

4<sup>th</sup> November 2023

Public Contracts Review Board  
Notre Dame Ravelin,  
Floriana,  
Malta



Caring First Limited [TID 193241]

Vs

- [1] Department of Contracts;
- [2] Central Procurement & Supplies Unit;
- [3] Mental Health Services;
- [4] CareMalta Limited [TID 193171]

CT: 4001/2023

**Tender Name: Leasing of Premises to House Inpatient Psychiatric Services Facility (IFSP) to The Central Procurement and Supplies Unit, obo Mental Health Services**

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## REASONED LETTER OF REPLY

*Whereas*, the Department of Contracts (*hereinafter* "**DOC**") issued a call for tenders for the "**Leasing of Premises to House Inpatient Psychiatric Services Facility (IFSP) to The Central Procurement and Supplies Unit, obo Mental Health Services**";

*Whereas*, Messrs. CareMalta Limited (*hereinafter* "**CM**" and/or "**the recommended bidder**") submitted a bid for this procedure, together with the appellant company;

*Whereas*, by means of a letter dated 29<sup>th</sup> September 2023, CM were recommended for award, whilst Messrs. Caring First Limited (*hereinafter* "**CFL**" and/or "**the appellant company**") were informed that their bid was being rejected, since it was not the cheapest priced offer satisfying the administrative and ;

*Whereas*, by means of a letter dated 06<sup>th</sup> October 2023, CFL filed an objection in accordance with *inter alia* article 59 of S.L. 601.12 and article 270 of S.L. 601.03 (*hereinafter* "**First Appeal**")

*Whereas*, by means of a letter dated 17<sup>th</sup> October 2023, DOC re-issued the letter of award/rejection by CM were once again recommended for award, whilst Messrs. CFL were informed that their bid was being rejected, whilst also information that the bid by CM was being recommended for award. Additionally and in accordance with regulation 21(2)(b) of S.L. 601.12 was provided to CFL, DOC informed CFL that Casal Nuovo Mater Boni Consili, Triq Haz Zabbar Paola, was the property address of the recommended bidder;

*Whereas*, by means of a letter dated 27<sup>th</sup> October 2023, CFL filed an objection in accordance with *inter alia* article 59 of S.L. 601.12 and article 270 of S.L. 601.03 (*hereinafter* "**Second Appeal**");

*Whereas*, CM contends that the decision of the DOC communicated by means of the award letter to CM and the rejection letter to CFL should be confirmed by the PCR, and this based on the following grounds:

1. **Preliminary observation**

- 1.1 It transpired that, on the 26<sup>th</sup> October 2023, CFL withdrew its original appeal by claiming that,

*“I have been instructed by our client to withdraw this appeal on a strictly without prejudice basis to the grievances raised therein.*

*Our client will be filing another appeal tomorrow. The deposit which has been paid in this appeal will now be used for the appeal to be filed tomorrow.”*

- 1.2 Until the date of this reply, there has not been published a decision of the Public Contracts Review Board Reference (*hereinafter* “**PCRB**”) in accordance with article 273 of S.L. 601.03, in relation to the first appeal and in particular in relation to the status of the deposit paid for the first appeal – So much so that, the first appeal in accordance with the website of the PCRB is listed as pending, in the new objections section<sup>1</sup>;
- 1.3 Procedure is a matter of public order, which cannot be renounced nor can it be ignored and thus anyone availing of a right granted to it by the legislator, must do so *ad unguem*, without reservations and with utmost respect towards the obligations therein indicated;
- 1.4 CFL cannot *sponta sua* determine that a deposit paid for an appeal, once it decided to withdraw the appeal, that the said deposit should apply for subsequent appeal – Proper procedure dictates that, the PCRB pronounces itself on the merit of the appeal (not applicable in this case) and the deposit, and once so determined, everyone would be regulated accordingly!
- 1.5 In view of the aforesaid, it is the position of CM that the second appeal has not been accompanied with the mandatory deposit as is required in accordance with article 273 of S.L. 601.03, and thereby the PCRB is hereby being asked to take all such actions in accordance with *inter alia* S.L. 601.03;

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<sup>1</sup> [https://pcrb.gov.mt/wp-content/uploads/2023/10/105-obj-ct-4001-2023\\_.pdf](https://pcrb.gov.mt/wp-content/uploads/2023/10/105-obj-ct-4001-2023_.pdf)

2. **General observations and remarks**
  - 2.1 In its appeal CFL has made substantial claims and allegations, some of which are frivolous, unsubstantiated and mostly erroneous – whilst it is a right incumbent to CFL to submit an appeal, it has no right to make baseless claims, which in turn impinge on the rights of others. In this regard, all rights are being reserved [please vide comment hereunder], for CM to take the necessary and appropriate actions against CFL;
  - 2.2 In accordance with provision 1.4 of the tender document, this procedure is regulated in accordance with S.L. 601.12 and it is only for appeals that S.L. 601.03 is mentioned, thus and thereby, a request for information is to be regulated by provision 21 of S.L. 601.12;
  - 2.3 In accordance with provision 1.3 & 2.7 of the tender document, the property is to be delivered in accordance with all specifications as per the tender document within 90 days from the date of the last signature on the contract;
  
3. **FIRST GROUND: The proposed site is not compliant with the terms of the Tender**
  - 3.1 Unlike what is stated and erroneously declared by CFL in its appeal, the offer by CM is fully compliant with the tender specifications;
  - 3.2 In its submissions, CFL entangles itself in a complicated maze, based on a number of assumptions, a series of unsubstantiated claims, and worst still, built around a sequence of wrong premises;
  - 3.3 For all intents and purposes, and as it has been confirmed by the DOC and the contracting authority, the bid of the CM is fully compliant with the tender specifications;
  
4. **SECOND GROUND: The proposed site is burdened with an encumbrance**
  - 4.1 In its second ground of objection, in an unorthodox manner, CFL seeks to oust CM on the premise that the proposed site is burdened with an encumbrance;

- 4.2 It thereafter also seeks to accuse CM of making false statements, by claiming that it gave a wrong warranty, only to thereafter seemingly sweetening it by claiming that, “at face value”;
  - 4.3 Prior to delving further, CM hereby **strongly objects** to the language used by CFL, and unless this is withdrawn, it will reserve all of its rights to take any and all possible actions to safeguard its interests, including but not limited to, the filing of appropriate complaints with the Director General of Competition;
  - 4.4 For all intents and purposes, CM stands by its declarations and has nothing else to add on this matter;
5. **THIRD GROUND: The DOC and the Contracting Authority have not disclosed the requested information**
- 5.1 Whilst indeed, economic operators should be given limited information, and this in line with local and ECJ judgements, the information should be relevant to the requests made, proportionate [especially when compared to the grievances and requests made], and not anti-competitive [with a view of abusing one’s right for information];
  - 5.2 In the context under review, the requests made by CFL are nothing more than a fishing expedition – there is a major difference between a limited right conferred by law for information in accordance with *inter alia* article 21 of S.L. 601.12 and the unreasonable request for information by CFL which goes far beyond what is permissible at law, and which is solely intended to distort competition!
  - 5.3 As a matter of fact, and in accordance with regulation 21(2)(b) of S.L. 601.12, information was provided to CFL whereby DOC informed CFL that the property of the recommended bidder is, “Casal Nuovo Mater Boni Consili, Triq Haz Zabbar Paola;”
  - 5.4 Hereby specific reference is being made to a most recent decision by the ECJ, which specially deals with this point, in the names of **Antea Polska S.A., v Państwowe Gospodarstwo Wodne Wody Polskie [C-54/21]**, wherein it was held that:

*In that regard, the Court has repeatedly held that the principal objective of the EU rules on public procurement is to ensure undistorted competition, and that, in order to achieve that objective, it is important that the contracting authorities do not release information relating to public procurement procedures which could be used to distort competition, whether in an ongoing procurement procedure or in subsequent procedures. Since public procurement procedures are founded on a relationship of trust between the contracting authorities and participating economic operators, those operators must be able to communicate any relevant information to the contracting authorities in such a procedure, without fear that the authorities will communicate to third parties items of information whose disclosure could be damaging to those operators”*

- 5.5 It is imperative that the request for information by this Honourable Board is analysed in accordance with the relevance of the requests made by CFL, and no information which is not relevant to such requests is released – CM clarifies that the information requested is of a confidential nature, and thereby a strong objection is being registered in relation to the disclosure of additional information;
- 5.6 The right for information in public procurement should not be extended to appease curious needs, nor should it be equated with an unreasonable right to be given information, as is the case with the request by CFL - On the contrary, it is a limited right which is pegged to the grievances and the requests of the objector – Thus a right which is relevant to the cause under review, which is limited and not exaggerated, which is not anti-competitive, which is not a fishing expedition – in simple terms, a right which CFL is seeking to vilify with its unreasonable requests!

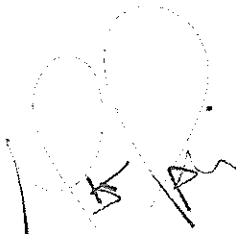
**NOWHEREFORE, CM hereby requests the Board to:**

**i. PRELIMINARY**

- a. to decide and thereafter determine if the appeal filed by CFL is in accordance with article 273 of S.L. 601.03; and/or
- b. if not in accordance with article 273 of S.L. 601.03, to take the necessary actions and make the appropriate determinations, in accordance with the law;

- ii. SUBSEQUENTLY [and on a without prejudice basis to the preliminary requests]
- a. to determine that the request/s for information as made by CFL is excessive and is in excess of what is permissible in accordance with article 21 of S.L. 601.12; and
  - b. to reject the pleas and the requests made by CFL in their entirety;
  - c. to confirm the award letter *inter alia* dated 17<sup>th</sup> October 2023, wherein CM were recommended for award;
  - d. To do anything which is ancillary and conducive to the above requests;

CM is hereby reserving the right to present further evidence, both orally or in written, during the hearing.



**Avv. Matthew Paris**  
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Required for testimony;	[1]	Representatives of the Evaluation Committee;
	[2]	Representatives of the Contracting Authority;
	[3]	Representatives of the Department of Contracts;
	[4]	Other witnesses which might be required