



ASSEMBLY — 39TH SESSION

EXECUTIVE COMMITTEE

Agenda Item 15: Technical Cooperation - Policy and activities on technical cooperation

IMPROVEMENT OF THE CONTRACTING AND PURCHASING PROCESSES CARRIED OUT WITH ASSISTANCE FROM THE TECHNICAL COOPERATION BUREAU

(Presented by the Dominican Republic)

EXECUTIVE SUMMARY

With a view to safeguarding the interests of the various civil aviation authorities of the Organization's Member States, the Dominican Republic proposes the implementation of a consultation system which allows States to verify the performance of the various suppliers available for the various assistance projects run by the ICAO Technical Cooperation Bureau.

The Dominican Republic also proposes the implementation of a system entailing consequences for contractors which do not fulfill their contractual obligations to States or are involved in legal action as a result of such failure to fulfill.

Action: The Assembly is invited to:

- a) request that contractors which do not fulfill their contractual obligations and/or are involved in legal action detrimental to States be removed from the ICAO Supplier List and be excluded from active participation in activities sponsored by ICAO;
- b) request that the identity of contractors which do not fulfill their contractual obligations and/or are involved in legal action detrimental to States be made public; and
- c) agree on any other action it considers.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective: <i>Economic development of air transport</i>
<i>Financial implications:</i>	Not applicable
<i>References:</i>	Resolution A36-17, <i>Consolidated statement of ICAO policies on technical cooperation</i> Civil Aviation Purchasing Service (CAPS) Ex post facto evaluations

¹ Spanish version provided by the Dominican Republic.

1. INTRODUCTION

1.1 The International Civil Aviation Organization (ICAO), in its role as a provider of assistance to States, has historically demonstrated its commitment to providing such assistance. Civil aviation authorities, in choosing to carry out their projects through ICAO, are essentially seeking transparent management of resources, the optimization of investments, and the guarantee of contractor performance.

1.2 However, in recent years, some States have encountered contractual performance problems, while others have been involved in legal action, which has even been successful, to elicit contracted companies' fulfilment of the commitments made under contracts signed through the Technical Cooperation Bureau.

1.3 The lack of an adequate inter-State consultation system which provides the performance profiles of contractors allows non-compliant companies to retain the privilege of participating in bidding and procurement processes and the privilege of participating in ICAO events and public meetings. Non-compliant companies are able to continue entering into contracts with States despite failing to fulfil previous contractual obligations.

1.4 The civil aviation authorities of Member States would be better informed before undertaking projects through Technical Cooperation if they had access to the profiles of the suppliers which have previously worked with other Contracting States. This would preserve the guarantee afforded by accurate information in cases where suppliers do not honour their commitments duly and efficiently.

2. DISCUSSION

2.1 State sovereignty allows a State to exercise its right to contract any company which it considers appropriate to its needs. However, when a State accepts assistance provided by ICAO to further its improvement processes, it does so because it is fundamentally seeking transparency and a guarantee of performance in the context of these processes.

2.2 Transparency is necessary for compliance with the regulations applicable by the audit and oversight bodies in a given State. These bodies could question the management of their own civil aviation authority if a supplier fails to meet its commitments and is found to have a history of non-performance of contractual obligations which was not considered before the supplier was contracted. Such a situation would raise the question of who is responsible.

2.3 The success of the procurement processes carried out by States with support from the ICAO Technical Cooperation Bureau is a shared responsibility. For this reason, we must keep in mind that damaging States' interests irreversibly damages the public image and credibility of the Organization, which we must protect fully.

2.4 The guarantee of fulfilment of the commitments which a supplier makes to a State through the Technical Cooperation Bureau must be established as soon as assistance is requested. The applicant requesting assistance must be given up-to-date information on the performance history of the various companies identified as options suitable for meeting the request.

2.5 Specific information on the successful completion of previous processes, efficient and punctual project deliveries, client satisfaction, and the like should be highlighted as positive points. Likewise, breaches of contract, delayed project deliveries, action brought by States for scams, fraud and the like, and other such things should also be made known to States.

2.6 The quality and efficiency of the companies which serve the aviation sector globally should be continuously improved, and a demand for higher standards would be an important contribution from States. The sharing of information and the disclosure of the results of evaluations, carried out through the analysis of the actions performed and of the degree to which original objectives have been met, are fundamental to this.

2.7 With this in mind, applying one of the principles of quality, that of maintaining beneficial relations with suppliers, as established by the quality management processes in ISO standard 9001:2008, by means of supplier evaluations, with spot checks in accordance with the impact of the expected end product, would be the ideal approach, making use of the certification held by the Technical Cooperation Bureau since 2012.

2.8 As a result, the foundations are in place for the establishment of a system entailing consequences for any company which does not meet its commitments. This system would encourage compliance, since non-compliance would subject a company to public scrutiny and jeopardize its reputation and its ability to stay in business. The consequences of non-compliance would be:

- a) the removal of a company from the list of suppliers in the event of poor performance; this would mean that the company would not be able to continue signing contracts without having fulfilled those already signed; and
- b) the exclusion of a company from active participation in activities sponsored by ICAO; this would mean that other States would not consider the company one of the Organization's trusted suppliers.

2.9 A database allowing the consulting of ex post facto evaluations of Technical Cooperation projects conducted through ICAO would be a highly beneficial tool. Such a database would contain valuable comments on project execution and results, thereby enabling decisions based on verifiable facts and learning based on the experiences of other States.

3. CONCLUSION

3.1 The guarantee represented by the joint and several liability of the Technical Cooperation Programme in respect of States which are applicants for assistance, donors, or recipients of assistance is an important element the reputability of which should not be tarnished by third-party non-fulfilment, especially considering that States rely on support from the Organization to improve their aviation systems and generally achieve or maintain compliance with the standards in force.

3.2 The acceptance and implementation of what is set out in this working paper would be an unequivocal demonstration of ICAO's commitment to Member States. It would constitute solid support for the civil aviation authorities which entrust their procurement processes to the Technical Cooperation Programme.

4. **ACTION**

4.1 The Assembly is invited to:

- a) request that contractors which do not fulfill their contractual obligations and/or are involved in legal action detrimental to States be removed from the ICAO Supplier List and be excluded from active participation in activities sponsored by ICAO;
- b) request that the identity of contractors which do not fulfill their contractual obligations and/or are involved in legal action detrimental to States be made public; and
- c) agree on any other action it considers.

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