

TIWAG
Tiroler Wasserkraft AG
Eduard-Walnöffer-Platz 2
A-6020 Innsbruck
Österreich

KW Kirchbichl – Erweiterung Turbine 4 / Rohrturbine 16,3 (17,1) MW

Complaint about the evaluation procedure

Dear Mr. Entstrasser,
Dear Mr. Gasser,
Dear Mr. Herdina

The purpose of this letter is to claim about the approach to evaluation of bidding process for KW Kirchbichl project.

We understand that Tiwag is not obliged to proceed according to public procurement law, but we believe that in European Market and especially in our common region we keep standard of equal and fair evaluation. Having this in mind we have invested a great effort and substantial financial sources to offer preparation, knowing that if we lose it would be due to the fact that our competitors were better than us. Better in fair competition, not better after artificial modification of our offer.

To prove above statement we would like to summarize the evaluation procedure of the bidding project KW Kirchbichl – Erweiterung Turbine 4 / Rohrturbine 16,3 (17,1) MW and to express our outmost disagreement and deep disappointment about the outcome of the evaluation process.

Upon enquiry from Tiwag of 25.11.2016 Litostroj Power (further just abbreviation LP), submitted the offer, no. E1/1314, Rev.0, on 17.02.2017.

On 14.03.2017 we received an e-mail from TIWAG with request for commercial and technical clarification of our offer,.. Upon TIWAG request regarding the necessary elevation of the turbine center line, we decreased the rotational speed of the turbine from 100 rpm to 90,9 rpm in our offer no. E1/1314, Rev.1, submitted on 31.03.2017.

On 20.04.2017 we received from TIWAG an invitation to clarification meeting, which was held on 08.05.2017 in Innsbruck. Please find attached the Minutes of the Meeting, divided into two documents:

1. Besprochene Punkte
2. Beilage 2

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From that meeting, we would especially like to expose the words from the closing speech of Mr. Wolfgang Kofler, Abteilungsleiter der Abteilung Anlagenplanung, whereas he told us, that LP shouldn't be offering dumping prices, because TIWAG wants a reliable partner for a fair price, which will properly execute the project.

On 17.05.2017 we received an e-mail from Mr. Andreas Löffler, Zentraler Einkauf, and we found out with big negative surprise, that TIWAG suddenly requests additional performance bank guarantee from LP in the amount of 70% of the total contract value, including VAT. In the telephone discussion, Mr. Kofler explained to our Mr. Dejan Lenart, Senior Sales Manager, that additional performance bank guarantee is a request of the Board of Directors of TIWAG, mainly due to takeover of the Litostroj Power group by Czech Company, Energo-Pro group, in 2014. Mr. Kofler also admitted, that additional performance bank guarantee is requested only from LP and not from other bidders. LP invited many times TIWAG management to Prague to meet our owner in order to establish the trust into our owner and Litostroj Power group, however, from TIWAG site, these invitations were fully ignored. Additionally, LP provided a letter from Czech Export Bank, where the Bank is confirming Energo-Pro group as an excellent client. Again, no response from TIWAG. Just the fact that Tiwag had doubts about Litostroj owners credit risk profile but was not ready to even meet the owner and has ignored Bank reference letter can create some doubts about fair competition in the project.

Later it was agreed, that LP will optionally offer issuing of performance bank guarantee for 50% of the net contract value (excl. VAT) and that the expenses for issuing the performance bank guarantee will not be included in the overall price for the evaluation. This we considered as fair approach.

Last price offer no. E1/1314, Rev.2, was submitted on 26.05.2017, turbine rotational speed was again 90,9 rpm.

On 12.07.2017 we received a letter from TIWAG, informing us, that for the execution of the project Kirchbichl, Erweiterung Turbine 4/Rohrturbine, Voith Hydro GmbH & Co KG St. Pölten has been chosen. Almost at the same time, Mr Löffler gave a telephone call to Mr. Lenart, explaining him, that LP offer was commercially and technically the best offer, but the price of the package turbine and generator was not the cheapest solution, due to the fact, that competition was offering faster turbine rotation (100 rpm) comparing to LP (90,9 rpm) and hence the generator contributed a significant portion to the package price.

LP has asked for a meeting with TIWAG representatives and the meeting was held in Innsbruck on 10.08.2017. Please find attached the Minutes of that Meeting.

We would like to expose the following major conclusions from that meeting and add our comments:

1. Evaluation criteria were not listed in the tender documentation.
LP comment: This is very unusual and very non-transparent procedure. In all the tenders, we are used to, evaluation criteria are very transparent. We accepted this

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having in mind common sense of fair competition as mentioned in the second paragraph on the beginning of this letter.

2. TIWAG has counted with additional 500.000 EUR for the slower generator due to lower rotational speed of LP turbine.

LP comment: TIWAG has asked LP competition on the project (Voith, Andritz), what surcharge to the price of the generator the slower generator represents. LP was not asked even to come back to original speed of rotation or to indicate generator price. We find this as unprecedented business practice, further more we can think it was done on purpose. Surely, our competition, in order to exclude the competition, has quoted extremely high price. According to our reliable information, that price increase shall be in the range of 130.000 EUR.

3. To LP overall price, an option of 55.030 EUR was added for the model acceptance test. According to statement from Mr. Hugo Götsch, this option was not added to competitor's prices.

LP comment: We consider this as a non-equal treatment of all competitors. As a bidder we are fully responsible for offered technical data and we guarantee them.

4. Despite agreement between Mr. Kofler and Mr. Lenart, the expenses for performance bank guarantee in the amount of 75.000 EUR were included into LP overall price for evaluation.

LP comment: We consider this as a violation of agreed conditions and unfair practice during evaluation

Artificially, using above prescribed approach, the price of LP was increased for evaluation at least by EUR 500.000,-.

5. TIWAG has deducted an addition of 0,91% points of the LP prototype efficiency with a simple explanation, that this addition cannot be believed. Additionally, Mr. Götsch told us, that after deduction of 0,91 % points, LP efficiency levels were comparable to the ones from competitors.

LP comment: This is again a sign of totally unfair approach against LP offer. In terms of efficiency, 0,91% points difference is extremely huge and based on this, LP offer shall be declared as an absolute winner, but due to lack of evaluation criteria, it cannot be calculated, what does the difference of 0,91% points mean.

Artificially the technical solution and benefit coming out of it (can be easily calculated) was decreased by 0,91% to be "equal" with competitors.

Because of all the listed facts Litostroj Power management considers the complete bidding and evaluation process from TIWAG as extremely unfair and non-transparent. We are very surprised that this is possible if the process is managed by public entity like Tiwag is, and if the process held on European Market.

We would like to mention, that the offer preparation costed LP around 60.000 EUR. But the main damage was made to our paradigm about fair competition in our region.

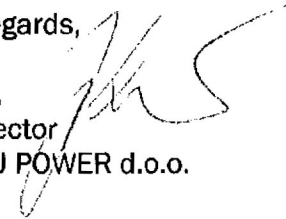
To avoid similar situation we take the liberty to inform about our case Tirolean government, Bundeswettbewerbsbehörde and Slovenian Embassy in Vienna.

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For any further discussion, we remain at your full disposal.

Kindest regards,

Jiri Kanak,
Sales Director
LITOSTROJ POWER d.o.o.



Ljubljana, 23.08.2017