

File No- BMSIC/40025/39-2021/6637

Date: -16/11/2022

Order

M/s Omega Pharma, having its head office at D-10, Kavi Nagar Indl. Area Sector-17, Ghaziabad, U.P.-201002. was declared as L1 bidder for following drugs vide tender reference no.- BMSIC/DRUGS/19-12:-

- (i) Amoxycillin 250mg Capsule/Tablet. (Rs. 0.72/- per Unit). (L-2 Bidder).
- (ii) Co-Trimoxazole Tablet (80mg+400mg) (Rs. 0.61/- per Unit). (L-1 Bidder).
- (iii) Co-Trimoxazole Tablet (160mg+800mg) (Rs. 1.15/- per Unit). (L-1 Bidder).

Accordingly, the firm M/s Omega Pharma. was issued a Letter of Intent (LoI) vide letter no. - 9029, dated 19-02-2021 of BMSICL for submitting the requisite documents, Performance security deposit and to execute the Rate-Contract for the said drug items.

Subsequently, the firm M/s Omega Pharma was given orders for above mentioned drug items vide BMSIC/40025/39-2021/406 dated 14-04-2021, BMSIC/40025/39-2021/6365 dated 02-12-2021, BMSIC/40025/39-2021/8607 dated 09-02-2022 & BMSIC/40025/39-2021/3364 dated 22-08-2022.

The firm, M/s Omega Pharma did not supply the ordered quantity against Amoxycillin 250mg Capsule/Tablet of Purchase Order no- BMSIC/40025/39-2021/6365 dated 02-12-2021, BMSIC/40025/39-2021/8607 dated 09-02-2022 & BMSIC/40025/39-2021/3364 dated 22-08-2022, but asked for extension of delivery schedule vide mail dated 22-02-2022. BMSICL, vide Letter No-BMSIC/40025/39-2021/10086 dated 26-03-2022 granted extension for the above mentioned purchase order no- BMSIC/40025/39-2021/6365 dated 02-12-2021. And the firm has not supplied the ordered quantity as yet. Hence BMSICL issued showcause notices vide mail dated 14-03-2022 & 26-05-2022.

The firm replied vide mail dated 30-03-2022, 27-05-2022 & 18-08-2022 that, *"We have supplied more than the LOI qty. i.e. 19.16% extra. We have quoted the price in the tender in June 2020 at the time of COVID 19. The API prices that had been taken by us for the said tender was June 2020. After the COVID, the rates of various items i.e. API have increased exorbitantly. Also the price of API has increased by much as 300 % even since the second wave of COVID has erupted. Pharma Companies are largely dependent on China for their API requirement. A sizeable decline in importers from China triggered its shortage in the domestic markets since the advent of COVID 19. The raw material shortage led to uncertainty in the market is fueling price hikes. In view of the above, we also informed to you of Amoxycillin Tablets IP 250 mg is being covered under FMC Further we also inform you that the major COVID 19 issue, the ministry of Finance Government of India has also issued FMC dated 19-02-2020, it is categorically stated that if there is disruption of supply chains due to the spread of Corona virus, the same shall be treated as natural Calamity and will be squarely covered by FMC."*

According to Force Majeure Clause (FMC), *"A Force Majeure (FM) means extraordinary events or circumstance beyond human control such as an event described as an act of God (like anatural calamity) or events such as a war, strike, riots, crimes (but not including negligence or wrong-doing, predictable/ seasonal rain and any other events specifically excluded in the clause). An FM clause in the contract frees both parties from contractual liability or obligation when prevented by such events from fulfilling their obligation s under the contract. An FM clause does not excuse a party's non-performance entirely, but only suspends it for the duration of the FM. The firm has to give notice of FM as soon as it occurs and it cannot be claimed ex-post facto. There may be a FM situation affecting the purchase organization only. In such a situation, the purchase or organization is to communicate with the supplier along similar lines as above for further necessary action. If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of FM for a period exceeding 90*



(Ninety) days, either party may at its option terminate the contract without any financial repercussion on either side."

Hence, in view of the provisions in Force Majeure Clause the rate Contract of Amoxycillin 250mg Capsule/Tablet with M/s Omega Pharma, D-10, Kavi Nagar Indl. Area Sector-17, Ghaziabad, U.P.-201002 is hereby terminated with immediate effect apart from forfeiture of security deposit. The non-executed purchase orders for Amoxycillin 250mg Capsule/Tablet issued earlier shall also stand cancelled.


(Managing Director)

Memo No. - BMSIC/40025/39-2021/6637

Date: - 16/ 11 /2022

Copy to: The Managing Director, M/s Omega Pharma for information and needful action.


(Managing Director)

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Date: - 16/ 11 /2022

Copy to:

1. The Additional Chief Secretary, Department of Health, Govt. of Bihar for kind information please.
2. Executive Director, State Health Society, Bihar for kind information please.
3. The CGM (Supply Chain), General Manager (Logistics), General Manager (Finance), BMSICL for information and necessary action. GM (Logistics) to ensure publication of this order on the official website of BMSICL and Notice Board as well.
4. MD, All Medical Corporations and Procurement Agencies all over India for information and necessary action please.
5. CEO, Government e- Marketplace for information and necessary action please.
6. All Civil Surgeons, Bihar and Superintendents of all Govt. medical college and hospitals of Bihar for information and necessary action.


(Managing Director)

