

File No- BMSIC/40025/111-2021/2375

Date: - 05/07/2022

Order

M/s **Saksham Life**, having its head office at Main Road, Mohaddinagar, Dist.- Samastipur was declared as L1 bidder for following Medical Devices/ Consumables vide tender reference no.- BMSIC/MEDICAL DEVICES/ CONSUMABLES/ 20-02:-

- (i) Disposable Syringe, 2 ml. (Rs.1.02/- per unit).
- (ii) Disposable Syringe, 5 ml. (Rs.1.19/- per unit).
- (iii) Disposable Syringe, 10 ml. (Rs.1.90/- per unit).

Accordingly, the firm M/s **Saksham Life** was issued a Letter of Intent (LoI) vide letter no. -BMSIC/40025/111-2020/294, dated 10-04-2021 of BMSICL for submitting the requisite documents, Performance security deposit and to execute the Rate-Contract for the said Medical Devices/ Consumables.

Subsequently, the firm M/s **Saksham Life** was issued following Purchase Orders of:-

1. 10,50,000 units of Disposable Syringe, 2 ml; 13,55,000 units of Disposable Syringe, 5 ml & 5,25,000 units of Disposable Syringe, 10 ml vide letter no. - BMSIC/40025/111-2021/2008, dated 19-06-2021.
2. 3,00,000 units of Disposable Syringe, 2 ml; 10,00,000 units of Disposable Syringe, 5 ml & 10,00,000 units of Disposable Syringe, 10 ml vide letter no. - BMSIC/40025/111-2021/4421, dated 10-09-2021.
3. 15,00,000 units of Disposable Syringe, 2 ml; 30,00,000 units of Disposable Syringe, 5 ml & 15,00,000 units of Disposable Syringe, 10 ml vide letter no. - BMSIC/40025/111-2021/10154, dated 29-03-2022.

The firm, M/s **Saksham Life** did not supply the ordered quantity against the Purchase Order no- 10154 dated 29-03-2022, which adversely affected the objectives of BMSICL, i.e. Free Medical Devices/ Consumables 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 Medical Devices/ Consumables 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 **Saksham Life** was issued a show cause notice vide e-mail dated 08-04-2022, 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/MEDICAL DEVICES/ CONSUMABLES/ 20-02.

The firm in its reply dated 30-05-2022 had stated that, ***"because of high increase prices of petroleum products. Making the situation out of control to carry on with same situation and further worsen because of Russia Ukraine war there has been further increase in the prices of petroleum products. Under these unavoidable situation the firm request to terminate their Rate-Contract due to Force Majeure Clause."***

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 Medical Devices/ Consumables 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 Disposable Syringe, 2 ml; Disposable Syringe, 5 ml & Disposable Syringe, 10 ml with **M/s Saksham Life** is hereby terminated with immediate effect apart from forfeiture of security deposit. The Purchase Orders No-10154, dated 29-03-2022 issued earlier hence is cancelled.


(Managing Director)

