



Decision of the Independent Review Body (IRB)

Description of Procurement : Construction of River Protection Wall at Pangrizampa
Case reference number : MoF/DPP/PMDD(15)/2024-25/08

IRB Members Present:

1	Mrs. Rinzin Lhamo, Director, DPP, MoF	Chairperson
2	Mr. Karma Dupchuk, DG, DoID, MoIT	Member
3	Mr. Sonam Wangchuk, CED, CAB	Member
4	Mr. Chandra B. Chhetri, SG, BCCI	Member

The parties and the Procurement under dispute are:

Applicant	Chimmi R.D Construction Pvt Ltd
Respondent	Thromde Administration, Thimphu

Background & discussion in brief:

The IRB Secretariat received a review application on February 25, 2025, challenging the tender decision dated December 19, 2024 (Letter of Intent) for awarding the contract to M/s KPC Construction Pvt. Ltd. The applicant argues that the decision deviated from standard procurement rules and was inconsistent and unfair, as their own bids were previously rejected for similar reasons. 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 March 7, 2025 to review the grievance that has been lodged against Thimphu Thromde Administration in presence of the required quorum.

Claims as claimed by Chimmi RD Construction Pvt Ltd:

"We beg to differ with the Procuring Agency's response to our grievance and maintain that the ITB Clause 31.1 and 31.2 have been breached. The lowest evaluated Bidder i.e. PKC Construction's financial bid is still 20.15% below the Departmental estimate after the Procuring

(Handwritten signatures)



Agency's review of its own cost estimate and the Bidder's quoted amount. The ITB Clause 31.2 states that "After revisiting the departmental estimate as provided in Clause 31.1, if the Procuring Agency determines that the Bid offered by the Bidder is 20% below or above the Agency estimate, the Procuring Agency shall eliminate the Bid before proceeding towards Bid evaluation." The Procuring Agency's decision to award the contract to the above-mentioned Bidder is a clear contravention of Clause 31.2.

In its decision of Intent to award the contract to a bidder that has not conformed and complied with the Procurement Guidelines, we feel the Procuring Agency has deviated from the standards with its interpretation and application of the procurement guideline. We feel an element of subjectivity has been entertained in its decision.

It may be informed that we have been bidding for numerous government tenders for over a decade and have diligently followed the standing procurement guidelines in the preparation of our bids. Since the introduction of the current procurement guideline vis a vis Bid Evaluation, we have had some experiences whereby our bids were rejected because the financial offers were beyond the stipulated range i.e. +ve/-ve 20% of the Procuring Agency's original official estimate and or review of it. In a few cases our bid offer was only a few decimal places beyond the +/- 20% range of the departmental estimate. We have been accepting it as we felt the decisions were in line with the established procurement rules."

Response as responded by Thimphu Thromde:

The decision was made based on Clause 5.4.5.1 of the Procurement Rules and Regulations (PRR) 2023, which states:

"An Abnormally Low Bid is one where the Bid price, in combination with other constituent elements of the Bid, appears unreasonably low to the extent that the Bid price raises material concerns as to the capability of the Bidder to perform the Contract for the offered Bid price. Before proceeding to further analysis, the Procuring agency shall revisit their departmental estimate to ensure it is realistic compared to the prevailing market rates."

Additionally, Clause 5.4.5.2 specifies:

"After revisiting the departmental estimate as provided in section 5.4.5.1, if the procuring agency determines that the bid offered by the bidder is 20% below or above the agency estimate, the procuring agency shall eliminate the Bid(s) before proceeding towards bid evaluation."

Furthermore, an official communication from Mr. Tenzin Phuntsho, Department of Procurement and Properties, Ministry of Finance, conveyed the following updates to the e-GP system, effective December 8, 2024:



1. The auto-rejection feature for abnormal bids has been removed to align with PRR 2023 Clauses 5.4.5.1 and 5.4.5.2.
2. The color coding for abnormal bids—green for abnormally high and red for abnormally low—has been discontinued.

Taking into consideration the above provisions and the changes in the e-GP system, the tender committee made a fair and unbiased decision. Since the auto-reject feature was removed, the committee referred to Clause 5.4.5.1 and reviewed the departmental estimate. According to the detailed estimate, 90% of the project cost is attributed to stone/boulders, which are locally and naturally available in Bhutan. Since these materials do not need to be imported, costs can be reduced by using own machinery and trucks for extraction and transportation respectively. Additional cost savings can be achieved through effective project management. Therefore, the committee could not rely completely on the Bhutan Schedule of Rates (BSR) for this project.

The committee also analyzed the bid prices and found the difference to be minimal:

- M/s Chimmi RD Construction Pvt. Ltd: Nu. 18,275,857.90 (-19.99%)
- M/s KPC Construction Pvt. Ltd: Nu. 18,240,000.00 (-20.15%)
- Price difference: Nu. 35,857.90

Further the committee review the technical scores and Average Performance Scores (APS) as details below

Firm Name	Technical Score	APS
M/s Chimmi RD Construction Pvt. Ltd	98.78	8.79
M/s KPC Construction Pvt. Ltd	98.40	8.40

By viewing above scores, both contractors have strong technical competence. Furthermore, the committee asked rate analysis from M/s KPC Construction Pvt. Ltd and found that the rates were workable and viable. After thorough deliberation, the committee unanimously decided to award the contract to M/s KPC Construction Pvt. Ltd as per e-tool report to achieve economy and efficiency.



Decision:

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 2023, 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 evidence available:

1. The IRB has observed that the Respondent has misinterpreted the *Abnormally Low Bid* clause by awarding the contract to a bid that was 20.15% lower than the Departmental estimate.
2. As submitted by the Respondent, the email sent by Mr. Tenzin Phuntsho from the Department of Procurement and Properties (DPP) on 8 December 2024 was cited as the basis for assuming that the Abnormally Low Bid provision had been revised. However, the email explicitly stated "Gentle Information," as the title of the email and informing of the changes in the e-GP system to align with the existing abnormally low bid provisions. Any formal change in policy must be issued in the form of an official notification from the Ministry of Finance.

To prevent any misunderstanding, Mr. Tandin Dorji from DPP subsequently sent an email on 10 December 2024, clarifying that the rule on *Abnormally Low Bids* remains unchanged. The earlier email was merely intended as a procedural alignment with the e-GP system and the existing abnormally low bid provisions.

3. 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 directs the Respondent to re-evaluate the bids in line with the existing abnormally low bids provisions.
4. 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.



<p><u>Mrs. Rinzin Lhamo, Chairperson</u></p> 	<p><u>Mr. Karma Dupchuk, Member</u></p> 
<p><u>Mr. Chandra B. Chhetri, Member</u></p> 	<p><u>Mr. Sonam Wangchuk, Member</u></p> 

Dated: 10 March 2025