



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

**Description of Procurement** : Construction of Compound Archery Range at CNR  
**Case reference number** : MoF/DPP/PMDD(15)/2024-25/11 & 12

**IRB Members Present:**

1	Mr. Chandra B. Chhetri, SG, BCCI	Acting Chairperson
2	Mr. Sonam Wangchuk, ED, CAB	Member
3	Mr. Choki Drakpa, Chief, OAG	Member
4	Mr. Leki Tshering, Offtg. Director, DPP, MoF	Member

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

Applicant	<ul style="list-style-type: none"><li>❖ Jigme Rinzin Wangchuk, Nima Sun Construction, Thimphu</li><li>❖ Dilip Kumar Rai, DK Builders, Thimphu</li></ul>
Respondent	<ul style="list-style-type: none"><li>❖ College of Natural Resources, Lobesa, Punakha</li></ul>

**Background & discussion in brief:**

The IRB Secretariat has received the Application for review on 2 June 2025 alleging the tender decision dated 30 May 2025 (Letter of intent) for “Construction of Compound Archery Range at CNR” 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.

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The application was verified by the IRB Secretariat and found in compliance with IRB Rules and Procedures 2023. Thus the grievance was processed and submitted for proceedings. The IRB met on 6 June 2025 to review the grievance that has been lodged against CNR in presence of the required quorum.

**Claims as claimed by Nima Sun Construction:**

*I would like to respectfully reiterate that the award decision was made solely on the basis of the APS (Average Performance Score), such an approach may not constitute a fair evaluation process, particularly for new contractors who have not yet had the opportunity to establish a scoring history. While I acknowledge the importance of performance evaluation, the use of APS in this instance appears to have disadvantaged new bidders, despite the fact that the quotations submitted were identical.*

*Moreover, the qualification criteria did not explicitly state that, in the event of identical quotations, the APS score would serve as the determining factor—except in the context of key personnel qualifications. This lack of clarity raises concerns regarding the consistency and transparency of the evaluation process.*

*In light of the above, I respectfully urge the committee to re-evaluate the award decision, taking into account accurate and verifiable data, and ensuring alignment with the published qualification criteria. Upholding fairness and transparency in the procurement process is vital to fostering equitable competition. Thank you for your attention and understanding. I trust that this matter will be given the serious consideration it merits.*

**Claims as claimed by DK Builders:**

*As acknowledged by your office, the e-GP system officially accepts and evaluates bid prices up to three decimal places. Our quoted bid was duly submitted through the system and accepted without error; clearly falling within the stipulated 20% deviation limit, as confirmed in your correspondence. Given that the system-generated result reflected our bid as compliant, we strongly believe that the evaluation and award process should align with the e-GP system's official output. The subsequent manual recalculation beyond three decimal points, leading to the conclusion that our bid marginally exceeds the permissible threshold, appears to override the system's validation and introduces subjectivity into an otherwise standardized process.*

*We are concerned that this approach not only undermines the objectivity and integrity of the system but may also set a precedent that could create ambiguity for future bidders relying on the e-GP's automated checks. In light of the above, we kindly and respectfully request your good*

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office to reconsider the evaluation outcome based on the system's accepted results, and to uphold the transparency and fairness embedded in the digital procurement framework. We remain grateful for your attention to this matter and trust that a fair review will be conducted.

**Response as responded by CNR :**

**To Nima Sun Construction:**

The tender for the Construction of Compound Archery Range at the College of Natural Resources, Lobesa, Punakha (Tender ID – 20937) attracted a total of 76 bidders. The EGP-estimated amount for the work was Nu. 2.277 million.

Both M/s Nima Sun Construction and M/s Baedrurya Builders submitted identical bids of Nu. 1,821,600/- (Ngultrum One Million Eight Hundred Twenty-One Thousand Six Hundred Only), which falls within the permissible 20% deviation range from the estimated cost.

Given that the bids were tied, the tender evaluation committee proceeded to assess the Annual Performance Scores (APS) of both firms based on their past project performance, with the aim of determining the most competent and reliable contractor. The APS results were as follows:

- M/s Baedrurya Builders: Received consistent scores of 9, 9, and 9 for their last three completed projects.
- M/s Nima Sun Construction: Received scores of 9 and 8 for their last two completed projects.

The evaluation revealed that M/s Baedrurya Builders demonstrated consistently higher performance across more projects, reflecting superior reliability, workmanship, and adherence to project timelines and quality standards. Based on this key differentiator, the committee unanimously decided to award the contract to M/s Baedrurya Builders, citing proven competence through consistent APS as the deciding factor in a tie situation.

On 2nd June 2025, Mr. Tandin Dorji, Dy. C. Legal Officer, Department of Procurement and Properties raised a concern referring to Clause 5.4.4.1 of the Procurement Rules and Regulations (PRR) 2023, which 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.”

Accordingly, we sought clarification on the same day, as the PRR 2023 and the Evaluation Guidelines for Works do not appear to provide specific provisions or guidance on resolving tied bids. In response, Mr. Tandin Dorji indicated that he was not in a position to advise on the way



forward.

*In the absence of clear directives under PRR 2023 or the evaluation guidelines for dealing with tied bids, and considering the need to ensure selection of the most capable contractor, the procuring agency stands by the committee's decision to award the contract to M/s Baedrurya Builders based on their superior and consistent performance record. This approach was adopted in good faith, in the interest of ensuring quality and reliability in project execution.*

### **To DK Builders**

*The tender for the Construction of the Compound Archery Range at the College of Natural Resources, Lobesa, Punakha (Tender ID – 20937) received an overwhelming response, with a total of 76 bidders participating. The EGP-estimated cost for the project was Nu. 2.277 million.*

*During the bid evaluation, it was noted that M/s DK Builder submitted a bid which, according to the e-GP system, displays values up to three decimal places. Upon precise calculation, their quoted bid was found to reflect a deviation of -20.00049978% below the departmental estimate of Nu. 2,277,000.00. this deviation slightly exceeds the permissible threshold of  $\pm 20\%$  as stipulated in Clause 5.4.5.2 of the Procurement Rules and Regulations (PRR) 2023, which states: "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."*

*In strict adherence to this regulation, DK Builder's bid was not awarded the work due to exceeding the allowed deviation limit, even by a fraction.*

*Consequently, the contract was awarded to M/s Baedrurya Construction, whose bid was exactly at the allowable lower limit of -20% and therefore within compliance. Additionally, among the remaining tied bids, Baedrurya Construction demonstrated a consistently higher Annual Performance Score (APS), reflecting superior reliability, quality, and adherence to project timelines in past assignments. This served as the decisive factor in awarding the work in the absence of any other differentiating criteria.*

*Thus, the evaluation and award process were conducted in full conformity with the PRR 2023, ensuring transparency, fairness, and value-based procurement*

### **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 and Procedures 2015, the Independent Review Body hereby delivers the following

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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 cited the Annual Performance Scores (APS) as the determining factor in selecting the successful bidder between Nima Sun Construction and Baedrurya Builders, both of whom had submitted identical bid amounts. However, the IRB notes that Clause 5.4.4.1 of the Procurement Rules and Regulations (PRR) 2023 explicitly provides 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."*

The bidding documents did not specify APS as a tie-breaker. Its use therefore constitutes the application of an evaluation criterion not disclosed to bidders. No evidence was found that bidders were notified in the Bid Data Sheet (BDS) or the stated evaluation criteria about APS being used as a tie-resolution method.

While the intention of the Procuring Agency is duly noted, the use of Annual Performance Scores (APS) as an evaluation criterion, not being explicitly stated in the bidding documents constitutes a procedural deviation.

2. The bid submitted by DK Builders was rejected on the grounds that it exceeded the permitted  $\pm 20\%$  deviation threshold by 0.00049978%, based on a manual recalculation that extended beyond the standard three-decimal precision utilized by the e-GP system. The IRB notes that the e-GP system, as confirmed by both parties, evaluates and accepts bids up to three decimal places. Based on this system standard, the bid submitted by DK Builders falls within the acceptable deviation limit.

While the intention of the Procuring Agency is duly acknowledged, the decision to override system-generated outputs through manual recalculations introduces an element of subjectivity into the evaluation process. As per the current process, the figure generated by the e-GP system shall be considered final. The value reflected in the e-Tool is auto-fetched directly from the e-GP system, ensuring consistency and integrity in the procurement process. Furthermore, the provision to manually edit the bid prices in the e-Tool has been disabled, as such modifications were leading to significant inconsistencies during implementation.

3. Based on the above findings, the Independent Review Body hereby nullifies the award

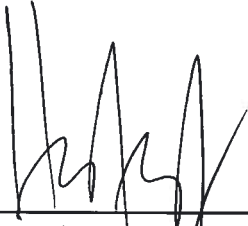

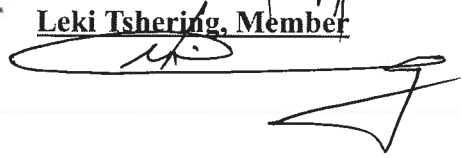



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Department of Procurement and Properties  
Ministry of Finance  
Royal Government of Bhutan

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of the contract made to Baedrurya Builders. Given that re-evaluation of the bids would not effectively resolve the tie-bid issue, the IRB directs the Respondent to initiate a re-tendering of the works.

4. Furthermore, to prevent the recurrence of similar issues in future procurement processes, the IRB advises the Respondent to pre-define clear and appropriate tie-breaker evaluation criteria in the Bid Data Sheet (BDS) or Evaluation Criteria. This measure is essential to uphold the principles of transparency, fairness, and consistency in the event of tied bids.
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.

<u>Sonam Wangchuk, Member</u> 	<u>Choki Drakpa, Member</u> 
<u>Leki Tshering, Member</u> 	<u>Chandra Chhetri, Acting Chairperson</u> 

Dated: 12 June 2025