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

MoF/DNP/GPPMD-21/19-20/ 788

20 January 2020

The Chief Executive Officer
Kabab Construction Pvt. Ltd
Thimphu

Subject: Decision of Independent Review Body

Sir,

The Independent Review Body had received your Application for review regarding *Re-tender for Re-electrification of Street Lighting at Pasakha Industrial Estate* on 3 January 2020.

The Independent Review Body met on 9th January, 2020 to review the application that had been lodged against Industrial Infrastructure Development Division, Department of Industry, Ministry of Economic Affairs.

The IRB after considering the facts and evidence submitted by the parties and having duly heard the parties, hereby issues the decision enclosed herewith. The decision of the IRB is confined to the issues raised in Application for Review by Bidder and responses from Department of Industry.

Yours Sincerely,

(Phub Rinzin)
Chairperson
Independent Review Body

Copy to:

1. Director General, Department of Industry, MoEA



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Form 6- Decision of Independent Review body

Case name: *Re-tender for Re-electrification of Street Lighting at Pasakha Industrial Estate*

Case Reference Number: *MoF/DNP/GPPMD/IRB-21/2019-20/ 09*

This Independent Review Body consists of:

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

The parties and procurement under dispute are:

Applicant	Kabab Construction Pvt. Ltd
Respondent	Department of Industry, MoEA
Brief Description of Procurement	Re-tender for Re-electrification of Street Lighting at Pasakha Industrial Estate

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:

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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. On the allegation of receiving late information with regard to the re-tender, IRB observes that the letter of regret was sent to both the unsuccessful bidders (Kabab Construction Pvt. Ltd. and Wangthang Construction Pvt. Ltd) and Applicant agrees to have received the letter on 25th November 2019. The invitation of re-tender was sent through the e-GP system following the limited tendering method, generally the procuring agency while following the limited tendering method has the option to select 3 to 5 bidders, however in this case, the Respondent choose to keep the limited tendering open. Therefore, IRB finds that the need to inform the bidders was not necessary as the e-GP system would automatically send notification to the eligible bidders and also accessible under the limited tendering tab.
2. On the issue of Applicant being technically disqualified, as per the Respondents, the Applicant had failed to provide relevant necessary supporting documents for Human Resource. The IRB upon review of the Bidding Documents found that the bidder had to furnish the following document *Copies of Provident Fund Account Documents for all regular personnel or payrolls or Copies of monthly remittance schedule of Health Contribution and Tax Deducted at Source for all regular personnel committed for this project.* And in case of contract employees *Copies of contract agreements with all personnel if they have been hired on contract by the contractor.* Therefore, the IRB cross-checked in the e-GP for this particular tender and found that Applicant had failed to upload the required documents as per the bidding documents and hence losing points for Human Resources during the evaluation.

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3. With regard to the allegation of Wangthang Construction Pvt Ltd's bid capacity as the contractor is currently executing 820 million project, the IRB cross-checked with CDB and found that the company has an on-going project of 925 million. However, the company has secured full marks for bid capacity having secured the required bid capacity.
4. On the issue of whether Wangthang Construction Pvt. Ltd. had similar work experience in electrical works, the IRB cross-checked the evaluation report generated from e-TOOL and established that Wangthang Construction was awarded 0 (zero) points during evaluation time for not possessing any work experience of similar nature, while Applicant was awarded 8 points for possessing similar work experience.
5. 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.
6. The IRB observes that the work for the particular tender in dispute has already been awarded to Wangthang Construction Pvt. Ltd, which contravenes Bidding Documents, Instruction to Bidders clause 42.4 which states that "*Once the appeal copy is received by the procuring agency, it shall not proceed further with the procurement process until receipt of notification from the Independent Review Body Secretariat*". Therefore, the Respondent in future must ensure that such lapses are avoided and due diligence is exercised.
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

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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: 20 January 2020

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

