

Department of Contracts

Dr Franco Agius

Legal Representative

Dr Anthony Cassar Chairman of the Public Contracts review Board welcomed the parties and invited them to proceed with their submissions noting that the original date set for this second meeting had to be changed.

Dr Franco Agius Legal Representative for the Department of Contracts said that the Contracting Authority had carried out the necessary research, the outcome of which was that they decided to maintain the same parameters as published in the tender.

Mr Martin Casha (43457M) called as a witness by the PCRFB testified on oath that he was representing Wasteserv Malta. Consignments of annealed wire would be requested ‘as and when’ over a four year period, normally every three or four months. The effect of price changes should therefore even out over a period of four years. The Authority had carried out research to try to find an index for low carbon rod wire as discussed at the first hearing – however no such index could be traced on that product that was available free of charge. Similarly research had been carried out to find indices for scrap metal.

Witness stated that at the end of the day whichever international index was chosen it was bound to affect one or other bidder – they had therefore decided to stick to the original terms of the tender bearing in mind the lack of frequency that the index will be used and that the basic material of the product is iron ore. In reply to questions witness said that he was not aware of the origin of materials of previous consignments and that he had no knowledge on the composition of annealed wire and had only been made aware that scrap metal is its major component at the first hearing.

Dr Agius said that the concept of using an index was to reduce the risk inherent in market fluctuations, and it was immaterial which territory’s index was chosen as compensation would be based on changes reflected in that particular index.

Ms Sarah Muscat Representative of SR Environmental Solutions said that the Contracting Authority was ignoring the fact that the price index proposed is based on the wrong material. This is the crux of the problem – iron ore is only a very small part of the product which is mainly made of scrap iron. The international demand for scrap iron is on the increase and likely to go on increasing because of market conditions and could lead to severe fluctuations in the price of the product.

Dr Agius stated that the Authority would not object if the Board ruled that a different index be used although it must be borne in mind that they are unable to decide which index is the appropriate one to use.

The Chairman made a final comment that it would be preferable if the scrap metal index was used as long as it could be sourced free of charge.

He then thanked the parties for their submissions and declared the hearing closed.

This Board,

Having noted this ‘Call for Remedy Prior to Closing Date of Call for Competition’ filed by S R Environmental Solutions Ltd (herein after referred to as the Appellants) on 8 July 2019, refers to the claims made by the same Appellants with regard to the Tender of reference CT 2028/2019 listed as case no 1341 in the records of the Public Contracts Review Board.

Appearing for the Appellants: Ms Sarah Muscat

Appearing for the Contracting Authority: Mr Martin Casha

Appearing for the Department of Contracts: Dr Franco Agius

Whereby, the Appellants contend that:

- a) Their main concern is the index to be used in the revision of prices. In this regard, the proposed index refers only to the price of Iron Ore, which forms only a negligible part of the finished product. The index that should be**

applied must be related towards scrap iron, since this material forms the major component of the product.

This Board also noted the Contracting Authority's 'Letter of Reply' dated 9 July 2019 and its verbal submissions during the hearings held on 13 and 27 August 2019, in that:

- a) The Authority confirmed that it finds no objection to apply a different index, as long as it could be sourced free of charge.**

This same Board also noted the testimony of the witness namely:

Mr Martin Casha duly summoned by the Public Contracts Review Board.

This Board, after having examined the relevant documentation to this 'Call for Remedy' and heard submissions made by the parties concerned, including the testimony of the witness duly summoned, opines that the issue relates to the price index which is to be applied in the revision of prices during the supply of the tendered product.

- 1. This Board notes that the authority has no objection in applying the most suitable index for the adjustment of price fluctuations during the period of supplies, as long as the chosen index can be accessed free of charge.**

- 2. During the second hearing, this Board was made aware that the major component of the product consists of scrap iron, so that the proposed index should be inclined towards such a particular iron. In this regard, this Board notes that the Authority will endeavor to identify an index which satisfies such a requirement.**

- 3. In the meantime, this Board received, from the Authority, a list of indexes, which are related to scrap iron and which are free of charge and in this respect, this Board directs the Authority to apply any one of these indexes which corresponds, as near as possible, to the main component of the product. For clarity sake, such a list of indexes is being denoted as set hereunder:**

cmdty Scrap Metal Price Indexes



| Symbol | Cash Index Name | LastChange | %ChgYTD | ChgYTD | %Chg | Time |
|--------------|--|------------|---------|---------|---------|------------------|
| ALPAUSY11.CM | Scrap Aluminum Radiator Idx | 0.2264 | +0.0101 | +4.67% | -0.0101 | -4.27% 08/02/19 |
| ALPAUSY12.CM | Scrap Aluminum Auto Wheels Idx | 0.4415 | -0.0019 | -0.43% | -0.0852 | -16.18% 08/02/19 |
| ALPAUSY15.CM | Scrap 6063 Aluminum Extrusion Idx | 0.4339 | +0.0119 | +2.82% | -0.0935 | -17.73% 08/02/19 |
| ALPAUSY19.CM | Scrap Aluminum Old Sheet Idx | 0.2273 | -0.0009 | -0.39% | -0.0244 | -9.69% 08/02/19 |
| ALPAUSY20.CM | Scrap Aluminum Old Cast Idx | 0.2300 | +0.0036 | +1.59% | -0.0235 | -9.27% 08/02/19 |
| ALPAUSY22.CM | Scrap Painted Siding Idx | 0.2809 | -0.0011 | -0.39% | -0.0366 | -11.53% 08/02/19 |
| ALPAUSY51.CM | Scrap Aluminum Can Idx | 0.3090 | -0.0027 | -0.87% | -0.0404 | -11.56% 08/02/19 |
| ALPAUSY54.CM | Scrap Mixed Extrusion 6061/6063 Idx | 0.2106 | -0.0023 | -1.08% | -0.1125 | -34.84% 08/02/19 |
| ALPAUSY55.CM | Scrap ACSR/Neoprene/Mixed Idx | 0.2549 | +0.0052 | +2.08% | -0.0307 | -10.75% 08/02/19 |
| ALPAUSY57.CM | Scrap Irony Aluminum Copper Radiator Idx | 0.5949 | -0.0004 | -0.07% | -0.0143 | -2.35% 08/02/19 |
| BRPAUSY23.CM | Scrap Brass Solids Idx | 1.2691 | +0.0349 | +2.83% | -0.1402 | -9.95% 08/02/19 |
| BRPAUSY26.CM | Scrap Brass Radiator Idx | 1.2755 | -0.0120 | -0.93% | -0.0330 | -2.52% 08/02/19 |
| BRPAUSY27.CM | Scrap Iron Brass Radiator Idx | 0.6331 | -0.0057 | -0.89% | -0.0428 | -6.33% 08/02/19 |
| BRPAUSY29.CM | Scrap Red Brass Idx | 1.5812 | -0.0117 | -0.73% | -0.0433 | -2.67% 08/02/19 |
| BRPAUSY30.CM | Scrap Yellow Brass Idx | 1.3740 | +0.0061 | +0.59% | -0.0705 | -4.88% 08/02/19 |
| BRPAUSY58.CM | Scrap Heater Cores Idx | 0.7470 | -0.0554 | -6.90% | +0.1604 | +27.34% 08/02/19 |
| CUPAUSY1.CM | Scrap Bare Bright Copper Wire >99% Idx | 2.1916 | -0.0540 | -2.40% | -0.0838 | -3.68% 08/02/19 |
| CUPAUSY10.CM | Scrap Cu/Al Radiators Idx | 0.9360 | -0.0096 | -1.02% | +0.0247 | +2.71% 08/02/19 |
| CUPAUSY2.CM | Scrap #1 Copper 96-98% Idx | 2.0275 | -0.0398 | -1.93% | -0.1392 | -6.42% 08/02/19 |
| CUPAUSY4.CM | Scrap #1 Insulated Copper Wire >85% Idx | 1.1330 | -0.0261 | -2.25% | -0.0794 | -6.55% 08/02/19 |
| CUPAUSY5.CM | Scrap #3 Insulated Copper Wire 25-50% Id | 0.3537 | +0.0008 | +0.23% | +0.0410 | +13.11% 08/02/19 |
| CUPAUSY6.CM | Scrap #2 Copper 94-96% Idx | 1.8436 | -0.0400 | -2.12% | -0.1182 | -6.03% 08/02/19 |
| CUPAUSY7.CM | Scrap #3 Copper - Light Copper Idx | 1.6500 | -0.0240 | -1.43% | -0.0429 | -2.53% 08/02/19 |
| CUPAUSY74.CM | Scrap #2 Insulated Copper Wire 50-75% Id | 0.5446 | -0.0153 | -2.73% | -0.0549 | -9.16% 08/02/19 |
| CUPAUSY91.CM | Scrap Electric Motor Idx | 0.1265 | +0.0065 | +5.42% | +0.0156 | +14.07% 08/02/19 |
| FSPAUSY41.CM | Scrap #1 HMS Prepared Idx | 6.5620 | +0.1200 | +1.86% | -1.3607 | -17.17% 08/02/19 |
| FSPAUSY42.CM | Scrap #1 HMS Unprepared Idx | 4.3497 | +0.0330 | +0.76% | -1.7841 | -29.09% 08/02/19 |
| FSPAUSY46.CM | Scrap Shredded Scrap Idx | 3.8604 | +0.0138 | +0.36% | -2.5229 | -39.52% 08/02/19 |
| FSPAUSY59.CM | Scrap Cast Iron Idx | 6.0257 | -0.1208 | -1.97% | -1.1853 | -16.44% 08/02/19 |
| FSPAUSY70.CM | Scrap Shredded Tin Idx | 3.7768 | +0.0338 | +0.90% | -1.0880 | -22.36% 08/02/19 |
| FSPAUSY71.CM | Scrap Auto Cast Idx | 3.9432 | +0.0953 | +2.48% | -1.9025 | -32.55% 08/02/19 |
| PBPAUSY47.CM | Scrap Lead Wheel Weights Idx | 0.0706 | -0.0082 | -10.41% | +0.0001 | +0.14% 08/02/19 |
| PBPAUSY48.CM | Scrap Soft Lead Idx | 0.3670 | +0.0015 | +0.41% | -0.0492 | -11.82% 08/02/19 |
| PBPAUSY86.CM | Scrap Auto Batteries Idx | 0.1801 | -0.0003 | -0.17% | +0.0218 | +13.77% 08/02/19 |
| SSPAUSY39.CM | Scrap 304 Stainless Steel Solid Idx | 0.2518 | -0.0070 | -2.70% | +0.0087 | +3.58% 08/02/19 |
| ZNPAUSY50.CM | Scrap Old Zinc Die Cast Idx | 0.3207 | -0.0304 | -8.66% | -0.0863 | -21.20% 08/02/19 |

In view of the above, this Board,

- i) Directs that the Authority selects an index from the above-mentioned list and through a clarification note amends article 26 clause 26.9, to dictate the index that will be applied for the revision of prices,**

- ii) Directs that the tendering process be resumed.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

5 September 2019