དཔལ་ལྡན་འབྲུག་གཞུང་།
རྒྱལ་ཡོངས་གཞུང་ཚས་ལས་ཁུངས། དངུལ་རྩིས་སྡེབ་ཚག།
ROYAL GOVERNMENT OF BHUTAN
DEPARTMENT OF NATIONAL PROPERTIES, MINISTRY OF FINANCE

MoF/DNP/GPPMD-21/19-20/ 646 | 05 December 2019

The Proprietor
M/s Tshogyal Tshokey Construction
Chukha

Subject: Decision of Independent Review Body

Sir,

The Independent Review Body had received your Application for review regarding ***Tender for Renovation of Poultry Sheds, Sarpang*** on 25th November 2019.

The Independent Review Body met on 3rd December 2019 to review the application that had been lodged against National Poultry Research and Development Center (NPRDC).

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 the Bidder and response from NPRDC.

Yours Sincerely,

(Phub Rinzin)
Chairperson
Independent Review Body

Copy to:

1. Program Director, National Poultry Research and Development Center, Sarpang

Form 6- Decision of Independent Review body

Case name: ***Tender for Renovation of Poultry Sheds at NPRDC, Sarpang***

Case Reference Number: ***MoF/DNP/GPPMD/IRB-21/2019-20/ 06***

This Independent Review Body consists of:

Mr. Phub Rinzin, Director, CDB	Chairperson
Mr. Tshering Dorji, Director, DPA, MOF	Member
Mr. Chandra B. Chhetri, Dy. SG, BCCI	Member

The parties and procurement under dispute are:

Applicant	M/s Tshogyal Tshokey Construction
Respondent	National Poultry Research and Development Center, Sarpang
Brief Description of Procurement	Renovation of Poultry Sheds at NPRDC, Sarpang

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:

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 requirement of Earnest Money Deposit/ Bid Security of Nu. 100,000 (One Hundred Thousand only) was mentioned under Invitations for Bids (IFB). The Instructions to Bidders (ITB) Clause 5 under the Bidding Documents specifies the Sections that comprise the Bidding Documents:

    - Section 1- ITB
    - Section 2- Bidding Data Sheet (BDS)
    - Section 3- Evaluation and Qualification Criteria
    - Section 4- Bidding forms
    - Section 5- General Conditions of Contract (GCC)
    - Section 6- Special Conditions of Contract (SCC)
    - Section 7- Contract forms
    - Section 8- Bill of Quantities and Specification and
    - Section 9 Drawings.

    The IRB, after reviewing all the above documents, finds that the Invitation for Bids does not form a part of the Bidding Documents.

2. On the allegation of the Bid Security amount being specified under the Bidding Data Sheet (BDS), Clause ITB 19.5. IRB observes that the BDS Clause ITB 19.5 must be read in conjunction with ITB Clause 19.5 which states that *"in case Bid Securing Declaration is executed in pursuant to ITB Clause 19.4 the bidder shall deposit the bid security amount specified in the BDS within 14 days from the date of notification by Employer"*.

Therefore, IRB finds that the amount specified under the BDS is enforceable on cases when Bid Securing Declaration has to be executed.

3. IRB also finds that apart from the requirement of Bid Securing Declaration, there is no mention of requirement of Bid Security anywhere in the bidding documents. As per the Bidding Documents, responsibility is entrusted on all bidders to examine all instructions, forms, terms and specifications in the bidding documents. Having done that, if the bidder observed ambiguities in the bidding documents, the bidder is obliged to seek further clarification as per ITB Clause 6.1. in writing in case of manual (in this case it is done manually).

4. IRB would also like to point out the lapses on the part of the Respondents while preparing the bidding documents. Respondents in future must ensure that such ambiguities are avoided and due diligence is exercised after having sought procurement professional advice from the procurement officers of the respective agency.

5. With regard to the allegation on late issuance of Letter of Intent (LOI) by adding wrong email and wrong company name, the IRB's mandate is to provide a mechanism to ensure independent decisions for alleged breach of the provisions of Procurement Rules and Standard Bidding Documents. Any allegations on elements of corruption are beyond the mandate of the IRB.

6. In line with the above justifications, Respondents have not violated procurement norms that would warrant nullification of the award of contract. Therefore, the IRB decides that the decision of Respondent stands valid.

7. 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: 5 December 2019

Member	**Chairperson**	**Member**