



དངུལ་རྩིས་ལྷན་ཁག།
Department of Procurement and Properties
Ministry of Finance
Royal Government of Bhutan

BHUTAN
Believe

29 October 2024

MoF/DPP/PMDD-15/2024-25/ 464

The Proprietor
Dhrodhen Enterprise
Phuentsholing

Subject : Decision of the Independent Review Body (IRB)
Case no : MoF/DPP/PMDD(15)/2024-25/02

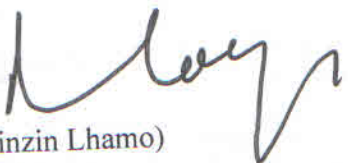
Sir,

The IRB Secretariat has received your Application for Review dated 12 October 2024 alleging the tender decision dated 2 October 2024 (Letter of intent) for "supply of M/s Angle Iron Post and u-Nails" published through the e-GP system was unjust and not satisfied with the response provided by the Respondent.

After review and acceptance of your Application for Review, the IRB met on 24 October 2024 to review your application that has been lodged against the Ministry of Agriculture and Livestock and concluded the grievance proceedings in the presence of the required quorum as per the IRB Rules and Procedure 2023.

The IRB after considering the facts and evidence submitted by the parties and having duly conducted the proceedings hereby issues the decision enclosed herewith. The decision of the IRB is confined to the issues raised in the application by the applicant and responses provided by the Respondent.

Yours sincerely,


(Rinzin Lhamo)
Chairperson
Independent Review Body

*Please file - make a
file for IRB
documents.*

Copy:

1. Hon'ble Secretary, Ministry of Agriculture and Livestock, for compliance to attached decision.



Decision of the Independent Review Body (IRB)

Description of Procurement : Supply of M/s Angle Iron Post & U Nails
Case reference number : MoF/DPP/PMDD(15)/2024-25/02

IRB Members Present:

1	Mrs. Rinzin Lhamo, Director, DPP	Chairperson
2	Mr. Sonam Penjor, Director, DoMCIIP, MoICE	Member
3	Mr. Karma Dupchuk, Director, DoID, MoIT	Member
4	Mr. Chandra Chhetri, SG, BCCI	Member

The parties and the Procurement under dispute are:

Applicant	Mr. Gyaltshen Dukpa Dhrodhen Enterprise Phuentsholing
Respondent	Ministry of Agriculture & Livestock

Background & discussion in brief:

The IRB Secretariat has received the Application for review on 12 October 2024 alleging the tender decision dated 2 October 2024 (Letter of intent) for “supply of M/s Angle Iron Post and U Nails” published through the e-GP system was unjust and not satisfied with the response

8



provided by the Respondent. The application was received through the e-GP and the processes for grievance till payment of grievance fee was facilitated through the system.

The application was verified by the Secretariat and found in compliance with IRB Rules and Procedures 2023. Thus the grievance was processed and submitted for proceedings. The IRB met on 24 October 2024 to review the grievance that has been lodged against MoAL in presence of the required quorum.

Claims as claimed by Dhrodhen Enterprise:

My grievance is based on the unsatisfactory response from the procuring agency in considering the second higher rate responsive as per the LOI due to application of 20% Domestic Margin preference.

As per the BOR, there are a total of 15 firms offering lower and comparable rates in total the responsive considered firms. Is the domestic preference margin applied uniformly to the offers made by all these bidders during evaluation to arrive at a fair determination of responsible bid without denying other bidders the opportunities as per Clause 35.2 (c) and other relevant clauses of the SBD and PRR as submitted earlier.*

The 'Technical specifications and compliance of Goods and related services (from e-LG-5) "has a specific column to fill information in regard to the origin of goods. is the information correctly filled as required by SBD where wrongful submission affects the responsiveness or the bid and contravenes certain SBD Clause.

Did the Procuring Agency determine the goods thus offered has its origin in Bhutan as per PRR 1.1.2.3 (a)? As far as everyone knows TMT Bar is the only steel product manufactured in Bhutan at present, no MS Angles, MS Sheets or other types of steel is manufactured in Bhutan. Granted an industry can avail VAC but what products are covered in the VAC is very important. Domestic industries should be given opportunities and support for growth but not at the cost of others.

The 1b. Price and Delivery schedule: "Goods Manufactured in Bhutan (Form e-LG-4b)" should be filled accordingly for goods manufactured in Bhutan- was this option available during tender preparation and submission? The Tender document had only "1a Price and delivery schedule: Goods Manufactured Outside Bhutan (Form e-LG-4a)" column available during tender preparation prior to submission. is the bid prices and discounts of SBD clause 18.6 followed as instructed and mandated.

I find the evaluation and determination of responsiveness of bids thus considered is highly

g

m f d



questionable as per the PRR and SBD instructions. My interpretation may be wrong and will stand corrected as the procuring agency may have their own way of interpretation and application of the PRR but it needs to be made transparent and elaborated to substantiate their claims as a mere three words "domestic preference applied" is not satisfactory.

As I highlighted in my earlier submissions in connection to my grievance, the government is going to incur huge financial loss as per the LOI. Moreover this tender being of the highest value good Tender for FY 2024, if implemented as per the LOI, will also deny traders who depend on government supply for fair opportunity of business.

Response as responded by MoAL:

Dhrodhen Enterprise bid was not lowest for any of the specified locations. For your information, the bid evaluation process compares bids from domestic manufacturers, who receive a 20% domestic preference, with those from general trade license holders

While you mentioned that your bid was lower, the evaluation results showed that it was not the lowest, even within the category of general trade license holders. You may have compared your bid to the quoted prices from domestic manufacturers and thus assumed that it was lower. However, as noted, your bid is not the lowest for any location.

20% domestic Preference was provided to domestic manufacturers, holding valid production and manufacturing license and value-addition certificates, based on ITB, clause 40.1 and was not intended to favor any firm as accused by the complainant.

A total of 55 bidders participated in the supply of angle post U-nails, including 11 domestic manufacturers.

Out of 11 domestic manufacturers, 10 domestic manufacturers have valid production and manufacturing license and value addition certificate for eligibility of the 20% domestic preference as per the IRB Clause 40.1 pertaining to Margin of preference and Clause 1.1.2.3 of PRR 2023

M/s Sersang Chain- link fencing, a domestic manufacturer has no value addition certificate for angle post and u- nails, thus the bidder was not eligible for 20% domestic preference.

All the 55 bidders were technically responsive for the next phase of evaluation.



Decisions:

Having duly conducted the review of documents and evidences submitted by both the parties in an equal and fair manner having concluded the proceedings and complied with the provisions of the IRB Rules and Procedures 2015, the Independent Review Body hereby delivers the following decisions:

In accordance with Clause 60 of the IRB Rules and Procedure 2023, the IRB hereby renders the following decision based on the evidences available:

1. The IRB finds that a total of 55 bidders participated in this tender out of which 10 bidders submitted the Value Addition Certificate for eligibility of 20% domestic preference. The Bid Data Sheet (BDS) in the bidding documents clearly specified that the domestic preference would apply. Accordingly, the Respondent has applied the domestic preference as per the process set in the the evaluation and qualification criteria prescribed in the bidding documents. Therefore, IRB is of the stand that domestic preference has been fairly applied to those bidders with valid Value Addition Certificates specific to the present procurement of supply of angle post and u-nails.
2. The IRB cross-checked if the "Technical specifications and compliance of Goods and related services (from e-LG-5)" has been correctly filled. The IRB here observed that the country of origin of goods was clearly specified. Likewise the country of origin could also be authenticated from the price schedule.
3. With regard to usage of form 1b. Price and Delivery schedule: "Goods Manufactured in Bhutan (Form e-LG-4b)" and "1a Price and delivery schedule: Goods Manufactured Outside Bhutan (Form e-LG-4a)", the IRB confirmed with the e-GP focal that while preparing the tender in the e-GP, the tender preparer has the option to select one form only (outside Bhutan or inside Bhutan). Hence for this tender, the Goods Manufactured outside Bhutan form was used.

IRB here is of the opinion that generally all the bidders quote the final net prices and then domestic preference is applied on the net price, therefore not using both the forms do not have any implication. IRB views that since information on these forms were available prior to submission of the bids, it is also the responsibility of the Applicant to seek clarification prior to submission of bids on any of the bidding related issues.

4. On the issue of whether the Value Addition Certificate (VAC) is specific to Angle Post and U-nails, IRB has cross-checked the VAC's submitted and observed that all VAC's submitted by the bidders were specific to the production of Angle post and U-nails and

9



therefore finds no merit in this submission. Furthermore, since the requirement to submit VAC was one of the evaluation criteria, it was the responsibility of the bidders to submit it, in order to qualify for 20% domestic preference. As such it is beyond the mandate of IRB and also the Respondent to question on the basis of how the VAC was issued.

5. In line with the above justifications, IRB reaches to the conclusion that the Respondents have not violated any of the procurement norms that would warrant nullification of the award of contract. Therefore, the IRB decides to uphold the decision of the Respondent and the Respondent can go ahead with the procurement process.
6. While this does not have an implication on the present decision, Respondent may note that domestic preference is applied on the product and not on the bidder/ manufacturer.
7. In pursuance to Clause 63 of the IRB Rules and Procedure 2023, the decision of the IRB shall be final and binding and if the decision is not accepted, then an appeal may be made to the Court only on a question of law. In such a case, any concession granted by the IRB shall stand withdrawn.

Mrs. Rinzin Lhamo, Chairperson

Mr. Sonam Penjor, Member

Mr. Karma Dupchuk, Member

Mr. Chandra Chhetri, Member

Dated: 29 October 2024