



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

BHUTAN
Believe

MoF/DPP/PMDD-15/2024-25/ 466

29 October 2024

The Proprietor
Waiba Construction
Dagana

Subject : Decision of the Independent Review Body (IRB)
Case no : MoF/DPP/PMDD(15)/2024-25/04

Sir,

The IRB Secretariat has received your Application for Review dated 22 October 2024 alleging the tender decision dated 17 October 2024 (Letter of intent) for "Construction of upper Daragaon farm road, under Lhamoizingkha Gewog" 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 Lhamoizingkha Gewog Administration 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. The Gup, Lhamoizingkha Gewog Administration, for compliance with the decision.



Decision of the Independent Review Body (IRB)

Description of Procurement: Construction of upper Daragaon farm road
Case reference number : MoF/DPP/PMDD(15)/2024-25/04

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	The Proprietor Waiba Construction Dagana
Respondent	Lhamoizingkha Gewog Administration

Background & discussion in brief:

The IRB Secretariat has received the Application for review on 22 October 2024 alleging the tender decision dated 17 October 2024 (Letter of intent) for "Construction of upper Daragaon farm road" 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 the Respondent in presence of the required quorum.

Claims as claimed by Waiba Construction

This is regarding the tender evaluation for the construction of upper Daragaon farm road, under Lhamoizingkha Gewog. As per the Bid opening record, there were several bidders with the exact same bid amount (Nu. 2,060,000.00 Ngultrum Two Million Sixty Thousand only) 20% below estimated amount, technically lowest bidders as per the new rule of GPPMD, which was marked with green. However the LOI is awarded to M/s Shrestra Construction with 19.991% below estimated amount. Although We understand there should be kept criteria to filter the equal bidders, Our grievance here is not because the work was not awarded to my firm but the confusion has arised because the LOI is not issued among any of the lowest quoted bidders.

To which the reply we received from Gewog Administration was "As you have mentioned, there were five bidders with the same lowest bid amount of Nu. 2,060,000/- with -20% thus, while filtering the lowest bidders through the avg. APS criteria 1 of the bidder has 2 works in hand, 1 has scored zero APS and the avg. APS for the other 3 bidders was also very minimal i.e below 5. Thus, to further assess, APS for all the bids within 19% was evaluated as the amount difference was very negligible compared to the lowest bid. Amongst the 35 bids Shrestra scored highest.

Our firm does not find the criteria or the procedure to award the work to other than the bidders with quoted amount 20% below estimate not valid due to following reasons:

- 1. The BDS states that "In case where there is more than one bidder quoting the lowest amount (within + or - 20%), the work shall be awarded to the bidder with the highest average score calculated from the Average Performance Scores (APS) for the last three consecutive works." However it is not mentioned that if the bidders Average APS is below 5 it will result in rejection of the bid.*
- 2. We understand that if the bidder has not at all completed any projects then the APS could be 0 (Zero), although with that system the new upcoming energetic contractors are suppressed and will never get any work.*
- 3. On the other hand for example if the bidder has completed just one project in the past, how can we assume the other two work's APS to be 0 (zero) when the bidder has not completed or taken part in those projects. The sole purpose of Average Performance Score is defeated. In our case*



my firm has scored 9 with just one project being completed. By the evaluation rule $(9+0+0)/3$ APS amounts to just 3 which means the quality of the work that my firm carried out in the past was the worst which is not the case. My firm does not understand the process of calculating Average.

4. We also believe that the similar work experience is also taken into consideration where the experience in road works should be given priority for the work requiring W1 items. With this we would like to request the work is awarded within the lowest bidders (20% below estimate) whoever is awarded with the work.

Response as responded by Lhamoizingkha Gewog:

This is in response to the allegation in the application for review. As per Clause 35.1 of the Standard Bidding Document (SBD), the Procuring Agency shall award the contract to the bidder whose offer is substantially responsive and determined to be the best evaluated bid, subject to qualification criteria, including past performance records. The Gewog tender committee thoroughly considered all necessary factors during the evaluation process.

In this particular case, we acknowledge that the deviation percentages between bidders in the -20% and -19% range were close in terms of financial impact. As per the opening report, there were five bidders with the same lowest quoted amount of Nu. 2,060,000/- with -20% below the departmental estimate. Accordingly, as per the average APS comparison M/s Tshering Kay Dee Construction scored zero since, the firm is newly established and hasn't executed any works yet, M/s Chimi Seldon Construction has already two works in hand and the APS for the other three bidders were 3 for M/s Waiba construction, 4.67 for M/s Jigme T Choedak construction and 4.33 for M/s CNR Construction. However, the Gewog tender committee placed considerable importance on the past performance of the bidders. Thus, the minor difference in percentage was not deemed significant enough to affect the procuring agency's decision-making in terms of cost savings, and the evaluation process included reviewing the Average Performance Score (APS) based on the past three consecutive works for all the bidders with the bid percentage within -19%. The evaluation was done amongst the 36 bidders. Having observed that there is negligible difference in amount between L1 (lowest bidder) and highest APS scoring bidder stood at Nu. 243.20/- (Ngultrum two hundred forty three and chetrum two) only and the APS difference of 6 points the Gewog Tender Committee unanimously decided to award the work for construction of upper Daragaon farm road to Shrestra Construction having BCTA No. 8432 whose APS score of 9 points.

The committee's decision was made with the intention of ensuring that bidders with strong performance records are given due consideration. This aligns with our commitment to encourage



quality and reliable project delivery for the Gewog. By awarding the contract to the bidder with the highest APS, we have adhered to the principle of ensuring the best value for public resources while fostering a competitive and fair bidding environment.

Moreover, setting the selection criteria in BDS based on the past performance of the bidder was genuinely aimed for getting a performing bidder and not to suppress the upcoming bidders. The average APS for M/s Waiba Construction was $9/3=3$ points with only one work executed. The works not executed were considered zero only for the uniformity of APS comparison amongst the bidders with the three consecutive works score and not to degrade the contractor's performance.

We appreciate your understanding and assure you that the evaluation process was carried out transparently and in full compliance with the established guidelines. This response addresses the concern by highlighting the rationale behind the decision to prioritize performance records over marginal financial differences.

Decisions:

Having duly conducted the review of documents and evidence 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 Respondent with the intention to address the issue of tie bids had inserted this additional criteria in the Bid Data Sheet stating that "*In case where there is more than one bidder quoting the lowest amount (within + or - 20%), the work shall be awarded to the bidder with the highest average score calculated from the Average Performance Scores (APS) for the last three consecutive works.*"

However, IRB finds that the criteria where a bidders bid is not considered for award if the APS score is below 5 does not appear anywhere as an evaluation criteria in the bidding documents.

2. Clause 3.1.4 (a) of the Procurement Rules and Regulations (PRR) 2023 states that the tender evaluation committee shall evaluate bids using the criteria and methodologies specified in the bidding documents. Furthermore, PRR 5.4.4.1 also states that such



methods and factors as specified in the bidding documents shall only be used in actual evaluation and not some other methods or criteria. Introduction of methods and factors not mentioned in the bidding documents would be considered unfair and shall be prohibited.

3. While the Respondents intention was to select the best bidder with the best track record, IRB is of the opinion that the Committee has failed to prescribe these specific conditions in the bidding documents and evaluation was carried out in deviation of prescribed conditions.
4. Given the above infractions of the provisions of the Procurement Rules and Regulations and the bidding documents, the IRB decides to nullify the award of contract and terminate the procurement process in the present case and directs the Respondent to re-evaluate.
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