

File No- BMSIC/40025/34-2021/6709

Date: -18/11/2022

Order

M/s **Legen Healthcare**, having its head office at Plot No-20, Sector-5, Parwanoo Dist-Solan (H.P) has participated in Tender No- **BMSIC/DRUGS/19-12** and was issued a Letter of Intent (LoI) vide letter no.- BMSIC/40025/34-2021/9142 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) Tranexamic Acid 500mg Tablet. (Rs. 5.75/- per Unit).
- (ii) Ampicillin 250mg Capsule/Tablet. (Rs.0.73/- per Unit).
- (iii) Ampicillin 500mg Capsule/Tablet (Rs.1.47/- per Unit).
- (iv) Amoxycillin 250mg Capsule/Tablet. (Rs.0.72/- per Unit).
- (v) Amoxycillin 500mg Capsule/Tablet. (Rs.1.35/- per Unit).

Subsequently, the firm M/s Legen Healthcare was issued Purchase Order for above mentioned drug items vide Letter No. - BMSIC/40025/34-2021/831 dated 08-05-2021. The firm didn't supply the ordered quantity against above mentioned Purchase Order, but asked for extension of delivery schedule vide mail dated 19-06-2021 & 16-08-2021 stating that, *"Due to spread of second wave of COVID-19, there is an acute shortage of major Active Pharmaceuticals Ingredients (API) and other raw materials in country, Lockdown and curfew has been imposed by various states to contain the spread of pandemic, all the services like transportation, courier services and drugs testing laboratories are being kept suspended. Due to containment zones declared in various parts and curfew imposed in our manufacturing area as well as Covid-19 infections of the employees there is much scarcity of manpower, due to which the operations are carried out with a minimum work force. Also there is limited functioning to transport / courier services which account to inordinate delay in supply."* BMSICL, vide letter no-BMSIC/40025/34-2021/2482 dated 08-07-2021 & vide letter no- BMSIC/40025/34-2021/4324 dated 08-09-2021 granted extension for the supplies against Purchase Order no- BMSIC/40025/34-2021/831 dated 08-05-2021.

The firm, M/s Legen Healthcare was again issued a Purchase Order for above mentioned drug items vide letter no- BMSIC/40025/34-2021/6374 dated 02-12-2021, BMSIC/40025/34-2021/9704 dated 12-03-2022 & BMSIC/40025/34-2021/3744 dated 03-09-2022. The firm didn't supply the ordered quantity against purchase order no- BMSIC/40025/34-2021/6374 dated 02-12-2021 and BMSIC/40025/34-2021/9704 dated 12-03-2022 and hence M/s Legen Healthcare was issued a show cause notices for non supply of Ampicillin 250mg Capsule/Tablet, Ampicillin 500mg Capsule/Tablet, Amoxycillin 250mg Capsule/Tablet, Amoxycillin 500mg Capsule/Tablet vide mail dated 14-03-2022 & 29-09-2022 respectively.

The firm replied vide mail dated 21-03-2022 & 30-09-2022 stating that, *"we are not habitual defaulter as have already supplied 100 % medicines against PO No. BMSICL/40025/24-2021/831, dated 08-05-2021. We had tried to procure the material but our vendors could not supply. We have also brought to your kind notices about the office memorandum NO. F18/4/2022-PPD issued by Ministry of Finance, Government of India, Department of Expenditure, Procurement Policy Division dated 13/05/2020 as per Force Majeure Clause (FMC) wherein we had informed the department in time about our inability to supply the medicine without availability of raw material. In the present circumstances created by COVID 19 epidemic i, ii & iii wave the supply of these medicines became difficult and therefore you are requested to terminate these items i.e, Amoxycillin 250mg, Amoxycillin 500mg , Ampicillin 250mg & Ampicillin 500mg."*



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:-

- i. Ampicillin 250mg Capsule/Tablet. (Rs.0.73/- per Unit).
- ii. Ampicillin 500mg Capsule/Tablet (Rs.1.47/- per Unit).
- iii. Amoxycillin 250mg Capsule/Tablet. Rs.0.72/- per Unit).
- iv. Amoxycillin 500mg Capsule/Tablet. Rs.1.35/- per Unit) with M/s Legen Healthcare, Plot No-20, Sector-5, Parwanoo Dist.-Solan (H.P) is hereby terminated with immediate effect apart from forfeiture of security deposit. The non-executed purchase orders for above mentioned four drug items issued earlier shall also stand cancelled.

(Managing Director)

Memo No- BMSIC/40025/34-2021/ 6709

Date: - 18/ 11 /2022

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

(Managing Director)

Memo No. - BMSIC/40025/34-2021/ 6709

Date: - 18 / 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)

