དཔལ་ལྡན་འབྲུག་གི་རྒྱལ།
མགོ་སྐྱོང་དང་ཁྲེང་ཚས་ལས་ཁུངས། དངུལ་རྩིས་ལྡན་ཁག།
ROYAL GOVERNMENT OF BHUTAN
DEPARTMENT OF PROCUREMENT AND PROPERTIES, MINISTRY OF FINANCE

MoF/DPP/PMDD-15/2022-2023/2024 2nd February, 2023

The CEO
M/s Dejung Bumzang Construction Pvt. Ltd.
Trashigang
Bhutan
Phone no. 17121029/17563285
Email – dejungbumzang@gmail.com

Subject: Decision of Independent Review Body (IRB) for Case Ref. No. IRB(05)/2022-23

Sir,

The IRB Secretariat has received your Application for review dated 26/12/2022 alleging the tender decision dated 05/12/2022 (Letter of Intent) for execution of ***'Improvement of Agurthang FR GC Road'*** published though e-GP system was unjust and not satisfied with the subsequent exchange of communications with the Respondent.

After review and acceptance of your Application for review, the IRB met on 16/01/2023 to review your application that has been lodged against the Samdrup Jongkhar Dzongkhag Administration. During the proceeding, the IRB Secretariat was instructed to get more documents from the Respondent and accordingly the Respondent was communicated. The Respondent failed to provide the required document within the given time and thereafter, the IRB concluded the grievance proceeding.

The IRB after considering the facts and evidence submitted by the parties and having duly conducted the proceeding hereby issues the decision enclosed herewith. The decision of the IRB is confined to the issues raised in the Application for Review by the Claimant and response by the Respondent.

Yours Sincerely,

(Tshering Choden)
Chairperson
Independent Review Body

Copy to: Dasho Dzongdag, Samdrupjongkhar Dzongkhag Administration for compliance.

FORM 6 – Decision of Independent Review Body

Case name: M/s Dejung Bumzang Construction *(Applicant)* Vs Dzongkhag Administration, Samdrupjongkhar *(Respondent)*

Case Ref. No.: IRB(05)/2022-23

Independent Review Body member present:

1	Mr. Tshering Choden, Director, DPP, MoF	Chairperson
2	Mr. Karma Dupchuk, Director, DoID, MoIT	Member
3	Ms. Sonam Deki, Offtg. Director, DoS, MoEA/MoICE	Member

The parties and the procurement under dispute are:

Applicant	Mr. Jomo Tshering CEO M/s Dejung Bumzang Construction Samdrupjongkhar Phone no. 17121029/17563285
Respondent	Samdrupjongkhar Dzongkhag Administration Samdrupjongkhar
Brief Description of Procurement	Execution of 'Improvement of Agurthang FR GC Road'

Background & Discussion in brief:

The IRB Secretariat has received grievance for review on 26/12/2022 alleging the tender decision dated 05/12/2022 (Letter of Intent) for execution of ***'Improvement of Agurthang FR GC Road'*** published though e-GP system was unjust and the Applicant was not satisfied with the subsequent exchange of communications with the Respondent.

After review and acceptance of Application for review, the IRB met on 16/01/2023 to review the grievance that has been lodged against the Samdrup Jongkhar Dzongkhag Administration in presence of 3 members including the chairperson which is minimum quorum required to review the grievance. During the proceeding, the IRB Secretariat was instructed to get the following information & documents from the Respondent:

1. List of Exclusion of Bidders from the Respondent if any;
2. Total days of delay for 2 works (Const. of Library Block at Karmaling HSS & Const. of 6 Unit Classroom at Phuntshothang MSS) mentioned in your clarification letters and current progress of the works mentioned;
3. More details of the claims by Respondent when the Respondent reiterated that the manpower and materials were not there at site;
4. Whether the contract was terminated for those 2 works and if not the reasons for not terminating the contract; and
5. Additional documents/evidence including provisions of contract document (SCC/BDS) which mentions exclusion upon issuance of notice of termination.

The Secretariat gave 3 days (16 – 19/01/2023) to furnish the said information & documents but the Respondent failed to do so and thereafter, the IRB concluded the grievance proceeding.

Claims as claimed by the Applicant:

"The applicant firm is the first lowest winning bidder as per the evaluation. However the Dzongkhag awarding committee has awarded the work to fourth lowest bidder. The firm submitted the grievance letter to the dzongkhag tender committee but the response received was not aligning to any clause in the standard bidding document provided and we are not satisfied and we believe breaching of contract regulations from Dzongkhag awarding committee. All the documents is uploaded for your kind reference and even personally mail to focal person. We want the DTC to re award the work to our firm since we are the first lowest bidder after proper reviewing from IRBs good knowledge".

Response as responded by the Respondent:

"Works are awarded based on the contractor's past and present performance. The on-going construction of 6-Unit Classroom at Phuntshothang MSS and construction of library block at Karmaling HSS are with poor performance, which was even issued with notice for termination on dated 24/11/2022. Thus, the Dzongkhag Administration regrets to inform that the work could not award to your firm. The details of justification has been emailed vide letter no. DZ.EG & HSS-04/2022-2023/2638 dated 09-12-2022. The on-going construction of 6-Unit Classroom at Phuntshothang MSS and construction of library block at Karmaling HSS are with poor

performance, which was even issued with notice for termination dated 24/11/2022. Thus, the Dzongkhag Administration regrets to inform that the work could not be awarded to the firm".

Analysis and Findings:

1. The tender ID: 14118 was awarded to M/s Dorji Construction despite the Applicant being the Lowest Bidder after complying the process of evaluation. If the Respondent intends to exclude the Applicant because of delay of earlier 2 works, the Respondent should not have evaluated his bid.
2. As the Applicant was not satisfied with the decision of Respondent, the Applicant sought clarification claiming that they complied with all technical requirements and offered 2nd lowest price despite which the Respondent has awarded to a bidder who offered higher price than the Applicant. To this, the Respondent justified that during evaluation, while reviewing the past performance of the bidder, the Applicant had 2 works in hand:
   (i) Construction of Library Block at Karmaling HSS; and
   (ii) Construction of Six Unit Classroom at Phuntshothang MSS.

   Both the works under Samdrupcholing Dungkhag Administration *(under same Dzongkhag)* was issued Notice of Termination for poor performance.
3. Notice of Termination issued on 24/11/2022 was issued by the Respondent with the intent to terminate works mentioned in SN 2 for poor performance with duration of 15 days but the said works were not terminated as the Applicant has resumed the works after the notice.
4. In response to SN 2, Applicant claimed that the site was never left idle as there was adequate materials supplied and manpower deployed. The Applicant further justified that amongst the 3 works awarded under the jurisdiction of the Respondent, *(Construction of 4-Unit Staff Quarters at Jomotsangkha BHU in addition to works mentioned above),* one was completed on time and two are in progress.
5. The Applicant states that he is allowed to take up 4 works in hand as per Registration Guidelines issued by CDB. The guidelines stated allows medium class contractors to take up 5 works simultaneously and here the Applicant is a medium class contractor.
6. Further the Applicant claims that the notification of termination doesn't become award criteria in SBDs. Moreover, Applicant claims that the issuance of the notice is not fundamental breach of contract but just a reminder letter. After reviewing the bidding documents, it was known that the notification of termination was not mentioned as criteria for exclusion. Further, the Respondent has not maintained a Exclusion List of Bidders.

Decision:

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 2015, the Independent Review Body hereby delivers the following decision:

1. In accordance with Clause 58 of the Rules of Procedures of the IRB 2015, the IRB renders the following decision:
   (i) Based on the evidences available, IRB hereby instructs the Respondent to revaluate the bid;
   (ii) IRB recommends the Respondent to maintain 'Exclusion List' if the Respondent intends to exclude bidder(s) in future with preset criteria in compliance to PRR 2019.

2. In pursuant to 61, the decision of IRB is final and binding and of the decision is not acceptable, then an appeal may be made to the court of law.

Mr. Tshering Choden, Chairperson	
Mr. Karma Dupchuk, Member	
Ms. Sonam Deki, Member	

Dated: 2nd February 2023