



Decision of the Independent Review Body (IRB)

Description of Procurement : Procurement of Red Hat Software for eCMS
Case reference number : MoF/DPP/PMDD(15)/2024-25/04

IRB Members Present:

1	Mrs. Rinzin Lhamo, Director, DPP, MoF	Chairperson
2	Mr. Choki Drakpa, Chief Attorney, OAG	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	Mr. Gyalzin Tashi Yoegyal Enterprise Thimphu
Respondent	Department of Revenue & Customs Ministry of Finance

Background & discussion in brief:

The IRB Secretariat has received the application for review on December 12, 2024 alleging the tender decision dated December 9, 2024 (Letter of intent) for "Procurement of Red Hat Software for eCMS, DRC FY 2024-2025" 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 and Procedures 2023. Thus the grievance was processed and submitted for proceedings. The IRB met on December 26, 2024 to review the grievance that has been lodged against DRC in presence of the required quorum.

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Claims as claimed by Yoegyal Enterprise:

"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 its realistic compared to the prevailing market rates."

In this context, we would like to emphasize that, based on discussions with other agencies, it is a common practice to revisit and consider low-quoted prices, even if they fall below the 20% threshold, or to initiate a re-tendering process with appropriate approval.

Additionally, we request clarification on the methodology used to derive the departmental cost estimate. The software market, particularly for specialized products like Red Hat software, is subject to price fluctuations. It is critical that the departmental estimate reflects current market rates accurately to ensure a fair evaluation. As an authorized Red Hat partner, we believe we could have been consulted during this process to provide relevant insights.

It is also worth noting that Red Hat is the sole provider for its software renewals, with standardized pricing. No alternative suppliers exist for this product. As an authorized reseller, we offered the best possible price in direct consultation with the manufacturer. For authenticity and verification, we are more than willing to facilitate direct communication with Red Hat representatives.

We respectfully urge the tender committee to revisit this matter and provide detailed insights into the cost estimation process. If the departmental estimate is found to be unrealistic compared to prevailing market conditions, we request that corrective measures be taken in alignment with the PRR to ensure transparency and fairness in the procurement process.

Response as responded by DRC:

Your submitted bid had 20% deviation below the departmental cost estimate projected after market research. In such cases, the system automatically rejects the bid and does not permit the procuring agency to proceed with the award.

It is imperative that this 20% deviation, along with any other criteria outlined in the tender document, be recognized and considered during the awarding process. Therefore, please note that the procuring agency has strictly adhered to the eGP system and the Procurement Rules and Regulations (PRR).

The cost estimate from the department was prepared in consultation with the previous supplier, and the 15% increase from the previous price was anticipated. The elimination of Yoegyal happened due to its 20% below deviation, the decision was strictly made adhering to the eGP.

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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 evidences available:

1. Instruction to Bidders (ITB) Clause 43.1 clearly states that *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 its realistic compared to the prevailing market rates.*

The IRB finds that while the above provision states that the procuring agency shall revisit their departmental estimate, this process has not been followed at the time of evaluation by the Evaluation Committee.

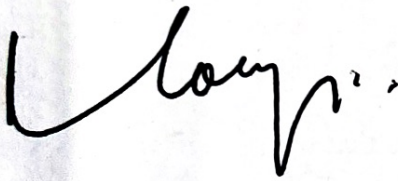

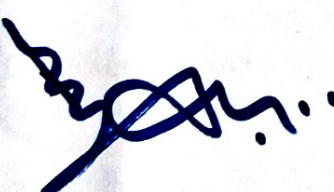
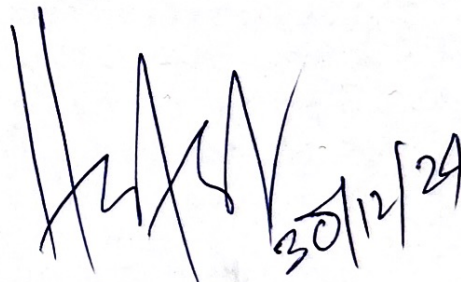
2. IRB also recognizes that the Departmental estimate was not re-visited because the e-GP system automatically eliminates all the bids that are 20% below and above the Departmental estimate and therefore revisiting the departmental estimate in the e-GP was beyond the control of the Respondent. IRB members were also informed that this issue has now been fixed in the e-GP.
3. Upon further scrutiny following the hearing, the IRB has established that Red Hat has shared fair commercials to the distributor, Redington Distribution PTE LTD. The distributor in turn shared fair commercials to the following Affiliated Partners along with a valid Manufacturer Authentication Form (MAF) in Bhutan. Namely, NGN Technologies Private Limited, Data link, Yoegyial Enterprise, SCD Enterprise.

This proves that as submitted by the Complainant, Red Hat is the sole provider for its software renewals, with standardized pricing. No alternative suppliers exist for this product.

4. The Respondent had added an 15% increase from the previous price, which is not justifiable to arrive at the accurate estimate and the IRB while cross-checking the document submitted by Respondent find discrepancies in the two estimates i.e., the 15% increase and the Red Hat Enterprise Linux for virtual Data centers (online price).



5. 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 and directs the Respondent to re-evaluate revisiting the Departmental Estimates.
6. 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. Choki Drakpa, Member</u></p> 
<p><u>Mr. Chandra B. Chhetri, Member</u></p> 	<p><u>Mr. Sonam Wangchuk, Member</u></p>  30/12/24

Dated: 30 December 2024