

The Forgotten World of Indigenous Procurement: Developing Effective Legal Language

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Danielle Blanchard, a law student and research assistant at Thompson Rivers University, British Columbia, presents an analysis of Indigenous-centered public procurement policies in Canada. Noting that Indigenous businesses are underrepresented in the construction industry, the paper reviews various approaches which could be adopted to increase participation, including “set-asides”, unbundling of large scale scope, tender evaluation preference, value-driven evaluations, direct award contracts, and representative employment requirements, among other things. The author provides precedents for Indigenous-centered strategies from the United States and Australia. The paper concludes by proposing that amendments to language used in procurement processes should be accompanied with reporting methods, setting targets related to participation, and enforcement mechanisms.

Public contracts are often lucrative projects that can provide a business with significant cash flow, increased expertise in a discipline, modernized administrative processes, and means to develop human resources strategies, among other benefits. Public contractors typically provide fair prices for services, and have well-established evaluation procedures, making public contracts highly competitive. The competitiveness makes new, small, or disadvantaged bidders difficult to accommodate using current tender evaluation models. Many Indigenous businesses have the capacity, knowledge, and experience needed to participate in the market, but are underrepresented as contractors.¹

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¹ Government of Canada, “Public Services and Procurement Canada” (last modified 2021-05-17) online: *Mandate commitment: Creation of a 5% target in procurement-Indigenous business—Standing Committee on Indigenous and Northern Affairs—June 19, 2020* <https://www.tpsgc-pwgsc.gc.ca/trans/documentinfo-briefingmaterial/inan/2020_06_19/p6-eng.html>; Note regarding

Public contracts also have the capacity to establish a framework to promote engagement from Indigenous businesses, Indigenous employees, and Indigenous communities in a substantive way. Projects that engage culturally specific topics or that occur on traditional, treaty, or contested territories are most appropriate to implement Indigenous-centered evaluation criteria to the procurement model. An Indigenous-centered provision in a public procurement process would allow Indigenous contractors to meet certain evaluation criteria more readily than non-Indigenous companies bidding on government contracts. This paper intends to explore public procurement initiatives that create an Indigenous-centered approach to tender evaluations and presents initiatives that have been used in various Canadian provinces and territories, by the federal government, as well as federal initiatives in Australia and the US. The purpose of the paper is to answer the following legal question:

What legal language can be used in public procurement documents to effectively enhance Indigenous participation?

This paper discusses three models of procurement practice and presents specific language under each category. The categories are: 1) constraining the purchaser's options; 2) creating positive incentives; and 3) increasing the scope of beneficiaries.

This paper can be used by First Nation, provincial, territorial, and municipal governments, as well as large private project managers in their procurement processes to encourage and mandate Indigenous business participation. Policies can be implemented on an across-the-board basis, a case-by-case basis, or as a pilot project to test the market's capacity. Joint ventures can also offer flexibility with regard to project funding barriers. Note that public tenders are required in joint ventures with the federal government, if they meet certain contract price thresholds, as per provisions under the *Government Contracts Regulations of the Financial Administration Act*.² That Act does not provide exemptions for public authorities to use preferential treatment if the contract is substantially funded by the federal government, even if the territorial authority is restricted by a Land Claim Agreement.³

Current Procurement Initiatives

Indigenous Procurement Initiatives (IPI) have shown little development in the provinces but have made significant strides in the territories and with the federal government. Some Crown

terminology: "Aboriginal" is a term referred to by the Canadian government. This is indicative of a colonial relationship, and is related to being status or non-status, etc, pursuant to the Indian Act. The term is used for government-generated documentation and to validate eligibility criteria. For example, for companies to take advantage of the PSAB's set asides, they must be an "Aboriginal business". "Indigenous" is an international term that encompasses self-determination and is preferred by many communities. The term "First Nation" is used in Yukon government contracting language, and the term "Native American" is used in US legislation.

² Government of Canada, "Justice Laws Website" (2022-04-28) online: *Government Contracts Regulations SOR/87-402* <<https://laws-lois.justice.gc.ca/eng/regulations/sor-87-402/fulltext.html>> at ss 6 (b), 7 (a)-(b)[Government Contracts Regulations]

³ Blair McBride, "Federal rules state Rae Access Road project requires public tender, Premier says" (July 16, 2020) online: *Yellowknifer* <<https://www.nnsi.com/yellowknifer/federal-rules-state-rae-access-road-project-needs-public-tender-says-cochrane/>>; Sidney Cohen, "A tale of two tenders: Public bidding for projects on Tłı̨chǫ land an 'insult', says grand chief" online: *CBC* <<https://www.cbc.ca/news/canada/north/tenders-tlichu-territory-1.5653532>>

corporations operating in northern areas have voluntarily adopted Indigenous-centered procurement policies as well. Manitoba and Ontario have both created IPIs, but the policies' exclusion of large sectors and lack of use has left them ineffective.⁴ This paper discusses procurement provisions from Nunavut, the Yukon, the federal government's Procurement Strategy for Aboriginal Business (PSAB), the Indigenous Chamber of Commerce's Model Indigenous Procurement Policy, Australia's Mandatory Minimum Participation Contracts, and the US *Small Business Act*.⁵ Additionally, this paper uses information from a public engagement session that was conducted by the BC government in 2019, to seek input from Indigenous communities, businesses and individuals on what barriers exist in current procurement processes. The Canadian Council for Aboriginal Business has produced a gold standard for Progressive Aboriginal Relations, which in some cases include modified procurement practices.

The various approaches to Indigenous-centered procurement initiatives have seen the implementation of several main strategies used in different contexts. These strategies include but are not limited to: set-asides; scoping; tender evaluation preference; value-driven evaluations; direct award contracts; invitational tenders; advance notice of projects; mandatory minimum participation contracts; representative employment requirements; as well as bid supplements.

1) Constraining the Purchaser's Options

Set Asides

'Set asides' allow a public authority to limit the competition of business for certain contracts to Indigenous businesses. They are currently being used by the federal government as a primary method of increasing its targets through the PSAB that was created in 1996. Set asides used by the PSAB have both mandatory and voluntary elements. Mandatory set asides are used if "an Aboriginal population is the primary recipient or end user of the goods or services being procured and the value exceeds \$5,000."⁶ Voluntary set asides are used when qualified Aboriginal suppliers are known to exist in the marketplace, and departments make the choice to designate the procurement to be restricted exclusively to an Aboriginal business.⁷ The Indigenous Chamber of Commerce endorsed and

⁴ Indigenous Chamber of Commerce, "Aboriginal Procurement Policy and Approved Resolution: Model Aboriginal Procurement Policy", (2012) online (pdf):

<<https://chambermaster.blob.core.windows.net/userfiles/UserFiles/chambers/9454/CMS/MOU/ACC-Aboriginal-Procurement-Policy-and-Approved-Resolution-for-MCC-AGM-May-2011.pdf>> [Model Aboriginal Procurement Policy]

⁵ Governments of Nunavut, "Nunavummi Nangminiqaqtunik Ikajuuti (NNI Policy)" (20-04-2006), online (pdf):

<<https://www.gov.nu.ca/sites/default/files/files/nni.pdf>> [NNI Policy]; Government of Yukon, "Policy 2.6" (02-09-2022) at s 11(7.10), online (pdf): *General Administration Manual* <<https://yukon.ca/sites/yukon.ca/files/hpw/hpw-2020-gam-2.6-yukon-first-nations-procurement-policy-2020-12-11.pdf>> [Yukon Procurement Policy]; Model Aboriginal Procurement Policy, *supra* note 4; Australian Government, "Indigenous Procurement Policy" (December 2020) online (pdf): *National Indigenous Australians Agency* <<https://www.niaa.gov.au/sites/default/files/publications/ipp-guide.pdf>> [Australian Indigenous Procurement Policy]; *US Small Business Act*, P.L. 117-81 (amended 2021), online: <https://www.govinfo.gov/content/pkg/COMPS-1834/pdf/COMPS-1834.pdf> [US Small Business Act]

⁶ Government of Canada, "Decision to Set Aside a Procurement under the Procurement Strategy for Aboriginal Business" (2015-08-12) online: *Public Services and Procurement Canada* <<https://buyandsell.gc.ca/policy-and-guidelines/supply-manual/section/9/40/1>> a s 9.40.1(a)(i)(A) [PSAB]

⁷ *Ibid*, at s 9.40.1(a)(ii)

promoted the set-aside mechanism to be “applied in relation to all procurement where practical and reasonable” in the *Model Aboriginal Procurement Policies* created in 2012.⁸ The Indigenous Chamber of Commerce recommends that set asides not only restrict competition to Aboriginal businesses, but also provide means for an authority to negotiate sole-source contracts with an Aboriginal business, if appropriate.⁹ Manitoba has created an IPI that provides mandatory set-asides if the scope of the project is “culturally specific to Indigenous people”, or if the project is “primarily designated for Indigenous people”, and the project is “supported by sufficient competition and capacity to be able to reserve the entire requirement for competition among Indigenous business only.”¹⁰

Australia has implemented an Indigenous Procurement Policy (IPP) in order to “significantly increase the rate of purchasing from Indigenous enterprises”.¹¹ To meet these goals, the IPP created annual targets for the volume and value of contracts, and introduced Mandatory Set Asides (MSA) and Mandatory Minimum Participation Requirements (MMR).¹² MSAs provide Indigenous enterprises with specialized opportunities to enter into public contracts, and apply “to procurements to be delivered in remote Australia and for all other procurements wholly delivered in Australia valued between \$80,000-\$200,000” if a suitable Indigenous small or medium enterprise is identified in the market.¹³ MMRs make specific requirements for contracting parties to provide representation in the Indigenous workforce and in supply chains.¹⁴ The MMR targets apply to specified industry categories, ranging from construction to healthcare services.¹⁵

Set asides are easy mechanisms to adopt for a public procurement strategy, as they remove specific contracts from open competition, and reduce the administrative burden of the tender evaluation process by going directly to Indigenous businesses. The language can be flexible, as in the case of the PSAB, whereby set-aside tenders may be reissued or opened up to a fully competitive market if no Indigenous businesses bid on the project.¹⁶ However, use of the set aside model can be restrictive, as contracts are typically small to ensure there is sufficient Aboriginal business capacity, providing fewer economic benefits than other mechanisms.

Scoping

Project scoping, or unbundling, is a mechanism that structures specific public contracts to be a size manageable by Aboriginal businesses.¹⁷ In BC’s *Report on What We Heard*, the province engaged

⁸ Model Aboriginal Procurement Policy, *supra* note 4

⁹ *Ibid* at 3

¹⁰ Manitoba, “Indigenous Procurement Initiative” (23-07-2020) online: *Indigenous Procurement Manual* <<https://www.gov.mb.ca/central/psc/pubs/api/Indigenous%20Procurement%20Policy.pdf>> at 2

¹¹ Australian Government, “Indigenous Procurement Policy” (2021) online: *National Indigenous Australian Agency* <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp> [Australian Indigenous Procurement Policy Summary]

¹² *Ibid*

¹³ Australian Indigenous Procurement Policy, *supra* note 5 at 17

¹⁴ Australian Indigenous Procurement Policy Summary, *supra* note 11

¹⁵ *Ibid*

¹⁶ PSAB, *supra* note 6, at 9.40.1(c)

¹⁷ Yukon Procurement Policy, *supra* note 5 at s 11(7.10)

Aboriginal businesses to discuss the specific challenges faced when bidding on public contracts. The participants pointed to scales of contracts as an impediment for some companies to participate in bidding.¹⁸ The practice of scoping is endorsed by the Indigenous Chamber of Commerce as a way to promote business participation by Aboriginal business and engage Aboriginal communities in mainstream business.¹⁹ The government of Yukon has adopted the strategy in section 11(7.10) of its Procurement Policy by using the following language: “the Government shall, where reasonable, make best efforts to structure contracts, on both Settlement Land and Non-Settlement Land, so that they are of a size manageable by Yukon First Nations Businesses.”²⁰

Under this model, projects such as road construction can be divided into separate contracts such as environmental assessment, excavation, asphalt supply and delivery, paving, flagging, and line painting, instead of a main contractor being awarded the entire contract and subcontracting scopes in a segregated negotiation process. The model allows Indigenous businesses the opportunity to contract directly with public authorities, develop more autonomous relationships in the industry, provide entry points into the market, and sustain fiscal capacity. While this method may be more administratively cumbersome for the contracting authority, the economic benefits can be direct.

Tender Evaluation Preference

Tender evaluation preference is a more complex mechanism of providing incentives for Indigenous businesses to participate in government bidding. It is promoted as a Model Procurement Policy by the Indigenous Chamber of Commerce and is defined as “the inclusion of evaluation criteria in competitive tendering that provides a preference (points) based on the level of Aboriginal business participation.”²¹ The Model Policy points to several ways to administer the method, such as: subcontracting or supplier targets, affirmative action programs, and employment and training requirements. Participants to BC’s procurement engagement sessions suggested that Indigenous knowledge, values, culture, employment, social benefit and training be included in weighted criteria.²²

Open tenders can use evaluation methods for certain criteria to meet the targets of the procurement authority. The most common criteria provide points for First Nation ownership by percentage, First Nation employee base or work development plans that incorporate Indigenous into their hiring practices.²³ The weight of allocated points can be all across the board or case-by-case specific. For example, one open tender from the Yukon for a geological survey incorporated Yukon

¹⁸ British Columbia Indigenous Procurement Initiative, “Report on What We Heard” (2019) online (pdf): <https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/services-policies-for-government/procurement-transformation/indigenous-procurement-initiative/ipi_report_on_what_we_heard.pdf> [Report on What We Heard]

¹⁹ Model Aboriginal Procurement Policy, *supra* note 4

²⁰ Yukon Procurement Policy, *supra* note 5

²¹ Model Aboriginal Procurement Policy, *supra* note 4 at 3

²² Report on What We Heard, *supra* note 14

²³ SaskPower, “Partnership for Success” (2021) online (pdf): *Indigenous Procurement Policy* <<https://pubsaskdev.blob.core.windows.net/pubsask-prod/121957/PFS-Indigenous-Procurement-Policy.pdf>> ; Yukon Procurement Policy, *supra* note 5

First Nations participation into its tender evaluation documents at the open tender stage.²⁴ The company bidding on the project was required to:

Provide details regarding the initiatives, activities and actions the Respondent has taken on any previous project or contracts to involve or increase the participation of First Nation citizens in the work being performed. Examples of such actions are those that increase capacity, education and training, employment, or subcontracting opportunities for First nation citizens.²⁵

The points allocated to this specific item was 50 out of a total 2,250 points for the entire project, or roughly 2%.

This method has the potential to create the highest scaled benefit to Indigenous companies, communities, and citizens, while keeping the bidding process open and competitive. It encourages contractors to establish and disclose subcontracting to Indigenous firms and incentivises the hiring and training of Indigenous people for their projects. Indigenous evaluation preference is currently being used by the governments of Nunavut and the Yukon, and some Crown corporations, such as SaskPower and Manitoba Hydro.

Value-Driven Request for Proposals

A common method of procurement that ensures the quality of the project is aligned with the values of the procurement authority is to conduct a formal request for proposals (RFP). These documents are a representation of a firm's regional presence, similar experience, model employees, select policies, and anticipated price. This method can request firms to disclose their commitments to Indigenous communities, experience working with Indigenous peoples, and commitment to providing employment, subcontracting and training opportunities for Indigenous people and businesses. Evaluation points are allocated in the same manner as the tender evaluation preference model and are modified on a case-by-case basis. The flexibility of this mechanism allows a procurement authority to incentivize private actors to engage with and develop relations with Indigenous communities, companies, and individuals. An incremental approach to the adoption of this model can provide a creative mechanism for authorities to test the market to see how many companies can provide such data. This strategy is currently being used in the Yukon, and by Crown corporations such as SaskPower.

Direct Award Contracts and Invitational Tendering

²⁴ Yukon Tenders, "Request for Standing Offer (Non-Binding, Value Driven, Two-Envelope Process)" (April 2021), , Issued by Transportation Engineering Branch, Highway and Public Works, *RSO-485- Geotechnical and Geological Consultants Services*, appendix A at 10 [RSO-485]

²⁵ RSO-485, *supra* note 24

A direct award, or sole source approach is a type of procurement without competition.²⁶ Direct award contracting is currently being used in the Yukon and Nunavut. This method can be used by departments to meet annual targets, support projects of cultural importance to Indigenous, advance reconciliation, and build Indigenous capacity, among other departmental goals.²⁷ In Canada, direct award or invitational tendering may not be used if the project is partially funded by the federal government. For projects over \$25,000 for goods or over \$100,000 for construction services, the *Federal Government Contract Regulations* require that such projects are awarded via public tendering.²⁸

Sole sourcing procurement benefits are also incorporated in the United States' *Small Business Act*,²⁹ whereby Congress is actively engaged in the activities of the Native American Super SBA 8(a) program.³⁰ The Act entitles tribally owned firms to sole source procurement contract for any value.³¹ The Native American 8(a) contracting program in the Small Business Administration permits Native Enterprises certified under Section 8(a) of the Act to enter into a negotiated sole-source contract as long as the firm is owned 51 percent or more by an "economically disadvantaged" tribe.³² The purpose of the provision is to

foster business ownership and development by individuals in groups that own and control little productive capital; and promote the competitive viability of such firms in the marketplace by creating a small business and capital ownership development program to provide such available financial, technical, and management assistance as may be necessary.³³

Advance Notice

Advance notice for capital spending allows for Indigenous companies to better prepare for upcoming bids. It provides a time advantage to find suppliers, establish joint ventures, understand the scope of the work, focus on elements that may be in deficit, and provides information to community members wishing to participate in the work. The policy is an operational requirement for governments of the Yukon and Nunavut as per CLCA obligations.³⁴ The strategy is endorsed by the Indigenous Chamber of Commerce as a measure that can promote the participation of Aboriginal businesses.³⁵ According to their capital spending plan, the government of Yukon must "communicate well in advance of project procurement to allow Yukon First Nation governments, Yukon First Nations Businesses and Yukon First Nations People to plan and prepare for the procurement opportunities."³⁶

²⁶ Yukon Procurement Policy, *supra* note 5 at "definitions"

²⁷ Yukon Procurement Policy, *supra* note 5 at s 11(7.5)(a)

²⁸ Government Contracts Regulations, *supra* note 2 at s 6

²⁹ US Small Business Act, *supra* note 5

³⁰ Maria Panezi, "The Complex Landscape of Indigenous Procurement", (2020) in *Building a More Equitable and Inclusive Free Trade Agreement*, eds John Burrows and Risa Schwartz, at 239-240

³¹ *Ibid*

³² Panezi, *supra* note 26

³³ US Small Business Act, *supra* note 5 at sec. 2-2(B)(i)

³⁴ Yukon Procurement Policy, *supra* note 5; NNI Policy, *supra* note 5

³⁵ Model Aboriginal Procurement Policy, *supra* note 4 at 3

³⁶ Yukon Procurement Policy, *supra* note 5 at s 11(7.6)(c)(ii)

Direct award contracts can incorporate an advance contract award notice mechanism should there be concerns about the availability of other capable contractors. The policy notifies suppliers publicly of the type of contract available prior to awarding and allows to unconsidered firms to demonstrate their ability to carry out the contract. To create an Indigenous focused policy, administrators can open up the supplier list of the Advance Contract Award Notice (ACAN) to Indigenous-only businesses. Federal procurement rules for ACAN policy stipulate:

An ACAN is a public notice published on the Tenders minisite for a minimum of 15 calendar days, indicating to the supplier community that a department or agency intends to award a contract for goods, services or construction to a pre-qualified supplier believed to be the only one capable of performing the work, that way enabling other suppliers during the publishing period to signal their interest in bidding by submitting a statement of capabilities. If no other supplier submits a statement of capabilities that meets the requirements set out in the ACAN, the contracting officer may then proceed with awarding the contract to the pre-qualified supplier.

If one or more suppliers meet the requirements, the contracting officer will then use the competitive process.³⁷

Invitational, or limited tendering, reduces the number of eligible competitors for a specific contract in the event there is more than one company able to fulfil contractual requirements. The governments of Yukon and Nunavut have incorporated this policy to mandate preference for Indigenous businesses when at least one Indigenous business is found to meet contractual requirements. The Nunavut Nangminiqqtunik Ikajuuti (NNI) policy stipulates that invitational tenders “may be issued exclusively to Nunavut based businesses where sufficient competition exists, being three (3) or more companies located in Nunavut that are interested in and capable of performing the work.”³⁸ The Yukon policy stipulates that “if the Procurement Authority intends to issue invitations to more than three Suppliers, the Procurement Authority will endeavour to ensure that at least one-third of the Suppliers are Yukon First Nations Businesses.”³⁹

2) Creating Positive Incentives

Bid Supplements for Open Tenders

Open tender calls are the most competitive and free-market mechanism to ensure that the lowest price is obtained by forcing firms to directly compete. The process is a bottom-line approach to procurement and can be a tense process for bidders. Many contracts are awarded for a final price being low by a trivial amount, in some instances less than 0.01% of the total contract price. It is the most open method of procurement and is typically posted publicly in portals such as MERX or provincial bidding platforms. To provide mechanisms for Indigenous companies to compete in a market where intense competition can prevent inclusion, Yukon and Nunavut policies have both

³⁷ Government of Canada, “The Procurement Process” (10-16-2020) online: *Public Services and Procurement Canada* <<https://buyandsell.gc.ca/for-businesses/selling-to-the-government-of-canada/the-procurement-process#60>>

³⁸ NNI Policy, *supra* note 5, at s 11.3

³⁹ Yukon Procurement Policy, *supra* note 5, at s 11(7.5)(c)

implemented bid supplements, or bid value reductions, for eligible Indigenous firms. Bid supplements allow an Indigenous company's final bid amount to be reduced to remain competitive when the contract award relies heavily on final price. The criterion for the supplement varies depending on eligibility factors and can total up to 21% of the total contract price, as is the case of Nunavut.

The Yukon's policy for bid value reductions (BVR) focusses on ownership, business location, and hiring of Indigenous labour. The language used is as follows:

(i) Ownership:

- a. A Yukon First Nations Business that is at least 50% Yukon First Nation-owned will receive a 5% reduction to its price (BVR = 5%).
- b. Where the Yukon First Nations Business is at least 75% Yukon First Nation owned, it will receive an additional 5% reduction to its price (BVR = 5% + 5%).
- c. Where the Yukon First Nations Business is 100% Yukon First Nation owned, it will receive an additional 5% reduction to its price (BVR = 5% + 5% + 5%).

...

(ii) Business Location

- a. Where the primary operation of a Yukon First Nations Business is located in a Yukon community other than Whitehorse and the contract activities are to occur within the traditional territory in which the Yukon First Nations Business is located, as specified in the Procurement documents, the Yukon First Nations Business will receive an additional 5% reduction to its price.

(iii) Hiring of Yukon First Nations Labour

- a. Where a tender process involves a Labour Component, a Response committing to employ Yukon First Nation labour will receive a reduction of up to 15%, applied to the price of the labour to be performed by Yukon First Nations People, irrespective of the firm's status as a Yukon First Nation or non-Yukon First Nations Business.⁴⁰

Implementing large reductions in bid values can be difficult for procurement authorities that do not have the financial capacity or authority to reduce the price of the contract. However, the bid reduction model is extremely effective at creating space for Indigenous business in open tenders. It can provide substantial leverage in specific industries where Indigenous businesses have difficulty competing.

3) Increasing the scope of beneficiaries

Definitions

⁴⁰ Yukon Procurement Policy, *supra* note 5, at s 11(7)(b)

The government of Yukon’s procurement policy made effective in February of 2021 is the most comprehensive Indigenous procurement policy found during this research. The policy reflects legal requirements mandated by the Umbrella Final Agreement (UFA) that have been adopted into the territory’s procurement processes, and it provides a model for other public authorities to follow. The eligibility criteria for Yukon First Nations business expands the definition to incorporate “a sole proprietorship owned by a non-Yukon First Nations Person, which supports a Yukon First Nation spouse or common law partner, and/or a Yukon First Nations family, may qualify as a Yukon First Nations Business”, significantly increasing the potential beneficiaries of the policy.⁴¹

Levels of Employment

The Nunavut Land Claims Agreement’s definition of a “representative level of employment” as “a level of employment in the Nunavut Settlement Area that reflects the ratio of Inuit to the total population of the Nunavut Settlement Area”.⁴² The NNI Policy of Nunavut requires the government to support Inuit participation in the economy to achieve this target.⁴³ The comprehensive policy makes use of bid adjustments, mandatory minimum labour levels for each procurement, invitational tendering, direct contract awarding, mandatory training opportunities, as well as incentives and penalties for compliance with the policy.⁴⁴

Final Comments

Operational and administrative policies for Indigenous procurement that are not mandated by Comprehensive Land Claims Agreements, or Self-Governance Agreements are voluntary initiatives developed, monitored and enforced by public authorities. Such policies are vulnerable to external factors such as political influence, budget cuts, absence of directives, lack of knowledge regarding the existence of departmental targets, or lack of use altogether.⁴⁵ To address potential pitfalls, IPIs need to place the appropriate language directly into procurement processes, tender documents, and subsequently contract documents. Language such as “required to consider” loses value due to imprecision and lack of concrete directives. Accurate reporting methods and targets are essential to monitoring success rates and maintaining the integrity of the provision, as exemplified by PSAB’s lessons learned.⁴⁶ To create a fully comprehensive IPI, provisions should incorporate enforcement mechanisms, a dispute resolution processes, and assign accountability.

⁴¹ Yukon Procurement Policy, *supra* note 5 at s 1(2)(qq) “definitions”

⁴² NNI Policy, *supra* note 5 at “definitions”

⁴³ NNI Policy, *supra* note 5 at s 7.1(c)

⁴⁴ NNI Policy, *supra* note 5

⁴⁵ Model Aboriginal Procurement Policy, *supra* note 4; Bronwen Grieve “Understanding the Target Process of the Procurement Strategy for Aboriginal Business” (2018) online (pdf): *University of Victoria*

<https://dspace.library.uvic.ca/bitstream/handle/1828/9423/Grieve_Bronwen_MADR_2018.pdf?sequence=1> at iii

⁴⁶ *Ibid*