the tender document, it was confirmed by the witnesses from the VAT Department that X Clean Ltd (Preferred Bidder) had no liabilities with the Department as at the date of submission of their offer.

7.2. "With regard to time-keeping measures submitted by Appellants, such measures were compliant enough not to be penalised by deduction of any marks.

7.3. "With regard to 'Rostering Methodology', Appellants' submissions, could have been more informative and more focused on the allocation of the duties of personnel so that, deduction of marks when compared to other competing submissions, was justified.

7.4. "With regard to the 'Contingency Plan' relating to sick personnel, it is the responsibility of the economic operator to ensure replacement of sick personnel and marks on this issue should only be deducted if Appellants' submission indicated lack of importance on the issue.

7.5. "With regard to the 'Contingency Plan' relating to alternative transport for employees in case of public transport shutdown, Appellants submissions were informative enough to be compliant.

7.6. "With regard to the 'Contingency Plan' relating to the eventuality of industrial action, Appellants' submissions were compliant.

7.7. "With regard to 'Monthly Reports', more detailed and inclusive reports were in fact submitted by other competing tenderers so that by comparison, the deduction of marks in this regard, were proportionately justified.

7.8. "With regard to the dependence on the IT system for timekeeping and attendance supervision, Appellants' submission was compliant through the presence of onsite supervision.

7.9. "With regard to 'Audits' to be carried out by Appellants, they denoted a scheme of reporting were gaps between intervals of audits were considered as vast by the Contracting Authority, however, same Appellants cited that 'Or as agreed by the Contracting Authority' so that, such a commitment must also be taken into consideration during the allocation of marks.

"In view of the above, this Board,

i) "acknowledges the fact that this tender is substantial in monetary terms but also more importantly notes the necessary quality of service which the successful bidder must offer,

ii) "considering the allocation of marks on certain mandatory items, this Board opines that a re-evaluation process, taking into consideration this Board's findings, will reap a more transparent and advantageous benefit to the Authority,

- iii) “does not uphold the Contracting Authority’s decision in the award of the tender,
- iv) “directs that Appellants’ offer be reintegrated in the evaluation process,
- v) “directs that the Evaluation Committee shall be differently composed, and shall take this Board’s findings in its deliberation,
- vi) “directs that the deposit paid by Appellants be fully refunded.

4. Is-socjeta` X Clean Limited issa qed tappella mid-decizjoni li ha l-Bord ghal quddiem din il-Qorti u qed tissottometti li t-tnaqqis tal-punti ghall-offerta tal-Joint Venture kienet gustifikata u ma kellhomx jigu maqluba mill-Bord. Jigi rilevat li l-kuntratt kellu jinghata fuq il-kriterju tal-*Best Price/ Quality Ratio*, cioe`, ai termini ta’ *weighting* tal-kwalita` tad-diversi xoghlijiet rikjesti li jitwettqu fil-kuntratt. Il-mod kif jinhadmu l-marki teknici u l-marki finanzjarji huwa specificat fis-sejha ghall-offerti. Jirbah is-sejha min fl-ahhar igib l-akbar ammont ta’ punti. Kif inghad, is-socjeta` X Clean Limited qed issostni l-fatt li t-tnaqqis tal-punti li l-kumitat ta’ evalwazzjoni ghamel lill-offerta ta’ SaniClean kien gustifikat. Is-socjeta` rikorrenti ressqet l-aggravji taghha fil-kuntest ta’ kull aspett fejn hassitha ppregudikata.

5. Wara li semghet it-trattazzjoni tad-difensuri tal-partijiet u rat l-atti kollha tal-kawza u d-dokumenti esebiti, din il-Qorti sejra tghaddi ghas-sentenza taghha.

Ikkonsidrat:

6. L-aggravji tas-socjeta` appellanti X Clean Limited sejrjn jigu trattati punt punt. Tajjeb li jigi rilevati, fl-ewwel lok, illi l-ilmenti ta' din is-socjeta` huma marbuta ma' apprezzament tal-fatti maghmula mill-Bord li hu kompost minn membri teknici li huma aktar esperti f'din il-materja milli l-gudikanti ta' din il-Qorti. Isegwi li certa affidabbilita` trid tinghata lill-osservazzjoni tal-bord, ghalkemm din il-Qorti mhux se toqghod lura milli tezamina r-ragunament tal-istess Bord li wasslu jichad certi ilmenti tas-socjeta` appellanti.

Irid wkoll jigi puntwalizzat li, meta, bhal f'dan il-kaz, l-offerta trid tkun rrakkomandata a bazi ta' punti ta' kwalita`, il-kumitat evalwattiv, ghandu certa diskrezzjoni ("leeway") kif jiddeciedi. Fl-ghoti ta' punti hemm certu elementi soggettiv u din il-Qorti tapprezza li jista' jkun hemm differenzi f'opinjonijiet li mhux bilfors iwasslu ghal decizjoni hazina.

L-ewwel punt: List of Measures to ensure time-keeping measures and adequate level of service

Taht din il-kategorija, l-offerent ried jipprovdi listi ta' mizuri li bihom huwa seta' jizgura l-attendanza tal-haddiema tieghu ghax-xoghol u li l-haddiema tieghu kienu ha jaghtu servizz tajjeb waqt il-hin tax-xoghol taghhom. Fl-offerta taghha SaniClean indikat li hija kienet behsiebha timplimenta sistema elettronika li permezz taghha tirregistra d-dhul u l-

hrug tal-haddiema taghha. Bhala mizura alternattiva ghas-sistema elettronika, SaniClean semmiet li hija kienet ha tqabbad supervizuri sabiex dawn joqghodu ghasa fuq il-haddiema, u jivverifikaw ukoll il-kwalita` tas-servizz. Huwa fuq din is-supervizjoni li hemm dizgwid bejn il-kumitat ta' evalwazzjoni u l-Bord.

Il-kumitat ta' evalwazzjoni deherlu li SaniClean ma tahx taghrif specifiku kif effettivament dawn is-supervizuri kienu ha jilhqu dan l-iskop. Il-Bord, min-naha l-ohra, sema' ix-xhieda ta' rapprezentant tas-socjeta` SaniClean, is-Sur Giulio La Scala, li spjega kif kienet sejra tahdem is-supervizjoni fizika, u qal li kien sodisfatt b'dak li offriet SaniClean fir-rigward u ma kienx necessarja tnaqqis ta' tlett punti fuq din il-materja.

Is-socjeta` appellanti tissottometti li l-ispjegazzjoni dwar it-thaddim tas-supervizjoni fizika ma nghatax fl-offerta, izda wara quddiem il-Bord.

Din il-Qorti tasal biex aktar accetta il-hsieb tal-kumitat ta' evalwazzjoni li fuq materja hekk importanti l-offerta kienet vaga u provdjet taghrif kemxejn dghajjed dwar kif sejra tahdem is-sistema. L-ispjegazzjoni li ta s-Sur La Scala quddiem il-Bord ma kellhiex tigi kkonsidrata, ghax il-Bord kellu jqis l-offerta kif inhi u mhux jitlob spjegazzjoni *ex post facto*.

Jirrizulta wkoll li dwar il-hasil tal-art, il-Joint Venture offriet li taghmel “*low-touch cleaning*” u mhux kuljum. Dan ukoll huwa ta’ thassib ghax li ma tahsilx l-art kuljum fil-kuntest ta’ post vulnerabbli bhal ma huwa San Vincenz De Paul kellu zgur iwassal ghat-tnaqqis ta’ punti.

Ghalhekk, din il-Qorti ma taqbilx mal-Bord li tnaqqis ta’ tlett punti f’din il-materja ma kienx gustifikat, u tqis li l-kumitat ta’ evalwazzjoni ghamel analizi tajba tal-materja.

It-tieni punt: Contingency plans

Taht din il-kategorija, is-Sani Clean Joint Venture gabet puntegg ta’ 9.75, cioe`, tnaqqis ta’ 5.25. Taht din il-kategorija l-offerent kellu jipprovdi l-pjan tieghu ta’ kif kien behsiebu jipprovdi s-servizz f’kaz li xi haddiema tieghu jkunu morda u f’kaz li jkun hemm azzjonijiet industrijali fi hdan il-grupp tal-haddiema tieghu. Barra minn hekk, l-offerent ried juri wkoll kif kien ha jizgura li l-haddiema tieghu kienu ha jaslu fil-hin ghax-xoghol, f’kaz li jkun hemm waqfien tas-servizz tat-trasport pubbliku.

Dwar il-kaz tal-waqfien tas-servizz tat-trasport pubbliku, SaniClean Joint Venture indikat li hija kien ser ikollha access ghal numru ta’ vannijiet minghajr ma tat ebda dettall iehor.

Il-kumitat tal-ghazla deherlu li kellu jnaqqas il-marki lil SaniClean Joint Venture ghaliex din ma ghaddietx kopja ta' xi ftehim ta' garr ta' persuni mal-offerta taghha jew imqar provdjet dettalji dwar kif kienet ser jitwettaq dan il-ftehim. Wiehed ma jridx jinsa li hawnhekk qeghdin nitkellmu fuq madwar mitt haddiem u f'kaz ta' emergenza ma kinitx SaniClean Joint Venture biss li kien ser ikollha din l-emergenza, b'dana li kien ser ikun diffiċli li wiehed isib arrangamenti tal-ahhar minuta. F'dan ir-rigward ta' min izid ukoll li waqt ix-xhieda tal-kap tal-kumitat tal-ghazla gie spjegat li d-dipendenza ta' San Vincenz fuq dawn il-haddiema hija kbira.

Hekk ukoll, lanqas ma kien hemm imnizzel fl-offerta, min kien ha jhallas ghas-servizz ta' trasport, jekk huwiex SaniClean Joint Venture, il-haddiem jew l-awtorita` kontraenti.

Fl-ahhar nett, il-kumitat tal-ghazla deherlu wkoll li kellu jnaqqas il-marki fuq dan l-aspett ghaliex SaniClean Joint Venture ma pproponietx is-sistema ta' *carpooling* bejn il-haddiema, sistema li tiswa anqas flus u hija aktar xierqa ghall-harsien tal-ambjent.

SaniClean Joint Venture batiet ukoll tnaqqis fil-marki dwar il-pjan ta' kontingenza f'kaz ta' haddiema morda. Fl-offerta taghha SaniClean Joint Venture indikat li biex taghmel tajjeb ghall-haddiema li jkunu ma jifilhux

hija kienet lesta li ttawwal il-hinijiet ta' dawk il-haddiema li jkunu ga qed jahdmu f'dik il-gurnata.

Il-kumitat tal-ghazla hass li din is-soluzzjoni proposta minn SaniClean Joint Venture ma kinitx wahda tajba ghaliex il-haddiema kienu sejr in jahdmu matul il-gurnata biss peress li ma kienx ha jkun hemm bzonn ta' servizz ta' tindif mal-lejl. Billi l-haddiema kienu ha jahdmu fuq hin jew xift wiehed biss, il-kumitat tal-ghazla ma setax jifhem kif SaniClean Joint Venture setghet tissostitwixxi l-haddiema morda b'haddiema li ga kienu qeghdin jahdmu dakinhar. It-titwil tal-hin tal-haddiema prezenti ma kienx ha jaghmel tajjeb ghall-vojt kollu mahluq bil-haddiema morda ghaliex il-haddiema morda kienu ha jkunu assenti mhux ghal ftit sghat izda ghall-gurnata kollha tax-xoghol.

Fuq kollox kif imsemmi fi klawnsola 2.2(n) u fi klawnsola 4.1.1 f'Taqsimha IV tas-sejha (ara pagni 30 u 31 ta' Dok. DK1), "*All absenteeism, including Vacation and Sick leave and any other form of leave has to be made good by the contractor from a relieving pool managed directly by the contractor*".

Peress li l-kumitat tal-ghazla dehrlu li dan il-pjan ta' kontingenza ma kienx wiehed konvincenti bizzejjed u f'certi kazi kien sahanitra dgħajjef, il-kumitat iddecieda li jaghti marki inqas lil SaniClean Joint Venture.

Din il-Qorti tapprezza t-thassib tal-kumitat tal-ghazla, u ma tarax li l-Bord ta spjegazzjoni xierqa ghaliex kellu jwarrab dawn in-nuqqasijiet li johorgu mill-offerta ta' SaniClean. Il-fatt li tkun ir-responsabbilita` tal-offerent li jara kif isolvi l-problemi li jinqalghu, mhux bizzzejjed. L-offerent kellu juri li kellu kontingenza lesta u dan kif mitlub juri mid-dokumenti tas-sejha.

Kwindi, tara li anke hawn il-Bord kellu jqies it-tnaqqis tal-punti kien gustifikat.

It-tielet punt: Inspections

Fuq din il-materja, kull offerent kellu jindika metodologija li turi kif sejjer jassigura illi l-haddiema tieghu jzommu livell gholi ta' servizz. Din il-kategorija kienet tiswa 15-il marka u SaniClean Joint Venture u nghatat 11.15, jgifieri tilfet 3.85 punti.

It-thassib tal-kumitat tal-ghazla dwar din il-metodologija kien mibni fuq il-fatt li l-foreman (il-kap tal-grupp) kien ha jigi involut biss f'din l-attivitaa ta' registrazzjoni f'kaz biss li jirrizulta li jkun hemm xi nuqqasijiet jew diskrepanzi fit-taghrif li jkun gie mdahhal fis-sistema elettronika. Il-kumitat tal-ghazla hass li l-metodologija proposta kienet tkun ahjar li kieku l-kap tal-grupp jew is-supervizur ikun involut fl-input tal-informazzjoni bhala rutina ta' kuljum, wara li jkun ghamel l-istharrig tieghu fuq il-post

tax-xoghol. Mizjud ma' dan, il-kumitat tal-ghazla hass li l-metodologija proposta minn SaniClean Joint Venture ma kinitx tilqa' kontra sitwazzjonijiet fejn it-taghrif jigi mbaghbas jew imdahhal hazin b'mod intenzjonat;

Hawnhekk, ukoll din il-Qorti tara li dan it-thassib huwa gustifikat. Is-supervizjoni hija importanti f'dan il-kaz, mhux biss biex jigi assigurat is-sahha tal-haddiema, imma wkoll biex jigi mantenut is-servizz, li f'kaz tad-dar inkwistjoni huwa importanti li jinzamm dejjem fi grad gholi.

Ghalhekk, il-Qorti tara li, kollox ma' kollox, l-evalwazzjoni li ghamel il-kumitat tal-ghazla kienet ragjonevoli u l-Bord ma kellux jissostitwixxi d-diskrezzjoni tieghu ghal dik tal-kumitat. Dan tal-ahhar agixxa korrettement meqjus is-sitwazzjoni delikata ta' Saint Vincent de Paul u t-tnaqqis ta' punti li alloka lis-socjeta` SaniClean kienet ragjonevoli fic-cirkostanza tad-dghufija tal-offerta taghha.

Fil-kuntest tal-aggravju ta' SaniClean Joint Venture dwar l-okkju tal-kawza, din il-Qorti tara li, jekk hemm xi nuqqas, dan ma jwassalx ghan-nullita` tal-appell. L-appell quddiem il-Bord sar f'dan l-okkju, u l-appell quddiem din il-Qorti segwa l-istess okkju peress li kien kontinwazzjoni tal-process li beda quddiem il-Bord. Dan l-appell, fil-fatt, tressaq kontra din

is-socjeta` SaniClean, l-awtorita` kontraenti u d-Dipartiment tal-Kuntratti u dawn il-partijiet kollha fehmu r-rwol tagghom f'dan il-process.

Lanqas ma tara li hemm xi konfuzjoni bil-mod li gie redatt l-appell ghall-quddiem din il-Qorti. Is-socjeta` rikorrenti qed titlob it-thassir tas-sentenza li ta l-Bord biex l-evalwazzjoni li ghamel il-kumitat tal-ghazla tibqa' fis-sehh. Mill-istess rikors din it-talba tohrog cara.

Fil-kuntest tal-aggravju mressaq minn X Clean Limited fl-udjenza tas-7 ta' Lulju 2020, fis-sens li s-socjeta` W.M. Environmental Limited, membru fil-Joint Venture SaniClean, ghandha direttur li ghandu fedina kriminali peress li kien instab hati mill-Qorti tal-Magistrati bhala Qorti ta' Gudikatura Kriminali b'sentenza tal-25 ta' Lulju, 2018 billi naqas bhala min ircieva t-trasferiment ta' negozju fi hdan Karin Grech Rehabilitation Hospital f'Jannar, 2015, li jassumi d-drittijiet, is-setghat, l-obbligu u r-responsabbilitajiet kollha ta' min ittrasferixxa, din il-Qorti tirrileva li din hi materja li ma gietx sollevata la quddiem il-kumitat ta' evalwazzjoni u lanqas quddiem il-Bord, u din il-Qorti ma tistax tiehu konjizzjoni ta' materja gdida li ma tkunx giet sollevata mit-tribunal/qorti inferjuri. Din il-Qorti hija wahda ta' revizjoni u tiddeciedi biss a bazi tal-aggravji mressqa fl-appell u mhux fuq materja li ma tirrizultax mill-istess. Apparti dan ma jirrizultax li din is-socjeta` giet *black-listed* fit-termini tal-ligi u, ghalhekk, f'dan l-istadju ma tistax tikkwalifika l-ebda offerent. Jirrizulta wkoll li l-

akkuzat appella mis-sentenza li ghadha pendent. Ovvjament, jibqa' impregjudikat id-dritt tal-awtorita` kompetenti li tirregola s-sitwazzjoni skont ir-rizultanzi.

Ghaldaqstant, ghar-ragunijiet premissi, tiddisponi mill-appell ta' X Clean Limited billi tilqa' l-istess, thassar u tirrevoka d-decizjoni kollha li ta l-Bord ta' Revizjoni dwar il-Kuntratti Pubblici fil-15 ta' Mejju 2020, f'dan il-kaz, u b'hekk tqis valida d-decizjoni li ha fir-rigward il-bord ta' evalwazzjoni li irrikomanda li l-kuntratt jinghata lis-socjeta` appellanti X Clean Limited.

L-ispejjez marbuta ma' dan l-appell jithallsu kollha minn SaniClean Joint Venture.

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