

## Updated Ineligibility and Suspension Policy creates significant new compliance challenges for suppliers to Government of Canada



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Selling goods and services to the Government of Canada just became more challenging. Effective today (May 31, 2024), participants in most new federal procurements must comply with a [revised Ineligibility and Suspension Policy](#) (the revised policy) that significantly expands disclosure requirements and the grounds on which a vendor may be suspended or debarred from selling. All domestic and foreign companies that conduct material business with the federal government will want to understand the impact of the revised policy and consider what changes they must make to their internal practices to ensure compliance.

### Background

The federal government has had a long-standing [Ineligibility and Suspension Policy](#) (the 2016 policy) that identifies when a supplier may be declared ineligible or suspended from doing business with the government. The 2016 policy, together with related "[Integrity provisions](#)" included in government procurements and resulting contracts, set out detailed certification and disclosure requirements covering a broad range of domestic and foreign offences and activities.

Compliance with the 2016 policy has been particularly challenging for businesses with an international footprint. While most multinational businesses have well-established controls covering the internal reporting of charges or convictions related to foreign corrupt practices, these controls likely do not cover the broad range of offences and activities included in the 2016 policy (including misleading advertising and lobbying offences). As a result, complying with ongoing disclosure requirements found in the 2016 policy has proven difficult. These requirements include providing written notice, within 10 working days, of (among other things) any charge, conviction or other circumstance relevant to the policy with respect to the supplier itself, its affiliates and its first-tier subcontractors.

Given that providing a false or misleading certification or declaration is grounds for debarment, a failure to comply with the disclosure requirements can have serious consequences.

## Expanded disclosure obligations and grounds for suspension or debarment

The revised policy exacerbates the compliance challenges created by the 2016 policy. Most significantly, the revised policy materially expands the grounds for the suspension or debarment of a supplier and, by extension, suppliers' ongoing disclosure requirements. The following examples — which include civil offences, foreign and provincial offences, labour code violations and procurement-related conduct — help demonstrate this point. Specifically, the revised policy now allows suspension or debarment of a supplier for

- receiving a poor performance evaluation under the Vendor Performance Management Policy of the Department of Public Works and Government Services (PWGSC)
- breaching the Code of Conduct for Procurement
- making prohibited or excessive campaign contributions under the *Canada Elections Act*
- violating occupational safety or wage and hour provisions of the *Canada Labour Code*
- conviction of fraud under the *Criminal Code*
- conviction of environmental offences resulting in inclusion on the Environmental Offenders Registry
- charges, convictions, determinations, or agreed statements of fact in relation to acts or omissions in a province or outside of Canada which the Registrar of Ineligibility and Suspension (the Registrar) determines are similar to certain federal civil or criminal offences
- an individual owner, trustee, director, manager or senior official's suspension, debarment or conviction or guilty plea to certain civil or criminal offences

## Other material changes

The revised policy also notably now

- provides the Registrar significant discretion as to the duration of a supplier's ineligibility
- authorizes the Registrar to provisionally suspend a supplier served with a Notice of Intention to Suspend
- adopts a 10-business-day deadline for suppliers to provide responding submissions to enforcement actions and satisfy PWGSC information requests
- lists standard and discretionary terms for administrative agreements for the first time

## Implications for business

Any supplier to a department or agency of the Government of Canada will need to carefully review the revised policy and put in place appropriate procedures and controls to ensure compliance at the time of bidding, during the bid evaluation process and throughout the term of the resulting contract. It is unlikely that relying on internal controls developed for complying with foreign corrupt practices legislation will be sufficient. Rather, it is probable that a "made in Canada" solution will be required — with controls that are specifically designed to align with the grounds for suspension or debarment in the revised policy.

## Increased enforcement concerns

After several years of inactivity, PWGSC debarred or suspended three suppliers in the past year, including the first-ever suspension of a foreign supplier. Given the expanded debarment grounds and increased disclosure obligations of the revised policy, PWGSC may be ramping up its scrutiny of suppliers. Obtaining trustworthy and knowledgeable guidance is more critical than ever before. Osler has significant experience advising a diverse array of suppliers on contracting with the Government of Canada and defending against debarment and suspension actions. Bidders and suppliers should contact the authors for direct assistance with questions about the revised policy and related procurement matters.