

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.

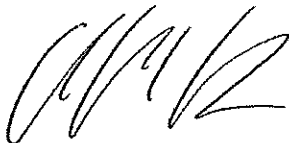
10. However, in spite of another reminder on 5 October 2023 (attached and marked as "**Document CF4**"), the Appellant has yet to receive the Requested Information, the disclosure of which is essential for the Appellant to determine whether to exercise recourse to its legal and judicial remedies in terms 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.

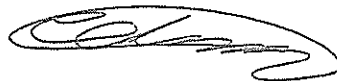
THEREFORE, in view of the above and for other reasons that may be adduced at law at the sitting to be set by the Public Contracts Review Board, the Appellant humbly demands that the same Board should, subject to any declaration or order as it deems fit and opportune:

- (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)

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



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



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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
Senior Associate



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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

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Good morning Mr. Cachia and Ing. Farrugia

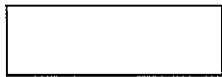
I am politely following up on my email below given that I did not receive an acknowledgement.

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

Regards,

Clement Mifsud Bonnici

Senior Associate

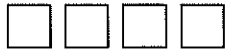


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From: Clement Mifsud Bonnici

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

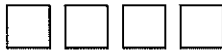
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DOCUMENT CF4

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





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