

5% Target and Indigenous Procurement

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Introductions

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Mandate Commitment: Creation of a 5% Target in Procurement-Indigenous Business

- ◆ The mandate letter for the minister of Public Services and Procurement includes a commitment to “work with the minister of Indigenous Services and the president of the Treasury Board to create more opportunities for Indigenous businesses to succeed and grow by creating a new target to have at least 5% of federal contracts awarded to businesses managed and led by Indigenous Peoples.”
- ◆ Indigenous Peoples in Canada, as well as their business ventures, face unique challenges, and this is reflected in lowered levels of participation in federal contracting. Indigenous Peoples in Canada comprise approximately 5% of the overall Canadian population; however, they are consistently awarded a lower percentage of federal contracts.
- ◆ The 5% target seeks to leverage government spending to help grow Indigenous businesses and improve the socio-economic conditions of Indigenous communities. This has the potential to improve the lives of not just Indigenous Peoples, but all Canadians.

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) Directive on the Management of Procurement was published with Annex E to the Mandatory Procedures for Contracts Awarded to Indigenous Businesses. 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) soon, 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

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[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 at the end of the presentation)
- 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

First Call Letter (ISC)

By the **end of each calendar year**, Indigenous Services Canada (ISC) will issue an annual call letter to all government departments and agencies



Departmental Procurement Plans (Departments)

In response to the First Call Letter, Deputy Heads will submit *procurement plans* for meeting the mandatory minimum target for the following fiscal year.



Second Annual Call Letter (ISC)

ISC will issue a second annual call letter requesting submission of these reports no later than **2 months after fiscal year end**.



Annual Performance Report (Departments)

Performance against the 5% target will be tracked by annual *performance reports*, which will be submitted in response to the second call letter within **6 months of fiscal year end**.



Government-wide Performance

ISC will consolidate all departmental information and publish the Government of Canada's performance against the 5% target within 12 months following the end of each fiscal year, starting in FY 2022-2023.

Directive on the Management of Procurement

The directive ensures that procurement of goods, services and construction obtains the necessary assets and services that support the delivery of programs and services to Canadians, while ensuring best value to the Crown.

Appendix E: Mandatory Procedures for Contracts Awarded to Indigenous Businesses

- ◆ The Government of Canada is committed to economic reconciliation with Indigenous peoples and will contribute to improved socio-economic outcomes by increasing opportunities for First Nations, Inuit and Métis businesses through the federal procurement process.
- ◆ Departments are to meet or exceed the 5% target no later than the fiscal year-end of 2024–25, as set out in the schedule prescribed by Indigenous Services Canada.
- ◆ Mandatory procedures include:
 - ◆ Planning for contracts awarded to Indigenous businesses
 - ◆ Providing opportunities for Indigenous businesses
 - ◆ Reporting on contracts awarded to Indigenous businesses



What does this mean for you?

Every procurement must be assessed for Indigenous Participation

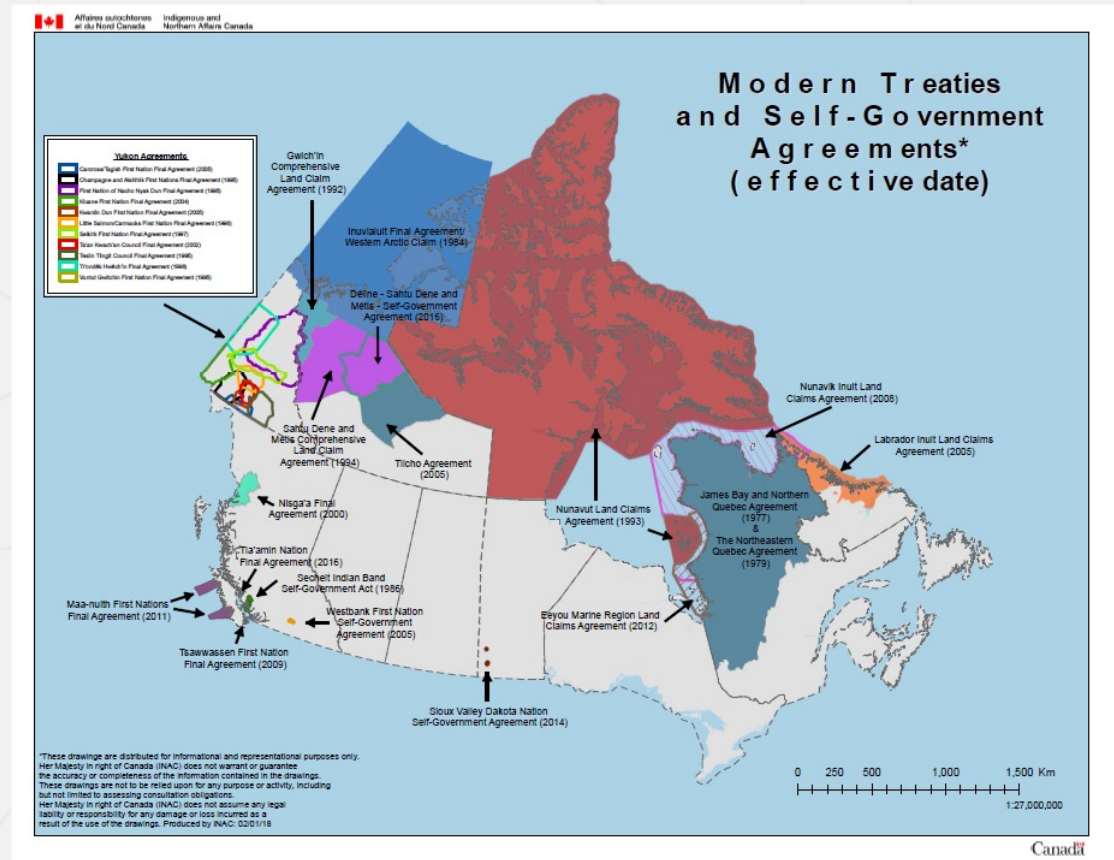
- ◆ All procurement activities are subject to the 5% mandatory minimum target, unless it can be demonstrated that Indigenous participation is impossible, in which case it must be documented to file and the client department will seek an exemption. (All exemptions will require Deputy Head approval).

Early engagement between Contracting Authorities and Business Owners

- ◆ **Analysis of the Statement of Work:** Work with your client to determine whether mandatory measures must be applied (e.g., is the procurement subject to Modern Treaties, or can PSIB set aside be considered).
- ◆ **Conducting Indigenous Capacity Assessments:** Determine Indigenous capacity (e.g. verify IBD, search CLCA business lists, conduct an RFI, NPP, etc.). Contact Procurement Assistance Canada (PAC) and/or Indigenous Services Canada (ISC) 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).

Modern Treaties

- Modern treaties are also known as Comprehensive Land Claim Agreements (CLCAs)
- They give clarity to how land and resource rights and ownership will be managed. Modern treaties are in place to ensure fair treatment of Indigenous and Inuit interests with respect to cultural, social, political and economic rights, including rights to lands, and to fish and hunt and practice their own cultures
- The rights defined in them are constitutionally protected within section 35 of the *Constitution Act, 1982*
- In Canada, there are 25 modern treaties. Their locations: Yukon (11), Northwest Territories (4), Nunavut (1), Quebec (4), Newfoundland and Labrador (1) and British Columbia (4)



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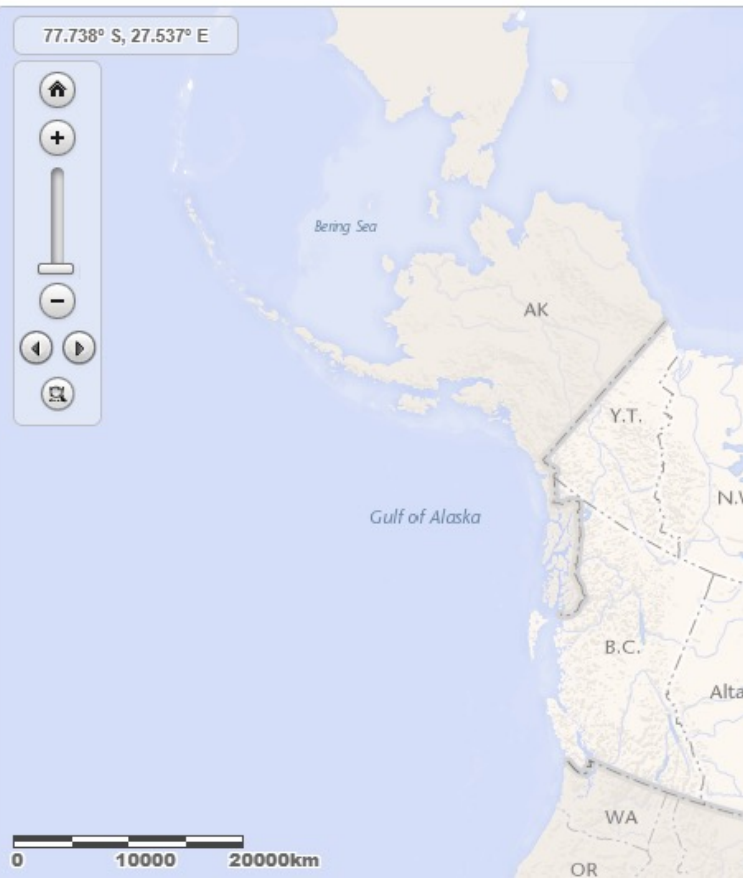
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Aboriginal and Treaty Rights Information System

To determine if a requirement is subject to any Modern Treaties and/or is located on a Historical Treaty area, Project Authorities and Contracting Authorities must consult the Aboriginal and Treaty Rights Information System (ATRIS). ATRIS is a web-based system intended to provide up-to-date, site-specific information on potential or established Indigenous or treaty rights of Indigenous peoples across Canada.

Procurement Strategy for Indigenous Businesses

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).

Indigenous Participation Plans (IPP): can also be included (for PSIB requirements) to detail how Indigenous businesses and people will be involved in the contract work.

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

Procurement Strategy for Indigenous Businesses

Decision to set aside a procurement under the PSIB

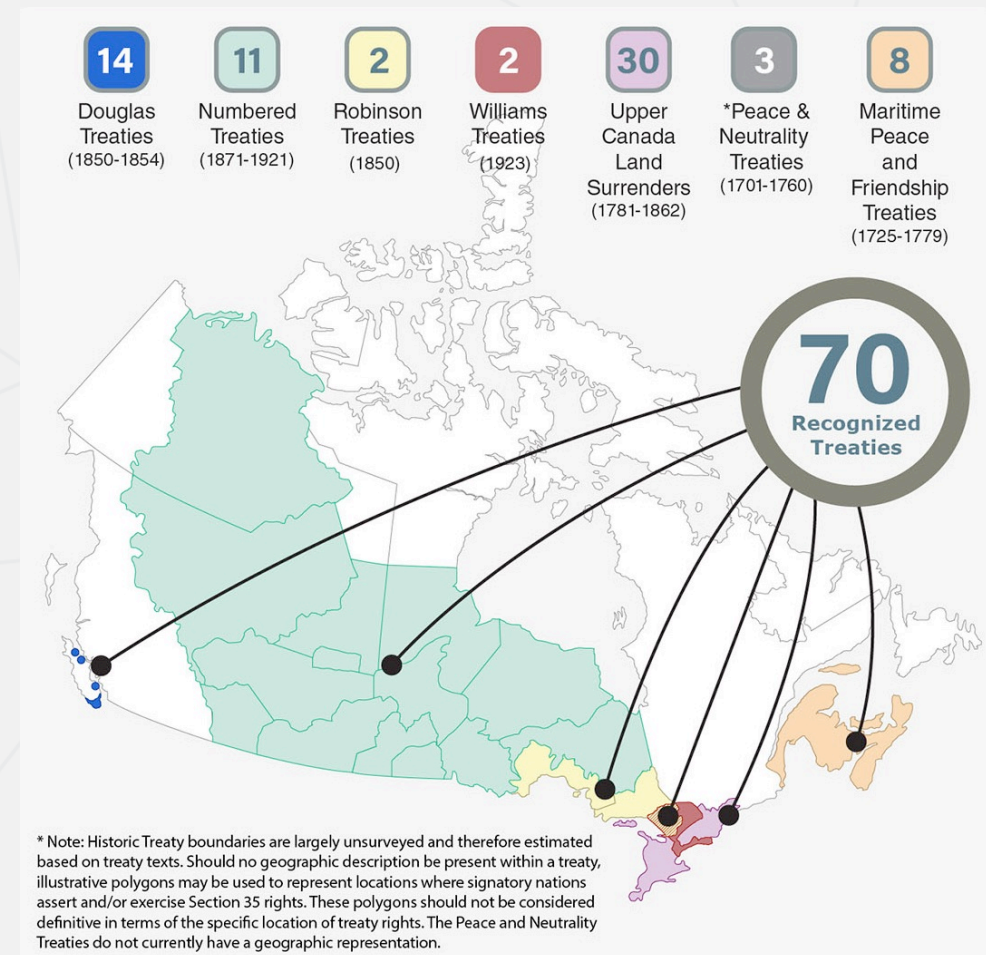
- ◆ The decision to set aside a procurement under PSIB is the responsibility of the client department, PSPC cannot unilaterally declare a procurement set-aside under PSIB.
- ◆ If it is determined that the requirement falls under **Mandatory PSIB** and it is not considered, the Contracting Authority should contact the client and identify the potential omission.
- ◆ If the client indicates that the procurement is not to be set aside under PSIB, the file should be annotated accordingly, and the procurement may then proceed.

PSIB Advice and Support

- ◆ Contracting Authorities should advise clients of PSIB and support them, using the information, tools and guidance available, to meet both the client needs and policy requirements.
- ◆ Contracting Authorities may also seek additional advice and guidance from the MTS team, Business Advisory Services (BAS) team, Indigenous Procurement Policy Division (IPPD), and Indigenous Services Canada (ISC).

Indigenous Participation Plans

- ◆ Indigenous Participation Plans (IPPs) / socio-economic criteria can also be included in non-Modern Treaty to detail how Indigenous businesses and people will be involved in the contract work.
- ◆ Contracting Authorities can seek additional advice and guidance from the MTS team, Business Advisory Services (BAS) team, Indigenous Procurement Policy Division (IPPD), and Procurement Assistance Canada (PAC).



Recommended Canada School of Public Service (CSPS) Courses

Indigenous Considerations in Procurement (**COR409**)

Topics include:

- ◆ determining the applicability of modern treaties/CLCAs and the key mechanisms of the PSIB
- ◆ describing the common procurement obligations that may apply when a procurement is subject to a modern treaty/CLCA
- ◆ explaining how modern treaty/CLCA obligations and the use of the PSIB may affect certain steps in the procurement process

Procurement in Nunavut Settlement Area (**COR410**)

Topics include:

- ◆ identifying when a procurement is subject to the Nunavut Directive
- ◆ limiting bids to Inuit firms depending on market capacity (as per the Inuit Firm Registry)
- ◆ including bid evaluation criteria related to benefits for Inuit and Nunavut, either on a best-effort or mandatory basis, depending on contract value
- ◆ determining how to document and report on government contracts (as per the Nunavut Directive)

Indigenous Procurement Checklist

- ◆ Meant to be filled out with clients and included in the procurement file.
- ◆ Used soon in the procurement process in order assess procurement activities for Indigenous participation.
- ◆ Will help PSPC procurement officers in determining the best approach for Indigenous participation along with their clients.

INDIGENOUS PROCUREMENT CHECKLIST LISTE DE VÉRIFICATION DE L'APPROVISIONNEMENT AUPRÈS DES AUTOCHTONES

The 5% target is a **mandatory requirement** for federal departments and agencies to ensure a minimum of 5% of the total value of each department and agencies contracts are awarded to Indigenous businesses. For example, if a department awards 100 million dollars in contracts, at least 5 million of awarded contracts should go to Indigenous businesses. **All procurement activities should be considered for the minimum target of 5%.** The following can be counted towards the target:

Les ministères et organismes fédéraux ont l'**obligation** d'attribuer au moins 5 % de la valeur totale de leurs marchés à des entreprises autochtones. Par exemple, si la valeur totale des contrats d'un ministère est de 100 millions de dollars, au moins 5 millions de dollars doivent être attribués ou offerts en sous-traitance à des entreprises autochtones. **Toutes les activités d'approvisionnement doivent être prises en compte pour l'objectif minimum de 5 %.** Les éléments suivants peuvent être comptabilisés :

Indigenous Procurement Checklist

1. Is your requirement subject to any mandatory measures, such as a Modern Treaty (also known as Comprehensive Land Claim Agreement (CLCA's)) or a Mandatory set-aside under the Procurement Strategy for Indigenous Businesses (PSIB)?
2. Has your Department determined if this requirement should include voluntary Indigenous procurement measures?
3. Is your requirement geographically limited such that specific Indigenous interests should be considered in the development of an Indigenous Participation Plan?
4. Have you identified areas of particular interest for relevant Indigenous group(s) which should be taken into account in the development of an Indigenous Participation plan (i.e. Interests in particular sites or locations, priority on employment or training, local capacity, etc.) ?
5. Has your Department conducted a market research activity to determine Indigenous capacity (i.e. Indigenous Business Directory (IBD); Indigenous Services Canada (ISC); a Request for Information (RFI), TBIPS search, etc.)?

Questions?

