



08<sup>th</sup> January 2024

Public Contracts Review Board  
Notre Dame  
Ravelin, Floriana,  
Malta

In the acts of the PCRB remedies before  
closing date of call for competition in  
the names of:

**Pharma-Cos Limited**

**vs**

**Department of Contracts et.**

**This is an application for Lot 1, Lot 2 & Lot 3**

CT 2238/2023

Tender Name: Supplies – The supply, delivery and distribution of incontinence products for senior citizens and persons with disabilities in Malta – Active ageing and community care

## URGENT APPLICATION

Whereas Messrs. Pharma-Cos Limited (hereinafter Appellant company and/or PCL) filed an application on the 20<sup>th</sup> October 2023 in accordance with article 262 of S.L. 601.03 in relation with the captioned subject;

Whereas in accordance with article 266 of S.L. 601.03 (hereinafter PPR)

*Pending the decision of the Public Contracts Review Board **the process of the call for tenders shall be suspended.***

Whereas the tender was originally scheduled for a closing date on the 28.09.2023, but was eventually and following multiple clarifications, extended as follows:

Original submission date:	28.09.2023
First extended date:	19.10.2023
Second extended date:	30.11.2023
Third & final extended date:	04.01.2024

Whereas in accordance with the ePPS, the tender opening date was scheduled for the 4<sup>th</sup> January 2024 at 10:00am [vide cope of the ePPS enclosed as DOC1];

### 1. Breach of article 266 of the PPR

1.1 In accordance with article 266 of the PPR, this procedure was to be suspended, since the article of the law stipulates that:

*“Pending the decision of the Public Contracts Review Board the process of the call for tenders shall be suspended.”*

1.2 It transpires that, on the 04<sup>th</sup> of January 2024, there has been an opening session of the above captioned tender, at 10:00am [vide DOC1];

1.3 The aforesaid implicitly confirms that the Department of Contracts acted in blatant breach and with total disregard to article 266 of the PPR, and this notwithstanding that the DOC was validly notified, and that it filed a relative reply on the 25<sup>th</sup> October 2023;

1.4 The PCRB has already being asked to determine an identical situation, in the PCRB case 1907 dated 11<sup>th</sup> September 2023 in the names of **Cherubino Limited vs Department of contracts et.** wherein it held that:

*“With reference to the justified content of the urgent Application this Board is of the view that it is just and equitable in this instance to invoke Regulation 262(e) of the Public Procurement Regulations and consequently orders the cancellation of tender CT 3026/2023 since the process has been vitiated through the Department’s explicitly ignoring Regulation 266 by failing to suspend the process.”*

**2. Without prejudice to remedy under 262 of PPR**

2.1 The above stated is being submitted without prejudice to all such statements and claims made by PCL in its call for remedies dated 18<sup>th</sup> October 2023, filed in accordance with article 262 of the PPR, and to any other submissions which PCL is entitled at law to submit before the PCRB;

**NOWTHEREFORE, whilst reserving the right to put forward further submissions, the Appellant company hereby requests:**

- i. Without prejudice to all requests made in the application dated 18<sup>th</sup> October 2023, to take all actions necessary and in accordance with the PPR, *inter alia* to and in accordance with article 262 [e] and/or 276[h] of the PPR, to order the cancelation of Tender with number CT3026/2023;
- ii. To do anything else which is conducive and necessary for the proper execution of the above;

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



Dr Matthew Paris LL.D  
[matthew@dalliparis.com](mailto:matthew@dalliparis.com)

## View CFT Workspace

**CFT: CT2238/2023 - THE SUPPLY, DELIVERY AND DISTRIBUTION OF INCONTINENCE PRODUCTS FOR SENIOR CITIZENS AND PERSONS WITH DISABILITIES IN MALTA - ACTIVE AGEING AND COMMUNITY CARE**

NAME OF CONTRACTING AUTHORITY:	Department of Contracts
PUBLISHED ON BEHALF OF:	Active Ageing and Community Care
TITLE:	CT2238/2023 - THE SUPPLY, DELIVERY AND DISTRIBUTION OF INCONTINENCE PRODUCTS FOR SENIOR CITIZENS AND PERSONS WITH DISABILITIES IN MALTA - ACTIVE AGEING AND COMMUNITY CARE
CFT CA UNIQUE ID:	CT2238/2023
EVALUATION MECHANISM:	Price/Cost Effectiveness
DESCRIPTION:	CT2238/2023 - THE SUPPLY, DELIVERY AND DISTRIBUTION OF INCONTINENCE PRODUCTS FOR SENIOR CITIZENS AND PERSONS WITH DISABILITIES IN MALTA - ACTIVE AGEING AND COMMUNITY CARE
PROCUREMENT TYPE:	Supplies
DIRECTIVE:	2014/24/EU (Classic)
PROCEDURE:	Open
CFT INVOLVES:	A Public Contract
CPV CODES:	33751000-Disposable nappies 85142400-Home delivery of incontinence products 33771100-Sanitary towels or tampons 33140000-Medical consumables 33141621-Incontinence kit
INCLUSION OF E-AUCTIONS:	No
NUTS CODES:	MT00
ESTIMATED CONTRACT VALUE (EUR):	7,760,000
ABOVE OR BELOW THRESHOLD:	Above



gov.mt

END OF CLARIFICATION PERIOD: 29/09/2023 09:30

UPLOAD OF DOCUMENTS WITHIN THE CLARIFICATIONS:	Yes
TENDERS OPENING DATE:	04/01/2024 10:00
ALLOW SUPPLIERS TO REGISTER FOR NOTIFICATIONS:	Yes
CONTRACT AWARDED IN LOTS:	Yes
NUMBER OF LOTS :	3
LOT NAME(1)	Lot 1 – Paediatric Incontinence Products
LOT NAME(2)	Lot 2 – Adult incontinence Products
LOT NAME(3)	Lot 3 – Bariatric Incontinence Products
TENDERS FOR LOTS:	Maximum Number of Lots
MAXIMUM NUMBER OF LOTS:	3
EU FUNDING:	No
MULTIPLE TENDERS WILL BE ACCEPTED:	Yes
DATE OF PUBLICATION/INVITATION:	11/08/2023 11:01
TED LINKS FOR PUBLISHED NOTICES:	
DATE OF AWARDING:	
DOES THIS CALL FALL UNDER THE SCOPE OF GPP?:	No
CERTIFICATION CHECK:	Yes