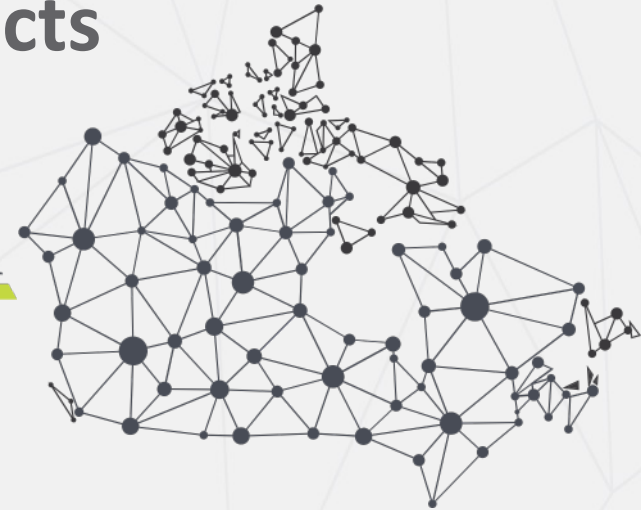


Implementing the Minimum Mandatory Target of 5% for Contracts Awarded to Indigenous Businesses

September 2022



Context – Drivers for Action

- ◆ **Government Announcement:** *Mandatory target to have at least 5% of federal contracts awarded to businesses managed and led by Indigenous peoples (August 6, 2021)*
- ◆ **PSPC's 2021 Mandate Commitment:** *Lead the **implementation of the requirement** for federal departments and agencies to ensure a **minimum of 5 per cent of the total value** of federal contracts are held by Indigenous businesses.*
- ◆ **Speech from the Throne:** *“Reconciliation requires a whole-of-government approach, breaking down barriers, and rethinking how to accelerate our work...the Government is committed to closing the gaps that far too many First Nations, Inuit and Métis communities still face today”.*
- ◆ **Article 19 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP):** *“States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”*

Policy Framework for 5% Target

- ◆ In April 2022, the Treasury Board (TB) Mandatory Procedures for Contracts Awarded to Indigenous Businesses was published as Annex E to the Directive on the Management of Procurement. It provides a policy and reporting framework to ensure accountability.
- ◆ Section 4.2.7.3 of the Directive requires business owners to consider opportunities to support the participation of Indigenous peoples in matters related to procurement and document files accordingly
- ◆ Guidelines will also be made available by the Treasury Board of Canada Secretariat (TBS) in April 2022, which will provide additional operational guidance on how to implement the Mandatory Procedures

How the 5% is calculated yearly

**[X] = Total value of contracts awarded to
*Indigenous businesses***

**[Y] = Total value of contracts awarded
—
[Z] = Deputy Head approved exclusions**

What counts towards the 5%?*

Contracts and subcontracts awarded to
Indigenous Businesses



For the purpose of the 5% target, Indigenous Services Canada defines an **Indigenous business** as

IBD Definition:

a sole proprietorship, limited company, cooperative, not-for-profit organization, or a joint venture or partnership in which **Indigenous persons** have at least **51% ownership and control** and **is registered** on the Indigenous Business Directory (IBD) at contract award.

Modern Treaty / CLCA Beneficiary Businesses: Definitions vary, please refer to each Modern Treaty for specific definitions.

***Socio-economic benefits** (e.g., employment, training, skills development) will not count towards the 5% Target. However, departments will be encouraged to track and report on them in the Departmental Results Report.

Phased Implementation of 5% for Client Departments

Departments have been grouped into phases based on their readiness to meet the 5% target:

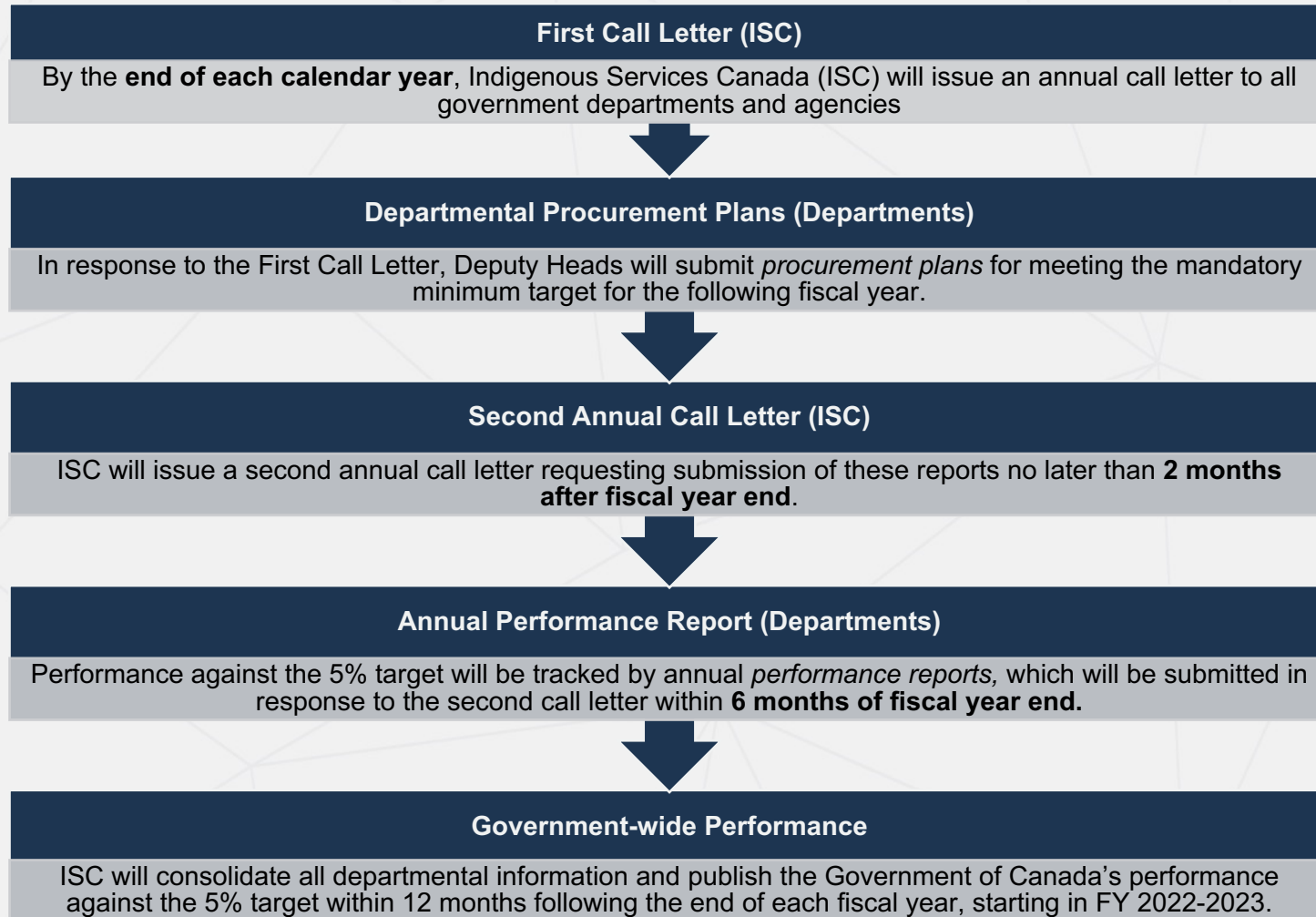
Phase 1: Departments on track to meet the 5% Target (32);
1 April 2022 – 31 March 2023

Phase 2: Departments in transition (20)
1 April 2023 – 31 March 2024

Phase 3: Departments still to be assessed (42)
1 April 2024 – 31 March 2025

- ◆ Contracting Authorities should refer to the schedule to confirm the phase of client departments (**see Annex A, 1-3**)
- ◆ PSPC as common service provider, will be required to provide Indigenous contracting data (value of contracts and subcontracts) to clients **within three months after end of fiscal starting FY 2022-2023.**

Reporting Cycle



Maximizing Indigenous Participation to Achieve the 5% Target

Every procurement must be reviewed for Indigenous Participation

- All procurement activities are subject to the 5% mandatory minimum target, unless it can be demonstrated that Indigenous participation is impossible, in which case it must be documented to file and the client department will seek an exemption. All exemptions will require Deputy Head approval.

Early engagement between Contracting Authorities and Business Owners

- **Analysis of the Statement of Work: Determine** whether mandatory measures must be applied (e.g., is the procurement subject to Modern Treaties, mandatory PSIB set aside)
- **Conducting Indigenous Capacity Assessments:** Determine Indigenous capacity (e.g. verify IBD, search CLCA business lists, conduct an RFI, NPP). Contact Indigenous Services Canada for assistance in assessing capacity.
- **Structuring and Unbundling:** Pursue all reasonable opportunities for Indigenous businesses to submit competitive bids. Note that this is also a requirement under several Modern Treaties (CLCAs).

How Do We Support You

- Updating standard procurement templates in the Standard Acquisitions Clauses and Conditions Manual and providing additional guidance in the Supply Manual for PSIB and IPPs;
- Client departments will submit their procurement plans outlining how they will meet the 5% target to Indigenous Services Canada; these will be shared with PSPC, which in turn will be shared across sectors to build awareness and support planning;
- Developing new procurement tools to support implementation, e.g. checklists, procurement nugget;
- Info sessions and department-wide outreach to share best practices and tools;
- Reviewing standing offers and supply arrangements to determine which have existing qualified Indigenous suppliers;
- Engaging with commodity managers responsible for mandatory SOSA to ensure qualified Indigenous suppliers are available to support OGDs in meeting their 5% target.

Procurement Tools

- ◆ **Indigenous Participation Plans (IPP):** Inclusion of bid evaluation criteria to detail how Indigenous businesses and people will be involved in the contract work. IPP can be used in context of PSIB or open competitive procurements.
- ◆ **Procurement Strategy for Indigenous Businesses (PSIB):** The Government of Canada can limit bidding or “**set aside**” certain procurements for competition among Indigenous businesses only. Contracts awarded to Indigenous businesses in Canada can will count towards the 5% Target as long as they are registered on the PSIB Indigenous Business Directory* at contract award.
- ◆ **Mandatory PSIB:** If the contract is in an area, community or group in which Indigenous people make up at least 51% of the population *and* the Indigenous population will be the primary recipient of the goods, services or construction.
- ◆ **Voluntary PSIB:** Indigenous business capacity exists and the department or agency can assure that operational requirements, best value and contracting management can be met.
- ◆ **Conditional PSIB:** When it is difficult to determine Indigenous business capacity, the procurement is open to both Indigenous and non-Indigenous businesses. However, if 2 or more Indigenous businesses submit a bid, then the procurement is set aside under PSIB (only the Indigenous firms who submitted a bid would be assessed).

*CLCA businesses will not be required to register on the Indigenous Business Directory

Indigenous Procurement Checklist part 1 (Draft)

Defining the requirement

- Mandatory measures: Modern Treaties Obligations, Mandatory PSAB.
- Indigenous considerations: Does the requirement involve Indigenous knowledge, heritage and/or culture? Does it involve one or more Indigenous communities?

Capacity Assessment and Engagement

- Determine how Indigenous businesses could be included.
- Attempt to understand Indigenous concerns and/or priorities.

Structuring and Unbundling

To maximize Indigenous participation in procurement, requirements should be structured in a way that provides all reasonable opportunities for Indigenous businesses to submit competitive bids:

- Elements such as qualifications, certifications and security requirements are not artificially inflated;
- Time frames and schedules take the local context into account; and,
- The contracts are unbundled (severed).

Indigenous Procurement Checklist part 2 (Draft)

Procurement Strategy

- Procurement Obligations from Modern Treaties (ex. Nunavut Directive: Limited Bidding, IBC/NBC)
- PSIB: Mandatory, Voluntary, or Conditional
- Indigenous Participation Plan (IPP)

Solicitation and Bid Evaluation

- Contracting authorities should refer to the standard procurement templates in the Standard Acquisition Clauses and Conditions (SACC) Manual.
 - Including appropriate terms and conditions in your solicitation documents
 - Developing appropriate criteria for the bid evaluation process and include a reporting element with specific delivery dates or milestones.
- When requirements are set aside under PSIB, compliance form is part of the solicitation documents.
- Determining whether an IPP can be mandatory or optional.

Documentation and Reporting

- All efforts to promote the participation of Indigenous businesses and peoples in the procurement;
- The value of contracts and subcontracts awarded to Indigenous businesses;
- Evidence of any market research into the capacity of Indigenous businesses and people;
- Notification to the Modern Treaty (CLCA) rights-holders;
- Confirmation that bid evaluation criteria to provide benefits and participation to Indigenous businesses and people was considered in the planning process.



Questions and/or Comments?

Who to Contact with Questions

For further assistance on how to implement the 5% mandatory procedures and how to increase opportunities for Indigenous businesses and people in procurement, please send an email to the following address:

TPSGC.PAApprovalAutochtone-APIndigenousProc.PWGSC@tpsgc-pwgsc.gc.ca.

For interpretation of any aspect of the mandatory procedures, contact the Treasury Board of Canada Secretariat.

For information regarding the Government of Canada *Procurement Strategy for Indigenous Business*, contact Indigenous Services Canada at indigenousprocurement@sac-isc.gc.ca.

For information regarding services provided by Shared Services Canada, contact Shared Services Canada at SSC.pvr-arf.SPC@Canada.ca.