

**Most Urgent
Out Today**



No. SO(DCP)9-1/2016 Prequalification
**GOVERNMENT OF THE PUNJAB
SPECIALIZED HEALTH CARE &
MEDICAL EDUCATION DEPARTMENT**
Dated Lahore the 25th October , 2017

To,

1. Vice Chancellor, King Edward Medical University, Lahore
2. Vice Chancellor, Fatima Jinnah Medical University, Lahore
3. Vice Chancellor, Faisalabad Medical University, Faisalabad
4. Vice Chancellor, Nishtar Medical University, Multan
5. Vice Chancellor, Rawalpindi Medical University, Rawalpindi
6. The Administrator, Sheikh Zayed Hospital, Lahore
7. All the Principals of Autonomous Medical Institutions in Punjab
8. All the Heads of Specialized Health Institutions in Punjab
9. All the Medical Superintendents of Teaching Hospitals in Punjab.
10. The Secretary, Blood Transfusion Authority, Lahore

SUBJECT : DISMISSAL OF STAY IN WRIT PETITION NO. 39637/16 (TITLED M/S UNISA PHARMACEUTICAL INDUSTRIES LTD VS PROVINCE OF PUNJAB ETC) PASSED BY LAHORE HIGH COURT, LAHORE VIDE ORDERS DATED 17.10.2017

Kindly refer to this department's notification of prequalification issued vide even number dated 21.04.2017 wherein it was mentioned that the said notification was subject to the final decision by the Honorable Lahore High Court, Lahore in Writ Petition No. 39637/16 filed by M/s Unisa Pharmaceuticals.

2. The Honorable Lahore High Court, Lahore vide order dated 17.10.2017 has **dismissed the subject writ petition being devoid of merit**. The copy of judgment is attached with this letter and is also available on Department's website for download on following link:

<http://health.punjab.gov.pk/Notifications>

3. The orders of Honorable Lahore High Court, Lahore are being communicated for information and immediate completion of ongoing procurement process including **Award of Contract** to the successful bidders.

4. It is further reiterated that the status of M/s Unisa Pharmaceuticals stands **"Not Prequalified"**.

(TAYYAB FARID)

**PROCUREMENT SPECIALIST
SPECIALIZED HEALTH CARE AND
MEDICAL EDUCATION DEPARTMENT**

No & Date even:-

1. The Accountant General, Punjab , Lahore
2. Additional Secretary (Staff) to Secretary SHC&ME Department Punjab.
3. PSO to Special Secretary, SHC&ME Department Punjab.
- ✓ 4. System Analyst / In-Charge ICT Cell, Specialized Healthcare & Medical Education Department, Government of the Punjab with the request to upload the same on Department's website on the above link for ready availability of the status of the firm.

IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Case No. W.P No.39637/2016

M/s Unisa Pharmaceutical Industries Ltd. Vs Province of Punjab etc.

S.No.of order/ Proceeding	Date of order/ Proceeding	Order with signature of judge, and that of parties or counsel, where necessary.
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17.10.2017 Pir Muhammad Masood Chishti, Advocate for
the petitioner.
Barrister Khalid Waheed, Addl.A.G. along with
Hafiz Shahid Hameed, Section Officer.

This petition under Article 199 of the
Constitution of Islamic Republic of Pakistan,
1973, lays a challenge to the order dated
11.11.2016 passed by the Chairman Grievance
Committee/ Special Secretary, respondent No.2
as well as the order dated 10.10.2016 passed by
the respondent No.3, the Procurement Specialist/
Convener, Specialized Healthcare & Medical
Education Department, Government of the
Punjab.

2. The decision dated 11.11.2016 has been
made by the Grievance Committee in its meeting
held on the said date by which application for
pre-qualification of pharmaceutical
manufacturers and sole agents of foreign
principals as per rule 67 of PPRA Rules, 2014

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Lahore High Court Lahore

was considered. In respect of the petitioner the findings of the Committee were as follows:-

The Grievance Committee observed that physical vendor audit report has not been produced. The Grievance Committee unanimously rejected the grievance of the firm”.

3. Therefore, the entire controversy revolves around the production or otherwise of physical vendor audit report. In simple terms, the said report is one of the requirements as prescribed in the bidding documents for the pre-qualification of a pharmaceutical firm. It is required as one of the conditions that the firm bidding for the contract shall provide the “physical vendor certification” and which includes evidence and report of physical vendor audit conducted by the firm or its representatives. Admittedly, no such audit has been conducted by the firm or its representative in the instant case and, therefore, there is no report regarding any such audit. Thus, the petitioner firm has failed to produce the physical vendor certification. The entire reliance of the learned counsel for the petitioner is on the document called ‘the invitation for pre-qualification’ issued by the Government of the

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Punjab and in particular the following statement:-

"6. The firms or its sections/products which are or will be prequalified by Primary & Secondary Healthcare Department are considered prequalified subject to application ~~W.P. No. 37 of 2016~~ prescribed form in the bidding document by SHC & ME Department. Similarly, the firms/products of Reference Countries Source (United States Food and Drug Administration, World Health Organization, European Medicine Agency or regulatory bodies of Japan, Australia, Health Canada, Switzerland any of the regulatory bodies of erstwhile Western Europe or three stringent regulatory bodies of erstwhile Eastern Europe) having Certificate of Pharmaceutical products (CPP) will be considered prequalified subject to application in prescribed form by local agent. Reference countries approved sources are eligible to participate and no application against the medicine/section shall be considered included in the negative list. The negative list related to India is mentioned in the import policy order 2016 (Appendix-G is related to drugs and medicines) and available at the web site of Ministry of Commerce Government of Pakistan."

4. According to him, the petitioner procures the raw material from the reference countries which have been mentioned in the said paragraph and the document and, therefore, the petitioner should be exempted from the production of physical vendor certificate. However, there is a distinction in the case of the petitioner as against the case of the firms mentioned in paragraph 6 reproduced above. In case, the product has been manufactured by any

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of the source countries mentioned in that column, the condition for the production of physical vendor certificate will not apply. In the case of the petitioner, however, the raw materials are being procured from sources in the reference countries mentioned above and therefore, in the present case, the exemption contemplated by the pre-qualification document will not be applicable and it will be necessary to produce the physical vendor certificate. This has also been mentioned in the drug policy approved in the 4th meeting of the Policy Board of the Drug Regulatory Authority of Pakistan by which it was clearly mentioned as follows:-

"(iv) Inspection of all manufacturers abroad will be conducted except for products manufactured and approved for sale by US-FDA, EMA, or regulatory bodies of Japan, Australia, health Canada, Switzerland, any of the regulatory bodies of erstwhile Western Europe or three stringent regulatory bodies of erstwhile Eastern Europe, which shall be exempted from the inspection of the manufacturing unit abroad."

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5. Therefore, it is evident from a reading of the decision reproduced above that inspection of all manufacturers abroad shall be conducted except for products manufactured and approved for sale by the regulatory bodies mentioned in that

paragraph. Clearly, therefore, there is a distinction between the case of the petitioner and the condition relied upon by the learned counsel as the petitioner's products are not manufactured abroad and are not approved as manufacture products by any of the regulatory bodies. On the other hand, the petitioner procures raw material from these countries merely and, therefore, the condition will be fully applicable to the petitioner's case. It is also not denied that manufacturers in Pakistan similarly situated are given the same treatment as the petitioner and there is no distinction with regard thereto.

6. In view of the above, the instant petition is without merit and is, therefore, dismissed.

RESIDENT

(SHAHID KARIM)
JUDGE

TRUE COPY

In Case No.....

[Handwritten Signature]
Branch
Lahore

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Razaqat Ali

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Authorized Under Article 87 of
Shahadat Order 1980