



Press release

Negotiations in attempt to settle legal dispute concerning contract award for Mellach power station

Vienna, 9 November 2007 – In today's proceedings before the Austrian Federal Procurement Office, both parties to the disagreement agreed to a proposal by Mitsubishi and A-TEC Industries to attempt to clarify the key material issues involved in the contested tender evaluations with the technical experts from both sides, before any further legal action. From A-TEC Industries' point of view, this means that "the decisive cards in the bidding battle" are laid before the technical experts.

The background to this unconventional initiative, as reported in the media, was the lack of transparency in the tendering process. The outcome of the evaluation has so far proved incomprehensible to Mitsubishi and A-TEC Industries, given the requirements of the tender and the information supplied to date.

"Things are not made easy for a bidder who requests a subsequent review of an evaluation. Generally, the bidder is immediately told that its tender has been rejected retroactively on a technicality and that there is therefore no right to request a review, an argument so far supported by the Austrian Administrative Court of Appeal (VwGH)," explain A-TEC Industries' legal advisers, Kathrin Hornbanger and Max Kletter. That was the way it went with Mitsubishi and A-TEC, too: in the review proceedings, they were immediately confronted with the "killer argument" that they should not even have been allowed to submit their bid, as they had failed to supply proof of suitability in the tendering phase. Despite the fact that they had been invited to participate in the tendering process and involved in negotiations for almost a year. "And rightly so, as Mitsubishi and A-TEC are the market leaders in this area and it goes without saying that they have the required qualifications. What they did was not to present the documents stipulated in the tender invitation, instead they supplied other evidence that in Mitsubishi's and A-TEC's view – and, until now, also in the eyes of the customer, Verbund, was equally suitable," say the legal experts.

Strictly speaking, in practice virtually no tenders conform entirely with the formal requirements. In the ongoing review proceedings, A-TEC sees itself as being confronted retroactively with artificial formal deficiencies in the tendering process as a delaying tactic, and finds itself committed to legal proceedings protracted by all the objections raised by Verbund and Siemens in order to be able to prove that any such deficiencies can not be allowed to result in the rejection of its bid. The key questions – whether the evaluation of the bids complied with the legal provisions governing public procurement,

and whether the tender by Siemens was indeed the best offer – might otherwise not even be examined.

About A-TEC Industries

Vienna Stock Exchange listed A-TEC Industries AG is an international industrial group headquartered in Vienna, with flourishing Drive Technologies, Plant Construction, Mechanical Engineering and Metals Industry divisions. The group currently employs around 13,500 people, and in 2006 posted revenue of EUR 1.6 billion.

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