



MALTA

QORTI TA' L-APPELL

S.T.O. PRIM IMHALLEF

SILVIO CAMILLERI

ONOR. IMHALLEF

TONIO MALLIA

ONOR. IMHALLEF

JOSEPH AZZOPARDI

Seduta tas-27 ta' Gunju, 2014

Appell Civili Numru. 130/2014/1

Kerber Securities Ltd.

v.

Wasteserv Malta Ltd;

u Signal 8 Security Services Malta Limited

Il-Qorti:

Dan hu appell imressaq fit-28 ta' Marzu, 2014, mis-socjeta` Kerber Securities Limited wara decizjoni datata 11 ta' Marzu, 2014, moghtija mill-Bord ta' Revizjoni dwar Kuntratti Pubblici (minn hawn 'l quddiem, imsejjah il-Bord) fil-kaz referenza WSM 053/2013.

Illi dan il-kaz huwa marbut mas-sejha ghall-offerti li harget is-socjeta` Wasteserv Malta Ltd "*for security services and security duties to be performed at the Maghtab Environmental Complex*". Ghal dan it-tender applikaw diversi entitajiet u gie rakkomondati li l-kuntratt jinghata lis-socjeta` Signal 8 Security Services Malta Limited, li resqet it-tieni l-orhos offerta, wara li s-socjeta` appellanti giet dikjarata "*administratively non-compliant*", peress illi mal-offerta naqset li tissottometti certi dokumenti rikjesti. Is-socjeta` Kerber Securities Ltd. ma qablitx ma' din id-decizjoni u ressqet appell quddiem l-imsemmi Bord li b'decizjoni tal-11 ta' Marzu, 2014, cahad l-appell u kkonferma d-decizjoni tal-awtorita` koncernata. Id-decizjoni tal-Bord hija s-segwent:

"Having noted the Appellant's objections, in terms of the 'Reasoned Letter of Objection' dated 12th December 2013 and also through Appellant's verbal submissions during the hearing held on 6th February 2014, had objected to the decision taken by the pertinent Authority, in that:

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- a) Appellant contends that his offer did satisfy the requirements as specified in clause 1.2.12 of the tender document.
- b) Appellant affirms that all necessary documents were submitted to the Contracting Authority.
- c) Appellant complained of the fact that in the 'letter of refusal', the Contracting Authority did not specify which documentation was missing. Furthermore Appellant contends that the personnel being assigned to this tender were qualified.

"Having considered the Contracting Authority's verbal submissions during the hearing held on 6th February 2014, in that:

- a) The Appellant in actual fact did not submit all the documentation as stipulated in the tender document.
- b) The technical qualifications of the personnel to be assigned to this tender by Appellant were not up to the required standard as required in the tender document.

"Reached the following conclusions:

- "1. This Board opines that the tender document is a contract between the Tenderer and the Contracting Authority. So that any condition or requirement laid out in the tender document must be strictly adhered to.

"In this regard, the tender document stipulated certificates to confirm the technical qualifications of the personnel to be assigned for this tender. From submissions made during the hearing it was proved that the Appellant failed to submit all the requested documentation.

- "2. From the documentation related to qualifications of personnel to be deployed, the Evaluation Board could only adjudicate on the actual documentation submitted by Appellant. During the hearing of this appeal, it was evidently proved that the personnel to be assigned for this tender did not have the required technical standard.

"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."

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Is-socjeta` rikorrenti appellat mid-decizjoni tal-Bord ghax issostni li d-dokumenti rikjesti fil-hrug tal-offerti kienu gew sottomessi, u ma kienx lecitu li jintalbu certifikati li ma kienux mitluba.

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

Ikkonsidrat:

Illi fil-principju hu rikonoxxut illi jekk offerent joffri biex jaghti servizz, ma hux mehtieg li, fil-mument li jitfa' l-offerta, ikun munit bil-licenzji u l-permessi kollha mehtiega biex ikun jista' jwettaq l-obbligi li jkun dahal ghalihom, basta li dak li jkun jimpenja ruhu li jekk jinghata l-kuntratt iwettaq is-servizz skont id-dettami tal-ligijiet vigenti tal-pajjiz. Dan jghodd, pero`, sakemm fl-istess dokumenti tal-hrug ghall-offerti ma jigix mitlub xort' ohra.

Fil-fatt f'dan il-kaz, kien mehtieg il-prezentata ta' certi dokumenti flimkien mal-offerta li tinghata. Saret enfasi fuq il-htiega li l-ufficjali jkollhom *computer literacy certification*, izda kif tajjeb issottomettiet is-socjeta` appellanti, dan hu mehtieg biss mill-haddiema li kienu se jahdmu fuq *day shift*, u ma kienx mehtieg li l-gwardjani l-ohra, indikati bhala *night shift workers*, kellu jkollhom

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dan ic-certifikat. Darba li *t-tender documents* ma esigie li dawn tal-ahhar kellu jkellhom dan ic-certifikat, ma kienx lecit u għall-awtorita` kontraenti li ticcensura l-fatt li l-gwardjani l-oħra citati minnha u indikati bhala *nghit shift workers* mis-socjeta` appellanti ma kellhomx l-imsemmi certifikat. Id-dokumenti tas-sejha riedu biss dawk il-gwardjani "*appointed to execute the day shift services*" ikollhom dan ic-certifikat, u fil-kaz tal-gwardjani l-oħra, kien rikjest certifikat "*for computer-literate personnel only*". Kien allura, irregolari li l-awtorita` kontraenti tippretendi certifikat anke minn dawk li kienu indikati li se jahdmu bil-lejl u ma kienux *computer-literate*. Fil-fatt waqt it-trattazzjoni orali tal-appell quddiem din il-Qorti, id-difensuri tal-appellati irrikonoxxew li dan l-aggravju hu gustifikat.

Apparti dan, pero`, inqala' disgwid bejn il-partijiet minhabba l-fatt li l-gwardjan li kellu jahdem mal-gurnata ma kellux *a fire fighting certificate*, kif rikjest. Is-socjeta` appellanti tghid li din il-persuna kellha certifikat dwar "*Safe Use of Fire Extinguishers*", li, skont hi, kellu jissodisfa l-vot tat-*tender document*. Din il-Qorti taqbel li certifikat fuq l-uzu ta' apparat għat-tifi tan-nar mhux l-istess bhala tagħlim fi glieda kontra n-nar. L-uzu ta' apparat għat-tifi tan-nar huwa parti mill-*fire fighting skills*, izda mhux kollox. L-uzu tal-*fire extinguisher*, hu veru, huwa *fire fighting* b'tagħmir li huwa mahuq specificament u esklussivament biex jiggiel in-nar, pero`, min ikun adett għall-*fire fighting* ikun mistharreg f'hafna aktar affarijiet milli sempliciment kif juza *fire extinguisher*. Din il-persuna partikolari, fil-fatt, kull ma għamlet hu li attendiet

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kors ta' erba' sieghat fuq l-uzu tal-apparat ghat-tifi tan-nar, u ma jirrizultax la li tghallmet xi haga fir-rigward lanqas li ghandha xi tgharif relatat mat-tifi tan-nar b'mod generali. Jirrizulta li, mill-persuni indikati mis-socjeta` appellanti li kellhom iservu bhala gwardjani, ma kien hemm hadd li kellu *a fire fighting certificate* kif rikjest fid-dokumenti ammessi mas-sejha, u allura jirrizulta li, kif gie deciz, l-offerta tas-socjeta` appellanti ma kienetx konformi amministrattivament mal-kundizzjonijiet tat-*tender*.

Peress illi bhala fatt kien hemm gwardjan wiehed li ma kienx konformi, ma jistax jinghad li kien hemm *shifting of goal posts* fil-kaz. Is-socjeta` appellanti giet originarjament skwalifikata minhabba nuqqas ta' certifikati "*for one of the guards*". Dan gie issa konfermat.

Din il-Qorti, kwindi, tqis l-eskluzjoni tas-socjeta` appellanti bhala korretta.

Ghaldaqstant, ghar-ragunijiet premessi, tidisponi mill-appell tas-socjeta` Kerber Securities Ltd. billi tichad l-istess u tikkonferma d-decizjoni li ha l-Bord tar-Revizjoni dwar Kuntratti Pubblici fil-11 ta' Marzu, 2014.

L-ispejjez jithallsu mill-imsemmija socjeta` appellanti.

< Sentenza Finali >

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