



ODISHA STATE MEDICAL CORPORATION LTD.

(A Govt. of Odisha Undertaking)

Assuring Quality, Saving lives

Order No. : 2672 /OSMCL/.../.../2018

Date : 21.02.2019

ORDER

M/s. Itas G. Pharma, a sole Proprietorship firm duly registered having its Regd. Office at House No. 7, 3rd Floor, Masjid Gali, Sree Nagar, Guwahati, Assam had participated in the tender vide Bid Ref. No. OSMCL/2018-19/Mother & Baby KIT/02 floated by Odisha State Medical Corporation Limited (OSMCL). This, being an online Bid through e-tender portal bids were invited from eligible bidders for supply of Mother & Baby Kit as per the particulars mentioned in the said Bid documents. That M/s Itas G. Pharma (hereinafter referred as "the firm") claiming to be the distributor of the above products as mentioned in the e-tender documents participated in the bidding process by submitting the required documents within stipulated time period.

That on 15.01.2019 the Tender Evaluation Committee on the basis of the documents as submitted by the firm in the tender documents declared the said firm as qualified bidder. That thereafter the financial bid was opened on 18.01.2019 and the above mentioned firm was declared as L1 and on the same day the Letter of Intent (LoI) was issued to the said firm vide Letter No.604 dtd 18.01.2019. Subsequently the purchase order was issued vide P.O no. – CR19364 dt. 22.01.2019 after signing of contract. That while the matter stood thus a complaint was received by OSMCL from L2 bidder vide its letter dtd. 22.01.2019 regarding the veracity of the claims, representation and documents provided by the L1 bidder. That it was categorically stated in the said complaint about submission of forged documents by the said firm in the tender documents. After receipt of the complaint, clarification notice was issued to the said firm vide letter No. 870 dtd. 24.01.2019. That on the said date another letter vide letter No. 872 dtd. 24.01.2019 was issued to M/s Shreeji Analytical & Research Laboratories Pvt. Ltd., Indore about genuineness of the test report (vide Lab Report No. SL/GN/18-19/9894) for item Rubber sheet submitted the firm in the bid documents.

That after receipt of letter from the said lab vide Letter No. SL/LTR/012/19-20 dtd. 25.01.2019 it was ascertained that the submitted report (lab report SL/GN/18-19/9894) by the firm in the tender does not belong to them in any manner and the report submitted by the L1 bidder is false, fake and forged. Further, the said lab has clearly stated that the Lab does not have any relation to the firms in any kind of manner like financial, technical or business. So it is proved that the test reports submitted by the M/s Itas G. Pharma, Guwahati is forged.

That the firm had also submitted a reply on 29.01.2019 and another letter on the said date stating it that the same is in continuation of the earlier reply dtd. 29.01.2019. That the said firm has replied that in the Technical Bid after verifying all the documents was submitted and they being the authorised distributor do not have any direct nexus with the forged submission of false test reports. It was further submitted that the NABL test reports is absolutely correct and genuine. That thereafter on the said date another letter was submitted stating therein that the said firm is now making query with their Principal Manufacturer with regard to the authenticity of documents and requested not to take any action against them and to take action against the manufacturer. The said firm by the said letter sought for fifteen(15) working days for necessary clarification in this regard.

Whereas pursuant to the said letters show cause notice was issued vide Letter No. 1513 dtd. 02.02.2019 to the firm stating therein that since the firm has not specifically denied the submission of forged document and has shifted the submission of forged documents on its manufacturer, why the said firm shall not be derecognized/ blacklisted for a period of three(3) in terms of tender Clause No. 6.36.3. That in the said notice two documents are enclosed namely complaint received from M/s AnithaTexcot India Pvt. Ltd., Tripur and Clarification reply from M/s Shreeji Analytical & Research Laboratories Pvt. Ltd., Indore.

That pursuant to the said show cause notice the firm submitted its reply on 11.02.2019 accepting the fact that the manufacturer has submitted a forged certificate. It is further submitted that the said firm has been made a victim of circumstances and for the action of the Principal Manufacturer they should not be penalised. The firm also stated that if the test report is forged one as alleged the same cannot be attributed to the firm as they neither procured it nor have they manufacture it for the purpose of tender. It was stated that the complaint of M/s AnithaTexcot India Pvt. Ltd., Tripur was for the purpose of making huge loss to the State Exchequer.

That after receipt of the said reply the OSMCL had sent a letter vide Letter No. 2096 dtd.12.02.2019 for providing an opportunity of hearing to the firm. It was stated that if the firm wants to be heard in person they can appear personally or through authorised representative on 15.02.2019 at 4.00PM. That on the date fixed instead of appearing the sole proprietor of said firm on 14.02.2019 expressed its inability to present in the hearing on the ground of his son's marriage for which OSMCL vide its Letter No. 2176 dtd. 14.02.2019 extended the date of personal hearing and advised the firm to attend personal hearing in the matter any time between 19.02.2019 and 21.02.2019 during business period (10.00AM to 5.00PM) as per the firm's convenience with prior intimation. That on 20.02.2019, the sole proprietor of the firm with prior intimation appeared before the undersigned and was heard in person. The said firm has submitted another show cause reply



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during the course of hearing. In the oral hearing the said firm has reiterated the pleas which has been a part of the show cause reply.

I have carefully examined and perused the show cause notice dtd. 02.02.2019 and reply submitted by the firm on 11.02.2019 and 20.02.2019 along with the tender documents i.e. Bid Ref. No. OSMCL/2018-19/Mother & Baby KIT/02. That the show cause notice to the said firm was primarily revolving around submission of forged document by the said firm in the tender document. That pursuant to the show cause notice the said firm in its reply has not specifically denied submission of the forged document in the Bid, but has given an evasive reply stating therein the followings:

- i. The firm has received the test report from M/s Innovative Lien Co. Pvt. Ltd., Indore and they did not have any reason to doubt the veracity of the same and had submitted the same along with the tender. The said test report was neither procured by them nor have they manufactured that document for the purpose of the tender. The firm has been made a victim in circumstances and the action of the manufacturer the firm cannot be penalised. The firm is neither able to State, the test report supplied by the M/s Innovative Lien Co. Pvt. Ltd., Indore was forged nor deny the same. However, the firm expressed it believed the test report is absolutely correct and genuine.
- ii. That since the Kits as desired on tender and the samples have passed the test at the empanelled laboratory of the Corporation, therefore there could have been no occasion for anyone to get a forged test report.
- iii. That the manufacturer M/s Innovative Lien Co. Pvt. Ltd., Indore has been asked by the firm to provide specific response with regard to the test report and the replied awaited.
- iv. That it is a settled proposition of law that if a criminal action is done by somebody he has to be penalised for that nobody else.
- v. That the Corporation has not taken the decision to award the contract to the firm merely on the basis of the report submitted by the firm which is alleged to be false rather the Tender Evaluation Committee has further got the sample tested in the empaneled Govt./NABL laboratory before reaching the decision.

That on 20.02.2019 during the course of personal hearing the firm has further submitted the following.

1. That Clause 6.36.3 and 6.36.4 is not applicable to the said firm.
2. That after tender evaluation report was prepared by tender evaluation committee after verification and sample testing, raising such question once again on allegation of the third party is violation of the principle of estoppel.
3. There are several items in Mother & Baby Kit and all the items have been tested and found correct as per the empanelled laboratories of the Corporation. Allegation is only one test report is false which is only for one item i.e. "Rubber Sheet". It is most important that the said product has been found absolutely correct and proper as per Odisha State Medical Corporation Limited. Their question of forged document/ test report becomes redundant. Thus for some irrelevant allegation on one product, we may not be stopped from supplying the entire kit.

The tender documents have the following clauses-

Clause 6.3.1- The purchasers of the bid documents shall examine all instructions, forms, terms and specifications in the Bid Document and verify that all the contents mentioned under clause 6.1, are contained in the 'Bid Document'.

Clause 6.4.6- Bidder shall submit a declaration letter as per the format given as Format T5 and copy of amendments published if any signed by the bidder or the authorised representative shall be enclosed as part of the technical bid as a proof of having read and accepted the terms and conditions of the bid document.

Clause 6.30.3- "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Tender Inviting Authority, and includes collusive practice among Bidders (prior to or after Bid submission) designed to establish Bid prices at artificial non-competitive levels and to deprive the Tender Inviting Authority of benefits of free and open competition;

Clause 6.36.3 and 6.36.4- The bidder can be blacklisted by OSMCL for a period of 3 years in case it is found at the time of evaluation/verification/inspection that the bidder has furnished forged documents/false information along with the bid.

Clause 6.11.2- At any point of time, the Tender Inviting Authority reserves the right to reject the bid if the bidder fails to



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fulfil the terms & conditions of the bid document including technical specification, furnishing of relevant documents & information in the required format of the tender and demonstration (wherever required) to the satisfaction of Tender Inviting Authority.

Clause 6.30.4- Tender Inviting Authority will reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question; will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a contract by the Tender Inviting Authority if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing the contract.

That the pre-qualification of bidders under Clause 5.2.1 states that authorised distributors are allowed to participated to the tender with proper authorisation for each item from the original manufacturer. That as per Clause 5.2.4 the bidder should furnish valid material and fabric test report of kits item tested by Govt. approved or NABL accredited laboratory. Admittedly the bidder is a Distributor and the Original Manufacturer is M/s Innovative Lien Co. Pvt. Ltd., Indore. That all the documentary proof as per clause 6.4.2 is to be signed by the authorised person to submit the Bid documents. That the firm as per clause 6.3.1 being a purchaser was to verify all the documents mentioned under clause 6.1 of the bid documents. That the firm has submitted the test report of M/s Shreeji Analytical & Research Laboratories Pvt. Ltd., Indore as per Clause 6.17.15. That the firm has also submitted a declaration letter Format T-5 which is a part of the technical bid as a proof of having read and accepted the terms & conditions of the Bid documents. Therefore the evasive reply of the firm even after the clarification issued by M/s Shreeji Analytical & Research Laboratories Pvt. Ltd., Indore stating therein that the documents submitted by the firm along with the Bid documents in respect of the test report is forged and fabricated cannot be accepted on the ground that the firm is not liable for act of the manufacturer. It is in commercial transaction such as this wherein an agents action binds the principal, the firm's plea that the act of the manufacturer of producing a forged test report will not make them liable is not to be accepted.

That the plea of the firm that after taking into consideration of the technical bid evaluation report once the Technical Evaluation Committee has declared the Bid to be eligible to be considered for financial bid evaluation and once the complaint relating to sample testing was discussed in length by the TEC raising such question once again on the allegation of

the L2 bidder is violation of principle of estoppel is not applicable in the present case. There was no promise or undertaking at any point of time that if a party submits a forged documents and it surfaces and found to be true, the Tender Inviting Authority will remain silent despite having proof of forgery. It was categorically stipulated in the tender that at any point of time/ any stage of tender, the Tender Inviting Authority reserves the right to reject the bid if the bidder fails to fulfil the terms & conditions of the bid document including technical specification, furnishing of relevant documents & information in the required format of the tender and demonstration (wherever required) to the satisfaction of Tender Inviting Authority. It is pertinent to mention here that there are no dual stances and Tender Inviting Authority had never represented before the bidder that once the TEC takes a decision, the bid of the firm will not be questioned for all his misrepresentation or submission of forged documents. Therefore, the plea of violation of principle of estoppel is misconceived and therefore cannot sustain in the facts and circumstances of present tender. That apart since the firm has resorted to fraudulent practice by submitting forged documents in order to influence the procurement process and for execution of contract to detriment of Tender Inviting Authority. The Tender Inviting Authority at any point of time as per Clause 6.30.4 has the power to declare a firm ineligible, if at any time the Tender Inviting Authority determines the firm has engaged in corrupt and fraudulent practice in competing for or executing the contract.

The further plea of the firm that nowhere in tender condition it is mention that the test report submitted by tenderer will be the sole basis of the award of tender. Even after verification and testing of products by the empanelled laboratory of the Corporation, the Tender Inviting Authority if found that the firm has submitted a forged document to influence the procurement process the Authority is having the power to reject such proposal even after awarding the same. That there is no denial of fact that the test report submitted by the firm for procuring the tender was based on a forged document and such fact is evident from the report called for from M/s Shreeji Analytical & Research Laboratories Pvt. Ltd., Indore. The said NABL accredited laboratory has stated that the report submitted by the firm is forged and fabricated.

The further plea of the firm that allegation of only one test report is false is of no consequence as all other items are tested and found to be correct also cannot be accepted, as the same pleas violates the aforementioned tender conditions. The tenderer has a lawful obligation to go through the tender documents and to inform himself to all the terms and conditions contained therein before submission of documents. It was incumbent on the part of the tenderer to make himself aware of the genuineness of the documents which is submitted as per the tender conditions.



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The plea of the firm regarding the complainant is of no consequence since the firm is not bona fide in its act of submission of documents before the Tender Inviting Authority. The other pleas of firm does not relates to submission of forged documents. The product was to be supplied by the firm and it is the firm which has submitted a forged document and therefore onus lies on the said firm to show that the test report of M/s Shreeji Analytical & Research Laboratories Pvt. Ltd., Indore was an authenticated one, but it has failed to do so and has shifted the burden on the manufacturer who is not the tenderer before the Tender Inviting Authority.

That taking into consideration all the factual and legal pleas raised by the firm, the oral submission of the sole proprietor of the firm in the course of hearing and after considering the relevant provisions of the tender, the firm M/s Itas G. Pharma is found to have resorted to fraudulent practice by submitting a forged document in order to influence to procurement process and execution of contract to detriment to the Tender Inviting Authority and hence liable to be blacklisted for the period of three(03) years for furnishing forged document/ false information along with Bid.

The Performance Security / EMD submitted by the firm for the tender is hereby, forfeited & the firm shall not be allowed to participate in the tender process of Odisha State Medical Corporation Ltd. for **three (03)** years.


Archana Pattnaik, I.A.S
Managing Director, OSMCL


Memo No. 2673 /Dt. 21.02.2019

Copy forwarded to M/s. Itas G. Pharma, having its Regd. Office at House No. 7, 3rd Floor, Masjid Gali, Sree Nagar, Guwahati- 781005, Assam for information.


Managing Director
OSMCL

Memo No. 2674 /Dt. 21.02.2019

Copy forwarded to DHS/DMET, Odisha for information and necessary action.


Managing Director
OSMCL

Memo No. 2675 /Dt. 21.02.2019

Copy submitted to the Commissioner-cum-Secretary to Govt., H & FW Dept. Odisha, for favour of kind information.


Managing Director
OSMCL

Memo No. 2676 /Dt. 21.02.2019

Copy forwarded to the G.M (Drugs & Surgical) / G. M (F&A), OSMCL for information.


Managing Director
OSMCL

Memo No. 2677 /Dt. 21.02.2019

Copy forwarded to Sr. Manager (IT), OSMCL for information and necessary action.


Managing Director
OSMCL