

File No- BMSIC/40025/276-2021/2904

Date: 26/07/2022

Order

**M/s Bochem Healthcare Pvt. Ltd.**, having its head office Plot No- 83-84, Industrial Area, Dewas road, Nagziri, Ujjain-456010(MP) was declared as L3 bidder for following drug vide tender reference no.- BMSIC/DRUGS/21-07:-

- (i) Cefixime Tablet 200mg. (Rs.2.36/- per Unit). (L- 2 Bidder).
- (ii) Diethylcarbamazine Citrate Tablets 100mg. (Rs.0.19/- per Unit). (L-2 Bidder).
- (iii) Oral Rehydration Salts, ORS Powder (Each Sachet (20.5 gm.) Contains: Sodium Chloride IP 2.6 g/l, Potassium Chloride IP 1.5g/l, Sodium Citrate IP 2.9g/l, Dextrose (anhydrous) IP 13.5g/l, Excipients q.s.) 20.5 gm/ sachet. (Rs.1.98/- per Unit). (L-2 Bidder).

Accordingly, the firm **M/s Bochem Healthcare Pvt. Ltd** was issued a Letter of Intent (LoI) vide letter no. -5529, dated 27-10-2021 of BMSICL for submitting the requisite documents, Performance security deposit and to execute the Rate-Contract for the said Medical Devices/ Consumables. Agreement for the supply of above drugs was executed on 16-03-2022.

Subsequently, the firm **M/s Bochem Healthcare Pvt. Ltd** was issued following Purchase Orders of:-

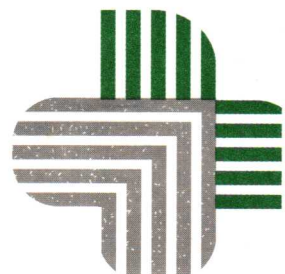
1. 60,00,000 units of Cefixime Tablet 200mg, 1350000 units of Diethylcarbamazine Citrate Tablets 100mg & 1000000 units of Oral Rehydration Salts, ORS Powder (Each Sachet (20.5 gm.) vide letter no. - 10116, dated 26-03-2022.

The firm, **M/s Bochem Healthcare Pvt. Ltd** did not supply the ordered 60,00,000 units of Cefixime Tablet 200mg against the Purchase Order no- 10116, dated 26-03-2022, which adversely affected the objectives of BMSICL, i.e. Free drug supply to every patients at all Government health facilities in the State of Bihar, thus violating Tender Clause No- 19 (d), which reads as, ***"It is the duty of the supplier to supply products at the destinations mentioned in the Purchase Order and supply shall confirm to the conditions mentioned in the provisions of NIT, rate contract and directives of BMSICL."***

In view of the above facts, **M/s Bochem Healthcare Pvt. Ltd** was issued a show cause notice vide e-mail dated 27-05-2022, and also informed that because of this activity of Non-supply of the ordered item, BMSICL is forced to initiate strong action against your firm in accordance with the terms and conditions laid under the SBD pertaining to the Tender No- BMSIC/DRUGS/21-07.

The firm in its reply dated 30-05-2022 had stated that, ***"under such circumstances it feels fit to make a request before you that please consider Cefixime Tablets 200mg supply due to current "FORCE MAJEURE" clause situation which creates uncertainty of availability of Raw materials. When the availability will be stable we will complete the supply of the Cefixime Tablets 200mg as soon as possible & also we will complete the supply of DECC Tablets 100mg & Balance Qty. of ORS 20.5gm Pouches up to 10/06/2022."***

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 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."*

As per Tender Clause 21 (2), the schedule of supply of drug is of 60 days after the issuance of purchase Order, whereas the firm has not started the supply even after the lapse of 90 days.

Hence, in view of the provisions contained in the contract relating to Force Majeure Clause, where the performance in whole or in part or any obligation under the said contract was prevented or delayed by any reason of Force Majeure for a period exceeding 90 days, the rate Contract of Cefixime Tablet 200mg with **M/s Bochem Healthcare Pvt. Ltd** is hereby terminated with immediate effect apart from forfeiture of security deposit submitted for Cefixime Tablet 200mg. The Purchase Orders for Cefixime Tablet 200mg in PO No-10116, dated **26-03-2022** issued earlier stands cancelled.



(Managing Director)

