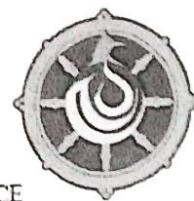




དཔལ་ལྷན་འབྲུག་གཞུང་།  
ཀྲུལ་ཡོངས་གཞུང་ཆས་ལས་ཁུངས་། དངུལ་རྩིས་ལྷན་ཁག།  
ROYAL GOVERNMENT OF BHUTAN  
DEPARTMENT OF NATIONAL PROPERTIES, MINISTRY OF FINANCE



MoF/DNP/PMDD-21/2021-22/ 443

18 October 2021

The Managing Director  
Trishul Builders Pvt. Ltd  
Wangdue Phodrang

**Subject: Decision of Independent Review Body (IRB)**

Sir,

The IRB Secretariat had received your Application for review on 1 October 2021 pertaining to tender for “*Resurfacing of Gelephu Trongsa PNH (Ch. 65-76.30 km)*” published through e-GP System.

Having accepted for review of your appeal the IRB met virtually on 12 October 2021 at 10:00 AM to review your application that had been lodged against the Department of Roads, Regional Office, Tingtibi.

The IRB after considering the facts and evidence submitted by the parties and having duly conducted the virtual hearing hereby issues the decision enclosed herewith. The decision of the IRB is confined to the issues raised in the Application for Review by Trishul Builders Pvt. Ltd and responses from the Department of Roads, Regional Office, Tingtibi.

Yours Sincerely,

(Karma Dupchuk)  
Interim Chairperson  
**Independent Review Body**

Copy to:

1. Chief Engineer, DoR Regional Office, Tingtibi



རྒྱལ་ཁབ་ལྷན་འབྲེལ་གཞུང་།  
ལྷན་ཁྲིམས་གཞུང་ཆས་ལས་ཁྲིམས་། དངུལ་རྩིས་རྒྱུ་ལག་།  
ROYAL GOVERNMENT OF BHUTAN  
DEPARTMENT OF NATIONAL PROPERTIES, MINISTRY OF FINANCE



**Form 6- Decision of Independent Review body**

**Case name:** *Resurfacing of Gelephu Trongsa PNH (Ch. 65-76.30 km*

**Case Reference Number:** *MoF/DNP/PMDD/IRB-21/2021-22/02*

**This Independent Review Body consists of:**

Mr. Karma Dupchuk, Director, DES, MoWHS	Interim Chairperson
Mr. Karma P Dorji, Director, DoHPS, MoEA	Member
Mr. Tshering Yonten, General Secretary, CAB	Member

**The parties and procurement under dispute are:**

<b>Applicant</b>	Mr. Sonam Tshewang, Managing Director Trishul Builders Pvt. Ltd
<b>Respondent</b>	Department of Roads (DoR) Regional Office Tingtibi
<b>Brief Description of Procurement</b>	Tender dated 19 August 2021 for Resurfacing of Gelephu Trongsa PNH (Ch. 65-76.30 km

Having duly conducted the review of documents and evidences submitted by both the parties in a transparent 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 accords 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 issues the following decision:

1. The Applicant has failed to exercise the right to seek clarification prior to submission of bids. ITB Clause 8.1 clearly states that *"A prospective bidder requiring any clarification of the bidding documents may notify the Employer through e-GP. The Employer shall respond to any request for clarification received earlier than 15 days prior to the deadline for submission of bids. The Employer's response shall be posted in the e-GP and will be available on the Dashboard of all participating bidders but without identifying its source. Should the clarification result in changes to the essential elements of the bidding documents, the employer shall amend the bidding documents...."*

However, only after the bids were submitted, the Applicant on 3 September 2021 wrote to the Respondent requesting for evaluation of bids with the submission that the applicant was aware that joint venture bids will not be entertained but the clause set was in contradiction to the ITB Clause 3.1 of the Eligibility criteria. Therefore, any clarification or ambiguities in the bidding documents procedurally should have been clarified before the submission of bids within stipulated timelines mentioned by the NIT.

Once the bids are submitted, all bidders sign and agree to the *"Contractors Bid"*, this is an agreement from the bidders agreeing that having examined the bidding documents we offer to execute the works in accordance with the conditions of contract.

2. Meanwhile, the Respondents have clearly specified in the bidding documents ITB Clause 3.1 and 4.1(a) that Joint Venture of bidders is not applicable and shall be disqualified. As submitted by Respondents this additional clause for ineligibility of JV for the particular work was incorporated considering the assessed scope of work being not huge and complex.





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



3. However, IRB observes that the ineligibility of JV has been endorsed during the 2nd DOR Bi-annual Meeting held from 4-5 August 2021 and this JV exclusion would be applied across all DOR offices.

Clause 5.1.1.2 of the Procurement Rules and Regulations (PRR) 2019 states that “*the procuring agency shall prepare bidding documents specific to the goods, works or services to be procured. the applicable standard bidding documents shall be used with minimum changes as necessary to address project specific conditions. Reasons for changes, if any, shall be recorded and seek approval from the Head of the Procuring Agency.*”

IRB is of the view that while Clause 5.1.1.2 of the PRR empowers procuring agencies to use standard bidding documents with minimum changes as necessary to address project specific conditions, the PRR and the SBD does not provide clarity on whether changes can be made in the Bid Data Sheet (BDS) only if there is an empowering provision or linking clause in the Instruction to Bidders (ITB) or even otherwise necessary changes can be made to the Bid Data Sheet (BDS) without any empowering provision or linking provision in the ITB.

Since this is a policy issue, the IRB recommends holding meetings amongst the procuring agencies like MoWHS, CAB, CDB and DNP to provide clarity on this subject at the earliest.



4. However, for the present application of review, IRB finds that the Respondent has not violated procurement norms that would warrant nullification of award of contract. Therefore, the Respondent may go ahead with the re-tendering works by duly addressing any contradictory provisions in the Bid Conditions as deemed appropriate.
5. As per Clause 61 of the Rules of Procedures of the Independent Review Body, The decision of the 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.



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



Date: 13 October 2021

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