



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)/2025-26/01

IRB Members Present:

| | | |
|---|---|-------------|
| 1 | Mrs. Rinzin Lhamo, Director, DPP | Chairperson |
| 2 | Mr. Karma Dupchuk, ^{DD} 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. Tshewang Norbu Chief Executive Officer Hi-Tech Company Pvt. Ltd Punakha |
| Respondent | Department of Surface Transport, Ministry of Infrastructure and Transport Thimphu |

[Handwritten signatures in blue ink]



Background & discussion in brief:

The IRB Secretariat has received the Application for review on 10 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 Hi-Tech Company Pvt. Ltd:

We stand as the 2nd best evaluated bidder scoring 96.31 against the winning bidder scoring of 96.32. Upon the grievance submission, we came to know that our bid was unsuccessful due to deduction of points for not mentioning specific current current project name in the contract agreement for (Project Engineer and Surveyor) and therefore we would like to bring your attention to concerns regarding the bidding process:

- 1) It was clearly mentioned in the BDS clause 8.2 that the Pre Bid meeting will not be held (as in attached screenshot). However, upon enquiry against our grievance, the agency has conducted the Pre Bid meeting with few bidders (only 5 contractors out of 10 prospective competitors) without any further notifications to us, thereby not having transparency and establishing an unfair bidding process with deviation from the guideline at the first stage.*
- 2) Although the Pre-bid meeting was held without our notice, the department have failed to share the copy of minutes of meeting (MOM) to all bidders, which was mandatory to be uploaded to egp as per the system of the PRR/egp and thereof should form a part of legal bidding documents, resulting in providing an incomplete bidding document to those bidders who missed the meeting due to lack of official notification to attend the Pre-bid meeting.*
- 3) Upon our findings after grievance submission, we have come to know that the minutes of meeting have been unofficially leaked and the same have been reached to some bidders, resulting in failure of having a proper communication and transparency in line with the stipulated procedures of the PRR, and thereof having discrepancy within the competitive bidders.*

2



- 4) *Coming to know the content of the MOM which clearly states that the bidders should specifically mention the current project name in the contract agreements for the personals committed on hire (as attached the copy of MOM), the bidders who attended the meeting have got clear instructions about the requirements of the same, where as we have submitted the documents specifying the general project as we use to do in all previous tenders (especially the box cut package 1 which was awarded recently) and the same have be accepted by the agency without any objections.*

We as a 2nd best evaluated bidder we hereby appeal your kind office to kindly review our above identified issues that we believe warrant reconsiderations for acceptance of our submitted documents with the following concerns regarding the bidding process:

- 1. The Pre-bid meeting clearly states that it shall not be held, yet there appears to be some misunderstanding or deviation from the instructions in the BDS 8.2.*
- 2. The complete bidding documents have not been formally shared, particularly the Minutes of Meeting (MoM), which are part of the legally binding documents for this tender.*
- 3. There has been a lack of proper communication throughout the process. Our same documents, which have been accepted in all previous tenders—especially the recently awarded Box Cut Package 1—are not being considered fairly in this instance.*
- 5. There is an apparent discrepancy created by sharing additional requirements (MOM) exclusively with certain bidders attending the meeting, compromising transparency and fairness among all participants.*

Response as responded by DoST:

1. *On the Conduct and Notification of the Pre-Bid Meeting*

Contrary to the bidder's claim, the Notice Inviting Tender (NIT) clearly indicated the date and time for the pre-bid meeting. Eventually, 50% of the bidders submitted bids attended the meeting, which demonstrates that the information was made available and accessible through proper channels. Although the bidder pointed out ambiguities in the bidding document and NIT, he had the opportunity to seek clarification through the eGP system before the tender opening. Despite being aware of this option, the bidder chose not to request any clarification. Therefore, the bidder's failure to act cannot be considered a procedural lapse on the part of the Procuring Agency, especially when 50% of the participating bidders attended the pre-bid meeting.

3



2. On the Allegation of Incomplete or Exclusive Sharing of Information

The bidder claimed that not attending the pre-bid meeting put them at a disadvantage due to not having access to the Minutes of Meeting (MoM). Although the MoM was uploaded to the eGP system and approved by the HOPA, it was not successfully published on the platform. However, the MoM did not introduce any new criteria or additional instructions. It simply reiterated the existing requirements to remind bidders to upload the necessary documents during the bidding process-requirements that bidders were already expected to be familiar with. Furthermore, the discussions held during the pre-bid meeting, specifically the point in this case, were strictly confined to the existing provisions outlined in the Evaluation Guidelines since 2019, which are publicly available and equally binding on all bidders. Therefore, the claim of being unfairly disadvantaged lacks merit.

3. On the Requirement for Project-Specific HR Agreements

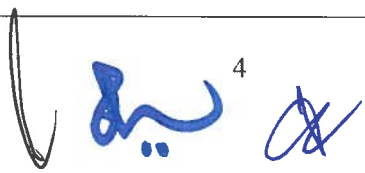


The requirement for human resources (HR) that will be employed on a contract basis to have a contract agreement specifying the project is clearly outlined in the Evaluation Guidelines 2019 (Annexure I). This requirement ensures the exclusivity and availability of the proposed personnel. In the case of M/s Hi-Tech Company Pvt. Ltd., the contract agreement between Mr. Balaram Acharya (Project Engineer, Road) and Mr. Sonam Tshewang (Surveyor) did not mention the project name thereby failing to meet this criterion. As a result, these personnel were not considered during the evaluation. Conversely, for other proposed HR such as Mr. Shiva Lal Acharya (Project Engineer Bridge) and Mr. Leela Krishna Shapkota (Project Manager), the bidder clearly indicated the project name in their contract agreements, demonstrating awareness of the requirement. This inconsistency within the same bid submission suggests a lack of thorough internal review rather than any shortcoming in the evaluation process. (Refer to the contract agreement copy attached as Annexure II.)

4. Discrepancy in the Signature of the Employer

Additionally, the TEC upon further scrutiny, observed that there was a discrepancy in the signature of the employer in two different contract documents. Moreover, there was no letter of authorization or power of attorney attached to the bid that could help identify the owner of the signature and justify this discrepancy. (Annexure III)

While we acknowledge the shortcoming of not publishing the MoM despite it being uploaded to the e-GP system, we emphasize that the discussion in question remained fully within the scope of the Evaluation Guidelines. Therefore, we affirm that: No additional evaluation criteria or requirements were introduced during the pre-bid meeting; All evaluations were conducted strictly in accordance with the pre-defined and publicly accessible guidelines. Not on subjective or discretionary judgement.

Therefore, this is to request IRB to dismiss the appeal on the foregoing grounds and reasons.

 4  



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 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. Clause 8.2 of the Bidding Data Sheet (BDS) expressly stated that **Pre-bid meeting shall not be held as per the notice**. While the IRB acknowledges this as a typographical error, the clause stands in direct contradiction to the Tender Notice. Although we concur with the Respondent's assertion regarding the bidders responsibility to seek clarification and acknowledge that 50% of the bidders attended the pre-bid meeting, it must equally be recognized that the Respondent has a concurrent obligation to issue an addendum clarifying the discrepancy prior to the bid submission deadline.



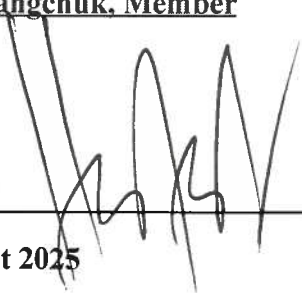

The notes of Invitation to bids in the Standard Bidding Documents states that *the Invitation for Bids shall not be incorporated into the Bidding Documents. However, the information contained in the Invitation for Bids should conform to the Bidding Documents and in particular to the relevant information in the Bidding Data Sheet*. Clearly stipulating that the Bidding Data Sheet would govern over the invitation to bid, which is the notice in this case.

2. Had the Minutes of the Pre-Bid Meeting been duly published on the e-GP, the issue concerning the contravention of the relevant clause mentioned above would not have arisen. However, upon review, it has been determined that although the Minutes were uploaded to the system and duly approved by the Head of the Procuring Agency, they were never formally published on the e-GP platform by the Tender Creator. As a result, the minutes were not accessible to the participating bidders in the e-GP. Therefore, access to the Minutes was limited exclusively to those bidders who attended the pre-bid meeting.
3. The IRB further observes that, while the *Evaluation Guidelines for Procurement of Works (Above Nu. 5.00 Million), 2023*, 'Points to Remember' state that the contract agreement for hired key personnel must be project specific, 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 would not be binding on the bidders. Had the Minutes of the Pre-Bid Meeting been fully uploaded and duly published on the e-GP, any such requirement whether reflected in the evaluation criteria or not, would have acquired binding contractual force upon the parties.
4. The IRB further notes inconsistency on the part of Applicant, wherein contract agreements for certain proposed personnel were project-specific, while for others, such specificity was absent. As a result, the personnel lacking project specific agreements were not considered during the evaluation. In contrast, for other proposed human resources the bidder explicitly mentioned the project name within their respective contract agreements, thereby



demonstrating an understanding of this requirement. 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 ensuring documents are well gone through before bids are submitted.

5. The IRB also acknowledges lapses on the part of the bidder, particularly with respect to the submission of contract agreements that reflect inconsistencies in the identification of the Employer and lack any form of authorization. Furthermore, upon detailed examination, the Tender Evaluation Committee identified a discrepancy in the employer's signature across two separate contract documents. Notably, the bid did not include any letter of authorization or power of attorney that could authenticate the signatory or provide a reasonable justification for the inconsistency. 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.
6. 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 M/s Penjor Construction Pvt. Ltd. and Chimmi RD 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.
7. In pursuance to Clause 56 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.

| | |
|---|---|
| <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