



MALTA

**QORTI TA' L-APPELL**

**ONOR. IMHALLEF**

**EDWINA GRIMA**

Seduta tas-27 ta' Mejju, 2015

Appell Civili Numru. 34/2012

**ALBERTA FIRE & SECURITY EQUIPMENT  
LIMITED**

**Vs**

**(1) ID-DIRETTUR TAL-KUNTRATTI**

**(2) TEKTRACO LTD**

**(3) TRANSPORT MALTA ghal kull interess li jista' jkollhom.**

Il-Qorti,

Rat id-decizjoni moghtija mill-Bord ta' Revizjoni Dwar il-Kuntratti Pubblici fit-23 ta' Lulju 2012 fejn giet ippronunzjata is-segwenti decizjoni fl-ismijiet premissi:-

*“This Board,*

- *having noted that the appellants, in terms of their ‘reasoned letter of objection’ filed on the 13<sup>th</sup> February 2012 and also through their verbal submissions presented during the hearing held on the 4<sup>th</sup> July, 2012, had objected to the decision taken by the pertinent authorities;*
- *having noted all of the appellant company’s representatives’ claims and observations, particularly, the references made to the fact that (a) by email dated 6<sup>th</sup> February 2012 the appellant company was informed that the company’s tender was not technically compliant since the certification supplied did not conform with the requirements as stated in clause 6.1.2 of the tender document, which stated that bidders “shall demonstrate their ability to work on the current system installed, thus ensuring no interruption of service shall occur. Therefore, technicians and/or engineers to install, commission and programme the equipment must possess the following certification: Certification for Honeywell MaxPro Levels 1 and 2 (and) Certification for Verint Codecs” and that copies “these certificates are to be attached with the tender bid”, (b) the contracting authority had requested clarifications about various other aspects of the tender but none were requested with regard to the certification provided, (c) the contracting authority had indicated that what the bidder offered had to be compatible with the system already installed and in operation, (d) the appellant company had replied to all the technical queries raised by the contracting authority and, as a result, it was rather odd that no query had been received with regard to such an issue as to the submission of non compliant certifications, (e) the certification Maxpro Levels 1 and 2 requested in the tender document was no longer issued after year 2008, (f) in the circumstances, the disqualification was deemed unfair and it led his firm to lodge this appeal, (g) the last email dated 17<sup>th</sup> October 2011 also stated that “the level of competency is very much dependent on the style of training given, indeed even within Honeywell two distinct focuses are used when delivering Macpor VMS training (Video or Access)” and so it could well be the case that the appellant company’s MaxPro VMS training did cover the tender requirements depending on the level of training given and (h) since MaxPro Levels 1 and 2 certificates were no longer issued then the contracting authority should have included the current equivalent qualifications in the tender requirements;*
- *having considered the contracting authority’s representatives’ reference to the fact that (a) the contracting authority had requested in clear terms the certification as per clause 6.1.2 of the tender document already cited, (b) what the contracting authority was requesting was the upgrading of the*

*CCTV licensed wireless lings, which, in itself, was indicative that there already was a system in place and, as a consequence, the proposal had to be integrated with the existing one which operation required that the technicians/engineers had to possess the Honeywell MaxPro Levels 1 and 2 certification together with the certification for Verint Codecs, (c) there was no problem with regard to the Verint Codecs so much so that the appellant company had indicated that it would be sub-contacting Vering Systems Inc. itself and the tender document did allow bidders to sub-contract works/services up to 40% of the value of the tender, (d) the problem arose with regard to the Honeywell certification because, whereas the contracting authority requested Honeywell certification for CCTV, the appellant company submitted certification for something else, namely, access (e) in the course of the evaluation process, the evaluation board had noted that the certification submitted by the appellant company did not match requirements and, to set its mind at rest, the evaluation board requested Honeywell of Germany to confirm if the certification submitted by the appellant company, namely Pro-Watch Ecosystem & MaxPro VMs, was equivalent to MaxPro Levels 1 and 2 and the reply given was that it was not, (f) the recommended bidder had submitted the requested certificates from Honeywell in respect of Mr Karim Cassar and Mr Josef Grima indicating they were 'trained to a competent and knowledgeable level of ability for installation by successfully completing the course: Systems Training (Maxpro) Level 1 and 2, (g) on the other had, the appellant company submitted Honeywell Training Certificates in the name of Mr. Claudio Vella, Mr Ludovic Vella and Mr Trevor Buhagiar confirming that they have 'participated in a Pro-Watch Ecosystem & MaxPro VMS Training', (h) the certificate provided by the appellant company was not in accordance with requirements because it referred to 'access systems' and not with 'CCTV systems', (i) an 'access system' was simply meant to control access into a room/office by the installation of a camera and so forth whereas Transport Malta had in place a system that covered the Malta's port areas by way of CCTV, (j) the certification was required because the existing system at Transport Malta had to be reconfigured and, as a consequence, the technicians/engineers carrying out this contract had to be knowledgeable on the system, (k) in the course of the adjudication process the contracting authority had exchanged emails with Honeywell in order to establish if the certificates submitted by the appellant company satisfied the tender requirements, (l) Pro-Watch represented an access control system, namely controlling persons entering, say, an office but had nothing to do with the CCTV system at Transport Malta, (m) Maxpro, which later became MaxproNet, covered the requirements of the tender whereas Pro-Watch and Maxpro VMS did not cover those requirements –Maxpro had been upgraded to the current MaxproNet and not to MaxPro VMS or to*

*Pro-Watch which were not relevant to the authority did not raise with the appellant company the issue concerning the unsuitability for the certificates the company presented and that was so because the contracting authority had already obtained the information it required from source, namely Honeywell itself, (o) the certification issued by Honeywell to ESI covering Pro-Watch ECO and Pro-Watch Video Manager one had to keep in view that Pro-Watch Manager represented an integration of a video camera to an access control, namely to control access into an office and (p) had the appellant submitted certificates for MaxProNet (the current version of MaxPro as per Honeywell's email dated 14<sup>th</sup> October 2011) then those certificates would have been acceptable;*

- *having considered the recommended tenderer's representatives' reference to the fact that (a) the tender document was very specific in requiring Maxpro Levels 1 & 2 certification and, therefore, it was their responsibility for the bidder who did not possess/submit that certification to explain that the certification the said bidder actually submitted were equivalent to the requirement set out in the tender document – in other words, it was up to the bidder to clearly explain one's own compliance, (b) the evaluation board had no discretion to accept certificates other than those specified in the tender document and (c) his client submitted the certificates requested and the contracting authority raised no queries in that regard, yet it was different case with the appellant company because it did not submit what was requested and the appellant company even failed to explain that its certificates were equivalent to those requested in the tender.*

- *having considered*

*(a) the contact made by the Public Contracts Review Board's Chairman via an email (Ref: Wed 11/07/2012 10:46) with Mr Christian Gradinger's (Technical Support Manager EMEA – Honeywell Integrated Security, Honeywell Security Group) wherein the following was stated, viz;*

*Quote*

*Mr. Christian Gradinger  
Technical Manager – EMEA  
Honeywell Integrated Security  
101 Columbia Rd  
Morristown  
NJ 07960-4640  
United States*

*Dear Mr Gradinger*

*Re: Tender for the Upgrading of CCTV Licensed Wireless Links  
(Tender Document TM 075/2011)*

*Please be informed that the undersigned is currently presiding over a hearing in connection with an appeal filed by an appellant relating to the subject in caption.*

*Claude 6.1.2 of the tender document stated that:*

*“Bidders shall demonstrate their ability to work on the current system installed, thus ensuring no interruption of service shall occur. Therefore technicians and/or engineers to install, commission and programme the equipment must possess the following certification*

- *Certification for Honeywell MaxPro Levels 1 and 2*
- *Certification for Verint Codecs*

*Copies of these certificates are to be attached with the tender bid.”*

*Kindly note that, during the said hearing, it became evidently clear that there was a diverse opinion amongst interested parties, as regard the scope and extent, of the areas covered in the attached documentation as submitted by different tenderers.*

*The Board that I preside, namely the Public Contracts Review Board, decided to take this initiative, namely, to send you copies of a couple of samples of certificates in question in order to acquire a knowledgeable reply direct from someone who is duly competent in the field.*

*At his stage all that is required is that, at your earliest convenience, you would kindly go through the content of the attached documents (certificates) and analysing them within the context of Clause 6.1.2 above, you would advise by return whether any one of them or both, for all that matters, fulfil the specification parameters of the said Clause.*

*Please allow us to take this opportunity to thank you in advice for your prompt attention to the subject matter.*

*Yours truly,*

*Alfred Triganza*

*Chairman*

*Public Accounts Review Board*

*Unquote*

*The above email included 'training certificates' pertaining to Mr Claudio Vella (dated 25.06.2010) and Mr Karim Cassar (dated 21.08.2008)*

*(b) The content of Christian Gardinger's (Technical Support Manager EMEA-Honeywell Integrated Security, Honeywell Security Group) email reply to this Board's Chairman (Ref: Tji 12/07/2014 12:40) wherein the latter stated*

*Quote*

*Dear Mr. Triganza*

*I can confirm that ESI as part of their Integrator agreement with Honeywell has sent their engineering team to Pro-Watch ECO and Maxpro VMS Trainings to our Training Center in Germany. In these trainings the team has learned everything they need to know to successfully install and maintain Honeywell's Access control and Video Management Systems. As outlined in the attached certificate Mr. Claudio Vella has successfully participated in this training course.*

*Training was provided in total of three ESI engineers. We know ESI as a competent partner of Honeywell with the ability to install and maintain complex Security systems. ESI is a Silver certified Honeywell partner in our Integrator Service Certification program.*

*Training activities were limited to Pro-Watch and Maxpro VMS, we do not provide training for Verint Codecs.*

*I hope this helps to clarify*

*Mit freundlichen Grüßen  
Best regards*

*Christian Gardinger  
Technical Support Manager EMEA – Honeywell Integrated Security*

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*Unquote*

*Reached the following conclusions, namely:*

*The Public Contracts Review Board is fully cognisant of the fact that the contracting authority had indicated that what a bidder offered had to be compatible with the system already installed and in operation. With regard to certification, this Board also took cognizance of the fact that “the level of competency is very much dependent on the style of training given, indeed even within Honeywell two distinct focuses are used when delivering MaxproVMS training (Video or Access)” and so it could well be the case that the appellant company’s MaxPro VMS training did cover the tender requirements depending on the level of training given. This issue had to be addressed by a knowledgeable third party who would be made aware that what the contracting authority was requesting was the upgrading of the CCTV licensed wireless links, which in itself, was indicative that there already was a system in place and, as a consequence, the proposal had to be integrated with the existing one which operation required that the technicians/engineers had to possess the Honeywell MaxPro Levels 1 and 2 certification together with the certification for Verint Codecs.*

*The Public Contracts Review Board acknowledged the fact that there was no problem with regard to the Verint Codecs so much so that the appellant company had indicated that it would be sub-contracting Verint Systems Inc. itself and the tender document did allow bidders to sub-contract works/service up to 40% of the value of the tender.*

*The Board had to analyse the suitability of certification submitted to ensure that this covered Honeywell certification for CCTV rather than certification for something else, namely, access amidst the claim made by the contracting authority stating that Pro-Watch represented an access control system, namely controlling persons entering, say, an office but had nothing to do with the CCTV system at Transport Malta.*

*With this in mind the Public Contracts Review Board emailed (Ref: Wed 11/07/2012 10:46) Mr Christian Gradinger's (Technical Support Manager EMEA – Honeywell Integrated Security, Honeywell Security Group) attaching the 'training certificates@ pertaining to Mr Claudio Vella (dated 25.06..2010) and Mr. Karim Cassar (dated 21.08.2008) seeking an opinion as to whether the certification duly submitted by both tenderers fulfils the requirements stated in Clause 6.1.2 of the tender document.*

*This Board feels that Mr. Gradinger's email reply (Ref: Thu 12/07/2012 12:40) was clear enough confirming that ESI "sent their engineering team to Pro-Watch ECO and Maxpro VMS trainings to" their "Training Center in Germany" and that in "these trainings the team has learned everything they need to know to successfully install and maintain Honeywell's Access control and Video Management Systems. As outlined in the attached certificate Mr. Claudio Vela has successfully participated in this training course" adding that Honeewell knows "ESUI as a competent partner of Honeywell with the ability to install and maintain complex Security systems".*

*The Board has also considered the fact that training activities wer limited to Pro-Watch and Maxpro VMS as Honeywell does not provide training for Verint Codecs. The Publi Contracts Review Board considered this within the claim made during the hearing that there was no problem with regard to the Verint Codecs so much so that the appellant company had indicated that it would be sub-contracting Verint Systems Inc. itself and the tender document did allow bidders to sub-contract works/services up to 40% of the value of the tender.*

*In view of the above, this Board finds in favour of the appellant company and, apart from recommending that the latter's hid be reintegrated in the evaluation process, this Board also recommends that the appellant company be reimbursed with the deposit paid for the appeal to be lodged."*

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

1. Illi d-decizjoni tal-Bord kienet ghal kollox zbaljata meta qieset illi c-certifikazzjoni offerta mis-socjeta appellate Tektraco Limited kienet konformi mar-rekwizti tas-sejha ghall-offerti meta din kienet tispecifica rekwizit mandatorju car u cioe' zewg certifikati specifici li ma kenux fil-pussess tas-socjeta appellate li kienet ressqet l-appell taghha quddiem il-

Bord fuq dan ir-rekwizit. Dan ghaliex dawn id-dokumenti ma kienux konformi ma' dak mitlub mill-awtorita kontraenti.

2. Illi l-Bord ghadha ghad-decizjoni minghajr ma ta indikazzjoni li kien wasal ghal tali decizjoni u minghajr ghalhekk ma giet moghtija l-opportunita lill-partijiet li jaghmlu is-sottomissjonijiet finali taghhom speċjalment wara li l-Bord ikkonsulta ruhu mas-socjeta estera Honeywell dwar il-validita ta' certifikati imressqa mis-socjeta appellat u strah fuq l-informazzjoni moghtija lilu minn rapprezentant ta' l-istess socjeta fid-decizjoni tieghu. Dan bi ksur lampanti tal-principji tal-gustizzja naturali senjatament il-principju tal-audi alteram partem.
3. Illi mhuwiex minnu dak deciz mill-Bord illi c-certifikazzjoni offerta mis-socjeta Tektraco Ltd hija b'xi mod ekwivalenti ghal dak li gie mitlub mill-awtorita kontraenti fir-rekwiziti mandatorji tat-tender.

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 rigwardanti “upgrading of CCTV Licensed Wireless Links”, billi din kienet giet imhabbra u ippubblikata mill-awtorita kontraenti li f'dan il-kaz kien Transport Malta. Dan ghaliex il-valur tal-kuntratt publiku kien stmat f'ammont ta' inqas minn €120,000 u allura skont ir-regolament 19 tat-Taqsima II tar-Regolamenti Dwar il-Kuntratti Pubblici il-kuntratt *de quo* kellu jigi regolat mill-awtorita kontraenti.

Illi id-Direttur appellat ghandu ragun billi jidher car kemm mir-regolament iccitat 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-aggudikazzjoni sussegwenti, oltre il-fatt illi allura huwa ma kienx kompartecipi fil-proceduri

## Kopja Informali ta' Sentenza

quddiem il-Bord ta' Revizjoni dwar il-Kuntratti Pubblici.<sup>1</sup> 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 tnisslu minn sejha ghall-offerti pubblici li saret fid-19 ta' Awwissu 2011 mill-Awtorita ghat-Trasport f'Malta u dana rigwardanti *upgrading of CCTV Licensed Wireless Links*. Wara din is-sejha kienu biss zewg operatori li tefghu l-offerta taghhom wahda minnhom is-socjeta appellanti u l-oħra is-socjeta appellata Tektraco Limited. Illi permezz ta' ittra datata l-1 ta' Frar 2012, il-kuntratt pubbliku gie aggodikat favur is-socjeta appellanti ghalkemm kienet l-oghla offerta billi c-certifikazzjoni imressqa mis-socjeta Tektraco ma kenitx konfomri mar-rekwiziti tas-sejha. Illi s-socjeta appellata Tektraco Limited appellat minn din id-decizjoni quddiem il-Bord ta' Revizjoni dwar il-Kuntratti Pubblici billi saħhget illi c-certifikazzjoni li ipprezentat ta'l-inginiera li kienu der jiehdu hsieb ix-xoghol u cioe' ic-certifikazzjoni fil-*Pro-Watch Ecosystem & MaxPro VMS Training*, kienu ekwivalenti ghac-certifikati indikati fir-rekwiziti mandataorji u cioe' *Honeywell MaxPro Levels 1 & 2*. Billi ghalhekk l-offerta taghha kienet l-irhas wahda, allura l-kuntratt kellu jigi aggodikat favur taghha. Illi l-Bord ta' Revizjoni dwar il-Kuntratti Pubblici rinfaccjat b' din il-kwistjoni hass il-htiega li jikkomunika mar-rapprezentant tas-socjeta estera li joffri dan it-tip ta' certifikazzjoni ghal CCTVs u cioe' is-socjeta Honeywell Integrated Security gewwa l-Istati Uniti, ghalkemm din il-komunikazzjoni kienet diga saret mill-Awtorita kontarenti qabel ma saret l-aggodikazzjoni. Wara li kiseb l-informazzjoni mehtiega, l-Bord ghadda ghal decizjoni favur is-socjeta appellata, fejn allura infetah mill-gdid il-konkors pubbliku ta'l-aggodikazzjoni. Illi jirrizulta mill-atti li ghakemm l-informazzjoni moghtija mis-socjeta estera lill-awtorita kontraenti kienet fis-sens

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

illi c-certifikazzjoni imressqa mis-socjeta appellate Tektraco ma kenitx konformi mar-rekwizit mitlub fis-sejha għall-offerti, madanakollu l-informazzjoni mogħtija imbagħad mill-istess socjeta, għalkemm minn rapprezentant differenti kienet tghid mod iehor.

Mill-kontenut tat-tieni aggravju jirrizulta li s-socjeta` appellanti qed tinvoka l-ksur tal-principju fundamentali ta' gustizzja naturali "*audi alteram partem* u għalhekk tilmenta illi hija giet imcahhda mill-jedd għal smigh xieraq u dana f'process kwazi gudizzjarju fejn hija kellha interess issemma lehinha stante li l-ezitu tad-decizjoni setghet twassalha biex issofri pregudizzju irrimedjabbli. Illi din il-qorti hija tal-fehma illi qabel xejn għandu jigi trattat dan il-garvam billi l-istess jista' ikollu effett fuq l-ezitu ta' dan l-appell. Illi s-socjeta appellanti tilmenta illi l-Bord ma messux qabad u għadda għad-decizjoni tiegħu abbazi ta'l-informazzjoni mogħtija minn rapprezentant tas-socjeta estera Honey well mingħajr qabel ma għarraf lill-partijiet bl-informazzjoni li kien kiseb u mingħajr ma ingħataw l-opportunita li iressqu is-sottomissjonijiet tagħhom fir-rigward qabel mal-Bord għadda għad-decizjoni finali.

Illi kif diga kellha okkazzjoni tirrileva, din il-qorti tosserva illi kull process ta' *public procurement* għandu bhala il-bazi tiegħu il-kuncett bazilari tat-trasparenza li ifisser illi l-partecipanti kollha tas-sejha għandhom jigu trattati bl-istess mod. Naturalment biex ikun hemm dan it-trattament ugħwali l-konkorrenti kollha tas-sejha jridu ikunu mqieghda fil-kundizzjoni li ikunu jistghu jitolqu mill-istess punt ta' tluq. Dan jista' jimmatterjalizza ruhu biss jekk l-offerenti ikun mogħtija l-istess informazzjoni u l-istess mezzi biex jippartecipaw fis-sejha pubblika illi issir. Illi dan il-kuncett ta' trasparenza u ugħwaljanza fil-process ta'l-aggudikazzjoni huwa imfisser saħansitra fid-Direttiva 2004/18/EC tal-

Unjoni Ewropeja trasportata fil-legislazzjoni taghna li ghandha bhala l-qafas taghha dawn il-principji balizari meta jinghad:

“The award of contracts concluded in the Member States on behalf of the State, regional or local authorities and other bodies governed by public law entities, is subject to the respect of the principles of the Treaty and in particular to the principle of freedom of movement of goods, the principle of freedom of establishment and the principle of freedom to provide services and to the principles deriving therefrom, such as the principle of equal treatment, the principle of non-discrimination, the principle of mutual recognition, the principle of proportionality and the principle of transparency<sup>2</sup>.

*Multo magis* dawn il-principji ghandhom ikunu applikabbli b'iktar forza meta l-aggudikazzjoni tkun qed tigi ikkontestata ghal xi raguni jew ohra. Fil-fatt ir-regolamenti dwar il-Kuntratti Pubblici ihaddnu dawn il-jeddijiet fundamentali ta' trattament ugwali u ta' trasparenza meta fir-Regolament 85(7)(j) tar-Regolamenti dwar il-Kuntratti Pubblici, li jitkellem dwar il-procedura li ghandha tkun adottata mill-Bord ta' Revizjoni dwar il-Kuntratti Pubblici jinghad:

**Is-sessjonijiet tal-Bord ta' Revizjoni li matulhom jigi ttrattat l-ilment ghandhom isiru bil-miftuh u kemm min ikun qed jaghmel l-ilment kemm il-parti li jkollha interess ikollhom jedd jattendu u jkollhom isehibhom lil kull persuna, professjonali jew xort'ohra, li huma jqisu li jkun adatt biex jiddefendi l-interessi taghom.** (sottolinjar tal-Qorti).

Isegwi ir-Regolament 85(7)(k) fl-istess vena:

**(i) Ic-Chairman ikun jista' jistabbilixxi l-procedura ghas-smigh tal-ilmenti kollha li jsiru lill-Bord ta' Revizjoni u ghandu jizgura li matul is-smigh li jsir bil-miftuh kull parti li jkollha interess tinghata l-opportunità li tressaq il-kaz taghha.** (sottolinjar tal-Qorti).

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<sup>2</sup> Recital 2 to the Council Directive

Illi l-opportunita li kull parti interessata tinghata jedd ghal smigh xieraq isib iktar forza fid-dawl tal-provvedimenti tar-regolament 85(8)(b) li jaghti forza ezekuttiva lid-decizjonijiet tal-Bord:

**“Id-decizjoni tal-Bord tikkostitwixxi titolu ezekuttiv u tista’ tkun infurzata skond l-artikolu 273 tal-Kodici ta’ Organizzazzjoni u Procedura Civili.”**

Dawn id-decizjonijiet jorbtu mhux biss lid-Direttur tal-Kuntratti jew l-Awtorita Kontraenti skont il-kaz, izda lill-offerenti kollha.

Premess dan ghalhekk ma ghandux ikun dubitat illi ghalkemm il-Bord kellu kull jedd jikseb kull parir jew informazzjoni mehtiega sabiex jasal ghad-decizjoni tieghu, u dana bis-setgha moghtija lilo fir-regolament 85(7)(i), madanakollu dan ghandu isir b’osservanza tal-jedd tas-smigh xieraq lill-partijiet kollha involuti fil-procediment pendenti quddiemu. Dan kellu isir fuq kollox ghaliex mill-atti jirrizulta illi ghalkemm t-teknici tas-socjeta appellanti, certu Karim Cassar u Josef Grima kellhom ic-ertifikazzjoni mehtiega kif mitlub fir-rekwiziti tas-sejha u cioe’ “Systems Training (Maxpro) Level 1 and 2”, it-teknici tas-socjeta Tektraco Claudio Vella, Ludovic Vella u Tevor Buhagiar kienu ippartecipaw f’ “Pro-Watch Ecosystem & MaxPro VMS Training” u ghalhekk mhux dak mitlub specifikatament fir-rekwiziti mandatorji tas-sejha. Illi di piu mid-dokumenti ipprezentati mill-awtorita kontraenti jirrizulta illi l-Kumitat ta’ Evalwazzjoni kienu diga diligentement ghamlu l-verifiki tagghom sabiex jaraw jekk ic-certifikazzjoni tas-socjeta Tektraco kenitx ikopri l-istess modules ta’ studju u ghalhekk kenitx ekwivalenti ghal dak mitlub, fejn ir-risposta li ircevev minn certu Les Fish tekniku fi hdan is-socjeta Honeywell fil-Germanja li taghmel dan it-tip ta’ tahrig, kienet fin-negattiv u kien ghalhekk abbazi ta’ din ir-risposta kif ukoll abbazi ta’ evalwazzjoni interna illi l-offerta tat-Tektraco giet michuda. Ghalhekk il-Bord kellu ikun ferm kawt meta imbaghad irceva informazzjoni minn ghand l-istess socjeta tal-Honeywell fl-Istati Uniti, certu Christian

Gradinger li kienet qed tghid mod iehor. Illi ghalhekk il-Bord kellu iressaq dina l-informazzjoni ghas-skrutinju tal-partijiet kollha interessanti u jisma' s-sottomissjonijiet taghhom fir-rigward qabel ma igahddi ghad-decizjoni tieghu. Fuq kollox il-partijiet kellhom jigu infurmati dwar il-persuna li maghha kien ser jikkonsulta il-Bord u dan f'gieh il-principju tat-trasparenza, kif kellhom ukoll jigu infurmati dwar il-kweziti li l-Bord kienu ser iressqu ghall-parir minn ghand din il-persuna,<sup>1</sup> hekk imsejja terms of reference, u id-dokuemntazzjoni li kienet ser tigi mibghuta lill-istess persuna. Fil-fatt s-socjeta appellanti tallega illi dan Gradinger kienet l-istess persuna li harrget lit-teknici tas-socjeta Tektraco u ghaldaqstant tallega illi ma setax ikun imparzjali. Tilmenta ukoll illi il-Bord kellu jirreferi id-dokument kollu tat-tender lir-rapprezentant barrani sabeix dan ikun f'posizzjoni ahjar jivverifika jekk ic-certifikazzjoni kenitx idonja ghax-xoghol li kellu issir.

Illi ghalhekk il-Bord ma setax minghajr ma jinforma lill-partijie tkollha bil-passi li kien qed jiehu u bir-risposti li huwa kien ottjena ighaddi gahd-decizjoni tieghu minghajr ma jaghti lill-partijie tikoncernati iressqu dawk il-provi u sottomissjonijiet li jidhrilhom xieraq.

**“Ir-regola 'audi alteram partem' ghandha tigi skrupolozament osservata, u l-partijiet ghandhom id-dritt li jkunu prezenti fl-investigazzjonijiet li jaghmel id-delegat tal-Board, biex ikunu jistghu jikkontrollaw l-informazzjonijiet li jigu moghtija lil dak id-delegat ghall-finijiet ta' dik l-investigazzjoni. Il-vjolazzjoni tar-regola 'audi alteram partem' taghti lok ghas-sindakat tal-Qrati ordinarji, li jistghu, anzi ghandhom, jirritjenu null dak li jkun sar in konsegwenza tal-vjolazzjoni - kif sar f'dan il-kaz. Din ir-regola 'audi alteram partem' hija regola ta' gustizzja naturali, u bhala tali hija ta' interess publiku; u ghalhekk ma hiex rinunzjabili ' per simpliciter', billi jinghad illi kien hemm akkwijexxenza mill-parti li giet pregudikata bil-vjolazzjoni ta' dik ir-regola.<sup>3</sup>”**

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<sup>3</sup> PA Antonio Sammut vs John Bell McCance ne 29/05/1946

“Il-principju *“audi alteram partem”* huwa principju fundamentali mixhut fuq kull min gie mgħoni b’poter li jiddeciedi. L-awtur S.A. de Smith fil-ktieb *“Constitutional and Administrative Law”* (Penguin Books, 3rd Edit.) jghid, a pagna 564, li dan il-principju, *“Is the more interesting and important rule of natural justice. In its crudest form, it means that nobody shall be penalized by a decision of a court or tribunal unless he has been given (a) prior notice of the charge or case he has to meet, and (b) a fair opportunity to answer the case against him and to put his own case”*. Fil-kawza famuza ingliza *“Ridge vs Baldwin, deciza mill-House of Lords fl-1964, intqal li d-dritt għallsmiegh xieraq *“is a rule of universal application”*, u Lord Loreburn, fil-kawza *“Board of Education vs Rice”*, deciza wkoll mill-House of Lords fl-1911, kien qal li d-dover li jagħti smiegh xieraq hu impost *“upon every one who decides anything.”*<sup>4</sup>”*

Għaldaqtsant il-Qorti qed tilqa’ t-tieni aggravvju u għalhekk ma tarax illi għandha tinoltra ruhha fl-aggravvju l-iehor imressqa mis-socjeta appellanti.

Għal dawn il-motivi l-appell qed jigi milqugh, id-decizjoni tal-Bord dwar ir-Revizjoni tal-Kuntratti Pubblici qed tigi revokati. Tirrimanda l-atti lura quddiem il-Bord sabiex wara li jisma’ s-sottomissjonijiet, u jekk ikun il-kaz anke provi, mill-partijiet kollha interessati iġħaddi għad-decizjoni tiegħu skont il-ligi.

Fid-dawl tac-cirkostanzi partikolari ta’ dan il-kaz, l-ispejjez ta’ din il-procedura għandhom jibqgħu bla taxxa bejn il-partijiet.

## < Sentenza Finali >

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<sup>4</sup> PA Salon Services Limited vs Elaine Dimech 13/11/2003