



Public Contracts Review Board
Department of Contracts
Notre Dame Ravelin
Floriana VLT2000

21 December 2023

Dear Sirs,

Re: Request for Participation (Negotiated) for the Provision of Mental Healthcare Beds for the Mental Health Services within the Ministry for Health – Reference 022-6079/23 (the “Negotiated Procedure”)

1. We have been instructed by **Caring First Limited (C-28125)** (the “Appellant”) to file an appeal in terms of Regulation 270 of the Public Procurement Regulations (Subsidiary Legislation 601.03) (the “PPR”) in connection with the above-captioned Negotiated Procedure.
2. The Appellant is aggrieved by the Contracting Authority’s (as defined below) proposed award of the Negotiated Procedure to the Recommended Bidder (as defined below) and this for the following reasons:
 - a. First Ground of Appeal: The identity of the original tenderer cannot change after the bid is submitted.
 - b. Second Ground of Appeal: The financial offer submitted by the Recommended Bidder excessively exceeds the Estimated Procurement Value of the Negotiated Procedure.
 - c. Third Ground of Appeal: The Contracting Authority have not disclosed the Recommended Bidder’s licence.

From a strictly procedural perspective, the Appellant is lodging its appeal with respect to Tender ID: 1.

A. Factual Background

3. On 7 November 2023, the Contracting Authority published the Negotiated Procedure. This Negotiated Procedure was published on its website,¹ but not on the ePPS or the Government Gazette.

This Negotiated Procedure followed 2 distinct procurement procedures for the same subject-matter which were cancelled before any bids were submitted:

¹ <<https://healthservices.gov.mt/en/cpsu/Pages/Procurement/Published-Calls/Negotiated-Procedure-without-Prior-Publication/Negotiated-Procedure-2023.aspx>> last accessed 21 December 2023.

- a. Reference 022-6073/23 - Request for Participation (Negotiated) for the Provision of 40 Long Term Care Beds for the Mental Health Services within the Ministry for Health published on 6 October 2023.
 - b. Reference 022-6075/23 - Request for Participation (Negotiated) for the Provision of Mental Healthcare Beds for the Mental Health Services within the Ministry for Health published on 17 October 2023.
4. The Negotiated Procedure aims to procure between 35 and 40 “Mental Healthcare Beds” in a “licensed Home with mental health facilities licensed by the Healthcare Standards Directorate within the Superintendence of Public Health”.
 5. The estimated procurement value of the Negotiated Procedure was €2,409,000 (excluding VAT)² with a contract duration of 36 months. The Negotiated Procedure was to be awarded in accordance with the sole criterion of price according to Clause 13.
 6. The deadline for the submission of bids was 8 November 2023—just about 24 hours from the publication of the Negotiated Procedure.
 7. On 8 November 2023, the Contracting Authority published a Schedule of Applications for Participation Received³ which stated that 3 bids were received on that same day: 2 from the Appellant and 1 from “BBF OPERATING LTD”.

BBF OPERATING LTD is a limited liability company incorporated on 13 May 2019 with company registration number C91788.

8. On 11 December 2023, the Appellant received 2 letters of rejection which were for the most part identical.⁴ In these letters, the Appellant was informed that its offer was rejected as follows:

[...] However, this Ministry regrets to inform you that the procurement proposal submitted by your company was Administratively non-compliant.

The main reason why your procurement proposal was non-compliant is as follows:

Your offer was found to be administratively non-compliant since the licence you submitted following a rectification opportunity does not authorise the proposed home [...] to operate as a mental health facility as per eligibility requirement stated under Article 2 (page 1) of the published RfP Document. For this reason, your offer was found to be administratively non-compliant and was not considered further.

The Appellant was also informed that the Negotiated Procedure was to be awarded to “BBF Ltd” for a price which is significantly more expensive than the estimated procurement value of the Negotiated Procedure.

² This has been calculated as follows: €55 per patient-bed per day * 40 beds * 365 days * 3 years.

³ Exhibit CFL-3.

⁴ Exhibit CFL-1 and Exhibit CFL-2.

BBF LTD is a limited liability company incorporated on 18 August 2016 with company registration number C76909.

BBF OPERATING LTD is a wholly owned subsidiary of BBF LTD. However, the 2 are distinct companies with separate legal personality.

9. On 15 December 2023, the Appellant submitted a request to the Contracting Authority requesting the disclosure of: (i) the address of the home offered by the recommended bidder; and (ii) a copy of the licence submitted by the recommended bidder for the said home (the "Information Request").
10. On the same day, 15 December 2023, the Appellant wrote to the Healthcare Standards Directorate within the Superintendence of Public Health and requested a list of all mental health facilities licensed by the Healthcare Standards Directorate within the Superintendence of Public Health, including, **the identity of the owner or operator and the date on which the licence was granted (originally)**.
11. On 20 December 2023, the eve of the deadline for the filing of this appeal, the Contracting Authority disclosed the address of the home offered by the recommended bidder: "St. Thomas Community Living, Triq il-Baħħara, Marsascala."

The Contracting Authority did not disclose the "copy of the licence submitted by the recommended bidder for the said home".

12. On the same day, 20 December 2023, the Health Care Standards wrote to the Appellant and referred it to a public list of sites which were licensed as mental health facilities.⁵ However, and when pressed, the Health Care Standards refused to disclose the identity of the owner or operator and the date on which the licence was granted (originally) with respect to "St. Thomas Community Living".
13. To date, the Appellant remains without the information and documentation requested in the Information Request.
14. The Appellant is aggrieved by the decisions and conduct taken by the Contracting Authority with respect to this Negotiated Procedure.
- A. **First Ground of Appeal: The identity of the original tenderer cannot change after the bid is submitted**
15. The Appellant submits that the economic operator which originally submitted the bid on 7 November 2023 was BBF OPERATING LTD and not BBF LTD.

Therefore, the Recommender Bidder cannot change the identity of the original tenderer *ex post facto* after the deadline for the submission of bids. Similarly, the Contracting Authority cannot permit any such change in the identity of the original tenderer.

⁵ <<https://healthservices.gov.mt/en/hcs/Pages/licensed-establishments/hospitals.aspx>> last accessed 21 December 2023.

16. The change in the identity of the economic operator who originally submitted the bid is tantamount to a change to a substantial aspect of the bid and it is one that cannot be rectified throughout the process. If any such change is permitted, this would amount to the submission of a new tender by the Recommended Bidder.
17. Therefore, the Appellant submits that this ground of appeal ought to be upheld for the above-mentioned reasons and other reasons that may be brought in the proceedings.
18. The Appellant hereby expressly reserves the right to raise additional grounds of objection if and when the information and, or documentation requested in the Information Request is disclosed to the Appellant.

B. Second Ground of Appeal: The financial offer submitted by the Recommended Bidder excessively exceeds the Estimated Procurement Value of the Negotiated Procedure

19. The Appellant submits that the Recommended Bidder's bid ought to be rejected because its financial offer excessively exceeds the estimated procurement value of the Negotiated Procedure.
20. The estimated procurement value of the Negotiated Procedure is €2,409,000 if calculated on the estimated €55 per patient-bed per day and the maximum number of 40 beds.

The Recommended Bidder's financial offer, as stated in the Appellant's Letter of Rejection, is €2,951,025 because it is calculated on a rate of €77 per patient-bed per day and on the minimum of 35 beds.

However, and if one had to compare like with like on the maximum 40 beds, the Recommended Bidder's financial offer is €3,372,600⁶—€1 million higher than the estimated procurement value.

21. Although the Contracting Authority has reserved "*the right to accept or reject Financial Offers exceeding the Estimated Procurement Value*", the Contracting Authority is to apply this discretion reasonably, in accordance with the law and established procedures. Further, and according to established procedures, the evaluation committee must verify whether extra funds are available and that the financial offer is financially worthwhile and economically feasible.
22. The PPR further defines "unacceptable tenders" as means "*tenders submitted by tenderers that do not have the required qualifications, and tenders whose price exceeds the contracting authority's budget as determined and documented prior to the launching of the procurement procedure.*"
23. Therefore, the Appellant submits that this ground of appeal ought to be upheld for the above-mentioned reasons and other reasons that may be brought in the proceedings.

⁶ This has been calculated as follows: €77 per patient-bed per day * 40 beds * 365 days * 3 years.

24. The Appellant hereby expressly reserves the right to raise additional grounds of objection if and when the information and, or documentation requested in the Information Request is disclosed to the Appellant.

C. Third Ground of Appeal: The Contracting Authority has not disclosed the Recommended Bidder's licence

25. The Appellant submits that the Contracting Authority has breached its duty at law to disclose the documentation and, or information requested in the Information Request, and consequently, the Appellant's right to effective judicial protection is breached.

26. The requested disclosure is necessary to ensure the efficacy of the remedies framework provided in 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 Negotiated Procedure to the Recommended Bidder.

27. The requested disclosure simply does not (and cannot) constitute commercially sensitive information or a trade secret which may prejudice the legitimate commercial interests of the Recommended Bidder, if disclosed.

28. Moreover, the requested disclosure, specifically the copy of the purported licence, falls squarely within Regulation 40(2)(c) of the PPR given:

Without prejudice to the other provisions of these regulations, the following information shall not be considered as confidential [...] documentation submitted by economic operators attesting that they comply with selection criteria [...]

29. The 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 and whether to raise additional grounds of appeal.

30. Without the requested information, the Appellant is being effectively deprived of its right to lodge a substantive objection in terms of the PPR against the Contracting Authority's decisions and conduct.

31. Therefore, apart from requesting this Honourable Board to order the Contracting Authority to comply with the Information Request, the Appellant is hereby fully reserving its right to raise additional grounds of appeal in light of such disclosure.

THEREFORE, the Appellant humbly demands that this Honourable Board should:

(a) declare that the Contracting Authority has breached its duties at law towards the Appellant to disclose the information and documentation requested in the Information Request as described in this appeal;

(b) order the Contracting Authority to disclose the information and documentation requested in the Information Request as described in this appeal to the Appellant;

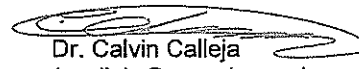


- (c) declare that the Contracting Authority's recommendation of the Negotiated Procedure to the Recommended Bidder is wrong and, or illegal, and consequently, quash that decision;
- (d) cancel and revoke the proposed award of the Negotiated Procedure to the Recommended Bidder;
- (e) order the refund of the deposit paid by the Appellant:

subject to any declaration or order as it deems fit and opportune.

Yours sincerely,
Ganado Advocates


Dr. Clement Mifsud-Bonnici
(cmifsudb@ganado.com)


Dr. Calvin Calleja
(ccalleja@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: 21/12/2023 - 10:14
 Document ID: 18497197

Transaction details

Payer's name:	CARING FIRST LIMITED
Beneficiary name:	Cashier Malta Government
Relation:	Administrative Services
Reason:	Other
Payment details:	PCRB APPEAL, CARING FIRST LIMITED, RFP022 6079/23 (CPSU 105623)
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:	Let the bank apply the beneficiary bank BIC
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 12,045.00
BOV to transfer the money:	as soon as possible
Receiving bank to get the money as:	normal priority payment
Saved template:	PCRB APPEAL

Additional information

Credit amount:	EUR 12,045.00
Debited amount (excluding charges):	EUR 12,045.00
Estimated amount to be withdrawn from account:	EUR 12,049.00
Transaction charge:	EUR 4.00

Transaction result

Status:	Your instructions have been processed successfully.
Transaction ID:	136413556



11 December 2023

Caring First Limited

[Tender ID: 1]

TENDER REFERENCE: RFP022-6079/23 (CPSU 1056/23)

SUBJECT: Request for Participation (Negotiated) for the Provision of Mental Healthcare Beds for the Mental Health Services within the Ministry for Health

Dear Sir/Madam,

Thank you for participating in the above-mentioned procurement procedure. However, this Ministry regrets to inform you that the procurement proposal submitted by your company was Administratively non-compliant.

The main reason why your procurement proposal was non-compliant is as follows:

Your offer was found to be administratively non-compliant since the licence you submitted following a rectification opportunity does not authorise the proposed home (The Good Samaritan Hospital) to operate as a mental health facility as per eligibility requirement stated under Article 2 (page 1) of the published RfP Document. For this reason, your offer was found to be administratively non-compliant and was not considered further.

The procurement was recommended for award to **BBF Ltd** for the amount of **€77.00 Excluding VAT per bed per day x 35 beds** for a maximum contract value of **€2,951,025.00 Excluding VAT**, this being the cheapest priced offer 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 **21 December 2023** against a deposit of **€12,045**.

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



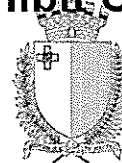
IBAN Code	MT55MALT011000040001EURCMG5001H
Bank Code	01100

The official 'recommendation for award' schedule can be accessed on the CPSU website:
<https://healthservices.gov.mt/en/cpsu/Pages/Procurement/Published-Calls/Negotiated-Procedure-without-Prior-Publication/Negotiated-Procedure-2023.aspx>

Although this Ministry has not been able to make use of your services on this occasion, we trust that you will continue to take an active interest in its procurement opportunities.

Yours sincerely,

f/Central Procurement and Supplies Unit



11 December 2023

Caring First Limited

[Tender ID: 2]

TENDER REFERENCE: RFP022-6079/23 (CPSU 1056/23)

SUBJECT: Request for Participation (Negotiated) for the Provision of Mental Healthcare Beds for the Mental Health Services within the Ministry for Health

Dear Sir/Madam,

Thank you for participating in the above-mentioned procurement procedure. However, this Ministry regrets to inform you that the procurement proposal submitted by your company was Administratively non-compliant.

The main reason why your procurement proposal was non-compliant is as follows:

Your offer was found to be administratively non-compliant since the licence you submitted following a rectification opportunity does not authorise the proposed home (Casa Serena) to operate as a mental health facility as per eligibility requirement stated under Article 2 (page 1) of the published RfP Document. For this reason, your offer was found to be administratively non-compliant and was not considered further.

The procurement was recommended for award to **BBF Ltd** for the amount of **€77.00 Excluding VAT per bed per day x 35 beds** for a maximum contract value of **€2,951,025.00 Excluding VAT**, this being the cheapest priced offer 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 **21 December 2023** against a deposit of **€12,045**.

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 'recommendation for award' schedule can be accessed on the CPSU Website:
<https://healthservices.gov.mt/en/cpsu/Pages/Procurement/Published-Calls/Negotiated-Procedure-without-Prior-Publication/Negotiated-Procedure-2023.aspx>

Although this Ministry has not been able to make use of your services on this occasion, we trust that you will continue to take an active interest in its procurement opportunities.

Yours sincerely,

f/Central Procurement and Supplies Unit



CENTRAL PROCUREMENT & SUPPLIES UNIT
MINISTRY FOR HEALTH
 UB002, San Gwann Industrial Estate, San Gwann
 Tel: (+356) 2540 4000 E-mail: info.cpsu@gov.mt

Date: 8th November, 2023

Item Description: Request for Participation (Negotiated) for the Provision of Mental Healthcare Beds for the Mental Health Services within the Ministry for Health

File Reference: CPSU 1056/23

Terms of Reference

A Request for Participation with reference RFP 022-6079/23 was issued by the Central Procurement and Supplies Unit (MfH) on 7th November, 2023 for the above referenced services.

Closing date for the submission of application to participate was 8th November, 2023 at 10.00hrs.

Schedule of Applications for Participation Received		
RfP Application Reference	Economic Operator Name	Remarks
1	CARING FIRST LTD	/
2	CARING FIRST LTD	/
3	BBF OPERATING LTD	/
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Declaration of Number of Applications Received

A total of 3 application/s was/were received.

Name:

f/Central Procurement & Supplies Unit - MfH

Name:

f/Central Procurement & Supplies Unit - MfH