



Press release

Better legal protection for bidders thanks to rulings by highest courts

Landmark decisions in bid dispute surrounding giant Mellach power station

Vienna, 19 December 2007 – The Austrian Federal Procurement Office’s hasty confirmation last Friday that there would be no review of Verbund’s elimination of Mitsubishi’s bid was followed by two landmark decisions by the Austrian Constitutional Court (VfGH) on Monday (17 December). At around midday on Monday, the VfGH again granted suspensive effect to the complaint filed by Mitsubishi and A-TEC Industries regarding the Procurement Office’s recent preferred bidder decision in favour of Siemens. Last week the Austrian Administrative Court of Appeal (VwGH) – similarly to the VfGH – had also granted suspensive effect to a first complaint.

On Monday evening the VwGH delivered another resolution in which it granted suspensive effect to the complaint lodged against the Austrian Federal Procurement Office’s decision to reject the appeal last Friday (14 December). The highest courts in the country are thus unanimous in clearing a path for the better protection of bidders’ rights, and have clarified a principle that has taken even the experts by surprise.

Contract award practice has – often and without hesitation – countered an awkward review request by an out-of-favour bidder with retroactive disqualification of its bid, so as to summarily remove the ground from under the requester’s feet and scupper any potential legal review. Once disqualified, a bidder loses its *locus standi* and, with it, its right to request a retroactive review.

“All attempts to improperly evade the consequences of decisions by the highest courts by means of summary decisions and disregard for proper rules of procedure, and thus to stifle competition, must be strictly suppressed” is the view at A-TEC Industries.

The recent decisions in favour of Mitsubishi and A-TEC Industries by the VfGH now massively increase protection for bidders. By its judgment, the VfGH has upheld and provided legal underpinning for the fundamental independence and effectiveness of contract award monitoring.

In the view of Mitsubishi and A-TEC Industries, the contract award process has to date been neither fair nor transparent. Mitsubishi and A-TEC Industries are now demanding a new round of invitations to tender, which in any event is now essential in the light of the changed technical circumstances caused by the failure of an infeed to the 380 KV

transmission line. And the tender process must be conducted under clear and fair conditions.

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.

Contact

Harald Pickl

A-TEC Power Plant Systems AG

Brünner Strasse 52, A-1210 Vienna, Austria

Tel: +43 (1) 90180 0