



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



MoF/DNP/PMDD-21/2021-22/1270

22 April 2022

The Managing Director
Hi-Tech Company Pvt. Ltd
Punakha

Subject: Decision of Independent Review Body (IRB)


Sir,

The IRB Secretariat had received your Application for review on 30 March 2022 pertaining to tender dated 8 December 2021 for "*The Embankment and Earth Fill Works for Development of Pasakha Dry Port*" published through eGP System.

Having accepted for review of your appeal the IRB met virtually on 11 April 2022 and 19 April 2022 at the DNP Conference Hall to review your application that had been lodged against the Department of Trade, Ministry of Economic Affairs.

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 Hi-Tech Company Pvt Ltd and responses from DOT, MoEA.

Yours Sincerely,


(Chandra B. Chhetri)
Interim Chairperson
Independent Review Body

Copy to:

✓ 1. The Director General, Department of Trade, MoEA.



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



Form 6- Decision of Independent Review body

Case name: the Embankment and Earth Fill Works for Development of Pasakha Dry Port

Case Reference Number: MoF/DNP/PMDD/IRB-21/2021-22/05

This Independent Review Body consists of:

Mr. Chandra B. Chhetri, Dy. Secretary General, BCCI	Interim Chairperson
Mr. Karma Dupchuk, Director, DES, MoWHS	Member
Mr. Tshering Yonten, Executive Director, CAB	Member

The parties and procurement under dispute are:

Applicant	Mr. Tshewang Norbu Managing Director Hi-Tech Co. Pvt Ltd.
Respondent	Department of Trade Ministry of Economic Affairs
Brief Description of Procurement	Tender ID No. 10297 for the Embankment and Earth Fill Works for Development of Pasakha Dry Port

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་གཞུང་།
རྒྱལ་ཡོངས་གཞི་རྒྱུ་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. The IRB finds that the Additional clause in tender document under Specification and performance requirement *"For 70% of the earth fill materials required, the department has kept the lead of 20 km for Opening Bidding since the client could not ascertain the exact site for sourcing the earth fill materials. In case the winning bidder manages to lift the materials from closer proximity, the payment shall be based on the lead distance from project site to the site of materials extraction source"* and the pre-bid meeting minutes which states that *"in case the winning bidder managed to outsource sufficient materials within 20 km lead, then the procuring agency would do the rate analysis and accordingly revise the new rate based on the current market rate"* has led to the issue in the present procurement.

This basically means that the rates quoted by the bidders at the time of the bidding process for the 70% earth fill materials would be irrelevant because this rate would however change subsequently. This has created a gray area in the bidding process and leaving room for manipulation. IRB has observed that this has been the lapses on part of the Department.

2. During the evaluation, the evaluation committee sought rate analysis, however the Applicant has failed to submit detailed breakdown and analysis on the quoted rate, instead the bidder submitted a revised rate which was not in line with the bidding processes. While it was agreed and informed during the pre-bid meeting *winning bidder managed to outsource sufficient materials within 20 km lead then the procuring agency would do the rate analysis and accordingly revise the new rate based on the current market rate*, the bidder wasn't required to submit new rates at the time of bid evaluation since it clearly stated 'winning bidder'. Therefore, it was the responsibility of the Applicant to comply with the bidding terms and conditions.
3. The IRB directs the Respondent to revisit the departmental estimates to ensure it is consistent with prevailing market prices and take into consideration realistic conditions on the availability of the filling materials.


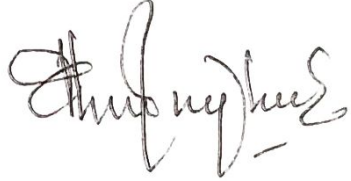


དཔལ་ལྷན་འབྲུག་གཞུང་།
རྒྱལ་ཡོངས་གཞི་རྒྱུ་ཆས་ལས་ཁུངས་། དངུལ་རྩིས་ལྷན་ཁག།
ROYAL GOVERNMENT OF BHUTAN
DEPARTMENT OF NATIONAL PROPERTIES, MINISTRY OF FINANCE



4. IRB observes that the Applicant has quoted Nu. 70/cum for BOQ item AR-2 in contrast to the rate for BOQ item AR-1 at Nu. 670/cum. The IRB here advises the Respondent to revisit if the bid is abnormally low bid seriously unbalanced or frontloaded bids as per the ITB provisions.
5. Given the above infractions, the IRB directs the Respondent to review the entire evaluation process.
6. 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.

7
Date: 22 April 2022

<u>Interim Chairperson</u>  By: Secretary General Bhutan Chamber of Commerce & Industry Thimphu : Bhutan	<u>Member</u> 
<u>Member</u> 