

Contract to build the Pfonns-Brenner lot remains valid

Vienna, 28.10.2020 - The withdrawal announced yesterday by BBT SE from the contract concluded on 28 March 2018 between the consortium H51 Pfonns-Brenner and BBT SE to build the Pfonns-Brenner lot of the Brenner Base Tunnel is plainly unlawful and therefore the contract remains valid. PORR AG will take every step necessary to protect its rights.

Brenner Base Tunnel SE (BBT SE) has announced its withdrawal from construction contract B0142 “on serious (important) grounds” in a letter dated 27 October 2020 and signed by BBT board members Martin Gradnitzer and Gilberto Cardola. The main reason given for withdrawing from the contract is the alleged “performance refusal in connection with the tunnel’s segment system”.

Karl-Heinz Strauss, CEO of PORR AG: “This unilateral termination of the contract is clearly illegal. The contract between consortium H51 and BBT SE is still valid, even in the event of a new contract being awarded”. Renowned university professor Dr. Andreas Kletečka came to the same conclusion when writing his legal opinion. This would have far-reaching consequences: “In the event of an illegal termination, BBT would have to fulfil the contract with the consortium in any case and possibly also a second contract with a new contractor. BBT would not only have to pay for the loss of profits, but also cover all costs for the ongoing availability of the entire consortium workforce and its technology. This in itself may come to almost as much as the original contract sum”, said Kletečka.

Failures of management and supervision swept under the rug

Not only is the termination of the contract not legally covered, it is also highly irresponsible towards the Austrian taxpayers. It makes a further multi-year delay to this critical European infrastructure project inevitable, along with cost increases in the millions. PORR has always been ready to render the requisite services and discuss any issues in addition to offering technologically sound solutions at no additional cost.

Strauss: “For at least two years now, the Management Board and Supervisory Board of BBT SE have known that they made a mistake in the tendering process that would threaten the safety of the tunnel”. Strauss underlined that if BBT were to take safety concerns seriously, the Management and Supervisory board would have to admit that they had set parameters in the tender for cost reasons that would make the safe construction of the tunnel impossible if the applicable technical standards were upheld. “But since it is obvious that what is not allowed cannot be the case, they now want to save themselves by illegally terminating the contract”.

Valid agreement

PORR AG, whose participation in the consortium H51 Pfonns-Brenner is worth around half of the contract value (EUR 966m before sales tax) will take every step necessary to protect its rights. “The contract is valid. That’s why we won’t be taking the rap for failures of management and of supervision and why we insist that BBT take responsibility for the damages incurred”, concluded Strauss.

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