



MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF

EDWINA GRIMA

Seduta tad-29 ta' April, 2015

Appell Civili Numru. 35/2012

Computime Limited (C 4760)

Vs

Malta Information Technology Agency, u d-Direttur (Generali) tal-Kuntratti, u ICT Ltd (C 46930) ghal kull interess li jista' jkollhom

Il-Qorti,

Rat id-decizjoni moghtija mill-Bord ta' Revizjoni Dwar il-Kuntratti Pubblici fil-31 ta' Lulju 2012, fejn giet ipprounzjata is-segweni decizjoni fl-ismijiet premessi:-

"This Board,

- *having noted that the appellants, in terms of their 'reasoned letter of objection' filed on the 17th May 2012 and also through their verbal submissions presented during the hearing held on the 26th July 2011, had objected to the decision taken by the pertinent authorities;*
- *having noted all the appellant company's representatives' claims and observations, particularly, the references made to the fact that (a) by letter dated 4th May 2012 the Malta Information Technology Agency had informed the appellant company that its tender was not successful because it did not satisfy the Layer 2 features, (b) the appellant company had replied 'Yes' to Section A sub-sections 01 to 05 of page 29 of the tender document as to whether the routers satisfied the tender specifications and to Section B 'Layer2 features' sub-sections 12 to 17 at page 30 of the tender document where, similarly, the appellant company replied in the affirmative with regard to the Layer 2 Features and, at that stage, no other information was requested by the Malta Information Technology Agency except to tick the 'Yes' box, (c) the appellant company had submitted a compliant tender submission which was also the cheapest, (d) the tender document at Schedule 1.6 (page 46) provided for 'WAN active equipment upgrades' – where it was clearly stated that this was not going to be taken into account in the evaluation process – and it was under this section that ICT Solutions Ltd had included the optional 24 port switch card referred to by the Malta Information Technology Agency in its letter of rejection, (e) to the clarifications requested by the Malta Information Technology Agency the appellant company had, invariably and clearly, confirmed that the Layer 2 functional requirements in the company's original tender submission satisfied the requirements of the tender document, (f) in its tender submission ICT Solutions offered a module specifically designed to meet the requirements of this tender and that the upgrade specifically designed to meet the requirements of this tender and that the upgrade included under Schedule 1.6 did not form part of the module offered and, in fact, it was not included in the costings, (g) the Cisco Part No. quoted in the tender submission was actually made up of about ten other different Part No, but in this sector it was standard practice to quote the Lead Part No. and not all the Part Nos. involved and then the bidder had to declare if the Lead Part No. was compliant with tender requirements or not, (h) in spite of the fact that the Lead Part No. quoted represented about ten other Part Nos. the Malta Information Technology Agency only asked about one of them, namely the switch, but it did not ask about the other parts, namely the 'memory' and so forth, (i) this tender had to cater for the*

specific needs of schools and so the appellant company offered a bundle along with a confirmation that the bundle satisfied all tender requirements, (j) whilst the standard bundle offered by ICT Solutions Ltd included a switch with 16 ports, yet, as an option, it also included an upgrade to a switch with 24 ports in case there would be instances that might need such an upgrade, (k) it had already been ascertained with the supplier that the Lead Part No. quoted by ICT Solutions Ltd satisfied all tender requirements, (l) Malta Information Technology Agency had requested ICT Solutions Ltd to make available within a week the equipment offered for testing purposes and, as a consequence, the supplier was asked to deliver a sample of this equipment for testing, (m) it was not being disputed that the router module tested at ICT Solutions Ltd could have included 24 ports instead of 16 ports but, then again, for the purposes of this tender it did not matter if the configuration included 16 or 24 ports and this option meant that one could upgrade the standard bundle, which include a 16 ports card, to a bundle with a 24 ports card, (n) technically, it did not make sense that the bundle offered by ICT Solutions Ltd did not include the Ether Switch card and, at the same time, ICT Solutions Ltd declared that the system offered was functional, (o) ICT Solutions Ltd was offering a bundle which was tailor made to meet schools' requirements and that was why the prices quoted were very advantageous, (p) it appeared that the Malta Information Technology Agency assumed that the bundle offered did not include the Ether Switch and that the latter was only being offered as an optional, but had the Malta Information Technology Agency explicitly asked if the bundle offered include the Ether Switch – apart from the 24 port one offered as an optional – the answer by ICT Solutions would have definitely been in the affirmative, (q) THE Layer 2 function requested did require an Ether Switch and ICT Solutions Ltd provided one with 16 ports in the bundle and one with 24 ports as an option/upgrade but, in any case, both of them rendered the Layer 2 functional, ® on the 13th January 2012, ICT Solutions Ltd provided the following reply (1) with regard to the first bullet of clarification 1. Layer 2 features – Spanning Tree Support, “YES and we can CONFIRM that the cost of the proposed model in table I under Schedule 1.1 capital costs submitted in our offer INCLUDES this functionality and that this functionality WILL BE AVAILABEL from day 1” because, whilst the reply to the first one was in the affirmative, yet, that reply was ‘per se’, confirmation that the additional module, SM-ES2-24, which was included as an optional upgrade in the tender submission of ICT Solutions Ltd, was not required to render the Layer 2 features functional, (s) the tender only

required 'yes' or 'no' answers and if the Malta Information technology Agency required more details as to what those answers represented it should have asked for the, such as what the Lead Part No. quoted represented, namely the memory, the switch and so forth, (t) the Matla Information Technlogy Agency apparently carried out an internet search on the |Part No. quoted by ICT Solutions Ltd and came to the conclusion that that Part No. included a certain number of items, but excluded the Ether Switch, whereas ICT Solutions Ltd insisted that it included more parts, one of them being the Ether Switch, and, in case of doubt, the least that the Malta Information Technology Agency could have done was to ask the tendering company what the Lead Part No. the company quoted actually included, (u) the contracting authority was not expected to resort to downloading documentation from the internet in order to satisfy its queries but one expected the contracting authority to first ask the bidder about the contents of the company's tender submission and, whenever asked, ICT Solutions Ltd gave unambiguous replies. As a matter of fact, proceeded the appellant company's representative, ICT Solutions Ltd had replied in a an exhaustive and definite manner all the clarifications sought by the Malta Information Technology Agency, including the confirmation that the offer included the Layer 2 functionality, (v) the appellant company was a system integrator, meaning that it could build up a system by picking items from different sources, that is not all parts necessarily originating from one source, such as Cisco, (w) in submitted such technical bids, it was the practice for the bidder to quote only the Lead Part. No., which, in this case, included not only the router 'chassis' but also the Ether Switch along with eight (8) or so other items bearing different Part Nos, (x) in its tender submission ICT Solutions Ltd included a system equivalent to the system used during testing carried out in the presence of the Malta Information Technology Agency personnel and the only difference was that the standard bundle proposed in the tender submission had a 16 port switch card while the one tested had a 24 port switch card whose difference was irrelevant for the purpose of this tender and (y) if the Malta Information Technology Agency requested the test in order to check the switch card then it was quite odd how, during testing, the Malta Information Technology Agency did not ask ICT solutions Ltd which switch card it was going to actually use in the standard module it was offering;

- *having considered the contracting authority's respresentatives' reference to the fact that (a) in its tender submission the appellant company offered a Cisco Part No. 2911 which referred to a router*

without the Ether Switch and that it then offered the Ether Switch (Part. No. S/M-ES2-24) as an option part under Schedule 1.6 'WAN active equipment upgrades', (b) the evaluation board, through its technical advisers noted that the Cisco Part No. quoted by the appellant company was not enough to satisfy the Layer 2 function in its entirety because it also required the Ether Switch, which the appellant company was offering as an option, (c) the omission of the Ether Switch also had a bearing on the price and it was reckoned that the inclusion of the cost of the Ether Switch in the price offered by the appellant company would render its offer more expensive than the recommended offer, (d) the appellant company should have included both the Cisco Part No. and the Ether Switch in order to meet the mandatory requirements in connection with the Layer 2 function, (e) when the Malta Information Technology Agency tested the equipment at ICT Ltd's offices it was noted that, on that occasion, the appellant company had included the Ether Switch as part of the router module it offered, something which the appellant company had failed to do in its tender submission, (f) the Malta Information Technology Agency had requested the testing of the system offered precisely because it was noted that the router offered by the appellant company was without the Ether Switch and so it did not meet mandatory requirements, (g) when the test was carried out the appellant company presented a router which included the Ether Switch which item was indicated as 'optional' in the appellant company's tender submission, (h) the other bidders presented a solution which included both the router and the switch, (i) the documentation available from Cisco itself indicated that the Part No. quoted by the appellant company did not satisfy the tender requirements because it did not include the Ether Switch, (j) the Part No. indicated by the appellant company was verified with the documentation made available by Cisco and it transpired that it did not include the Ether Switch in question, (k) there was separate technical documentation (Part Nos.) both with regard to the router and with regard to the switch card, (l) albeit both a 16 port or a 24 port switch card were acceptable, yet the 16 port switch card was never mentioned before this hearing, (m) when the Malta Information Technology Agency researched Cisco's website documentation it resulted that the Part No. quoted by the appellant company did not include the Ether Switch card and that in its tender submission the company was offering this card as an option, (n) from the other tender submissions it was evident that the Layer 2 functionality was not possible without the Ether Switch card, (o) during testing the appellant company had to include the 24 port Ether Switch card to the company's proposed solution in order to

achieve the Layer 2 functionality and (p) albeit the Malta Information Agency opted not to question the appellant company's confirmation given in an email dated 13th January 2012 that the company's offer included the Layer 2 functionality, yet, in order to eliminate any doubt in this regard, a test was carried at the appellant company's offices and there the appellant company presented the router together with the 24 port switch card – indicated as optional in its submission- and it was with the combination of the router and the switch card that the Layer 2 functionality was achieved,

reached the following conclusions, namely:

- 1. The Public Contracts Review Board is of the opinion that though it was established that the appellant company indicated the lead part reference number this did not necessarily mean that the part was devoid of any additional components which are necessary for it to function fully and satisfy the Layer 2 functionality. One may compare this with when one quoted the chassis/serial number of a produce such as a motor vehicle which would include all the necessary parts and accessories to make a complete unit.*
- 2. The Public Contracts Review Board notes that the appellant company indicated and confirmed that its offer cover the required Layer 2 functionality;*
- 3. The Public Contracts Review Board notes that the 24 port Ethernet Switch was quoted as an optional upgrade, indicating that the basic requirements, presumably the 16 port switch, was included in the price as confirmed by Mr Fearne from the appellant company, who also reiterated that the equipment offered by this company satisfied the technical requirement of the tender without any additional expense.*

In view of the above, this Board finds in favour of the appellant company, recommends that the company be reinstated in the tendering process, and that the deposit be reimbursed”.

Illi s-socjeta appellanti aggravata b'din id-decizjoni rissqet l-appell taghha fit-termini tas-segwenti aggravvji:

1. Illi l-Bord ta' Revizjoni dwar il-Kuntratti Pubblici ghamel konsiderazzjonijiet irrilevanti ghaliex in effetti gie deciz, nonostante dak li hemm provdut f'pagna 14 tas-sejha, illi ma kienx necessarju illi is-

socjeta ICT Ltd fl-offerta taghha tiddekrivi b' mod komplet u ezawrjenti dak kollu li kienet qed toffri, u dan abbazi tal-konsiderazzjoni tal-Bord fis-sens illi kien sufficjenti illi l-ICT Ltd, issemmi biss dak li l-Bord isejjah il-“*Lead Part Number*”.

2. Illi il-Bord naqas milli jassigura harsien tal-principju fundamentali ta' trattament ugwali li japplika fl-ambitu ta' *public procurement* u li jinsab espress fir-Regolament 4(1) ta' l-Avviz Legali 296 ta' l-2010 kif ukoll fis-sentenzi tal-Qrati ta' l-Unjoni Ewropeja.

Illi fir-risposta tieghu ghall-appell, id-Direttur tal-Kuntratti jitlob il-liberazzjoni mill-osservanza tal-gudizzju stante illi huwa ma kienx l-awtorita kontraenti fil-kaz ta' dina is-sejha ghall-offerti pubblici ghall- “***WAN active Equipment and related Ancillary Services for Schools***” billi din kienet giet imhabbra u ippubblikata mill-agenzija tal-Gvern, *Malta Information Technology Agency* (MITA). Dan ghaliex il-valur tal-kuntratt publiku kien stmat fl-ammont ta' €500,000 u allura skont ir-regolament 15(c) tar-Regolamenti Dwar il-Kuntratti Pubblici il-kuntratt de quo kellu jigi regolat skont id-disposizzjonijiet li johorgu mit-Taqsima V ta' l-imsemmija regolamenti u cioe' mill-awtorita kontraenti li f'dan il-kaz kienet l-Agenzija indikata.

Illi id-Direttur appellat ghandu ragun billi jidher car kemm mir-regolamenti iccitati, kif ukoll mill-atti probatorji, illi huwa ma kellux xejn x'jaqsam la mal-hrug tas-sejha ghall-offerti pubblici u wisq anqas ma' l-agjudikazzjoni sussegwenti, oltre il-fatt illi allura huwa ma kienx kompartecipi fil-proceduri quddiem il-Bord ta' Revizjoni dwar il-Kuntratti Pubblici. Dan kif stabbilit fit-Tielet Skeda tal-Avviz Legali 296 tal-2010 u dana skont il-*proviso* ghar-

regolament 37 fit-Taqsima V¹. Ghal dawn il-motivi dana il-pregudizzjali ser jigi milqugh u id-Direttur tal-Kuntratti qed jigi liberat mill-osservanza tal-gudizzju.

Illi in succinct il-fattispecje tal-kaz tinsel minn sejha ghall-offerti pubblici li saret fl-24 ta' Novembru 2011 mill-Agenzija ghat-Teknologija Informatika maghrufa bhala il-MITA u dana sabiex jinxtara apparat li kien necessarju sabiex tigi implimentata sistema ta' *e-Learning* minflok is-sistema li kienet qed tintuza fl-iskejjel li kienet qadima u ma kenitx qed taqdi l-bzonnijiet ta' l-ghalliema u l-istudenti fl-iskejjel. Dan l-apparat kien jikkonsisti f' *WAN Active Equipment* u servizzi ancillari. Is-sejha kellha tghalaq fis-06 ta' Jannar 2012. Jekk wiehed ihares lejn ir-rekwiziti tat-*technical specifications* elenkati, isib illi din it-taqsima (Taqsima G fit-*tender document*) ma hija xejn hlief lista li hdejhom l-offerent kellu jimmarka f'kaxxa biswit kull wahda il-kelma "YES". Dan ifisser illi allura mid-dokument ma kienx possibbli ghall-offerent illi jaghti spjegazzjoni iktar dettaljata ta' l-ispecificazzjonijiet tal-prodott li kien ser joffri, ghalkemm huwa kellu l-obbligu illi jissottometti kwalsiasi dokumentazzjoni u certfikazzjoni illi tista' taghti iktar dawl fuq l-ispecificazzjonijiet tal-prodott, oltre il-possibilita li tinghata kull spjegazzjoni ulterjuri f' l- hekk imsejha *Tenderer Response Column*. Dana skont il-klawsola numru 0.6.2.3 tat-*Tender Document*. Maghdud dan madanakollu, fil-klawsola numru 05 tad-dokument imsejjah *Evaluation Procedure*, li tirreferi ghal procedura li kellha tigi adottata mill-Bord ta' l-Evalwazzjoni, l-awtorita kontraenti kellha dritt titlob kwalunkwe kjarfika fl-istadju ta' l-evalwazzjoni minn ghand l-offerent u dan kif previst ukoll fil-klawsola 03.6.3 taht it-titolu *General Terms and Conditions* fejn jinghad:

"In the interests of transparency and equal treatment and without being able to modify their Tenders, Tenderers may be required, at the sole written request of MITA, to provide clarifications to their Tenders."

¹ Ara sentenza App. Sup deciza 07/08/2013 fl-ismijiet Gatt Tarmac Limited vs Kunsill Lokali Victoria et.

Dan irid isehh izda minghajr vjolazzjoni tal-klawsola 05.2 tad-dokument fejn hemm specifikat illi:

“No rectification of incorrect and/or incomplete documentation in Part II shall be allowed.”

Dan qed jigi premess billi il-perm tal-vertenza idur madwar il-kwistjoni jekk it-talba maghmula mill-awtorita kontraenti matul il-process ta' l-evalwazzjoni ghal spjegazzjonijiet minn ghand l-offerent, is-socjeta ICT Limited, kienx jammonta o meno ghal ratifika jew zieda fl-ispecifikazzjonijiet kif sottomessi originarjament minnha fit-*tender document*, li allura kienu inkompleti u setghu iwasslu ghall-iskwalifika tieghu mit-tellieqa, jew semplicement kjarifika tal-informazzjoni sottomessa.

Illi l-Bord ta' Revizjoni dwar il-Kuntratti Pubblici kien tal-fehma illi ma kien hemm l-ebda nuqqas fil-presentazzjoni maghmula mis-socjeta appellanti quddiemha ICT Limited, fl-applikazzjoni minnha sottomessa u kwindi gie deciz illi it-tellieqa bejn l-offerenti, li kienu erba', fosthom is-socjeta appellanti odjerna lil lilha kien gie aggudikat il-kuntratt originarjament, kellu jerga' isir mill-gdid. Fil-fatt bis-sahha tas-setgha moghtija lilha permezz tar-regolament 85(5) tal-Avviz Legali 296 tal-2010 fejn jinghad illi ghalkemm ikun gie intavolat appell mid-decizjoni tal-Bord;

“... Dak ir-riferiment m'ghandux madankollu jzomm lid-Direttur tal-Kuntratti jew lill-Kap ta' awtorità kontraenti milli jimplimenta d-decizjoni finali tal-Bord ta' Revizjoni;” il-kuntratt gie aggudikat favur is-socjeta ICT Limited li illum attwat il-ftehim milhuq mal-awtorita kontraenti fl-intier tieghu.

Illi ghalhekk aggravata b'dina d-decizjoni is-socjeta appellanti interponiet l-appell odjern bil-gravam illi l-Bord ibbaza d-decizjoni tieghu fuq

konsiderazzjoni irrilevanti, oltre li dan wassal sabiex hija ma ircevietx dak it-trattament ugwali fundamentali f'kull process ta' *public procurement*.

Illi l-Qorti ezaminat bir-reqqa id-decizjoni tal-Bord u l-atti probatorji kollha u issib illi s-socjeta appellanti ma ghandhiex ragun. Ibda biex din il-Qorti ta' revizjoni ma ghandhiex tissindika apprezzament li sar minn Bord li kellu l-opportunita jisma' in-nies esperti fil-qasam tant illi seta' jasal ghad-decizjoni, f'kamp purament tekniku, illi l-offerta maghmula mis-socjeta ICT Limited kienet konformi teknikament mal-ispecificazzjonijiet tat-*tender* u kwindi l-ghazla kellha issir mill-gdid billi din ma setatx tigi estromessa mit-tellieqa bejn l-offerenti tenut kont illi kienet qed toffri l-irhas prezz. Illi gustament allura gie deciz illi:

“Qabel ma jigi ttrattat il-meritu tal-appell tajjed illi din il-Qorti, qabel xejn, tirribadixxi li bhala Qorti tat-“tiolet istanza” f'dawn it-tip ta' kazijiet, ma hux mistenni li din tidhol biex tezamina d-dettalji teknici ta' kull offerta biex tara jekk offerta partikolari tissodisfax jew le r-rekwiziti teknici mitluba fis-sejha ghall-offerti. Din il-Qorti, kif kostitwita, la tista' u lanqas ghandha x-xjenza teknika mehtiega biex tevalwa materji li jmorru lil hinn mill-kompetenza taghha. Kif qalet il-Qorti Ewropea ta' Gustizzja (ECJ), f'kaz numru T-300/07 fl-ismijiet Evropaiki *Dynamiki v. Commission*, deciza fid-9 ta' Settembru, 2010:

“As a preliminary point, it should be recalled that the Commission enjoys a broad margin of discretion with regard to the factors to be taken into account for the purpose of deciding to award a contract following an invitation to tender. Review by the Court is limited to checking compliance with the procedural rules and the duty to give reasons, the correctness of the facts found and that there is no manifest error of assessment or misuse of powers (see, to that effect, Case T-145/98 ADT Projekt v Commission [2000] ECR II-387, paragraph 147; Case T-148/04 TQ3 Travel Solutions Belgium v. Commission [2005] ECR II-2627, paragraph 47; and Case T-437/05 Brink's Security Luxembourg v. Commission [2009] ECR II-0000, paragraph 193.”

Dak il-kaz, hu veru, kien jolqot kaz mistharreg minn kummissjoni ewropeja, pero`, il-principju jibqa' li, bhala qorti ta' revizjoni, il-

kompetenza ta' din il-Qorti hija necessarjament cirkoskritta.” (App.Sup – Steelshape Limited vs Direttur tal-Kuntratti et. deciza 7 ta' Awwissu 2013.

Tradott dan l-insenjament ghal din il-vertenza, huwa evidenti illi din il-Qorti ma tistax u lanqas ghandha il-kompetenza illi iccaqlaq dak mistharreg mill-Bord ta' Revizjoni dwar il-Kuntratti Pubblici li kellu l-opportunita li jisma' x-xhieda kollha viva voce, inkluz allura, l-opinjoni teknici in materja u ghalhekk seta' jizen ahjar il-fatti kif esposti quddiemu. Bis-setghat moghtija lulu skont il-ligi u wara li ghamel evalwazzjoni tal-fattispecje kollha li kellu quddiemu l-Bord kien tal-fehma illi is-socjeta ICT Limited kienet issodisfat it-*tender specifications* u li allura kellha terga' issir it-tellieqa mill-gdid bejn l-offerenti kollha.

Illi dak li kien qed jigi ikkontestat fl-offerta in dizamina huwa jekk ir-*router* offrut mis-socjeta ICT Limited fir-rekwizit numru 12 tat-*tender document* kienx jissodisfa l-*Layer 2 features*², billi mid-dokument kien jidher illi l-*etherswitch* kien qed jigi offrut bhala “*option*” u mhux inkluz fl-imsemmi *router*. Illi s-socjeta ICT Limited insistiet illi dan ma kienx il-kaz billi jekk wiehed ihares lejn l-ispecificazzjonijiet tal-prodott li igib il-*lead part reference number CISCO Part No 2911*, dan huwa maghmul minn ghaxar *part numbers* ohra u allura l-istess kien jikkompreni l-*etherswitch* u kwindi jissodisfa il-*Layer 2 features* mitluba. L-*etherswitch* indikat bhala “*option*” kien jirreferi ghall-*upgrade* ta'l-istess, billi tali *upgrade* minn 16 ghal 24 *port switch card*, kellu jigi indikat fl-Iskeda 1.6 anness mat-*tender document* li kienet titkellem dwar l-*upgrades* ghall-prodott, liema specificazzjonijiet ma kellhomx jittiehdu in konsiderazzjoni fil-process ta'l-evalwazzjoni. Kwindi dan jittraduci ruhu fil-konkluzjoni bil-wisq evidenti illi l-prodott offert mis-socjeta ICT Limited kien jinkludi sa mill-bidu nett l-ispecificazzjonijiet kollha mitluba minghajr il-htiega li isir xi tibdil jew zieda fl-ispecificazzjonijiet indikati minnha fit-*tender*

² Ara fol.30 tat-*tender document*

document sottomess. Fil-fatt dawn il-kjarifikazzjonijiet gew ipprovduti minn dan l-offerent, fuq rikjesta tal-awtorita kontraenti, f'itra datata 13 ta' Jannar 2012 li l-prodott li kien qed jigi offrut bhala “*bundle*” definittivament kien jinkludi l-ispecificazzjonijiet kollha mitluba. Din l-ittra certament serviet bhala kjarifika ta' dak li kien qed jigi offert u ma biddel xejn minn dak sottomess minn dina l-kumpanija fl-offerta minnha maghmula. Illi gustament allura l-Bord wasal ghal konkluzjoni illi s-socjeta ICT Limited kellha tinkonkorri mill-gdid fl-aggudikazzjoni billi allura kienet tkun hi il-vittma ta' trattament inugwali u mhux is-socjeta appellanti, kif lamentat fit-tieni aggravvju minnha sottomess.

Finalment gjaladarba il-mod kif kien infassal it-*tender document* ma kienx jinnessita illi l-applikant jidhol fl-ispecificu tal-ispecificazzjonijiet tal-prodott minnu offert, allura ma hemmx dubbju illi is-socjeta ICT Limited ressqet l-offerta taghha kif mitlub. Kien jispetta imbaghad lill-Bord ta'l-Evalwazzjoni sabiex jitlob il-kjarifiki necessarji qabel ma issir l-aggudikazzjoni jekk kien ihoss din il-htiega. Dan il-process ta' kjarifika ma jistax jittraduci ruhu f'wiehed ta' trattament diskriminattiv bejn l-offerenti stante illi l-ligi stess tippermetti dan, u lanqas ma jista' iwassal ghal eliminazzjoni ta' xi offerent mill-process ta' aggudikazzjoni jekk il-prodott offert huwa wiehed *technically compliant* mar-rekwiziti tal-kuntratt offert.

Ghal dawn il-motivi l-appell qed jigi michud u is-sentenza appellata ikkonfermata.

L-ispejjez ta' dina l-istanza ghandhom jigu sopportati mis-socjeta appellanti.

< Sentenza Finali >

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