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རྒྱལ་ཡོངས་གཞུང་ཚན་ལས་ཁུངས་། དཔལ་ལྷན་ཁག།

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

MoF/DNP/GPPMD-21/19-20/ 534

13 November 2019

The Proprietor(s)

New Edge Technologies, Yangkor Pvt. Ltd, Zealous Systems, Athang and Dot Com
Thimphu

Subject: Decision of Independent Review Body


Sir,

The Independent Review Body had received your Application for review *Implementation of Electronic Patients Information System (e-PIS)* on 25 September, 2019.

The Independent Review Body met on 14th October, 17th October and 5th November 2019 to review the application that had been lodged against the Ministry of Health.

The IRB after considering the facts and evidence submitted by the parties, hereby issues the decision enclosed herewith. The decision of the IRB is confined to the issues raised in Application for Review by Bidders and responses from the Ministry of Health.

Yours Sincerely,



(Phub Rinzin)

Chairperson

Independent Review Body

Copy to:

1. Hon'ble Secretary, Ministry of Health



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

Decision of Independent Review body

Case name: *Implementation of Electronic Patients Information System (e-PIS)*

Case Reference Number: *MoF/DNP/GPPMD/IRB-21/2019-20/ 03*



This Independent Review Body consists of:

Mr. Phub Rinzin, Director, CDB	Chairperson
Mr. Karma Dupchuk, Director, DES, MOWHS	Member
Mr. Tshering Dorji, Director, DPA, MOF	Member
Mr. Kinley Tenzin, Chief Attorney, OAG	Member
Mr. Wangdi Gyeltshen, Secretary General, CAB	Member
Mr. Chandra B. Chhetri, Dy. SG, BCCI	Member

The parties and procurement under dispute are:

Applicant	New Edge Technologies, Yangkor Pvt. Ltd, Zealous Systems, Athang and Dot Com
Respondent	Ministry of Health
Brief Description of Procurement	Implementation of Electronic Patients Information System (e-PIS)

Having duly conducted the review after hearing the evidence of all 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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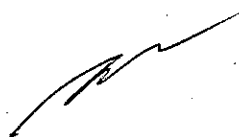
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In accordance with Clause 58 of the Rules of Procedures of the Independent Review Body of 2015, the IRB observes and decides that:

1. The Expression of Interest (EoI) was floated in December, 2018. Out of the 20 firms that responded to the EoI, 6 were shortlisted for submission of response to RFP. Short listing took more than four months. The Respondent has submitted that there was a delay in short listing mainly because of the difficulty in getting the funds and delay in getting the project endorsed by the Cabinet. IRB finds no specific allegation from the Complainants of any breach of the process by the Respondent with respect to the short listing of the final list of consultants of the RFP, and has therefore not examined the short listing process followed by the Respondent.
2. With regard to the allegation on demo scripts and list of devices to be integrated being revised by the Respondent several times till the day before the demonstration, while the Respondent maintains that this was to ensure that all firms do not prepare in advance and to assess their capacity, IRB after reviewing all the documents and emails found that the demo note, scripts and demo criteria were updated several times with the last updates issued on 4th September and the demo was conducted on 7th and 8th September, 2019.
3. On the allegation of limited access to facility to be used for demo, TOR clearly stated that the Respondent would not cater to last minute visits. Further, based on the materials reviewed by the IRB, this appears to have been clearly agreed by the relevant parties during the pre-proposal meeting and is also clearly mentioned in the email that was sent on the 6th May, 2019. However, upon request of the bidders, the Respondent was accepting last minute visits. IRB observes that Respondent should have ensured that a dedicated time is allocated for all bidders to access the facility and restrict after the end of the specified deadline.



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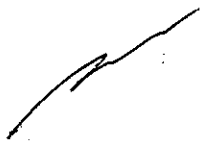

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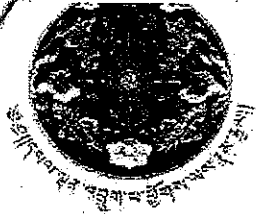
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4. The IRB also notes that the Complainants received letters of regret from the Respondent, informing them of the awarding of the contract to NGN Technologies on Sept 12, 2019. Other firms were not informed about the technical evaluation results until after the selection of the winner of the bid and financial bids were opened in the absence of bidders that had received qualifying technical scores. As Per Instruction to Consultants (ITC) 21, *“after technical evaluation is completed, the Procuring Agency shall inform the Consultants who have submitted proposals the technical score obtained by their Technical Proposals, and shall notify those Consultants whose proposals did not meet minimum qualifying mark, or were considered non responsive to the RFP and TOR, that their Financial proposals will be returned unopened after completing the selection process. The procuring agency shall simultaneously notify in writing those consultants that have secured the minimum qualifying mark, the date, time and location for opening the financial proposal. The opening date shall allow consultants sufficient time to make arrangements for attending the opening.”* The same has been clearly reiterated in the Rule 7.3.1.13 of Procurement Rules and Regulations. The above provisions are unqualified, without exception and essential to ensure transparency in the evaluation of proposals. The IRB, therefore, is unable to accept the Respondent’s attempted defence for not following the aforementioned process in the present case and its attempt to by-pass the required procedures is in contravention of the aforementioned provisions.
5. With regard to the scope changes that were notified to the bidders two days before the submission of bid, the IRB, after reviewing the documents, noted that an email was sent by the Respondent to the bidders on 18th August making changes in various fields and another email was sent by the Respondent to the bidders on 20th August, a day prior to the submission of bids, in which corrections were made on evaluation criteria under S. No. A1, technical criteria. The IRB observes that as per ITC 10.4, the Respondent had the

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right to amend RFP by issuing an addendum, in writing and after providing all the bidders reasonable time in which take the addendum into account and extend the deadline for submission of bids. In the present case, all changes to the RFP were made by the Respondent through e-mail without issuing a formal addendum and without having provided the bidders sufficient time to take the addendum into account.

While the Respondent, in its written submission, states that the bid submission was postponed upon request of the vendors, the IRB upon examining the e-mails find that it was solely the decision of the Respondent to extend the deadline which was unconnected to the aforementioned changes in scope made by the Respondent. The email sent by MOH on August 12, 2019 clearly states that bid submission is postponed due to unavoidable circumstances.

6. While Data Sheet ITC 10.2 clearly states that clarification may be requested no later than 10 days before the submission date, on the contrary, the Respondent sent emails till the last date of bid submission and even after the submission of bids. Similarly clarification was sought regarding demonstration and facility visits in contravention to ITC 10.2.

7. On the issue of changing the sub-criteria, the Procurement Rules and Regulations 7.3.1.11 give the authority to evaluation committee to normally divide the criteria into sub-criteria. The number of sub-criteria should be kept to essential. IRB here observed that the criteria specified in the data sheet for both EOI and RFP were very broad. Points should have been clearly allocated for each of the broad criteria, while those broad criteria could have then been further divided into sub-criteria by the evaluation Committee but keeping it to essential. This is vital to ensure transparency in the evaluation.


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8. Given the above infractions of the provisions of the Bidding Documents and the Procurement Rules and Regulations by the Respondent observed by the IRB, the IRB decides to nullify the award of contract and terminate the procurement process in the present case and directs the Respondent for re-tendering.
9. As per Clause 61 of the Rules of Procedures of the Independent Review Body, The decision of 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: 13 November 2019

<u>Chairperson</u> 	<u>Member</u> 
<u>Member</u> 	<u>Member</u>