

IN THE PUBLIC CONTRACTS REVIEW BOARD

7<sup>th</sup> December 2023



**In the acts of Objection 105 re: 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 2 interim application submitted by Caring First Limited (the Objector) on the 16<sup>th</sup> of November 2023 and in pursuance of the decree of this Honourable Board of the 1<sup>st</sup> of December 2023;

CPSU is hereby submitting one reply addressing the 2 applications.

**On the Application Directed to the Department of Contracts and/or the Contracting Authority;**

1. CPSU reiterates that 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 decisions taken 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.*

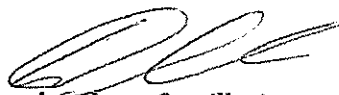
2. The Department of Contracts, followed sub-regulation (1) when it issued the letter of rejection, and in line with sub-regulation (2) disclosed the address of the premises of the preferred bidder, however in line with its discretion in accordance with sub-regulation (3) decided not to disclose the other requested information;
3. CPSU again submits that the Department of Contracts was within its rights in this decision not to disclose the information and holds firm to the Department's decision;
4. Moreover CPSU submits that all information is submitted to the PCRFB as the board reviewing the decision and that the evaluation process is the remit of the evaluation committee and whilst the appeal is a right of every interested person, this cannot be done my means of a fishing expedition for information;

5. Since the information being requested is not public information, it could potentially be confidential information and thus it is only this Honourable Board which is competent to order the disclosure of this information;
6. Without prejudice to the above to which it holds firm, CPSU as the Contracting Authority will adhere to decision of this Honourable Board.

**On the Request to Care Malta re Lease Agreement**

7. CPSU submits that the document being requested is not one of the documents requested at tendering stage and thus any decision on this matter might be in breach of the principle of self limitation.
8. Moreover and without prejudice to the above the information requested does not have the necessary probative value to prove that the property is burdened with an encumbrance.
9. Without prejudice to the above CPSU submits itself to the decision of this Honourable Board.

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