

Public Works and Government Services Canada

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Integrity Regime: Ineligibility and Suspension Policy

The Ineligibility and Suspension Policy is effective as of July 3, 2015

Part A – Introduction

I. Purpose

1. The purpose of the Ineligibility and Suspension Policy is to provide information about the new Integrity Regime which aims to determine which suppliers/potential suppliers are ineligible to do business with the Government of Canada. The Ineligibility and Suspension Policy allows the Minister of Public Works and Government Services to make prospective declarations of ineligibility for entering into contracts with the Government of Canada.

II. Authorities

1. PWGSC administers the Integrity Regime under the authority of the *Department of Public Works and Government Services Act*, the *Financial Administration Act* as well as through the operation of various Memoranda of Understanding that have been concluded with other government departments and agencies. Where a government department or agency has the authority to contract, the determinations made by the Minister under the Ineligibility and Suspension Policy may be relied upon by that department or agency in making a decision on whether they wish to enter into a contract with a given supplier/potential supplier.
2. The Integrity Regime consists of the Ineligibility and Suspension Policy and the Integrity Provisions that are incorporated by reference into solicitations and contracts and which create legal rights and obligations on the parties.
3. The contractual clauses that form part of the Integrity Regime operate in isolation but are intended to be consistent with the Ineligibility and Suspension Policy. The contractual clauses operate where PWGSC has a commercial relationship with a given supplier/potential supplier and the Ineligibility and Suspension Policy allows the Minister to provide suppliers/potential suppliers with prospective determinations of ineligibility/suspensions where there is no immediate relationship. The contractual clauses may be used by other government departments and agencies to bind supplier/potential suppliers.
4. A government department or agency, as the case may be, may make certain decisions under the Integrity Regime. The Public Interest Exception, for instance, is an example where the knowledge and expertise of the government department or agency is better suited to making decision on whether it is in the public interest to contract with an ineligible supplier/potential supplier. A government department or agency may also exercise the right to terminate a contract, where such a right is provided for in the contract.

Part B – Scope of application

1. The Ineligibility and Suspension Policy applies to supply contracts, construction contracts, real property contracts and service contracts. The Ineligibility and Suspension Policy does not apply to certain specified contracts, including, but not limited to:

- a. contracts that relate to the fulfillment of obligations by a public body under:
 - i. an international agreement to which Canada is a party and in relation to goods or the carrying out of a work or works or the provision of services necessary for the implementation or exploitation of a project related to that agreement;
 - ii. an international agreement relating to the stationing of Canadian troops and in relation to goods or the carrying out of a work or works or the provision of services necessary for the fulfillment of that mission;
 - b. contracts for goods, services, real property and construction in relation to the carrying out of a work or works or the provision of services on foreign soil and concluded on foreign soil;
 - c. inter-governmental agreements and intra-governmental agreements;
 - d. financial contracts;
 - e. insurance contracts;
 - f. contracts of employment;
 - g. real property agreements that are lease agreements that contain an option to purchase real property;
 - h. contracts for the leasing goods that contain an option to purchase those goods at the end of the term;
 - i. contracts that are ancillary or incidental to a main contract that is covered by the Ineligibility and Suspension Policy and that was in existence prior to the adopting of this Ineligibility and Suspension Policy;
 - j. options under a contract that is covered by the Ineligibility and Suspension Policy that was in existence prior to the adopting of this Ineligibility and Suspension Policy;
 - k. contracts between the Government of Canada and Indian Band Councils;
 - l. transfer payments (grants, contributions, and other transfer payments); and
 - m. contracts under the foreign military sales program.
2. The Minister may issue Directives excluding different classes of contracts or setting monetary thresholds for contracts that are to be excluded from the application of the Ineligibility and Suspension Policy.

Part C – Offences

1. The Ineligibility and Suspension Policy describes the offences for which the Minister may, if these offences have been committed by a given supplier/potential supplier or an affiliate of the supplier/potential supplier, make a determination of ineligibility/suspension under the Ineligibility and Suspension Policy.
2. A supplier/potential supplier is ineligible for contract award under the Ineligibility and Suspension Policy if it has been convicted or have pleaded guilty of an offence under any of the following provisions, which result in legal incapacity under section 750(3) of the *Criminal Code*, and for which they have not received a pardon under Section Part D, Section II:
 - a. paragraph 80(1)(d) (False entry, certificate or return), subsection 80(2) (Fraud against Her Majesty) or section 154.01 (Fraud against Her Majesty) of the [Financial Administration Act](#); or
 - b. section 121 (Frauds on the government and Contractor subscribing to election fund), section 124 (Selling or Purchasing Office), section 380 (Fraud) for fraud committed against Her Majesty or section 418 (Selling defective stores to Her Majesty) of the [Criminal Code](#)
3. A supplier/potential supplier is ineligible for contract award under the Ineligibility and Suspension Policy if they have, in the last three years, been convicted or have pleaded guilty of an offence under any of the following provisions, and for which they have not received a pardon under Part D, Section II:
 - a. section 119 (Bribery of judicial officers, etc), section 120 (Bribery of officers), section 346

(Extortion), sections 366 to 368 (Forgery and other offences resembling forgery), section 382 (Fraudulent manipulation of stock exchange transactions), section 382.1 (Prohibited insider trading), section 397 (Falsification of books and documents), section 422 (Criminal breach of Contract), section 426 (Secret commissions), section 462.31 (Laundering proceeds of crime) or sections 467.11 to 467.13 (Participation in activities of criminal organization) of the [Criminal Code](#);

- b. section 45 (Conspiracies, agreements or arrangements between competitors), section 46 (Foreign directives), section 47 (Bid rigging), section 49 (Agreements or arrangements of federal financial institutions), section 52 (False or misleading representation), section 53 (Deceptive notice of winning a prize) of the [Competition Act](#);
- c. section 239 (False or deceptive statements) of the [Income Tax Act](#);
- d. section 327 (False or deceptive statements) of the [Excise Tax Act](#); or
- e. section 3 (Bribing a foreign public official), section 4 (Accounting), or section 5 (Offence committed outside Canada) of the [Corruption of Foreign Public Officials Act](#), or section 5 (Trafficking in substance), section 6 (Importing and exporting), or section 7 (Production of substance) of the [Controlled Drugs and Substance Act](#).

4. A supplier/potential supplier is ineligible for contract award under the Ineligibility and Suspension Policy if any of its affiliates have been convicted or has pleaded guilty of an offence under any of the following provisions, for which they have not received a pardon under Part D, Section II:

- a. paragraph 80(1)(d) (False entry, certificate or return), subsection 80(2) (Fraud against Her Majesty) or section 154.01 (Fraud against Her Majesty) of the [Financial Administration Act](#); or
- b. section 121 (Frauds on the government and Contractor subscribing to election fund), section 124 (Selling or Purchasing Office), section 380 (Fraud) for fraud committed against Her Majesty or section 418 (Selling defective stores to Her Majesty) of the [Criminal Code](#); and

there is evidence that the supplier/potential supplier directed, influenced, authorized, assented to, acquiesced in or participated in the commission or omission of the acts or offences that would render the Affiliate ineligible for contract award under the Ineligibility and Suspension Policy.

5. A supplier/potential supplier is ineligible for contract award under the Ineligibility and Suspension Policy if any of its affiliates have, in the last three years, been convicted or has pleaded guilty of an offence under any of the following provisions, and for which they have not received a pardon under Section Part D, Section II:

- a. section 119 (Bribery of judicial officers, etc), section 120 (Bribery of officers), section 346 (Extortion), sections 366 to 368 (Forgery and other offences resembling forgery), section 382 (Fraudulent manipulation of stock exchange transactions), section 382.1 (Prohibited insider trading), section 397 (Falsification of books and documents), section 422 (Criminal breach of Contract), section 426 (Secret commissions), section 462.31 (Laundering proceeds of crime) or sections 467.11 to 467.13 (Participation in activities of criminal organization) of the [Criminal Code](#);
- b. section 45 (Conspiracies, agreements or arrangements between competitors), section 46 (Foreign directives), section 47 (Bid rigging), section 49 (Agreements or arrangements of federal financial institutions), section 52 (False or misleading representation), section 53 (Deceptive notice of winning a prize) of the [Competition Act](#);
- c. section 239 (False or deceptive statements) of the [Income Tax Act](#);
- d. section 327 (False or deceptive statements) of the [Excise Tax Act](#);
- e. section 3 (Bribing a foreign public official), section 4 (Accounting), or section 5 (Offence committed outside Canada) of the [Corruption of Foreign Public Officials Act](#); or
- f. section 5 (Trafficking in substance), section 6 (Importing and exporting), or section 7 (Production of substance) of the [Controlled Drugs and Substance Act](#); and

there is evidence that the supplier/potential supplier directed, influenced, authorized, assented to, acquiesced in or participated in the commission or omission of the acts or offences that would render the affiliate ineligible for contract award under the Ineligibility and Suspension Policy.

6. A supplier/potential supplier is ineligible for contract award under the Ineligibility and Suspension Policy if they have, in the last three years, been convicted or has pleaded guilty of an offence in a jurisdiction other than Canada of having committed an act or omission that would, in the opinion of Canada, be similar to any of the offences referenced in Part C, Section I, paragraphs 2 and 3, for which no pardon has been received under Part D, Section II, and that
 - a. the court, before which the supplier/potential supplier appeared, acted within the court's jurisdiction;
 - b. the supplier/potential supplier appeared during the court's proceedings or submitted to the court's jurisdiction;
 - c. the court's decision was not obtained by fraud, and
 - d. the supplier/potential was entitled to present to the court every defence that they would have been entitled to present had the proceeding been tried in Canada for having committed the act or omission in Canada.

7. A supplier/potential suppliers is ineligible for contract award under the Ineligibility and Suspension Policy if any of its Affiliates have, in the last three years, been convicted or pleaded guilty of an offence, in a jurisdiction other than Canada, of having committed an act or omission that would, in the opinion of Canada, be an offence similar to that referenced in Part C, Section I, paragraphs 4 and 5, for which no pardon has been received under Part D, Section II, and that
 - a. the court, before which the affiliate appeared, acted within the court's jurisdiction;
 - b. the affiliate appeared during the court's proceedings or submitted to the court's jurisdiction;
 - c. the court's decision was not obtained by fraud; and
 - d. the affiliate was entitled to present to the court every defence that they would have been entitled had the proceeding been tried in Canada for having committed the act or omission in Canada.

The ineligibility of an affiliate of a supplier/potential supplier under Part C, Section I, paragraph 7, however, will not render the supplier/potential ineligible under the Ineligibility and Suspension Policy if the supplier/potential supplier did not direct, influence, authorize, assent to, acquiesce in or participate in the commission or omission of the acts or offences that would render that Affiliate ineligible.

Lobbying Act

8. A supplier/potential supplier is ineligible for contract award under the Ineligibility and Suspension Policy if they or their affiliates have, in the last three years, been found responsible by a court for having breached section 5 of the *Lobbying Act*. However, the ineligibility of an affiliate of a supplier/potential will not render the supplier/potential ineligible under the Ineligibility and Suspension Policy if the supplier/potential supplier did not direct, influence, authorize, assent to, acquiesce in or participate in the acts that would render that affiliate ineligible.

9. The Minister may on a periodic basis issue Directives identifying new offences that are to be included in the Ineligibility and Suspension Policy.

Part D – Determining period of ineligibility and suspension

I. Criminal offences

1. The period of ineligibility/suspension for contract award for a supplier/potential supplier is determined pursuant to Part D of the Ineligibility and Suspension Policy. The period of ineligibility/suspension takes effect when a supplier/potential supplier has received a Notice of Ineligibility/Suspension from the

Minister.

2. For all criminal matters referenced in Part C, Section I, paragraphs 2 and 4, for which a supplier/potential supplier or any of its affiliates has pleaded guilty or has been convicted, and for which they are ineligible for a government contract, the period of ineligibility for entering into a contract with Canada shall, subject to Part D, Section I, paragraph 4, be for an indefinite period of time.
3. For all criminal matters referenced in paragraphs 3, 5, 6 and 7 of Part C, Section I, for which a supplier/potential supplier or any of its affiliates has pleaded guilty or been convicted, as the case may be, in the last three years, the period of ineligibility for contract award shall, subject to paragraph 4 and 5, be ten years, to commence from the date that the Minister has declared the supplier/potential supplier or any of its affiliates to be ineligible and provided written notice thereof.

II. Lobbying Act

4. For all matters referenced in paragraph 8 of Part C, Section I, for which a supplier/potential supplier or any of its affiliates has been found responsible under the *Lobbying Act*, as the case may be, in the last three years, the period of ineligibility for contract award shall be ten years, to commence from the date that the Minister has declared the supplier/potential supplier or any of its affiliates to be ineligible and provided written notice thereof.

III. Pardons and suspensions

5. A determination of ineligibility by the Minister over a given specified offence identified in Part C, Section I, of the Ineligibility and Suspension Policy may not be maintained or made, as the case may be, in respect of that offence if the supplier/potential supplier has
 - a. been granted an absolute discharge in respect of the offence, or has been granted a conditional discharge in respect of the offence and those conditions have been satisfied;
 - b. been granted a pardon under Her Majesty's royal prerogative of mercy;
 - c. been granted a pardon under section 748 of the *Criminal Code*;
 - d. received a record of suspension ordered under the *Criminal Records Act*; and
 - e. been granted a pardon under the *Criminal Records Act*, as that Act read immediately before the day section 165 of the *Safe Streets and Communities Act* comes into force.
6. A determination of ineligibility by the Minister may not be maintained or made, as the case may be, under the Ineligibility and Suspension Policy over a given offence if the supplier/potential supplier or any of its affiliates has at any time benefited from foreign measures that are, in the opinion of Canada, similar to Canadian pardons, conditional discharges, absolute discharges, records of suspension, or restoration of legal capacities by the Governor in Council in respect of that offence.

IV. Contracting with ineligible subcontractors

7. Where a supplier/potential supplier relies on a subcontractor(s) to perform parts of a government contract and enters into a subcontract with a supplier that has been convicted or pleaded guilty or where any of its Affiliates have been convicted or pleaded guilty, as the case may be, to any of the offences referenced in Part C, Section I, and for which no pardon or equivalent has been received, and for which no prior written approval has been provided by the Minister, the period of ineligibility is five years, to commence from the date that the Minister has declared the supplier/potential supplier to be in breach of this obligation, and provided written notice thereof.

V. Breach of Administrative Agreement

8. Where a supplier/potential supplier has concluded an Administrative Agreement with the Minister and

has breached any of its terms and conditions, the supplier/potential supplier will be subject to a period of ineligibility that shall be prescribed in advance by the Minister in the Administrative Agreement, to commence from the date that the Minister has declared the supplier/potential supplier to be in breach of the Administrative Agreement, and provided written notice thereof. The period of ineligibility prescribed will be longer than the period of ineligibility originally assessed against the supplier/potential supplier.

VI. Suspensions

9. The Minister may, at any time, suspend a supplier/potential supplier from participating in a procurement process for a period of up to 18 months, from the date that a Notice of Ineligibility/Suspension is served, if the said supplier/potential supplier has been charged with any of the offences listed in Part C, Section I of this Ineligibility/Suspension Policy or if the supplier/potential supplier has admitted to having committed any of the offences listed in Part C, Section I.
10. The Minister may, at any time, with written notice to a supplier/potential supplier, renew the suspension period by a further 18 months, or for as long as necessary, pending completion of a criminal proceeding in respect of the charges for which the supplier/potential supplier was suspended. The renewed period of suspension will be described in an Amended Notice of Ineligibility/Suspension which shall be served on the supplier/potential supplier by the Minister, prior to the commencement of that period.
11. The Minister may abridge or suspend the application of the suspension period and allow the supplier/potential supplier to enter into an Administrative Agreement with the Minister, on such terms and conditions as are necessary, to safeguard the integrity of the procurement process, but such Administrative Agreements, with the exception of Administrative Agreements concluded to give effect to the Public Interest Exception, shall have no legal force on a procurement process that is in existence prior to the conclusion of the Administrative Agreement.

VII. Reduction of ineligibility period

12. The period of ineligibility for entering into a contract under Part D of this Ineligibility and Suspension Policy may, to the extent that it is permissible in law, be suspended by the Minister, for a period of five years, through an Administrative Agreement, in advance of a procurement process, and the period of ineligibility for entering into a contract specified in the Administrative Agreement will, with any applicable term and condition, be the period of ineligibility that will apply to the supplier/potential supplier. With the exception of Administrative Agreements concluded to give effect to the Public Interest Exception, an Administrative Agreement will, however, have no legal force on any procurement process that is in existence prior to its conclusion.

Part E – Administration

I. Determinations by the Minister of Public Works and Government Services

1. The Ineligibility and Suspension Policy allows the Minister to provide a prospective determination of ineligibility/suspension of a supplier/potential supplier. The determination of ineligibility/suspension under the Ineligibility and Suspension Policy can be made in one of two ways, either the supplier/potential supplier may request an advanced determination or, alternatively, the Minister may issue a Notice of Intention to Declare Ineligible/Suspend to a supplier/potential supplier and makes a determination based on information that it has received and collected in respect of that supplier/potential supplier.

II. Advanced determination

2. A supplier/potential supplier may, at any time, request an advanced determination of whether they are ineligible from the Minister. In requesting an advanced determination, the supplier/potential supplier must describe any adverse information and submissions in respect of the request. The disclosure of a supplier/potential supplier must be complete and accurate.
3. Upon receipt of a request for an advanced determination, the Minister will conduct the review of the request. The Minister will review the written submissions of a supplier/potential supplier as well as supporting information and make a determination of whether the supplier/potential supplier should be declared ineligible or suspended, as the case may. The Minister will make determinations of ineligibility only. The Minister may, at any time, make such further enquiries as are necessary of the supplier/potential supplier. The Minister may also request that the supplier/potential supplier obtain validation from a third party monitor to confirm any or all of the information that is provided by the supplier/potential supplier.
4. Where the Minister has decided that the supplier/potential supplier is ineligible or should be suspended, the Minister shall issue a Notice of Ineligibility/Suspension to the supplier/potential supplier advising them that they are ineligible for contract award. To the extent that the supplier/potential is not an individual, the Minister shall also cause to have the name of that supplier/potential supplier entered on the Ineligibility and Suspension List. The ineligibility and suspension takes effect from the moment that the supplier/potential supplier is provided with a Notice of Ineligibility/Suspension.
5. Where the Minister determines that there are no grounds to declare a supplier/potential supplier ineligible or that there is no cause to suspend the supplier/potential supplier, the Minister will inform the supplier/potential supplier in writing of the determination.
6. Subject to the right to request a limited review, the decision of the Minister is final and binding on a supplier/potential supplier and may only be contested through judicial review.

III. Notice of intention to declare ineligible/suspend

7. The Minister may, at any time, issue a Notice of Intention to Declare Ineligible/Suspend to a supplier/potential supplier where it has reason to believe that the supplier/potential supplier is ineligible under the Ineligibility and Suspension Policy for contract award.
8. The Notice of Intention to Declare Ineligible/Suspend shall describe the basis upon which the Minister believes that the supplier/potential supplier is ineligible for contract award. A supplier/potential supplier shall have a period of (30) thirty days from the date that the Notice of Intention to Declare Ineligible/Suspend has been served to respond and provide any relevant information that may be of assistance to the Ministe in making an assessment.
9. Upon receipt of a reply from the supplier/potential supplier, the Minister will review the written submissions of a supplier/potential supplier as well as supporting information and shall make a determination on whether the supplier/potential supplier should be declared ineligible or suspended, as the case may.
10. Where a supplier/potential supplier does not respond to a Notice of Intention to Declare Ineligible/Suspend within the prescribed time period, the Minister may draw any reasonable inference appropriate under the circumstance and declare the supplier/potential supplier ineligible or suspend by issuing a Notice of Ineligibility/Suspension.

IV. Notice of ineligibility/suspension

11. Where the Minister has decided that the supplier/potential supplier is ineligible or should be suspended, the Minister shall issue a Notice of Ineligibility/Suspension to the supplier/potential supplier informing them that they are ineligible for contract award. The Minister shall also cause to enter the name of the ineligible/suspended supplier/potential suppliers on the Ineligibility/Suspension List. The suspension or

ineligibility takes effect from the moment that supplier/potential supplier receives notice.

12. Subject to the right to request a limited review, the decision of the Minister is final and binding on a supplier/potential supplier and may only be contested through judicial review.

V. Limited review

13. A supplier/potential supplier who is determined to be ineligible/suspended under a Notice of Ineligibility/suspension may apply to the Minister for a review of that decision, but only where the determination relates entirely to whether a supplier/potential supplier directed, influenced, authorized, assented to, acquiesced in or participated in the commission or omission the acts or offences that make the affiliate ineligible for contract award.
14. To contest the Notice of Ineligibility/Suspension, the supplier/potential supplier must serve a written Notice of Contestation within a period of (30) thirty days from the date of issuance of the Notice of Ineligibility/Suspension on the Minister of PWGS. The supplier/potential supplier may, with the Notice of Written Contestation, provide submissions and new information to the Minister for consideration. The Notice of Contestation does not operate as a stay of the determination of the period of ineligibility under the Notice of Ineligibility/Suspension.
15. Where the supplier/potential supplier fails to contest the Notice of Ineligibility/Suspension within the prescribed period of time, the Notice of Ineligibility/Suspension is final and binding on a supplier/potential supplier.
16. Upon receipt of a Notice of Contestation, the Minister will conduct the review. At the conclusion of the review, the Minister must confirm or cancel the determination. The Minister must give the supplier/potential supplier a notice of the decision after the decision is made. If the decision making the supplier/potential supplier is cancelled, the period of ineligibility if automatically terminated.
17. If a determination that a supplier/potential supplier is ineligible to enter into a contract is cancelled and the Minister subsequently becomes aware of information that was not in the Minister's possession at the time when the determination was made, the Minister may, make a new determination and re-instate the period of ineligibility by issuing a Notice of Ineligibility/Suspension.

VI. Collection and use of information

18. The information used by PWGSC to make a determination on eligibility/suspension can come from a wide range of sources, including the supplier/potential supplier, media reports, court decisions, law enforcement personnel, other agencies and members of the public. Third party sources can be used by PWGSC to validate information provided by a supplier/potential supplier. The Departmental Oversight Branch (DOB) is responsible for coordinating the collection and assembly of relevant information about a supplier/potential supplier and analyzing the information collected and supplied.

VII. Database

19. The Minister shall appoint a person to be known as the Registrar of the Ineligibility and Suspension List who will maintain a public list of every corporate supplier/potential supplier that is ineligible for contract award or that has been suspended as well as an inventory of names of persons that are ineligible for contract award or that have been suspended. The Registrar will record the name, address and offence that gave rise to the declaration of ineligibility or suspension and the period of ineligibility that applies to that supplier/potential supplier.
20. When so requested by the Minister, the Registrar will register the name of any supplier/potential supplier that has been declared to be ineligible or that has been suspended by the Minister. The Registrar shall provide written confirmation to either a government department or agency on whether a given supplier/potential supplier is ineligible to enter into contract with the government of Canada in

instances where a Memorandum of Understanding has been signed.

21. Where a supplier/potential supplier intends to use a subcontractor to perform part of a government contract, the supplier/potential supplier shall make enquiries of the Registrar to ensure that the proposed subcontractor is not an ineligible supplier/potential supplier. Where the subcontractor is a corporation, the supplier/potential supplier may consult the public Ineligible and Suspension List and confirm that the proposed subcontractor is not ineligible. Where the subcontractor is a person, the supplier/potential supplier must send a written request to the Registrar, along with a consent form from the subcontractor permitting the disclosure of information. The Registrar will, upon receipt of the consent form, provide written confirmation of whether the subcontractor is ineligible.

VIII. Administrative agreements

22. The Minister may request that a supplier/potential supplier enter into an Administrative Agreement to suspend the period of ineligibility/suspension. In most circumstances, the supplier/potential supplier generally agrees to such things as separation of employees from management or programs; implementation or extension of compliance programs; employee training and information; outside auditing; access to contractor records; or any other remedial or compliance measure. The Minister, for its part, reserves the right to impose additional sanctions, including periods of ineligibility in the future if the supplier/potential fails to abide by the agreement or engages in further misconduct.
23. With the exception of the Public Interest Exception, the Administrative Agreement may not affect solicitations of Canada that are in existence at the time that it is concluded, but generally act against future solicitations, issued after the Administrative Agreement has been concluded. Administrative Agreements remain in effect unless they are terminated for default by the Minister or until all of the rights and obligations have been fully satisfied by the supplier/potential supplier. An Administrative Agreement may also be amended at any time to account for new circumstances and events.
24. Where a contracting authority has a right of termination of a contract, the supplier/potential supplier may request an Administrative Agreement in lieu of termination from the Minister, which shall contain terms and conditions.
25. PWGSC or any government department or agency, as the case may be, may enter into a contract with a supplier/potential supplier or any of its affiliates, to the extent that it is permissible in law, which have been convicted or pleaded guilty to any of the offences referenced in Part C where it necessary to the public interest and for reasons which may include, but are not limited to: (a) the need is one of pressing emergency in which delay would be injurious to the public interest; (b) the supplier/potential supplier is the only person capable of performing the contract; (c) the contract is essential to maintain sufficient emergency stocks in order to safeguard against possible shortages; and (d) not entering into the contract with the supplier/potential supplier would have a significant adverse impact on the health, national security, safety, security or economic or financial well-being of the people of Canada or the functioning of any portion of the federal public administration. (Collectively "Public Interest Exemption" (PIE)). However, PWGSC or any other government department or agency, as the case may be, may only rely on a PIE where the supplier/potential supplier has concluded an Administrative Agreement with the Minister, on such terms and conditions that are necessary to safeguard the integrity of that solicitation for which a PIE is required. An Administrative Agreement under a PIE has legal force on any current solicitation and will identify as against what solicitation the exception is granted. However, an Administrative Agreement concluded under the PIE may not amend or abridge the period of ineligibility that is otherwise applicable to that supplier/potential supplier for past conduct and on any other solicitation. For the purposes of the Ineligibility and Suspension Policy, the supplier/potential supplier is deemed to be eligible for contract award when in receipt of a PIE, but only as specifically provided for in the Administrative Agreement. The Minister will in determining whether to enter into an Administrative Agreement, consider Canada's obligations under the trade agreements.
26. Where a supplier/potential supplier has been charged with any of the offences covered in Part C of this

Ineligible and Suspension Policy and has been suspended, the Minister may rely on an Administrative Agreement to suspend the period of ineligibility. In most circumstances, the supplier/potential supplier agrees to such things as; separation of employees from management or programs; implementation or extension of compliance programs; employee training; outside auditing; access to contractor records; or other remedial or compliance measures that are necessary to safeguard the integrity of the procurement process. The Minister, for its part, reserves the right to impose additional sanctions, including determinations of ineligibility in the future if the supplier/potential fails to abide by the agreement or engages in further misconduct.

VIX. Third party validation

27. In order to mitigate the risk associated with doing business with a supplier/potential supplier or any affiliate that has been charged or convicted of a crime under Part C, the Minister may require that the supplier/potential supplier agree to third party compliance monitoring. The terms and conditions of appointment of the third party are to be described in the Administrative Agreement.
28. A third party monitor must be independent, qualified and reliable. A third party monitor with whom the supplier/potential supplier has had a prior relationship that would prevent the third party from providing objective assessments to the Minister is not an eligible third party monitor.
29. The third party monitor may be required to provide periodic reporting to the Minister, as provided for in the Administrative Agreement. A third party monitor may be required to, for example, monitor the terms and conditions of an Administrative Agreement and report regularly to the Minister.
30. The supplier/potential supplier will be responsible for retaining and remunerating the third party monitor and shall provide a copy of the terms of engagement to the Minister.

Annex: Definitions

1. For the purposes of the Ineligibility and Suspension Policy, the following definitions apply:

"Administrative Agreement"

is a negotiated agreement between a supplier/potential supplier and the Minister.

"Affiliate"

includes a person, including, but not limited to, organizations, bodies corporate, societies, companies, firms, partnerships, associations of persons, parent companies or subsidiaries, whether partly or wholly-owned, as well as individuals, directors, officers and key employees if:

- a. one controls or has the power to control the other, or
- b. a third party has the power to control both.

"construction contract"

means a contract entered into for the construction, repair, renovation or restoration of any work except for a vessel and sub-agreement for Lessee's Improvements and includes

- a. a contract for the supply and erection of a prefabricated structure,
- b. a contract for dredging,
- c. a contract for demolition, or
- d. a contract for the hire of equipment to be used in or incidentally to the execution of any contract referred to in this definition.

"contract"

in this policy shall be read to include "real property agreements".

"control"

means

a. direct control, such as where:

- i. a person controls a body corporate if securities of the body corporate to which are attached more than 50 per cent of the votes that may be cast to elect directors of the body corporate are beneficially owned by the person and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate;
- ii. a person controls a corporation that is organized on a cooperative basis if the person and all of the entities controlled by the person have the right to exercise more than 50 per cent of the votes that may be cast at an annual meeting or to elect the majority of the directors of the corporation;
- iii. a person controls an unincorporated entity, other than a limited partnership, if more than 50 per cent of the ownership interests, however designated, into which the entity is divided are beneficially owned by that person and the person is able to direct the business and affairs of the entity;
- iv. the general partner of a limited partnership controls the limited partnership; and
- v. a person controls an entity if the person has any direct or indirect influence that, if exercised, would result in control in fact of the entity.

b. deemed control, such as where:

- i. A person who controls an entity is deemed to control any entity that is controlled, or deemed to be controlled, by the entity

c. indirect control, such as where a person is deemed to control, within the meaning of paragraph (a) or (b), an entity where the aggregate of

- i. any securities of the entity that are beneficially owned by that person, and
- ii. any securities of the entity that are beneficially owned by any entity controlled by that person

is such that, if that person and all of the entities referred to in paragraph (c)(ii) that beneficially own securities of the entity were one person, that person would control the entity.

"derivatives agreement"

means a financial agreement whose obligations are derived from, referenced to, or based on, one or more underlying reference items such as interest rates, indices, currencies, commodities, securities or other ownership interests, credit or guarantee obligations, debt securities, climatic variables, bandwidth, freight rates, emission rights, real property indices and inflation or other macroeconomic data and includes

- a. a contract for differences or a swap, including a total return swap, price return swap, default swap or basis swap;
- b. a futures agreement;
- c. a cap, collar, floor or spread;
- d. an option; and
- e. a spot or forward.

"federal immovable"

means an immovable belonging to Canada, and includes an immovable of which Canada has the power to dispose;

"federal real property"

means any real property belonging to Canada, and includes any real property of which Canada has the power to dispose;

"financial contract"

includes

- a. a derivatives agreement, whether settled by payment or delivery, that
 - i. trades on a futures or options exchange or board, or other regulated market, or
 - ii. is the subject of recurrent dealings in the derivatives markets or in the over-the-counter securities or commodities markets;
- b. an agreement to
 - i. borrow or lend securities or commodities, including an agreement to transfer securities or commodities under which the borrower may repay the loan with other securities or commodities, cash or cash equivalents,
 - ii. clear or settle securities, futures, options or derivatives transactions, or
 - iii. act as a depository for securities;
- c. a repurchase, reverse repurchase or buy-sellback agreement with respect to securities or commodities;
- d. a margin loan in so far as it is in respect of a securities account or futures account maintained by a financial intermediary;
- e. any combination of agreements referred to in any of paragraphs (a) to (d);
- f. a master agreement in so far as it is in respect of an agreement referred to in any of paragraphs (a) to (e);
- g. a master agreement in so far as it is in respect of a master agreement referred to in paragraph (f);
- h. a guarantee of, or an indemnity or reimbursement obligation with respect to, the liabilities under an agreement referred to in any of paragraphs (a) to (g); and
- i. an agreement relating to financial collateral, including any form of security or security interest in collateral and a title transfer credit support agreement, with respect to an agreement referred to in any of paragraphs (a) to (h).

"immovable"

means

- a. in the Province of Quebec, an immovable within the meaning of the civil law of the Province of Quebec, and includes the rights of a lessee in respect of such an immovable, and
- b. in jurisdictions outside Canada, any property that is an immovable within the meaning of the civil law of the Province of Quebec, and includes the rights of a lessee in respect of any such property;

"Ineligibility and Suspension List"

is a list to be maintained by the Minister that records all ineligibility and suspension decisions as they relate to suppliers/potential suppliers and the period of ineligibility that applies to that supplier/potential supplier.

"insurance contract", "security deposit" or "contract security"

includes

- a. a policy or contract of insurance (other than a warranty in respect of the quality, fitness or performance of tangible property, where the warranty is supplied to a person who acquires the property otherwise than for resale) that is issued by an insurer, including
 - i. a policy of reinsurance issued by an insurer,
 - ii. an annuity contract issued by an insurer, or a contract issued by an insurer that would be an annuity contract except that the payments under the contract,
 - iii. a contract issued by an insurer all or part of the insurer's reserves for which vary in amount depending on the value of a specified group of assets,
- b. a policy or contract in the nature of accident and sickness insurance, whether the policy is issued, or the contract is entered into, by an insurer, and
- c. through a bid, an irrevocable offer to lease, offer to purchase, performance, maintenance or payment bond issued in respect of a contract.

"intra-governmental agreement"

means an agreement that involves or is made between different departments and agencies of the Government of Canada.

"inter-governmental agreement"

means an agreement that involves or is made between Canada and one or more governments, including but not limited to foreign states, provincial, territorial and municipal governments or federal, provincial or municipal crown corporations, or an agreement between one of more governments to which Canada has declared itself to be bound.

"licence"

means any right to use or occupy real property or an immovable, other than

- a. a real right within the meaning of the civil law of the Province of Quebec and the rights of a lessee under a lease of an immovable, and
- b. an interest in land;

"Notice of Ineligibility/Suspension"

is a record of an administrative decision by the Minister to declare ineligible a supplier/potential supplier from contract award for a specific period of time.

"Notice of Intention to Declare Ineligible/Suspend"

is a Notice sent by the Minister informing a supplier or potential supplier person that they are being reviewed for a potential a declaration of ineligibility/suspension.

"procurement process" shall be read to include **"solicitation", "invitation to Offer" or "real property transaction"**.

"procurement process" means:

- a. as it relates to goods and services, a series of public actions or steps taken by PWGSC or any other government department or agency and which are directed at acquiring goods or services, either through a competitive public process or a sole source process, where permissible, and which result in binding obligations on a supplier or suppliers of goods or services, but does not include contract administration or contract management, after an award decision has been made.
- b. as it relates real property agreements or transactions, a series of public actions or steps taken by PWGSC or any other government department or agency and which are directed at concluding:
 - (a) a disposition or lease of federal real property or federal immovables; (b) a grant or concessions of federal real property or federal immovables; (c) an acquisition or lease of real property or immovables; (d) a licence or transfer in relation to any licence acquired or given by Her Majesty in respect of federal real property or federal immovables. The term "procurement process" does not include any transaction occurring after an award decision has been made such as administration or management.
- c. as it relates to "construction contract", means a series of public actions or steps taken by PWGSC or any other government department or agency and which are directed at concluding a contract entered into for the construction, repair, renovation or restoration of any work except a vessel and includes
 - a. a contract for the supply and erection of a prefabricated structure,
 - b. a contract for dredging,
 - c. a contract for demolition, or
 - d. a contract for the hire of equipment to be used in or incidentally to the execution of any contract referred to in this definition.

"real property"

means land in any province other than Quebec, and land outside Canada, including mines and minerals, and buildings, structures, improvements and other fixtures on, above or below the surface of the land, and includes an interest therein. The term is to be given ascribed to it in the *Federal Real Property and Federal Immovables Act*.

"real property agreement"

include:

- a. all dispositions or leases of federal real property or federal immovables by Canada;
- b. all grants and concessions of federal real property or federal immovables provided by Canada.
- c. all acquisitions or lease of real property or immovables by Canada; and
- d. all licences or transfers in relation to any licence acquired or given by Her Majesty the Queen in Right of Canada in respect of federal real property or federal immovables by Canada.

"service contract"

means a contract for the provision of service but does not include an agreement whereby a person is employed as an officer, clerk or employee of Her Majesty.

"supplier/potential supplier"

is any person that

- a. submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract or subcontract under a Government contract and for which the Ineligibility and Suspension Policy applies;

- b. conducts business with the Government of Canada as a vendor/potential vendor, lessor/potential lessor, optionor/potential optionor, licensor/potential licensor, purchaser/potential purchaser, tenant/potential tenant or contractor/potential contractor and for which the Ineligibility and Suspension Policy applies; or
- c. conducts business with the Government as an agent or representative of another contractor

"supply contract"

means a contract for the purchase of articles, commodities, equipment, goods, materials or supplies and includes

- a. a contract for printing or for the reproduction of printed matter, and
- b. a contract for the construction or repair of a vessel.

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