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## In this Great Future, You Can't Forget Your Past – Update to the Government of Canada's Integrity Regime Provides Clarity, Includes General Anti-Avoidance Provisions

Public Services and Procurement Canada (“PSPC”) released an important update to the Integrity Provisions and the *Ineligibility and Suspension Policy* of the government-wide Integrity Regime on April 4, 2016.<sup>1</sup> According to PSPC, the modifications are based on feedback received from contracting officers, government departments and suppliers.<sup>2</sup> The updates are the first to the Integrity Regime since it was introduced in July 2015 to replace the much-criticized Integrity Framework.<sup>3</sup>

The most significant update is the addition of anti-avoidance provisions to the *Ineligibility and Suspension Policy*, which are designed to prevent suppliers from circumventing ineligibility or suspension determinations through corporate reorganization.<sup>4</sup> Otherwise, the updates focus primarily on providing greater clarity with respect to how the Integrity Regime is applied and administered, incorporating plainer language and more detail about processes and both PSPC’s and supplier’s obligations.

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<sup>1</sup> See [PWGSC, Policy Notification PN-107R2](#).

<sup>2</sup> *Ibid.*

<sup>3</sup> McMillan Bulletin: [Federal Government Tightens Procurement Integrity Provisions](#); McMillan Bulletin: [For Better or Worse? Canada Updates Procurement Integrity Regime](#).

<sup>4</sup> See Section 10 of the PWGSC Integrity Regime: Ineligibility and Suspension Policy.

## Updates to the Ineligibility and Suspension Policy

The *Ineligibility and Suspension Policy* sets out when PSPC may declare ineligible or suspend a supplier from federal government procurement in Canada. The updated *Policy* provides more detail on the process used to make a determination of ineligibility or suspension. For example the *Policy* now explains how a charge or conviction that has occurred within the last three years is identified,<sup>5</sup> and clarifies the types of contracts that are exempt from the Integrity Regime.<sup>6</sup> The updated *Policy* also explains more fully supplier obligations regarding their first tier subcontractors, including requirements to verify status and to obtain written consent before continuing work with an ineligible or suspended subcontractor.<sup>7</sup>

The only substantive update to the *Policy* is the addition of the anti-avoidance framework. These provisions explain PSPC's discretion to extend a decision of ineligibility or suspension to a corporate entity's successor where the succession occurred for the purpose of avoiding the ineligibility or suspension, or where the result of the succession would be the avoidance of the ineligibility or suspension.<sup>8</sup>

Changes to the *Policy's* related Directives were also introduced. A new Directive on invoking public interest exception in emergency situations was developed, and five previously referenced Directives were archived: Directive on acquisition cards purchases; Directive on grants and contributions; Directive on awarding of contracts and Real Property transactions below \$10,000; Directive on Real Property transactions excluded from Integrity Regime application; and the Directive on contracts/real property transactions where application of the Integrity Regime could compromise criminal investigations, national security or public safety. These Directives were removed as their provisions are now incorporated directly into the *Policy*.

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<sup>5</sup> See Section 6 of the PWGSC Integrity Regime: Ineligibility and Suspension Policy.

<sup>6</sup> See Section 4 of the PWGSC Integrity Regime: Ineligibility and Suspension Policy.

<sup>7</sup> See Section 16 of the PWGSC Integrity Regime: Ineligibility and Suspension Policy.

<sup>8</sup> See Section 10 of the PWGSC Integrity Regime: Ineligibility and Suspension Policy.

## Revised Integrity Provisions

The Integrity Provisions were updated to incorporate the latest version of the *Ineligibility and Suspension Policy* by reference into solicitations and resulting contracts. The updates also brought about changes to certification requirements. For example, bidders, offerors or suppliers are now required to certify the following when submitting a bid:

- they have read and understand the *Ineligibility and Suspension Policy*;
- they understand that certain domestic and foreign criminal charges and convictions, and other circumstances, will or may result in a determination of ineligibility or suspension;
- they are aware that Canada may request additional information, certifications and validations for the purposes of making a determination of ineligibility or suspension;
- they have provided a list of all foreign criminal charges and convictions;
- none of the domestic criminal offences and other circumstances described in the Policy applies to them, their affiliates and their first tier subcontractors; and
- they are not aware of a determination of ineligibility or suspension that applies to them.<sup>9</sup>

The Provisions were also updated to provide more specific instructions on the requirement that bidders, offerors or suppliers provide a complete list of all foreign criminal charges and convictions similar to the Canadian offences listed in the *Ineligibility and Suspension Policy* pertaining to itself, its affiliates and its proposed first tier subcontractors. In particular, when an Integrity Declaration Form must be completed as part of the solicitation process.<sup>10</sup>

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<sup>9</sup> See Chapter 4, Section 4.45 Certifications and additional information of the PWGSC Supply Manual.

<sup>10</sup> See [PWGSC Integrity Declaration Form](#).

## Other Impacts

For congruency, the Supply Manual, the Standard Acquisition Clauses and Conditions Manual, as well as all five standard procurement templates, have also been revised to reflect the updates to the Integrity Regime.<sup>11</sup>

The updated Integrity Provisions must be included in any solicitation documents and resulting contracts as of April 4, 2016. Current solicitations on the Government of Canada's tendering system are not impacted by these revisions, and no amendments are required. That being said, suppliers should familiarize themselves with the latest iteration of the Integrity Regime and align their procurement policies, including certification practices, with the updated requirements to ensure future compliance.

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### a cautionary note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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<sup>11</sup> See PWGSC, Policy Notification PN-107R2, <https://buyandsell.gc.ca/policy-and-guidelines/policy-notifications/PN-107R2>.