

ICAO VENDOR SANCTION POLICY

**Approved by the Council and
published by its decision**



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1. BACKGROUND

1.1 In spending public resources for or in connection with its activities, the International Civil Aviation Organization (“ICAO” or “the Organization”), a specialized agency of the United Nations, aims to meet the highest standards of integrity, and demands the same from those who provide goods, works or services to ICAO. In light of ICAO’s overriding mandate of ensuring safe, secure and sustainable air transport, it is imperative that no resources are diverted from their ultimate purpose. Therefore, ICAO will not accept goods, works or services from any person or entity that does not meet those high standards of integrity.

2. PURPOSE AND OBJECTIVE

2.1. The present ICAO Vendor Sanction Policy (Policy) defines the framework within which ICAO shall make decisions regarding ineligibility of Vendors to work with or for ICAO as a result of their engagement in Proscribed Practices as defined in this Policy. This Policy will be published and made available to all Vendors.

2.2. This Policy is based on and has been adapted from the Model Policy Framework (MPF) for Agencies of the United Nations System (UN Agencies) adopted by the High Level Committee on Management Procurement Network, a framework which enables ICAO to cooperate with other UN Agencies to maintain consistent treatment of Vendors.

3. DEFINITIONS

3.1 For purposes of this Policy, the following terms shall have the meaning set forth in this section:

- a) **Eligible Vendor** means a Vendor which is deemed acceptable to supply goods, works or services to the Organization under the provisions of ICAO’s Procurement Code and which has not been included in the Ineligibility List or declared ineligible by the Sanctions Board, or if having been included, has subsequently been duly rehabilitated;
- b) **Ineligibility List** means a list that aggregates information disclosed by UN Agencies, hosted and maintained confidentially by the United Nations Global Marketplace (UNGM) and accessible to participating UN Agencies, which specifies the name, location, grounds for ineligibility as well as effective and terminal date for each ineligible Vendor status;
- c) **Ineligible Vendor** means a Vendor that is on the Ineligibility List or has been declared ineligible by the Sanctions Board of ICAO; and
- d) **Proscribed Practices**. The following are definitions of conduct or behaviour that constitute proscribed practices which may take place at any time during the ICAO procurement process, including contract execution or beyond:
 - i. A **corrupt practice** is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;

- ii. A **fraudulent practice** is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead a party, to obtain a financial or other benefit or to avoid an obligation;
- iii. A **coercive practice** is an act or omission that impairs or harms, or threatens to impair or harm, directly or indirectly, any party or the property of the party to improperly influence the actions of a party;
- iv. A **collusive practice** is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
- v. An **unethical practice** is conduct or behaviour that is contrary to the conflict of interest, gifts and hospitality, post-employment provisions or other published requirements of doing business with ICAO, including the UN Supplier Code of Conduct; and
- vi. **Obstruction:** Acts or omissions by a Vendor that prevent or hinder ICAO from investigating instances of possible Proscribed Practices.

3.2 **Sanction.** An administrative determination, including any necessary measures or rehabilitative requirements, determined and applied by ICAO at its discretion as a result of a Vendor engaging in Proscribed Practices. Such ICAO determination is intended to ensure compliance with the procurement rules, regulations and policies of ICAO and the UN System. An administrative determination may also include payment to be made by a Vendor in order to compensate ICAO for costs incurred as result of the Vendor's actions that led to the Sanction.

3.3 **Vendor.** An offeror or a prospective, registered or actual supplier, contractor or provider of goods, services and/or works to the UN System including entities bidding for or contracted in commercial relationships with ICAO; implementing partners or other entities receiving financial or other resources from ICAO in respect of its programmes and operations pursuant to contracts, Letters of Agreement, Execution Agreements, Memoranda of Understanding, or other instruments. Vendors include private or public companies, whether parent, holding, subsidiary, affiliate, consortium members, or partnership, government agencies or non-governmental organizations¹.

4. THE SANCTIONS BOARD

4.1 **Mandate.** A Sanctions Board ("the Board") shall be established as an internal administrative body to determine whether a Vendor has engaged in any Proscribed Practices and, if so, to recommend to ICAO's Secretary General appropriate Sanction(s) or other corrective and rehabilitative measure(s) against the Vendor.

4.2 **Composition.** The Sanctions Board membership ("Members") will consist of a pre-determined roster of Members ("Roster"). The ICAO Secretary General shall appoint the members to the Roster and shall appoint from this Roster a Chairperson. Additionally, a Secretary to the Sanctions Board ("the Secretary") shall be appointed to act as a non-voting advisor to the Board, reporting directly

¹ Employees, officers, advisers or representatives of the Vendor will be considered agents for which the Vendor is responsible under this Policy.

to the Sanctions Board Chairperson. Members shall sign a declaration of impartiality and non-conflict of interest for each case before the Sanctions Board which shall form part of the record.

4.3 ***Proceedings.*** The Board will meet in closed sessions, unless it decides otherwise. The Board shall report on its activities to the ICAO Secretary General.

5. SANCTIONS PROCEEDINGS

5.1 ***Preliminary Review.*** The Ethics Officer will be responsible for conducting a preliminary review upon receipt of timely, credible and verifiable information on allegations of Proscribed Practices. The Ethics Officer will assess the allegation to determine if the latter is made in good faith and there is prima facie evidence of a proscribed practice, and will then recommend to the Secretary General, through the Sanctions Board for review and recommendation, whether to commence an investigation and the manner in which the investigation shall be conducted.

5.2 ***Investigation.*** As applicable, an investigation shall be conducted by an appropriate investigator in accordance with the general principles set out in the Uniform Guidelines for Investigations endorsed by the Conference of International Investigators. Based on the availability of resources, Evaluation and Internal Audit Office (EAO) should be given preference over consultants, UN investigators or others.

5.3 ***Notice of Administrative Action.*** If, after reviewing the investigation report, there is sufficient evidence to confirm the allegations that a Vendor has engaged in Proscribed Practices, the Ethics Officer will submit to the Board a request for issuing a Notice of Administrative Action (“Notice”) against the Vendor. The Board will review the Ethics Officer’s Request for Notice and the investigation report, and will decide whether the findings of the investigation support a conclusion that there is sufficient evidence that the Vendor has engaged in Proscribed Practices. The Sanctions Board shall seek the approval of the Secretary General for issuing the Notice.

5.4 ***Vendor Response.*** Once the Sanctions Board issues a Notice of Administrative Action, the Vendor shall be given the opportunity to submit within thirty (30) days following the receipt of the Notice a written response to the Secretary of the Sanctions Board. The response must present arguments and provide supporting documentation in response to the allegations presented. The Vendor shall have no right to a hearing.

5.5 ***Settlement.*** The Vendor may at any time before the Sanctions Board reaches a final determination present an offer of settlement to the Secretary of the Sanctions Board, who shall submit it, through the Board Chairman, to the Board for its consideration. The settlement offer must include an admission of involvement in Proscribed Practices as well as an action plan for mitigating and eradicating the actions or omissions that resulted in the allegations included in the Notice of Administrative Action. The Board shall recommend the approval or rejection of the settlement offer to the Secretary General.

5.6 ***Board’s Final Determination and Recommendation.*** The Sanctions Board will render its recommendation based on all submissions received during the Sanctions Proceedings:

- a) ***Insufficient Evidence of Proscribed Practices.*** If the Board determines that there is insufficient evidence to support a finding that the Vendor engaged in a Proscribed Practice, the matter shall be closed.

- b) ***Finding of Proscribed Practices and Range of Possible Sanctions.*** If the Board determines that there is a preponderance of evidence to support a finding that the Vendor engaged in a Proscribed Practice, it shall recommend to the Secretary General appropriate sanction(s) from the range of possible sanctions listed below, as well as any remedial action:
- i. ***Censure:*** A letter of reprimand of the Vendor's behavior. Censure does not affect the Vendor's eligibility, but its existence will be an aggravating factor for imposing sanctions in future proceedings;
 - ii. ***Ineligibility or Debarment:*** A formal declaration that a Vendor(s) has become ineligible for a period of time to be awarded and/or to partake in ICAO contracts. Exceptionally, the Sanctions Board may declare that the Vendor's debarment be permanent;
 - iii. ***Other Sanctions:*** The Board may impose other sanctions that it finds appropriate to the circumstances at hand, including suspension, reimbursement or subjecting future contracts to special conditions. The Sanctions may be imposed in addition to or in place of Censure or Debarment.

5.7 ***Final decision by the Secretary General.*** The Board shall transmit to the Secretary General a written recommendation stating its findings of fact and conclusions. The Board shall also include a recommendation on specific sanctions for the Secretary General's consideration. Upon receiving the Board's recommendation, the Secretary General shall promptly issue a final, non-appealable decision, which shall be transmitted to the Vendor and which shall take effect immediately. The decision of the Secretary General is without prejudice to any action taken against the Vendor by any government or other international organization under applicable law.

6. DISCLOSURE

6.1 If the Sanctions Board imposes a sanction of Ineligibility or Debarment on a Vendor, information on the identity of the Ineligible Vendor and the sanctions imposed will be shared with the UN System for inclusion in the Ineligibility List.

7. MONITORING

7.1 The Director of the Technical Cooperation Bureau, through its Procurement Section, shall verify that no contracts are awarded to Ineligible Vendors and that they are not actively participating in ICAO's procurement processes.

8. EXCEPTIONS

8.1 The Secretary General, upon consultation with the Sanctions Board, may grant a waiver in exigent circumstances which warrant the participation of an Ineligible Vendor in a procurement process when it has been demonstrated that ICAO has a compelling interest in using the Ineligible Vendor, including the Ineligible Vendor being the sole provider of proprietary technology that is critical for the operation of ICAO's activities; the existence of monopoly conditions in the country where the procurement action is to take place, or circumstances that warrant unusual or immediate action, such as a sudden and unforeseen crisis, or any urgent situation that requires extreme effort or attention that can only

be provided by the Ineligible Vendor. The waiver granted by the Secretary General shall make the Ineligible Vendor eligible exceptionally and on a one-time basis.

9. REHABILITATION

9.1 ***Rehabilitation upon Expiration of Sanctions.*** An Ineligible Vendor wishing to restore its business relationship with ICAO, may request to have its eligibility restored by the Sanctions Board of ICAO when the sanctions imposed and corresponding entry in the Ineligibility List have expired. Expiration of the term of the Sanction(s) does not constitute, in and of itself, the rehabilitation of the Ineligible Vendor.

9.2 ***Rehabilitation prior to Expiration of Sanctions.*** Ineligible Vendors may also request rehabilitation when at least half of the sanctions term has expired.

9.3 ***Grounds of Rehabilitation.*** The request for rehabilitation must be submitted in writing to the Secretary of the Sanctions Board and must be accompanied by supporting documentation that demonstrate that corrective measures have been put in place to the satisfaction of the Sanction Board. The Ineligible Vendor must provide sufficient information attesting to the medium to long-term effects of corrective measures, the deterrent effects resulting from the sanctions imposed, and must show that re-establishing its eligibility will be a sound business decision for the Organization.

10. EXERCISE OF DISCRETION

10.1 This Policy is intended to assist in facilitating the reasonable exercise of discretion by the Organization and does not in itself confer any rights or privileges upon any party involved. ICAO reserves the right to further alter, amend, supplement or otherwise revise this Policy. ICAO also reserves the right to adapt, modify, waive or suspend the provisions of this Policy in particular cases as circumstances warrant at any time and without prior notice.

11. PRIVILEGES AND IMMUNITIES

11. Nothing in or relating to this Policy, either revealed or implied during proceedings herein described, or decisions issued, shall be deemed a waiver, alteration, abrogation, express or implied, of any immunity from suit or legal process or any privileges, exemptions or other immunity enjoyed by ICAO, its officers and staff, either pursuant to the *Convention on the Privileges and Immunities of the Specialized Agencies* or other conventions, agreements, laws or decrees of an international or national character, or shall be deemed to accept the jurisdiction of the courts of any country.

12. COMING INTO EFFECT AND AMENDMENT

12.1 This Policy shall come into effect upon approval by the Council.

12.2 The Policy may be amended, as required, under the authority of the Council.

12.3 The Secretary General shall further develop administrative procedures to implement this Policy.

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