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Department of Procurement and Properties
Ministry of Finance
Royal Government of Bhutan

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MoF/DPP/PMDD-15/2024-25/467

29 October 2024

The Chief Executive Officer
Thangtong Iron and Steel
Phuentsholing

Subject : Decision of the Independent Review Body (IRB)
Case no : MoF/DPP/PMDD(15)/2024-25/03

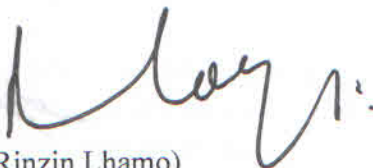
Sir,

The IRB Secretariat has received your Application for Review dated 17 October 2024 alleging the tender decision dated 8 October 2024 (Letter of intent) for "Supply of Chainlink & Barbed Wires" 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 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

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 Chainlink & Barbed Wires
Case reference number : MoF/DPP/PMDD(15)/2024-25/03

IRB Members Present:

1	Mrs. Rinzin Lhamo, Director, DPP	Chairperson
2	Mr. karma Dupchuk, Director, DiD, MoIT	Member
3	Mr. Chandra Chhetri, SG, BCCI	Member

The parties and the Procurement under dispute are:

Applicant	Chief Executive Officer Thangtong Iron and Steel Phuentsholing
Respondent	Ministry of Agriculture & Livestock

Background & discussion in brief:

The IRB Secretariat has received the Application for review on 17 October 2024 alleging the tender decision dated 8 October 2024 (Letter of intent) for "Supply of Chainlink & Barbed Wires" published through the e-GP system was unjust and not satisfied with the response provided by the Respondent. The application was received through the e-GP system 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 Thangtong Iron and Steel

According to ITB Clause 41 (Evaluation of Bids), "evaluation shall be done for Items or Lots." Additionally, the minutes of the pre-bid meeting on 2nd September 2024 state that "the work would be awarded to the lowest bidder(s) based on a Dzongkhag-wise lot basis."

However, preliminary bid figures announced on the e-GP suggest that JK Steel Solutions, Samtse submitted the lowest bids for all the listed delivery points (Gewogs/Chiwogs). If the evaluation adhered strictly to the criteria communicated to us in the pre-bid meeting, the entire contract should logically have been awarded to this bidder.

We were informally informed that the lowest bidder, JK Steel Solutions, was allowed to select the Dzongkhags where they could supply, and the tender committee subsequently issued letters of intent at higher rates than JK to seven other bidders.

For example: JK Steel Solutions was issued a letter of intent for Chhukha, Logchina, and Domazi at a rate of Nu. 245 per square meter. Rabten Wire Industry was issued a letter of intent for Samtse, Namgaycholing, and Gangtok for 5,400 sqm at a rate of Nu. 281.4 per square meter, even though JK Steel Solutions had quoted Nu. 241.68 per square meter for the same locations. This raises concerns about fairness and compliance with the pre-bid agreement, and we would like to understand whether it was appropriate to proceed with negotiations in this way.

It is important to note that the letter of intent shows that the evaluation has been done based on Gewog wise. However as per the Pre-bid meeting work would be awarded to the lowest bidder(s) based on a Dzongkhag-wise lot basis.

This e-GP tender requires that the bidder/ domestic manufacturers must produce Bhutan Standard Bureau Certificate and value added certificate to authenticate the value added, issued by the Department of Industry, MOICE, Bhutan.

One of the criteria for eligibility of a tenderer is that the domestic manufacturer must produce a Value-added Certificate to authenticate the value added, issued by the Ministry of Industry, Commerce and Employment (MoICE). According to the MoICE, the value addition percentage must be 40% and above to be eligible for 20% domestic preference in tender which is in line with the provisions on Fiscal Incentives Act of Bhutan 2021. Since this tender is limited to chain link manufacturers within Bhutan, however it appears that some lowest bidders have outsourced total production of Chain Link to foreign labors at minimal cost. This raises concerns about whether these bidders are genuinely meeting the value addition requirements. We assumed that the committee might have verified the authenticity of the 40% value addition certificate of the bidders.

We understand that the value addition certificate aims to:



Promoting job creation and engaging local labor and youth, contributing to national economic growth and social development. This is especially urgent at a time when many young Bhutanese are seeking opportunities abroad due to limited domestic employment options.

As Bhutan proudly transitions to middle-income country status since 13 December 2023, this milestone presents both opportunities and responsibilities. It underscores the need to strengthen our industries' capabilities and sustainability. To achieve this, it is imperative that all sectors of our society align their efforts toward advancing the national economy, fostering an environment rooted in mutual support, innovation, and shared success.

Encouraging import substitution by reducing reliance on foreign labor and retaining economic value within the country. The extensive involvement of foreign labor in domestic production raises concerns about whether these manufacturers genuinely meet the 40% value addition requirement, which directly impacts their eligibility for the certificate

1. Evaluation Process:

Was the deviation from the Dzongkhag-wise lot-based award discussed in the pre-bid meeting justified?

2. Negotiation and Letters of Intent:

Was it contractually correct to offer letters of intent at rates higher than those quoted by the lowest bidder?

3. Value Addition Compliance:

What specific metrics are used to evaluate whether bidders meet the 40% value addition requirement as per the Department of Industry, MOICE?

4. Impact of Outsourcing Production to Foreign Labor:

Does extensive outsourcing of production to foreign labor affect eligibility for the value addition certificate? How does the government monitor compliance with this criterion during the project lifecycle?

5. Monitoring Mechanisms:

Are there mechanisms in place to ensure that manufacturers meet BSB standards, including the requirement for in-house lab facilities with certified technicians to maintain quality control

Our Request:

Since the tender committee has initiated issuing letters of intent to the bidders at a higher rate than the lowest bidder, we respectfully request the government to consider equitable distribution of orders among all certified bidders. This will guarantee fairness, enable collaboration among experienced and new players, and ensure timely delivery of quality materials. Such an approach would contribute to the overall success of the fencing project and support the long-term stability of the domestic manufacturing sector.



Conclusion:

A fair and collaborative approach, with equitable distribution among certified manufacturers, will ensure the success of the project within quality standards and timelines. This approach will not only promote job creation for our young citizens and economic growth but also align the project with national policies aimed at supporting domestic industries and fostering sustainable development. We appreciate the opportunity to engage in this dialogue and look forward to your response.

Response as responded by MoAL:

Within the standstill period (9-14 October 2024), the complainant shared the following complaint through the e-GP system.

"We deeply appreciate the Ministry of Agriculture and Livestock (MoAL) for its dedicated efforts in ensuring the success of the chain-link fencing project through negotiations with the lowest bidder for the 20 dzongkhags and the distribution of orders to the next in line before the letter of intent was published."

To this, the procuring agency responded to the following in the system on 14th October, 2024.

"We greatly appreciate your concerns. At the moment, your submission is beyond the scope of this tender committee. We would advise you to submit this proposal through a relevant agency to the government for approval for the next phase of chain-link procurement. As for now, we have no option than to follow the procurement rules".

Response to Independent Review Body

The procuring agency received additional complaints through the Independent Review Body on 21st October 2024, which is beyond the standstill period. The complainant should have raised these concerns to the procuring agency within the standstill period which ended on 14th October 2024, so that the procuring agency could have responded. We believe that it may not be valid for the IRB to accept the additional complaints.

Nonetheless, we would like to submit clarifications for the information of the IRB team as detailed below:

1. Evaluation Criteria of Bids

While the ITB 41 states, "Evaluation shall be done for Items or Lots", our bid was item-wise and location-wise. The evaluation was carried out as specified in the bidding document.

While the complainant pointed out, "the work to be awarded to the lowest bidder based on Dzongkhag-wise lot basis", our bid evaluation was carried out location-wise and item-wise as specified in the BoQ.

2. Negotiation and Issuance of Letter of Intent

Because of the large size of the project, MoAL, in consultation with the Department of Industry,



DPP/MoF, and the OCASC/Cabinet Secretariat, it was decided that:

- a) the tender will be limited to domestic manufacturers, and;*
- b) the tender will be location-wise and item-wise, so that as many domestic manufacturers can participate in the tender;*

However, when the bids were opened, only one bidder quoted the lowest for all locations (80 schemes) and for both chain-link and barbed-wire.

The Tender Committee Issued LoI to the lowest bidder (for chain-link) and sought assurance whether the firm can supply the entire items within the stipulated time. However, the lowest bidder responded stating that they can supply about 40 % of the work only (32 schemes out of 80 schemes), within the stipulated time of 2 months. The firm has also indicated the locations where they can supply. Subsequently, the TC discussed and recommended to issue LoI to the second lowest bidders (location-wise), in the interest of cost efficiency.

If we had rejected the lowest bidder for not being able to supply 100%, first, it would have prolonged the procurement cycle, and; second, an additional sum of about Nu. 10 million (minimum) would have been incurred. Our arrangement of awarding 40% of the work to the lowest bidder and the remaining 48 schemes to 7 second lowest bidders (at their quoted rate), has saved about Nu. 1.320 million. For chain-link fencing, out of Nu. 5.1 billion in 13 FYP, only about Nu. 1.5 billion has been secured from the GoI/PTA. The urgency is that we establish the chain-link fencing as fast as possible and explore for additional funds from the GoI and other donors.

3. Practical Application of Value-addition Certificate

The TC has considered valid value-addition certificates issued by the MoICE final and binding.

4. Impact of Outsourcing Production to Foreign Labours

The fact that there is a valid value-addition certificate issued by the MoICE, the outsourcing of labour has not affected the value-addition.

5. Monitoring Mechanism

We have kept a dedicated budget Nu. 100,000 per scheme, for M&E and testing of the quality standards at the BSB-level. The executing agencies (Dzongkhags and Gewogs) shall be instructed to carry out the M&E effectively.

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 minutes of the pre-bid meeting held on 2 September 2024 stated that the work would be awarded to the lowest bidder based on a Dzongkhag-wise lot basis. While the Bid Data Sheet stated that '*Evaluation will be done as per item wise for each Dzongkhag*'.

IRB here observes that all the bidders including the Applicant had bid for all the items for all the locations, this indicates that quote was based on location and item wise as per the price schedule.

If at all the prices were to be quoted on a Dzongkhag-wise lot basis, the Respondent also had the responsibility to align the price schedule in the e-GP.

2. On the issue of carrying out negotiations, the IRB after review found that only one bidder had quoted lowest for all the locations for both chain link and barbed wires. Accordingly, clarification was sought at the time of evaluation on whether the firms can supply the entire items within the delivery period. To which Supplier agreed to supply 40% of the schemes within 2 months.

The IRB here finds that this negotiation is in line with the procedures in the Procurement Rules and Regulations Clause 5.5.1 which states that *negotiation shall be carried out on terms and conditions for all types of procurement methods*.

The Respondent has then rightly awarded the withdrawn portion to the next lowest bidders as required by the bidding terms.

On this the IRB advises the Respondent that for the withdrawn portion of the schemes, the bid security should be forfeited on a pro-rata basis for the withdrawn portion of the goods. IRB also informs that in accordance with the ITB Clause 34.1 of the Bidding Documents, the winning bidder should bear the positive difference of sum with the next lowest bidder.

3. On the issue of whether the Value Addition Certificate (VAC), IRB has cross-checked the VAC's submitted and observed that all VAC's submitted by the bidders were specific to the production of Chain Link and Barbed wires and therefore finds no merit in this submission. Furthermore, since the requirement to submit VAC was one of the



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evaluation criterias, 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.

4. Inline 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.
5. 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.

Mr. Chandra Chhetri, Member

Mr. Karma Dupchuk, Member

Mrs. Rinzin Lhamo, Chairperson

Dated: 29 October 2024