



No.PPRA/RP-03/2025
Government of Pakistan
Public Procurement Regulatory Authority
(Appeal & Review Petition Secretariat)
1st Floor, FBC Building, G-5/2, Islamabad
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ORDER

M/s MEGAPLUS Pakistan

...the "Petitioner"

Vs.

Federal Investigation Agency (FIA) & Others

...the "Respondent"

Date of Hearing 23.07.2025	<i>Barrister Adnan Saboor Rohaila, Mr. Asim Bokhari, Mr. Sohail, Sh. A. Sameer, Mr. Arshad Bukhari</i> <i>Mr. M. Ishaq Khan, Mr. M. Riaz</i>
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(On behalf of Petitioner)

(On behalf of Respondent)

REVIEW PETITION UNDER RULE 19(3) OF THE PUBLIC PROCUREMENT RULES, 2004

The above mentioned learned counsel(s) and representative(s) of the parties tendered appearance before the Review Petition Committee and furnished their arguments at length.

2. At the very outset, learned counsel of the petitioner i.e., M/s MEGAPLUS Pakistan submitted that the Respondent No.1 (Director General FIA) through respondent No.2 (Additional Director-II, Integrated Border Management System Phase-II, FIA) issued Tender Documents for Hardware, Plat &

Machinery, Furniture & Fixture, Software having tender No.08/12/2021 IBMS PHASE-II/PROJECT-FIA for 200 Computers / Workstations. Further submitted that, after complying with the requirements and formalities as required by the tender notice, the petitioner submitted its bid and declared as the successful bidder being the lowest. The proposal of the petitioner was accepted by the respondent and the respondent issued a purchase Order dated 17.03.2022 for supply of Desktop Computers and increased the quantity of desktop computers as 230 amounting to Rs.34,856,960/-.

3. The counsel of the petitioner also submitted that the goods were to be imported in the country for supply to the respondent as the goods were not locally made, assembled or manufactured items IT equipment as per the details mentioned in the supply order. Subsequently, the government in order to stabilize the economy immediately put a ban on imports of all kinds unless specific permissions were accorded for only in order of priority on need basis whereas the IT equipment was never included in any list for the purpose of urgency. As per the petitioner's stance, their firm always made best efforts to accede to its commitments including the instant tender.

4. The counsel of the petitioner further submitted that as per the agreement and its terms and conditions as well as law of the land read with fundamental principles of contract law any performance, obligation of commitment by a party to

contract if is impractical to be executed for the reason beyond control of the party and supplier cannot be attributed as breach of contract rather comes under the ambit of doctrine of force majeure, a well-established concept of administration of justice and law.

5. The counsel of the petitioner also submitted that, M/s Lenovo PC HK Limited Company HongKong issued proforma invoices No.6160114310 dated 12.09.2022 and No.6160114329 dated 12.09.2022 for the procurement of 200 and 30 computers respectively and mode of payment is 45 days L/C was agreed between the parties. Further added that, ban on imports were imposed by the Federal Government as a blanket policy and in order to facilitate and ensure the ban on imports the Federal Government also requested the State Bank of Pakistan not to open the Letter of Credit facility to importers which is a norm in international sales of goods. That the Government of Pakistan M/o Finance has taken austerity measures for financial year 2022-2023 imposed complete ban on purchase of machinery & equipment etc. by Office Memorandum dated 05.07.2022.

6. The counsel of the petitioner further submitted that the bank owing to the notification of the State Bank of Pakistan for ban on imports by the Federal Government as a matter of policy, showed its inability to open the Letter of Credit. Moreover, the State Bank of Pakistan as well as other government departments as well as ministries from time to

time issued various notifications endorsing and reaffirming the austerity as well as ban on import due to policy and economic reasons. It is important to mention here that after the ban on import the petitioner sent letters to the respondent for the extension of time for delivery equipment's vide dated 22.06.2022, 14.09.2022, 04.10.2022 and lastly on 06.12.2022 but all in vain. Resultantly, the respondent subsequently issued a Show Cause notice No.FIA/HQ/IBMS-II/259 dated 01.12.2022 to the petitioner against not fulfilling the terms of tender agreement and delivery of supplies.

7. The counsel of the petitioner further argued that, the imports and purchases are done in USD by the petitioner for the purpose of supply order issued by the respondents. Whereas prices quoted and reflected in the record is in Pakistan Rupees. It is no secret that the Pakistani Rupee has been periodically and consistently losing its value against the USD which has always been a concerns especially for importers as fulfillment of supply commitment comes with a heavy loss when the difference of currency exchange widens. The petitioner remained committed to make sure that the supply takes place and the commitment is fulfilled however due to the recent abnormal devaluation of the Pakistan Rupee against dollar, not only that the import was not possible but even if that is at a later stage becomes possible due to special permission or change of policy still the supply fouled neither

be practical not viable as the prices have almost doubled with the exchange rate difference.

8. The counsel of the petitioner also submitted that the respondent did not agree to the genuine demand and invoke force majeure thus a review was filed by the Petitioner before the Senior Civil Judge, Islamabad West for rescindment and cancellation of contract. The respondent filed their written statement and issues were framed. The Suit was dismissed on technical grounds whereas, no process under the PP rules was initiated at all by the respondents. Upon this, the respondent through a letter dated 18.02.2025 blacklisted the petitioner for a period of three (03) years by invoking Rule 19(1)(b) of the PP Rules, 2004.

9. The counsel of the petitioner further added that the proceedings of blacklisting under the PP Rules, 2004 is clearly defined and cannot be passed in shape of an order without looking into reasons of non-performance of an obligation and as an arbitrary exercise of misuse of law. Moreover, the respondent no.1 without adhering to the procedure laid down in the Contract itself leading to invocation of Rule 19(1)(b). As per Clause of the general conditions of contract provides for amicable settlement of disputes between the parties. Whereas in the wake of issuance of letter the respondent did not even adhere to the procedure laid down in the legal documents under which the same obligation is imposed on the petitioner.

10. The counsel of the petitioner also submitted that, it is also matter of record that any proceedings under Rule 19 of PP Rules, 2004 is to be governed and carried out under Mechanism for Blacklisting and Debarment of Bidders or Contractors Regulations 2024, whereas requirement of the law is to form a committee and issue a show cause notice, nothing of the sort has been complied with, thus the proceedings under Rule 19 of PP Rules suffer from fatal error, thus cannot sustain. Further added that Rule 19(1)(b) cannot be invoked before any adjudication has taken place for the purpose of either Blacklisting clause or Force Majeure situation or which is mechanism for settlement of disputes as provided, which is a precondition of invoking any proceedings under Rule 19(1)(b) of the PP Rules, 2004.

11. At the last, the counsel of the petitioner further submitted that the Respondent No.1 and 2 without adhering to the process provided in the very rules and as per the conditions of contract, without issuing any show cause notice and without providing any opportunity of proper hearing passed the said blacklisting order which is against the facts, law and procedure applicable to the matter in an arbitrary and Machiavellian style to the detriment of the petitioner, hence, filed this Review Petition.

12. On the other side, learned representative of the respondent i.e., Federal Investigation Agency (FIA) submitted that FIA published Tender No. 0812201/03 on the PPRA

website and in national newspapers inviting bids for the procurement of 230 desktop computers / workstations for Integrated Border Management System (IBMS) Phase-II project. M/s MEGAPLUS Pakistan participated in the tendering process and submitted both technical and financial proposals after compliance of terms and condition laid down in the tender documents, and won the tender being lowest bidder & meeting the required specifications and on submission compliance certificate of terms and conditions. Consequently, the respondent (FIA) issued a Purchase Order vide F. No. S-11/2020-21(IBMS)-II/PROCUREMENT/1-30 on 17.03.2022 for the supply of 230 desktop computers amounting to PKR 34,856,960/-.

13. The representative of the respondent also submitted that it was the responsibility of bidder to provide supply of 230 desktop computer under terms and conditions of tenders documents within the timelines mentioned in terms and conditions i.e. (90) days after issuance of Purchase Order. Despite repeated follow-ups and a passage of considerable time, the supplier failed to deliver the equipment. The reason cited by the vendor pertained to import restrictions and the inability to open Letters of Credit (LC) due to SBP policies, which did not absolve the vendor of contractual obligations, the tendered items were available in the local market and there was no condition requiring that the tendered items must be imported was given in the advertisement. After that a Show

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Cause Notice No. FIA/HQ/IBMS-II/259 dated 01-12-2022 was issued to the supplier asking for an explanation regarding non-fulfilment of the contract.

14. The representative of the respondent further submitted that, despite being given multiple opportunities, including time extensions, the supplier did not make credible arrangements for fulfilment nor demonstrate any substantial progress toward delivery. Moreover, the petitioner despite seeking extension in due delivery date did not provide supply 230 computers and violated terms of the contract and Rule 19 (1)(b) of the Public Procurement Rules, 2004, which empowers the procuring agency to blacklist a bidder or supplier for non-performance or failure to fulfil contractual obligations. Moreover, Earnest money to extent of supply of computers/servers was also forfeited. The representative of the respondent also added that, non-supply of 230 computers by the petitioner adversely impact the wastage of time which results in cost escalation and delay in Implementation of IBMS Phase-II project.

15. The representative of the respondent also submitted that, despite violation of non-supply of purchase orders of 230 desktop computers, upon receiving said Show Cause Notice dated 01.01.2022 the bidder / petitioner filed civil suit in the court of Senior Civil judge west Islamabad against the DG FIA Islamabad for execution of contract with a prayer to stop the FIA from taking any adverse action against the bidder. On

14.11.2024 the court dismissed the suit of plaintiff / petitioner.

16. The representative of the respondent further submitted that the blacklisting was carried out in compliance with law after followed due process under relevant Rule 19 (1)(b) of Blacklisting Regulations i.e., issuance of show cause, and recording of non-performance. The supplier's conduct, despite their history in the IT sector the bidder failed to perform the contractual obligations during the execution of contract that affected a high-priority government project. Moreover, further added that all codal formalities and due process have been followed while blacklisting of the petitioner. Rule 191(b) of the PP Rules, 2004 required arbitration only if same is provided under the contract. However no such condition is available under the contract. Therefore arbitration was not required for initiation blacklisting proceedings against the petitioner.

17. The representative of the respondent further argued and submitted that the respondent, being a law enforcement agency, must ensure accountability and reliability of its vendors. Therefore, the decision to blacklist the petitioner was necessary to protect public interest and prevent further delays and losses. Furthermore, in the departmental account meeting (DAC) at Ministry of Interior, matter was also raised by Secretary Interior being the Principal Accounting Officer (PAO) and directed FIA to initiate the process of blacklisting of

the said vendor which has failed to fulfil the contractual obligation.

18. At the last, the representative of the respondent also submitted that due to the bidder's failure to fulfil contractual obligations, the following adverse impacts were observed on the department's output, resulting in a direct loss to the government, hence request for dismissal of the instant review petition.

1. Increased Expenditure: The cost of equipment increased, compelling the FIA to request additional budgetary allocations from the government.

2. Project Delays and Performance Issues: The project suffered from delays and substandard performance, which negatively affected the reputation of the FIA and significantly hampered the overall efficiency of the organization.

19. After perusal of all relevant record and arguments made by both the parties, the Committee observed that the respondent had issued a Purchase Order dated 17.03.2022 to the Petitioner for supply of 230 desktop computers amounting to Rs. 34,856,960/- with a delivery timeline of 90 days. The Petitioner admittedly failed to deliver the equipment within the stipulated time.

20. The Committee also observed that the Petitioner attributed non-performance to circumstances beyond its control, i.e., the Federal Government's austerity measures,

import restrictions imposed by the State Bank of Pakistan, and abnormal currency devaluation, and sought to rely on the doctrine of force majeure. The Committee further observed that while the Petitioner corresponded with the Respondent requesting extensions of time, it did not make any alternative arrangement for supply of the contracted equipment from the local market, despite the Respondent's contention that the required specification computers were available locally.

21. The Committee further observed that the Purchase Order dated 17.03.2022 was issued to the Petitioner for the supply of 230 desktop computers, with a completion timeline of 90 days i.e., up to 16.06.2022. At the time of expiry of this contractual period, no formal notification of import restrictions had yet been issued by the Federal Government and the restrictions came into effect thereafter. Moreover, as per the Respondent's stance, the required equipment was also available in the local market. Despite this, the Petitioner failed to deliver the contracted goods within the stipulated period. Consequently, the Petitioner cannot legitimately invoke the plea of non-performance on account of inevitable circumstances, nor it can be shielded under the doctrine of force majeure. Therefore, the Committee is of the view that the Petitioner's stance with regard to the circumstances beyond its control, is untenable.

22. At the last, the Committee also noted that the Petitioner, through its own letters dated 22.06.2022,

14.09.2022, 04.10.2022, and 06.12.2022, sought repeated extensions of time for delivery. This conduct amounts to an admission of its inability to perform within the prescribed period and cannot subsequently be justified as a force majeure situation. Moreover, the Petitioner's failure to deliver the equipment caused delays in the implementation of the Integrated Border Management System (IBMS) Phase-II, a high-priority national project. The delay resulted in cost escalation, wastage of time, and adverse impact on public interest. Therefore, the respondent was rightly justified to blacklist the petitioner.

23. In view of the foregoing reasons and observations, the Committee unanimously decided to uphold the blacklisting order dated 18.02.2025 passed by the respondent. Consequently, the instant Review Petition stands **dismissed** and is hereby disposed of accordingly.


(Dr. Muhammad Aslam Waseem)
Director General (Legal)
(Member)


(Sheikh Afzal Raza)
Director (M&E)
(Member)


(Hasnat Ahmed Qureshi)
Managing Director (PPRA)
(Chairman of the Committee)

Note: A copy of this order is being forwarded to Director-IT, PPRA, Islamabad) for perusal and information.

Each page of the order has been signed by all members of the Review Petition Committee. The order comprises of twelve (12) pages.