



Review Petition No. PPRA/RP-01/2025
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 Medigas (Pvt.) Limited

...the "Petitioner"

Vs.

Pakistan Institute of Medical Sciences (PIMS)

...the "Respondent"

Date of Hearing 06.03.2025	Mr. Muhammad Ali, Advocate, Mr. Muhammad Babar <i>(On behalf of Petitioner)</i> Mr. Naseer Ullah, Mr. Muhammad Zulnoorain <i>(On behalf of Respondent)</i>
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REVIEW PETITION UNDER RULE 19(3) OF THE PUBLIC PROCUREMENT RULES, 2004

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

2. At the outset of the hearing, learned counsel of the petitioner i.e., M/s Medigas (Pvt.) Limited submitted that they filed the instant Review Petition along-with the application for

condonation of delay against the order dated 26.08.2024 passed by Respondent No. 2 (Director-Purchase, PIMS) on behalf of Respondent No. 1 (Executive Director, PIMS) vide Letter No. F-1-15/2023-24/Liq. M.Oxygen/Purchase/PIMS, whereby the petitioner has been blacklisted and debarred from conducting business with PIMS for a period of two years. The counsel of the petitioner also submitted that the impugned order is void, illegal, unconstitutional, and violative of Articles 18 of the Constitution of the Islamic Republic of Pakistan, Rules 2(b) and 19 of the Public Procurement Rules, 2004, and clause E-3 of the terms and conditions of the tender document.

3. The counsel of the petitioner further submitted that the respondent no. 01 (PIMS) floated tender schedule No. 2 vide #05/2023-2024/PIMS and invited firms for the installation /placement of VIE Tanks for the supply of Liquid Medical Oxygen to PIMS IH Cardiac Centre, CM, MCH, BCC, and IHITC for a period of three years. The due date for submission of the bid was 12.12.2023.

4. The counsel of the petitioner also submitted that they participated in the bidding process for the aforementioned tender. The Petitioner duly submitted all required bid documents along with a bid security amounting to Rs.300,000/- through CDR No.00292235, in compliance with Rule 25 of the Public Procurement Rules, 2004, as a prerequisite to participate in the bidding process.

5. The counsel of the petitioner further submitted that the Bid Evaluation Committee of the respondent, evaluated the Petitioner's bid in accordance with Rule 30 of the PP Rules, 2004, and declared the bid submitted by the Petitioner as the most responsive and lowest evaluated bid on 12.12.2023. After that a Letter of Intent (LoI) was issued by the respondent to the Petitioner as the successful bidder on 12.03.2024. In the LoI, the Petitioner was directed to furnish various documents as enumerated therein. Among these, the Petitioner was required to furnish a performance guarantee amounting to 2% of the bid price, equivalent to PKR 13,593,037/-, for a period of three years in the form of a Call Deposit Receipt (CDR) in the name of the Executive Director, PIMS, Islamabad, within a period of five days.

6. The counsel of the petitioner further added that after the issuance of the LoI dated 12.03.2024, the Petitioner encountered challenges in fulfilling the requirement of furnishing a three-year performance guarantee in the form of a CDR, as stipulated by PIMS. The banks on the Petitioner's panel were unable to issue a CDR with a validity period exceeding one year, in accordance with the rules set by the State Bank of Pakistan. The Petitioner, therefore, offered to furnish the performance guarantee on an annual basis and committed to renewing it each year for the required three-year period. However, the procuring agency declined this reasonable



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proposal. This demand by the respondent was neither mentioned in the tender documents nor in alignment with Rule 32 of the PP Rules, 2004. Rule 32 explicitly provides that no procuring agency shall introduce any condition, which discriminates between bidders or that is considered to be met with difficulty. In ascertaining the discriminatory or difficult nature of any condition reference shall be made to the ordinary practices of that trade, manufacturing, construction business, or service to which that particular procurement is related.

7. The counsel of the petitioner further submitted that they had various meeting and made requests with the procuring agency to review its decision and suggest alternate and practicable demands, but the respondent did not accede to the valid requests of the petitioner. The attitude of the respondent /procuring agency was extremely negative and appeared to favour awarding the project to a firm of their choice on a high price.

8. The counsel of the petitioner also submitted that, despite repeated follow-ups, respondent / PIMS did not issue a Purchase Order "PO" to the petitioner and also did not withdraw its illegal demand of providing performance guarantee in shape of CDR for three years. Consequently, the Petitioner's was compelled to withdraw its offer of supply under the terms of tender document through Letter No. SAL/PIMS/332, dated 22.04.2024. After the submission of a letter of withdrawal of the



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offer to supply tender goods, the Petitioner's received a Show Cause Notice dated 04.07.2024 from the respondent. In response, a detailed reply was submitted on 13.07.2024. Subsequently, in December 2024, when the representative of the Petitioner's visited PIMS to seek information regarding re-bidding for a new tender, the procurement department of the procuring agency verbally informed the Petitioner's representative that M/s Medigas Pvt Ltd had been blacklisted and debarred from future participation in bidding to PIMS.

9. The counsel of the petitioner further added that the aforementioned Show-Cause Notice dated 04.07.024 was illegal, unauthorized, and unwarranted. It contravened the spirit of the penalty clause as provided under Clause E-3 of the terms and conditions of the tender and is therefore liable to be declared as null and void. The respondent no. 01, in its letter dated 26.08.2024 unlawfully invoked Clause E-3 of the conditions of tender to debar the Petitioner. Through this letter, the procuring agency not only forfeited the bid security amounting to PKR 300,000 but also debarred the Petitioner from conducting business with PIMS.

10. The counsel of the petitioner further submitted that the respondent no 01 has misinterpreted and misapplied Clause E-3 of the tender conditions and has unlawfully imposed penalties on the Petitioner. The clause explicitly allows the procuring agency to award the contract to the next lowest evaluated bidder



as a penalty in the event of noncompliance of work order. However, instead of adhering to this stipulated course of action, the procuring agency has taken an illegal step by debarring the Petitioner and forfeiting the bid security. This action is beyond the scope of its authority and contrary to the provisions of the tender. It is, therefore, liable to be set aside.

11. At the last, in order to support his stance, the counsel of the petitioner presented the reported judgement of Hon'ble Apex Court as 2010 SCMR 306 which states as follows:

... The mere letters of intent to award the contract in present cases would not constitute a concluded contract. There may be cases in which a contract may involve a number of documents including exchange of correspondence between the parties in the process of finalization of the award of a contract. The principle of natural justice was not attracted in the absence of infringement of any vested rights of the appellants...

...Therefore, the letter of intent could not be treated to be synonymous to a completed contract...

12. At the very last, the counsel of the petitioner submitted that the debarment decision has caused significant reputational damage as well as irreparable harm to its business operations, reputation, and financial standing. Hence, filed the instant review petition.

13. On the other hand, the representative of the respondent No.1 i.e., PIMS raised preliminary objections regarding the maintainability of the instant review petition. The representative argued that the subject petition is time barred as provided under Rule 19(3) of the Public Procurement Rules, 2004. Hence, liable to be dismissed on this ground.



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14. After perusal of relevant record and arguments made by both the parties, the Committee observed that the order of blacklisting of the petitioner was passed by the respondent No.1 dated 26.08.2024 whereas the petitioner has filed the subject petition on 09.01.2025 and claimed that the said order of blacklisting was not communicated to him by the respondent. During the hearing, the Committee further observed that the representative of the respondent could not justify and failed to provide evidence regarding communication of the blacklisting order to the petitioner.

15. As per the Rule 19(3) of the Public Procurement Rules, 2004 the bidder may file the review petition before the Authority within thirty days of **communication** of such blacklisting or barring action after depositing the prescribed fee and in accordance with procedure issued by the Authority. The committee also observed that the respondent blacklisted the petitioner for the period of 02 years and the said tenure of blacklisting can only be attracted under Rule 19(1)(b) in case, the bidder *fails to perform his contractual obligations* during the execution of contract or breaches the contract due to his capacity and capability to perform or otherwise.

16. On the basis of the Justification provided by the petitioner, the application for condonation of delay is **hereby accepted.**

17. The committee is of the view that no formal contract was signed between the parties and, mere issuance of LoI does not constitute the valid contract, therefore, Rule 19(1)(b) could not be invoked in this case. The Committee further is of the view that the procuring agency can only forfeit the bid security of the bidder, if bidder failed to abide by the earlier commitments submitted through bids.



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18. For what the reasons mentioned above, the blacklisting order dated 26.08.2024 passed by the respondent i.e. Pakistan Institute of Medical Sciences (PIMS) is hereby **set-aside.**



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



(Sheikh Afzaal 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 implementation of this order and to **de-list the petitioner's company i.e., M/s Medigas (Pvt.) Limited** from the list of active blacklisted / debarred firms on PPRA's website.

Each page of the order has been signed by all members of the Review Petition Committee. The order comprises of eight (08) pages.