



MALTA

QORTI TA' L-APPELL

S.T.O. PRIM IMHALLEF

SILVIO CAMILLERI

ONOR. IMHALLEF

TONIO MALLIA

ONOR. IMHALLEF

JOSEPH AZZOPARDI

Seduta tas-6 ta' Frar, 2015

Appell Civili Numru. 433/2014/1

SR Environmental Solutions Limited (C51243)

v.

(1) Dipartiment tal-Kuntratti;

(2) Dipartiment tax-Xoghlijiet u l-Infrastruttura għal d-Dipartiment tax-Xoghlijiet u s-Servizzi (fil-Ministeru tat-Trasport u l-Infrastruttura); u

(3) United Equipment Company (UNEC) Limited (C10827)

Dan hu appell imressaq fl-10 ta' Novembru 2014 mis-socjeta` SR Environmental Solutions Limited wara decizjoni datata 21 ta' Ottubru 2014, moghtija mill-Bord ta' Revizjoni dwar Kuntratti Pubblici (minn hawn 'il quddiem imsejjah "il-Bord") fil-kaz referenza CT 3126/2013 (kaz numru 744).

Dan il-kaz huwa marbut mas-sejha għall-offerti li harget il-Works and Services Department (Ministry for Transport and Infrastructure) *"for the supply, delivery & commissioning of low emissions truck mounted gully sucker icw the National Flood Relief Project"*. Għal dan it-tender applikaw diversi entitajiet, fosthom is-socjeta` SR Environmental Solutions Limited, li pero`, giet skwalifikata mill-process peress li l-offerta tagħha giet meqjusa bhala teknikament mhux konformi, u intgħazlet bhala l-offerent preferut il-kumpanija United Equipment Company (UNEC) Limited. Is-socjeta` SR Environmental Solutions Limited ma qablitx ma' din id-decizjoni u resqet appell quddiem l-imsejmi Bord li b'decizjoni tal-21 ta' Ottubru 2014, cahad l-appell u kkonferma d-decizjoni tal-awtorita` koncernata. Id-decizjoni tal-Bord hija s-segwenti:

"This Board,

“Having noted the Appellant Company’s ‘Letter of Objection’, without reason, dated 26th August 2014 and also through Appellant’s verbal submissions during the hearing held on 18th September 2014, had objected to the decision taken by the pertinent Authority, in that:

“a) Appellant contends that his offer was technically compliant and not as stated by the Contracting Authority in its letter of rejection, stating that Appellant’s offer was technically non-compliant.

“b) Appellant claims that the technical specifications as laid out in the tender document were vague and of no assistance to the prospective tenderer.

“Having considered the Contracting Authority’s verbal submissions during the hearing held on 18th September 2014, in that:

“a) The Contracting Authority contends that, in formulating the submitted technical specifications of his product, he made the wrong assumptions and failed to provide for a ‘worst case scenario’ situation.

“b) In submitting his offer, Appellant failed to foresee that under certain conditions, the truck being proposed by same to carry out the tendered works could exceed the rated gross vehicle weight which is legally permitted.

“Reached the following conclusions:

“1. This Board notes that since, in its Letter of Objection, the Appellant Company did not state the reasons for objecting, the actual reasons were stated by Appellant in the verbal submissions made by same during the hearing of this Appeal. This Board does not approve of such an irregular procedure, especially when the same Board noticed that the Appellant was fully informed by the Contracting Authority as to why Appellant’s offer

was technically non-compliant, vide attachment to the 'Letter of Rejection' dated 19th August 2014.

"2. With regards to the Appellant's contention that his offer was technically compliant; this Board, after having heard of what was required from the works being tendered and the technical submissions made by the Engineers of the Contracting Authority, considers these submissions to be credible and justified. This Board upholds the Contracting Authority's contention that, in compiling the technical details of his offer, Appellant made the wrong assumptions and did not provide for a 'worst case scenario' situation. This Board also notes that Appellant should have known of the maximum vehicle load which is legally allowed. In this regard, this Board does not uphold Appellant's contention that his offer was technically compliant.

"3. With regards to Appellant's claim that the technical details as dictated in the tender document were vague, if not unhelpful; this Board had to rely heavily on the technical submissions made by the Engineers, however, this same Board opines that the purpose for which this tender was issued was clearly defined in the tender document. In this respect this Board does not uphold Appellant's claim that the technical specifications as laid out in the tender document were vague.

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

Is-socjeta` rikorrenti appellat mid-decizjoni tal-Bord ghax issostni li l-offerta taghha kienet teknikament konformi ghax offriet *truck* li jiflah it-toqol kif hu mistenni li jkun mgħobbi dan it-*truck*.

Wara li semgħet it-trattazzjoni tad-difensuri tal-partijiet u rat l-atti kollha tal-kawza, din il-Qorti sejra tghaddi għas-sentenza tagħha.

Ikkunsidrat:

Illi l-aggravju tas-socjeta` appellanti jista' jigi sintezizzat fl-argumenti li resqet quddiem il-Bord li hi stess spjegat bil-mod is-segwent:

*“Illi ai termini tat-technical specifications tat-tender inkwistjoni, it-truck irid ikollu ‘**partitioned** cylindrical shaped tank’ ta’ kapacita` massima ta’ mhux anqas minn 6,000 litru, fejn parti mit-tank tkun ghall-isludge jew waste, liema parti trid tkun ta’ kapacita` ta’ mhux anqas minn 4,000 litru, filwaqt illi l-parti l-ohra tkun intiza ghall-ilma nadif u liema parti trid tkun ta’ kapacita` ta’ mhux anqas minn 2,000 litru. Dawn iz-zewg partijiet tat-tank huma indipendenti minn xulxin b’mod li l-hmieg li jingabar ikun f’parti mit-tank u ma jithallatx mal-ilma nadif fil-parti l-ohra. Fl-istess technical specifications gie indakat ukoll li dan it-truck ghandu jkun suitable for cleaning of **dirt** from silt and oil traps in rain water culverts and ducts u li ghalhekk ghandu jkun armat with a high pressure water hose, lance suitable nozzles to open and clean storm water drains. Illi ghalhekk, il-mod kif jintuza dan it-truck hu li bl-ilma nadif, applikat bi pressjoni qawwija, jitnehha l-hmieg u kull ostakolu iehor mill-rain water culverts and ducts, filwaqt illi fil-parti l-ohra tat-tank jitpogga l-hmieg u l-hama li jingibed bil-pompi. Kwindi l-prassi hi li t-truck johrog ghax-xoghol bil-parti z-zghira tat-tank mimlija bl-ilma nadif filwaqt li l-parti l-kbira tat-tank tkun vojta sabiex fiha jitqieghed il-hmieg u l-hama li jingabar. B’hekk, it-truck jidhol lura mix-xoghol bil-parti z-zghira tat-tank vojta u l-parti l-kbira mimlija bil-hmieg migbur.”*

Illi din is-socjeta` offriet truck b’chassis li jiflah 12-il tunellata, u cioe` truck li jiflah igorr parti biss mit-tank mimli, u mhux iz-zewg partijiet flimkien. Hi tissottometti li waqt il-hidma tieghu dan it-truck ma hu sejjer ikollu qatt iz-zewg partijiet mimlija, u ghalhekk ma kellix ghalfejn toffri truck li jiflah it-tank kollu mimli. Il-Bord qal li dak li assumiet din il-kumpanija hu zbaljat, u d-dokumenti

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tal-hrug tas-sejha imkien ma pprovda ghal fatt li ried *truck* li kien, f'kull mument, b'parti wahda biss mit-tank mimli, izda ried *truck* li jiflah ghat-toqol tat-tank, anke jekk mimli kollu. Dan ma giex offrut, u l-Bord ghalhekk, ikkonferma l-eskluzjoni tas-socjeta` rikorrenti.

Din il-Qorti tara li ghandha taqbel mad-decizjoni tal-Bord. Ghandu jinghad in principju li kull min huwa involut fil-process ta' sejha pubblika, inkluz ukoll dawk li huma mghebbija bl-oneru li jiggudikaw is-sejha, huma kollha marbutin bil-kundizzjonijiet li jkunu mnizzla fid-dokumentazzjoni tas-sejha. Il-kumpanija rikorrenti hija zbaljata meta tghid fl-aggravju taghha li l-kapacita` massima tal-parti tat-tank mahsub ghall-garr tal-hama (*sludge*) kellha tkun ta' 4,000kg, bhalma hija zbaljata wkoll jekk hija fehmet li l-kapacita` massima ta-tank kellu jkun ta' 6,000kg. Jekk wiehed imur fuq il-klawsola 1.1 tal-ispecificazzjonijiet teknici josserva li t-*total tank capacity* kellu jkun '*not less than 6000 litres*', filwaqt li l-kapacita` tas-*sludge/waste tank* kellu jkun '*not less than 4,000 litres*'. Jigifieri il-metragg ta' 6000 litru bhala kapacita` totali tat-tank u l-metragg ta' 4000 litru bhala kapacita` tal-parti tat-tank intiz ghall-hama, ma kienux il-massimu izda l-minimu ta' kemm kellu jiflah it-tank.

Issa l-kumpanija rikorrenti qeghda tghid fl-aggravju taghha li fil-kalkolazzjonijiet taghha hija hadmet mhux fuq dan il-minimu li hemm indikat fid-dokument tas-sejha izda fuq l-assunzjoni li t-tank qatt ma huwa ha jkun

mimli. Dan qed tghidu ghaliex hija temmen li t-tank qatt ma jista' jkun mimli b'ilma nadif u b'ilma mahmug fl-istess hin. Fil-hsieb tal-Qorti, il-kumpanija rikorrenti ghamlet hazin li mxiet fuq din l-assunzjoni ghaliex kif sewwa qal il-kumitat ta' evalwazzjoni fir-ragunijiet migjuba fl-ittra tal-iskwalifika notifikata lill-kumpanija appellanti;

"This was not provided for anywhere in the tender document and hence the assumption taken was not legitimate. In actual practice, it could very well happen that water is not needed in a particular cleansing operation and hence the water tank will remain full (or partially full), while the sludge tank is fully loaded at the end of the operation. This would result in a condition where the vehicle will have a total weight which exceeds the GVW rating of its chassis given by the manufacturer. Such a condition cannot be tolerated."

Din il-Qorti taccetta dan ir-rizultat tekniku u darba li, bhala fatt, hu possibli li z-zewg partijiet tat-tank jistghu jkunu mimlija t-tnejn f'daqqa, it-tank li offriet is-socjeta` rikorrenti mhux skont kif mehtieg fl-offerta.

Hu hazin li tippretendi li l-awtorita` kontraenti kellha *ab initio* tindika li l-assunzjoni li ghamlet is-socjeta` rikorrenti m'ghandhiex tkun addottata. Mhux mistenni mill-awtorita` kontraenti li tispekula fuq x'jista' dak li jkun jassumi li trid. Dak li riedet l-awtorita` kontraenti kien car, u cioe, truck li jkun kapaci jiflah tank b'minimu ta' 6000 litru. Kieku kellha xi dubji dwar l-interpretazzjoni tas-sejha, setghet titlob kjarifika, imma darba dan ma ghamlitux, u ma offrietx *truck* li jgorr il-metragg mitlub, ma tista issa tikkwerela l-kundizzjonijiet tas-

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sejha biex tipprova "idahhal" it-*truck* taghha fost l-offerti li kienu konformi mas-sejha.

L-aggravji l-ohra marbuta ma' xi kummenti li seta' qal ic-Chairman tal-Bord fuq il-mod kif gie redatt l-appell ta' quddiemha (fejn fil-verita` ma nghatawx ragunijiet ghall-oggezzjoni) u fuq il-mod kif forsi setghet tigi redatta ahjar is-sejha ghall-offerti, ma humiex rilevanti, ghax kummenti *off the cuff* the gudikant ma jirriflettu xejn hliet l-impressjoni tal-mument, u dak li jorbot u jiddeciedi gudikant ghandu johrog biss mis-sentenza. F'dan il-kaz, nonostante n-nuqqas li kien hemm fl-appell, il-Bord sema' l-kaz, ta' opportunita lis-socjeta rikorrenti tispjega l-aggravju taghha, itrattatu u cahditu wara li osservat li *"it does not uphold appellant's claim that the technical specifications as laid out in the tender document were vague"* (ara **Macri Joint Venture v. Awtorita` tat-Turizmu ta' Malta et**, deciza minn din il-Qorti fit-18 ta' Lulju 2014).

Ghal bqija, din il-Qorti tikkondividi dak li gie deciz mill-Bord li s-socjeta` rikorrenti ma kellhiex timxi fuq l-assunzjoni li bhala toqol massimu tat-tank hija ma kellhiex timxi fuq 6000kg izda fuq 4000kg. Darba li d-dokumenti relatati mas-sejha ghall-offerti kien jitkellem fuq minimu ta' 6000kg, il-kumpanija rikorrenti kellha l-obbligu li tahdem fuq dan il-metragg.

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Ghaldaqstant, ghar-ragunijiet premessi, tidisponi mill-appell ta' SR Environmental Solutions Ltd billi tichad l-istess u tikkonferma d-decizjoni li ta l-Bord ta' Revizjoni dwar il-kuntratti pubblici fil-21 ta' Ottubru 2014, bl-ispejjez jithallsu mis-socjeta` rikorrenti appellanti.

< Sentenza Finali >

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