

File No- BMSIC/40025/29-2020/6593

Date: -18/ 11 /2022

Order

M/s Medicef Pharma, having its head office at #28, Phase-I, EPIP, Jharmajri, Baddi, District-Solan H.P was declared as L1 bidder for following drugs vide tender reference no.- BMSIC/DRUGS/19-08:-

(i) Amoxycillin and Potassium Clavulanate Oral Suspension IP (125mg Amoxicillin +31.25mg Clavulanic Acid/5ml) 30 ml Bottle (Rs. 12.95/- per Bottle).

Accordingly, the firm M/s Medicef Pharma was issued a Letter of Intent (LoI) vide BMSICL letter no. BMSIC/40025/29-2020/8000 dated 15-01-2021 for submitting the requisite documents, Performance security deposit and to execute the Rate-Contract for the said Drug. The Agreement was made on 3<sup>rd</sup> February 2021.

Subsequently, the firm was issued Purchase Orders for 10, 00,000 units of Amoxycillin and Potassium Clavulanate Oral Suspension IP vide Letter No. - BMSIC/40025/29-2020/9057 dated 20-02-2021 & BMSIC/40025/29-2020/4538 dated 16-09-2021 respectively. The firm didn't supply the ordered quantity against Purchase Order no- BMSIC/40025/29-2020/4538 dated 16-09-2021, but asked for extension of delivery schedule vide mail dated 12-01-2022 stating that, "In refrence to our request as subjected regarding extension in delivery for further 7 days & late acceptance of Amoxycillin + Potassium Clavunate-Oral Suspension(without late delivery charges -LD), we would like to bring in your kind notice that we had supplied entire quantity of Amoxycillin + Potassium Clavunate-Oral Suspension (500000 Bottles) as per purchase order quantity at mentiuned mentoned warehouse (PATNA, MUZAFFARPUR & PURNIA) where we have been successfully delivered & as received by warehouse authority with the receipt note against purchase order (Tax Invoices & POD copies are enclosed for your perusal). We are committed to supply all material at your asked warehouse (3 to 4 days). Earlier we had requested you for PO Amoxycillin Potassium Clavunate-Oral Suspension extension of this time as it would help us in easy delivery & supply updation on BMSICL portal. Now goods are delivered & received by all consignees. There are unforeseen circumstances and beyond our control and we request you to consider above facts and we would like to make humble request to our extension of delivery up to-20-11-2021. Without of late delivery charges."

The extension was granted till 22-11-2021, vide Letter No. BMSIC/40025/29-2020/8292 dated 31-01-2022. The firm supplied only 4,81,960 units of Amoxycillin and Potassium Clavulanate Oral Suspension IP.

BMSICL again issued the purchase order for 30,00,000 units of Amoxycillin and Potassium Clavulanate Oral Suspension IP vide letter no- BMSIC/40025/29-1265 dated 26-05-2022 against which the firm didn't supply the ordered quantity. The firm vide letter dated 13-06-2022 informed that, "We have received a purchase order no as above mentioned on 30/05/2022. In this regarding, we want to keep some point in front of you that impact the supply in terms of Price, Qty and time line as:

1. Price increment required in this supply: We would like to request that you consider the current scenario of the Market and support us in terms of price increment. As you know that only in the API of Amoxicillin's Price is 50% upside that creates a huge difference. If we consider the other inputs Like Clavulanic Acid & Excipients, these are also upside. Even Packing Materials and freight also 40%-50% upside and due to FMC and govt important policy certain things are beyond



our control and it's effect on our cost of production also. These are major variables that impact the cost badly.

2. Tender Qty 3109200 btl's : As per tender Qty, 3109200 btl's was to be supplied in 2 Years and already 10,00,000 btl's have been supplied to BMSICL against your PO No. BMSIC/40025/29-2020/9057 Dtd on 20/02/21 Qty 5 Lac & BMSIC/40025/29-2020/4538 Dtd on 16/09/22, Qty 5 Lac. Now Balance Qty. are 2102900 btl's. But we received a PO of 30 Lac btl's out of 2102900 btl's. Further I would like to request you that we can supply the remaining Qty 2202900 Btl's only.

3. Limitations of Plants: Furthermore, I would like to request that the Qty 2102900 btl's into four parts for next 8 Months i.e 5 Lac btl's/two month. Since the Dry syrup filling is a lengthy process and the plant has a limitation of manufacturing and filling as well. In a single PO, Qty is more than 5 Lac not possible for our manufacturing facility. As you know that the total Qty 3109200 was committed for 2 years but 75% Qty in a single PO within 60 days is not fishable for us. Also, procurement of API and HDPE btl's side also a major constraint. No one can supply this huge input within 60 days. We request to consider these facts and the Purchase Order be arranged with month wise planning. i.e. each 5 Lac btl's will be supplied within a 60 days difference period."

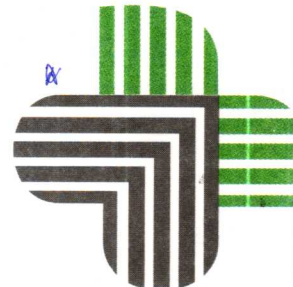
The firm vide mail dated 03-08-2022 also informed that, "we are unable to supply goods against your purchase order No. BMSIC/40025/29-2020/1265 dated on 26-05-2022 as received in favour of Tender BMSIC/DRUGS/19-08 due to below listed reasons:

- 1- All the Input's prices are tremendously shoot up i.e. In the Amoxicillin Trihydrate's price only approximately 50% up, that was not expected.
- 2- All the Packing Materials price like Foil /Cartons are also 35% -40% up side.
- 3- Forwarding charges is also 50% up approximately
- 4- Plant Capacity is not viable for given order. As we had filled the tender 32 lac btl's for two years and we have supplied 10 lac btl's already in two consecutive orders (each 5 Lac). Now balance Qty 22 Lac btl's was to be supplied but in this, single PO Qty is given 30 Lac that is too high as per our plant capacity within 45 days. All the above said fact, we have kept in front of you in the last letter dated on 13-06-22 But unfortunately, not accepted by you.

Above said facts are very genuine and not for us only, even any manufacturer, can't supply the goods at this cost according to current scenario and also not possible the said qty within given timeline. Therefore, we are unable to supply goods and consider this withdrawal letter with relaxation."

In view of the above, M/s Medicef Pharma was issued a show cause notice, vide mail dated 03-09-2022 & 29-09-2022. And the firm has not supplied the ordered quantity as yet against the Purchase Order No- BMSIC/40025/29-1265 dated 26-05-2022.

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 Amoxycillin and Potassium Clavulanate Oral Suspension IP (125mg Amoxicillin +31.25mg Clavulanic Acid/5ml) 30 ml Bottle with M/s Medicef Pharma is hereby terminated with immediate effect apart from forfeiture of security deposit submitted for Amoxycillin and Potassium Clavulanate Oral Suspension IP (125mg Amoxicillin +31.25mg Clavulanic Acid/5ml) 30 ml Bottle. The non-executed purchase orders for Amoxycillin and Potassium Clavulanate Oral Suspension IP (125mg Amoxicillin +31.25mg Clavulanic Acid/5ml) 30 ml Bottle issued earlier shall also stand cancelled.

File No- BMSIC/40025/29-2020/6593

(Managing Director)

Date: - / /2022

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

File No- BMSIC/40025/29-2020/6593

(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)

