



Public Contracts Review Board
Department of Contracts
Notre Dame Ravelin
Floriana VLT2000

27 October 2023

Dear Sirs,

Re: Tender for the Leasing of Premises to House In-Patient Psychiatric Services Facility (IPSF) to the Central Procurement and Supplies Unit, obo Mental Health Services (the "Tender")

1. We have been instructed by **Caring First Limited (C-28125)** (the "**Appellant**") to file an appeal in terms of Regulation 59 of the Procurement of Property Regulations (Subsidiary Legislation 601.12) and Regulation 270 of the Public Procurement Regulations (Subsidiary Legislation 601.03) (the "**PPR**") in connection with the above-captioned Tender.
2. The Appellant is aggrieved by the Department of Contracts' and the Contracting Authority's (as defined below) proposed award of the Tender to the Recommended Bidder (as defined below) and this for the following reasons:
 - a. First Ground of Appeal: The Proposed Site is not compliant with the terms of the Tender
 - b. Second Ground of Appeal: The Proposed Site is burdened with an encumbrance
 - c. Third Ground of Appeal: The Department of Contracts and the Contracting Authority have not disclosed the Requested Information.

A. Factual Background

3. On 27 April 2023, the Department of Contracts (the "**Department of Contracts**") on behalf of the Central Procurement and Supplies Unit (the "**Contracting Authority**") published the above-captioned Tender for the leasing of premises to house the In-Patient Psychiatric Services Facility.
4. The estimated procurement value of the Tender was €14,600,000 (excluding VAT) with a contract duration of 4 years extendable by two further periods of 1 year each. The Tender was not divided into lots and was to be awarded in accordance with the sole criterion of price according to Clause 13.
5. On 29 September 2023, the Appellant received a letter of rejection from the Contracting Authority whereby it was informed that its offer was being rejected, despite being administratively and technically compliant, because a cheaper offer had been identified and recommended (attached and marked as "**Document CF1**"). In the same letter, the

Contracting Authority informed the Appellant that the Tender was being recommended for award to CareMalta Group Ltd (C-15462) (the "**Recommended Bidder**").

6. On 3 October 2023, the Appellant submitted a request to the Department of Contracts and to the Contracting Authority for the disclosure of the premises offered by the Recommended Bidder (the "**First Information Request**").
7. On the following day, the undersigned on behalf of the Appellant sent a reminder to the Department of Contracts and the Contracting Authority and received an acknowledgement of its request.
8. Later on the same day, that is 4 October 2023, the Appellant submitted a second request for information to the Department of Contracts and to the Contracting Authority, asking for the disclosure of information relating to the satisfaction by the Recommended Bidder of the Tender requirements (the "**Second Information Request**"), namely:
 - a. the number of beds offered by the Recommended Bidder at the premises;
 - b. documentation submitted by the Recommended Bidder on the "information on ownership of the premises and proof of legal title thereon";
 - c. copies of "PA (Planning Authority) permits and compliance certificates" submitted by the recommended bidder;
 - d. "the latest plans of the premises, approved and stamped by PA" submitted by the Recommended Bidder;
 - e. "condition certificate by a Perit" submitted by the Recommended Bidder;
 - f. "a Site-plan clearly indicating the exact location of the property" submitted by the Recommended Bidder;
 - g. "a Site-plan clearly indicating the exact location of the closest public transport bus stop to the property" submitted by the Recommended Bidder;
 - h. "a Site-plan clearly indicating the exact location of the parking facility proposed" submitted by the Recommended Bidder;
 - i. "plan of the parking facilities confirming the availability of at least parking spaces equivalent to 75% of the number of beds offered" submitted by the Recommended Bidder; and
 - j. "detailed report, certified by a Perit, on the usable indoor and outdoor floor space of the property in m², indicating clearly where each space is, on a site plan, including the number of beds specified in item no 1.1 of the technical offer, a draft drawing showing how rooms and spaces can fit within the different floor levels of the property, and a plan clearly indicating the entrances to the building" submitted by the Recommended Bidder.
9. The First Information Request and the Second Information Request are collectively referred to as the "**Requested Information**" and the electronic correspondence on the

Requested Information is attached to this appeal as “**Document CF2**” and “**Document CF3**” respectively.

10. However, despite another reminder on 5 October 2023 (attached and marked as “**Document CF4**”), the Appellant did not receive the Requested Information, the disclosure of which is essential for the Appellant to determine whether to exercise recourse to its legal and judicial remedies in terms of law.
11. On 6 October 2023, the Appellant lodged an appeal against the Department of Contracts' decision of 29 September 2023 in terms of Regulation 59 of the Procurement of Property Regulations (Subsidiary Legislation 601.12) and Regulation 270 of the PPR (attached and marked as “**Document CF5**”). The Appellant requested this Honourable Board *inter alia* to order the disclosure of Requested Information and to find that the Department of Contracts' decision is wrong and illegal.
12. On 16 October 2023, the Department of Contracts (attached and marked as “**Document CF6**”) replied to that appeal and committed to indicate the address of the property offered by the Recommended Bidder.
13. On 17 October 2023, the Department of Contracts wrote to the Appellant indicating “*Casal Nuovo Mater Boni Consili, Triq Ħaż-Żabbar, Paola*” (the “**Proposed Site**”) as the property offered by the Recommended Bidder (attached and marked as “**Document CF7**”).
14. On 26 October 2023, the Appellant, on a strictly without prejudice basis, withdrew the appeal lodged on 6 October 2023 and communicated its intention to file a fresh appeal by 27 October 2023.
15. To date, the Appellant remains without the information and documentation requested in the Second Information Request.
16. The Appellant is aggrieved by the decisions and conduct taken by the Department of Contracts and the Contracting Authority with respect to this Tender.
- A. First Ground of Appeal: The Proposed Site is not compliant with the terms of the Tender**
17. The Appellant submits that the Proposed Site is not, and cannot, be compliant with the technical specifications of the Tender.
18. According to publicly available information retrieved from the website of the Planning Authority, the Proposed Site's total usable area is significantly less than the area to be occupied by the various rooms mandatorily required in the Tender.
19. The total area to be occupied by the various rooms mandatorily required in the Tender is according to the Appellant's *conservative* calculations: **2,447m²**.
20. This is based on the area (m²) specified for each room listed in the Schedule of Accommodation included in the first tab of Annex II – Room Schedules attached to the Tender and calculated as follows:

- a. First, **1179.5m²** is the total of area of the rooms listed in Annex II excluding (i) Inpatient Ward and areas for such; and (ii) other ancillary areas required for circulation, that is, corridors, staircases, lifts and lobbies;
- b. Second, **1267.5m²** is the total area of at least 3 Inpatient Wards and linked areas (excluding PTIU). This is calculated based on the following:
 - i. The Tender required as a minimum 65 beds¹—5 of which are to be dedicated to the Psychiatric Intensive Therapy Unit (PTIU), and therefore, the remaining 60 beds are required for the Inpatient Wards.²
 - ii. The Tender provided that each ward shall house between fourteen (14) and eighteen (18) inpatients.³ Assuming a minimum of 60 beds for the Inpatient Wards, this would require a minimum of 3 Inpatient Wards—if the range of inpatients per ward is increased to 20 inpatients.
 - iii. The Tender stipulated that the linked areas stipulated in the “Schedule of accommodation: ART6.1 – Inpatient Wards” in Annex II are required “(**PER WARD**)”.
 - iv. The total area of the “room/space description (PER WARD)” for each Inpatient Ward specified in Annex II is 422.5 m².⁴
 - v. This total area is to be multiplied by 3 for each of the 3 Inpatient Wards, as per above, and would result in **1267.5m²**.
 - vi. Although the Tender did say that the Contracting Authority reserves the right to increase or decrease the range of inpatients which can be housed in a given ward, the Tender also stipulated that the “Patient Bedrooms” in the Inpatient Wards could not house more than 6 beds⁵ and that the minimum size of the bedrooms (excluding ensuite facilities) is 9m² per patient in the case of shared bedrooms.⁶ The latter requirements could not be varied.

¹ To date, the Appellant does not know the total number of beds offered by the Recommended Bidder despite being requested in the Second Information Request. The Recommended Bidder should have been disqualified if it offered less than 65 beds.

² Tender, Section 3 Technical Specifications, Clause 6:

“The IPSF shall accommodate a total capacity of between 65 and 100 beds. Five (5) of the beds shall be situated within the Psychiatric Intensive Therapy Unit (PITU). Submissions received which propose less than the minimum of 65 beds shall be automatically disqualified. Submissions received which propose more than the maximum of 100 beds, shall be capped at the maximum of 100, and no remuneration shall be due to the lessor for any additional capacity offered. N.B. For detailed schedules of accommodation and room furnishings schedules kindly refer to ANNEX II – ROOM SCHEDULES.”

³ Tender, Section 3 Technical Specifications, Clause 6.1.

⁴ This assumes 20 inpatients per Inpatient Ward as per above.

⁵ Tender, Section 3 Technical Specifications, Clause 6.1.7.1: “Each bedroom shall have a maximum of six (6) beds.”

⁶ Tender, Section 3 Technical Specifications, Clause 6.1.7.2: “The minimum size of the bedrooms (excluding ensuite facilities) shall be as follows: 6.1.7.2.1 Single bedrooms – 12m² 6.1.7.2.2 Shared bedrooms – 9m² per patient”.

vii. There is a further restriction in the Tender that "*all these rooms shall be connected, at the same level without having the necessity to pass through stairwell/ lift lobby*" and that "*an entire ward shall be placed on one floor level.*"⁷

21. According to publicly available information retrieved from the website of the Planning Authority, the Proposed Site's total usable area is, according to the Appellant's *generous* estimates, is 1638.8m² which is significantly less than the area to be occupied by the various rooms mandatorily required in the Tender as illustrated above.

The Proposed Site is also split on multiple floors. This would necessarily require that the Inpatient Wards are split on separate levels and each Ward needs to have the requisite dedicated linked areas specified above.

22. Further, and according to publicly available information, the Proposed Site does not have the requisite parking facilities on site. The Tender required *inter alia* that the property has access to parking spaces equivalent to 75% of the number of beds offered. Therefore, and if a bidder offered the minimum of 65 beds, the Proposed Site should have had access *inter alia* to:

- 49 parking spaces (75% of 65 beds);⁸
- separate parking spaces for staff and visitors;⁹
- 2 reserved parking spaces.¹⁰

According to publicly available information, the Proposed Site does not. It is notorious that parking in Paola is a limited resource—and this was also raised in planning processes relevant to the Proposed Site.

23. Therefore, the Appellant submits that this ground of appeal ought to be upheld for the above-mentioned reasons and other reasons that may be brought in the proceedings.

24. The Appellant hereby expressly reserves the right to raise additional grounds of objection if and when the information and, or documentation requested in the Second Information Request is disclosed to the Appellant.

B. Second Ground of Appeal: The Proposed Site is burdened with an encumbrance

25. The Appellant submits that the Recommended Bidder's bid ought to be rejected because:

- a. First, the Proposed Site is, at the time of submission of the bid, burdened with an encumbrance;
- b. Second the Recommended Bidder made incorrect self-declarations in its bid on this issue.

⁷ Tender, Section 3 Technical Specifications, Clause 6.1.

⁸ Tender, Section 3 Technical Specifications, Clause 4.5.5.1.

⁹ Tender, Section 3 Technical Specifications, Clause 4.5.5.3.

¹⁰ Tender, Section 3 Technical Specifications, Clause 4.5.5.4.

26. The Tender required that the bidder:
- a. *"warrants that the property in question is free and clear of all encumbrances, except for the easements";*¹¹
 - b. *"is empowered to dispose of the property which is the subject of the tender or that he has legal title of the Leased Premises".*¹²

The Recommended Bidder should have made self-declarations on these 2 points.

27. The Proposed Site appears to be operated and managed by a third-party entity, within the CareMalta group of companies, HILA Homes Ltd (C72905)—but one which has separate legal personality and has different board of directors.
28. The Appellant understands that HILA Homes Ltd offers *"services to persons with disabilities that include respite and residential services"*—a category of vulnerable users which, the Appellant respectfully submits, ought not be displaced unnecessarily.
29. At face value, this situation constitutes an "encumbrance" on the Proposed Site which existed (and still does exist) on 30 May 2023—being the closing date for the submission of bid.
30. The Appellant is assuming that the Recommended Bidder's bid was accepted because it provided a self-declaration that *"the property in question is free and clear of all encumbrances, except for the easements"*. This self-declaration must be incorrect given this encumbrance on the Proposed Site. The Appellant respectfully submits that the Recommended Bidder's bid should have been rejected on this basis.
31. Therefore, the Appellant submits that this ground of appeal ought to be upheld for the above-mentioned reasons and other reasons that may be brought in the proceedings.
32. The Appellant hereby expressly reserves the right to raise additional grounds of objection if and when the information and, or documentation requested in the Second Information Request is disclosed to the Appellant.

C. Third Ground of Appeal: The Department of Contracts and the Contracting Authority have not disclosed the Requested Information

33. The Appellant submits that the Department of Contracts and the Contracting Authority have breached their duty at law to disclose the documentation and, or information requested in the Second Information Request, and consequently, the Appellant's right to an effective judicial protection is breached.
34. The requested disclosures are necessary to ensure the efficacy of the remedies framework provided in the Procurement of Property Regulations and the PPR to which the Appellant is entitled. The Appellant must be aware of this documentation and/or information to be able to effectively scrutinise the Contracting Authority's decision to award the tender to the recommended bidder.

¹¹ Tender, Section 1, Clause 6 (B) b.

¹² Tender, Section 1, Clause 6 (B) a.

35. The requested disclosures simply do not (and cannot) constitute commercially sensitive information or a trade secret which may prejudice the legitimate commercial interests of the recommended bidder, if disclosed. Moreover, the requested disclosures fall within Regulation 21(2) of the Procurement of Property Regulations.
36. This Requested Information is essential for the Appellant to determine whether to lodge an appeal with this Honourable Board against the decision to award the public contract to the Recommended Bidder or otherwise and whether to raise additional grounds of appeal.
37. The fact that the Appellant has very little information about the Recommended Bidder's tender has the effect of impeding or even in this case, preventing, the effective use of its remedies.
38. In the absence of sufficient information enabling it to ascertain whether the decision of the Department of Contracts and the Contracting Authority to award the contract is vitiated by errors or unlawfulness, the Appellant cannot rely on its right in terms of law to an effective review.
39. The Appellant must, in the interests of transparency and to ensure compliance with the requirements of good administration and effective judicial protection, enjoy access, at the very least, to the essential content of the information provided by the Recommended Bidder.
40. Without the Requested Information, the Appellant is being effectively deprived of its right to lodge a substantive objection in terms of the Procurement of Property Regulations and the PPR against the Department of Contracts' and Contracting Authority's decisions and conduct.
41. Therefore, apart from requesting this Honourable Board to order the Contracting Authority to disclose the Requested Information, the Appellant is hereby fully reserving its right to raise additional grounds of appeal in light of such disclosure.

THEREFORE, the Appellant humbly demands that this Honourable Board should:

- (a) declare that the Department of Contracts and/or the Contracting Authority have breached their duties at law towards the Appellant to disclose the information and documentation requested in the Second Information Request as described in this appeal;
- (b) order the Department of Contracts and/or the Contracting Authority to disclose the information and documentation requested in the Second Information Request as described in this appeal to the Appellant;
- (c) declare that the Recommended Bidder's bid is not compliant with the terms and conditions of the Tender;
- (d) declare that the Department of Contracts' and the Contracting Authority's recommendation of the Tender to the Recommended Bidder is wrong and, or illegal, and consequently, quash that decision;



- (e) cancel and revoke the proposed award of the Tender to the Recommended Bidder;
- (f) order the refund of the deposit paid by the Appellant;

subject to any declaration or order as it deems fit and opportune.

Yours sincerely,
Ganado Advocates


Dr. Clement Mifsud-Bonnici
(cmifsudb@ganado.com)


Dr. Calvin Calleja
(ccalleja@ganado.com)



Bank of Valletta p.l.c
 Registration Number: C 2833
 Registered Office: 58 Zachary Street, Valletta VLT 1130 - Malta

Pay third party

Printed by: Ms. ANGELLE FALZON
 Printed on: 06/10/2023 - 10:02
 Document ID: 17646280

Transaction details

| | |
|-------------------------------------|--|
| Payer's name: | CARING FIRST LIMITED |
| Beneficiary name: | Cashier Malta Government |
| Relation: | Professional Service |
| Reason: | Other |
| Payment details: | PCRB appeal |
| Currency: | EUR - Euro |
| Beneficiary IBAN/Account: | MT55MALT011000040001EURCMG5001H |
| Beneficiary IBAN/Account type: | Valid IBAN of country - Malta |
| Bank name: | Other bank |
| Bank address / Bank's BIC: | Insert the beneficiary bank BIC manually |
| Bank's BIC: | MALMTMT |
| Beneficiary address: | No |
| From account: | 4001763140 6 (EUR) |
| Charges should be paid by: | Shared - I pay BOV charges; Cashier Malta Government pays the beneficiary bank charges |
| Amount: | EUR 50,000.00 |
| BOV to transfer the money: | as soon as possible |
| Receiving bank to get the money as: | normal priority payment |
| Saved template: | Cashier Malta Government |

Additional information

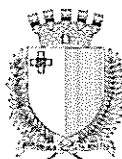
| | |
|--|---------------|
| Credit amount: | EUR 50,000.00 |
| Debited amount (excluding charges): | EUR 50,000.00 |
| Estimated amount to be withdrawn from account: | EUR 50,004.00 |
| Transaction charge: | EUR 4.00 |

Transaction result

| | |
|-----------------|---|
| Status: | Your instructions have been processed successfully. |
| Transaction ID: | 133020137 |

DOCUMENT CF1

DIPARTIMENT TAL-KUNTRATTI
Notre Dame Ravelin
Floriana FRN 1600 – MALTA



DEPARTMENT OF CONTRACTS
Notre Dame Ravelin
Floriana FRN 1600 – MALTA

Telephone: (0356) 2122 0212
(0356) 2122 0313
Fax: (0356) 2124 7681
e-Mail: info.contracts@gov.mt
website: www.contracts.gov.mt

29th September 2023

TID 193241 Caring First Ltd

REFERENCE: CT4001/2023

SUBJECT: Leasing of Premises to House Inpatient Psychiatric Services Facility (IPSF) to The Central Procurement and Supplies Unit, obo Mental Health Services

Dear Sir/Madam,

Thank you for participating in the above-mentioned tender procedure. However, I regret to inform you that the tender submitted by your company was not successful since the criteria for award of this tender was the cheapest priced offer satisfying the administrative and technical criteria.

The tender was recommended for award to TID 193171 CareMalta Group Ltd for the amount of €12,410,000.00 exclusive of VAT this being the cheapest priced tenders satisfying the administrative and technical criteria.

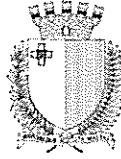
If you intend to object to this decision, the Public Procurement Regulations allow for an official objection which in this case has to be lodged electronically with the Public Contracts Review Board by sending an email on: info.pcrb@gov.mt by noon of Monday 9th October 2023 against a deposit of €50,000

Payments are to be made through bank transfer in terms of the following details:

| | |
|------------------------|---------------------------------|
| Name of Account Holder | Cashier Malta Government |
| Name of Bank | Central Bank of Malta |
| Address of Bank | Castille Place, Valletta |
| Account Number | 40001EUR-CMG5-001-H |
| BIC | MALT MT MT |
| IBAN Code | MT55MALT011000040001EURCMG5001H |
| Bank Code | 01100 |

The official schedule can be accessed on the website: www.etenders.gov.mt.

**DIPARTIMENT TAL-KUNTRATTI
Notre Dame Ravelin
Floriana FRN 1600 – MALTA**



**DEPARTMENT OF CONTRACTS
Notre Dame Ravelin
Floriana FRN 1600 – MALTA**

Telephone: (0356) 2122 0212
(0356) 2122 0313

Fax: (0356) 2124 7681

e-Mail: info.contracts@gov.mt

website: www.contracts.gov.mt

Although we have not been able to make use of your services on this occasion, I trust that you will continue to take an active interest in our initiatives.

Yours sincerely,

Jonathan Bugeja

f/Director General (Contracts)

DOCUMENT CF2

Calvin Calleja

From: Clement Mifsud Bonnici
Sent: 03 October 2023 18:50
To: Cachia Anthony J at Department of Contracts; Farrugia Karl at CPS-Health
Cc: Anastasi Alison at CPS-Health; Calvin Calleja
Subject: CT4001/2023 - LEASING OF PREMISES TO HOUSE INPATIENT PSYCHIATRIC SERVICES FACILITY (IPSF) TO THE CENTRAL PROCUREMENT AND SUPPLIES UNIT, OBO MENTAL HEALTH SERVICES
Attachments: 2023 09 29 - Letter of Rejection(3163923.1).pdf

Dear Mr. Cachia and Ing. Farrugia,

I am writing to you on the instructions of **Caring First Limited** in connection with the above-captioned tender.

Our clients are requesting the disclosure of the **premises** offered by the recommended bidder.

This information is NOT confidential in terms of Regulation 21(2)(b) of the Procurement of Property Regulations. There is no trade secret or commercial sensitivity which might be disclosed if the description and location of the premises is made known to our clients.

We would appreciate if the requested information were disclosed as early as **tomorrow Wednesday 4/10 noon** given the deadline to lodge the appeal which lapses on 9 October 2023.

If you fail to disclose this information, our client reserves the right to raise the failure to disclose this information as a specific ground in its appeal application.

All of our clients' rights, including to request further disclosure of information as permitted by law, are reserved.

Regards,

Clement Mifsud Bonnici
Senior Associate



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DOCUMENT CF3

Calvin Calleja

From: Clement Mifsud Bonnici
Sent: 04 October 2023 15:53
To: Cachia Anthony J at Department of Contracts; Farrugia Karl at CPS-Health
Cc: Avv. Alexia J Farrugia Zrinzo - 360 Legal; Anastasi Alison at CPS-Health; Dr. Leon Camilleri; Debono Mark Anthony 1 at Department of Contracts; Calvin Calleja
Subject: RE: CT4001/2023 - LEASING OF PREMISES TO HOUSE INPATIENT PSYCHIATRIC SERVICES FACILITY (IPSF) TO THE CENTRAL PROCUREMENT AND SUPPLIES UNIT, OBO MENTAL HEALTH SERVICES

Dear Mr. Cachia and Ing. Farrugia

Further to our client's request of 3 October 2023 for the disclosure of the premises (which hasn't been disclosed yet), our client now requests the disclosure of the following:

1. The number of beds offered by the recommended bidder at the premises.
2. Documentation submitted by the recommended bidder on the "Information on ownership of the premises and proof of legal title thereon".
3. "Copies of PA (Planning Authority) permits and compliance certificates" submitted by the recommended bidder.
4. "The latest plans of the premises, approved and stamped by PA" submitted by the recommended bidder.
5. "Condition certificate by a Perit" submitted by the recommended bidder.
6. "A Site-plan clearly indicating the exact location of the property" submitted by the recommended bidder.
7. "A Site-plan clearly indicating the exact location of the closest public transport bus stop to the property" submitted by the recommended bidder.
8. "A Site-plan clearly indicating the exact location of the parking facility proposed" submitted by the recommended bidder.
9. "Plan of the parking facilities confirming the availability of at least parking spaces equivalent to 75% of the number of beds offered" submitted by the recommended bidder.
10. "Detailed report, certified by a Perit, on the usable indoor and outdoor floor space of the property in m², indicating clearly where each space is, on a site plan, including the number of beds specified in item no 1.1 of the technical offer, a draft drawing showing how rooms and spaces can fit within the different floor levels of the property, and a plan clearly indicating the entrances to the building" submitted by the recommended bidder.

Our client submits that this information and, or documentation (as applicable) should be disclosed to it. This is so for the following reasons:

- First, the requested disclosures are necessary to ensure the efficacy of the remedies framework provided in the Procurement of Property Regulations to which our client is entitled. Our client must be aware of this documentation and/or information to be able to effectively scrutinize the Contracting Authority's decision to award the tender to the recommended bidder.
- Second, the requested disclosures simply do not (and cannot) constitute commercially sensitive information or a trade secret which may prejudice the legitimate commercial interests of the recommended bidder, if disclosed. Moreover, the requested disclosures fall within Regulation 21(2) of the Procurement of Property Regulations.
- Third, this information, which was specifically sent by the recommended bidder to the Contracting Authority within the context of this procurement procedure, has absolutely no commercial value in the wider context of the recommended bidder's activities, and therefore, its disclosure cannot be refused.

- Fourth, the requested information is clearly very important to the award of this procurement procedure. Given the importance of this information, the whole document, or at the very least, the essential content of the documentation must be accessible to our client in view of the principle of transparency and the right to an effective remedy.

Although this information and documentation should be easily procurable, our client understands that you might need more time to collate this documentation. To this, end our client is requesting the disclosure of this information and documentation by **Friday 6/10 noon**.

If you fail to disclose this information/documentation, our client reserves the right to raise this failure as a specific ground in its appeal application.

All our clients' rights, including to request further disclosure of information as permitted by law, are reserved.

Regards,

Clement Mifsud Bonnici

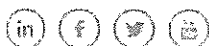
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From: Clement Mifsud Bonnici

Sent: Wednesday, October 4, 2023 11:46 AM

To: Farrugia Karl at CPS-Health <karl.farrugia@gov.mt>; Anastasi Alison at CPS-Health <alison.anastasi@gov.mt>

Cc: Cachia Anthony J at Department of Contracts <anthony.j.cachia@gov.mt>; Avv. Alexia J Farrugia Zrinzo - 360 Legal <alexia@360legalmalta.com>; Dr. Leon Camilleri <leon@360legalmalta.com>; Debono Mark Anthony 1 at Department of Contracts <mark-anthony.debono.1@gov.mt>; Calvin Calleja <ccalleja@ganado.com>

Subject: RE: CT4001/2023 - LEASING OF PREMISES TO HOUSE INPATIENT PSYCHIATRIC SERVICES FACILITY (IPSF) TO THE CENTRAL PROCUREMENT AND SUPPLIES UNIT, OBO MENTAL HEALTH SERVICES

Yes. That's why the request is addressed to the central government authority (DoC) and contracting authority (CPSU).

Clement Mifsud Bonnici

Senior Associate

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From: Farrugia Karl at CPS-Health <karl.farrugia@gov.mt>

Sent: Wednesday, October 4, 2023 11:36 AM

To: Clement Mifsud Bonnici <cmifsudb@ganado.com>; Anastasi Alison at CPS-Health <alison.anastasi@gov.mt>

Cc: Cachia Anthony J at Department of Contracts <anthony.j.cachia@gov.mt>; Avv. Alexia J Farrugia Zrinzo - 360 Legal <alexia@360legalmalta.com>; Dr. Leon Camilleri <leon@360legalmalta.com>; Debono Mark Anthony 1 at Department of Contracts <mark-anthony.debono.1@gov.mt>; Calvin Calleja <ccalleja@ganado.com>

Subject: Re: CT4001/2023 - LEASING OF PREMISES TO HOUSE INPATIENT PSYCHIATRIC SERVICES FACILITY (IPSF) TO THE CENTRAL PROCUREMENT AND SUPPLIES UNIT, OBO MENTAL HEALTH SERVICES

As Dr Mifsud Bonnici is aware we require the authorisation from DG Contracts in order to divulge this information. If approved we shall submit.

Ing Karl Farrugia | Managing Director

Sourcing & Supplies Management

Central Procurement and Supplies Unit (CPSU)

San Gwann Industrial Estate SUB002 San Gwann | Malta

Department Of Health (DOH)

Ministry for Health (MFH)

e: Karl.farrugia@gov.mt
m: 00356 79469637
t: 00356 25454105

On 4 Oct 2023, at 10:53, Anastasi Alison at CPS-Health <alison.anastasi@gov.mt> wrote:

Including legals

Thanks

Dr. Alison Anastasi
Head of Operations (Procurement)
CPSU

From: Clement Mifsud Bonnici <cmifsudb@ganado.com>
Sent: Wednesday, October 4, 2023 10:46:47 AM
To: Cachia Anthony J at Department of Contracts <anthony.j.cachia@gov.mt>; Farrugia Karl at CPS-Health <karl.farrugia@gov.mt>
Cc: Anastasi Alison at CPS-Health <alison.anastasi@gov.mt>; Calvin Calleja <ccalleja@ganado.com>
Subject: RE: CT4001/2023 - LEASING OF PREMISES TO HOUSE INPATIENT PSYCHIATRIC SERVICES FACILITY (IPSF) TO THE CENTRAL PROCUREMENT AND SUPPLIES UNIT, OBO MENTAL HEALTH SERVICES

CAUTION: This email originated from OUTSIDE the Government Email Infrastructure. DO NOT CLICK LINKS or OPEN attachments unless you recognise the sender and know the content is safe.

Good morning Mr. Cachia and Ing. Farrugia

I am politely following up on my email below given that I did not receive an acknowledgement.

This is kind reminder to disclose the premises offered by the recommended bidder by **noon today**.

Regards,

Clement Mifsud Bonnici

Senior Associate



T. +356 2123 5406

A. 171, Old Bakery Street, Valletta VLT 1455, Malta

W.

ganado.com



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From: Clement Mifsud Bonnici

Sent: Tuesday, October 3, 2023 6:50 PM

To: Cachia Anthony J at Department of Contracts <anthony.j.cachia@gov.mt>; Farrugia Karl at CPS-Health <karl.farrugia@gov.mt>

Cc: Anastasi Alison at CPS-Health <alison.anastasi@gov.mt>; Calvin Calleja <ccalleja@ganado.com>

Subject: CT4001/2023 - LEASING OF PREMISES TO HOUSE INPATIENT PSYCHIATRIC SERVICES FACILITY (IPSF) TO THE CENTRAL PROCUREMENT AND SUPPLIES UNIT, OBO MENTAL HEALTH SERVICES

Dear Mr. Cachia and Ing. Farrugia,

I am writing to you on the instructions of **Caring First Limited** in connection with the above-captioned tender.

Our clients are requesting the disclosure of the premises offered by the recommended bidder.

This information is NOT confidential in terms of Regulation 21(2)(b) of the Procurement of Property Regulations. There is no trade secret or commercial sensitivity which might be disclosed if the description and location of the premises is made known to our clients.

We would appreciate if the requested information were disclosed as early as tomorrow Wednesday 4/10 noon given the deadline to lodge the appeal which lapses on 9 October 2023.

If you fail to disclose this information, our client reserves the right to raise the failure to disclose this information as a specific ground in its appeal application.

All of our clients' rights, including to request further disclosure of information as permitted by law, are reserved.

Regards,

Clement Mifsud Bonnici
Senior Associate



T. +356 2123 5406
A. 171, Old Bakery Street, Valletta VLT 1455, Malta
W. "



Deliver results

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DOCUMENT CF4

Calvin Calleja

From: Calvin Calleja
Sent: 05 October 2023 16:00
To: Cachia Anthony J at Department of Contracts; Farrugia Karl at CPS-Health
Cc: Avv. Alexia J Farrugia Zrinzo - 360 Legal; Anastasi Alison at CPS-Health; Dr. Leon Camilleri; Debono Mark Anthony 1 at Department of Contracts; Clement Mifsud Bonnici
Subject: RE: CT4001/2023 - LEASING OF PREMISES TO HOUSE INPATIENT PSYCHIATRIC SERVICES FACILITY (IPSF) TO THE CENTRAL PROCUREMENT AND SUPPLIES UNIT, OBO MENTAL HEALTH SERVICES

Dear Mr. Cachia and Ing. Farrugia,

A gentle reminder that we have not yet received the information with respect to the above-captioned tender either on: (a) the disclosure of the premises offered by the recommended bidder or (b) the remaining information requested in terms of our e-mail yesterday at 3:53 pm.

Our client is requesting the disclosure of this information and documentation by tomorrow **Friday 6/10 noon**.

If you fail to disclose this information/documentation, our client reserves the right to raise this failure as a specific ground in its appeal application.

All our clients' rights, including to request further disclosure of information as permitted by law, are reserved.

Best regards,

Calvin Calleja

Associate

ganado

T. +356 2123 5406

A. 171, Old Bakery Street, Valletta VLT 1455, Malta

W. ganado.com



DOCUMENT CF7

DIPARTIMENT TAL-KUNTRATTI
Notre Dame Ravelin
Floriana FRN1600 – MALTA



DEPARTMENT OF CONTRACTS
Notre Dame Ravelin
Floriana FRN1600 – MALTA

Telephone: (0356) 2122 0212
(0356) 2122 0313
Fax: (0356) 2124 7681
e-Mail: info.contracts@gov.mt

17th October 2023

TID 193241 Caring First ltd

REFERENCE: CT4001/2023

SUBJECT: Leasing of Premises to House Inpatient Psychiatric Services Facility (IPSF) to The Central Procurement and Supplies Unit, obo Mental Health Services

Dear Sir/Madam,

The Department of Contracts is withdrawing the letters to bidders of the Leasing of Premises to House Inpatient Psychiatric Services Facility (IPSF) to The Central Procurement and Supplies Unit (CPSU), obo Mental Health Services issued on 29th September 2023 and re-issuing the afore-mentioned letters. A new appeals period is being given.

I regret to inform you that the tender submitted by your company was not successful since the criteria for award of this tender was the cheapest priced offer satisfying the administrative and technical criteria.

The tender was recommended for award to TID 193171 CareMalta Group Ltd for the amount of €12,410,000.00 exclusive of VAT this being the cheapest priced tender satisfying the administrative and technical criteria.

The recommended property address is **Casal Nuovo Mater Boni Consili, Triq Ħaż-Żabbar, Paola.**

If you intend to object to this decision, the Public Procurement Regulations allow for an official objection which in this case has to be lodged electronically with the Public Contracts Review Board by sending an email on: info.pcrb@gov.mt by noon of Friday 27th October 2023 against a deposit of €50,000.

Payments are to be made through bank transfer in terms of the following details:

| | |
|------------------------|---------------------------------|
| Name of Account Holder | Cashier Malta Government |
| Name of Bank | Central Bank of Malta |
| Address of Bank | Castille Place, Valletta |
| Account Number | 40001EUR-CMG5-001-H |
| BIC | MALT MT MT |
| IBAN Code | MT55MALT011000040001EURCMG5001H |
| Bank Code | 01100 |

The official schedule can be accessed on the website: www.etenders.gov.mt.

Although we have not been able to make use of your services on this occasion, I trust that you will continue to take an active interest in our initiatives.

Yours sincerely,

Anthony Cachia

Director General (Contracts)

UFFIĊĠJU TAL-AVUKAT TAL-
ISTAT
CASA SCAGLIA, 16
TRIQ M.A. VASSALLI
IL-BELT
MALTA



OFFICE OF THE STATE ADVOCATE
CASA SCAGLIA, 16
M. A. VASSALLI STREET
VALLETTA
MALTA

Public Contracts Review Board
Notre Dame Ditch
Floriana, FRN 1601

16th of October 2023

Reply of the Director of Contracts (the Respondent) to the appeal of Caring First (C-28125) regarding Tender Ct4001/2023– Leasing of Premises to House Inpatient Psychiatric Services Facility (IPSF) to The Central Procurement and Supplies Unit, obo Mental Health Services

1. The Department of Contracts has taken note of the complaints raised by letter of objection of Caring First.
2. The Department of Contracts also notes that it is still in time to reply to Caring First's request for information of the 4th of October 2023, since the fifteen-day period established by Reg. 48(2) of the Procurement of Property Regulations has not yet lapsed.
3. The Department of Contracts shall therefore be withdrawing its letter of the 29th September 2023 wherein its award decision was communicated to the bidders, and shall be re-issuing the same letter indicating the address of the preferred bidder's offered property. A fresh appeals period shall run from date of the final letter communicating the award decision.
4. The Department of Contracts submits, therefore, that the merits of this case have been exhausted and recommends that the deposit is refunded to Caring First.

Av. Daniel Inguanez
daniel.inguanez.2@stateadvocate.mt

For the Director of Contracts



**Public Contracts Review Board
Department of Contracts
Notre Dame Ravelin
Floriana VLT2000**

6 October 2023

Dear Sirs,

Re: Tender for the Leasing of Premises to House In-Patient Psychiatric Services Facility (IPSF) to the Central Procurement and Supplies Unit, obo Mental Health Services (the "Tender")

1. We have been instructed by **Caring First (C-28125)** (the '**Appellant**') to file an appeal in terms of Regulation 59 of the Procurement of Property Regulations (Subsidiary Legislation 601.12) and Regulation 270 of the Public Procurement Regulations (Subsidiary Legislation 601.03) (the "**PPR**") in connection with the above-captioned Tender.
2. On 27 April 2023, the Department of Contracts (the "**Department of Contracts**") on behalf of the Central Procurement and Supplies Unit (the "**Contracting Authority**") published the above-captioned Tender for the leasing of premises to house the In-Patient Psychiatric Services Facility.
3. The estimated procurement value of the Tender was €14,500,000 (excluding VAT) with a contract duration of 4 years extendable by two further periods of 1 year each.
4. The Tender was not divided into lots and was to be awarded in accordance with the sole criterion of price according to Clause 13.
5. On 29 September 2023, the Appellant received a letter of rejection (attached and marked as "**Document CF1**") from the Contracting Authority whereby it was informed that its offer was being rejected in spite of being administratively and technically compliant since a cheaper offer had been identified and recommended. In the same letter, the Contracting Authority informed the Appellant that the Tender was being recommended for award to CareMalta Group Ltd (C-15462) (the "**Recommended Bidder**").
6. On 3 October 2023, the Appellant submitted a request to the Department of Contracts and to the Contracting Authority for the disclosure of the premises offered by the Recommended Bidder (the "**First Information Request**").

7. On the following day, the undersigned on behalf of the Appellant sent a reminder to the central government authority and the contracting authority and received an acknowledgement of its request.
8. Later on the same day, that is 4 October 2023, the Appellant submitted a second request for information to the Department of Contracts and to the Contracting Authority, asking for the disclosure of information relating to the satisfaction by the Recommended Bidder of the Tender requirements (the "**Second Information Request**"), namely:
 - a. the number of beds offered by the Recommended Bidder at the premises;
 - b. documentation submitted by the Recommended Bidder on the "information on ownership of the premises and proof of legal title thereon";
 - c. copies of "PA (Planning Authority) permits and compliance certificates" submitted by the recommended bidder;
 - d. "the latest plans of the premises, approved and stamped by PA" submitted by the Recommended Bidder;
 - e. "condition certificate by a Perit" submitted by the Recommended Bidder;
 - f. "a Site-plan clearly indicating the exact location of the property" submitted by the Recommended Bidder;
 - g. "a Site-plan clearly indicating the exact location of the closest public transport bus stop to the property" submitted by the Recommended Bidder;
 - h. "a Site-plan clearly indicating the exact location of the parking facility proposed" submitted by the Recommended Bidder;
 - i. "plan of the parking facilities confirming the availability of at least parking spaces equivalent to 75% of the number of beds offered" submitted by the Recommended Bidder; and
 - j. "detailed report, certified by a Perit, on the usable indoor and outdoor floor space of the property in m², indicating clearly where each space is, on a site plan, including the number of beds specified in item no 1.1 of the technical offer, a draft drawing showing how rooms and spaces can fit within the different floor levels of the property, and a plan clearly indicating the entrances to the building" submitted by the Recommended Bidder.
9. The First Information Request and the Second Information Request are collectively referred to as the "**Requested Information**" and the electronic correspondence on the

Requested Information is attached to this appeal as "**Document CF2**" and "**Document CF3**" respectively.

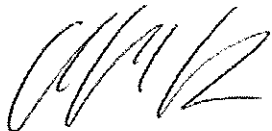
10. However, in spite of another reminder on 5 October 2023 (attached and marked as "**Document CF4**"), the Appellant has yet to receive the Requested Information, the disclosure of which is essential for the Appellant to determine whether to exercise recourse to its legal and judicial remedies in terms of law.
11. The requested disclosures are necessary to ensure the efficacy of the remedies framework provided in the Procurement of Property Regulations and the PPR to which the Appellant is entitled. The Appellant must be aware of this documentation and/or information to be able to effectively scrutinise the Contracting Authority's decision to award the tender to the recommended bidder.
12. The requested disclosures simply do not (and cannot) constitute commercially sensitive information or a trade secret which may prejudice the legitimate commercial interests of the recommended bidder, if disclosed. Moreover, the requested disclosures fall within Regulation 21(2) of the Procurement of Property Regulations.
13. This Requested Information is essential for the Appellant to determine whether to lodge an appeal with this Honourable Board against the decision to award the public contract to the Recommended Bidder or otherwise.
14. The fact that the Appellant has very little information about the Recommended Bidder's tender has the effect of impeding or even in this case, preventing, the effective use of its remedies.
15. In the absence of sufficient information enabling it to ascertain whether the decision of the Contracting Authority to award the contract is vitiated by errors or unlawfulness, the Appellant cannot rely on its right in terms of law to an effective review.
16. The Appellant must, in the interests of transparency and to ensure compliance with the requirements of good administration and effective judicial protection, enjoy access, at the very least, to the essential content of the information provided by the Recommended Bidder.
17. Without the Requested Information, the Appellant is being effectively deprived of its right to lodge a substantive objection in terms of the Procurement of Property Regulations and the PPR against the recommendation notice dated 29 September 2023.
18. Therefore, apart from requesting this Honourable Board to order the Contracting Authority to disclose the Requested Information, the Appellant is hereby fully reserving its right to file a fresh objection in light of such disclosure.

19. For the avoidance of doubt, and in view of the Contracting Authority's failure to provide the Requested Information which is essential to the exercise of the Appellant's rights at law, the standstill period has not yet started to lapse. The Appellant is raising this point to prevent any frivolous or vexation pleas being raised to the requested disclosure by the Contracting Authority.
20. Since the disclosure of the Requested Information will merely serve to restore compliance with the Appellant's right to an effective remedy, the standstill period shall only start to lapse as from the date of the disclosure of the Requested Information to the Appellant.

THEREFORE, in view of the above and for other reasons that may be adduced at law at the sitting to be set by the Public Contracts Review Board, the Appellant humbly demands that the same Board should, subject to any declaration or order as it deems fit and opportune:

- (a) order the Department of Contracts and/or the Central Procurement and Supplies Unit as the Contracting Authority to disclose the Requested Information to the Appellant in terms of the First Information Request and the Second Information Request as described in this appeal;
- (b) declare that the standstill period with respect to the proposed award shall only start to lapse from the date of the disclosure of the requested information in paragraph (a) above by the Department of Contracts and/or the Contracting Authority to the Appellant;
- (c) without prejudice, declare that the proposed award is wrong and illegal in terms of Regulation 59 of the Procurement of Property Regulations and Regulation 270 of the Public Procurement Regulations; and
- (d) to order the refund of the deposit paid by the Appellant.

Yours sincerely,
Ganado Advocates



Dr. Clement Mifsud-Bonnici
(cmifsudb@ganado.com)



Dr. Calvin Calleja
(ccalleja@ganado.com)