

Eskom tender firms lose bid to have complaint dismissed

The Competition Tribunal has refused an application to dismiss a complaint against companies accused of price fixing and tender collusion involving a R240m Eskom tender.



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The tender was for the supply, installation and dismantling of scaffolding and thermal insulation for 15 Eskom coal-fired power stations and was to run over a period of five years.

The Tribunal, which has jurisdiction throughout South Africa and adjudicates competition matters in accordance with the Competition Act, said it launched an investigation following a complaint.

The complaint was lodged by Eskom in March 2016. The complaint alleged that SGB Cape and the three joint ventures (Tedoc SGB Cape Joint Venture, Superfecta SGB Cape Joint Venture and Mtsweni SGB Cape Joint Venture) may have colluded when bidding for the tender.

The findings of the investigation were that Waco Africa (Pty) Ltd, through its division SGB Cape, reached bilateral agreements with Tedoc Industries, (Pty) Ltd, Mtsweni Corrosion Control (Pty) Ltd and Superfecta Trading 159 CC to form and three joint ventures, namely Tedoc SGV JV, Superfecta SGB JV and Mtsweni SGB JV.

SGB Cape then allegedly submitted bids on its behalf and on behalf of the three joint ventures in which Waco held a stake.

However in March 2017, Eskom, for reasons unknown, withdrew its complaint but the commission decided to pursue the complaint against all the respondents after conducting its own investigation.

“In a hearing on 20 June 2018, the respondents raised several objections to the complaint brought by the commission. The tribunal, in its decision issued this week, dismissed the application to throw out the complaint but upheld an application by the firms and granted another.”

The commission is consequently required to make available specified non-privileged and unrestricted portions of the commission’s record to the respondents and to provide a supplementary affidavit outlining whether the joint ventures were incorporated or not, as well as the provisions or facts relied upon to show collusive tendering and/or price fixing agreements involving Tedoc Industries, (Pty) Ltd, Mtsweni Corrosion Control (Pty) Ltd and Superfecta Trading 159 CC.

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