

**Minutes of the 245<sup>th</sup> Meeting of KWA held on 25-04-2003 at 3.00 P.M. in the Conference Hall of Jalabhavan, Thiruvananthapuram.**

**Members Present**

1. Sri.K.J.Mathew, IAS	Chairman
2. Smt. Sudha Pillai, IAS	Member (Ex-Officio)
3. Sri.Baby Pathippally	Member
4. Sri.Thomas Babu	Member
5. Sri.M.Ganesan	Accounts Member
6. Smt.T.R.Indira	Technical Member
7. Sri.R.Ramanujam	Managing Director

*Item No. I (1) Confirmation of the Minutes of 243<sup>rd</sup> meeting held on 29<sup>th</sup> March 2003.*

The Authority Confirmed the minutes of 243<sup>rd</sup> meeting held on 29<sup>th</sup> March 2003.

*Item No. I (2) Confirmation of the Minutes of 244<sup>th</sup> meeting held on 16<sup>th</sup> April 2003.*

The Authority Confirmed the minutes of 244<sup>th</sup> meeting held on 16<sup>th</sup> April 2003.

*Item No. II (1) Review of billing and collection for the month of February 2003*

The Authority noted the contents.

*Item No. III (1) Supply of sewer cleaning equipment by M/s Southern Powertech Equipments (P) Ltd. Waiving of liquidated damages for belated supply – Sanction.*

Deferred.

*Item No. III (2) Annual Maintenance Contract for UPS supplied by M/s Electronics & Control Power Systems (P) Ltd.*

Res. No. 6307 The Authority resolved that negotiation may be held with the firm to reduce the rate to DGS & D rates.

*Item No. IV (1) DFID – Water Supply Component – Supplying and Laying of 500 mm DI Pumping main from OH Tank at Koovappadam to Modi Bathroom ground at Mattancherry – Tender No. 14/2001-02.*

Res. No. 6308 The Authority resolved to award the work of ‘DFID- Water Supply Component – Supplying and Laying of 500 mm DI pumping main from OH Tank at Koovappadam to Modi Bathroom ground at Mattancherry’ to the lowest tenderer M/s Navin Construction Corporation at their quoted rate of Rs. 6340/m (Total amount Rs. 95, 73,400/-).

*Item No. IV (2) DFID – UPAD – Water Supply Component – Supplying and laying 300 mm DI Pumping main from Dronacharya Junction to OH tank at Fort Kochi Tender No. 15/01-02.*

Res. No. 6309 The Authority resolved to award the work ‘DFID – UPAD – Water Supply Component – Supplying and laying 300 mm DI Pumping main from Dronacharya Junction to OH tank at Fort Kochi’ to the lowest tenderer, M/s. Navin Construction Corporation at their quoted rate of Rs. 2995/m (Total amount Rs. 38,93,500/-).

*Item No. IV (3) Transportation of materials for PH Division, Mattanur – 2002-2003.*

Deferred.

*Item No. IV (4) AUWSS to Koratty – Design and Construction of 6 mld output capacity Water Treatment Plant at Devarajagirikunnu in Melur Panchayat – Tender.*

Deferred.

*Item No. IV (5) ARWSS to Ottasekharamangalam – Phase I – Construction of 8.4 lakh litres capacity RCC GLSR at Middle Kalippara.*

Deferred.

*Item No. V (1) Convening 3 day workshop for finalisation of the document “Manual on Operation and Maintenance of Water Supply System” during June 19-21, 2003 at Thiruvananthapuram.*

Res. No. 6310 The Authority resolved to accord sanction for an amount of Rs. 2.00 lakhs for the conduct of the 3 day National Level workshop of Chief Engineers and Head of implementing agencies of various states in-charge of urban water supply and sanitation sector for finalisation of the document “Manual on Operation and Maintenance of Water Supply System” during June 19-21, 2003 at Thiruvananthapuram. The workshop is jointly organised by CPHEEO, Ministry of Urban Development, Government of India and Kerala Water Authority. The Government of India has already given their share of Rs. 3.00 lakhs.

*Item No. V (2) Request for empanelment in KWA for releasing English Tender Notices to English Dailies through advertising agency – Outline Advertising.*

Deferred.

*Item No. V (3) Promotion of Sri. Mathew Cheriyan, Law Officer II and Sri. M. B. Radhakrishnan, Legal Assistant.*

Deferred.

*Item No. V (4) Negotiated purchase of 15.24 Ares of land in Cherthala(s) Village for JBIC Aided Kerala Water Supply Project.*

Deferred.

*Item No. VI(1) Medical Advance of Sri. S. Pushpangadhan, Driver, Head Quarters Section, Vellayambalam.*

Deferred.

*Item No. VI(2) Promotion of Executive Engineers as Superintending Engineer/Deputy Chief Engineer – Proposal furnishing of.*

Res. No. 6311 The Authority resolved to promote Sri. Solomon Fernandez, Executive Engineer(PMU), Jalabhavan, Thiruvananthapuram as Superintending Engineer /Deputy Chief Engineer provisionally.

*Item No. VI (3) Revision of Legal Fee.*

Deferred.

*Item No. VI (4) Kerala Water Supply Project with Loan Assistance from JBIC – LoI and ToR for Consultancy Services – Report on the Evaluation of Financial Proposals and Negotiations with TEC Consortium Lead by M/s Tokyo Engineering Consultants Co. Ltd., Japan – Approval – reg.*

Ref: 1. Agenda Notes on Item No. I (1) of the 244th meeting of KWA held on 16.04.2003 on the same subject.

2. Resolution No.6306 dated 16.04.2003

The Authority noted the Resolution No.6306 taken considering the agenda notes on the subject in its 244th meeting held on 16.04.2003. It was resolved to:

1. Carry out further negotiations with the Consultant by the same High Level cum Tender Committee which conducted the earlier negotiations for reducing the quoted amount taking in to account the observations made.

2. Get the modifications proposed by the consultants to the draft agreement scrutinized by the Law Officer/ Legal Wing of Kerala Water Authority and place the legal opinion for consideration of the Authority.
3. Obtain clarification from the JBIC regarding the eligibility for advance payment to the consultants and whether interest is chargeable thereon.
4. Place the result of negotiations and detailed clarifications to the observations of the Authority, in the next meeting.

The results of the negotiations and clarifications to the points raised were presented to the Authority for consideration again, in this meeting.

The Authority observed that the negotiations with the bidder were carried out by the Committee on 16.04.2003 as a result of which the revised Financial Proposal dated 21.04.2003 was submitted by the bidder. Earlier two levels of negotiations had been carried out, first by an Evaluation Committee when the original offer dated 15.10.2002 has been reduced from Rs.123.45 Crores to Rs.108.63 Crores (as per revised proposal dated 20.03.2003) and second by the High Level cum Tender Committee, as a result of which the offer has been further reduced to Rs.103.20 crore, vide revised financial proposal dated 07.04.2003.

As per the latest negotiations, the offer for consultancy services has been reduced from 103.20 Crores to Rs.102.03 Crores.(both excluding taxes payable by the KWA.), the overall reduction in cost being Rs.1.17 crores as shown in the summary cost tables below.

### Summary of Consultancy Cost As Per Revised Proposal Dated 07-04-03

Escalation for Remuneration: Local (Key staff only) 4%, Foreign (Key staff and support staff) 2%, Start Date: July 2003

Sl.No.	Description	INR	JPY	US\$	Total in INR
1	Remuneration Key Staff	132,166,886	655,961,022	1,673,069	474,858,585
2	Remuneration Support Staff	141,234,000	0	472,659	163,921,630
3	Reimbursables	43,341,500	13,666,400	55,515	51,472,780
4	Miscellaneous	166,324,000	204,000,000	0	247,924,000
5	Total	483,066,386	873,627,422	2,201,243	938,176,995
6	Contingencies @ 10%	48,306,639	87,362,742	220,124	93,817,700
7	Grand Total	531,373,024	960,990,164	2,421,367	1,031,994,695

### Summary of Consultancy Cost As Per Revised Proposal Dated 21-04-03

Escalation for Remuneration: Local (Key staff only) 4%, Foreign (Key staff and support staff) 1.75%, Start Date: July 2003

Sl.No.	Description	INR	JPY	US\$	Total in INR
1	Remuneration Key Staff	132,166,886	652,640,918	1,662,492	473,022,869
2	Remuneration Support Staff	141,234,000	0	441,574	162,429,552
3	Reimbursables	43,341,500	13,666,400	55,515	51,472,780
4	Miscellaneous	171,780,651	172,000,000	0	240,580,651
5	Total	488,523,037	838,307,318	2,159,581	927,505,852
6	Contingencies @ 10%	48,852,304	83,830,732	215,958	92,750,585
7	Grand Total	537,375,341	922,138,050	2,375,539	1,020,256,437
Net Reduction					11,738,257

Note: INR Equivalent has been arrived at by assuming exchange rate of INR 1 = JPY 2.50 & US\$ 1 = INR 48.00

The Authority noted the areas where cost reduction was achieved in the latest negotiation as follows.

### Remuneration

(i). Rates of escalation: -

The bidder has reduced the escalation rate for foreign remuneration from 2% to 1.75% per annum, applicable for both key staff and support staff. The escalation for local staff remuneration remained the same at the previous reduced level of 4% per annum which is applicable only for key staff i.e., local support staff remuneration is not subject to escalation.

(ii). Billing Rates: -

The Billing rates of three personnel of M/s. Binnie Black and Veatch have been reduced by 2%, 13% and 14% from the level of 07.04.2003. In respect of all other personnel (local and foreign), the billing rate remained at the same level of the offer dated 07.04.2003.

The overall effect of these on total remuneration payable is that there is no change under INR portion; the JPY amount has been reduced due to reduced escalation rate and US\$ amount has been reduced due to reduced escalation rate as well as reduction in billing rate of 3 personnel.

The break-up of the local support staff manmonths for design and construction phases has been given, in the revised proposals as follows.

Design Phase	: 1695
Construction Phase	: <u>4014</u>
	<u>5709</u>

There is no change in the rate and amount of remuneration of support staff as per offers dated 07.04.2003 and 21.04.2003.

### Reimbursables

There is no change, in the amounts for Reimbursables, as per the two latest offers.

### Miscellaneous Costs

The cost for leak detection study was JPY. 85,000,000 as per offer dated 07.04.2003. However, the Authority had observed that as per offer dated 20.03.2003, the cost was JPY.60,000,000 and INR 10,000,000. As per the decision, vide resolution No. 6306 dated 16.04.2003, the Authority did not allow the change to JPY 85,000,000 on the ground that Rs.10,000,000 originally claimed under local component cost has been converted into equivalent JPY of 25,000,000 as desired by the Consultant during negotiations in this regard. Due to this, the original position has been restored in the latest revised proposal i.e., the JPY cost has been reduced by 25,000,000 and INR cost increased by 10,000,000. (This is really not an increase or decrease, but only restoring the earlier status).

The amount under JPY has been further reduced by 7,000,000 under staff training, as disallowed by the KWA resolution dated 16.04.2003.

The overall effect is that the amount under JPY has come down from 204,000,000 (in proposal dated 07.04.2003) to 172,000,000 (in proposal dated 21.04.2003).

As a result of the negotiations, the following reductions have been offered for the items - ground surveys, geo-technical investigation, and production of documents /reports. The reduction in the last item has been achieved by reviewing and reducing the number of reports to be produced as directed by the Chairman, as documents/ reports required later can be produced from soft copies.

Reduction in quoted amount for ground surveys	:	883,549 (-)
Reduction in quoted amount for geo-technical investigation.	:	1,482,300 (-)
Reduction in quoted amount for reports/documents	:	<u>2,177,500 (-)</u>
TOTAL REDUCTION		: 4,543,349 (-) =====

Even though the Miscellaneous costs have been reduced by Rs.4,53,349 as described above, the net effect is an increase of Rs.5,456,651 due to the fact that Rs.10,000,000 has been brought back under leak detection as already stated.

After considering the revised financial proposals, the Authority came to the conclusion that further reduction from the latest negotiated offer of Rs.102.03 Crores might not be possible. The amount is excluding taxes payable by the KWA as per ToR which is assessed at current rates as Rs. 19.50 crores. (approx.)

At this juncture the Authority also recalled the provisions in the LoI regarding the procedure for contract negotiation, as stated below.

After evaluation of the technical proposals, the first ranked bidder will be invited by the Authority to enter on negotiations (including costs and financial terms) of a contract between the Authority and the firm, with JBIC's consent/concurrence. If the two parties are unable to reach agreement on a contract within a reasonable time subject to the Bank's consent/concurrence, the Authority reserves the right to terminate the negotiations with the firm and to invite the firm placed second in the array to enter on negotiation. The procedure will be followed until the Authority reaches agreement with a consultant subject to the Bank's consent/concurrence.

These stipulations are in consonance with the JBIC guidelines and the loan agreement for the project. The Authority observed that the financial offers of the 2nd and 3rd ranked bidders are not known at this stage as the offer of the 2nd ranked bidder can be opened only if the negotiations with the first ranked bidder fail and similarly, the offer of the 3rd ranked bidder can be opened only if the negotiations with the 2nd ranked bidder also fail. These steps require the consent /concurrence of the JBIC. The latest negotiated offer has been recommended for acceptance by the Authority, as it came to the reasonable conclusion that a further reduced offer might not be possible. This is, however, subject to the terms and conditions discussed below.

Next, the Authority reviewed the clarifications and reply to the observations made vide minutes of the previous meeting.

1. Advance Payment and interest:

As decided by the Authority, the JBIC has been addressed by the Managing Director for clarifications on the advance payment to the Consultants and the interest chargeable thereon. The Authority perused the reply dated 23.04.2003 received from the JBIC and noted the following:

- i. As per the Guidelines for the Employment of Consultants under JBIC ODA loans, the consultancy contract may provide an advance payment to the Consultants at the time when the contracts become effective to cover the initial reimbursable expenses. The guidelines do not include any specific guideline with regard to the interest chargeable on advance payment.
- ii. Their sample form of contract also does not include any specific provision with regard to interest chargeable on advance payment.

- iii. In respect of Consultancy contracts in other JBIC assisted projects, they have normally not come across any specific provisions relating to charging of interest on advance payment.

In view of the clarifications of the JBIC and the fact that the negotiated contract amount has been arrived at on the premise that an advance payment of 10 % of the contract value will be paid, the Authority decided to approve as recommended, the claim for 10 % advance without ~~any~~ interest.

## 2. Billing rates and overheads, social charges etc.

The Authority noted the reply from the bidder, in regard to the query relating to the pay to the key staff, (vis-à-vis billing rates), that it varies from company to company and country to country. Also the companies were not in a position to reveal the same.

## 3. Modifications to the Draft Agreement: -

The Authority reviewed the note on the legal opinion furnished by the Legal Officer and Law Officer of the KWA and observed as follows:

It was pointed out by the legal wing that as per the modifications furnished by the bidder, the cumulative liability of the Consultants for breach of contract, breach of statutory duty etc. is limited to 100% of the total remuneration receivable by the Consultants. In normal course the Consultants shall be liable for the entire consequences. Hence the KWA's interest shall be fully protected by sharing of liability by Consultants and any contractors to be involved in the works, if Consultants are not fully made responsible.

The Authority observed that the legal opinion tendered by the Law Officer did not enable to reach a conclusive view on the question of cumulative liability of the Consultants.

The Authority dealt at length on this issue, analysing the consequences of any damage that may be caused due to design failures or inadequate construction supervision for which the Consultants are to be fully responsible.

It was also pointed out in the note on legal opinion that some additional provisions were incorporated by the bidder, claiming high rates of interest for delayed payments, bank charges to be met by the KWA for making payment etc.

The views of the Law Officer of KWA were also heard in person by the Authority. After considering the effect of all the modifications wanted by the bidder to be incorporated in the draft agreement, the Authority arrived at the conclusion that the agreement conditions, as provided in the Sample form of Agreement attached with ToR which was issued to the short-listed bidders while calling for Technical and Financial Proposals, shall apply. The Authority also noted that the LoI & ToR (which includes the Sample Agreement form) had been approved by the JBIC before issuing to the short-listed bidders.

The draft agreement form drawn up in accordance with the Sample Agreement may further be got vetted by the Law Department and Finance Department when the recommendations of the Authority are submitted to the Government for approval.

The Authority also observed that the legal note furnished by the Law Officer (KWA) has also pointed out certain safeguards to be incorporated in the Agreement with regard to liquidated damages for default in completion of Consultancy services within the agreed time by the selected bidder or inability of completion of project in agreed or extended time limits by KWA due to non release of full loan amount by JBIC. It was then decided to incorporate adequate supplementary conditions for safeguarding the interest of KWA, in consultation with the Law Officer.

Res. No. 6312 Taking all the above aspects into consideration, it is resolved by the Authority to:

1. Accept the negotiated and reduced offer of M/s. TEC Consortium led by M/s. Tokyo Engineering Consultants Co. Ltd., Japan for the Consultancy Services amounting to Rs.102.03 Crores (excluding Taxes payable by the KWA) and Rs.121.53 Crores (including Taxes assessed at Rs.19.50 Crores (approx.) and payable by KWA as per the Terms of Reference) and to recommend to Government for awarding the contract to the above Consortium for the implementation of the JBIC aided Kerala Water Supply Project subject to the Terms and Conditions in the Sample Agreement form attached with the ToR. The Sample agreement and the additional conditions proposed vide item 3 below to safeguard the interests of KWA, shall be vetted by the Law Department, GoK before entering into contract.

The accepted summary of costs is given below.

Summary of Accepted Consultancy Cost					
Escalation for Remuneration: Local (Key staff only) 4%, Foreign (Key staff and support staff) 1.75%, Start Date: July 2003					
Sl.No.	Description	INR	JPY	US\$	Total in INR
1	Remuneration Key Staff	132,166,886	652,640,918	1,662,492	473,022,869
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7	Grand Total	537,375,341	922,138,050	2,375,539	1,020,256,437

The Consultancy costs is payable in INR, JPY and US\$ as per the break up furnished in the table and the total amount given in INR is only for easy comparison.

2. Pay an interest free advance of 10% of the total contract value (excluding contingencies) to meet the initial expenses of the selected bidder in accordance with the JBIC guidelines against equivalent Bank Guarantee and to recover the same in 10 consecutive instalments, starting with the first invoice.
3. Incorporate the following additional clauses to the Sample Agreement for effectively safeguarding the interest of KWA viz.
  - (i) if the contract period is extended in accordance with the relevant provisions of the Agreement, the remuneration payable will be (a) on the same escalation rates as agreed to, provided the extension of time was necessitated not by the Consultants' default; (b) on the same rate of remuneration applicable for the period in which the work ought to have been carried out, if the extension is due to Consultants' default. In this case the total number of man months for which remuneration is payable for both key and support staff shall not exceed the original man months as applicable.
  - (ii) in case of (i) (a) above, it shall be the duty of the Consultants to review the progress/ program of works and revise the manning schedule so as to lessen the financial impact on the Client by suitable re-deployment of personnel ensuring that the agreed total man months are not unduly exceeded, and only re-deployment costs are to be met by the Client.
  - (iii) If the Consultants fail to complete the total Consultancy work as envisaged in the Agreement within the original or extended time period, they shall be liable for Liquidated damages to the Client for meeting any extra cost incurred by Client due to alternate arrangement of the Consultancy work left unfulfilled by the Consultants.

- (iv) The Consultants shall not claim any compensation, if the project has to be abandoned in a partially completed stage or indefinitely postponed due to non-release of the entire loan amount envisaged for the project by the JBIC.
4. To incorporate the following further conditions in the draft agreement, based on the consensus with the Consultants during negotiations.
- (i) The Consultants shall advise the Client from time to time on the taxes payable by the KWA on account of the consultancy charges and the time limits to be complied with in this regard as well as effective advice for reducing the incidence of tax on the KWA.
  - (ii) All Reimbursable and Miscellaneous Costs shall be payable limited to the actual costs which shall not exceed the agreed total costs in any event.
  - (iii) For items such as topographical survey, geo-technical investigations, environmental impact assessment, telemetry survey, web based MIS, video documentation etc. for which L.S. amounts are quoted, the costs are only indicative and the works shall be arranged through competitive tender. The tendering and negotiations with the contractors shall be carried out by the KWA assisted by the Consultants, as envisaged in the ToR. The costs associated with preparation, processing and publication of tenders etc. shall be deemed to be included in the negotiated quoted amounts of the respective items. The KWA reserves the right to buy the equipments required for ground surveys for which hire charges are specified in the cost proposals, if the alternative of buying the equipment is found to be more advantageous to KWA than hiring the equipment.

- (iv) Besides the extent and the quantities specified by the Consultants in the proposals, the leak detection study shall comprise of the entire transmission and pumping systems of the schemes up to the existing service reservoirs in the two cities viz. Thiruvananthapuram & Kozhikkode. The cost for leak detection study in JPY shall be limited to the actual remuneration and other expenses of the foreign personnel employed in the study and towards the cost of equipments provided in the cost proposal, without exceeding the agreed amount. The local component part of the leak detection study shall be arranged through tendering.
- (v) The Consultants shall not be entitled to any claim out of the contingency provisions without the prior approval of the KWA.
- (vi) The KWA reserves the right to call upon the Consultants to produce original documents in proof of any claim made by them in the Consultants' Technical Proposals including the information furnished in the C.V. of the personnel and experience of the firms and the Consultants shall produce such evidence within reasonable time without any demur failing which the Client will be at liberty to take such discretionary decision as deemed fit and lawful.
5. The Authority further resolved to accord sanction to the Managing Director, KWA to execute the contract agreement with the TEC Consortium led by M/s. Tokyo Engineering Consultants Co. Ltd., Japan after receipt of Government approval and to submit certified copy of the contract for review and concurrence of the JBIC, as stipulated in the Loan Agreement.

  
**SECRETARY**

  
**MANAGING DIRECTOR**

  
**CHAIRMAN**