

Reaching 5% and Beyond: A Roadmap to Increasing Federal Procurement from Indigenous Businesses in Canada



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

December 3, 2021

INTRODUCTION

Increasing Indigenous procurement has been repeatedly shown, through the research papers attached amongst other literature, to be a mechanism to improve the prosperity and well-being of Indigenous peoples. The Organisation for Economic Cooperation and Development's 2020 report titled "Linking Indigenous Communities with Regional Development in Canada," highlighted the economic potential for the Indigenous economy in Canada through increasing Federal procurement from Indigenous businesses.¹

This represents an important step to closing the economic gaps between Indigenous people and the non-Indigenous population which, economic analysis conducted by the National Indigenous Economic Development Board has shown, would grow the Canadian economy by \$27.67 billion.²

However, it must not be seen as an exercise in "supplier diversity," it must be understood for what it is: economic reconciliation.

As an act of reconciliation, the journey to include Indigenous peoples as meaningful participants in the Canadian economy will require a change in the *status quo*. To activate this journey, it is paramount to recognize Articles 3 and 20 of the United Nations Declaration on the Rights of Indigenous peoples stating that Indigenous peoples have the right to self-determination and the right to maintain and develop their political, economic and social systems or institutions, respectively. This is in addition to the recognition of Section 35,³ land claim, settlements and treaty rights. It is from these foundational points of departure that all other policy recommendations from the Indigenous procurement working group will follow.

From this recognition, it is essential that every Federal organization acknowledges that Indigenous procurement, as an act of Reconciliation, is a priority for their Department, Agency, Regulator, Crown Corporation, Special Operating Agency and/or Board. Indigenous procurement should be the first thought when any Federal official seeks to procure goods and services.

Another critical and overarching change is for the Government of Canada to acknowledge that reconciliation requires resources necessary for Indigenous peoples to design and construct a resilient Indigenous institutional infrastructure. This infrastructure is required to support self-determination and rebuild Indigenous economies. Taken together, these critical actions to support Federal Indigenous procurement represent economic reconciliation in action.

¹ An entire subsection of the report and 14 recommendations were dedicated to the topic of Indigenous procurement in Canada.

² National Aboriginal Economic Development Board (2016). Reconciliation: Growing Canada's Economy by \$27.7B, http://naedb-cndea.com/reports/naedb_report_reconciliation_27_7_billion.pdf

³ Constitution Act, 1982 Section 35.

Research and Policy Papers

The Indigenous Procurement Working Group is pleased to provide the Government of Canada with the following suite of research and public policy papers.⁴ This collection of work provides Indigenous perspectives of the actions necessary to increase Federal procurement from Indigenous businesses.

Title	Contributor
Defining Indigenous Businesses in Canada ⁵	Imagination Group
Transforming the Indigenous Procurement Process in Canada: A Literature Review, Qualitative Analysis, and Recommendations	Okwaho Equal Source
Creating the Conditions for Success: Implementing the 5% Procurement Requirement	Canadian Council for Aboriginal Business
Transforming the Indigenous Procurement Process in Canada	Canadian Council for Aboriginal Business

The Indigenous Procurement Working Group acknowledges that recommendations contained within these research and public policy papers, a summary of which is found below, represents the first steps in a journey to increase Federal procurement from Indigenous businesses.

To sustain the public policy changes necessary for increasing Indigenous procurement, the Government of Canada should take a long-term iterative and partnership approach. This will require sharing and discussing outcomes with Indigenous partners, co-developing solutions, examining early results and adjusting approaches as necessary. Thus, ongoing collaboration with the Indigenous Procurement Working Group is essential to inform additional policy and program design changes, as it will facilitate the ongoing progress necessary to achieve and exceed every Federal organization's 5% Indigenous procurement minimum target by 2024.

⁴ Additional research work on the subject of procurement from the CCAB can be found here: <https://www.ccab.com/research/publications/research-procurement/>

⁵ Additional engagement on this subject is forthcoming.

Summary of Key Policy Themes and Recommendations

The following is a summation of the key policy themes and recommendations found within the attached research and public policy papers:

1) Respect Indigenous Sovereignty and Crown Obligations

- Indigenous Governments and governing bodies are the final authority concerning the recognition of Indigenous businesses.
- No Federal procurement policy nor action can supersede Federal Modern Treaty, Land Claims, or National Settlement procurement obligations.
- Federal Indigenous procurement policies should acknowledge that all of Canada rests on traditional Indigenous territories. As a result, all major procurement projects in Canada, no matter if they are in urban, rural or remote areas, should include Indigenous participation.
- Indigenous procurement efforts should not be recognised “supply diversity” or opportunities for “minority suppliers.” Indigenous peoples are constitutionally recognised rights holders and should be recognized as such in Federal procurement policies and practices.
- Indigenous peoples have sovereignty over data assets that they generate.
- Co-developed Federal legislation should be introduced to enshrine Indigenous procurement targets, Federal data asset reporting requirements, recognize Indigenous data sovereignty, including data protection standards and use by the Government of Canada.

2) Establish a clear and universal certification process for Indigenous Businesses

- Indigenous business owners, directors of Indigenous companies, and in the case of co-operatives: voting members, need to provide evidence of Indigenous identity as provided by an Indigenous Government or recognized organization, accountable to Rights Holders.
- To diminish the practice of “Indigenous gilding”⁶ Indigenous business owners should demonstrate the following:⁷
 - Possession of the relevant expertise and credentials to own their business;
 - Capacity and experience to actively engage in operating their business.
 - Indigenous party in the business is receiving equal financial benefit from a business arrangement, contract, and revenues.
 - Majority Indigenous ownership for businesses.⁸

⁶ Indigenous gilding refers to the practice of a non-Indigenous business entity or individual taking unfair advantage of an Indigenous business entity or individual for the purpose of gaining access to otherwise inaccessible Indigenous procurement policies or contracts. Unfair advantage involves practices and arrangements that result in the disadvantage or detriment to an Indigenous business, or that do not represent a genuine demonstrated level of equitable partnership and benefit.

⁷ Engagement needs to continue on these interventions to diminish Indigenous gilding as well as the definition of what constitutes an Indigenous Joint Venture.

⁸ Majority ownership as per Indigenous business definition.

- An Indigenous owned joint venture be defined as majority Indigenous owned and provide evidence verifying that majority of the gross profit margin is being retained by the Indigenous partner.

3) Support Indigenous-led Institutional Infrastructure

- Building an Indigenous Institutional capacity is required to support Indigenous businesses, ensuring procurement readiness and scaling-up of Indigenous businesses to meet new demand pressures.
- This Indigenous institutional capacity will also be required to support Indigenous businesses that need to develop the necessary administrative, marketing, and export functions to become procurement ready.
- Take advantage of opportunities for global branding of procurement opportunities for Indigenous businesses with counterparts in other countries.
- Support Indigenous controlled processes to maintain the integrity and accuracy of certified Indigenous businesses and suppress false claims of Indigeneity and Indigenous cladding. This support will help provide assurances to Government institutions and industries that they are trusted sources of information on Indigenous businesses.
- Develop leading practices and case studies for examples of successful Indigenous procurement.
- Leading practices in Canada and internationally have shown that Indigenous-controlled business platforms are effective in increasing Government procurement from Indigenous businesses. As they develop, they have also shown to support value-added services for Indigenous businesses.
- As a specific act of economic reconciliation, these platforms should be provided with sustainable funding to accommodate the diversity of the Indigenous business landscape in Canada and facilitate the inclusion of Indigenous data assets held in sovereign Indigenous data repositories.
- Immediate and long-term investments could include, but are not limited to:
 - the development of Indigenous hubs intermediary and aligned online platforms which will allow for the development of national Indigenous business registry / database;
 - Indigenous entrepreneurship and Indigenous SME service providers and Indigenous procurement and export readiness training service providers.
- A multi-lateral approach and agreement should be facilitated to establish an Indigenous owned and operated national Indigenous centre of expertise to support Indigenous procurement.
- Governance of the Indigenous intermediary should be comprised of Indigenous peoples and organizations with expertise/professional experience in Indigenous business development and recognize the unique cultural and placed-based realities of First Nations, Métis and Inuit businesses.
- The Indigenous intermediary should conduct an examination of the current state of the Indigenous Business Directory held by Indigenous Services Canada to determine whether existing companies in the directory would satisfy the Indigenous business definition. Businesses that have been determined as not

meeting the business definition would be provided an opportunity to satisfy the business definition or be removed from the directory.

- An Indigenous-administered platform, as a component part of the Indigenous intermediary, could also act as a training platform for aspiring businesses using a graduated system approach: Sole Source Contracting, Pro-Services, Advanced, etc.

4) Create meaningful incentives for Federal Officials

- Every Federal Department, Agency, Regulator, Crown Corporation, Special Operating Agency and Board should publicly acknowledge their minimum 5% Indigenous procurement target and their commitment to reach their targets by 2024.⁹
 - Federal officials need to recognize that Indigenous procurement is a priority for their organization.
- Yearly targets should be established to ensure every Federal organization reaches their targets by 2024. The following is the proposed implementation schedule:
 - Year 1 (Fiscal 2021-2022): at least 1% of the total value of Federal contracts are held by Indigenous businesses.
 - Year 2 (Fiscal 2022-2023): at least 3% of the total value of Federal contracts are held by Indigenous businesses.
 - Year 3 (Fiscal 2023-2024): at least 5% of the total value of Federal contracts are held by Indigenous businesses.
- Mandate the inclusion of SMART (Specific, Measurable, Achievable, Relevant and Time-bound) Indigenous procurement targets in the Performance Management Plans of every Federal executive and ensure that these targets are tied to the executive Performance Awards at every level.
- Additional targets should also be introduced through an iterative process designed to support the achievement of targets, including using Performance Management Agreements to incentivize Indigenous procurement.

5) Change Federal procurement policies and practices

- Ensure that Indigenous businesses are not placed in a position of disadvantage; protect Indigenous businesses from criteria that are not requirements for non-Indigenous businesses. Federal Indigenous procurement policies and practices will be more effective if they “meet Indigenous businesses where they are.”
- It is more efficient for hundreds of Federal procurement officers to amend their way of doing business than have tens of thousands of Indigenous businesses learn, often through significant trial, error and cost how to pursue the “Government way” of doing business.
- Support development of Indigenous institutional infrastructure, Indigenous procurement experts would be able to provide support to Federal Officials to amend their procurement practices which would help all parties reach better

⁹ This is in line with the announcement on August 6, 2021, that the Government of Canada 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.”

outcomes. The procurement policy design and implementation must involve Indigenous business procurement experts at the national, regional and local levels, with an agile methodology, involving effective feedback loops.

- Public Services and Procurement Canada's (PSPC) Regional Offices should act as a single Federal point of contact for all Federal procurement inquiries and conduct proactive liaison with Indigenous intermediary.
- Education and knowledge building reflecting the concepts of First Nations, Métis and Inuit cultural practices, governance, self-determination and self-sufficiency through economic development, should be part of the core curriculum delivered to Federal procurement officials annually.
- Create adequate commercial viability in Indigenous subcontracting through a series of Mandatory Minimum Indigenous Requirements (MMIRs) and Mandatory Indigenous Set Asides (MISAs).
 - 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.
- Amend the Treasury Board Contracting Policy to create meaningful opportunities for Indigenous businesses, including a new enterprise-wide threshold for sole-source contracts of \$100,000.00 (indexed at 2021 Canadian Dollars) for Indigenous businesses.
- An Indigenous-led national Procurement Policy alignment protocol (to the PSIB), developed and managed by Indigenous peoples, must reflect Indigenous worldviews and geographies unique to the Indigenous experience in Canada.
- The Government of Canada should actively reach-out to Indigenous businesses, communities and organizations to advertise procurement opportunities.¹⁰ This outreach should clearly explain 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.
- Ensure that every regional Federal Council has an Indigenous procurement working group, composed of Senior Management and supporting procurement staff, that have been trained to work with Indigenous communities and businesses and ideally, have Indigenous procurement experience.
- PSPC should identify set-aside opportunities and large-scale contractors for Indigenous service providers with national and international scope and work with the Indigenous intermediary and National Indigenous Organizations (NIOs) to make meaningful connections to Indigenous businesses that have the capacity to deliver on the Government contract in question.
- Global Affairs Canada (GAC) should identify opportunities where Indigenous businesses can bid for procurement contracts in other countries and then work with NIOs to make meaningful connections to Indigenous businesses that have the capacity to deliver on these contracts. This includes opportunities for

¹⁰ This would be in addition to the outreach and capacity building work done by Indigenous intermediaries.

international Indigenous-to-Indigenous joint ventures and establishing mutual-recognition arrangements concerning Indigenous Government Procurement.

- GAC should identify opportunities where Indigenous businesses can bid for procurement contracts to service the Government of Canada's Missions abroad and then work with NIOs to make meaningful connections to Indigenous businesses that have the capacity to deliver on these contracts.

6) Frequently and openly report Indigenous procurement data assets

- Federal Indigenous procurement outcomes cannot be improved unless they can be quantifiably and frequently measured.
- The Federal Government should commit to publishing "Triple A" Indigenous procurement data assets¹¹ on a quarterly basis through the Mains and Supplementary Estimates.
- Publication of "Triple A" Indigenous procurement data assets can be done several ways, including the use of the Government of Canada's Open Data portal which helps ensure ease of accessibility.¹²
- Similar to the Commonwealth Government of Australia, Indigenous procurement Data reported must be detailed and standardized.
- Agencies must conduct sufficient monitoring of Federal contracts to ensure that commitments made in contracts are delivered and reported on.
 - Federal officials should use an Indigenous provider of a Vendor Performance Management (VPM) program to assess all federal contracts and ensure that Indigenous requirements are legitimately adhered to.

Each of the recommendations within these research and public policy papers, taken collectively, would effectively support every Federal organization to procure at least 5% of its goods and services from Indigenous businesses by 2024. They should be viewed as an informative roadmap that will help the Government of Canada to start their journey of increasing Federal procurement from Indigenous businesses.

¹¹ Triple A data assets refers to data that are: Authoritative, Accurate and Accessible.

¹² The Government of Canada will work with National Indigenous Organizations to development standardized reporting to inform the data managements needs of NIOs.