



# **Aboriginal Business Procurement Policy Performance Objectives - Contracting Policy Notice 1996-6 (Archived)**

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**FILE NO:** 3880-000-005

**DATE:** September 19, 1996

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

**SUBJECT: ABORIGINAL BUSINESS PROCUREMENT POLICY  
PERFORMANCE OBJECTIVES**

## **SUMMARY**

**ALL DEPARTMENTS AND AGENCIES WITH A CONTRACTING BUDGET IN EXCESS OF \$1 MILLION MUST DEVELOP MULTI-YEAR PERFORMANCE OBJECTIVES RELATING TO PROCUREMENTS FROM ABORIGINAL BUSINESSES AND DEVELOP RELATED REPORTING MECHANISMS.**

## **BACKGROUND**

1. Contracting Policy Notice 1996-2, dated March 27, 1996, outlined some of the details of the government's strategy to promote Aboriginal business development through the federal government procurement process. This policy applies to all departments and agencies subject to the Government Contracts Regulations.
2. Since the beginning of the current fiscal year, officials from the Access to Federal Procurement Directorate, Department of Indian Affairs and Northern

Development (DIAND) and the Treasury Board Secretariat have conducted a number of information seminars for regional contracting officials from departments and agencies, as well as seminars for Aboriginal businesses, so that both communities would be aware of the new policy. These information seminars will continue, including some in the National Capital Region this fall.

3. The government approved this strategy to increase Aboriginal business participation in the government's procurement process through a program of mandatory and selective set-asides, sub-contracting opportunities and supplier development activities leading to increased representation of Aboriginal business in contract awards and sub-contracts. As part of this program, each department and agency with annual procurements totalling more than \$1 million is required to develop multi-year performance objectives, on a calendar year basis, and report against these objectives.

## DEVELOPMENT OF OBJECTIVES

4. The Treasury Board Advisory Committee on Contracts has established a special working group on Procurement Strategy for Aboriginal Business (PSAB). This working group is working closely with officials in the Access to Federal Procurement Directorate of Indian Affairs and Northern Development Canada as well as the Treasury Board Secretariat to develop guidelines and to provide advice for the implementation of this initiative.
5. Departments have been informed that, if their organization contracts in excess of \$1 million annually, multi-year performance objectives are required of them on a calendar year basis, in the following areas:
  1. estimated number of contract awards to Aboriginal business;
  2. estimated dollar value of contract awards to Aboriginal business;
  3. estimated representation of Aboriginal business in supplier development activities; and
  4. estimated representation of Aboriginal business in supplier inventories.
6. Objectives must be set on a calendar year basis, for a rolling three year period, commencing January 1, 1997. Initial proposals will be reviewed by DIAND and

confirmed in an exchange of letters between DIAND and the department or agency. Agreements will be adjusted or extended annually within 30 days of the anniversary date of the agreement.

7. The following are suggestions as to how a department or agency might approach setting its objectives. Departments and agencies are encouraged to build on these initiatives, as appropriate for their situation.

**(a) Estimated Number of Contracts Awarded**

Departments and agencies must develop a performance objective specifying the number of contracts and sub-contracts to be awarded to Aboriginal firms and outlining the means to be used to increase the number of contracts.

**(b) Estimated Dollar Value of Contracts Awarded**

A combination of approaches may be used to develop this objective. First, a total value of contracts and sub-contracts to be awarded to Aboriginal businesses should be specified. In addition, specific contracts, or sectors and regions in which increased contract values will be sought, may be specified.

**(c) Estimated Supplier Development Activities**

In the context of ongoing supplier development activities in departments and agencies, describe what means the department or agency intends to take to increase representation of Aboriginal businesses, with specific references to regional activities where they exist.

**(d) Estimated Supplier Inventories**

It is acknowledged that the creation and maintenance of inventories of Aboriginal suppliers is a responsibility shared by DIAND with each department and agency. Each department and agency must describe what means it will take to increase its inventory, again with specific reference to regional activities.

8. Attached, as Appendix A, is an example of what could be included in a department performance objective agreement. Departments and agencies are required to propose, in this or a similar format, their performance objectives. These proposals should be sent to Access to Federal Procurement, DIAND by

October 4, 1996 and will be confirmed in an exchange of letters at the Deputy Minister level, by December 31, 1996.

## REPORTING AGAINST PERFORMANCE OBJECTIVES

9. Performance against the quantitative performance objectives, that is, the number and value of contracts awarded to Aboriginal businesses, must be reported quarterly and annually, at the same time as reports required in Treasury Board Contracting Policy Notice 1996-1, dated March 7, 1996, to the Reporting Services Section, Supply Management Directorate, Department of Public Works and Government Services (PWGSC). Further details on reporting will be outlined in a future Contracting Policy Notice.
10. Performance against the non-quantitative performance objectives must be reported annually to Access to Federal Procurement, DIAND in narrative format, within 60 days of the end of the calendar year in a format to be outlined in a future Contracting Policy Notice.

## ELIGIBILITY FOR SET-ASIDES

11. As indicated in paragraph 14 of Contracting Policy Notice 1996-2, firms or individuals who bid for contracts that are within the scope of the set-aside program, as well as in those cases where a non-competitive contract is justified, must submit to the respective contracting authority a certification form covering their eligibility to be considered as an Aboriginal business. Information on eligibility for this program, including the certification form required for each set-aside procurement is attached as Appendix B.

## FURTHER INFORMATION

12. Further information concerning procedures and audit provisions for this program is nearing completion and will soon be provided in another Contracting Policy Notice.

13. In the interim, to ensure that a set-aside procurement is included for the audit process, DIAND should be notified when a procurement is to be set-aside. Notification that a procurement is to be, or has been, set-aside should include the commodity or service, dollar value of the procurement, solicitation number, closing date and telephone number of the contracting officer. It should be sent to Nancy Kenyon, Director, Access to Federal Procurement, Indian and Northern Affairs Canada. The facsimile number is (819) 994-0445 and the telephone number is (819) 997-8383.

## CONTRACTING MANUAL

14. 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

15. For information concerning performance objectives or the Aboriginal business procurement policy in general, please contact the Access to Federal Procurement Directorate, Indian and Northern Affairs Canada, telephone (819) 997-8383 or 997-8746, or facsimile (819) 994-0445.
16. For further information or assistance related to the contracting aspect of this policy, please contact the Contracting Management Group, Treasury Board Secretariat, telephone (613) 957-3789, or facsimile (613) 952-1381.

R.J. Neville

Assistant Secretary and Assistant Comptroller General

Financial and Contract Management Sector

Attachments

# APPENDIX A

## SAMPLE PERFORMANCE OBJECTIVE PROPOSAL

### A. Supplier Development Activities

#### 1997

To the limited extent that the Department carries out supplier development activities, it will recognize, and include, Aboriginal suppliers in these activities. When Aboriginal suppliers present themselves, they will be informed of the procurement strategy for Aboriginal business (PSAB) and its potential impact. Departmental procurement staff will be advised of the existence of the PSAB and Departmental performance objectives and will be sensitized to the requirement to develop aboriginal supplier capacity to do business with the Department.

#### 1998

The Department will continue activities described above for 1997. Special efforts will be made to develop an aboriginal supplier base in the Western Region, by advertising in newspapers and letters to Aboriginal organizations. In addition, it will develop, in the context of its normal supplier development activities, modules and material to be directed at potential aboriginal ♦suppliers.

#### 1999

The Department will continue activities described above for 1997 and 1998. In addition, it will present, in the context of its normal supplier development activities, modules or material to potential aboriginal suppliers. As well, it will investigate Aboriginal supplier capacity in the informatics services area of the National Capital Region.

### B. Supplier Inventories



## **1997**

Departmental procurement staff will be advised of the performance objective of increasing the number of Aboriginal firms on its supplier inventories. The Department will investigate electronic linkages to the DIAND database for its procurement personnel. The Department will amend its supplier registration process to enable Aboriginal suppliers to identify themselves.

## **1998**

The Department, in close cooperation with DIAND, will develop lists of Aboriginal suppliers, or implement direct electronic linkages with a recognized database of Aboriginal suppliers, and allow all Departmental procurement personnel to access this inventory. A special inventory of Aboriginal construction firms will be developed in our Western Region.

## **1999**

The Department will review the inventory of Aboriginal suppliers it is using and confirm that this inventory is current. This year, special emphasis will be given to developing an inventory of Aboriginal printing firms.

## **C. Number of Contracts**

### **1997**

The Department will communicate the requirements of the PSAB to all its procurement personnel. The Department will set a performance objective of entering into xx◆ contracts with Aboriginal suppliers.

### **1998**

The Department will review contracts awarded to Aboriginal suppliers on a commodity by commodity basis. Special efforts will be made, where Aboriginal supplier capacity exists, to increase Aboriginal supplier representation in those commodity areas where there is currently little or no representation. The Department will set a performance objective of entering into xx◆ contracts with Aboriginal suppliers.

## **1999**

The Department will review its contracting data to determine if Aboriginal business is adequately represented in contracts at all dollar levels, for both competitive and non-competitive contracts and standing offers. If necessary, it will make special efforts to increase representation of Aboriginal suppliers in areas where they are judged to be represented inadequately. The Department will set a performance objective of entering into xxx contracts with Aboriginal suppliers.

### **D. Dollar Value of Contracts Awarded**

## **1997**

The Department will endeavour to award contracts valued at \$xx to Aboriginal business.

## **1998**

The Department will endeavour to award contracts valued at \$xxx to Aboriginal business. Included in this amount will be contracts, valued at \$xx, to be awarded to Aboriginal contractors in the construction sector in our Western Region.

## **1999**

The Department will endeavour to award contracts valued at \$xxx to Aboriginal business. Included in this amount will be contracts, valued at \$xx, to be awarded to Aboriginal printing suppliers in our National Capital Region.

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# **APPENDIX B**

## **GOVERNMENT SUPPORT FOR ABORIGINAL ECONOMIC DEVELOPMENT THROUGH FEDERAL PROCUREMENT**

### **REQUIREMENTS FOR THE SET-ASIDE PROGRAM FOR ABORIGINAL BUSINESS**

#### **Who is eligible?**

**An Aboriginal business**, which can be:

- a band as defined by the *Indian Act*
- a sole proprietorship
- a limited company
- a co-operative
- a partnership
- a not-for-profit organization

in which Aboriginal persons have at least 51 percent ownership and control,

OR

**A joint venture** consisting of two or more Aboriginal businesses or an Aboriginal business and a non-Aboriginal business(es), provided that the Aboriginal business(es) has at least 51 percent ownership and control of the joint venture.

When an Aboriginal business has six or more full-time employees at the date of submitting the bid, at least thirty-three percent of them must be Aboriginal persons, and this ratio must be maintained throughout the duration of the contract.

The bidder must certify in its submitted bid that it is an Aboriginal business or a joint venture constituted as described above.

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**Are there any other requirements attached to bidders in the Set-Aside Program for Aboriginal Business?** - Yes, three:

- In respect of a contract, (goods, service or construction), on which a bidder is making a proposal which involves subcontracting, the bidder must certify in its bid that at least thirty-three percent of the value of the work performed under the contract will be performed by an Aboriginal business. *Value of the work performed* is considered to be the total value of the contract less any materials directly purchased by the contractor for the performance of the contract. Therefore, the bidder must notify and, where applicable, bind the subcontractor

in writing with respect to the requirements that the Aboriginal Set-Aside Program (the Program) may impose on the subcontractor or subcontractors.

- The bidder's contract with a subcontractor must also, where applicable, include a provision in which the subcontractor agrees to provide the bidder with information, substantiating its compliance with the Program, and authorize the bidder to have an audit performed by Canada to examine the subcontractor's records to verify the information provided. Failure by the bidder to exact or enforce such a provision will be deemed to be a breach of contract and subject to the civil consequences referred to in this document.
- As part of its bid, the bidder must complete the *Certification of Requirements for the Set-Aside Program for Aboriginal Business* (certification) stating that it:
  1. meets the requirements for the Program and will continue to do so throughout the duration of the contract;
  2. will, upon request, provide evidence that it meets the eligibility criteria;
  3. is willing to be audited regarding the certification; and
  4. acknowledges that if it is found NOT to meet the eligibility criteria, the bidder shall be subject to one or more of the civil consequences set out in the certification and the contract.

### **How must the business prove that it meets the requirements?**

It is not necessary to provide evidence of eligibility at the time the bid is submitted. However, the business should have evidence of eligibility ready in case it is audited.

The civil consequences of making an untrue statement in the bid documents, or of not complying with the requirements of the Program or failing to produce satisfactory evidence to Canada regarding the requirements of the Program, may include: forfeiture of the bid deposit; retention of the holdback; disqualification of the business from participating in future contracts under the program; and/or termination of the contract. In the event that the contract is terminated because of an untrue statement or non-compliance with the requirements of the Program, Canada may engage another contractor to complete the performance of the

contract and any additional costs incurred by Canada shall, upon the request of Canada, be borne by the business.

## **What evidence may be required from the business?**

### **Ownership and control**

Evidence of ownership and control of an Aboriginal business or joint venture may include incorporation documents, shareholders' or members' register; partnership agreements; joint venture agreements; business name registration; banking arrangements; governance documents; minutes of meetings of Board of Directors and Management Committees; or other legal documents.

Ownership of an Aboriginal business refers to "beneficial ownership" i.e. who is the real owner of the business. Canada may consider a variety of factors to satisfy whether Aboriginal persons have true and effective control of an Aboriginal business. (See Appendix A for a list of the factors which may be considered by Canada.)

### **Employment and employees**

Where an Aboriginal business has six or more full-time employees at the date of submitting the certification and is required by Canada to substantiate that at least thirty-three percent of the full-time employees are Aboriginal, the business must, upon request by Canada, immediately provide a completed *Owner/Employee Certification* form for each full-time employee who is Aboriginal.

**Evidence as to whether an employee is or is not full-time and evidence as to the number of full-time employees** may include payroll records, written offers for employment, and remittance and payroll information maintained for Revenue Canada purposes as well as information related to pension and other benefit plans.

**A full-time employee**, for the purpose of this program, is one who is on the payroll, is entitled to all benefits that other full-time employees of the business receive, such as pension plan, vacation pay and sick leave allowance, and works at least 30 hours a week. It is the number of full-time employees on the payroll of the business at the

date of bid submission that determines the ratio of Aboriginal to total employees of the business for the purpose of establishing eligibility under the Program.

Owners who are Aboriginal and full-time employees who are Aboriginal must be ready to provide evidence in support of such status. The *Owner/Employee Certification* to be completed by each owner and full-time employee who is Aboriginal shall state that the person meets the eligibility criteria and that the information supplied is true and complete. This certification shall provide the person's consent to the verification of the information submitted.

## Subcontracts

**Evidence of the proportion of work done by subcontractors** may include contracts between the contractor and subcontractors, invoices, and paid cheques.

**Evidence that a subcontractor is an Aboriginal business** (where this is required to meet the minimum Aboriginal content of the contract) is the same as evidence that a prime contractor is an Aboriginal business.

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## WHO IS AN ABORIGINAL PERSON FOR PURPOSES OF THE SET-ASIDE PROGRAM FOR ABORIGINAL BUSINESS?

*An Aboriginal person is an Indian, Metis or Inuit who is ordinarily resident in Canada.*

**Evidence of being an Aboriginal person** will consist of such proof as:

- Indian registration in Canada
- membership in an affiliate of the Metis National Council or the Congress of Aboriginal Peoples, or other recognized Aboriginal organizations in Canada
- acceptance as an Aboriginal person by an established Aboriginal community in Canada
- enrolment or entitlement to be enrolled pursuant to a comprehensive land claim agreement, or membership or entitlement to membership in a group with an accepted comprehensive claim

**Evidence of being resident in Canada** includes a provincial or territorial driver's licence, a lease or other appropriate document.

For further information on the Set-Aside Program for Aboriginal Business, contact the Access to Federal Procurement Directorate in the Department of Indian Affairs and Northern Development at (819) 997-8383 or (819) 997-8746 or fax (819) 994-0445.

## GOVERNMENT SUPPORT FOR ABORIGINAL ECONOMIC DEVELOPMENT THROUGH FEDERAL PROCUREMENT

### CERTIFICATION REQUIREMENTS FOR THE SET-ASIDE PROGRAM FOR ABORIGINAL BUSINESS

A bidder who submits, under this program, a bid or proposal in response to a solicitation must complete and submit this certification. Failure to submit this certification will result in the proposal's being found non-compliant.

I, \_\_\_\_\_ (*Name of duly authorized representative of business*) hereby certify that

\_\_\_\_\_ (*Name of business*) meets, and shall continue

1. (i) to meet throughout the duration of the contract, the requirements for this program as set out in the attached document entitled "Requirements for the Set-Aside Program for Aboriginal Business", which document I have read and understand.

The aforementioned business agrees to ensure that any subcontractor it engages with respect to the contract shall, if required, satisfy the requirements set out in "Requirements for the Set-Aside Program for Aboriginal Business."

◆◆◆◆(ii)

The aforementioned business agrees to provide to Canada, immediately

◆◆◆◆(iii)

upon request, information to substantiate a subcontractor's compliance with this program.

### PLEASE CHECK THE APPLICABLE BOXES IN 2 AND 3 BELOW

2. (i) The aforementioned business is an Aboriginal business which is a

sole proprietorship, band, limited company, co-operative, partnership or not-for-profit organization, [ ]

OR

(ii) The aforementioned business is a joint venture between two or more Aboriginal businesses or an Aboriginal business and a non-Aboriginal business. [ ]

3. The Aboriginal business or businesses have:

(i) fewer than six full-time employees [ ]

OR

(ii) six or more full-time employees [ ]

The aforementioned business agrees to immediately furnish to Canada, such evidence as may be requested by Canada from time to time, corroborating this certification. Such evidence shall be open to audit during normal business hours by a representative of Canada, who may make copies and take extracts from the evidence. The aforementioned business agrees to provide all facilities for audits and to furnish information requested by Canada with respect to the certification. It is understood that the civil consequences of making an untrue statement in the bid documents, or of not complying with the requirements of the Program or failing to produce satisfactory evidence to Canada regarding the requirements of the Program, may include: forfeiture of the bid deposit; retention of the holdback; disqualification of the business from participating in future contracts under the Program; and/or termination of the contract. In the event that the contract is terminated because of an untrue statement or non-compliance with the requirements of the Program, Canada may engage another contractor to complete the performance of the contract and any additional costs incurred by Canada shall, upon the request of Canada, be borne by the aforementioned business.

[ ]

6. Date Signature

Place Title (Duly authorized representative of business)

For:



# Appendix A

## The Set-Aside Program for Aboriginal Business

Factors that may be considered in determining whether Aboriginal persons have at least 51% ownership and control of an Aboriginal business include:

- Capital Stock and Equity Accounts, i.e., preferred stock, convertible securities, classes of common stock, warrants, options
- Dividend policy and payments
- Existence of Stock Options to employees
- Different treatment of Equity transactions for Corporations, Partnerships, Joint Ventures, Community organizations, Cooperatives, etc.
- Examination of Charter Documents, i.e., corporate charter, partnership agreement, financial structure
- Concentration of ownership or managerial control in partners, stockholders, officers trustees and directors based definition of duties
- Principal occupations and employer of the officers and directors to determine who they represent, i.e. banker, vested ownerships
- Minutes of directors meetings and stockholders meetings for significant decisions that affect operations and direction
- Executive and employee compensation records for indication of level of efforts associated with position
- Nature of the business in comparison with the type of contract being negotiated
- Cash management practices, i.e., payment of dividends - preferred dividends in arrears
- Tax returns to identify ownership and business history
- Goodwill contribution/contributed asset valuation to examine and ascertain the Fair Market value of non cash capital contributions
- Contracts with owners, officers and employees to be fair and reasonable

- Stockholder authority, i.e. appointments of officers, directors, auditors
- Trust agreements made between parties to influence ownership and control decisions
- Partnership - allocation and distribution of net income, i.e., provision for salaries, interest on capital and distribution share ratios
- Litigation proceedings over ownership
- Transfer pricing from non-Aboriginal joint venturer
- Payment of management or administrative fees
- Guarantees made by the Aboriginal business
- Collateral agreements

## Government support for aboriginal economic development through federal procurement


### OWNER/EMPLOYEE CERTIFICATION FORM

#### SET-ASIDE PROGRAM FOR ABORIGINAL BUSINESS

1. I, \_\_\_\_\_, am an  
Name

owner and/or full-time employee of \_\_\_\_\_,  
Name of business

and an Aboriginal person, as described in the document "Requirements for the Set-Aside Program for Aboriginal Business".

2. I certify that the above statement is true and consent to its verification upon the request of  Canada.



Date



Signature of owner and/or employee

Place

Date modified: