

File No- BMSIC/40025/19-2021/6590

Date: -15/11/2022

Order

M/s Zen Pharma Pvt Ltd, having its head office at, 34/134, Laxmi Industrial Estate, New Link Road, Andgeri (West), Mumbai, has participated in Tender No- **BMSIC/DRUGS/20-05** and was issued a Letter of Intent (LoI) vide letter no.- BMSIC/40025/19-2021/9140 dated 24-02-2021 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 products:-

- (i) Lidocaine Injection 1% w/v, 20 ml Vial @ 8.00/-.
- (ii) Clindamycin Injection 600 mg @ 18.25/-.
- (iii) Cefotaxime Injection 1 gm vial @ 13.64/-.

Subsequently, M/s Zen Pharma Pvt Ltd was issued Purchase Orders for above mentioned drug items vide Letter No. – BMSIC/40025/19-2021/2337 dated 01-07-2021 & BMSIC/40025/19-2021/6603 date 09-12-2021. The firm didn't supply the ordered quantity against above mentioned Purchase Order, but asked for extension of delivery schedule vide mail dated 29-09-2021 & 09-12-2021 stating that, *"With Respect to the subject under reference we would like to inform you that due to the Corona pandemic situation there has been as acute shortage of raw materials of raw materials as major import channels from China are blocked resulting in steep rise in raw material prices as well as it's acute shortage. Due to the non-availability of raw materials our planning of supplying the item within 25 days took a major hit. Despite such obstacles we were able to supply the 100% qty but the entire consignment couldn't reach the warehouse within the stipulated time line."*

The firm, M/s Zen Pharma Pvt Ltd supplied the ordered quantity after delivery extension provided vide BMSICL letter no- BMSIC/40025/19-2021/5133 dated 06-10-2021 & BMSIC/40025/19-2021/8380 dated 02-02-2022 against Purchase Order No- BMSIC/40025/19-2021/2337 dated 01-07-2021 & BMSIC/40025/19-2021/6603 date 09-12-2021 respectively.

BMSICL again vide letter no- BMSIC/40025/19-2021/2226 dated 30-06-2022 issued a Purchase Order for above mentioned drug items. M/s Zen Pharma Pvt Ltd didn't supply **Cefotaxime Injection 1 gm vial** against Purchase Order No- BMSIC/40025/19-2021/2226 dated 30-06-2022.

In view of the above, M/s Zen Pharma Pvt Ltd was issued a show cause notice, vide mail dated 03-09-2022 & 29-09-2022. The firm, M/s Zen Pharma Pvt Ltd, vide mail dated 30-09-2022 replied that, *"We would like to highlight that the tender was published during COVID period and we were declared L1@ 13.64 for the above item. Pls note that the tender quantity mentioned in the tender was 37600 Vials and till date we have successfully supplied 1,29,600 vials. Sir, the raw material prices have now increased to almost two times from the time we had executed the agreement. We had executed all previous orders without any delay to your institution incurring losses. However, given the current situation it is impossible for us to continue our supplies for the same."*

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 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 Cefotaxime Injection 1 gm vial with M/s Zen Pharma Pvt Ltd is hereby terminated with immediate effect apart from forfeiture of security deposit submitted for Cefotaxime Injection 1 gm vial. The non-executed purchase orders for Cefotaxime Injection 1 gm vial issued earlier shall also stand cancelled.

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(Managing Director)

Date: -15/ 11 /2022

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

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(Managing Director)

Date: -15/ 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) 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)

