



5<sup>th</sup> December 2023

Public Contracts Review Board  
Notre Dame Ravelin,  
Floriana,  
Malta

**In the acts of the pending appeal, in the names  
of:**

**Caring First Limited (C-28125)**

**Vs**

**Department of Contracts et.**

**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**

---

**Reply by CareMalta Limited (C-28382);  
Respectfully requests**

This is a reply being filed by CareMalta Limited [hereinafter 'CM'] following a PCRB decree dated 1<sup>st</sup> December 2023, which reply is being filed following two [2] applications submitted by Caring First Limited [hereinafter 'CFL']:-

1. CFL's attempt to obtain information and documents to which it is not entitled has no limits, and following the first [1<sup>st</sup>] request dated 3<sup>rd</sup> October 2023, the second [2<sup>nd</sup>] requested dated 4<sup>th</sup> October 2023, the third [3<sup>rd</sup>] request dated 6<sup>th</sup> October 2023, the fourth [4<sup>th</sup>] request 27<sup>th</sup> October 2023, it has now filed a fifth [5<sup>th</sup>] request through two further applications dated the 16<sup>th</sup> November 2023;
2. CFL gives the impression that it is entitled to documents and information it so desires – however this request bonanza goes on to confirm that the attempts by CFL are nothing more than a fishing expedition;
3. As CM has already replied in its submissions of the 4<sup>th</sup> November, the request for 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];
4. Article 21 of S.L. 601.12 clearly confirms that the requests by CFL are unreasonable and go far beyond what is permissible at law, and which is solely intended to distort competition!
5. 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;"
6. Hereby specific reference is being made to a most recent decision by the ECJ, which specifically 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”*

7. Anything beyond and above that provided, should not be released to CFL, else not, such disclosure of information/documents would only contribute towards the distortion of competition!
8. For all intents and purposes, reference is additionally made to a Court of Appeal judgment dated 27<sup>th</sup> June 2014 in the names of **Joe Micallef & Son Express Skip Services Limited (C 47507) v. Id-Direttur tal-Anzjani u Kura fil-Komunita` (27 ta' Gunju, 2014)** wherein it was made very clear that documents which have not been requested by the tender document cannot be requested at evaluation stage, let alone be requested and released to the second bidder – the request for the release of the lease agreement is outrageous to say the least [hereinafter ‘first application’!
9. In addition to the above, the additional requests for information made in the second application are likewise not compatible with the EU directive, with the Public Procurement Regulations, with local judgments and with ECJ decisions – The premise of CFL that it has a right, “... to effectively scrutinize the decision to award the tender to the Recommended Bidder” is incorrect and has no basis at law, *se mai* it is the PCRB that has such a right to scrutinize - The procurement file is/will be available to it [PCRБ] during the hearing (and beyond), by which it can easily ascertain that all conditions have been adhered to;
10. CFL is failing to understand that, if its unreasonable request for information is upheld, it would be given access to information which should not be in possession of a competitor, since such information will distort competition, both throughout this procedure, but also in other situations beyond this call for competition;

11. What is ironic is that, CFL is expecting to illegally obtain the information/documentation of CM, whilst keeping under wraps its very information/documentation – thus ascertaining that competition is not only distorted but ransacked and ravaged!

In view of the above, and in view of other oral submissions to be made during the scheduled sitting, **CareMalta Limited strongly objects** to the requests made by Caring First Limited, and thereby requests this Honourable Board to reject in their entirety the requests [both applications] made by the appellant company and this under such conditions which this Board deems as fit and opportune.

  
**Av. Matthew Paris**  
matthew@dalliparis.com