



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)/2025-26/02

IRB Members Present:

1	Mrs. Rinzin Lhamo, Director, DPP	Chairperson
2	Mr. Karma Dupchuk, Director ^{D.G.} , 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. Penjor Chief Executive Officer M/s Penjor Construction Pvt. Ltd Punakha
Respondent	Department of Surface Transport, Ministry of Infrastructure and Transport Thimphu

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Background & discussion in brief:

The IRB Secretariat has received the Application for review on 13 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 M/s Penjor Construction Pvt. Ltd:

We have earned only 15 points for personnel as the Surveyor and Site Supervisor-II that we have proposed were working on the Druk Bindu Hydropower Project and similarly 18.80 points for equipment as the three excavators proposed were deployed at the same project.

Physical verification on manpower and equipment was conducted on one of our ongoing works (Construction of Druk Bindu Hydropower project) which was not uploaded by DHyE on e-GP as the bidding was not conducted through e-GP. Upon request by DoST, DHyE had provided the list of manpower and equipment deployed at site by email dated 23rd June 2025 clearly mentioning that the list is currently engaged at the Druk Bindu (18+8 MW) Hydropower Project site. Further another email from DHyE sharing the list of equipment and manpower for other bidders informed the evaluators that the projects are yet to be fully mobilized and therefore requested the evaluators to verify the details with the contractor prior to making any decisions.

We appreciate that physical verification of manpower and equipment was conducted with the intention of promoting fairness in the bidding process but we respectfully disagree with the clarification provided to us regarding the engagement of the proposed manpower and equipment due to the following justification:

1. Not giving score to our proposed Surveyor by considering as engaged in Druk Bindu Hydropower Project:

The evaluation committee had assumed that all deployed manpower from the list submitted by DHyE at site was committed by our firm and considered to be engaged in that project. Hence our proposed Surveyor was made not available to be considered for the project under evaluation.



Whereas, in reality we had deployed our proposed Surveyor as additional resources to expedite the work rather than keeping him idle.

As per the list shared by DHyE to DoST, it can be clearly noted that we have deployed two Surveyor Mr. San Bir Kalden, whom we have proposed as the surveyor for the current bid under evaluation and Mr. Kul Badhar Gurung. Further the contract for the Druk Bindu Hydropower Project requires only one surveyor and our proposed Surveyor Mr. San Bir Kalden was never committed for Druk Bindu Hydropower Project.

The following documents are attached as annex-4 for necessary information and scrutiny:-

- ❖ *The list on the total manpower deployed at site shared by DHyE*
- ❖ *Contractual requirement of manpower for Druk Bindu Project.*
- ❖ *Surveyor committed by our firm for Druk Bindu Hydropower Project as per the Contract document signed between our firm and DHyE.*
- ❖ *Emails copy sent by DHyE*

From the above attached documents, we feel that our proposed Surveyor Mr. San Bir Kalden should not be considered as engaged and accordingly appropriate scores should be allocated as per bidding documents requirement.

2. Non-scoring on our proposed three excavators and considering as engaged in Druk Bindu Hydropower Project:

The evaluators had considered our proposed three excavators as committed and deployed for the Druk Bindu Hydropower Project. But from the list of equipment currently deployed at site we have deployed 8 excavators against contractual requirements of 4 numbers.

Further, the proposed three excavators bearing registration numbers BP-1- A0826, BP-1-A0827 and BP-1-A0828 were never committed for Druk Bindu Hydropower Project as the excavators were purchased in the month of May 2025 whereas the bid submission of Druk Bindu Hydropower was on 5th June 2024 and Contract signed on 23rd December 2024. This can be clearly cross checked from the date of contract signing and the date of initial registration of the three excavators from its BCTA registration certificate.

The following documents are attached as annex-4 for necessary information and Scrutiny:-

- ❖ *The list on the total equipment deployed at site shared by DHyE*
- ❖ *Contractual requirement of equipment for Druk Bindu Project.*

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- ❖ Contract agreement signed between our firm and DHyE.
- ❖ BCTA registration certificate of the proposed three excavators.

From the above attached documents, it can be clearly noted that the evaluation process was not carried out with due diligence. Therefore our proposed three excavators should be considered for evaluation as per bidding documents requirement.

Response as responded by DoST:

1. Appeal Submitted in Absence of Legitimate Authority

The Board of M/s Penjor Construction Pvt. Ltd. has formally issued a Power of Attorney (POA) to Mr. Penjor, authorizing him to act on behalf of the company in connection with this tender and other related matters. However, the grievance in question was submitted by an individual (a witness) who neither holds the PoA nor has been authorized by the company to act on its behalf. (Annexure I: PoA of the board of the company).

Upon review, the Tender Evaluation Committee (TEC) noted that the signature on the grievance appeal does not match the signature of the authorized representative as specified in the submitted PoA. This raises serious concerns about the legitimacy of the appeal and indicates a lack of valid authorization.

In principle, only the aggrieved party or their duly authorized representative-through a formal Power of Attorney or written authorization may submit a grievance. A third party, including a witness, is not permitted to submit a grievance unless specifically authorized to do so through a valid PoA.

Therefore, based on the above, we respectfully request that the grievance be deemed inadmissible due to the absence of proper authorization, and nullify the IRB process requested by the bidder accordingly.

2. Resources (HR and Equipment) being Engaged at Druk Bindu Hydropower Project (DHyE)

In evaluating any tender, the status of human resources (HR) and equipment is assessed based on their engagement status, which is often prompted through the eTool system. However, beyond what is flagged by the system, it is a standard practice-or trade usage—to consider whether the HR and equipment are already deployed in other ongoing projects. Thus, evaluation involves assessing not only the resource formally committed to other projects but also those actively engaged on-site. Regardless of whether they are marked in the eTool system.

The evaluation committee relied on the list of HR and equipment shared by the Druk Bindu Hydro Project. This list, as per the project, included both resources that were committed during the tender and those currently engaged at the project site (Annexure II). However, the list did not clearly distinguish between what was originally committed and what was additionally deployed later during project execution.

The contractor argued that only the resources formally committed during the tendering of the Druk Bindu Hydro Project should be considered during the evaluation, and not any additional HR or machinery subsequently deployed. However, the evaluation committee adhered strictly to



the Evaluation Guideline 2023, which aims to prevent contractors from committing the same resources to multiple projects. The guideline emphasizes that if a contractor commits resources that are already actively engaged elsewhere, they cannot be considered available for the current tender unless explicitly released by the other project.

In this case, the project manager of the Druk Bindu Hydro Project did not provide a certification stating that the HR and equipment in question were no longer required. Therefore, the evaluation committee excluded those resources from consideration.

Moreover, both the contractor and DHYe had failed to update the CiNET system with the current "work-in-hand" information, as required by the 2020 circular, issued by the Ministry. Because this information was missing from CiNET, the evaluation committee had to seek verification directly from the project regarding the status of deployed resources.

As per the Evaluation Guideline 2023, it is the contractor's responsibility to keep the CiNET system updated with accurate and timely information once a work is awarded. This omission by the contractor contributed to the ambiguity surrounding the resource availability.

It is also important to note that the resource requirements specified by procuring agencies during the tendering stage are indicative of the minimum needed. During execution, contractors are expected to mobilize additional resources if required by project management. In the case of the Druk Bindu Hydro Project, it is likely that the contractor deployed more resources than originally committed to expedite progress. Consequently, The list of resources currently at the site includes both committed and additionally deployed resources.

This situation confirms that some HR and equipment committed for the present tender are already engaged at the Druk Bindu Hydro Project. The evaluation guideline explicitly supports this interpretation by focusing on resources that are engaged, not just committed, at other sites (Annexure III).

3. Implication on Bid Capacity Calculation

According to the 2020 circular and the provisions in the Evaluation Guideline, it is the contractor's responsibility to ensure that their "work-in-hand" information is accurately updated in the CiNET system-especially since DHye does not utilize the eTool system. Failure to do so resulted in the contractor receiving an unfair advantage by scoring a full 25 out of 25 in the bid capacity evaluation.

$$\text{Bid Capacity} = (2.5 \times A \times N) - B$$

Where:

A = Average turnover of the contractor over the last 3 calendar years

N = Estimated duration of the project to be tendered

B = Portion of other ongoing works to be completed in the period that overlaps with the current project's duration (that is. N)

The variable B is critical as it represents the contractor's current workload. If the value of ongoing works is underreported or missing, it can artificially increase the bid capacity, thereby



compromising the fairness of the evaluation process. In this instance, such discrepancies went unnoticed because the work-in-hand data was not available in the system. The eTool system calculates bid capacity automatically based on the data entered. Had the bidder properly recorded the Druk Bindu Hydro Project in the system, their bid capacity would have been lower, potentially affecting their evaluation score.

4. Overlapping Equipment Commitments

In the appeal, the bidder submitted the minimum equipment requirement for the DHyE project, which was not included in DHyE's earlier correspondence. Upon further scrutiny, the TEC noted that three ROCs are required for the DHyE project. The ROCs committed for this tender is already reflected as engaged in the DHyE project, as evidenced by the Contractor's Plant and Machinery Policy Schedule. (Refer Annexure M). While this overlap was initially overlooked, it now clearly indicates double commitment of the same equipment, which is not permissible under the evaluation guidelines.

In view of the foregoing clarifications and evidences submitted by the Procuring Agency, we respectfully submit the following prayer for your kind consideration:

- 1. That the appeal submitted by M/s Penjor Construction Pvt. Ltd. be deemed inadmissible due to the absence of proper legal authority, as it was lodged by a party who is not duly authorized by the company through a valid Power of Attorney*
- 2. That the appeal lacks merit, as the evaluation was conducted in strict compliance with the Evaluation Guideline 2023, and based on verifiable data concerning human resources and equipment engagements, including those actively deployed at the Druk Bindu Hydro Project.*
- 3. That the contractor's failure to update the CiNET system and the non-availability of resource release certification from the concerned project management resulted in justifiable exclusion of the said resources from the evaluation.*
- 4. That the bid capacity score was inaccurately inflated due to underreporting of ongoing work in the CiNET system, thereby compromising the fairness and transparency of the evaluation, had it gone unaddressed.*
- 5. That overlapping equipment commitments, particularly the case of the ROCs, were evident upon detailed verification, confirming non-compliance with the requirement to avoid double commitments.*

In light of the above, we respectfully pray that the appeal be dismissed in its entirety and that the evaluation result as endorsed by the Tender Evaluation Committee (TEC) be upheld as valid and compliant with the applicable procurement norms and guidelines.

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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 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 Respondent has raised concerns regarding the signatory of the IRB application. However, the IRB wishes to highlight that the same signatory was previously accepted by the Respondent at the time of submission of the grievance to the Procuring Agency. The IRB further notes that the grievances submitted through the e-GP, along with the forms completed therein, were deemed sufficient for the purposes of establishing acceptance and authenticity. The very act of filing the grievance through the applicant's registered system credentials substantiates the legitimacy of the submission, and the accompanying letter was submitted as supporting evidence only. In response to the concerns raised by the Respondent, the IRB, during its meeting, sought clarification from the Applicant and confirmed that the letter in question was duly signed by Mr. Tashi Tshering, who serves as the Technical Director for the company. Based on the foregoing, the IRB finds no substantive grounds to reject the application for review from further review.
2. The IRB finds that the Tender Evaluation Committee (TEC) did not adequately distinguish between resources that were contractually committed at the time of bidding and those that were subsequently deployed at the Druk Bindu Project. This was also acknowledged by the Respondent in their application submitted to the IRB. While the TEC demonstrated due diligence by extending its evaluation beyond CiNET and e-TOOL, it also bore the responsibility of ensuring that all information relied upon was properly substantiated. Relying solely on the list provided by the DHyE was insufficient, particularly as the accompanying email explicitly stated that confirmation should be sought from the contractor and also indicated that the project was not yet fully mobilized. With respect to the engagement of the Surveyor and the Excavators, 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.

Although obtaining the contractor's view may not have been procedurally required, it would have been prudent to resolve the matter in coordination with DHyE Management prior to

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- making any award decisions. Failure to do so contributed to a lack of clarity in the evaluation process and consequently resulting in this very grievance.
3. The IRB observes that limiting the assessment of works solely to Hydropower projects, as was in this case, introduces a degree of subjectivity into the evaluation process. The Respondent has submitted that, beyond what is flagged by the system, it is standard practice to consider other ongoing projects during the evaluation process, however, the Procurement Rules and Regulations clearly mandate that all evaluation criteria must be pre-determined and explicitly stated in the bidding documents. The introduction of new or unstated criteria during evaluation is deemed unfair and is strictly prohibited. Therefore, in the present case, the consideration of other ongoing projects not specified in the evaluation criteria, particularly those beyond what is recorded in the e-Tool system constitutes a contravention of the applicable procurement rules.
 4. The Respondent has made reference to the *Evaluation Guidelines for Procurement of Works (Above Nu. 5.00 Million)*, 2019, particularly for the requirement of release letter if the 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 would not be binding effect upon the bidders.
 5. The IRB notes that Clause 6 of the 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 when works are completed with the intent to accrue benefits for similar work experience, APS 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.
 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 Hi-Tech Company 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. 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.
8. 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.

Mrs. Rinzin Lhamo, Chairperson

Mr. Karma Dupchuk, Member

Mr. Sonam Wangchuk, Member

Mr. Chandra Chhetri, Member

Dated: 1 August 2025

