



རྒྱལ་ཡོངས་གཞི་རྒྱུ་རྒྱུ་ལྟ་བུ་གཞི་རྒྱུ་
རྒྱལ་ཡོངས་གཞི་རྒྱུ་རྒྱུ་ལྟ་བུ་གཞི་རྒྱུ་

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



MoF/DNP/PMDD-21/2021-22/661

22 November 2021

The Chief Executive Officer
T&K Construction Pvt. Ltd
Thimphu

Subject: Decision of Independent Review Body (IRB)

Sir,

The IRB Secretariat had received your Application for review on 9 November 2021 pertaining to tender ID No. 9019 dated 23 August 2021 for "*Construction of 65 Bedded Mother and Child Hospital, Mongar*" published through eGP System.

Having accepted for review of your appeal the IRB met virtually on 17 November 2021 at 2:00 PM to review your application that had been lodged against the Health Infrastructure Development Division (HIDD), under Department of Medical Supplies & Health Infrastructure (DMSHI), Ministry of Health.

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 T&K Construction Pvt Ltd and responses from the HIDD.

Yours Sincerely,

(Karma Sonam)

Interim Chairperson

Independent Review Body

Copy to:

1. The Chief Engineer, HIDD, DMSHI, MoH.



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



In accordance with Clause 58 of the Rules of Procedures of the Independent Review Body of 2015, the IRB issues the following decision:

1. On the allegation of the Bid capacity score of 15/25 was obtained by T- Kunzom Construction Pvt Ltd considering the civil work construction of BNB Corporate Office Building projects [Part I- Civil] which was completed in 2016 but the e-Tool generated report states that it was completed in 2020, IRB is of the view that HIDD on their part has exercised due diligence in carrying out the evaluation based on the information generated from the e-Tool.

However, the IRB upon verification of the documents which were submitted by Bhutan National Bank (BNB) Head Office to Construction Development Board (CDB) and additional documents furnished by BNB to the IRB Secretariat, the following are the findings of the IRB:

- a. Four documents were submitted by BNB to CDB namely: Project closure report on civil components (Part I-Civil), Contract agreement signed with T-Kunzom Pvt Ltd for the design components (Part II- Interior Design), Overall project closure report and Project closure report on ID Components. Further upon request of the IRB Secretariat, BNB has also furnished a copy of the Provisional Completion Certificate for the Phase I- civil works.
- b. The work award letter was issued on 18 March 2014 for a contract duration of 24 months and the project commenced from 25 March 2014. However, the project was completed on 31 December 2016 due to some unforeseen technical problems encountered during the execution.
- c. As per the information updated by BNB in e-Tool, it states that *the main civil works were completed and closed on 31st December 2016 while the lifts, internal plumbing and compound works were deferred to be executed with Interior Design and other specialized works.*



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



Form 6- Decision of Independent Review body

Case name: Construction of 65 Bedded Mother and Child Hospital, Mongar

Case Reference Number: *MoF/DNP/PMDD/TRB-21/2021-22/04*

This Independent Review Body consists of:

Mr. Karma Sonam, Director, CDB	Interim Chairperson
Mr. Karma P Dorji, Director, DHPS, MoEA	Member
Mr. Tshering Yonten, Executive Director, CAB	Member
Mr. Chandra B. Chhetri, Dy. Secretary General, BCCI	Member

The parties and procurement under dispute are:

Applicant	Mr. Thinlay Gyamtsho Chief Executive Officer T&K Construction Pvt. Ltd
Respondent	HIDD, DMSHI MoH
Brief Description of Procurement	Tender ID No. 9019 dated 23 August 2021 for Construction of 65 Bedded Mother and Child Hospital, Mongar

Having duly conducted the review of documents and evidences submitted by both the 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:



དཔལ་ལྷན་འབྲུག་གཞི་རྒྱུ་།
རྒྱལ་ཡོངས་གཞི་རྒྱུ་ཆས་ལས་ཁུངས་། དྲུལ་རྩིས་ལྷན་ཁག།
ROYAL GOVERNMENT OF BHUTAN
DEPARTMENT OF NATIONAL PROPERTIES, MINISTRY OF FINANCE



- d. Accordingly, a Provisional Completion Certificate for Phase-I Civil was issued vide letter no. UC/Consult/BNBL/2017/610 dated 16/1/2017. The Provisional Completion Certificate issued by United Consultancy clearly states that *"BNBL Corporate Office Building (Phase-I Civil) has been completed except for the following items of work which have to be integrated and completed simultaneously with ID works. (1) Installation of lift; (2) boundary work and road work due to setback issues with adjacent land. In this regard, please consider this as a provisional certificate for the said work undertaken by T-Kunzom Pvt Ltd. Please find attached the handing/taking checklist which have been jointly verified by client representative, contractor and CMC"*
- e. With regard to the major component of work amounting to Nu. 163.641 Million, all payments made were executed in the Phase-I Civil and the remaining portion of work which had to be integrated and completed with ID works was only worth Nu. 16.814 Million. The remaining civil works continued till the end of ID works closure on 28 February 2019, but the overall completion report was updated in e-Tool only after completion of defect liability period of 12 months from the date of completion.
- f. Final Project Closure Report also reads *payments have been fully settled and the retention money of Nu.1.681 million will expire by the end of February, 2020.* This indicates that only 10% of the remaining portion of civil works Nu. 16.814 Million was retained as retention money and not the total amount of civil works under the Phase-I.
2. Based on the available information the major component of work which amounts to Nu. 163.641 Million was executed in the Phase-I Civil works which was completed and closed on 31 December 2016. Therefore, IRB took the stand that 31 December 2016 should be treated as the date of completion of the project - Phase-I Civil.
3. IRB is also of the stand that allowing spill over of all components of civil work to continue till 28 February 2019 is unreasonable, since the remaining partition of the work which had to be integrated and completed with ID works was only worth Nu. 16.814 Million out of Nu. 163.641 Million.



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



4. IRB had also observed that delay in updation of information despite the completion of works would give undue advantage in terms of generating score during the evaluation. Further in case the contractor has five works in hand then, the Provisional Completion Certificate issued could have been used to be eligible for the award of the new work.
5. Given the above infractions in the delay to update the work completion status in the e-Tool by Bhutan National Bank despite major civil works being completed back in 2016 and provision completion certificate being issued on 16 January 2017, the IRB decided to nullify the award of contract and terminate the procurement process in the present case and directs the Respondent for re-evaluation.
6. Phase-I Civil amounting to Nu. 163.641 Million shall be treated to be completed on 31st December 2016. Separate contract was executed for Interior Design works as a different package and this was not registered in the e-Tool. The remaining works which were executed along ID works amounting to Nu. 16.814 Million to be considered from 31st December 2016 till 28 February 2019.
7. The IRB shall immediately request the Construction Development Board (CDB) to make necessary changes in the e-Tool based on the decision of the IRB.
8. On the second allegation that the CEO of T-Kunzom is also the technical Director of M/s Wangthang Construction Pvt Ltd and is executing the 150 bedded MCH in Thimphu, IRB had examined the matter and opined that the CEO of T-Kunzom may work beyond the capacity of the Technical Director in the 150 bedded MCH in Thimphu. By considering the nature of engagement, his participation in the current tender is deemed inappropriate because of the conflict of interest and prima facie fronting issue. However, upon further verification of documents and clarifications submitted by HIDD, IRB concluded that HIDD had exercised appropriate due diligence and had also sought clarification on the issue with Wangthang Construction Pvt. Ltd. and Corporate Regulatory Authority, MoEA and further confirmed that there was no conflict of interest in general and CEO of T-Kunzom had no financial authority, liability and accountability on the GJPMCH project which was being executed by Wangthang Construction Pvt. Ltd.






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



IRB had sought further clarifications from the Companies Registrar, MoEA and confirmed that a person being a owner of the Company and Board Member to another company would not amount to fronting or conflict of interest. Therefore, while IRB finds that there is no apparent conflict of interest or fronting as alleged, further review on the financial involvement and other involvement is beyond the mandate of the IRB.

9. 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: 22 November 2021

<u>Interim Chairperson</u>  22/11/21	<u>Member</u> 
<u>Member</u> 	<u>Member</u>