

Transforming the Indigenous Procurement Process in Canada



Prepared by the **Canadian Council for Aboriginal Business**

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Transforming the Indigenous Procurement Process in Canada

The Canadian Council for Aboriginal Business (CCAB) presents this public policy paper to identify a series of actions that would support the successful implementation of the 5% Indigenous Procurement Requirement of every Federal organization. Specially, this paper will:

1. Provide public policy recommendations drawing upon the Literature Review “Transforming the Indigenous Procurement Process in Canada: A Literature Review, Qualitative Analysis, and Recommendations” by Okwaho Equal Source as well as CCAB’s published research and public policy work; and
2. Identify appropriate Federal mechanisms and practices that would need to change to successfully implement the proposed policy recommendations

Minister Anand’s Announcement of federal-wide measures to increase opportunities for Indigenous businesses¹

On August 6, 2021, the Government of Canada announced that it had begun to implement a “mandatory requirement for federal departments and agencies to ensure a minimum of 5% of the total value of contracts are held by Indigenous businesses.”

This requirement also includes public reporting and will be phased in over 3 years, beginning this year, with full implementation expected by 2024.

Given that every federal department and agency is required to direct 5% of their procurement spend to Indigenous businesses, the public policy recommendations below are designed to be of general application across the Government of Canada.² Some of the recommendations below reiterate the implementation guidance found in CCAB’s first public policy paper: “Creating the Conditions for Success: Implementing the 5% Procurement Requirement.” Where this occurs, CCAB has endeavoured to provide additional detail and advice.

¹ <https://www.canada.ca/en/public-services-procurement/news/2021/08/government-of-canada-announces-federal-wide-measures-to-increase-opportunities-for-indigenous-businesses.html>

² Additional public policy advice, tailored for specific Federal organizations, would likely help them to reach their targets before 2024. CCAB welcomes the opportunity to work with every Federal organization to help them achieve their 5% procurement requirement.

Implementing the Change

Ensure Enterprise-wide application

The announcement by Minister Anand on August 6, 2021, noted that the new mandatory 5% procurement requirement applies to “federal departments and agencies.” Additional clarity should be provided to ensure that this mandatory procurement requirement will apply to every Government of Canada “organization”: department, agency, crown corporation and special operating agency. All 206 federal organizations should report their spend from Indigenous businesses.

Recommendations:

- Public Services and Procurement Canada (PSPC) provide clarity that this mandatory 5% procurement requirement applies to all 206 federal organizations, ensuring all report their spend from Indigenous businesses.

Introduce firm implementation requirements

As announced, the 5% procurement requirement will be phased in over 3 years, beginning this year, with full implementation expected by 2024. However, annual targets were not provided.

Recommendations:

Every federal organization should meet their annual spending requirements, following the proposed implementation schedule:

- Year 1 (Fiscal 2021-2022): 1% of the total value of contracts are held by Indigenous businesses
- Year 2 (Fiscal 2022-2023): 3% of the total value of contracts are held by Indigenous businesses
- Year 3 (Fiscal 2023-2024): 5% of the total value of contracts are held by Indigenous businesses

Build mechanisms through Federal Councils for collaborative effort across Government for Indigenous procurement transformation

An all-of-government approach will be necessary to support every federal organization to meet their 5% Indigenous procurement requirement. This will be especially true of large infrastructure projects that may require contributions from multiple departments/agencies. It will also support the sharing of best practices amongst local procurement officers.

Recommendations:

- Ensure that every regional Federal Council has an Indigenous procurement working group, composed of Senior Management and supporting procurement staff, that have been trained in how to work with Indigenous communities and businesses and ideally, have Indigenous procurement experience.

Build meaningful relationships and partnerships with Indigenous communities and businesses at the local and regional level.

Building relationships with Indigenous communities and businesses at the local and regional level will take considerable time and resources. They should not be referred to as “stakeholder consultations”. The vision should be to build meaningful and mutually beneficial partnerships: Indigenous partners learning how to benefit from federal procurement opportunities, federal officials learning how to meaningfully fulfill the Truth and Reconciliation Calls to Action and their obligations within the United Nations Declaration on the Rights of Indigenous Peoples.

Recommendations:

- PSPC regional officials, who have experience working with Indigenous partners, lead the outreach to Indigenous businesses, communities and organizations in their regions and propose that their respective PSPC Regional Office act as a single point of contact for all procurement inquiries.
- PSPC regional officials undertaking this outreach, should work with an Indigenous organization, at either the regional or national level to build Indigenous institutional capacity and support the Indigenous partners.

Build meaningful relationships with Indigenous organizations and businesses at the national level.

Recognizing that many Indigenous businesses that have national and increasingly, international scope, they can contribute to federal procurement needs across Canada and at Canada’s 178 missions in 110 countries and economies.

National Indigenous organizations have the national and international business networks³ that can make the meaningful connections and provide capacity support to Indigenous businesses that can benefit from national and international procurement opportunities. This will further support the Government of Canada’s commitments to fulfilling the Truth and Reconciliation Calls to Action and their obligations within the United Nations Declaration on the Rights of Indigenous Peoples.

³ This includes the three Indigenous Export Missions that CCAB has led since December 2020, and will led two more before the end of January 2021.

Recommendations:

- PSPC identify PSIB set-aside opportunities and large-scale contractors for Indigenous services providers with national and international scope and work with National Indigenous organizations to make meaningful connections to Indigenous businesses that have the capacity to deliver on these contracts.
- Global Affairs Canada (GAC), identify opportunities where Indigenous businesses can bid for procurement contracts in other countries and then work with National Indigenous organizations to make meaningful connections to Indigenous businesses that have the capacity to deliver on these contracts. This includes opportunities for international Indigenous-to-Indigenous joint ventures.
- GAC identify opportunities where Indigenous businesses can bid for procurement contracts to service the Government of Canada's Missions abroad and then work with National Indigenous organizations to make meaningful connections to Indigenous businesses that have the capacity to deliver on these contracts.

Hold federal officials with delegated authorities responsible for Indigenous procurement transformation.

Federal procurement is the aggregation of thousands of daily buying decisions by thousands of Government officials. All these purchases must be approved by those with delegated authorities pursuant to the authorities indicated in sections 7, 32, 33 and 34 of the Financial Administration Act (FAA). As a result, these federal officials with delegated authorities need to contribute to their organization's 5% Indigenous procurement requirements, through their procurement decisions, regardless of size.

Recommendations:

- Amend the Directive on Delegation of Spending and Financial Authorities⁴ to make Indigenous procurement training mandatory for every federal official seeking to obtain delegated authorities that would permit them to make purchases on behalf of the Government of Canada.
- Mandate the inclusion of the 5% Indigenous procurement target in the Performance Management Agreement (PMA) of every Deputy Minister and ensure that this target is tied to their executive Performance Award.
- Mandate the inclusion of 5% Indigenous procurement targets in the PMAs of every federal official with delegated authorities 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."

⁴ <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=32503§ion=html>

- 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."

Reporting the Indigenous Procurement Data

CCAB first noted the need for every Federal organization to report annually on progress towards reaching a 5% procurement target in its research report: Industry and Inclusions (2019). Since that time, CCAB has refined its public policy recommendations to address specific questions pertaining to the Government of Canada's data assets, with respect to Indigenous procurement and the need for regular and consistent public reporting on Indigenous procurement spend.

The level of specificity, presented below as responses to a series of questions, is designed to provide clear and helpful guidance to Federal officials. Most importantly, this guidance should ensure that the Federal Indigenous procurement data assets are of the highest quality and greatest use for Indigenous Nations, Leaders, and Institutions.

Who will publish the data?

Recommendation:

Every Government of Canada organization: department, agency, crown corporation and special operating agency, totalling 206 federal organizations, will report their spend from Indigenous businesses.

What data will be published?

Recommendation:

Similar to the Commonwealth Government of Australia,⁵ the Government of Canada would report the following information pertaining to Indigenous procurement:

- Organization Name (department, agency, crown corporation or special operating agency)
- Organization's numerical contract target
- Organization's contract count against the target
- Organization's contract value target (5% in 2023-2024)
- Organization's contract value against the target
- Organization's data for (b), (c), (d), and (e) for previous five fiscal years, for those years that data are available
- Organization's Mandatory Set Aside Results (MSR) for previous five fiscal years
- Organization's Mandatory Minimum Indigenous participation requirements (MMR) for previous five fiscal years
- Names of Companies with active MMR contracts
- Names of Companies with history of meeting their MMR commitments.

⁵ <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp#data>

- Names of Companies with history of failing to meet their MMR commitments.

When will the data be published?

Recommendation:

- Full data to be reported on an annual basis. Present fiscal year data to be presented through every Federal Organization's submission reporting on spending and operations through the Main and Supplementary Estimates

Where will the data be published?

Recommendation:

- Full data to be published on the PSPC website, with links from ISC and CIRNAC websites, and through the Government of Canada's Open Data Portal.⁶ Every Federal Organization will present the Indigenous procurement datasets as outlined above, through their annual Departmental Plans and Departmental Reports.

How will the data be published?

Recommendation:

- Full data will be available in table format on the PSPC website. Full data will also be available in a downloadable machine-readable format from the PSPC website and from the Government of Canada's Open Data Portal.
- Full data will also be available for rendering on the Federal Geospatial Platform⁷ basemap, which is administered by Natural Resources Canada.

⁶ <https://open.canada.ca/en/open-data>

⁷ <https://www.nrcan.gc.ca/earth-sciences/geomatics/canadas-spatial-data-infrastructure/geospatial-communities-and-canadian-geosecretariat/federal-geospatial-platform/11031>

Changing the Contract

Build procurement experience

Research work conducted by Okwaho Equal Source and research work conducted by CCAB, has shown that the average size of federal contracts and the complicated government procurement process act as a meaningful barrier for Indigenous businesses obtaining federal procurement contracts.

Recommendation:

- Amend the Treasury Board Contracting Policy to introduce a new “micro contract” policy for federal contracts of less than \$10,000.00. These micro contracts would be exclusive Indigenous set-asides and would be written in plain-language.

The goal of these micro contracts would be to reduce the barrier to entry for Indigenous businesses seeking federal procurement opportunities and build familiarity with the federal procurement process, albeit, through a simplified process.

Open the doors to more Indigenous businesses

Inconsistencies in the sole-source limits amongst federal organizations can cause confusion for Indigenous businesses and organizations. Furthermore, the low threshold for sole-source contracts, typically \$25,000.00, makes the sole-source opportunity moot for most substantive work.

Recommendations:

- Amend the Treasury Board Contracting Policy to establish a new enterprise-wide threshold for sole-source contracts of \$100,000.00 for Indigenous businesses.
- The goal of this change would be to encourage federal officials to procure from Indigenous businesses, through simplifying the contracting process for those contracts less than \$100,000.00 in value. It would also provide consistency for Indigenous businesses and provide an equity measure that will help them to obtain contracts less than \$100,000.00 in value on par with non-Indigenous businesses.

Close the doors to predatory practices

Phantom joint ventures, where an Indigenous partner is used as a front by a non-Indigenous business to obtain a contract set-aside, corrodes the integrity of an Indigenous procurement policy. If a Joint Venture purports to be Indigenous owned, a majority of the profit must be retained by the Indigenous partner.

Recommendations:

- Stipulate in the Treasury Board Contracting Policy that an Indigenous owned Joint Venture should be defined as 51% Indigenous owned and an attestation be provided stating that 51% of the gross profit margin being retained by the Indigenous partner.

Establish a series of Mandatory Minimum Indigenous Requirements (MMIRs)

Recommendations: Amend the Treasury Board Contracting Policy to establish the following MMIRs:

- 5% of the contract value for all federal contracts more than \$5,000,000.00.
- 5% of the contract value for all federal contracts in regions or communities where Indigenous people make up at least 51% of the population and where the Indigenous population will be the recipient of the good, service or construction.

Establish a series of Mandatory Indigenous Set Asides (MISAs)

Recommendations: Amend the Treasury Board Contracting Policy establish the following MISAs:

- 5% of all federal contracts between \$100,000.00 to \$200,000.00 (inclusive).
- 5% of all federal contracts in regions or communities where Indigenous people make up at least 51% of the population and where the Indigenous population will be the recipient of the good, service or construction.
- 5% of all Grants and Contributions funding for federal business programs.

Ensure compliance with MMIRs

Recommendations:

- Require bidders to submit an Indigenous content plan that demonstrates how they will achieve their requirements under the MMIRs.
- Award points to those bidders with a history of fulfilling their MMIR commitments.
- Conversely, deduct points to those bidders with a history of failing to meet their MMIR commitments.
- Mandate the sharing of each primary contractor's MMIR set asides history across all federal organizations.

Establish a series of policies to support Indigenous hospitality businesses

When planning travel for work or hosting an event, mandate that federal employees need to undertake the following actions before their Delegated Authorities approve their travel and/or event plans.

Recommendations:

- Present at least one quote from an Indigenous hospitality company (event space, food & beverage, etc.). If this is not possible, the federal official must provide an explanation as to why they were not able to obtain a quote.
- Amend the National Joint Council's Travel Directive to mandate that Government employees must stay at an Indigenous-owned facility (hotel, motel, inn, etc.) when travelling for work. If this is not possible, the federal official must provide an explanation as to why they were not able to stay at an Indigenous-owned facility.

Conclusion

Like individual points on a map, each of the recommendations in this report are, by themselves, insufficient to guide the reader to the ultimate destination: to have every federal department and agency procure at least 5% of its goods and services from Indigenous businesses by 2024.

However, taken together, these recommendations provide a practical roadmap for every federal organization to increase its procurement spend from Indigenous businesses in the short term and put in place the necessary incentives and policies to achieve the Government of Canada's Indigenous procurement target.

Some of the recommendations, such as policies to support Indigenous hospitality businesses, building meaningful relationships and changes to PMAs, can be fully implemented early in fiscal 2022/23 through changes to internal departmental policies. Others will require decisions by Cabinet, though not necessarily legislation.

This much is certain: the sooner federal organizations begin to implement these recommendations, the likelier they will be to meet their minimum 5% Indigenous procurement targets.