

Key Indigenous Considerations in Federal Procurement

June 2023 CIPMM Presentation



Introductions

Alexandre Cournoyer

(Indigenous Procurement Policy Directorate, PSPC)

Anthony Tiet

(Regional Modern Treaty Implementation, PSPC)

Timothy Dymond

(Transformative Indigenous Procurement Strategy, ISC)

Socio-Economic Gaps

- ◆ Indigenous Peoples in Canada face unique challenges that continue to prevent them from fully accessing, participating, and enjoying the benefits of the Canadian economy.
- ◆ Federal procurement is a tool to help address these gaps.



5% Minimum Target

- ◆ All federal departments are mandated to award at least 5% of the total value of all federal contracts to Indigenous businesses.
- ◆ The 5% minimum target seeks to leverage federal contracting to help grow Indigenous businesses and improve the socio-economic conditions of Indigenous communities.

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



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.

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).

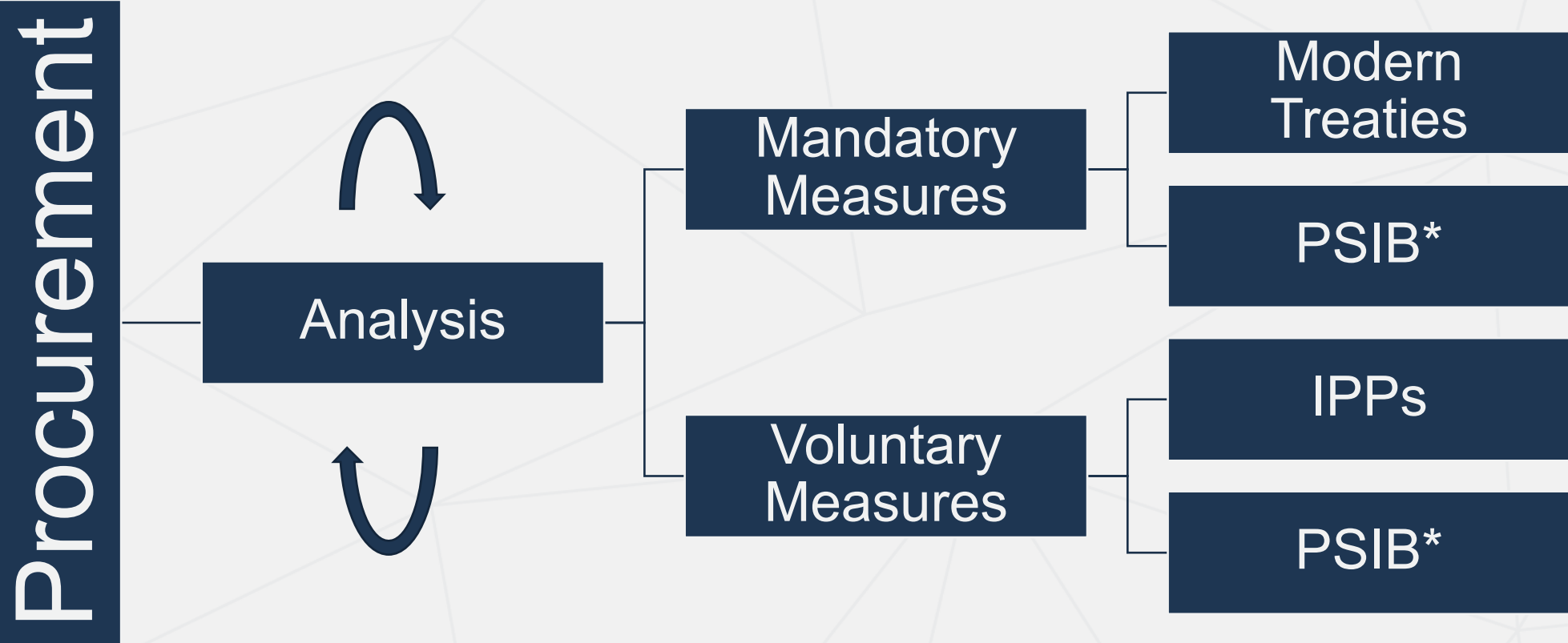
Early engagement between Contracting Authorities and Business Owners

- ◆ **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).

General Principles

- ◆ **Commensurate Efforts:** Efforts to include Indigenous Participation should always be commensurate with the value and scope of the procurement activity.
- ◆ **Best Value:** We should consider positive outcomes for Indigenous communities and efforts towards economic reconciliation in our understanding of best value.
- ◆ **Promise of a Process:** Commitment to an inclusive analysis, not a specific result.
- ◆ **Documentation:** Efforts to include Indigenous Participation should always be documented thoroughly, but as a way to demonstrate our due diligences but also to build a better understanding of Indigenous capacity.

Summary of Indigenous Procurement



Mandatory and Voluntary Measures

◆ **Mandatory Measures:**

- ◆ Must be applied to your procurement activity and
- ◆ will dictate your Indigenous Procurement Strategy to an extent;
- ◆ should be identified early.

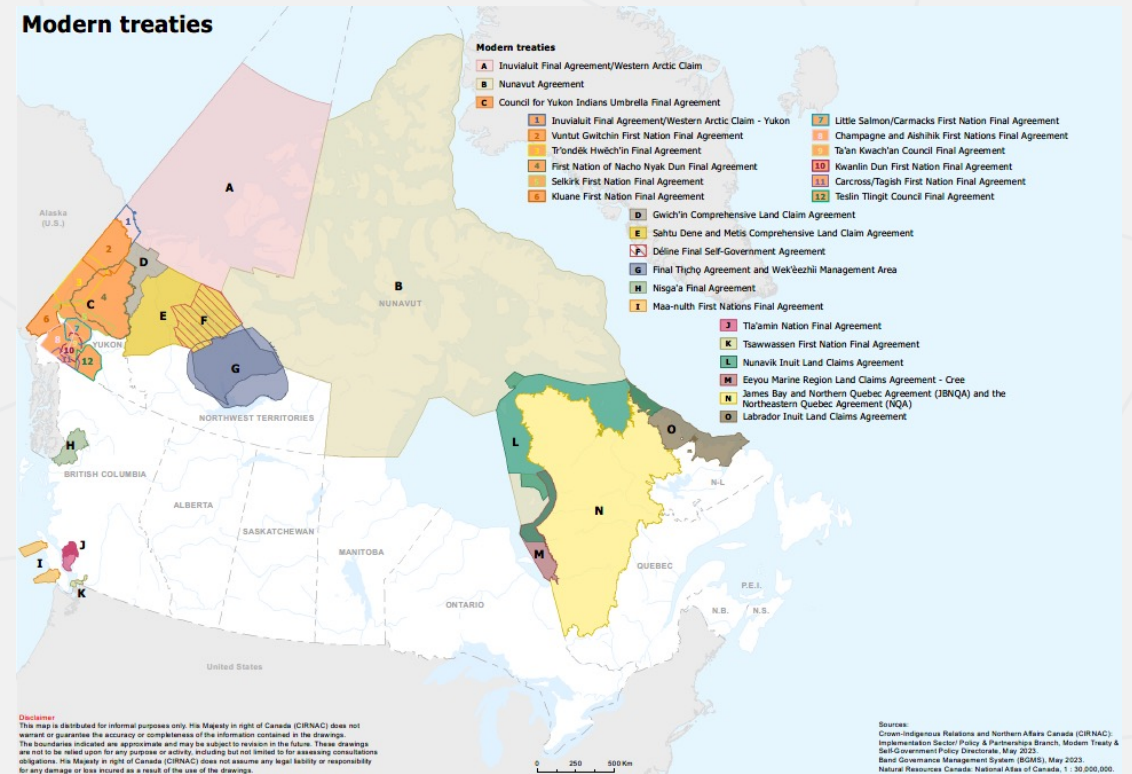
◆ **Voluntary Measures:**

- ◆ Are applied on a voluntary basis.
- ◆ Allow for more flexibility, but create more responsibility.
- ◆ Should be outlined early.

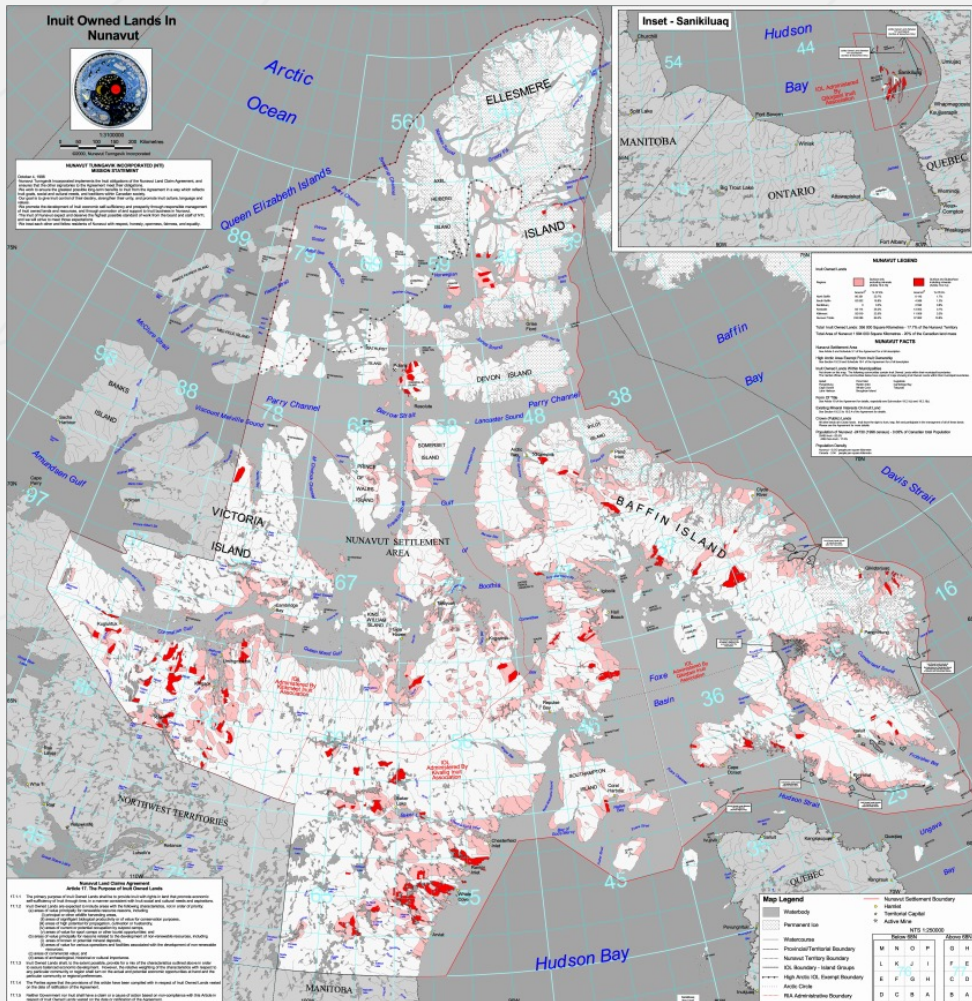
It's also possible to use some voluntary measures to support implementation of mandatory measures, when the latter allows. For example, including an IPP into a mandatory PSIB requirement.

Mandatory Measure: Modern Treaties

- Modern treaties are also known as Comprehensive Land Claim Agreements (CLCAs)
- 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*



Nunavut Directive



- ◆ Article 24 of the *Nunavut Agreement* includes procurement obligations.
- ◆ The *Nunavut Directive* further clarifies how these obligations are to be met in federal procurement processes.
- ◆ The *Directive* applies to all procurement contracts “where the deliverable(s), or a portion of the deliverable(s), include final delivery or performance in or into the Nunavut Settlement Area [NSA]”.
- ◆ If there are any conflicts between the *Directive* and any other policy instrument, the *Nunavut Directive* prevails.

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).

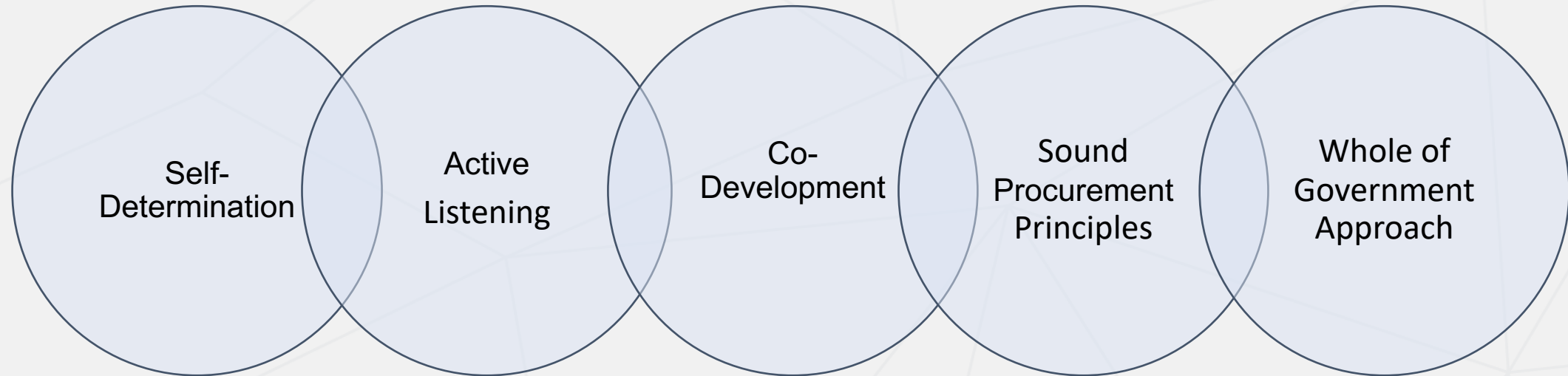
Indigenous Participation Plans (IPP): can also be included (for PSIB requirements) to detail how Indigenous businesses and people will be involved in the contract work.

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

Transformative Indigenous Procurement Strategy (TIPS)

Support the Implementation of the mandatory minimum target of 5% of the value of federal contracts to be awarded to Indigenous peoples.

Co-develop a new Indigenous Procurement Strategy, which will be based on Indigenous methodology and feedback; support greater Indigenous control; and transform and/or transfer services.



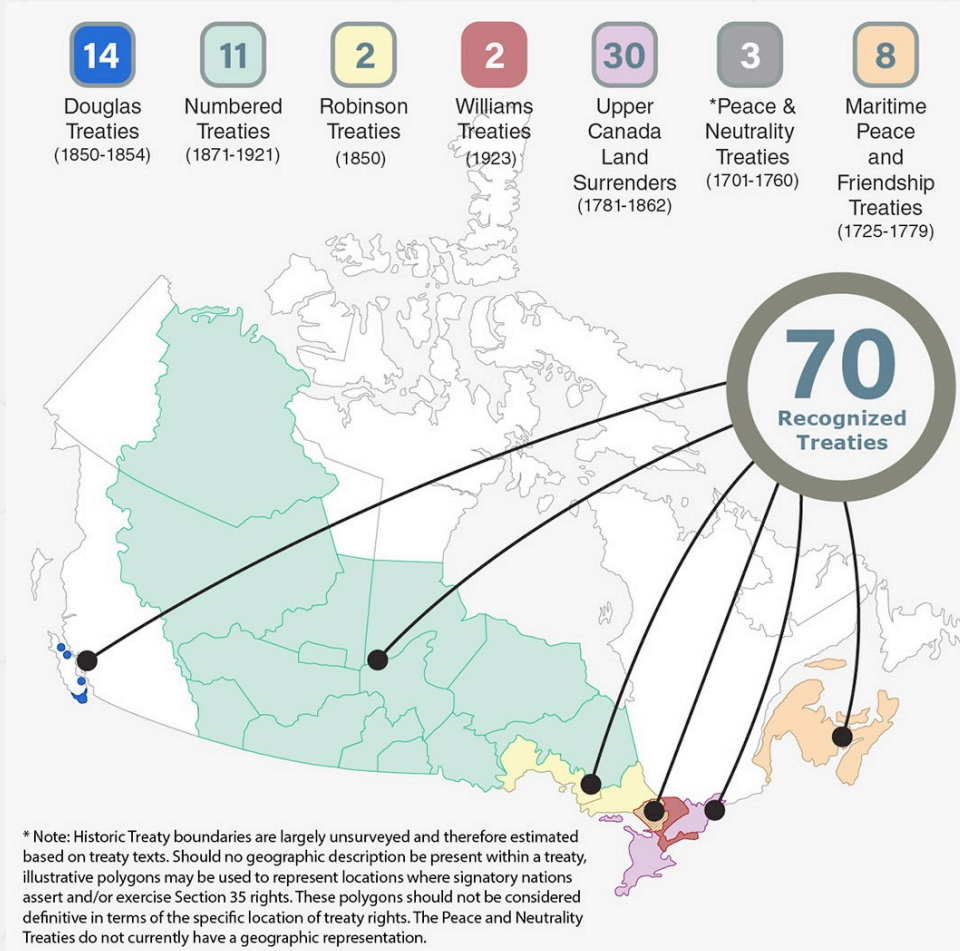
Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them, as far as possible, to administer such programmes through their own institutions.

– UNDRIP

Voluntary Measure: Historical Treaties

- ◆ Treaties are agreements made between the Government of Canada, Indigenous groups and often provinces and territories that define ongoing rights and obligations on all sides.
- ◆ Indigenous Participation Plans (IPPs) can be included in non-Modern Treaty and non-PSIB requirements to detail how Indigenous businesses and people will be involved in the contract work.



Indigenous Participation Plans

- ◆ Indigenous Participation Plans (IPPs) are mechanisms you can use to include Indigenous component in your procurement activity.
- ◆ IPPs are prepared by bidders and are a series of commitments to include various Indigenous components in their contracts (ex. subcontracts, employment, training, etc.)
- ◆ IPPs respond to criteria developed as part of the solicitation and would ideally be found at the best possible intersection of indigenous capacity and requirements.

Successful Indigenous Procurement Strategy

- ◆ **Analysis:** Understanding the requirement, how it might intersect with Indigenous capacity and priorities is the first step.
 - ◆ *This is where we determine whether or not mandatory measures apply.*
- ◆ **Review and Revise:** the Statement of Work should be reviewed and potentially revised to afford maximum opportunity to intersect with Indigenous capacity and priorities.
 - ◆ Examples could include unbundling, changing solicitation timelines, notification, delivery areas, etc.
- ◆ **Engage:** Engagement with Indigenous communities (where applicable) will help in determining Indigenous capacity and priorities.

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 Mandatory limited bidding 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.)?

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)

Questions?

Thank you

