



**Decision of the Independent Review Body (IRB)**

**Description of Procurement** : Construction of Box-cut Bypass from Tsachu Top - Jigmecholing (Ch. 9.2 - 19.314 km), Package II.

**Case reference number** : MoF/DPP/PMDD(15)/2025-26/03

**IRB Members Present:**

1	Mrs. Rinzin Lhamo, Director, DPP	Chairperson
2	Mr. Karma Dupchuk, <sup>D.G.</sup> Director, DoID, MoIT	Member
3	Mr. Sonam Wangchuk, ED, CAB	Member
4	Mr. Chandra Chhetri, SG, BCCI	Member

**The parties and the Procurement under dispute are:**

Applicant	Mr. Dorji Penjor Chief Executive Officer M/s Chimmi RD Construction Pvt. Ltd Thimphu
Respondent	Department of Surface Transport, Ministry of Infrastructure and Transport Thimphu



## **Background & discussion in brief:**

The IRB Secretariat has received the Application for review on 18 July 2025 alleging the tender decision dated 8 July 2025 (Letter of intent) for “Construction of Box-cut Bypass from Tsachu Top - Jigmecholing (Ch. 9.2 - 19.314 km), Package II” 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 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 2025. Thus the grievance was processed and submitted for proceedings. The IRB met on 30 July 2025 to review the grievance that has been lodged against DoST in presence of the required quorum.

## **Claims as claimed by Chimmi RD Construction Pvt. Ltd:**

### *I. Procedural Irregularities in Evaluation*

#### *1. Violation of Pre-Bid Decisions - Improper Verification Method*

*The Pre-Bid Meeting Minutes dated 04.06.2025 (Annexure C) clearly mandated that verification of resource commitment (manpower & equipment) would be conducted through the e-Tool System. Contrary to this:*

*TEC sought verification through external agencies (emails to DHyE), violating Key Point to Remember, Evaluation guidelines, PRR 2023 (Annexure D), which accepts the concurrence of third-party data. The client agency (DHye) explicitly advised DoST to consult us prior to decisions (Annexure E), which was not done. Deployment of resources in other projects was formally approved on 10.03.2025 (Annexure F), well before this tender notice date.*

*Relief Sought: Reinstatement of 5 marks wrongfully deducted under HR criteria and 0.4 marks under Equipment due to unjust verification methods.*


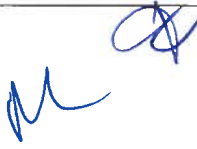
### *II. Response to Alleged Discrepancies*

#### *1. Allegation of Forgery - Signatures of Ms. Pema Lhamo*

*TEC alleges possible forgery based on identical signatures by Ms. Pema Lhamo and Mr. Pema Tshering. We categorically deny this. The following clarifications are provided:*

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*Authorization Letter (Annexure J) from Ms. Lhamo empowered Mr. Tshering to sign on her behalf, which is a standard business practice, not a breach under IT B 2.1.1 (i). The same signature appearing on both CVs simply indicates authorized delegation, not misconduct.*

## 2. Inconsistent Letterhead - "CHIMMI RD & CYJ JV"

*A few pages bearing this JV header were draft documents inadvertently included. The final Tender Form clearly names Chimmi RD Construction Pvt. Ltd. as the sole bidder. There was no intention to mislead.*

## 3. Transit Mixer Agreement - Erroneous Upload

*A previous lease agreement was mistakenly attached for this bid. The same equipment was proposed, and this was a clerical error with no material bearing on eligibility or compliance.*

*Relief Sought: All above objections be expunged, as they do not constitute technical non-compliance or misrepresentation under procurement law.*

## III. CiNET Update Request (GCP-2 Project)

*We request IRB's kind intervention in facilitating the CiNET system update for our ongoing GCP-2 work with DHyE. Despite multiple requests, we are unable to update credentials due to lack of access. This affects our bid capacity unjustly in future tenders.*

*Relief Sought: IRB to direct concerned agencies to upload GCP-2 data into CiNET.*

## IV. Summary of Reliefs Requested

*We respectfully seek the IRB's intervention to:*

- 1. Restore unjustly deducted marks (2 HR + 0,4 Equipment + 3 Surveyor= 5.4 marks)*
- 2. Expunge all unsupported allegations (forgery, incorrect letterhead, wrong document upload).*
- 3. Facilitate CiNET system update for our firm's ongoing projects for accurate bid capacity.*



**Response as responded by DoST:**

**1. Verification of HR and Equipment Engagement**

*The pre-bid meeting did not impose any restrictions on the evaluation guideline requirements but emphasized the continued use of eTOOL for the evaluation process. When evaluating a tender, we check the status of human resources (HR) and equipment based on whether they are already being used elsewhere. While the eTool system helps flag this, it's common practice to also look at whether these resources are currently working on other ongoing projects, even if the system hasn't marked them. So, the evaluation includes checking both officially committed resources and those physically active at other sites.*

*Moreover, on the contrary to the claims of violating the Key points to Remember in the Evaluation Guideline, the Project Management of the project under DHyE did not issue any certification mentioning that those engaged resources are no longer required in the project. The guideline also specifically stated that the resources are permitted to be used in the current project only if the project manager of the project certifies that they are no longer required in the other project and this was mainly to avoid situations where resources are deployed for multiple projects.*

*According to the Ministry's notice issued on January 17, 2020, both the Procuring Agency (PA) and the contractor are equally responsible for updating the status of HR and equipment in the CiNET system. In this case, both parties failed to update their information related to a project under DGPC. As a result, the TEC had to ask DHyE for the contractor's resource status as an extra step to ensure fairness during the evaluation process.*

*When the DHyE shared the resource details, they referred to the qualification and disqualification of the bidder and requested us to verify the information with the contractor. However, this verification was unnecessary, since DHyE had already provided accurate and reliable information regarding the contractor's resource status for the project.*

*The bidder claims that the deployment of resources in the other project was formally approved on 10.03.2025 well before the issuance of this tender notice. However, the contractor's commitment letter to the Project Director, DHyE, specifically mentioned that the required machinery and manpower have already been engaged, and they committed to mobilize and deploy the remaining equipment and human resources as and when required at the site. This clearly indicates that the list provided by DHyE reflects the actual equipment*



*and manpower currently deployed and engaged at the project site. The letter also highlighted that any additional equipment and manpower would be mobilized for other projects, but it never mentioned that the equipment and manpower already engaged at the DHyE site would be utilized for any other project. Therefore, the equipment/machine engaged in the DHyE project cannot be taken into consideration as the Project Manager has never issued a certificate stating they are no longer required in the other project.*

*Therefore, the TEC conducted the evaluation in accordance with the evaluation guidelines, properly verified the documents submitted by DHyE to ensure fairness, and did not violate any decisions made during the pre-bid meeting*

## 2. Engagement of Mr. Tshering Tashi (Surveyor)

*It is generally understood that only engineers are allowed to work on two projects at the same time. According to the current evaluation practice followed by almost all procuring agencies, only engineers (not surveyors) can be involved in two projects at once, and even then, only within the same company. Surveyors are allowed to work on just one project at a time.*

*Moreover, during the evaluation, it was found that Mr. Tshering Tashi, who was proposed as the surveyor, was already working on the Gamri Hydro Project. This means he was involved in more projects than allowed. Additionally, he was replaced at the project site only after the evaluation of this tender was completed (see Annexure I). The appellant's claim that a surveyor can handle two projects at once is incorrect and misleading. His appeal to allow the two works by the surveyor is, in fact, a misappropriation to obtain this work.*

*The contractor also claimed that the Surveyor committed (Mr. Tshering Tashi) was replaced by Mr. Bumpa Dorji on 06.02.2025, prior to tender submission. But the list shared by DHyE didn't mention that he was being replaced. Further, the acceptance of the replacement of key personnel by the DHyE was issued only on July 11, 2025 which was only after issuance of Lol indicating that the particular committed HR was engaged for that project till July 11, 2025. Moreover, the official correspondence shared by the bidder as Annex (I) was submitted only with the grievance submitted to IRB, which happened to be only after the evaluation of this tender submitted only with the grievance submitted to IRB, which happened to be only after the evaluation of this tender.*

*The issuance of letter on July 11, 2025 also indicates that this is the solicited letter by the bidder to indicate his non engagement of HR to obtain the work through misinterpretation.*

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Signature: [Handwritten signature in blue ink]

Initials: [Handwritten initials in blue ink]





*The acceptance of such a letter would undermine the future tendering process undermining the very purpose of having the PRR.*

**3. Forged Signature of Ms. Pema Lhamo & Inconsistent Document**

*The appellant claims that there was no violation of ITB 2.1.1 (ii) and that Ms. Pema Lhamo had authorized Mr. Pema Tshering to sign the bid on her behalf. They have submitted an authorization letter as proof. However, This letter was not uploaded in the e-GP system along with the bid indicating the fabrication of the authorization letter to deny their forgery. Therefore, it cannot be accepted as a valid supporting document.*

*On top of that the date on the letter appears suspicious and could have been backdated. Since there is no proof that the authorization letter was not submitted during the bid evaluation, its authenticity is questionable. Further, the acceptance of such additional documents during the grievance hearing would undermine the future tendering process and will set precedent undermining the PRR.*

*The bidder also stated that the draft letterhead showing 'Chimmi RD & CJY IV' was mistakenly included in the tender, which not only indicates a lack of authenticity and is misleading but also supports the forged signature of the aforementioned personnel.*

*Regarding the incorrect submission of the transit mixer agreement, the contractor's assertion that it does not affect eligibility or compliance contradicts the evaluation guideline, which clearly states that the agreement must be project-specific. Consequently, these resources will not be considered in the evaluation. and the corresponding score will be automatically lost.*

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Handwritten signatures and marks in blue ink.



**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 2025, the Independent Review Body hereby delivers the following decisions:

In accordance with Clause 54 of the IRB Rules 2025, the IRB hereby renders the following decision based on the evidences available:

1. The IRB notes that the agreed mechanism, as captured during the pre-bid meeting, explicitly stated that the engagement of personnel and equipment would be verified through the e-TOOL system. However, during the evaluation process, the Tender Evaluation Committee (TEC) proceeded to assess information beyond what was available in e-TOOL, thereby deviating from the agreed methodology. Furthermore, the IRB observes that limiting the assessment of information exclusively to hydropower projects in this instance introduced a level of subjectivity into the evaluation process. The Respondent has argued that it is standard practice to consider other ongoing projects beyond what is flagged by the system.

The Procurement Rules and Regulations unequivocally require that all evaluation criteria be pre-determined and clearly articulated in the bidding documents. The introduction of new or unstated evaluation criteria during the assessment stage is considered unfair and is expressly prohibited. Accordingly, in the present case, the consideration of other ongoing projects particularly those not recorded in the e-TOOL system and not stipulated in the published evaluation criteria constitutes a breach of the applicable procurement regulations.

2. The IRB finds that the Tender Evaluation Committee (TEC) did not adequately differentiate between resources that were contractually committed at the time of bid submission and those that were subsequently deployed. This shortcoming was acknowledged by the Respondent during the IRB meeting, wherein it was stated that the evaluation had been conducted solely based on information provided by the DHyE. While the TEC demonstrated a degree of due diligence by extending its evaluation beyond CiNET and e-TOOL, it nonetheless bore the responsibility to ensure that all information relied upon was properly verified and substantiated. Sole reliance on the list submitted by DHyE was insufficient, especially in light of the fact that the accompanying email explicitly advised that confirmation be sought from the contractor and indicated that the project in question was not yet fully mobilized.

Although seeking clarification directly from the contractor may not have been a procedural requirement, it would have been prudent to engage with DHyE Management to clarify these

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matters prior to making any award decisions. The IRB further finds that, with respect to the engagement of the Surveyor and the Equipments, the Tender Evaluation Committee failed to adequately establish whether these resources were formally engaged under the project or merely mobilized as supplementary manpower to expedite ongoing works. The absence of clear verification in this regard raises concerns about the thoroughness of the evaluation process and has contributed to a lack of transparency and clarity in the evaluation process.

3. The Respondent has made reference to the *Evaluation Guidelines for Procurement of Works (Above Nu. 5.00 Million)*, 2023, particularly for requirement of release letter if equipment is no longer required. However, the Evaluation Criteria contained within the bidding documents do not explicitly impose such a requirement. Consequently, reliance on the Evaluation Guidelines as the basis for evaluation lacks legitimacy, and is not binding upon the bidders.
4. While it is clear that an Engineer may be assigned to two project sites simultaneously, provided that both assignments are within the same firm, the IRB notes a lack of clarity regarding the classification of Surveyors and whether they may be considered as Engineers for evaluation purposes. In light of the apparent misinterpretation and ambiguity on this matter, the IRB advises the Respondent to seek formal clarification from the Bhutan Construction and Transport Authority (BCTA). Establishing a clear position on this issue will help ensure consistency and reduce ambiguity in future tender evaluations.

With regard to the replacement of personnel, while the Applicant asserts that formal approval was prior to submission of bids, the corresponding clarification letter was submitted only after the issuance of the Letter of Intent. It was the responsibility of the bidder to ensure that all relevant information, including any changes or approvals, was clearly communicated and properly documented prior to the submission of bids. Failure to do so has resulted in avoidable ambiguity, which could have been prevented through due diligence at the appropriate stage of the bidding process.

5. With regard to the allegation of forgery, the IRB notes that it falls outside its mandate to determine whether the matter constitutes forgery. Should there be sufficient grounds or evidence to support such a claim, the matter may be pursued separately with the relevant authorities. However, in relation to the submission of the Authorization Letter, the IRB finds that it does not meet the admissibility requirements for the specific tender in question and therefore cannot be considered valid for evaluation purposes since this document was only submitted at the time of grievance submission.
6. The IRB finds that the use of an inconsistent letterhead in the Joint Venture agreement does

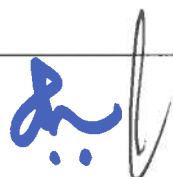






not materially impact the validity of the bid, as the signatories and the contents of the agreement are clear and unambiguous. However, given the status of the Applicant as a large-class contractor, it is expected that such documentation is prepared with due diligence and in a manner reflecting professional standards in future tenders.

The IRB concurs with the TECs assessment that the submission of an incorrect agreement for the transit mixer warrants the non-award of points for that particular item of equipment. In accordance with the established evaluation criteria, points can only be awarded for equipment that is properly supported by valid and relevant documentation.





7. The IRB informs that the Clause 6 of Monitoring Guidelines 2020 issued by the Bhutan Construction and Transport Authority (BCTA) requires that ongoing works be updated in the Ci-NET system within 14 days. In cases where implementing agencies fail to update such information, the Guidelines permit contractors to directly initiate the registration process with BCTA. In the present case, the Applicant did not exercise this provision. It is also a recurring observation of the IRB that contractors frequently fail to update project information during the initial phases of construction, basically accruing benefits for bid capacity and works in hand. On the contrary, efforts to update the records are typically made only when the works are nearing completion or completed with the intent to accrue benefits for similar work experience, Average Performance Score and bid capacity. Therefore, it is the responsibility of the Contractor to ensure that all information of works in hand are accurately and completely updated. This obligation also forms part of the professional and ethical standards expected of all contractors.
8. In view of the foregoing findings, and having taken into account the procedural irregularities attributable to both the Respondent and the bidder, as well as the merits of the grievances submitted by Hi-Tech Company Pvt. Ltd. and Penjor Construction Pvt. Ltd. for this same tender, the IRB hereby nullifies the contract award decision dated 8 July 2025. Accordingly, the Respondent is hereby directed to initiate a re-tendering process for the concerned works.
9. Recognizing the concerns stemming from the subjectivity inherent in the evaluation particularly when information must be obtained in the absence of a standardized and comprehensive database, the IRB notes that such ambiguity frequently leads to disputes and inter-bidder complaints. In such circumstances, the burden falls solely on the Evaluation Committee to conduct further inquiries, which may compromise the objectivity and consistency of the evaluation process. The IRB is of the view that, unless this issue is systematically addressed, similar challenges will continue to arise in future procurements. Accordingly, the IRB recommends that the Ministry of Finance issue a formal notification



mandating the registration of all private and corporate works within the timeframe prescribed under the *Monitoring Guidelines 2020*. Furthermore, to ensure a level playing field and promote fairness in the evaluation process, the IRB also recommends that a reasonable grace period be granted to all contractors to update any ongoing works that have not yet been recorded in the system. Requiring bidders to submit a declaration of ongoing works as part of the bidding requirements may serve as an additional safeguard to identify and prevent such discrepancies.

10. In pursuance to Clause 56 of the IRB Rules 2025, 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.

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

Dated: 1 August 2025