



Aboriginal Business Procurement Policy and Incentives Contracting Policy Notice 1996-2 (Archived)

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Contracting Policy Notice 1996-2

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Date: March 27, 1996

To: Functional Heads, Administration/Finance of all Departments and Agencies

Subject: Aboriginal Business Procurement Policy and Incentives

Summary

The government has approved a strategy to promote aboriginal business development through the federal government procurement process; and has adopted other related measures. The first phase of the program is effective on april 1, 1996. A second phase will come into effect on january 1, 1997.

Background

1. The Government has approved a program designed to increase Aboriginal business participation in supplying government procurement requirements through a program of mandatory and selective set-asides and supplier development activities leading to increased representation of Aboriginal business in contract awards by individual departments and agencies.

The North American Free Trade Agreement (NAFTA) and the World Trade Organization Agreement on Government Procurement (WTOAGP) provide for procurements to be "set aside" for minority and small businesses. This means any procurement set aside under this policy for Aboriginal businesses is excluded from the provisions of these two international trade agreements. However, these agreements do not permit subcontracts to be reserved for Aboriginal businesses.

Pursuant to Article 1802, the Agreement on Internal Trade does not apply to measures adopted or maintained with respect to Aboriginal peoples.

Comprehensive Lands Claims Agreements take precedence over the trade agreements and the Aboriginal business setaside program.

2. The Government has agreed that all departments and agencies shall initiate or participate in supplier development activities aimed specifically at Aboriginal businesses.

3. In many instances, Aboriginal businesses now exist and are capable of responding to the needs of departments and agencies for prime contractors. Over the next few years, the number of these qualified Aboriginal firms will increase as a result of other initiatives under this new policy. It is essential that contract administrators become and stay familiar with the supply and qualifications of Aboriginal businesses, especially in regional situations. Federal departments are expected to lead by example and practice in contracting with qualified Aboriginal businesses.

New Policy

4. Consistent with the Government's policy that its procurement activities be conducted in a manner that will provide maximum value to all Canadians, an Aboriginal Procurement initiative has been approved to promote Aboriginal business participation in government procurement. This initiative consists of the following elements:

- greater emphasis on Aboriginal economic development when planning procurements;
- mandatory setasides in procurements above a threshold which are destined for Aboriginal populations;
- selective setasides for specific procurements;
- provision for subcontracting with Aboriginal firms when the primary requirement is outside of NAFTA and WTOAGP;
- related changes to the Contracting and Procurement Review policies to support these initiatives; and
- under phase two of this initiative, each department and agency with an annual contracting budget in excess of \$1.0 million shall develop multiyear performance objectives for contracting with Aboriginal businesses. Details of how this goal will be pursued will be announced in the near future.

5. The new policy is broad in scope. The first phase, which becomes effective on April 1, 1996, requires all Contracting Authorities, where a procurement is valued in excess of \$5,000, and for which Aboriginal populations are the primary recipients, to restrict this procurement to qualified Aboriginal suppliers where operational requirements, best value, prudence and probity, and sound contracting management can be assured. Contracts valued at less than \$5,000 may also be set aside for qualified Aboriginal suppliers if it is practical to do so.

6. The performance objectives phase of this policy will take effect on January 1, 1997.

7. The Department of Indian Affairs and Northern Development is developing information to assist in the identification of Aboriginal populations. Departments and agencies will be supplied with this additional guidance soon.

8. All departments and agencies are authorized and encouraged to voluntarily set aside other procurements under the setaside program for Aboriginal business where practical and costeffective. There is no upper limit for these types of procurements, however, procurements over \$2.0 million in value will continue to be subject to the procurement review process.

9. In addition, in other procurements, participation of Aboriginal business as subcontractors to the prime contractors should be encouraged. However, where a procurement is subject to one of the international trade

agreements, any consideration of, or requirement to use Aboriginal subcontractors would be inconsistent with those agreements.

Exceptions

10. Procurements subject to any of the current and future Comprehensive Land Claims, as well as procurements within National Park comanagement agreements take precedence over this policy.

Where the restriction to use Aboriginal business would cause severe economic dislocation, departments and agencies may request authority of the Treasury Board to exclude specific contracts or classes of contracts from the mandatory requirements of this policy.

Establishment Of Selection Criteria

11. This new policy to encourage Aboriginal business to increase its participation in supplying government needs is consistent with the current Treasury Board contracting policy, requiring among other objectives the goal of best value in relation to other national objectives. The principles to be considered in best value situations are discussed in Section 9 of the Treasury Board Manual Contracting.

12. Prior to the selection process in any procurement, the establishment of selection criteria is important, especially where the final selection will be made on the basis of that broader concept of best value rather than lowest price.

13. Contracting authorities are encouraged, where applicable, to use criteria in bid evaluation which will recognize the existence and capabilities of Aboriginal business. The Department of Indian Affairs and Northern Development, with the assistance of the contracting community of government, will develop practical suggestions as to how criteria encouraging more Aboriginal procurement could be used effectively.

Certification Process

14. A formal certification will be required as part of the bid documentation to qualify business enterprises under the setaside program for Aboriginal business. Bidders will be required to certify on each bid that they meet the eligibility criteria, will honour the Aboriginal content requirements, and are prepared to comply with eligibility auditing provisions. Prime contractors will have to secure certification from subcontractors where applicable.

15. The Appendix to this Contracting Policy Notice contains definitions pertinent to the requirement stipulated in Section 14, above. It should be noted that eligibility certification will be subject to audit by Consulting and Audit Canada through an arrangement with the Department of Indian Affairs and Northern Development.

Future Initiatives

Procurement Review Policy

16. The procurement review policy will be examined to determine what amendments may be necessary to recognize support of aboriginal business as a national objective integral to the promotion of industrial

and regional development, and to facilitate the use of selection criteria that recognize this objective.

Performance Objectives

17. The Minister of Indian Affairs and Northern Development, in consultation with the Minister of Public Works and Government Services and the President of the Treasury Board, will develop appropriate guidelines for establishing performance objectives. The Treasury Board Advisory Committee on Contracts (TBACC) will be invited to assist in this task through appropriate consultations.

Bid Dispute Mechanism

18. Discussions are now underway to develop an appropriate bid dispute mechanism which will allow bidders to challenge the bidding and contract award process under this new policy. In the interim, departments and agencies should be prepared to respond to bid challenges as appropriate.

Security Requirements in Contracts with Aboriginal Businesses

19. The requirement to provide, as well as the amount of, security in contracts to protect the interests of the Crown always remains with each Contracting Authority. This protection may take the form of holdbacks or the provision of some type of security instrument (e.g. a bill of exchange, a government guaranteed bond, a letter of credit or a surety bond). The security requirement, if any, of each contract situation should be assessed separately rather than some overall standard security requirement being applied in every case. Because Aboriginal businesses may encounter difficulty in obtaining certain kinds of security, the Contracting Authority should be sensitive to this problem and not require unreasonable contract security. In certain cases, perhaps an advance form of security may not be needed; holdbacks in contract payment may suffice. An example of a practical relaxation for security in construction contracts is the change in the guidelines for bid security. It is suggested that the threshold for bid security not apply unless the anticipated cost of the contract exceeds \$100,000. As indicated above, each contracting authority must decide on an appropriate amount based on the circumstances of the individual procurement.

Monitoring And Reporting

20. Departments must retain for review and audit details of procurements in order to monitor the success of this policy and to prepare appropriate reports to the Treasury Board.

Contracting Manual

21. These policy changes will be integrated into the appropriate sections of the Treasury Board Manual Contracting at the earliest opportunity. In the meantime, departments and agencies are encouraged to reproduce the necessary number of copies of this notice to ensure proper implementation of the policy modifications and the establishment of the necessary controls for monitoring and evaluation.

Inquiries

22. For information concerning the Aboriginal business procurement policy in general, please contact the Access to Federal Procurement Directorate, Indian Affairs and Northern Development, telephone (819) 9978383 or 9978746, or facsimile (819) 9940445.

23. For further information or assistance related to the contracting aspect, please contact the Contracting Management Group, Financial and Information Management Branch, Treasury Board Secretariat, telephone (613) 995-6084, or facsimile (613) 995-3050.

Le secrétaire adjoint et contrôleur général adjoint,
Secteur de la gestion des finances et des marchés,

R. J. Neville
Assistant Secretary and Assistant Comptroller General
Financial and Contract Management Sector

Distribution/Diffusion: TB06, TB07, T004, T005, T006, T009, T010 T022, T023, T024, T035, T036, T040, T041, T161

Definitions

Aboriginal Business

An Aboriginal business is an enterprise that is:

- a. a sole proprietorship, limited company, cooperative, partnership, or notforprofit organization
 - o in which Aboriginal persons have majority ownership and control meaning at least 51 percent, and
 - o in which, in the case of a business enterprise with six or more fulltime employees, at least 33 percent of the fulltime employees are Aboriginal persons,

or

- b. a joint venture or consortium in which an Aboriginal business or Aboriginal businesses as defined in (a) have at least 51 percent ownership and control, and
- c. which certifies in bid documentation that it meets the above eligibility criteria, agrees to comply with required Aboriginal content in the performance of the contract, and agrees to furnish required proof and comply with eligibility auditing provisions.

Required Aboriginal Content

Required Aboriginal Content means at least 33 percent of the total value of the work to be performed under a contract is performed by an Aboriginal business contractor or by a combination of that contractor and other Aboriginal businesses.

Aboriginal Person

Aboriginal Person means, for the purpose of this policy, an Indian, Métis or Inuit person who is a Canadian citizen and resident in Canada

Aboriginal Population

Aboriginal Population means


- a. an area, or community in which Aboriginal people make up at least 80 percent of the population;
- b. a group of people for whom the procurement is aimed in which Aboriginal people make up at least 80 percent of the group.

Full time Employee

- Full time employee means an employee who:
- is on the permanent payroll; and
- receives such benefits of fulltime employees as pension plan participation, vacation pay, and the like; and
- consistently works at least 30 hours a week.

Procurement

Procurement means the acquisition of goods and services including construction through contracting arrangements and means the contract categories reported in the annual Treasury Board Contracting Activity Report.

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