



དཔལ་ལྷན་འབྲུག་གཞུང་།
རྒྱལ་ཡོངས་གཞུང་ཆས་ལས་ཁུངས་། དངུལ་རྩིས་ལྷན་ཁག།

ROYAL GOVERNMENT OF BHUTAN
DEPARTMENT OF NATIONAL PROPERTIES, MINISTRY OF FINANCE



MoF/DNP/PMDD-15/2022-23/ 247

07 September, 2022

Tshering Dorji
TD Airport Clearing Agent
Paro

Subject: Decision of Independent Review Body (IRB)

Sir,

The IRB Secretariat had received your Application for review on 22 August 2022 regarding a tender decision dated 22 August, 2022 pertaining to "*Leasing of Space for Cargo Clearing Agent at Paro International Airport*" published through eGP System.

Having accepted for review of your appeal the IRB met on 5 September 2022 at 2:00 PM at the Conference Hall of Department of National Properties to review your application that had been lodged against the Department of Air Transport (DOAT), under Ministry of Information & Communications.

The IRB after considering the facts and evidence submitted by the parties and having duly conducted the virtual hearing hereby issues the decision enclosed herewith. The decision of the IRB is confined to the issues raised in the Application for Review by TD Airport Clearing Agent and responses from the DOAT.

Yours Sincerely,

(Rinchen Wangdi)
Chairperson
Independent Review Body

Copy to:

1. The Sr. Administration Officer, DOAT, Paro International Airport



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Form 6- Decision of Independent Review body

Case name: Leasing of Space for Cargo Clearing Agent at Paro International Airport

Case Reference Number: IRB(01)/2022-23

This Independent Review Body consists of:

Mr. Rinchen Wangdi, Director, DNP	Chairperson
Mr. Sonam Tashi, Offtg. DAG, DOJ, OAG	Member
Ms. Sonam Deki, Offtg. Director, DoS, MOEA	Member
Mr. Tshering Yonten, Executive Director, CAB	Member
Mr. Chandra B. Chhetri, Dy. Secretary General, BCCI	Member

The parties and procurement under dispute are:

Applicant	Mr. Tshering Dorji TD Airport Clearing Agent Paro
Respondent	DOAT Paro International Airport MOIC
Brief Description of Procurement	Leasing of Space for Cargo Clearing Agent at Paro International Airport

Having duly conducted the review of documents and evidences submitted by both the parties in an equal and fair manner and having concluded the proceedings and complied with the provisions of the Rules and Procedures of Independent Review Body, the Independent Review Body hereby delivers the following decision:



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In accordance with Clause 58 of the Rules of Procedures of the Independent Review Body of 2015, the IRB issues the following decision:

1. On the allegation of DOAT disregarding the condition laid down under the Qualification Criteria of the tender document and issuing letter of intent to Yoe Gay Clearing and Forwarding Agent:

IRB is of the view that DOAT should consider the requirements specified under the Qualification Criteria to determine the responsiveness of the bids and only the responsive bids should be compared against each other for quoted price.

As per Clause 5.4. Evaluation of Bids of the Procurement Rules and Regulations 2019;
5.4.1.1 *"The purpose of bid evaluation process shall be to determine which of the bids received are responsive and thereafter compare the responsive bids against each other to select the lowest evaluated bid."*

5.4.2.1 *Responsive bids under these rules shall mean "substantially responsive bids. Bids are substantially responsive where:*

a. The bidders fulfill the conditions of eligibility and qualification, if any laid down in the bidding document.

2. The clarification from the DOAT stating that the decision has been taken with the understanding that availability of trained employees suffice the need of one year experience mentioned in the qualification criteria, is not justifiable since the requirement of minimum one year experience and two certified employees have been specified separately under the Qualification Criteria of the bidding document.
3. Further, DOAT issuing the letter of intent to Yoe Gay Clearing and Forwarding Agent due to huge differences between the quoted rates of the participating bidder and claiming it to be a profit based tender, IRB finds that such requirements are not specified in the bidding document and the decision is not in line with the PRR 2019 and the bidding document.
4. Based on the available information, IRB's decision is to nullify the existing tender and re-tender allowing open participation of all eligible bidders. The requirement of one year experience as a cargo clearing agent restricts the participation of any new clearing agents in the market.
5. If required, the DOAT should determine the expected monthly rent and mention it in the bidding document as a base price.
6. If possible, the DOAT should negotiate and award the service to multiple bidders for competition and better service delivery.



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7. As per Clause 61 of the Rules and Procedures of the Independent Review Body, the decision of the Independent Review Body shall be final and binding. If the decision of the Independent Review Body is not acceptable, an appeal may be made to the Court only on a question of law. In such a case, any concession granted by the Review Body shall stand withdrawn.

Date: 7 September 2022

Chairperson 	Member
Member Sonam Deki MOCA	Member
Member Dy. Secretary General Bhutan Chamber of Commerce & Industry Thimphu : Bhutan	