QORTI TAL-APPELL

IMHALLFIN

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

Seduta ta' nhar it-Tlieta, 1 ta' Dicembru, 2020.

Numru 1

Rikors numru 286/20

Sultech & Co. (P 1477)

v.

Ministeru ghal Ghawdex, Direttorat ghall-Izvilupp Regjonali EkoGhawdex, u Anthony Mercieca

Il-Qorti:

1. Dan hu appell imressaq fit-22 ta' Settembru, 2020, mis-socjeta` rikorrenti Sultech & Co., wara decizjoni datata fl-1 ta' Settembru, 2020, moghtija mill-Bord ta' Revizjoni dwar il-Kuntratti Pubblici (minn hawn 'il quddiem imsejjah 'il-Bord') fil-kaz referenza MGOZ/MPU/32/2019 (kaz numru 1449).

2. Dan il-kaz hu marbut ma sejha ghall-offerti li hareg il-Ministeru ghall-Ghawdex "*for the provisions, maintenance and regular collection of open skips at various sites in Gozo*". Ghal dan il-kuntratt intefghu zgur zewg offerti, wahda mis-socjeta` rikorrenti u ohra mill-intimat Anthony Mercieca, li lilu gie rrakomandat li jinghata l-kuntratt. Il-kriterju ghall-ghoti tal-kuntratt kien l-orhos prezz, basta l-offerta tissodisfa "*the administrative and technical criteria*". Is-socjeta` rikorrenti ressqet oggezzjoni quddiem il-Bord, ghax qalet li l-offerta tal-intimat ma tissodisfax dawn il-kriterji, izda dan cahad l-appell u kkonfema d-decizjoni tal-kumitat ta' evalwazzjoni.

3. Id-decizjoni tal-Bord hija s-segwenti:

"**having noted this objection filed by Sultech & Co (hereinafter referred to as the Appellants) on 21st May 2020, refers to the claims made by the same Appellants with regard to the tender of reference MGOZ/MPU T 32/2019 listed as case No. 1449 in the records of the Public Contracts Review Board awarded by Ministry for Gozo (hereinafter referred to as the Contracting Authority).**

"**Appearing for the Appellants: Dr Jonathan Mintoff**

"**Appearing for the Contracting Authority: Dr Andrew Cauchi**

"**Appearing for the Preferred Bidder: Dr Mario Scerri**

"**Whereby, the Appellants contend that:**

a) "Their main concern refers to the fact that, they are not convinced that, after the Court of Appeal's decision, the Evaluation Committee followed the instructions and directions given by the same Court.

b) "Appellants' second complaint refers to whether the Evaluation Committee took all the necessary considerations in their deliberations for the award of the tender.

"This Board also noted the Contracting Authority's 'Letter of reply' dated 26th May 2020 and its verbal submissions during the virtual hearing held on 24th August 2020, in that:

a) "The Authority insists that it had followed the directions given by the Court of Appeal and it had obtained all the necessary documentary evidence which the Court deemed applicable in this regard.

b) "With regard to Appellants' second concern, the Authority maintains that, the Evaluation Committee carried out the adjudication process, after obtaining the relevant assurances and written confirmations from the preferred bidder.

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

"Mr Brian Farrugia duly summoned by Sultech & Co

"Mr Terry Caruana duly summoned by Sultech & Co

"Mr Joseph Antignolo duly summoned by Sultech & Co

"Mr Jonathan Henwood duly summoned by Sultech & Co

"Ms Jacqueline Gili duly summoned by Sultech & Co

"Mr Angelo Camilleri duly summoned by Sultech & Co

"Mr Joseph Cutajar duly summoned by Sultech & Co

"This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, including the numerous witnesses duly summoned opines that, the issue that merits consideration is, whether the Evaluation Committee followed and abided by the directions and considerations raised by the Court of Appeal during the treatment of application of reference number 105/2020 (Sultech & Co (P147)) vs Ministry for Gozo.

1. "This Board would, first and foremost, refer to an extract from the decision of the Court of Appeal relating to this particular case, as follows:

"Dan kollu huwa bizzejjed biex tithasssar id-decizjoni lil-Mercieca, izda dan ma jfissirx illi l-offerta ta' Mercieca ghandha titwarrab bla ma titqies mill-gdid, flimkien mal-offerti validi l-ohra, fid-dawl tal-konsiderazzjonijiet maghmula fuq. Seww jghid il-Ministeru fit twegiba tieghu illi dwar l-obbligu tal-oblatur"(to) provide data concerning subcontractors and the percentage of works to be subcontracted"[1], hemm in-nota 2(B) illi tghid

illi l-oblaturi ghandhom jaghtu kull taghrif nieqes fi zmien hamest ijiem wara li sirilhom talba ghalhekk. Fic-cirkostanzi l-kumitat tal-ghazla kellu d-dmir jitlob dan it-taghrif nieqes qabel ma jghaddi ghad-decizjoni tieghu.

"*26. Ghal dawn ir-ragunijiet il-qorti tipprovdi dwar l-appell bill thassar id-decizjoni tal-kumitat tal-ghazla illi l- kuntratt jinghata lil Mercieca u thassar ukoll id-decizjoni tal-Bord tal-Ghazla, b'dan illi fic-cirkostanzi d-depositu mhallas minn Sultech sabiex setghet tressaq l-oggezzjoni taghha quddiem dak il-bord ghandha tintradd. Tordna illi l-process tal-ghazla jsir mill gdid wara li l-kumitat tal-ghazla jitlob u jinghata t-taghrif mehtieg kif imfisser fuq."*

"**In other words, the Court directed that, apart from cancelling the decision of the PCRB and the Authority's in the award of the tender, directed also that, the Evaluation Committee should re-assess the compliant bids after obtaining documentary evidence from Mr Anthony Mercieca pertaining to the relationship between him and his son, Mr Mario Mercieca and also evidence to support Mr Anthony Mercieca's claim regarding the availability of sufficient open skip resources to cover any contingency that may arise.**

2. "**This Board would respectively treat only the issues raised by the Court of Appeal which can be summarised as follows:**

(i) "**Documentary Evidence of Relationship between Mr Anthony Mercieca (the bidder) and His son Mario Mercieca**

(ii)"**Documentary Evidence regarding the availability of sufficient Open Skip Resources**

(iii) "**Re-Evaluation Process**

3. "**With regard to the relationship of Mr Anthony Mercieca with Mr Mario Mercieca, this Board refers to correspondence dated 23rd April 2020, sent to the Authority, wherein, apart from a description of the close commercial relationship between Mr Anthony Mercieca and Mr Marco Mercieca, there is also a clear description of the set-up of the business of Mr Anthony Mercieca in relation to his sons, Mario and Joseph.**

3.1. "**With regard to documentary Evidence showing the commercial contractual relationship between Mr Mario Mercieca and Mr Anthony Mercieca, this Board would refer to an agreement entered into between the two parties for the execution of the works being tendered for, as follows:**

"Ftehim milhuq

"*Illum, sebgha u ghoxrin (27) ta' April elfejn u dsatax (2019).*

"*Bejn*

"*Minn naha l-wahda:* ***Anthony Mercieca****, kuntrattur, bin il-mejtin Fortunato Mercieca u Maria Nee Gauci, imwieled Sannat, Ghawdex, fid-29 ta Settembru 1948, u joqghod 23, Triq il-Bebunaq, Sannat, Ghawdex detentur tal-karta ta l-identita numru 74848(G).*

"*Minn naha l-ohra:* ***Mario Mercieca,*** *impjegat, bin il fuq imsemmi Anthony Mercieca u Vitorina nee Refalo, imwieled Rabat, Ghawdex, fil-25 ta Ottubru 1981, u joqghod Flat1, ' 'Tan-Nannu', Triq Cenc, Sannat, Ghawdex, detentur tal-karta ta' l- identita numru 29081G.*

"*Li bis-sahha tieghu*

"*Il-partijiet jiddikjaraw u jippremettu:-*

(i) "*Illu l-komparenti Mario Mercieca huwa sid ta' skip loader bin-numru ta' registrazzjoni BCJ 773, liema vettura hi koperta bil-permessi kollha tal-Awtorita tal-Ambjent u Rizorsi u tad-Direttorat ghar-Regolazzjoni Veterinarja ta kategorija 1, A1, A2, C2, u A4 ghall-garr u rimi ta skart u kull materjal iehor tar-rimi nkluz hmieg u kull fdal iehor tal-annimali;*

(ii) "*Illi Mario Mercieca huwa impjegat ma missieru Anthony Mercieca;*

(iii) "*Illi billi l-komparenti Anthony Mercieca talab ukoll is-servizzi ta ibnu l -komparenti Mario Mercieca ghall-uzu ta l-skip loader imsemmi;*

(iv) "*Illi l -komparenti Mario Mercieca accetta li jghamel dan is-servizz b'rati li gew miftiehema bejniethom skont il-hin li fih isir dan is-servizz, konsistenza u durata tas-servizz;*

"*Ghaldaqstant bis-sahha ta dan il-ftehim il-partijiet qeghidn jiftiehemu dan li gej:-*

1. "*Il-komparenti Anthony Mercieca jimpjega b'effett immedjat is-servizzi tal-komparenti Mario Mercieca li jaccetta, ghall-uzu u operazzjoni ta l-skip loader bin-numru BCJ 773;*

2. "*Illi l-komparenti Mario Mercieca ikun jintrabat li jaghmel dan is-servizz mitlub mill-komparenti Anthony Mercieca f'kull hin tal-gurnata b'dawk ir-rati ta hlas gia miftiehema u accettati mill-partijiet;*

3. "*Illi l-komparent Mario Mercieca ikun obbligat li jirrendi s-servizz mitlub b'diligenzu u b'hila, u li jzomm il-vetturi fi stat tajjeb ta manutenzjoni, tiswija u ndafa;*

4. "*Illi l -komparent Mario Mercieca jiddikjara li l-skip loader huwa debitament illicenzjat u kopert bil-poloz tal- assikurazzjoni kollha biex jintuza bhala tool of trade u jinstaq fit-triq u huwak opert ukoll b'dawk il-permessi kollha necessarji mahruga mill-awtoritajiet kollha kompetenti*

biex jintuza ghall-iskop li ghalih il-komparenti Anthony Mercieca irid juza l-istess trakk bhala waste carrier vehicle.

"*Dan il-ftehim jissosstitwixxi kull ftehim iehor li sar bejn il-partijiet qabel illum.*

"*B'xhieda ta dan il-partijiet iffirmaw din l-iskrittura.*

"*Anthony Mercieca* — *Mario Mercieca*
"*KI 74848(G)* — *KI 29081(G)*

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3.2. "**With regard to the availability of sufficient resources which the bidder has available to cater for any contingency that might arise during the execution of the tendered works, this Board would respectfully refer to an agreement dated 5th August 2020, between Mr Anthony Mercieca (Bidder) and Roc-A-Go Crane Services Ltd, as follows:**

"Ftehim milhuq

"*Illum, hamsa (5) ta' Awissu elfejn u dsatax (2019).*

"*Bejn*

"*Minn naha l-wahda:* ***Anthony Mercieca****, Kuntrattur, bin il mejtin Fortunato Mercieca u Maria nee Gauci, imwieled Sannat, Ghawdex, fid-29 ta' Settembru 1948 , u joqghod 23, Triq il-Bebunaq, Sannat, Ghawdex, detentur tal-karta ta' l-identita numru 74848(G).*

"*Minn naha l-ohra: Victor Micallef li ghandu l-karta ta; l-identita' numru 940547(M) in rapprezentanza tal-kumpanija* ***Roc-A-Go Crane Services Ltd****. (C 27553) bl-indirizz registrat Roc-A-Go, Triq Tal-Barrani, Zejtun.*

"*Li bis-sahha tieghu Il-partijiet jiddikjaraw u jipremettu:-*

(i) "*Illi l-kumpannija Roc-A-Go Crane Services Ltd, hi sid ta' DAF Skip loader tal-ghamla Leyland bin-numru ta' registrazzjoni HAU 803 debitament illicenzjat, u kopert bil-licenzji u permessi kollha tal-awtoritajiet kompetenti biex jintuza fit-triq bhala waste carrier vehicle kif jirrizulta mid-dokumenti hawn annessi:*

(ii) "*Illi billi l - komparenti Anthony Mercieca gie mgharraf li l-offerta li xehet ghat-Tender bin-numru MGOZ/MPU T 32/2019: 'Framework Agreement for the Provision, Maintenance and Regular Collection of Open Skips at Various Sites in Gozo', kienet l-aktar wahda vantaggjuza;*

(iii) “*Illi billi l - komparenti Anthony Mercieca talab lill-kumpanija li tpoggi ghad-dispozizzjoni tieghu l-skip loader imsemmi f'kaz li dak li ghandu tigrilu hsara sakemm idum jissewwa;*

(iv) “*Illi l-kumpanija Roc-A-Go Crane Services Ltd. acettat li tipprovdi dan skip loader lil Anthony Mercieca u li tpoggi ghad-dispozizzjoni tieghu dan l-skip loader meta tigi mitluba li taghmel dan f'kazijiet ta' kontingenza biss meta l-skip loader li ghandu tigrilu l-hsara u ghaz-zmien sakemm iddum tissewwa l-istess hsara u b'rati li gew miftiehema bejniethom;*

“*Ghaldaqstant bis-sahha ta' dan il-ftehim il-partijiet qeghdin jiftiehemu dan li gej:-*

1. “*Il-kumpannija Roc-A-Go Services Ltd. tintrabat u tobbliga ruhha li taghti u tpoggi ghad-dispozizzoni tal-komparenti Anthony Mercieca, li jaccetta, ghall-uzu tiegu u tal-impjegati tieghu dan l-skip loader kull meta jkollu bzonnu ghall-htigijiet ta' kontingenza ghaz-zmien biss kemm l-skip loader li ghandu bin-numru BCJ 773 ma jkun jista' jintuza minhabba hsara u sakemm tissewwa l-istess hsara;*

2. “*Il-partijiet jaqblu li ghal dan is-servizz ta kontingenza ghandhom jigu applikati bejniethom dawk l-istess rati li gia kienu gew miftiehema u applikati bejniethom kull darba li l-kumpannija ipprovdiet dan l-skip loader lill-istess Anthony Mercieca meta kellu bzonnu u li qed tintrabat li tkompli tipprovdilu bis-sahha ta' dan il-ftehim.*

“*B'xhieda ta' dan il paritjiet iffirmaw din l-iskrittura.*
“*Anthony Mercieca* *Victor Micallef obo*

“*KI 74848(G)* *Roc-A-Go Services Ltd.*

“**From the above documentation, this Board is justifiably convinced that Mr Anthony Mercieca has sufficient back-up to support any contingency that might arise. It should also be pointed out that, all the quoted documentation was submitted to the Authority.**

3.3. “**This Board would also mention the fact that, the necessary equipment being utilised by the bidder for the tendered works is properly licensed and insured for the execution of the tender.**

4. “**With regard to the re-evaluation process, this Board, after having examined in detail, the Evaluation report and the documentary evidence with regard to the issues raised by the Court of Appeal, can confirm that,**

i.“**The Evaluation Committee carried out the instruction given by the Court of Appeal.**

ii.“The Evaluation Committee obtained all the necessary documentation to confirm and establish the relationship between Mr Anthony Mercieca (the Bidder) and Mr Mario Mercieca.

iii.“The Evaluation Committee are in possession of documentary evidence to prove that, Mr Anthony Mercieca has sufficient resources to cater for any contingency that might arise during the execution of the tendered works.

5. “This Board would respectfully point out that, after having treated Appellants’ complaints during the two hearings of the same case, same Board cannot but note the following facts, which for transparency’s sake, must be recorded, as follows:

i.“The publication of this tender was 26th May 2019,

ii.“Through various appeals and unnecessary delays, Appellants are still carrying out the works being tendered for,

iii.“The Appellants’ contracting rate, is much higher than the rates being quoted by Mr Anthony Mercieca in his offer,

iv.“Such events were truly to the benefit of Appellants yet unnecessarily detrimental to the Authority and Government funds.

“In conclusion, this Board opines that:

a) All the necessary documentary evidence, as duly directed by the Court of Appeal, was submitted to the Authority by Mr Anthony Mercieca and found to conform with what was being requested.

b) “The Evaluation Committee carried out their adjudication process in a just, fair and transparent manner, after re-evaluating the compliant offers.

c) “The Evaluation Committee, in their deliberations, took all the issues raised by the Court of Appeal and abided by the principles of the Public Procurement Regulations.

d) “The offer of Mr Anthony Mercieca is fully compliant and the cheapest.

e) “The unjustifiable delays, through various appeal and applications, has been beneficial to Appellants and financially detrimental to the Authority.

“In view of the above, this Board,

i. “**does not uphold Appellants’ contentions,**

ii. “**upholds the Authority’s decision in the recommendation for award,**

iii. “**directs that, the deposit paid by Appellants should not be refunded.**”

4. Ghandu jinghad f’dan l-istadju li dan mhux l-ewwel darba li dan il-kaz gie quddiem din il-Qorti. Meta harget is-sejha l-ewwel darba, il-kuntratt gie rrakomandat li jinghata lill-intimat Anthony Mercieca, u kienet ukoll saret oggezzjoni ghall-quddiem il-Bord, li cahad it-talbiet tas-socjeta` rikorrenti. Din l-ahhar socjeta` appellat ghall-quddiem din il-Qorti, li b’decizjoni tad-9 ta’ Marzu 2020 (fir-rikors numru 385/19) laqghet it-tielet aggravju tas-socjeta` appellanti, hassret id-decizjoni tal-Bord u ordnat li l-process tal-ghazla jsir mill-gdid.

5. Partijiet relevanti minn dik is-sentenza qed jigu riprodotti peress li jista’ jkollhom rilevanza ghall-din il-kawza.

> “23. Ghalhekk il-qorti ma taqbilx mas-sottomissjoni tal-Ministeru fit-twegiba tieghu ghall-appell illi ‘ghalkemm huwa utli li tigi indikata r-relazzjoni bejniethom, il-fatt illi Mario Mercieca ma giex indikat espressament bhala sotto-kuntrattur jew li kien hemm prova illi dan huwa impjegat tieghu, ma kienx punt li fuqu kellha titwarrab is-sejha kif qed tippretendi l-kumpanija appellanti’; mhux biss huwa ‘utli li tigi indikata r-relazzjoni’ izda huwa mehtieg.
>
> “24. Ukoll, ma jidhirx illi giet indirizzata sew il-htiega ghal ‘*contingency arrangements*’ kif iridu l-para 4.2.8 u 4.2.9 tat-*technical specifications* u jekk hemmx arrangamenti ghall-eventwalitajiet imsemmija f’dawk il-paragrafi.
>
> “25. Dan kollu huwa bizzejjed biex tithassar id-decizjoni li l-kuntratt jinghata lil Mercieca, izda dan ma jfissirx illi l-offerta ta’ Mercieca ghandha titwarrab bla ma titqies mill-gdid, flimkien mal-offerti validi l-

> ohra, fid-dawl tal-konsiderazzjonijiet maghmula fuq. Sewwa jghid il-Ministeru fit-twegiba tieghu illi, dwar l-obbligu tal-oblatur '[to] *provide data concerning subcontractors and the percentage of works to be subcontracted*', hemm in-nota 2(B) illi tghid illi l-oblaturi ghandhom jaghtu kull taghrif nieqes fi zmien hamest ijiem wara li ssirilhom talba ghalhekk. Fic-cirkostanzi l-kumitat tal-ghazla kellu d-dmir jitlob dan it-taghrif nieqes qabel ma jghaddi ghad-decizjoni tieghu.
>
> "26. Ghal dawn ir-ragunijiet il-qorti tipprovdi dwar l-appell billi thassar id-decizjoni tal-kumitat tal-ghazla illi l-kuntratt jinghata lil Mercieca u thassar ukoll id-decizjoni tal-Bord tal-Ghazla, b'dan illi fic-cirkostanzi d-depozitu mhallas minn *Sultech* sabiex setghet tressaq l-oggezzjoni taghha quddiem dak il-bord ghandha tintradd. Tordna illi l-process tal-ghazla jsir mill-gdid wara li l-kumitat tal-ghazla jitlob u jinghata t-taghrif mehtieg kif imfisser fuq."

6. Wara dan, fl-atti tal-istess kawza, kienu saru rikorsi sabiex is-socjeta` rikorrenti jkollha access ghall-*evaluation report* u kwalsiasi rapport iehor redatt in konnessjoni mal-kaz, izda din il-Qorti b'decizjoni tal-10 ta' Awwissu, 2020, cahdet ir-rikorsi relattivi.

7. Is-socjeta` Sultech & Co issa, ghat-tieni darba, qieghda tappella mid-decizjoni li ha l-Bord ghal quddiem din il-Qorti, u dana peress li, kif intwera, il-kuntratt, ghal darba ohra, gie rakkomandat li jinghata lil Anthony Mercieca. Din is-socjeta` ressqet aggravji li jorbtu mal-fatt li skont hi, l-offerent ippreferut ma kienx konformi mal-kriterji amministrattivi u teknici nkluzi fis-sejha.

8. 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.

9. Trattat l-appell, din il-Qorti, wara li ezaminat id-dokumenti kollha u rat ix-xhieda tal-partijiet, tqis li fil-verita` l-offerta tal-intimat Mercieca hija wisq mimlija inezattezzi biex setghet tigi accettata. Fis-sentenza precedenti taghha din il-Qorti irrimarkat fuq il-htiega li s-sub-kuntratturi jigu ndikati b'mod car biex il-profil taghhom ikun jista' jigi ezaminat. F'dan il-kaz, l-imsemmi intimat qal li sejjer jaghmel uzu minn vettura registrata fuq isem ibnu Mario. L-intimat ma jqisux bhala sub-kuntrattur, izda bhala speci ta' sieheb, tant li l-Bord qies ir-relazzjoni ta' bejniethom bhala "*close commercial relationship*", izda l-offerta intefghet f'isem Anthony Mercieca biss u mhux ukoll f'isem ibnu. L-intimat stess ammetta li l-"*family business*" ghadha ma gietx kostitwita skont il-ligi, u allura r-relazzjoni bejn il-missier u l-iben hija ftit vaga. Jekk l-iben mhux sub-kuntrattur, jista' jkun li ghandu jkun persuna li fuqha Anthony Mercieca kien sejjer jiddependi biex iwettaq xoghlu, pero`, f'kull kaz, kellu jressaq dokument li jkun fiha sensiela ta' informazzjoni ulterjuri dwar l-istess iben (tissejjah *European Single Procurement Document ESPD*); din ma gietx ipprezentata. Il-fatt li Mario hu iben Anthony Mercieca ma jezentax il-htiega li jigi pprezentat tali dokument.

10. Jekk bejn il-missier u l-iben hemm relazzjoni ta' bejn min ihaddem u impjegat, allura l-istorja tkun differenti, ghax jekk hu hekk ma jkunx hemm bzonn li jitressaq l-ESPD fir-rigward tal-impjegati. L-offerent

Anthony Mercieca jghid li ibnu hu impjegat tieghu, izda naqas li jressaq l-ahjar prova fuq dan, senjament xhieda ta' ufficjal mil-Jobs Plus biex jikkonferma dan. Kif intwera, dan Anthony Mercieca ammetta li l-"*family business*" ghadu ma giex imwaqqaf, u lanqas ressaq dettalji ta' kif inhu l-impjieg ta' ibnu. Il-missier ma ghandux *skip loader* tieghu, u jrid jinqeda b'dik ta' ibnu b'arrangamnt li jidher li hu a la bona!

11. L-intimat ressaq vettura ohra li wkoll mhix tieghu, izda ta' certu Victor Micallef. Din it-tieni vettura ghandha isservi bhala kontingenza. Din il-vettura, kif ikkonferma ufficjal ta' Transport Malta, hija registrata fuq dan Victor Micallef fil-kapacita` tieghu personali u mhux ta' xi kumpanija. Il-ftehim ta' kontingenza, is-Sur Mercieca, iffirmah (wara l-iskadenza ghall-prezentata tal-offerti) pero`, ma' Roc A Go Crane Services Ltd, rigward l-istess vettura minkejja li ma hijiex is-sid tal-vettura. Jista' jkun li Victor Micallef huwa xi wiehed mil-proprjetarji ta' din is-socjeta`, pero`, Victor Micallef u Roc A Go Crane Services Ltd ma humiex l-istess persuna.

12. Dan il-ftehim ta' kontingenza, inoltre, ikopri hsara fil-vettura l-ohra u sakemm tissewwa l-istess hsara. Id-dokumenti tas-sejha, pero`, iridu pjan ta' kontingenza li jkopri kull kontingenza "*whatever the nature or circumstances*". Isegwi li dan il-ftehim ta' kontingenza, apparti li mhux iffirmat ma' sid il-vettura, lanqas ikopri l-kontingenzi kollha possibbli.

Inoltre l-kuntratt sejjer jithaddem f'Ghawdex, u ma tantx hu komdu li l-vettura ta' kontingenza tkun Malta.

13. Apparti dawn il-problemi, jirrizulta wkoll li z-zewg vetturi ma humiex koperti bil-licenzji kollha mehtiega, kif rikjest specifikatament fid-dokument ghas-sejha. Il-vettura ta' Mario Mercieca hija licenzjata biex iggorr materjal likwidu biss (klassi C L), izda mhux ukoll materjal solidu (klassi A 5). Il-vettura l-ohra ma ghandha licenzja ghall-ebda uzu. Ghalhekk, il-vetturi proposti mill-oblatur Mercieca lanqas ma huma f'pozizzjoni li jistghu jaghmlu dan ix-xoghol, altrimenti jkunu qed jiksru l-ligi. Dan meta, kif inghad, id-dokument ghas-sejha insista li l-vetturi "*should be duly covered with all relevant licenses and permits*", tant li trid is-sottomissjoni tad-dokumenti relattivi li juru dan.

14. L-assikurazzjoni fuq l-ewwel vettura hija fuq l-isem ta' Mario Mercieca, li, kif intwera, mhux car x'inhi r-relazzjoni tieghu kummercjali ma' missieru l-intimat. Jekk Mario sejjer jikri l-vettura lil missieru, l-assikurazzjoni, fi kliem l-ufficjal tas-socjeta` assikuratrici in kwistjoni "awtomatikament taqa'". Jekk mhux ser jikrihielu, izda l-intimat jithalla juza l-vettura, l-assikurazzjoni tista' tigi estiza biex tkoprih. Kif inghad, pero`, ir-relazzjoni kummercjali bejn Anthony u Mario, jekk tezisti, hija xi haga ta' bejniethom u ma tistax tigi ezaminata f'dan il-kuntest. Kull offerent kellu obbligu li jindika jekk huwiex se jkun qieghed jaghmel uzu

mis-sub kuntrattur. Dan ma sarx u l-pozizzjoni ta' Mario thalliet ta' xi haga interna bejn il-missier u l-iben.

15. Jidher li l-intimat Anthony Mercieca qed jirrezisti milli jaghti informazzjoni tal-persuni li fuqhom sejjer jiddependi biex iwettaq il-kuntratt. Izda din l-informazzjoni hija mehtiega biex ikun hemm verifika ta' dawn il-persuni. Dan l-intimat inghata c-cans jirriforma l-offerta tieghu, pero`, baqa' ma kkjarifikax il-pozizzjoni ta' kif behsiebu jopera u jara li l-offerta tieghu tkun konformi ma' dak li jitlob id-dokument tas-sejha.

Ghaldaqstant, ghar-ragunijiet premessi, tiddisponi mill-appell tas-socjeta` rikorrenti Sultech & Co. billi tilqa' l-istess, thassar u tikkancella d-decizjoni li ha l-Bord ta' Revizjoni tal-Kuntratti Pubblici fl-1 ta' Settembru, 2020, u thassar ukoll id-decizjoni tal-Bord tal-Ghazla, b'dan illi d-depozitu mhallas minn Sultech & Co. sabiex tressaq l-oggezzjoni taghha quddiem dak il-Bord ghandu jintradd.

L-ispejjez kollha marbuta ma' dan l-appell ghandu jhallashom l-intimat Anthony Mercieca.

Mark Chetcuti Prim Imhallef	Joseph R. Micallef Imhallef	Tonio Mallia Imhallef

Deputat Registratur
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