DCC's PROCUREMENT CODE OF CONDUCT

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1. CONTEXT AND PURPOSE

1.1 Defence Construction Canada (DCC) is a Crown corporation that was created pursuant to the *Defence Production Act* for the specific purpose of delivering defence infrastructure projects for which it serves as the contracting authority on behalf of the Department of National Defence, the Canadian Armed Forces and the Communications Security Establishment.

1.2 DCC is committed to open, fair and transparent procurement and real property transactions. A strong government-wide Integrity Regime has been put in place by Public Services and Procurement Canada (PSPC) to ensure that the Government does business with ethical suppliers in Canada and abroad. This regime helps to foster ethical business practices, ensure due process for suppliers and uphold the public trust in the procurement process.

1.3 DCC's Procurement Code of Conduct (PCC) incorporates by reference PSPC's *Ineligibility and Suspension Policy* and any directives issued further to the policy, which form part of the Integrity Regime. The policy sets out when and how a supplier may be declared ineligible or suspended from doing business with the government.

1.4 The PCC provides suppliers with a clear statement of expectations to ensure a basic understanding of their responsibilities during the procurement process as well as throughout the implementation of the work.

1.5 The PCC reflects the *Ineligibility and Suspension Policy* and is framed by the principles set out in the *Financial Administration Act*, the *Criminal Code*, the *Competition Act* and the *Lobbying Act*, as well as other relevant legislative, regulatory and policy instruments relating specifically to procurement.

1.6 By providing a single point of reference to key responsibilities, DCC is making the measures easier to find and understand in light of an overall commitment to the highest standards of ethical conduct. The PCC will be reviewed as necessary to ensure DCC continues to meet this objective.

2. THE PROCUREMENT PROCESS: OPENNESS, FAIRNESS AND TRANSPARENCY

2.1 At DCC, fairness, openness and transparency are assured through compliance or alignment with relevant legislation, regulations, agreements, policies and guidelines, including the *Financial Administration Act*, the *Government Contracts Regulations*, the *Public Servants Disclosure Protection Act*, various Treasury Board of Canada Secretariat policies and Canada's international and domestic trade agreements, such as the World Trade Organization's *Agreement on Government Procurement*, the Canada-European Union Comprehensive Economic and Trade Agreement (CETA) and the Canadian Free Trade Agreement (CFTA). In addition, DCC's procurement activities are governed by land claims agreements with Canada's Aboriginal peoples.

2.2 In addition to the legal provisions, the tenets of fairness, openness and transparency are amplified in DCC's procurement policies and procedures, including DCC's *Code of Business Conduct* for employees.

3. APPLICATION

3.1 The PCC applies to suppliers who, in relation to the procurement of goods, services, real property or construction, have submitted, or may submit, an offer to contract or who have

been awarded a contract by DCC. Suppliers are persons, which includes individuals, organizations, bodies corporate, societies, companies, firms, partnerships, associations of persons, parent companies or subsidiaries, whether partly or wholly owned, as well as directors, officers and key employees.

3.2 Further, a person is a supplier's affiliate if, directly or indirectly, either one controls the other, a third party controls both, both are under common control or both are controlled by third parties that are affiliated with each other. Refer to the definitions of "affiliate" and "control" in the *Ineligibility and Suspension Policy*.

3.3 Specific classes of contracts are exempt from the application of the *Ineligibility and Suspension Policy*. Refer to the policy for more details.

4. RESPONSIBILITIES OF DCC EMPLOYEES

4.1 DCC employees are committed to adhering to DCC's *Code of Business Conduct* as well as the Treasury Board of Canada Secretariat's *Values and Ethics Code for the Public Sector*. DCC's *Code of Business Conduct* covers such issues as values and ethics, standards of conduct and conflict of interest.

5. RESPONSIBILITIES OF SUPPLIERS

5.1 Suppliers must respond to DCC's bid solicitations in an honest, fair and comprehensive manner, accurately reflect their capacity to satisfy the requirements stipulated in the bid or contract documents and submit bids and enter into contracts only if they will fulfill all obligations of the contract.

5.2 Suppliers are obliged to alert DCC of any factual errors that they discover in bid solicitations and of any changes affecting the list of names of directors or owners during the contract period.

5.3 Suppliers, potential suppliers and their affiliates are prohibited from:

5.3.1 directly or indirectly, paying or agreeing to pay a contingency fee to any individual for the solicitation, negotiation or obtaining of the contract if the payment of the fee would require the individual to file a return under section 5 of the *Lobbying Act*;

5.3.2 corruption, collusion, bid-rigging or any other anti-competitive activity under the *Competition Act* in the bidding process, real property transactions, the performance of work, the supply of goods or the rendering of services;

5.3.3 any activity that has resulted or could result in being convicted of an offence under any of the provisions listed in the *Ineligibility and Suspension Policy*.

5.4 Suppliers shall comply with applicable Government of Canada security and confidentiality requirements.

5.5 To help ensure that the entire procurement process conforms to the highest standards of ethical conduct, suppliers are required to avoid any action that would jeopardize the ability of DCC's employees to respect their obligations under DCC's *Code of Business Conduct*. While it is impossible to foresee every situation that could give rise to a real, perceived or potential conflict of interest, suppliers should, for example, not offer or give DCC employees gifts, hospitality or other benefits that may have a real or perceived influence on their objectivity in carrying out their official duties or that may place them under a real or perceived obligation to the donor.

5.6 A supplier that is bidding on, or has been awarded, a contract must abide by the obligations contained in the PCC, which form part of the contract.

5.7 A supplier shall comply, to the satisfaction of PSPC, with the terms and conditions of an administrative agreement entered into with PSPC pursuant to the *Ineligibility and Suspension Policy*.

6. PERIOD OF INELIGIBILITY OR SUSPENSION

6.1 The period of ineligibility or suspension for contract award for a supplier or potential supplier is determined pursuant to the *Ineligibility and Suspension Policy*.

7. PUBLIC INTEREST EXCEPTION

7.1 The Public Interest Exception applies in circumstances where DCC determines that entering into a contract with an ineligible or suspended supplier is in the public interest.

7.2 The reasons for invoking a Public Interest Exception include, but are not limited to, the following:

7.2.1 the need to respond to an emergency where delay would be injurious to the public interest;

7.2.2 the supplier is the only person capable of performing the contract;

7.2.3 the contract is essential to maintain sufficient emergency stocks in order to safeguard against possible shortages; and

7.2.4 not entering into the contract with the supplier would have a significant adverse impact on the health, national security, safety, public security or economic or financial well-being of the people of Canada or the functioning of any portion of the federal public administration.

7.3 The exception is applied on a case-by-case basis by DCC.

7.4 When a Public Interest Exception is invoked, an administrative agreement between PSPC and the supplier is required.

8. TREATMENT OF EXISTING CONTRACTS AFTER CONVICTION

8.1 If a supplier is convicted of an offence under any of the provisions listed in the *Ineligibility and Suspension Policy* during the performance of a contract, DCC retains the right to terminate the contract or real property agreement for default. Suppliers will be afforded an opportunity to show cause as to why the termination should not be exercised.

8.2 An administrative agreement between the supplier and PSPC will be required if a decision is taken to not terminate the contract or real property agreement. This will require third party monitoring of the terms of the agreement.

9. SUBCONTRACTORS

9.1 A supplier cannot enter into a contract with an ineligible or suspended subcontractor. Refer to the process described in the *Ineligibility and Suspension Policy* to verify the status of prospective first-tier subcontractors.

9.2 Should a supplier require the services of an ineligible or suspended subcontractor, they will have to obtain the advance written approval of DCC.

9.3 Any supplier that knowingly enters into a contract with an ineligible or suspended subcontractor without obtaining the advance written approval of DCC will be declared ineligible in accordance with the *Ineligibility and Suspension Policy*.

9.4 Suppliers must ensure that contracts with first-tier subcontractors include provisions to abide by the obligations contained in the PCC.

10. REMEDIES

10.1 Any disputes regarding the interpretation or application of the PCC should first be resolved using the dispute resolution clauses in the contracts. DCC will consider all alternative dispute resolution mechanisms that are appropriate to a situation, including facilitated negotiation, mediation and non-binding or binding arbitration, before considering litigation.

10.2 The Canadian International Trade Tribunal (CITT) has jurisdiction to conduct inquiries into complaints by potential suppliers concerning DCC procurements that are covered by trade agreements. Potential suppliers, who believe they may have been unfairly treated during the solicitation or evaluation of bids, or in the awarding of contracts subject to the trade agreements, may lodge a formal complaint with the CITT. The CITT, which is a court of record and has, as regards evidence and the enforcement of its orders, all powers of a superior court of record, may review all aspects of a procurement action up to and including contract award.

11. ADMINISTRATION

11.1 The *Ineligibility and Suspension Policy*, as it applies to DCC's procurement activities, is administered jointly by DCC and PSPC pursuant to a Memorandum of Understanding, which governs the duties and responsibilities of each party.

12. PUBLIC LIST

12.1 PSPC produces and maintains a public Ineligibility and Suspension List. The list contains the names of suppliers, other than individuals, that were determined to be ineligible, or have been suspended, under the Integrity Regime. For information regarding ineligible or suspended individuals, inquiries must be made to the Registrar of Ineligibility and Suspension.

13. KEY CONTACT

13.1 Inquiries regarding the PCC may be made to: Martine Cote, Service line leader Contract Service.

13.2 Issues related to PCC compliance may be brought to the attention of President's Office.