



Indian and Northern  
Affairs Canada

Affaires indiennes  
et du Nord Canada

# The Procurement Strategy for Aboriginal Business

---

Presented by:

Dolores Coelho  
Program Officer  
INAC

Building on Success,  
Assembly of First Nations Yukon  
Region  
September 14, 2010  
Whitehorse, Yukon

The wordmark for Canada, with a small Canadian flag icon above the letter 'a'.

Canada



# Background

- In response to under-representation of Aboriginal businesses winning federal contracts, the PSAB was created in 1996 with the intent to “increase the number of Aboriginal suppliers bidding for, and winning, federal government contracts.”
- All federal departments, corporations and parent Crown Corporations as listed in the Federal Administration Act are encouraged by the Treasury Board Contracting Policies to promote and enhance contracting opportunities for Aboriginal businesses.



# Why PSAB?

---

- The aim of PSAB is to stimulate Aboriginal economic development using government procurement.
- Treasury Board reminds us not to just seek 'best value' in satisfying operational objectives while ensuring value to the Crown; but to seek 'best overall value' in also satisfying national objectives, such as Aboriginal economic development, while ensuring value to the Crown and all Canadians.



# Why PSAB? ...

---

- The Aboriginal community has great potential to benefit from economic development.
- Since PSAB began in 1996, federal contracting with Aboriginal firms increased nearly ten-fold.
- Aboriginals comprise 4% of the population, but still account for about 2% of federal contracts.
- PSAB aims to increase capacity of Aboriginal business to succeed in an open market.



# What does PSAB do?

---

- The two principal tools PSAB uses are:
  - Set-asides of government procurement for Aboriginal business, and
  - Aboriginal supplier development activities.
- PSAB Set-asides are mandatory if the recipients of the procurement are primarily an Aboriginal population (i.e. 80%) or for Aboriginal People.
- Set-asides are voluntary otherwise, but highly encouraged whereas Aboriginal business capacity exists.



# When should we consider PSAB?

---

- For every procurement!
- For procurements where:
  - operational requirements,
  - best value,
  - prudence probity, and sound contracting management can be assured.
- If the departmental performance objectives have not yet been met (and even if they have).
- In priority areas such as the North, prairies and several Canadian urban centres.



# Ensuring Aboriginal Capacity

---

- How can we determine if Aboriginal capacity exists?
  - Contact INAC by email to [saea-psab@ainc-inac.gc.ca](mailto:saea-psab@ainc-inac.gc.ca) or by phone at 1-800-400-7677 (INAC is working to make its Aboriginal business directory available online),
  - Check Industry Canada's Aboriginal Business Directory: <http://www.ic.gc.ca/app/ccc/sld/cmpny.do?tag=248&profileId=381&lang=eng>,
  - Request for Information (RFI) or Solicitation of Interest (SOI).



# Ensuring Best Value

---

- How can we ensure best value when setting aside a procurement for Aboriginal businesses?
  - The goal should be ‘reasonable price’ not ‘lowest price’,
  - If the set-aside competition results in multiple bids, typically a market rate prevails



# Ensuring sound contracting practices

---

- How can we ensure sound contracting practices when setting aside a procurement?
  - Follow the typical solicitation rules, although restrict bidders to qualified Aboriginal businesses,
  - Use competitive solicitation whenever practical,
  - Use electronic tendering whenever practical,
  - Ensure source lists are up-to-date,
  - Ensure value for money, particularly for non-competitive procurements,
  - Etc...



# How to implement set-asides

---

- PSAB Set-asides can be implemented for
  - Open competition (RFP, RFQ, RFSO, RFSA...),
  - Selective competition (source lists),
  - "Advance Contract Award Notice" (ACANs),
  - Sole source,
  - Standing offers and supply arrangements,
  - Temporary help,
  - Acquisition card (Master Card),
  - Local Purchase Order,
  - Etc...



# Who is Eligible for PSAB?

---

- An Aboriginal business may be:
  - a sole proprietorship, limited company, cooperative, partnership, or not-for-profit organization in which
  - Aboriginal persons have majority ownership and control meaning at least 51 percent, and
  - In the case of a business enterprise with six or more fulltime employees, at least 33 percent of the full-time employees are Aboriginal persons, -OR-
- A joint venture or consortium in which an Aboriginal business or Aboriginal businesses as defined above have at least 51 percent ownership and control.



# Aboriginal Content Requirement

---

- At least 33% of the value of the work must be performed by an Aboriginal business.
- ‘Value of the work’ is the total value of the contract less any materials directly purchased by the contractor for the contract.
- Subcontracting is permitted, so long as the Aboriginal content requirement is still met.
- The contractor must notify/bind subcontractors in writing to respect this requirement.
- The bidder must certify in its bid that it will comply with this requirement.



# Employees vs. Subcontractors

---

- An full time employee is:
  - on the permanent payroll,
  - receives benefits of fulltime employees, such as pension plan participation, vacation pay, and the like, and
  - consistently works at least 30 hours a week (a part-time employee also complies with the above, but works less).
- A subcontractor is:
  - not on the firm's payroll,
  - does not receive benefits such as pension plan participation, vacation pay, and the like, and
  - is usually only engaged to complete a specific mandate.



# Eligibility Scenarios

---

- Scenario 1 – An Aboriginal firm acts as a ‘opportunity seeker’ and finds resources to meet individual government requirements.
- Conclusion – if the resources are not hired as employees, the arrangement would be one of subcontracting. Therefore, either 33% of the work must be done by the prime contractor, or the subcontractor must be an Aboriginal business, or re-subcontract a portion to a qualified Aboriginal business to comply with the requirement.



# Eligibility Scenarios

---

- Scenario 2 – An Aboriginal firm has 4 full-time employees and 30 seasonal part-time employees, only 10% of which are Aboriginal.
- Conclusion – if the firm meets the Aboriginal ownership and control requirement, it is eligible.



# Eligibility Scenarios ...

---

- Scenario 3 – An Aboriginal firm has a work force of 10 full-time employees, half Aboriginal and non-Aboriginal but elects to have the work done by the non-Aboriginal employees.
- Conclusion –if the firm satisfies the control and ownership requirement, this is permissible, and it is eligible.



# Eligibility Scenarios ...

---

- Scenario 4 – An Aboriginal firm has a work force of 6 full-time employees, two of which are Aboriginal, but after contract award hires another non-Aboriginal employee.
- Conclusion – if the person hired is full-time, the firm is no longer eligible under the PSAB as the 33% Aboriginal Employee component is lower and is in a position in which the Crown can decide to suspend the contract for ineligibility.



# Eligibility Scenarios ...

---

- Scenario 5 – An Aboriginal firm and non-Aboriginal firm form a joint venture, but all of the work is done by the non-Aboriginal partner.
- Conclusion – the joint venture is ineligible as a third of the work is not being performed by a qualified Aboriginal business. Even if the Aboriginal firm charged a 33% mark-up or administration fee, the venture would still be non-eligible, and would also likely not reflect sufficient value-for-money.



# Aboriginal Persons/Population

---

- For the purpose of the PSAB, an Aboriginal person may be Indian, Métis or Inuit; and a Canadian citizen resident in Canada.
- An Aboriginal Population means an area, community or group in which Aboriginal people make up at least 80 percent of the population;
- Sizable aboriginal populations may be found in urban centres, not just in rural areas, or on or near reserves.



# Trade Agreements

---

- Don't set-asides contravene trade agreements?
  - No.
- North American Free Trade Agreement (NAFTA) and World Trade Organization-Agreement on Government Procurement (WTO-AGP) allow procurements to be "set aside" for minority and small businesses. This means that any procurement set aside under PSAB for Aboriginal businesses is excluded from the provisions of these agreements.
- Agreement on Internal Trade (AIT) does not apply to measures adopted or maintained with respect to Aboriginal peoples.



# Reporting

---

- Departments are required to report quarterly on the number and value of contracts with Aboriginal business.
- They are required to inform INAC before and after each set-aside, and while this is required for set-asides over \$2 million, timely quarterly reporting is generally sufficient for lower value set-asides.
- Contracts with Aboriginal businesses may be through mandatory or voluntary set-asides, or may be “incidental”. All should be reported, although departmental success hinges on the certification of PSAB eligibility being completed.



# Audit

---

- All set-asides over \$2 million are subject to pre-award audit by Audit Services Canada (through an MOU with INAC).
- Set-asides under \$2 million are randomly sampled for post-award audit.
- Departments may request pre- and post-award audits.
- If supplier fails a pre-award audit, their bid is considered non-compliant.
- If supplier fails a post-award audit, disciplinary measures should be considered.



# What are some of our Challenges?

---

- Aboriginal Government Set-Asides
- Pre-qualification process
- Reporting
- Outreach
  - Procurement training
  - Procurement promotion



# Goals for a Modernized PSAB

- Increased Aboriginal Benefits Requirements and Aboriginal set-asides.
- Strengthen outreach and training to the procurement community and Aboriginal businesses.
- Revolutionize the pre-qualification process to be more accessible for Aboriginal businesses.
- Develop additional procurement tools to increase procurement opportunities;
- Introduction of credit system for bid processes,
- Increased non-competitive threshold for qualified Aboriginal businesses.
- Lower administrative burden for the procurement community and Aboriginal businesses.
- Mandatory departmental reporting for Aboriginal procurement that will be timely, measurable and accurate.



# Roles - INAC

---

- We provide the following:
  - Interpretation of the PSAB policy and advice to the government contracting community.
  - Information on Aboriginal suppliers.
  - We work with departments to establish performance objectives.
  - We assist Aboriginal suppliers to market themselves to the federal government.
  - We provide advice to government contracting authorities on how to apply the PSAB during the procurement planning stages.



## Roles – INAC ...

---

- We serve on the Procurement Review Committee to review requirements from \$ 2 million to \$100 million dollars projects and also on the Senior Procurement Advisory Committee (SPAC) which are Major Crown Projects above \$100 million to negotiate either a PSAB set-aside portion or an Aboriginal Benefit under the Industrial regional benefits portion.
- We conduct audits of Aboriginal businesses to ensure they meet the PSAB criteria's.



# Roles – PSAB Coordinator

---

- Most departments and agencies have a PSAB coordinator to provide guidance on contracting opportunities.
- The PSAB coordinator will:
  - conduct internal and external PSAB training;
  - keep abreast of areas in which sufficient Aboriginal capacity exists to warrant set-asides; and
  - promote the use of PSAB with their department/agency.



# Roles – Requisitioning Authority

---

- The decision for the Federal Government to set-aside a contract ultimately rests with the requisitioning authority (buyer) and they will:
  - Ensure procurements for Aboriginal populations are mandatorily set-aside.
  - Encourage set-asides otherwise where practical and cost-effective and whereas Aboriginal business capacity exist.
  - Encourage the use of criteria in bid evaluations that recognize Aboriginal benefits, for procurements not subject to NAFTA and WTO-AGP.
  - Ensure formal certification is submitted with bid documentation.



# Questions

---

- The PSAB Team is pleased to answer your questions.
- Contact us through the PSAB Help Line at 1-800-400-7677 or by email to [saea-psab@ainc-inac.gc.ca](mailto:saea-psab@ainc-inac.gc.ca).
- The PSAB Web site can provide you with more information:  
<http://www.ainc-inac.gc.ca/e cd/ab/psa/index-eng.asp>