

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE COMPETITION BUREAU  
AND  
THE DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT SERVICES  
REGARDING THE PREVENTION, DETECTION, REPORTING AND  
INVESTIGATION OF POSSIBLE CARTEL ACTIVITY**

---

**WHEREAS** the Commissioner of Competition (the "**Commissioner**") and the Minister of Public Works and Government Services ("**PWGSC**") have separate powers, duties and functions, and each recognizes the other's independence in performing its powers, duties and functions;

**WHEREAS** certain conspiracies, agreements or arrangements between or among two or more competitors or persons are criminal offences under the *Competition Act*;

**WHEREAS** the Competition Bureau's Immunity Program has proven to be its single most powerful means of detecting covert cartel activity;

**WHEREAS** PWGSC, as the principal procurement and real property transactions department of the federal government, is in a position to take steps to ensure that procurement processes and real property transaction processes under its responsibility take into account the potential for cartel activity, and to identify matters involving possible cartel activity for reporting to the Commissioner for investigation;

**WHEREAS** PWGSC is authorized under paragraph 7(1)(a) of the *Department of Public Works and Government Services Act* to investigate and develop services for increasing the efficiency and economy of the federal public administration and for enhancing integrity and efficiency in the contracting and transactional processes, including procurement processes and real property transaction processes under the responsibility of PWGSC;

**WHEREAS** PWGSC has established the Integrity Framework and is responsible for assessing bidders, potential buyers, offerors, landlords and suppliers to determine whether particular criminal convictions exist that would render them ineligible to be awarded a PWGSC contract or a PWGSC real property transaction, to continue to work on a PWGSC contract or to continue to have an interest in a PWGSC lease;

**WHEREAS** PWGSC may impose corrective measures as a consequence of its administrative/procurement review process that may result in, among other things, disqualification of bids in procurement processes or real property transaction processes under the responsibility of PWGSC;

**WHEREAS** PWGSC has a program to educate officers in procurement processes and real property transaction processes, and the Commissioner provides training on the detection and prevention of cartel activity;

**WHEREAS** cooperation and coordination will enhance the effectiveness of the Participants' activities concerning possible cartel activity in relation to procurement processes or real property transaction processes under the responsibility of PWGSC; and

**WHEREAS** the Participants recognize their shared interest in working together to communicate to other federal government departments and agencies the results of their collaborative efforts concerning the prevention, detection, reporting and investigation of possible cartel activity.

**THEREFORE** the Participants understand as follows:

## **1. PURPOSE AND GOVERNING PRINCIPLES**

(a) The purpose of this Memorandum of Understanding ("**MOU**") is to promote cooperation and coordination between the Participants in addressing possible cartel activity in procurement processes and real property transaction processes under the responsibility of PWGSC.

(b) In order to achieve the purpose of this MOU, areas of collaboration include:

- (i) enforcement;
- (ii) education and awareness; and
- (iii) sharing of resources and information.

## **2. DEFINITIONS**

In this MOU, these terms will have the following definitions:

(a) "**administrative/procurement review**" means a review by PWGSC of the conduct of third party vendors to determine whether the fairness, openness and transparency of procurement processes and real property transaction processes under the responsibility of PWGSC may have been compromised by such vendors and, if so, whether corrective measures should be taken in order to protect the integrity of these processes going forward;

(b) "**cartel activity**" means conduct subject to the criminal cartel provisions in sections 45, 46 and 47 of the *Competition Act*;

(c) "**enforcement activity**" means an inquiry or examination conducted by the Commissioner under the *Competition Act* involving possible cartel activity, including cartel activity in relation to procurement processes and real property transaction processes under the responsibility of PWGSC;

(d) "**procurement process**" means a call or request for bids or tenders, including such competitive processes in the context of standing offers and supply arrangements for goods and services; and

(e) "**real property transaction process**" means a process related to the leasing and letting of space, as well as the acquisition and disposal of real property.

### **3. PRESERVATION OF POWERS, DUTIES AND FUNCTIONS**

Nothing in this MOU abrogates or derogates from any power, duty or function of the Commissioner or PWGSC.

### **4. ROLES AND RESPONSIBILITIES**

#### **Competition Bureau**

(a) The Commissioner is responsible for the administration and enforcement of the *Competition Act* and carries out such responsibilities with the support of Competition Bureau (the "**Bureau**") staff.

(b) Where the Commissioner becomes aware of possible cartel activity in relation to a procurement process or a real property transaction process under the responsibility of:

(i) PWGSC, the Commissioner will inform PWGSC as soon as practicable once the Commissioner has determined that the matter raises a valid concern under the *Competition Act*; or

(ii) another federal government department where PWGSC is the procurement agency, the Commissioner may, where the Commissioner considers it appropriate to do so within the exercise of the discretion to administer and enforce the *Competition Act*, inform PWGSC with a view to having PWGSC examine bids on prior projects involving the same parties to assist the Commissioner's examination or inquiry under the *Competition Act*.

(c) The Bureau will consult with PWGSC's Special Investigation Directorate, Departmental Oversight Branch, when requiring information from PWGSC as part of an enforcement activity by the Commissioner under the criminal cartel provisions, such as supporting evidence, advice or other information on issues related to PWGSC or individuals or companies conducting business with PWGSC.

## **PWGSC**

(d) As a department, PWGSC undertakes the acquisition of goods and services to support its own programs.

(e) As a common service provider, PWGSC provides federal government departments, boards and agencies with services in support of their programs, including the acquisition of goods and services.

(f) As a common service organization, PWGSC provides real property services to federal organizations within Canada and is the designated custodian of general-purpose office accommodation in Canada, provided on an obligatory basis to departments and agencies, and sets the standards for them.

(g) Where PWGSC detects possible cartel activity in relation to a procurement process or a real property transaction process under its responsibility, PWGSC will inform the Commissioner about the matter as soon as practicable.

(h) Upon being informed under paragraph 4(b), PWGSC may decide to proceed with a procurement process or a real property transaction process under its responsibility that possibly involves cartel activity.

(i) PWGSC may initiate an administrative/procurement review of any party suspected of having engaged in cartel activity in relation to a procurement process or a real property transaction process under the responsibility of PWGSC to determine whether corrective measures should be taken. Schedule 1 to this MOU outlines the procedure for such an administrative/procurement review.

## **5. TRAINING AND AWARENESS**

(a) Training and awareness enhance the ability of the Participants to achieve their goals of preserving and promoting the benefits of fair, efficient and competitive procurement processes and real property transaction processes under the responsibility of PWGSC. Through training and awareness programs, the Participants provide outreach activities aimed at educating organizations and individuals on how to detect and prevent cartel activity in procurement processes and real property transaction processes.

(b) The Commissioner engages in outreach to PWGSC officers responsible for procurement and real property transactions to educate them on warning signs associated with possible cartel activity, as well as the steps that can be taken to reduce the likelihood of being victimized and to report suspected instances to the Bureau. The Commissioner also informs businesses about the *Competition Act*.

(c) PWGSC carries on both internal training and an active outreach program targeted at small and medium enterprises interested in doing business with the

federal government. Through its network of six regional offices, the Office of Small and Medium Enterprises at PWGSC delivers seminars and provides information and advice to suppliers on the procurement process. PWGSC's Professional Development and Change Management Directorate ("PDCMD") performs a leadership role in contributing to the professional development of the federal government procurement community. In addition, PDCMD is contributing to the development of strategies to ensure that the government has sufficiently skilled procurement personnel to manage the business of procurement, in both Headquarter and the Regional Offices, by aligning itself with evolving governmental, departmental and branch strategic directions.

(d) In view of the Participants' training and awareness activities, they will, on an annual basis:

(i) consult on, and coordinate the delivery of, key anti-cartel and bid-rigging messages to be included in communications with relevant stakeholders and with PWGSC staff involved in activities related to procurement and real property transactions under the responsibility of PWGSC; and

(ii) establish a work plan for activities and events to be undertaken under paragraph (i).

## **6. SHARING OF RESOURCES AND INFORMATION**

The Participants will consult with each other on matters of mutual interest whenever the need arises. As part of this consultation process, the Participants agree that they will, among other things:

(a) work in cooperation, where opportunities present themselves, to share resources and exchange information in order to increase expertise in areas of mutual interest that are related to procurement processes, real property transaction processes and competition law; and

(b) share information related to best practices, including information relating to international policies and programs, in areas of mutual interest that are related to procurement processes, real property transaction processes and competition law.

## **7. CONFIDENTIALITY**

(a) Subject to the provisions of the *Competition Act*, the *Access to Information Act*, the *Privacy Act* and any other applicable act of Parliament, the information communicated between the Participants pursuant to this MOU will be treated confidentially.

(b) Any information communicated between the Participants can only be used for the specific purpose for which it was provided and cannot be communicated to a third party without the written consent of the Participant from whom it originated unless:

(i) such information has been made public; or

(ii) such communication is required by law, in which case the Participant will notify the other as soon as possible upon learning of such requirement in order to enable them to take the steps necessary to maintain the confidentiality of the information.

## **8. REVIEW**

The Participants will evaluate the effectiveness of their activities under this MOU annually, commencing with the first anniversary of its coming into effect.

## **9. AMENDMENTS**

The Participants may, through an exchange of letters, consent to amending this MOU and its accompanying schedule.

## **10. COMMUNICATIONS**

Communications under this MOU will be carried out through the following designated officials or their delegates:

For the Commissioner

(a) The Senior Deputy Commissioner of Competition, Criminal Matters Branch.

For PWGSC

(b) The Assistant Deputy Minister, Departmental Oversight Branch.

## **11. SCHEDULE**

The schedule attached to this MOU forms an integral part of it.

## **12. EFFECTIVE DATE AND TERMINATION**

(a) This MOU will come into effect on the date of signature by both Participants.

(b) This MOU will remain in effect until 30 days after the date on which either Participant notifies the other in writing that it wishes to terminate this MOU.


**IN WITNESS THEREOF**, this MOU was signed in duplicate, in both official languages, each copy being equally authentic.

**FOR PUBLIC WORKS AND  
GOVERNMENT SERVICES CANADA**

  
\_\_\_\_\_  
Michelle d'Auray  
Deputy Minister

MAY 30 2013  
\_\_\_\_\_  
DATE

**FOR THE COMPETITION BUREAU**

  
\_\_\_\_\_  
John Pecman  
Interim Commissioner of Competition

May 30, 2013  
\_\_\_\_\_  
DATE

## **Schedule 1: Administrative/Procurement Review by PWGSC**

1. Subject to paragraph 2 below, PWGSC may initiate an administrative/procurement review of any party suspected of having engaged in cartel activity in relation to a procurement process or a real property transaction process under its responsibility. Such a review may result in corrective measures being taken.
2. PWGSC may initiate an administrative/procurement review in respect of a matter involving possible cartel activity in relation to a procurement process or a real property transaction process that it has either referred to the Commissioner pursuant to paragraph 4(h) of this MOU or been notified of pursuant to paragraph 4(b) of this MOU only (a) after the Bureau's enforcement activities have become public, (b) after the Commissioner has advised PWGSC that such a review would not jeopardize the integrity of the Bureau's enforcement activities, or (c) where the administrative/procurement review is necessary for maintaining fair, open and transparent procurement processes and real property transaction processes under the responsibility of PWGSC. In each case, PWGSC will consult with the Commissioner prior to initiating an administrative/procurement review with a view to minimizing any effect that such a review would have on the Bureau's enforcement activities.
3. Where PWGSC is aware that the Bureau is engaging in enforcement activities concerning a matter involving possible cartel activity in relation to a procurement process or a real property transaction process under the responsibility of PWGSC, PWGSC may disclose to the parties subject to the enforcement activities the existence of those activities only (a) after these parties have become aware of the existence of the Bureau's enforcement activities, (b) after the Commissioner has advised PWGSC that such disclosure would not jeopardize the integrity of the Bureau's enforcement activities, or (c) where the disclosure is necessary for maintaining fair, open and transparent procurement processes and real property transaction processes under the responsibility of PWGSC. In each case, PWGSC will consult with the Commissioner prior to disclosing to the parties subject to the enforcement activities the existence of the Bureau's enforcement activities with a view to minimizing any effect that such disclosure would have on the Bureau's enforcement activities.
4. PWGSC will not disqualify from future bidding any party to whom the Director of Public Prosecutions has granted immunity from prosecution under the Bureau's Immunity Program, unless such party has been convicted of any offence listed in Section 01(8) of PWGSC's Standard Instructions (Standard Acquisitions Clauses and Conditions Manual), as may be amended from time to time.



5. Where PWGSC has advised that it is considering corrective measures in a matter, an immunity applicant may ask the Commissioner to take such steps as are reasonably necessary to enable the applicant to disclose its status to PWGSC. PWGSC will not disclose the status of a party that has been granted immunity, except where required by law, in which case PWGSC will notify the Commissioner as soon as possible upon learning of such requirement in order to enable the Commissioner to take the steps necessary to maintain the confidentiality of the party's status. PWGSC may request confirmation from the Commissioner that a party is an immunity applicant.