



IN THE PUBLIC CONTRACTS REVIEW BOARD

6th November 2023

Re: Objection 105 - CT 4001/2023 - 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

Reply of the Central Procurement and Supplies Unit (CPSU) on behalf of the Department of Health to the reasoned application lodged by Messrs Caring First Limited (the Objector);

On the 27th of April 2023 a call for 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, was published;

Offers were submitted, and following an evaluation process a recommendation was made in favour of CareMalta Group Ltd, being a cheaper compliant bid (The recommended bidder). This information was communicated to the bidders by means of a letter dated 29th September 2023;

Following this communication, the objector requested to the Department of Contracts and the Contracting Authority a list of information and the Department of Contracts did not to disclose this information within the standstill period.

The Department of Contracts withdrew the letter of the 29th of September 2023 and issued a new letter, indicating the address of the property offered by the recommended bidder, which is Casal Nuovo Mater Boni Consili, Triq Haż Żabbar, Paola.

Consequently, the objector withdrew the original appeal, and filed a new appeal on the 27th of October 2023, based on 3 grievances and primarily contesting the compliance of the recommended bidder;

CPSU humbly disagrees with the objector and is filing the below pleas and submissions in reply, in the same order of objector's grievances.

Submissions

First Grievance - The proposed site is not compliant with the term of the tender

1. CPSU submits that this first grievance of the appellant is essentially speculative and factually unfounded;
2. The objector is in this part of the objection claiming that the objector does not have the required space for the fulfilment of the minimum mandatory requirements of the tender, and states that it is basing its calculations on publicly available information;
3. CPSU submits that it is up to the claimant to bring forward sufficient proof in substantiation of its grievance;
4. CPSU also submits that with the information it was provided, the evaluation committee is of the conviction that the recommended bidder is compliant with the minimum tender requirements;

5. CPSU submits that the tender does not state that there should be no lifts or staircases, but only that there should be no lifts or staircases within a ward.
6. With reference to the car park the tender document states the below:

4.5.5.1 The property shall have access to parking spaces equivalent to 75% of the number of beds offered.

Parking facilities can be both indoor or/and outdoor, public, or private. It can be a parking garage, or a parking space that belongs to the property or to another property within 500 metres from the IPSF building.

Should this not be available within 500 meters, the Lessor is to provide a shuttle / park and ride service between the IPSF and the parking facilities.

The provision of a shuttle / park and ride service to IPSF users, shall be free of charge to passengers, at no additional costs to the Contracting Authority, and on a 24/7 basis.

7. The Objector is not privy of the information relating to the preferred bidder's proposal on parking facilities, and thus this part of the grievance is also unfounded and speculative;
8. The evaluation committee evaluated the preferred bidder's proposal on the parking and decided that this was within the parameters of the tender specifications;
9. For the above reasons this first ground of appeal should be rejected;

Second Grievance – The proposed site is burdened with an encumbrance

10. The objector in this part of the objection letter refers to selection criteria (a) and (b) from page 4 of the tender document which state the below:

a. The bidder warrants he is empowered to dispose of the property which is the subject of the tender or that he has legal title of the Leased Premises.

b. The bidder warrants that the property in question is free and clear of all encumbrances, except for the easements.

11. The bidder states that the premises are managed by a company within the CareMalta group of Companies, with a distinct legal personality and with a different board of directors.
12. CPSU submits that the recommended bidder's offer could not have been rejected for the reason that an encumbrance exists, since the recommended bidder declared that there are no encumbrances and that it is empowered to dispose of the property;
13. The only proof that the tender requested on the above mentioned 2 criteria were the self declarations of the bidders and thus in line with the principles of self limitation and equal treatment the evaluation committee could not base its decision on other information not found within the tender submission;
14. Moreover and without prejudice to the above, the fact that the recommended bidder provided a warrant, was in itself sufficient for the evaluation committee as what the tender was after was in fact the warranty. The fact that an economic operator gives a warranty is sufficiently evident that the economic operator, is confident that it is able to fulfil the obligation, as no reasonable person gives warranties it knows it

cannot honour, especially in scenarios as like a public contract where there are considerable penalties which could be imposed.

15. The recommended bidder confirmed these guarantees, and the objector is suggesting that the recommended bidder is disqualified, for making these guarantees when these guarantees were not breached and could have not been breached as any breach of such guarantees could only occur at contract execution stage;
16. The guarantees made by the recommended bidder are not any different from any other offer in any other procurement process. The fact that someone offers a product, a service or premises, there is a presumption on the contracting authority, that the entity making the offer is able of delivering what it is offering;
17. If at contract execution stage it transpires that there are difficulties on the part of the contractor to implement what it is offering then there are sanction which could be applied;
18. In its judgment of the 27th June 2014 in the names of Joe Micallef & Son Express Skip Services Limited v. Id-Direttur tal-Anzjani u Kura fil-Komunita` et, the Court of appeal states the below:

Mill-kumpless tac-cirkostanzi, f'kaz ta' sejha li ma tinsistix mod iehor, mhux mehtieg li offerent ikun, meta jitfa' l-offerta, f'posizzjoni li jwettaq dak li obbliga ruhu li jwettaq, basta li dak li jkun jimpenja ruhu li jwettaq is-servizz skont id-dettami tal-ligijiet vigenti tal-pajjiz kif fil-fatt gara f'dan il-kaz. Darba dak li jkun issodisfa dak rikjest fid-dokumenti tas-sejha, jibqa' "technically compliant", u l-offerent rebbieh ikun marbut li fil-qadi ta dmirijietu josserva l-ligijiet kollha tal-pajjiz.

19. For the reasons as above explained and which will be further substantiated during the hearing, the second grievance ought to be rejected as well;

The Third Grievance - The Department of Contracts and the contracting Authority have not disclosed the requested information;

20. Regulation 48 of the Procurement of Property Regulations (S.L. 601.12) provides the below on the disclosure of information:

48.(1) The authority administering the procurement process shall as soon as possible inform each tenderer of decision staken concerning the award of a call issued under these regulations. The issued information shall include the name of the successful tenderer, the grounds for any decision to reject his tender and the grounds for any decision not to award a contract for which there has been a public call.

(2) Further to the provisions of sub-regulation (1), on request from the party concerned, the authority responsible for the administration of the procurement process shall as quickly as possible, and in any case within fifteen days from receipt of a written request, inform any tenderers that have submitted a tender of the characteristics and relative advantages of the tender selected.

(3) The authority responsible for the administration of the procurement process may decide to withhold certain information referred to in sub-regulation (1), regarding the contract, where the release of such information would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of bidders, whether public or private, or might prejudice fair competition between such operators.

21. The Department of Contracts, followed sub-regulation (1) when it issued the letter of rejection, and in line with sub-regulation (2) disclosed the address of the premises of the preferred bidder, however in line with its discretion in accordance with sub-regulation (3) decided not to disclose the other requested information. CPSU submits that the Department of Contracts was within its rights in this decision.


22. In addition to the above, the objector's objection of the 27th of October 2023 is in itself evidence that the disclosure of the address was sufficient for the objector to raise an objection on the decision of the evaluation committee.

23. For the above reasons this third grievance should also be rejected.

In view of the above, this Honourable Board ought to reject the requests of the objector and forfeit the deposit.

CPSU reserves its right to make further submission orally and in writing if authorised and to produce witnesses to substantiate its reply.

Avv. Alexia J Farrugia Zrinzo
alexia@360legalmalta.com
204/3 Old Bakery Street
Valletta



Avv. Leon Camilleri
leon@360legalmalta.com
204/3 Old Bakery Street
Valletta