

PMC for 400 MLD SWRO Desalination Plant at Perur, Chennai

Consortium Partners

SMEC International Pty. Ltd. (ACN-065440619/FCRN-F01483)

NJS Engineers India Pvt Ltd, India (CIN - U74210PN2007PTC129798)

Tata Consulting Engineers Limited, India (CIN- U74210MH1999PLC123010)

SMEC (India) Pvt. Ltd. (CIN: U93000DL1997PTC088574)



Ref: SSNT PMC 400 MLD/ CMWSSB / 5061185/ 281

Date: 5th February 2021

To,

The Chief Engineer, Project-III,
Chennai Metropolitan Water Supply and Sewerage Board,
Urban Administrative Building, 3rd Floor, No.75, Santhome High Road,
Raja Annamalaipuram, Chennai 600 028
Tamil Nadu, India

Sub: Consultancy for "Design, Preparation of Bid Documents & Evaluation of Bids for the Proposed Construction of 400 MLD Capacity Seawater Reverse Osmosis Desalination Plant at Perur along East Coast Road, South of Chennai, Tamil Nadu and Construction Management & Supervision for the Proposed Desalination Plant and its Product Water Conveyance Pipeline from the Plant and up to Porur and all allied works (JICA Loan ID-P267)"

Reply to CMWSSB Letter dated 01.02.2021- Non-availability of key staffs- Reg.

Ref:

1. Your letter vide Letter No: CMWSSB/SE (Desal)/400 MLD Plant/PMC-031/2021 dated 01.02.2021
2. Your Letter no. Lr.no. CMWSSB/SE(Desal)/400 MLD Plant/PMC-026/2020, dated 24.10.2020
3. Our letter vide Ref: SMEC/CMWSSB/5061185/163 dated 19.09.2020
4. Our letter vide Ref: SMEC/CMWSSB/5061185/082 dated 12.06.2020
5. Email from your office (JICA comments on PQ document) dated 05.06.2020
6. Our letter vide Ref: SMEC/CMWSSB/5061185/018 dated 10.03.2020
7. Our letter vide Ref: SMEC/CMWSSB/7061563/013 dated 24.02.2020
8. Our letter vide Ref: SMEC/CMWSSB/7061563/005 dated 20.01.2020
9. Your Letter no. Lr.no. CMWSSB/SE(Desal)/400 MLD Plant/PMC/2020, dated 13.01.2020
10. Our Contract with CMWSSB, dated 09.01.2020

Dear Sir,

In reference to the above, we would like to inform you that the observations made in your letter vide Ref. 1 dated 01.02.2021 are not factually and contractually correct. We would like to have your help to understand your reservations that has no roots.

We firmly believe that we fulfilled our contractual obligation, and there are no lapses in our services. We would like to reiterate that PMC has been performing all its Services with due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices as per the contract.

PMC has always acted as a professional and faithful adviser to the above assignment of CMWSSB and at all times supported to safeguard the legitimate interest of CMWSSB.

Furthermore, PMC has employed and provided highly qualified and experienced Experts as required to carry out the Services pursuant to the Contract.

In this regard, our response to your observations are as follows:

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Handwritten signature and date: 9/2/21
Circular stamp: Managing Director, C.M.W.S.S.B. dated 09 FEB 2021

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Observation-1: PMC has not mobilised the required Key Staffs in time which has affected the progress of work and some of the staffs appointed, particularly the Contract Specialist (Desal) International Expert has not participated in the preparation of RFQ document and several lapses are noticed.

Response-1: PMC would like to draw attention that this is a generic comment covering more than key personnel, noting the Contract Specialist was there.

PMC mobilised its experts within a week time from the date of signing the agreement in view of the urgency expressed by you and confirmed the commencement of the services from 20.01.2020 for the subject project.

Particularly, the International Contract Specialist (Desal) was mobilized in the month of November 2019, well before the signing of the Contract and started his involvement in the assignment by interacting with CMWSSB, JICA and studied the relevant documents for the preparation of PQ Document for CP-1 as per JICA format in due consultation with all Key technical experts and officials of CMWSSB. However, we could not claim his time input for December 2019 on the project due to the delay in the signing of the Contract.

The International Contract Specialist (Desal) left India after 22.02.2020 due to the onset of Covid-19 pandemic across the globe and the strict government regulations in his home country. However, he continued to provide his services from his home country, as and when required. Subsequently, the PQ final draft document was submitted to the CMWSSB on 24.02.2020

Further to the draft submission, several rounds of technical discussions were held to finalise the PQ document before CMWSSB forwarded the PQ document to JICA on 13.03.2020 for obtaining concurrence.

It is also to be noted that to supplement the International Contract Specialist (Desal), the National Contract Management Specialist was appointed from 02.03.2020 for local and better coordination regarding the PQ document.

Also, we have additionally mobilised legal expert, at no extra cost, to strengthen the legal aspects of PQ document and to ensure that the overall progress of the project is not hampered.

Due to the Covid-19 pandemic, the observations on the PQ document from JICA were received on 05.06.2020, and the observations were jointly discussed and reviewed by CMWSSB & PMC. Subsequently, the response to queries was submitted to CMWSSB on 12.06.2020.

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From this, it is evident that no time delay has occurred from PMC side. In fact, as requested by you, we have advanced the PQ document preparation, and all CP-1 experts worked extensively beyond the normal working hours on this document by duly considering CMWSSB suggestions/observations received intermittently till it was submitted to JICA.

The statement on alleged lapses is addressed in the response below.

Observation-2: The PMC has omitted the important qualification criteria, which is a part of Minutes of Discussion signed between JICA and CMWSSB.

Response-2: We would like to particularly refute your statement ascribing us of omission of important qualification criteria, which were a part of Minutes of Discussion signed between CMWSSB and JICA. It may be informed to you that the PQ document (first submission) was submitted on 13.03.2020 to JICA after a detailed discussion with representatives of CMWSSB and upon reviewed by CMWSSB.

During the initial discussions with CMWSSB, while drawing up the qualification criteria for PQ, it was opined by the experts of PMC that these particular provisions would restrict the participation of some potential bidders in the market, and the same was agreed by CMWSSB during the initial stage of discussion. Please note that a market assessment of potential bidders was carried out by PMC and presented to higher officials of CMWSSB on 02.03.2020. The PQ document was further reviewed by CMWSSB before it being forwarded to JICA. The queries sent by JICA on 05.06.2020 does not necessitate the inclusion of these provisions in the PQ document. These provisions were included in the PQ document on CMWSSB's instructions, at a later date while addressing the JICA comments.

Observation-3: The poor drafting of the RFQ documents has resulted in redrafting various clauses of the RFQ documents by the Board officials and delayed the finalisation of the document.

Response-3: We would like to bring it to the perspective that the PQ document was prepared using JICA Standard Prequalification Document (SPD) following many deliberations with CMWSSB. In this regard, we reiterate that the document did not require to draft the clauses as most of the clauses are the part of SPD. The Prequalification Data Sheet (PDS) and Eligibility & Qualification Criteria were to be modified to suit the project requirements.

After receiving the JICA observations, several consultations took place with CMWSSB and JICA, which is best normal practice, to sort out the various eligibility and qualification criteria. Accordingly, the document was updated

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and finalised by including/omitting/relaxing few clauses in the final version of the document to attract maximum bidder participation.

The major causes of delay in finalisation of PQ document were the indecisiveness and procrastination of CMWSSB regarding the incorporation of provisions like specific experience, NCLT, CDR, apostil, calculation of JV partners shares, consideration of sub-contractor experience, JV agreement/SPV formation etc. The time taken to arrive at these decisions delayed the finalization and submission of PQ document for the concurrence of JICA.

Hence, we repudiate your statement attributing us that the PQ document was drafted poorly and delayed in the finalisation due to PMC.

Observation-4: PMC has prepared the draft RFP document without the presence of Contract Specialist (Desal), and during the review, it was noticed that PMC has not incorporated required details due to which there was several corrections which portrays the poor quality of preparation of documents.

PMC did not incorporate the corrections conveyed in the meetings, which further delayed the preparation of the draft RFP document.

Response-4: After submitting the Concept Report on 09.07.2020, several rounds of technical presentations were given by PMC to CMWSSB and JICA. Subsequently, PMC staff started working on the preparation of RFP document using the Standard Bidding Document (SBD) of JICA and the FIDIC Gold Book-2008 as specified in the MOD.

Accordingly, Mr. Abdel Toukan, Contract Specialist (Desal) was mobilized from 02.11.2020 who continued providing his inputs on RFP document from Canada due to Covid-19 travel restrictions and reviewed the appropriate application of JICA and FIDIC rules and regulations.

It is brought to your kind notice that we had arranged his travel plan to India for the third week of November 2020, but due to the month-long lockdown owing to the second wave of Covid-19 in Canada, he had to postpone his travel to the first week of January 2021. During this period, his services were fully utilized, and he was actively involved in the responses to Preapplication queries along with other experts and attended many meetings with CMWSSB & PMC local team during odd hours (3:00 AM onwards) of his time in Canada.

He had been thoroughly involved during the RFP preparation before the draft document was submitted to CMWSSB on 01.12.2020. With all pandemic risks and local restrictions, the PMC arranged the International Contract Specialist

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(Desal) to travel from Canada to Chennai with a limited entry visa as allowed by Indian Embassy and after his arrival in Chennai, the Contract Specialist (Desal) was directly involved in all discussions and reviews with CMWSSB.

He has provided his services to the project both in the **evaluation of PQ applications and the preparation and finalization of RFP document** by involving in various meetings and joint deliberations with CMWSSB while working late nights during this period which is not usual to the international experts. Also, it is to be noted here that he shared his views and provided guidelines for the correspondence letters sent to bidders for clarifications, attended PQ evaluation meetings. Even after he left India on 22.01.2021, he continued to provide his services for the RFP finalization and bid process management from his home country for a while. He will travel back to India once the travel restrictions are eased out.

It may further be informed that the PMC did not receive any comments/observations for more than 2 weeks after submitting the draft RFP document to CMWSSB. CMWSSB had sufficient time for the review of the RFP document before the PMC had arranged the presentations on 15.12.2020 (Part-II) and 18.12.2020 (Part-I & III). During these presentations, PMC had sought some feedbacks/observations on various decision-making points from CMWSSB but could not get any response from CMWSSB. However, CMWSSB approached PMC on 06.01.2021 (one day after the opening of Application for PQ) and started exerting pressure on us to complete the RFP document by 20.01.2021. In view of the project's complexity, we envisaged a thorough discussion and review should have happened on the RFP document before the planned submission deadline of February 2021. However, CMWSSB expressed their urgency in finalisation of the document and proposed to review and work jointly on finalisation of the RFP document. Based on the request, PMC deployed all the named staffs to work **parallelly on the PQ evaluation as well as the finalisation of RFP document**.

With the available designated key experts, it was not so easy task to work simultaneously on two important activities, but you would appreciate that all the staff worked late hours continuously for 20 days without having any holidays. Considering the importance of the document and the ambitious timeline, PMC had mobilised additional staff like project coordinator, legal expert, electrical expert etc., to meet the urgency and expectations of CMWSSB. The International Experts were also working on the document round the clock without even considering the hindrance of different time zones. All the PMC staff provided their respective inputs during the extended hours from 8:00 AM to 10:00 PM and sometimes even up to 1:00 AM, including

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weekends and public holidays, to meet the urgency of submitting RFP.

However, it is to bring to your notice that PMC staff worked jointly with CMWSSB staffs on the RFP document and the relevant suggestions were incorporated immediately after these long late hours of review meetings. Despite this, constant instructions to change in the contract provisions by CMWSSB without having consensus on the changes led to the confusion and repetition of the work. You may agree with us that it was very difficult to absorb the changes given at the late hours and expecting the document to be ready by next day morning (before the start of office hour) and to keep the continuity of the document in such a short time, but we managed to do this too.

We would like to bring it to your kind notice that the unexpected Covid-19 pandemic has created a situation wherein we would have requested for additional time for the tender phase, but we have adhered to the agreed schedule and delivered the PQ and RFP documents before the planned time considering the project as well as CMWSSB's interest. Despite all these hurdles the PMC was able to complete and submit the RFP document within 20 days from the date of starting the joint discussions on RFP which is one month ahead of the planned submission date, i.e. Feb. 2021 (Refer Dec. 2020-MPR).

On the reverse side, if the document is amended/modified to contain a clause to include client vision which always happens, and for which the submitted document cannot be referred to be poor. This is an unacceptable definition and needs to be proven in which sense it was poor and on what basis it contradicts with JICA SBD or FIDIC.

Observation-5: The RFP document, especially Part-I and Part-III, were redrafted by the Board officials to make it suitable for the project requirements.

Response-5: We firmly refute the claim that the RFP document, especially Part-I and Part-III were redrafted by the Board officials as the document was prepared by the PMC using the SBD of JICA and the modifications to the documents were the ones which needed the CMWSSB's decision.

It was the indecisiveness on the part of the CMWSSB that led to the multiple repetitive modifications in the documents and ultimately led to this misunderstanding. PMC has prepared the document fairly based on their experience of similar projects and as per JICA guidelines. But it is observed that Board officials tend to impose their intended/ preferred changes in the document through PMC without any rational explanation. Any disagreement of PMC to the suggestions of Board officials has been treated as non-performance of the PMC. We always reiterate that as a client, CMWSSB has

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all the rights to make the changes to the documents submitted by PMC before forwarding to JICA.

One such instance is the inclusion of JV or SPV in the implementation of the project. During the PQ stage, it was formalised that a JV agreement would have to be registered in Chennai by the successful bidders to execute the project. The RFP document submitted in 01.12.2020 contains the provision of JV agreement registration in line with PQ. But CMWSSB proposed during one of the joint meetings that the project would be implemented by the successful bidders upon incorporating a SPV. This decision was taken at the highest level of CMWSSB on 19.01.2021 and accordingly, PMC was advised to modify the document on 20.01.2021. Later, CMWSSB decided to remove the above SPV formation clause from the document on 22.01.2021. These changes have cumulative effects in the document, and it is a very tedious process to comply with these changes in a short time. The other such instance is the quantum of performance security for the O&M period. There are many instances which required decision making from the CMWSSB to finalise the document, but CMWSSB officials kept on changing their views on the subject and tried to push forth their views on PMC without any proper reasoning.

Observation-6: PMC has not mobilised Electrical Engineer (Desal), and the required works are done by junior level staffs.

Response-6: Due to Covid-19, International Electrical Engineer (Desal) could not travel to India but constantly supported to complete the electrical part of the document remotely and provided the required inputs, although we have not fully charged for his home inputs on the project. In addition, we mobilised one local Electrical Engineer, for coordination, review, and completion of the RFP document in time, without any additional cost to CMWSSB. Also, it may be noted that one more Electrical Engineer (National) who is working on CP-2 was involved during the process.

It is to inform that the CV for the replacement of International Electrical Engineer (Desal) was submitted to CMWSSB on 13.07.2020 and the consent was accorded on 16.09.2020. PMC applied for the VISA of Electrical Engineer (Desal) for his travel to India which was denied by the Indian Embassy in the Philippines due to the prevailing travel restrictions to India. Thereafter, PMC had requested CMWSSB on 02.12.2020 to issue a VISA request letter addressing to Indian Embassy for Electrical Engineer (Desal) which was issued on 28.12.2020 by CMWSSB. In the meantime, PMC mobilised Electrical Engineer (Desal), Mr. Guilbert Z Gonzales, who worked from his home location from 07.12.2020 onwards and started supporting the local Electrical Engineers. Thus, we avoided delays in getting his inputs on the document.

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Consultant had to incur additional expenses to compensate its staff and also to meet the additional expenses on other overheads and logistics. In view of the above, the Consultant is entitled to claim additional costs as a variation. These additional costs suffered by the Consultant are being calculated, and the claim will be submitted to you shortly.

It is also being brought to your notice that despite our several requests and reminders, CMWSSB has not been releasing our legitimate and due payments regularly and the Consultant has been suffering huge financial losses due to such extraordinary delays in release of payments, which extended to as far as 7 months. In view of the above, the Consultant is entitled to claim the interests on delayed payment as per Clause 6.6 of the GCC of the Contract. The amount claimed as interest on delayed payment is being calculated, and the claim will be submitted to you shortly.

The tentative estimation of the above-mentioned cost variation, and the interest on delayed payments is approximately INR. 2.7 Crores. The detailed breakup of the same will be submitted to the Client and JICA shortly.

Thanking you and assuring our services at all times.

Yours truly,

For Consortium of SMEC International Pty Ltd -TCE Ltd.-NJS Engineers India Ltd.-SMEC (India) Pvt. Ltd.

P. Dharmabalan

Dr. P. Dharmabalan
Team Leader



Copy to:

- ✓ 1) Managing Director, CMWSSB, Chennai, for your kind information and intervention.
- 2) Mr. M. P. Singh, Chief of Development Operations, JICA India Office for kind information and Intervention
- 3) Mr. Avani Mishra, Deputy Director, DEA, Ministry of Finance—for your kind information
- 4) Superintending Engineer (Desal), CMWSSB, Chennai – for your kind information.

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