

File No- BMSIC/40010/65-2019/6528

Date: -11 / 11 /2022

Order

M/s Modern Laboratories, having its head office at, 45-47, Sector D-2, Sanwer Road, Industrial Area, Indore-452015 (M.P) has participated in Tender No- BMSIC/DRUGS/19-05 and was issued a Letter of Intent (LoI) vide letter no.- BMSIC/40010/65-2019/3453 dated 16-09-2019 for submitting the requisite documents, security deposit and to execute the Rate-Contract for the said drug within 15 days from the date of receipt of LoI, for the below mentioned product:-

- (i) Metformin Tablet 500 mg @ 0.26/-.

Subsequently, Modern Laboratories was issued Purchase Orders for Metformin Tablet 500 mg @ 0.26/- vide letter no. – BMSIC/40010/65-2019/7509 dated 06-03-2020, BMSIC/40010/65-2019/932 dated 12-05-2021 and BMSIC/40010/65-2019/6599 dated 09-12-2021. The firm didn't supply the ordered quantity against Purchase Order no- BMSIC/40010/65-2019/6599 dated 09-12-2021.

The firm, M/s Modern Laboratories vide mail dated 08-03-2022 asked for extension against Purchase order no- BMSIC/40010/65-2019/6599 dated 09-12-2021, stating that, *"We are in the receipt of your above referred orders (cited at serial no 4 to 6), which are placed to us for supply of – Metformin Tab 500mg, Ampicillin and Cloxacillin Inj 500 + 500mg, Moxifloxacin Eye Drop 0.5%w/v, Inj. Lignocaine 2% w/v, Albendazole Oral Susp. 200mg/5ml and Ampicillin and Cloxacillin Inj 250 + 250mg respectively. We have already commenced the supply for the referred three orders, and the same is also evident over the i-MCS portal of BMSICL. However, as the API/RM movement is very slow, the supplies might get delayed marginally. Anticipating this, we have already requested for supply period extension (Vide our letter cited at serial no 10). The circumstances are unfortunate and are out of our control. Further, we are not habitual defaulter, rather serving BMSICL is honour for us and despite of not consideration of our request for rate concurrence and enhancement due to exponential hike in RM/API rates, we are still supplying all the orders, bearing huge loss of more than 30%. Hence, we most humbly request BMSICL to consider the genuine unfortunate situation and provide the extension upto 15.03.2022 without imposing LD/Penalty. However, as we have already commenced the supply, we will try our best to deliver the supplies well before the extended period."* BMSICL, vide Letter No. BMSIC/40010/65-2019/345 dated 18-04-2022, granted extension to the firm for the supply of Metformin Tablet 500 mg.

BMSICL again vide letter no- BMSIC/40010/65-2019/941 dated 12-05-2022 & BMSIC/40010/65-2019/3220 dated 16-08-2022 issued Purchase Orders to M/s Modern Laboratories for Metformin Tablet 500 mg. The firm didn't supply against any of the mentioned Purchase Orders but vide mail dated 28-09-2022 stated that, *"In this connection, we would like to draw your immediate attention towards certain facts –1. We have supplied a total of 1,83,00,000 tablets, in the tender 19-05, excluding the order dated 16.08.2022. However, the tendered quantity was only 1,85,050 tabs, against which the LOI was issued to us mentioning the quantity as 18,12,710 tablets.*

2. *Therefore, it is pertinent to mention that we have been issued the orders exceeding approximately 100 times of the tendered quantity, and 10 times of the LOI quantity, and we have supplied all the orders of this extravagant quantity. As such, we have served the orders beyond the scope of tender and LOI. There is no extent defined to which the surplus orders could be placed.*

3. *It is also much vital to mention that the referred tender was filled/submitted before the pandemic period and hence the API/RM, PM rates has gained exponential hikes thereafter. As such the rates are no longer valid and also doesn't stand applicable to the past order too (cited at serial no 3) of the said item.*

4. *We have also requested for cancellation of the previous order (dated 12.05.2022), which was unheard. And despite of our repeated requests, no response was given to us. Ultimately, in the general interest of the public of Bihar State, we served the last order, bearing an exorbitant loss of more than 30%.*

5. *Apart from bearing the immoderate loss, the payments of our supplies is never released in time from BMSICL. Our past many supplies has been paid back after 6-9 months of the supply, which could have been actually paid after 45-60 days of our supplies. We have to bear intense bank interests on account of such delayed payments.*

6. *We yet again reiterate that we have served item - Tab. Metformin 500mg, more than 100 times of the tendered quantity, and are currently not in position to yet again bear huge loss in supplying the referred order (cited at serial no 5). Hence, we hereby request you to kindly please cancel the referred order dated 16.08.2022 without any financial/administrative/departmental repercussion on us, duly considering the fact that we have already complied to the tender and LOI quantities and have served BMSICL beyond the scope and agreement."*



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 a natural 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 obligations 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 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 Metformin Tablet 500 mg with Modern Laboratories is hereby terminated with immediate effect apart from forfeiture of security deposit submitted for Metformin Tablet 500 mg. The non-executed purchase orders for Metformin Tablet 500 mg issued earlier shall also stand cancelled.


(Managing Director)

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



(Managing Director)

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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) is requested 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 colleges and hospitals of Bihar for information and necessary action.


(Managing Director)

