

**TI Canada responds to the new Integrity Regime introduced by  
PWGSC in July 2015**

On July 3<sup>rd</sup> 2015, the Department of Public Works and Government Services Canada (PWGSC) introduced its revamped procurement Integrity Regime. The Regime replaces the former Integrity Framework, which had been subject to criticism. Transparency International Canada had provided its recommendations on how the Integrity Framework could be improved. Our comments, contained in a February 2015 [letter](#) to Public Works Minister Diane Finley focused on how to make the Integrity Framework more fair, transparent and effective in combatting bribery. We stressed that an updated Integrity Framework needed to account for the principles of procedural fairness, due process and transparency - particularly in the area of supplier debarment. Such recommendations were intended to promote fair and effective procurement processes and to ensure that the Integrity Framework enjoyed broad public and industry support as a legitimate tool for combatting corruption and bribery.

While TI Canada welcomes many of PWGSC's changes to the new Integrity Regime, we note that PWGSC has still fallen short in implementing some of our key recommendations.

**Framework as a statutory instrument**

Our February 2015 letter to Minister Finley stressed that the Integrity Framework should be applied as a government-wide statutory instrument rather than a department-focused policy under the purview of PWGSC. This change would allow the principles of the Integrity Framework to be vigorously enforced across all government departments, as well as affording the full safeguards of due process under law.

We welcome PWGSC's announcement that the new Regime applies government-wide but were disappointed to see that it has not been adopted as a statutory measure, remaining a policy instrument only. We also note that the new Regime is intended to be applied to procurements carried out by other government entities through memoranda of understanding to be adopted between PWGSC and the other

departments and agencies. Exactly when these memoranda will be implemented and what their contents will be has not been disclosed.

### **Procedural fairness related to supplier debarment and suspension**

One significant change in the new integrity framework is that a supplier can apply to have its ineligibility period reduced by up to five years if they address the causes of the conduct that lead to ineligibility. TI Canada had previously called for supplier debarment measures to be proportional to the offence and achieve the objectives of denunciations, punishment, deterrence, rehabilitation and (to some degree) reparation.

While TI Canada welcomes the promotion of a rehabilitation approach through the increased flexibility afforded to suppliers to demonstrate reformed behaviour (through third-party certification), the guaranteed five-year penalty for offences may not be proportional if the offence committed was relatively minor. Moreover, there remains significant doubt as to whether the Regime provides appropriate incentives for companies to a) self-report apprehended violations, and b) implement improved compliance programs.

Finally, we are concerned by the inclusion of a new provision in the Regime that allows PWGSC to suspend suppliers for up to 18 months if they are charged with committing listed or similar foreign offences. Obviously, such a measure raises the possibility of punishment for a company that is subsequently cleared of the charges. This calls into question fundamental issues in relation to procedural fairness and the presumption of innocence.

### **Transparency**

While TI Canada welcomes PWGSC' decision to publicly list debarred suppliers on an open portal, we remain concerned with the lack of disclosure of the grounds for the decision to debar a supplier.

Overall, TI Canada welcomes PWGSC's improvements to the Integrity Regime. However, we continue to have serious transparency and fairness-related concerns about the Regime, which we believe, may undermine its long-term viability and legitimacy. We, therefore, continue to urge the Government of Canada to implement all the recommendations contained in our February 2015 letter.