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



MoF/DNP/PMDD-21/2021-22/ 444

18 October 2021

The Proprietor
M/s Jigme Dorji Construction Pvt. Ltd
Thimphu

Subject: Decision of Independent Review Body (IRB)

Sir,

The IRB Secretariat had received your Application for review on 6 October 2021 pertaining to tender for *“Construction of low-cost Family Quarter (18 units) for RBP at Legokha, Paro”* 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 Royal Bhutan Police, Thimphu.

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 M/s Jigme Dorji Construction Pvt Ltd and responses from the Royal Bhutan Police.

Yours Sincerely,

(Karma Dupchuk)
Interim Chairperson
Independent Review Body

Copy to:

1. The Chairperson, Tender Committee, Royal Bhutan Police, HQs, Thimphu.



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Form 6- Decision of Independent Review body

Case name: "Construction of low-cost Family Quarter (18 units) for RBP at Legokha, Paro"

Case Reference Number: MoF/DNP/PMDD/IRB-21/2021-22/ 03




This Independent Review Body consists of:

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

The parties and procurement under dispute are:

Applicant	Mr. Kunley M/s Jigme Dorji Construction Pvt. Ltd Thimphu
Respondent	Royal Bhutan Police Thimphu
Brief Description of Procurement	Tender dated 30 August 2021 for Construction of low-cost Family Quarter (18 units) for RBP at Legokha, Paro

Having duly conducted thorough review of documents and evidences submitted by both the parties in 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 IRB observes that the requirement for two witnesses was not specified in the Instruction to Bidders (ITB) or the Bid Data Sheet (BDS) of the bidding documents.
2. The above point was further validated during the virtual hearing, the representative from RBP informed that when tenders were floated offline, the Respondents used to set the requirement of two witnesses in the bidding documents. However, since the inception of e-GP and for this tender in particular there was no mention of such a requirement in the bidding documents.
3. Therefore, IRB finds that the basis for invoking provisions of the Evidence Act of Bhutan 2005 and setting of requirements of two witnesses without having specified anywhere in the bidding documents and non award of points was unfair.
4. As an Evaluation Committee it is also important that due diligence is exercised in such cases and to actually see if such deviation could actually lead to material deviation and reservation as specified in Clause 26.2 of the ITB which states that a material deviation or reservation is one-
 - a) which affects in any substantial way the scope, quality or performance of the Works;
 - b) which limits in any substantial way, inconsistent with the Bidding Documents, the Employer's rights or the Bidder's obligations under the Contract; or
 - c) whose rectification would affect unfairly the competitive position of other Bidders presenting substantially responsive Bids.
5. During the virtual meeting, the IRB also sought expert views from Director, OAG in line with Rule 26 of the Rules and Procedures of the IRB, it was clarified that Evidence Act of Bhutan is a procedural law and relationship or contracts between employer and employee are governed by specific laws like the Labour Act and Contract Act and these laws do not mention anything on the requirement of witnesses.





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However, since interpreting provisions of law is beyond the mandate of the IRB, this shall stand as an advisory only to the Respondents. Respondents may further take up with your Legal Department of application of these laws.

6. Given the above infractions of the provisions of the Procurement Rules and Regulations of the RGOB 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-evaluation.
7. 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.

Date: 13 October 2021

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