

PUBLIC CONTRACTS REVIEW BOARD

Case 2236 – SPD4/2025/068 – Tender for Supply and Delivery of Fridge Freezers for Mtarfa and Mosta Home for Older Persons within the Active Ageing and Community Care

11th May 2026

The Board,

Having noted the letter of objection filed by Ms Cassandra Cauchi on behalf of Top Choice, (hereinafter referred to as the appellant) filed on the 10th April 2026;

Having also noted the letter of reply filed by Dr Noel Bezzina acting for and on behalf of Active Ageing and Community Care (hereinafter referred to as the Contracting Authority) filed on the 21st April 2026;

Having heard and evaluated the testimony of the witness Ms Lindsay Spiteri (ID no. 328985M), as summoned by Dr Noel Bezzina for and on behalf of Active Ageing and Community Care (hereinafter referred to as the Contracting Authority);

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by the legal representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 5th May 2026 hereunder reproduced.

Minutes

Case 2236 – SPD4/2025/068 – Tender for Supply and Delivery of Fridge Freezers for Mtarfa and Mosta Home for Older Persons within the Active Ageing and Community Care.

The Tender was issued on the 27th of October 2025, and the closing date was 20th of November 2025.

The estimated value of the tender, excluding VAT, was €20,000

On 10th of April 2026, Topchoice – Electronics & Appliances, lodged an appeal against the Active Ageing and Community Care– the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations.

On the 5th of May 2026, the Public Contracts Review Board (PCRB), composed of Mr Kenneth Swain as Chairman, Dr Ing. Damien Gatt and Mr Lawrence Ancilleri as members, convened a public hearing to consider the appeal.

A deposit of €400 was paid.

There were Three bids.

The attendance for this public hearing was as follows:

Appellant – Top Choice – Electronics & Appliances.

Ms Cassandra Cauchi – Company Representative.

Mr Robert Tabone – Company Representative.

Contracting Authority – Active Ageing and Community Care.

Dr Noel Bezzina – Legal Representative.

Ms Mary Grace Balzan – CA Representative.

Ms Lindsay Spiteri – Chairperson.

Ms Katya Gauci – Evaluator.

Ms Roberta Fava – Evaluator.

Recommended Bidder – Tablets & More – Formally declined invite.

Opening Statements

The Chairman welcomed the parties present and formally opened Case Number 2236 in the records of the PCRB. The Chairman identified the Appellant as, Topchoice – Electronics & Appliances, and the Contracting Authority as the Active Ageing and Community Care.

The Chairman, Mr Kenneth Swain, opened the meeting by informing both parties that Dr Ing. Damien Gatt, a member of the PCRB, was participating online. Ms Cassandra Cauchi for Topchoice and Dr Noel Bezzina for the Contracting Authority both raised no objections.

Since Ms Cassandra Cauchi was not a lawyer, the Chairman explained how the Board functions and outlined the procedure.

The Chairman invited the representative for the Appellant to make the initial submissions.

Initial Submissions

Initial Submissions by Ms Cassandra Cauchi (for the Appellant)

Ms Cassandra Cauchi and Mr Robert Tabone, both representing Topchoice, stated that they relied on the documents presented.

Initial Submissions by Dr Noel Bezzina (for the Contracting Authority)

Dr Bezzina stated that they had no submissions at this stage and called the first witness.

Witness Testimonies

Ms Lindsay Spiteri (ID no. 328985M), summoned by Dr Noel Bezzina

Ms Lindsay Spiteri, Chairperson of the Evaluation Board, stated that Topchoice was disqualified from the tender because they did not provide the requested information.

The Contracting Authority asked Topchoice whether the glass in the fridge was tempered glass, as the documents described it as a glass shelf. A clarification was sent. Topchoice replied that the document was attached; however, the Evaluation Board did not find this attachment. A rectification was requested, but Topchoice did not respond.

The Board clarified that the Contracting Authority had sent Topchoice one letter, namely a clarification with an opportunity to rectify.

Final Submissions

Final Submissions by Ms Cassandra Cauchi (for the Appellant)

Ms Cauchi stated that Topchoice replied to the clarification on the same day by uploading a literature list, with the requested information highlighted, including the energy label and the shelves. This was all uploaded.

Final Submissions by Dr Noel Bezzina (for the Contracting Authority)

Dr Bezzina stated that the Contracting Authority did not receive information regarding Specifications 2.1(g) and 2.1(h), which concerned the shelves. When the Evaluation Committee noted that this information was missing, and since this was an auto requirement, they sent a clarification with an opportunity to rectify to Topchoice. The literature list indicated that there were two glass shelves but did not verify the Contracting Authority's request.

Conclusion of the Hearing

With no further arguments presented, Chairman Mr Kenneth Swain thanked the parties and formally concluded the session.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 5th May 2026.

Having noted the objection filed by Top Choice (hereinafter referred to as the Appellant) on 10th April 2026, refers to the claims made by the same Appellant with regards to the tender of reference SPD4/2025/068 listed as case No. 2236 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Ms Cassandra Cauchi

Appearing for the Contracting Authority: Dr Noel Bezzina

Whereby, the Appellant contends that:

- a) Our company responded to the clarification request issued by the Contracting Authority on 06/01/2026 (document name: Clarification - Rectif. -Top Choice - V2), providing the required technical literature to address the points raised. Please find attached our response submitted through EPPS (document name: Submission Top Choice), together with the corresponding literature list (document name: Literature List), which clearly addresses the requested specifications.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 21st April 2026 and its verbal submission during the hearing held on 5th May 2026, in that:

- a) ***Failure to submit complete technical literature -***

Basically, the contracting authority issued this tender for Supply and Delivery of Fridge Freezers for Mtarfa and Mosta Home for Older Persons within the Active Ageing and Community Care, following which several economic operators submitted their offers, including the appellant. Upon evaluating the submitted offers, the TEC noted that although the appellant had submitted its technical literature with its submission, it failed to clearly indicate the technical literature submitted in relation to tender specification 2.1(g) (Power Consumption level: A+ or better) and 2.1(h) (shelves: with two (2) shelves in tempered glass).

In view this, given that the technical literature is a note 2 requirement, the TEC proceeded to issue a clarification note, allowing the appellant the opportunity to clarify whether it had indeed submitted the relative technical literature. Alternatively, the contracting authority also requested the appellant to rectify its submission, so that in the event that the appellant failed to submit the relative technical literature, it was allowed the opportunity to rectify such omission.

The appellant was therefore given all the opportunity, through a clarification and rectification note, to either clarify or rectify its submission; yet the appellant failed to submit the relative technical literature. In such a circumstance, the contracting authority had no other option but to reject the appellant's offer.

It is pertinent to point out that, notwithstanding the fact that the appellant is contending that it had indeed submitted the literature, such literature was missing both in the initial submission and even after the clarification/rectification requests, thus rendering the appellant technically not compliant. In fact, this can be evidenced in the document being attached and marked as 'DOC AACCC1' which clearly shows that no attachments were uploaded by the appellant in its submission.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witnesses duly summoned, will now consider Appellant's grievances.

Grievance 1: Failure to receive and recognise the Appellant's clarification/rectification response, including the technical literature submitted in relation to Specifications 2.1(g) and 2.1(h)

- The Appellant contends that it duly responded to the clarification/rectification request issued by the Contracting Authority on 06/01/2026 by uploading a Literature List through the EPPS portal, with the relevant specifications highlighted, and that this submission addressed Specifications 2.1(g) (Power Consumption level: A+ or better) and 2.1(h) (Shelves: with two (2) shelves in tempered glass).
- The Board notes the testimony of Ms Lindsay Spiteri (ID no. 328985M), Chairperson of the Evaluation Board, who confirmed during the hearing of 5th May 2026 that, notwithstanding the Appellant's claim of having uploaded the relevant documentation, the Evaluation Committee did not find any attachment in the Appellant's submission on the EPPS portal. This is further corroborated by the documentary evidence submitted by the Contracting Authority, specifically Document DOC AACC1, which clearly records that no answer attachment was uploaded by the Appellant in response to the clarification/rectification request.
- The Board further notes that whilst the Appellant has submitted a copy of the Literature List as part of its objection before this Board, the operative question before this Board is not whether such a document exists, but whether it was successfully uploaded and accessible to the Evaluation Committee through the EPPS portal at the material time, as required. The Appellant has not produced any verifiable evidence, such as system-generated upload confirmation or timestamped EPPS records, demonstrating that the attachment was in fact successfully submitted.
- The Board is of the view that, in the absence of such verifiable evidence, the burden of ensuring that all required documentation is successfully uploaded and accessible on the procurement portal rests exclusively with the bidder. The Contracting Authority cannot be held responsible for documentation that did not appear as uploaded in the Appellant's submission as recorded on the EPPS system.
- The Board further observes that, even setting aside the question of whether the Literature List was successfully uploaded, an examination of the Literature List submitted by the

Appellant as part of this objection reveals a critical substantive deficiency: whilst it references "2 glass shelves" in the technical data for the Vox Fridge Freezer KS1430E, it contains no mention, indication, or confirmation whatsoever that said shelves are manufactured from tempered glass, as expressly required by Specification 2.1(h). A generic reference to "glass shelves" does not satisfy, nor is it equivalent to, the mandatory requirement for tempered glass. The Appellant's Literature List therefore fails to corroborate compliance with Specification 2.1(h) on its face, independently of the question of whether it was uploaded through the EPPS portal.

- The Board notes that the Contracting Authority acted proportionately and in good faith by issuing a combined clarification and rectification request, thereby affording the Appellant every opportunity to either clarify or rectify the deficiency identified. The Appellant's failure to avail itself of this opportunity is a matter solely attributable to the Appellant. It is the opinion of this Board that the Evaluation Committee acted in a diligent, fair, and proportionate manner.

Therefore, the Board does not uphold the Appellant's grievance on this point.

The Board,

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) Does not uphold Appellant's Letter of Objection and contentions,
- b) Upholds the Contracting Authority's decision in the recommendation for the award of the tender,
- c) Directs that the deposit paid by Appellant not to be reimbursed.

Mr Kenneth Swain
Chairman

Mr Lawrence Ancilleri
Member

Dr Ing. Damien Gatt
Member