དཔལ་ལྡན་འབྲུག་གཞུང་།
རྒྱལ་ཡོངས་གཞུང་ཚན་ལས་ཁུངས། དངུལ་རྩིས་ལྷན་ཁག།
ROYAL GOVERNMENT OF BHUTAN
DEPARTMENT OF NATIONAL PROPERTIES, MINISTRY OF FINANCE

MoF/DNP/GPPMD-21/19-20/ 790 24 January 2020

The Proprietor
APECS Consultancy
Thimphu

Subject: Decision of Independent Review Body

Sir,

The Independent Review Body had received your Application for review on ***Consultancy Service of Survey and Design of Central Boulevard from International Border to Shetikhari*** on 11 December 2019.

The Independent Review Body met on 10th January 2020 to review the application that had been lodged against Thromde Administration, Gelephu.

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 the Application for Review by Bidders and responses from Gelephu Thromde.

Yours Sincerely,

(Phub Rinzin)
Chairperson
Independent Review Body

Copy to:

1. Executive Secretary, Thromde Administration, Gelephu

Form 6- Decision of Independent Review body

Case name: ***Consultancy Service of Survey and Design of Central Boulevard from International Border to Shetikhari***

Case Reference Number: ***MoF/DNP/GPPMD/IRB-21/2019-20/ 08***

This Independent Review Body consists of:

Mr. Phub Rinzin, Director, CDB	Chairperson
Mr. Kinley Tenzin, Chief Attorney, OAG	Member
Mr. Chandra B. Chhetri, Dy. SG, BCCI	Member

The parties and procurement under dispute are:

Applicant	APECS Consultancy, Thimphu
Respondent	Thromde Administration, Gelephu
Brief Description of Procurement	Consultancy Service of Survey and Design of Central Boulevard from International Border to Shetikhari

Having duly conducted the review after hearing the evidences 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. On the allegation of Inclusion of requirement of submission of Work permit for non-Bhutanese professional, the IRB agrees to the submission made by the Respondent, the responsibility to prepare the Request for Proposal is delegated to the procuring agency. Bringing in new qualification criteria or evaluation criteria which are not mentioned in the bidding documents are prohibited, however, in this case the document requirement was clearly laid down under Section 3, Technical Proposal which stated that "***For human resource qualification**, CV, marks and certificate, copy of CID, **Work permit**, VISA etc. should attach"*. On the allegation of violation of Clause 5.1 of the General Conditions of contract, those contract conditions are enforceable only when the Consultant and the procuring agency enter into contract after signing of a formal agreement. Further, IRB after examining the documents submitted by parties, it is evident that through the clarifications sought, it was clear that the Consultants were asked to submit documents as per the requirements of bidding document and if at all there were changes in the documents, Respondent would have issued an addendum.

2. On the allegation of use of e-TOOL for verification of proposed professionals engagement which is not prescribed as per SRFP and awarding 0 marks without seeking clarification with firm or the personnel and violating ITC Clause 25.1. The IRB here finds that the Respondents have failed to specify in the bidding documents that e-TOOL would be used to verify and check if committed professionals are engaged. However, the Evaluation Committee has the responsibility to exercise due diligence for checking the engagement of the human resource and in this case using e-TOOL to verify and cross-check if the personnel were engaged or not is reasonable and rational. IRB also observes that Clause 25.1 would only come into force if the Consultant was selected technically after evaluation of proposed professional staff, which is clearly stated in the Clause.

3. On the allegation of violating Clause 22.1 SRFP by not disclosing the technical marks obtained by the firm in the letter of regret, IRB finds that the relevant provision is Clause 21.2 and not Clause 22.1. The Applicant had failed to secure the minimum qualifying marks and accordingly the Respondent had sent regret letter on 4 November 2019. As such IRB finds that it would have been an issue if firms were not informed about the technical evaluation results even after the selection of the winner of the bid and financial bids, but in this case, letter of regrets were sent right after the technical evaluation was completed. Therefore, having received the letter of regrets, firms could have approached the Respondent for technical scores.

4. With regard to the allegation of failure to disclose Minutes of Bid Opening violating 7.3.1.14 of PRR, since the Applicant did not qualify technically and regret letter was sent, there was no need to disclose the financial bids. Clause 21.2 clearly states that "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 Proposals. The opening date shall allow Consultants sufficient time to make arrangements for attending the opening. Consultants' attendance at the opening of Financial Proposals is optional". The same has been reiterated in Clause 7.3.1.13 of the Procurement Rules and Regulations.

5. On the allegation of use of wrong selection criteria violating Clause 21.6 of ITC, Data Sheet, IRB finds no violation as the evaluation was carried out as per pre set criteria, while Data Sheet Clause 20.1 clearly sets the criteria and sub-criteria for evaluation of technical proposals and the minimum technical score required, Data Sheet Clause 21.6 clearly defines the criteria for financial evaluation.

6. On the allegation of the Respondent attempting to allow for sub-contracting violating Clause SCC 3.5 (a) which states that consultancy firm shall not be permitted to sub-contract any of the consultancy services to the sub-consultant/ firm under this contract. IRB finds that the lapses were mainly because the Respondent specified about subcontracting in the letter of intent, however IRB finds no implication in the

procurement process. Other Consultants had already sought clarification on the same and accordingly the letter of intent was modified rectifying the error by the Respondent.

7. 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.

8. 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: 24 January 2020

Member	Chairperson	Member