





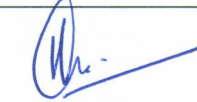

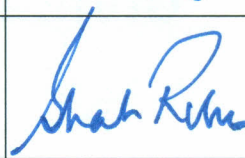
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BLACKLISTING OF CONTRACTORS & SUPPLIERS

CIVIL AVIATION AUTHORITY ORDER

VERSION : 1.0
DATE OF IMPLEMENTATION : 01-07-2019
OFFICE OF PRIME INTEREST : ENGINEERING SERVICES DIRECTORATE

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	NAME	DESIGNATION	SIGNATURE
PREPARED BY	ABDUL MOHAYMIN SAHITO	ASSISTANT DIRECTOR ES (CIVIL)	
REVIEWED BY	ENGR. ASIF HUSSAIN	SR. DEPUTY DIRECTOR ES (QC&M)	
	ENGR. RABIA SALMA	DIRECTOR ENGINEERING SERVICES	
VERIFIED BY	AIR CDRE. SYED NASIR RAZA HAMDANI	DIRECTOR SQMS / MANAGEMENT REPRESENTATIVE	
APPROVED BY	SHAHRUKH NUSRAT	DIRECTOR GENERAL CIVIL AVIATION AUTHORITY	
TYPE OF DOCUMENT	CIVIL AVIATION AUTHORITY ORDER (CAAO)		
STATUS OF DOCUMENT	CONTROLLED		

A. PURPOSE

- A1. To comply with the statutory obligation imposed on the procuring agencies by the Federal Government vide Rule 19 of Public Procurement Rules, 2004.
- A2. To define a mechanism and manner to permanently or temporarily bar Contractor(s), and Supplier(s) who either consistently fail to provide satisfactory performances or are found to be indulging in corrupt or fraudulent practices, from participating in procurement proceedings. (Rule 19 of Public Procurement Rules, 2004)
- A3. To create a due process and fair procedure prescribing fair criteria, proportionate duration of punishment and structuring of discretion of the authorities exercising the power of blacklisting.
- A4. To improve the performance monitoring mechanism of the Contractor(s) and Supplier(s) so as to impart best engineering practices in the organization.

B. SCOPE

- B1. The CAAO shall be applicable in all such cases wherein blacklisting of a defaulting / erring Contractor, and Supplier [i.e. individual(s), sole-proprietor(s), partnership(s), corporation(s), joint venture(s), company / companies, firm(s), association(s), or any other legal entity / entities] is required.
- B2. The CAAO shall also be applicable in all such cases wherein blacklisting of a defaulting / erring Concessionaire, Leasee, and Licensee [i.e. individual(s), sole-proprietor(s), partnership(s), corporation(s), joint venture(s), company / companies, firm(s), association(s), or any other legal entity / entities] is required.
- B3. The blacklisting of the erring Contractor(s) and Supplier(s) is not meant as a retributive action but it is a reformative measure, taken in the interest of free, fair, and open competition.

C. CORE RESPONSIBILITIES

- C1. Site Formation¹ is responsible for reporting all complaints warranting initiation of the blacklisting procedure against the Contractor or Supplier to the Controlling Office².
- C2. Controlling Office (or Controlling Office at HQCAA) is responsible for initiating the case for blacklisting of the erring Contractor or Supplier within twenty (20) working days from the receipt of the complaint(s) from the Site Formation, if it finds sufficient grounds warranting initiation of the blacklisting action.
- C3. Office of Prime Interest (OPI)³ shall recommend the cases initiated by the Controlling Office for necessary action by the PCAA's Committee for Blacklisting of the Contractors & Suppliers.

¹ Refer D1.11 for definition of the term "Site Formation".

² Refer D1.6 for definition of the term "Controlling Office".

³ Refer D1.9 for definition of the term "Office of Prime Interest".

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- C4. PCAA's Committee for Blacklisting of the Contractors & Suppliers is responsible for deciding in favour or against the Contractor(s) or Supplier(s) on the merit of the case, and submit it for the perusal / approval of the DGCAA.
- C5. Controlling Office shall intimate the decision(s) of the "Committee for Blacklisting of the Contractors & Suppliers" to the concerned Contractor(s) or Supplier(s).
- C6. President of the "Committee for Blacklisting of the Contractors & Suppliers" shall issue a blacklisting order with the approval of DGCAA whereby the particulars of the blacklisted Contractor or Supplier shall be published on the PCAA's website in the "List of Blacklisted Contractors & Suppliers" (CAAF-015-ESCW).
- C7. Secretary of the "PCAA Committee for Blacklisting of the Contractors & Suppliers" shall be responsible for publishing and maintaining the "List of Blacklisted Contractors & Suppliers" (CAAF-015-ESCW) on PCAA's website and for conveying the blacklisting order to PPRA, PEC, and other Government Departments *wherever applicable*.
- C8. Controlling Office / OPI / Site Formation shall ensure that blacklisted Contractors and / or Suppliers whose names appear on the "List of Blacklisted Contractors & Suppliers" (CAAF-015-ESCW) are not issued with bidding documents.
- C9. Office of Director Engineering Services shall be responsible for making any amendments or revisions required in this CAAO.

D. DESCRIPTION

D1. DEFINITIONS

- D1.1. "**Blacklisting**" means to put the name(s) of person(s), party / parties, consultant(s), firm(s), company / companies on a blacklist to express the PCAA's disapproval and discontent against such entity / entities, and to put restriction on such entity / entities from participating in any and all kinds of bidding processes during the period of their blacklisting. Such a disapproval will be expressive and widespread requiring the name(s) of the blacklisted entity / entities to be published on PPRA's website along with the names of their Board of Directors, Proprietor(s), or Owner(s) etc.
- D1.2. "**Concessionaire**" and "**Licensee**" means person(s), party / parties, firm(s), company / companies having permission to do business on to CAA property / properties by entering in to a concession / license agreement with PCAA. The word "**Concessions**" shall have the same meaning in this CAAO as assigned to it in the CAAO-004-CMPP. For brevity of this document, the word "Contractor" shall also mean concessionaire and/or licensee.
- D1.3. "**Consistent Failure**" means repetitive failure by an entity to perform as per its contractual obligations on or after award of contract / purchase order either at multiple instances in the same job or at multiple jobs undertaken by the same entity (either independently or as joint venture). For the purpose and scope of this document, the word "multiple" shall mean three or more in numbers.
- D1.4. "**Contract**" means an agreement enforceable by law. For the purpose and scope of this document, the word "Contract" shall also include "concession

agreement", "lease agreement", "license agreement", and "purchase order" within its meaning.

- D1.5. **"Contractor" and "Supplier"** mean person(s), party / parties, consultant(s), firm(s), company / companies entering in to a contract agreement with PCAA for fulfillment / performance / provision of works, services, or supply of goods in favour of the PCAA as per the terms and conditions laid under the contract agreement i.e. duties, responsibilities, the amount and type of work(s) etc.
- D1.6. **"Controlling Office"** means office of the Additional Director whom the Site Formation reports in either administrative or technical capacity.
- D1.7. **"List"** means the List of Blacklisted Contractors & Suppliers (CAAF-015-ESCW)
- D1.8. **"Offense"** means commission of the ground(s) and violation(s) defined under Section D3 of this CAAO.
- D1.9. **"Office of Prime Interest"** means office of the concerned / specialist Director whom the controlling office and its site formation report to in either administrative or technical capacity.
- D1.10. **"Penalty"** and its derivatives shall mean imposition of a temporary or permanent restriction on erring Contractors and Suppliers from participating in any and all kinds of bidding processes.
- D1.11. **"Site Formation"** means location(s), or office(s) under PCAA's control that are directly involved in procurement of works and services, supply of goods, and / or handling of commercial & estates' activities.
- D1.12. **"Suspension"** and its derivatives shall mean a temporary restriction imposed on contractor(s), supplier(s), leasee(s), licensee(s), concessionaire(s) person(s), party / parties, consultant(s), firm(s), company / companies from participating in any and all kinds of bidding processes during the period from receipt of "Notice of Decision" (against the entity) to "Finality of the Decision."

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D2. COMMITTEE FOR BLACKLISTING OF THE CONTRACTORS & SUPPLIERS (THE COMMITTEE)

Consequent upon the implementation of this CAAO, a committee comprising of following officials shall be constituted, and will be hereinafter referred to as "the Committee":

i. Director	President
ii. Additional Director	Secretary
iii. Additional Director CNS / ES	Member
iv. Additional Director Commercial / Estates	Member
v. Additional Director APS / ANS / HR	Member
vi. Additional Director Finance / Internal Audit	Member
vii. Co-opted Member	Member

The President and Secretary of the Committee shall be as follows;

- For cases pertaining to Airport Services Division, the President and Secretary of the Committee shall be from CNS Engineering Directorate.
- For cases pertaining to Air Navigation Services Division, the President and Secretary of the Committee shall be from Engineering Services Directorate.

- c. For cases pertaining to Human Resources Director, the President and Secretary of the Committee shall be from either CNS Engineering Directorate or Engineering Services Directorate, preferably on alternative basis.

Number of members including the President and the Secretary of the committee shall be limited to odd numbers.

The committee, if required in the interest of justice and fair play, may seek legal advice during the course of its proceedings.

D3. SANCTIONS AND GROUNDS FOR BLACKLISTING

D3.1. Competitive Bidding Stage: During the competitive bidding stage, PCAA shall impose on bidders or prospective bidders the penalty of blacklisting for a period which may extend to one (1) year for the first offense, and for a period which may extend to two (2) years for the second offense, thus barring them from participating in the public bidding process, without prejudice to the imposition of additional administrative sanctions and / or further criminal prosecution, as provided by applicable laws, on the following grounds:

- D3.1.1. Submission of eligibility requirements containing false information or falsified documents.
- D3.1.2. Submission of Bids that contain false information or falsified documents, or the concealment of such information in the Bids in order to influence the outcome of eligibility screening or any other stage of the public bidding.
- D3.1.3. Unauthorized use of one's name, or using the name of another for purpose of public bidding.
- D3.1.4. Misconduct *i.e. not responding to at least three (03) written consecutive communications.*
- D3.1.5. Refusal or failure to post the required performance security within the prescribed or extended time without showing cause for inaction for at least three (3) times in a single year.
- D3.1.6. Any documented unsolicited attempt by a bidder to unduly influence the outcome of the bidding in his favour.
- D3.1.7. All other acts that tend to defeat the purpose of the competitive bidding, such as but not limited to:
- D3.1.7.1. An eligible contractor / supplier not buying bidding documents *meaning* acquiring the bidding documents through unofficial means or in a manner unacceptable to PCAA, or
- D3.1.7.2. An eligible contractor / supplier acquiring the bidding documents by means of internet (downloading from website) and participating in the bidding process without purchasing the right to bid in at least three (3) separate instances within five consecutive years, and
- D3.1.8. In addition to the penalty of blacklisting, the bid security posted by the concerned bidder or prospective bidder shall also be forfeited.

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D3.2. **Contract Implementation Stage:** Without prejudice to the imposition of additional administrative sanctions as the internal rules of the PCAA may provide and/or further legal action as provided by the applicable laws, the PCAA shall impose on Contractors after the termination of the contract the penalty of blacklisting for a period which may extend to one (1) year for the first offense, and for a period which may extend to two (2) years for the second offense, thus barring them from participating in the public bidding process, for violations committed during the contract implementation stage, which include but not limited to the following:

D3.2.1. Consistent failure of the contractor, due solely to his fault or negligence, to mobilize and start work or to perform within the specified period as per the Work Order.

D3.2.2. Consistent failure of the supplier, due solely to his fault or negligence, to deliver goods within the specified period in the Purchase Order.

D3.2.3. Consistent failure by the contractor / supplier to fully and faithfully comply with his contractual obligations without valid cause, or failure by the contractor / supplier to comply with any written lawful instruction of the PCAA or its representative(s) pursuant to the implementation of the contract.

D3.2.4. Willful or deliberate abandonment or non-performance of the project or contract by the contractor / supplier at multiple occasions in different works resulting to substantial breach thereof without lawful and/or just cause.

D3.2.5. In addition to the penalty of blacklisting, the bid security and performance guarantee (i.e. Bank Guarantee, or Insurance Guarantee) or security deposit posted by the contractor / supplier shall also be forfeited.

D3.3. **Other Conditions:** PCAA shall impose on bidders or prospective bidders the penalty of blacklisting for a period which may extend to three (3) years for the first offense, and for an indefinite period for the second offense from participating in the public bidding process, for committing any of the following violations:

D3.3.1. Consistent failure to provide satisfactory performance.

D3.3.2. Existence of judicial decision(s) or verdict(s) against a contractor / supplier for having been found guilty of corrupt, collusive, or fraudulent practice(s) in litigious matters, wherein PCAA was involved either as a plaintiff or victim of such act(s).

D3.3.3. Existence of a PAC and or DAC decision against a contractor or supplier requiring blacklisting of the Contractor or Supplier.

D3.3.4. Submission of false and spurious documents, making false statements and allegations against a potential competitor or a PCAA Employee to gain undue advantage.




- D3.3.5. Misbehavior and or threatening of departmental and supervisory officers during execution of work or tendering process. Making false or defamatory allegations (libel) against departmental and supervisory officers.
- D3.3.6. Involvement in any sort of tender fixing.
- D3.3.7. Commission of fraud, embezzlement, criminal breach of trust, theft, cheating, forgery, bribery, falsification or destruction of records, receiving stolen property, false use of trademark, securing fraudulent registration, giving false evidence, furnishing of false information of serious nature, and any other practices deemed or considered unethical.
- D3.3.8. A blacklisted Contractor or Supplier participating in the bidding process under a new name.

D4. PROCEDURE FOR BLACKLISTING

D4.1. INITIATION

- D4.1.1. Upon determination that the contractor / supplier has committed any of the grounds for blacklisting, the concerned Controlling Office with recommendations of the OPI shall submit the facts of the matter before the Committee for their consideration, thereby initiating the procedure for Blacklisting of the erring Contractor or Supplier. The securities (i.e. bid security, earnest money, security deposit, retention money, or performance guarantee etc. *if any*) of said Contractor / Supplier shall also be withheld, which may be released with the approval of the Committee subsequent to the determination of facts in the Contractor's / Supplier's favour.
- D4.1.2. Subsequent to the receipt of a request for initiation of blacklisting proceedings against the erring Contractor or Supplier, the Committee within a reasonable period of time, which shall not exceed twenty (20) working days, commence its proceedings upon *prima facie* (self-sufficient) determination that the contractor, or supplier has committed any of the grounds for blacklisting during the competitive bidding stage, contract implementation stage, or at any other stage as described in other conditions.

If the basis of such a determination is receipt of written complaint(s), then the same shall be duly signed and stamped by the complainant(s). Anonymous complaint(s), or complaint(s) that are unverifiable shall not be entertained.

D4.1.3. Standard of Proof and Quality of Evidence:

- D4.1.3.1. Facts of the matter so determined as sufficient for initiation of the blacklisting proceedings shall be *clear and convincing* where corrupt or fraudulent practices are of concern.

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- D4.1.3.2. Where a complaint is instituted against Contractor / Supplier for misbehavior and tender fixing (as in Sub-Sections D3.3.5 & D3.3.6), the quality of evidence shall be high. Such evidence can be (i) oral evidence and/or a sworn statement of at least two credible witnesses as written record, (ii) audio / video record, and/or (iii) any other record of considerable and significant credibility.
- D4.1.3.3. *Onus probandi* (burden of proof) and the burden of persuasion shall always lie with the OPI.

D4.2. NOTIFICATION

- D4.2.1. Upon verification of the existence of grounds for blacklisting, the Committee through concerned Controlling Office (under intimation to OPI) shall immediately notify the concerned contractor or supplier in writing, advising him that:
- D4.2.1.1. a complaint for blacklisting has been filed against him, or he has been considered by the PCAA for blacklisting, stating the grounds for such;
- D4.2.1.2. he has the opportunity to show cause why he should not be blacklisted;
- D4.2.1.3. a hearing shall be conducted by the Committee, upon his request, where he may present documentary and/or oral evidence;
- D4.2.1.4. if he does not request for a hearing, then the committee shall continue with its proceedings *ex-parte*; and
- D4.2.1.5. the consequences of being blacklisted.
- D4.2.2. Within fifteen (15) working days from receipt of notification, the contractor / supplier shall submit his written answer with documentary evidence to the Committee with a manifestation for request of hearing to determine questions of fact, if he so desires. No extensions in time shall be allowed.
- D4.2.3. Should the contractor / supplier fail to answer within the same period, the Committee shall blacklist the Contractor / Supplier from participating in any bidding process of the PCAA and forfeit his bid security / securities (if any).

D4.3. HEARINGS

- D4.3.1. *Audi alteram partem* (listen to the other side); the principle of natural justice requires that no person should be condemned unheard. Before any action is taken, the party / parties to be affected by the decision must be given a notice to show cause against the proposed action and their explanation(s) be sought.
- D4.3.2. If a hearing is requested, the Committee shall immediately fix the date and time for hearing. The hearing shall be non-litigious and shall be

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terminated within three (3) consecutive / non-consecutive days or less if the Committee so desires.

D4.3.3. The Committee, if it so desires, may also invite a representative from a duly recognized public / private group in a sector or discipline relevant to the matter at hand to render his expert opinion in the interest of justice and fair play. In such a case, a prior approval shall be solicited from the DGCAA.

D4.3.4. If no request is made, the Committee shall make a determination of the case based on the complaint, reply of the contractor / supplier, documentary evidence submitted and facts verified. If the Committee is convinced that the contractor or supplier is at fault, it shall blacklist the contractor / supplier from participating in any bidding process and forfeit his bid security.

D4.3.5. The decision shall clearly and distinctly state the facts, evidence and the law on which it is based, as well as the date of effectivity of the penalty, if any.

D4.3.6. In case a contractor / supplier commits more than one offense or a combination of offenses for the same project / contract, each violation shall be meted with corresponding penalty *meaning* the term of blacklisting shall be compounded for each offence.

D4.4. NOTICE OF DECISION

D4.4.1. The Committee through the Controlling Office (under intimation to OPI) shall furnish the blacklisted contractor / supplier a copy of the decision immediately from its promulgation.

D4.4.2. If in case, the Contractor / Supplier fails to acknowledge the receipt of the decision regarding his blacklisting, the decision of the Committee shall be conveyed via publication on PCAA's website.

D4.5. EFFECT OF DECISION

D4.5.1. A contractor / supplier shall be suspended upon receipt of the notice of decision prohibiting him from participating in the bidding process(es) of the PCAA. The suspension shall remain in effect during the period of "application for review" and shall terminate only upon a reversal of the decision by the Committee.

D4.5.2. If an application for review is not filed, the decision shall become final and executory after the lapse of seven (7) calendar days from the receipt of the notice of decision. Thereafter, the Committee shall issue a Blacklisting Order disqualifying the erring contractor / supplier from participating in all kinds of bidding processes during the period of blacklisting.

D4.6. APPLICATION FOR REVIEW

D4.6.1. An Application for Review may be filed by the blacklisted Contractor / Supplier within seven (7) calendar days from receipt of the notice of

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decision and shall be for either or both of the following causes, provided that only one (1) Application for Review shall be filed:

D4.6.1.1. The decision is not in conformity with the evidence and/or facts presented; and

D4.6.1.2. Discovery of new evidence or facts which could not be discovered and produced during the course of (blacklisting) proceedings and which when presented would probably alter the result of the proceedings.

D4.6.2. No application for review shall be entertained unless the Contractor / Supplier seeking review furnishes to the PCAA at the time of filing the application for review a cash security to the extent of twenty-five thousand rupees (Rs. 25,000.00). The cash security shall stand forfeited if the application for review is dismissed at the initial stage or the existing decision of the committee is retained as final and executory. However, in case, the existing decision is modified or reversed after the application for review, the cash security shall become refundable.

D4.6.3. The Committee shall resolve with finality the application for review within thirty (30) calendar days from the filing thereof and furnish blacklisted contractor / supplier a copy of the decision immediately from its promulgation.

D5. FINALITY OF DECISION

D5.1. The decision of the PCAA shall become final and executory after the lapse of seven (7) calendar days from the receipt of the notice of decision on the application for review. If an application for review is filed, the affirmed, modified or reversed decision shall become final and executory upon receipt thereof by the Contractor / Supplier concerned.

D5.2. Upon finality of the decision blacklisting the contractor / supplier, the Committee shall issue a Blacklisting Order with the approval of DGCAA disqualifying the erring contractor / supplier from participating in any and all kinds of bidding processes during the period of blacklisting.

D6. ACTION AFTER CONTRACTORS / SUPPLIERS ARE PLACED ON "THE LIST"

D6.1. "List of Blacklisted Contractors & Suppliers" along with names of the key personnel will be published on PCAA's website and the information regarding blacklisted entity / entities will be conveyed via circular to PPRA, PEC and other Government Departments *wherever applicable*.

D6.2. Such a Contractor / Supplier shall be prohibited from participating in any and all kinds of bidding process, and no bidding documents shall be sold to such Contractor / Supplier.

D6.3. A list indicating reasons for blacklisting, period of blacklisting, and person(s) involved will be maintained for such firms or entities.

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D7. STATUS OF BLACKLISTED CONTRACTOR & SUPPLIER

- D7.1. Subsequent to the issuance of a Blacklisting Order, the erring contractor / supplier shall be prohibited from participating in any and all kinds of bidding processes in PCAA including but not limited to the procurement of works and services, supply of goods, and commercial concessions / licenses & leases.
- D7.2. If Blacklisting Order is issued prior to the date of the Letter for Award of Work / Contract, the blacklisted Contractor / Supplier shall not be qualified for award and such project / contract shall be awarded to the next qualified bidder pursuant to PPRA Rules.
- D7.3. If the Blacklisting Order is issued after award of work / contract to the blacklisted Contractor / Supplier, the awarded project / contract shall not be prejudiced by the said order; provided, however, that the said offense(s) committed by the blacklisted Contractor / Supplier is / are not connected with the awarded project / contract. Where, the said offense(s) are connected with the awarded project / contract, the fate of the pending bills / payments against the work(s) completed, services rendered, and / or the goods supplied shall be decided by the OPI with recommendations of the Committee.

D8. AMBIGUITIES

- D8.1. Any ambiguous language in the CAAO shall be interpreted as to its fair meaning, and not strictly for or against either party.
- D8.2. In the case of an ambiguity in the application of any provisions of this CAAO, or any definition contained herein, the President shall have the sole power to determine the application of such provisions with respect to any situation based on the facts known to him and such determination shall be final and binding.

E. EVIDENCES (ACRONYMS / RECORDS / REFERENCES)

E1. ACRONYMS

CAAO	CIVIL AVIATION AUTHORITY ORDER
DAC	DEPARTMENTAL AUDIT COMMITTEE
DGCAA	DIRECTOR GENERAL CIVIL AVIATION AUTHORITY
OPI	OFFICE OF PRIME INTEREST
PAC	PUBLIC ACCOUNTS COMMITTEE
PCAA	PAKISTAN CIVIL AVIATION AUTHORITY
PEC	PAKISTAN ENGINEERING COUNCIL
PPRA	PAKISTAN PUBLIC PROCUREMENT REGULATORY AUTHORITY

E2. RECORDS

- E2.1. List of Blacklisted Contractors & Suppliers (CAAF-015-ESCW)

E3. REFERENCES

- E3.1. CAAO-004-CMPP
- E3.2. PPRA Public Procurement Rules, 2004



IMPLEMENTATION

The CAAO shall be implemented with effect from **01st July, 2019** and shall supersede any other CAAO issued in this regard.

Date:


24th June, 2019



(ENGR. RABIA SALMA)
Director Engineering Services

Date:

21st June, 2019
File No. HQCAA/1601/111/GEN/ESCW/


(SHAHRUKH NUSRAT)
Director General
Pakistan Civil Aviation Authority

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PRESIDENT
Committee for Blacklisting of the
Contractors & Suppliers