

Creating the Conditions for Success: Implementing the 5% Procurement Requirement



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Creating the Conditions for Success: Implementing the 5% Procurement Requirement

The Canadian Council for Aboriginal Business (CCAB) presents this public policy to identify a series of actions that would support the successful implementation of the Government of Canada's 5% Indigenous Procurement Target.¹ Specially, this paper will:

1. Provide public policy recommendations drawing upon the Literature Review "Potential Procurement Practices Aimed at Achieving a Minimum 5% Target for Canada: Indigenous Procurement Policies in New Zealand, Australia and the United States" by Okwaho Equal Source as well as CCAB's published research and public policy work;
2. Identify appropriate Federal mechanisms and practices that would need to change in order to successfully implement the proposed policy recommendations; and
3. Deliver clear and precise "how to" directions that will act as a roadmap to describing how the Government of Canada would utilize their policy tools to implement the proposed policy recommendations.

¹ Though this paper was written before the Government of Canada announcement of August 6, 2021, concerning the modernization of the Procurement Strategy for Aboriginal Business, its recommendations will enhance and help to guide the implementation of the changes found within the announcement.

Aotearoa (New Zealand)

Overview

Hīkina Whakatutuk Cabinet Paper: Te Kupenga Hao Pāuaua

- The Government of New Zealand has published a Cabinet Paper in 2021, from Hīkina Whakatutuk (Ministry of Business, Innovation and Employment) which outlines their approach to “supporting the Māori Economy and achieving economic and social outcomes.”
- The Hīkina Whakatutuk Cabinet Paper proposes a progressive government procurement policy called Te Kupenga Hao Pāuaua.
- Translated, Te Kupenga Hao Pāuaua means cast the fishing net wide and be enterprising² and includes direct efforts to increase government purchases from Māori businesses.
- These efforts will be spearheaded by a project team, also referred to as Te Kupenga Hao Pāuaua, based within Te Puni Kōkiri (Ministry of Māori Development).
- As the Māori names suggests, Te Kupenga Hao Pāuaua will undertake an ambitious effort to prototype social procurement approaches over the next two years to reduce barriers for Māori businesses to engage in government procurement.
- It will also assist central and local government agencies to implement procurement practices that target Māori businesses.
- This national social procurement-based model may be a potential prototype for Canada.
- The New Zealand government prototype is a progressive and ambitious national strategy with deliverables and timeframes, which reflect the unique geography of New Zealand.

Government of New Zealand’s Procurement Rules

- In addition to the Hīkina Whakatutuk Cabinet Paper, the Government of New Zealand has 71 published rules concerning government procurement.³

Key policy take-aways for the Canadian context

- The primary features of the Te Kupenga Hao Pāuaua are:
 - A definition of an Indigenous business for procurement purposes.
 - The establishment of clear Government procurement targets.
 - An intermediary organisation to verify suppliers’ businesses are Indigenous for the purposes of the policy, and act as a broker, matching and connecting buyers and suppliers to realize procurement opportunities.
 - Support for sustainable, long term behavioural change of government agencies and businesses.

² <https://www.tpk.govt.nz/en/a-matou-kaupapa/maori-economic-resilience/progressive-procurement>

³ <https://www.procurement.govt.nz/procurement/principles-charter-and-rules/government-procurement-rules/planning-your-procurement/increase-access-for-new-zealand-businesses/>

- Additional features of Te Kupenga Hao Pāuaua include:
 - A strong focus on Indigenous-led ethical management.
 - Regular performance reviews will be conducted by government and the independent intermediary, the first of which will take place in 2022.
- Government Procurement Rule 17 explains the circumstances where agencies must incorporate opportunities for New Zealand business and instructs New Zealand government entities to:
 - Consider how they can create opportunities for New Zealand businesses, for designated contracts;
 - Have regard to guidance published by Hīkina Whakatutuk, on how to effectively involve New Zealand businesses in contract opportunities including Māori, Pasifika, regional businesses, as well as social enterprises; and
 - Conduct sufficient monitoring on designated contracts to ensure that commitments made in contracts are delivered and reported on.



Australia

Overview

- The latest version (2020) of the Government of Australia's Indigenous Procurement Policy (IPP) sets out new policies that the Australian government deems critical to improving Indigenous entrepreneurship, business and economic development outcomes by “significantly increasing the rate of purchasing from Indigenous enterprises.”
- The Department of Finance, which administers the Public Governance Performance and Accountability Act (2013), is responsible for the IPP as well as the Commonwealth Procurement Rules.
- Indigenous enterprises must be at least 50% Indigenous owned and recognized by either Supply Nation (Australia's prominent Indigenous independent national intermediary) or found in the public registry maintained by the Office of the Registrar for Indigenous Corporations (ORIC).
- The IPP seeks confirmation of Indigeneity from prospective Indigenous bidders, through the submission of:
 - A statutory declaration, declaring that the enterprise is 50% or more Indigenous owned; or
 - Certificates or letters of Indigeneity of the Indigenous owners provided by a recognized Indigenous organization such as a land council; or
 - Checking whether the enterprise is listed with an Indigenous Chamber of Commerce or another businesses directory/list and confirming that the business meets the eligibility requirements of the IPP.
- In Australia, there are two purchasing targets identified, which according to the IPP are:
 - Volume target, which is the equivalent of 3% of the number of eligible procurements awarded to Indigenous enterprises each financial year; and
 - Value target, which is described as the equivalent of 3% of the value of eligible procurements awarded to Indigenous enterprises each financial year. A series of progressively increasing value targets apply, up to a maximum value of 3%.
- Australia's Indigenous procurement policy (IPP) is based on an incremental target percentage accrued over a period beginning in 2019 with a one percent target, to 2027-28, which is the 3% target.
- In addition, the IPP will “count the range of procurement and purchases awarded to Indigenous business against their targets,” including:
 - Direct contracts and purchases.
 - Subcontracts relating to goods and services.
 - Multi-year contracts.

Key policy take-aways for the Canadian context

- The IPP has attempted to increase Indigenous procurement through establishing:
 - Annual targets for the volume and value of contracts to be awarded to Indigenous businesses by the federal government and every federal organization (portfolio).
 - A Mandatory Set Aside (MSA) to provide Indigenous businesses the opportunity to demonstrate value for money before a general approach to market. The MSA applies to all procurements to be delivered in remote Australia and for all other procurements wholly delivered in Australia with an estimated value from AUD80,000 to AUD200,000 (Australian Goods and Service Tax inclusive).
 - Indigenous participation targets to be mandated in high value contracts wholly delivered in Australia at AUD7.5 million or more in specified industry categories, known as the “mandatory minimum requirement” (MMR). This includes a mandate that tender evaluations for procurement subject to the MMR must consider a tenderer’s past performance against MMR targets contained in relevant Commonwealth contracts.

Supply Nation

- Supply Nation has “Ambassadors” that serve as relationship managers, acting as a state liaison and connector. This model has potential to be an adopted practice and applied to a provincial/territorial model in Canada.
- The independent Indigenous intermediary model for Canada could play a parallel role and function similar to Supply Nation. A possible program and service-based model could include, but is not limited to:
 - Procurement-readiness education, skills and training using a graduated system.
 - Indigenous Supply Chain and Procurement Management System.
 - Indigenous Supplier Selection and Procurement Solicitation.
 - Indigenous Procurement Legal Advisory.
 - Office of Risk Management, Negotiation & Sustainability.
 - Indigenous Supplier Contracting, Regulatory Compliance and Performance.
 - Project Management and Logistics.

United States of America

Overview

- The 8(a) Business Development program is designed to “level the playing field for small businesses owned by socially and economically disadvantaged peoples or entities.”
- The U.S federal government has a 5% target for all federal contracting dollars earmarked for businesses owned by socially and economically disadvantaged peoples or entities, including Indigenous-owned businesses.
- The Biden Administration has identified improvements to the 8(a) policy to include tripling the federal goal for contracting with all small and “disadvantaged” businesses from 5% to a minimum of 15% of all federal procurement dollars by 2025.

Key policy take-aways for the Canadian context

- Indigenous owned businesses are encouraged by the U.S. Small Business Administration to apply and participate in the 8(a) Business Development program, which can help businesses:
 - Compete for set-aside and sole source contracts in the program.
 - Get a Business Opportunity Specialist to help navigate federal contracting.⁴
 - Form joint ventures with established businesses through the SBA’s Mentor-Protégé Program.
 - Receive management and technical assistance, including business training, counselling, marketing assistance, and high-level executive development.
- The U.S. government aims to increase and enhance the participation of Indigenous nations in federal procurement using:
 - Formula-based awards and frequent monitoring of contract awards.
 - Encouragement of greater participation and widespread outreach and counselling to small business owners, especially tribal business owners.
 - Requirements that prime contractors develop and fully execute plans to increase subcontracting opportunities.
 - Supporting Indigenous institutional capacity including Native American Procurement Technical Assistance Centers (PTAC). This is done through contributions from Department of Defense (DoD) through a program that is administered by the Defense Logistics Agency (DLA).

⁴ CCAB’s research work has found that US Native Procurement Technical Assistance Centers have been very effective in navigating procurement opportunities. <https://www.aptac-us.org/contracting-assistance-for-business/find-an-american-indian-ptac/>

Policy Recommendations for the Government of Canada

Develop a definition of an Indigenous business for procurement purposes

- This work is underway, led and facilitated by National Indigenous Organizations.

Every federal organization must consider how they can create opportunities for Indigenous businesses

- Department/Agency specific measures should be articulated in every Federal organization's Departmental Plan.

The Government of Canada should actively reach-out to Indigenous businesses, Communities and organizations to advertise procurement opportunities

- This outreach should explain, in plain language, the requirements of the procurement opportunity. Federal procurement officials should be receptive to answering questions from Indigenous businesses to encourage their participation in Federal bid processes.
- At the regional level, Federal organizations need to coordinate procurement activities. The Government of Canada could use existing mechanisms, such as the regional Federal Councils⁵, to facilitate the coordination.
- Once coordinated, Public Services and Procurement Canada (PSPC) regional officials should lead the outreach to Indigenous businesses, communities, and organizations in the relevant region(s) to create a single window approach to Indigenous inquiries on those procurement opportunities available.

Agencies must conduct sufficient monitoring of federal contracts to ensure that commitments made in contracts are delivered and reported on

- Utilize a Vendor Performance Management (VPM) program, such as Nisto Link, to assess all federal contracts and ensure that Indigenous requirements are legitimately adhered to.

⁵ Federal Councils are informal collaborative networks amongst representatives of regional offices of federal departments and agencies. The best example is the BC Federal Council.

An independent, Indigenous operated intermediary is necessary to ensure ethical practices, operational performance and accurate data are established and maintained with strict adherence to Government's Indigenous procurement policies

- This work is underway, led and facilitated by National Indigenous Organizations, to develop a business case for an Indigenous intermediary to increase Indigenous procurement and support Indigenous businesses through the procurement process.

Federal executives at all levels must be committed to achieving Indigenous procurement targets

- Mandate the inclusion of SMART (Specific, Measurable, Achievable, Relevant and Time-bound) Indigenous procurement targets in the Performance Management Plan (PMA) of every federal executive and ensure that these targets are tied to the executive Performance Awards at every level.
- Amend the Government of Canada's Directive on Performance Management, Section 4.1.2 to read as follows: "Determining, in consultation with the deputy head, the departmental criteria for talent management plans, including Indigenous procurement targets, in accordance with the appendix to this directive."
- Amend the Government of Canada's Standard on Performance Management, specifically, A.2.2.1.1, to read as follows: "Performance agreements must include: Clear and measurable work objectives, with associated performance measures, including Indigenous procurement targets, that are linked to the priorities of the organization and of the Government of Canada."

Every Federal organization must track and report on their procurement from Indigenous businesses

- Assign the Chief Financial and Results Delivery Officer, or their equivalent, in every federal organization to report on procurement spend through their organizations' submissions to support the Main Estimates and Supplementary estimates.
- Every Departmental Results Report note the total organizational spend on Indigenous procurement.
- Feature the total Indigenous spend from every federal organization in the Main Estimates and Supplementary estimates.
- An Indigenous intermediary would review and accept results prior to broad public distribution.

Create adequate commercial viability in Indigenous subcontracting

- Amend the Treasury Board Contracting Policy⁶ to include a Directive, similar in design to the Federal Contractors Program for Employment Equity, that will:
 - Establish a mandatory minimum requirement (MMR) for Indigenous subcontracting of 5% of contract value for all federal contracts in excess of \$5,000,000.
 - Require bidders to submit an Indigenous content plan that demonstrates how they will achieve their requirements under the MMRs.
 - Award points to those bidders with a history of fulfilling their MMR commitments.
 - Conversely, deduct points to those bidders with a history of failing to meet their MMR commitments.
 - Mandate the sharing of each primary contractor's Mandatory subcontracting set asides history across federal departments/agencies within the Government of Canada.
 - Establish a Mandatory Indigenous Set Aside (MISA) for Indigenous businesses of 5% of the value of federal procurement contracts to be delivered in remote Canada.⁷
 - Establish a MISA for all federal procurements delivered in Canada with an estimated value between \$100,000 to \$200,000.00 (inclusive).

⁶ Established under s. 7(1) of the Financial Administration Act (FAA), this Policy sets out the policy objective for government contracting as being that to acquire goods and services and to carry out construction in a manner that enhances access, competition and fairness and results in best value or, if appropriate, the optimal balance of overall benefits to Canada and the Canadian people.

⁷ Remoteness being defined as census region with a value equal to or greater than 0.3. in the Statistics Canada's Index of Remoteness (E.g. Kenora, On = 0.2971): <https://www150.statcan.gc.ca/n1/pub/17-26-0001/172600012020001-eng.htm>.