

Procurement Practice Review of Contracts Awarded to Indigenous Businesses

March 2026

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Catalogue number:

P114-44/2026F-PDF

International Standard Book Numbers (ISBN):

978-0-660-98280-9

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I. Message from the Procurement Ombud



As Procurement Ombud, I have long advocated for fairness, openness, and transparency in federal procurement. These principles are not abstract ideals—they are the foundation upon which trust in public institutions is built. When they falter, so too does the confidence of Canadians, particularly those communities who have historically faced systemic barriers to participation in federal procurement.

This report presents a sobering account of the administration of the Procurement Strategy for Indigenous Business (PSIB/the Strategy). It reveals a pattern of fragmented guidance, inconsistent application and oversight, and missed opportunities to uphold the strategy’s core objective, to meaningfully support Indigenous businesses through federal procurement. While departments are meeting some of their obligations, the absence of a coherent, government-wide policy framework has led to confusion, underutilization of key oversight mechanisms, and errors that risk undermining the integrity of the strategy.

These findings are deeply disappointing. Indigenous procurement is not simply another requirement - it is a commitment to reconciliation, economic inclusion, and respect. The PSIB was created to address these commitments in a meaningful way, reflecting Canada’s positive intention to improving this important relationship. The PSIB is a guiding strategy rather than a centralized policy, meaning it only provides non-binding direction. As a result the PSIB lacks the necessary comprehensive guidance, enforcement mechanisms and overarching accountability necessary for it to successfully achieve its stated goals. The purpose of the strategy is clear but the path to realizing its goals requires thoughtful reassessment and renewed focus.

But it is not too late.

This report should serve as a turning point. Indigenous Services Canada, in collaboration with First Nations, Inuit, and Métis partners and Public Services and Procurement Canada, should lead the development of a comprehensive, government-wide policy that brings clarity, consistency, and accountability to PSIB administration. Departments must be equipped with the tools, guidance, and oversight mechanisms necessary to ensure that Indigenous businesses are not only invited to participate—but part of decision-making to ensure a strong and robust relationship.

The path forward requires urgency, transparency, and a shared commitment to doing better. The Office of the Procurement Ombud will support this work, and I remain hopeful that with focussed accountability, the Government of Canada can deliver on its procurement promise to Indigenous communities across Canada.

Alexander Jeglic
Procurement Ombud

II. Context

1. The Office of the Procurement Ombud (OPO) is a neutral and independent organization of the Government of Canada that works collaboratively with federal departments and Canadian businesses to promote fairness, openness and transparency in federal procurement.

2. OPO reviews the practices of federal departments for acquiring goods and services, if there are reasonable grounds to do so, taking into consideration factors such as consistency with relevant federal procurement requirements.

3. This review was conducted in accordance with paragraph 22.1(3)(a) of the *Department of Public Works and Government Services Act*, which gives the Procurement Ombud the authority to review the procurement practices of federal departments to assess their fairness, openness and transparency, and to make recommendations for the improvement of those practices. The Procurement Ombud's mandate to conduct this review is further defined in the Procurement Ombudsman Regulations (the Regulations).

4. The Procurement Ombud launched this review of procurement practices for the award of contracts to Indigenous businesses to assess their fairness, openness, and transparency and their compliance with established requirements. The grounds to conduct this review were based on an analysis of procurement information captured by OPO, testimonies before the House of Commons Standing Committee on Government Operations and Estimates and media articles about federal government Indigenous procurement among other considerations.

III. Background

5. Indigenous businesses have faced systemic barriers hindering their economic growth and full integration into the Canadian economy, leading to their underrepresentation in federal procurement. In March 1996, the federal government approved the Procurement Strategy for Aboriginal Business (PSAB), now called the Procurement Strategy for Indigenous Business (PSIB)¹, as its designated approach to address this issue.

6. Indigenous Services Canada (ISC), was created in 2017 to address long-standing socio-economic gaps between Indigenous Peoples and the non-Indigenous population in Canada. ISC plays a central role in implementing, administering and overseeing the PSIB. This includes developing policies, procedures, and guidelines to help Indigenous businesses access federal procurement opportunities.

7. Public Services and Procurement Canada (PSPC) supports ISC in the administration of the PSIB and supports departments in meeting the requirements of the mandatory procedures for contracts awarded to Indigenous businesses under this strategy by providing advice and guidance. PSPC makes purchases on behalf of other departments when requirements exceed the other departments' financial delegations. Federal departments and agencies also have responsibilities to ensure these procurements comply with PSIB provisions.

¹ The strategy was renamed the Procurement Strategy for Indigenous Business to reflect a more inclusive approach to Indigenous identity.

8. The PSIB uses “set-asides” to reserve certain federal contracts exclusively for Indigenous businesses, exempting them from Free Trade Agreements². When procurements are set aside, this means they are not bound by the procedural rules of those Agreements. There are two requirements that a business must adhere to when contracts are issued under the PSIB: the business must be at least 51% Indigenous-owned and controlled, and at least 33% of any resulting contracts’ value must be performed by Indigenous entities. Eligible businesses must be listed on the Indigenous Business Directory (IBD) or fall under one of the exempted categories³. As of November 2024, the IBD included over 2,900 registered businesses.

9. As of 2022, federal departments must ensure annually that at least 5%⁴ of the total value of contracts—not limited to those awarded under PSIB set-asides—are awarded to Indigenous businesses. Together, the PSIB set-aside and the 5% minimum target represent key measures in Canada’s commitment to advancing economic growth and reconciliation with Indigenous peoples.

IV. Objective and scope

10. This review covers the period between April 1, 2023 to March 31, 2025 and was undertaken to determine whether procurement practices pertaining to contracts awarded to Indigenous suppliers were conducted in a manner consistent with applicable legislation, regulation, policies, procedures and guidance and support the principles of fairness, openness and transparency. To make this determination, OPO examined whether these practices were consistent with Canada’s obligations under national and international trade agreements, the *Financial Administration Act* and the regulations made under it, the Directive on the Management of Procurement and, where applicable, organizational policies and guidelines.

11. The following organizations were selected for review:

- ISC, due to its responsibilities related to Indigenous procurement, which include implementing and advising on the PSIB.
- PSPC, due to its responsibilities to provide guidance to the functional procurement community and its role as a central purchasing agent.
- Shared Services Canada (SSC), Employment and Social Development Canada (ESDC), and Correctional Service Canada (CSC) due to the value of contracts these departments awarded to Indigenous suppliers.

12. The objective of this review was supported by the following four lines of enquiry (LOE):

² A free trade agreement is a treaty between two or more countries that reduces or eliminates barriers to trade, such as tariffs and quotas, making it easier and cheaper to buy and sell goods and services across borders. These agreements aim to create more predictable, fair, and open international markets and often cover a wide range of issues beyond traditional trade, including intellectual property, investment, and services.

³ Certain categories of Indigenous businesses are exempted from registration on the IBD. These include Elders, bands and tribal councils, as well as businesses registered on a modern treaty beneficiary business list. Please note that there have been some modifications to the exemptions since the review period.

⁴ The 5% minimum target was reflective of Canada’s efforts for equitable Indigenous access to procurement as it was comparable to size of the Indigenous population of Canada in 2021.

- **LOE 1:** Whether ISC guided and supported federal departments for procurements conducted under the PSIB, in accordance with its responsibilities under the Directive on the Management of Procurement.
- **LOE 2:** Whether SSC, ESDC, CSC and PSPC have established departmental procurement management frameworks which include oversight, planning and reporting mechanisms pertaining to contracts awarded to Indigenous businesses that align with and support applicable policies, procedures and guidance.
- **LOE 3:** Whether contracts awarded under the PSIB were issued in a manner consistent with applicable legislation, regulation, policies, procedures and guidance.
- **LOE 4:** Whether contracts awarded under the PSIB were monitored and adequately reported in a manner consistent with the applicable legislation, regulation, policies, procedures and guidance.

13. Only contracts issued under the PSIB by SSC, ESDC or CSC, or by PSPC on behalf of one of those departments, were selected for review. Also, the review did not include the procedures on how ISC manages the IBD.

V. Approach

14. The review included:

- analysis of documentation such as policies, guidelines, websites and instructions for the PSIB;
- examination of procurement files; and
- interviews with staff at SSC, ESDC, CSC, ISC and PSPC.

15. For the examination of procurement files, OPO selected a sample of 30 files (10 each from SSC, ESDC and CSC) from within the scope period. The sample size was reduced to 27 files after 3 originally selected files were confirmed by CSC as having been mistakenly identified and reported as set-asides under the PSIB.

16. Of these 27 files, 23 contracts were awarded by the departments on their own behalf, 2 contracts were awarded by PSPC as the contracting authority on behalf of ESDC, and 2 contracts were awarded by PSPC on behalf of CSC.

17. The 27 procurement files selected for review included:

- 20 contracts that were competitively procured and 7 procured through a non-competitive process
- 6 for goods, 20 for services and 1 for construction
- 13 valued above \$2 million and 14 valued below \$2 million

- 6 mandatory set-asides⁵ that were required under PSIB and 21 voluntary set-asides⁶ under PSIB (including 2 conditional set-asides that were later classified as voluntary set-asides by departments after contract award)
- 7 contracts awarded to Joint Venture businesses⁷ and 20 awarded to non-Joint Venture businesses
- 22 procurements that resulted in the award of single contracts and 2 procurements that resulted in 5 contracts being awarded

VI. Results

Roles and responsibilities

18. To support the effective implementation of the PSIB, it is important that departments involved have clearly defined roles and responsibilities. This clarity helps ensure that efforts are well-coordinated, reduces overlap or gaps in delivery, and enables more consistent tracking of progress. It also strengthens accountability and supports a more strategic and inclusive approach to advancing Indigenous economic participation through procurement.

19. The Directive on the Management of Procurement is a Treasury Board policy instrument that governs how federal departments and agencies procure goods, services, and construction, ensuring best value for the Crown while supporting broader policy objectives. The Directive outlines responsibilities across key federal actors:

- **Indigenous Services Canada (ISC):** The department responsible for “implementing and advising on” the PSIB and for “leading and administering” the strategy. ISC is responsible for verifying the eligibility of Indigenous businesses in the IBD and coordinating departmental performance reporting. This includes confirming that eligible businesses in the IBD are at least 51% Indigenous-owned and controlled. The Transformative Indigenous Procurement Strategy Directorate within ISC administers the PSIB.
- **Public Services and Procurement Canada (PSPC):** PSPC develops procurement tools to support the participation of Indigenous businesses in procurement, and provides guidance to procurement teams to support departments meeting the *Mandatory Procedures for Contracts Awarded to Indigenous Businesses*.
- **Treasury Board:** Developed and is the issuing body for the Directive on the Management of Procurement.
- **Treasury Board Secretariat:** Ensures that government-wide training and guidance are developed and maintained, in collaboration with ISC, PSPC, and the Canada School of Public Service, to support departments in meeting PSIB requirements; and that departments’ results achieved are reported to Parliamentarians.

⁵ Mandatory set-asides are required when the procurement is for an area where Indigenous people are at least 51% of the population, the Indigenous population will be the primary recipient, and there are no modern treaty conflicts.

⁶ Voluntary set-asides are optional and are used when Indigenous capacity exists.

⁷ A joint venture is an Indigenous business and a non-Indigenous business acting as a single business.

- **Other federal departments and agencies:** Responsible for identifying opportunities, applying set-asides, and ensuring they meet or exceed the 5% minimum target for Indigenous procurement. PSIB set-aside contracts awarded by federal departments and agencies must comply with all the strategy's requirements.

Departments must also establish their own procurement management frameworks (PMFs)⁸ that include processes, systems, and controls for oversight, planning, and reporting—specifically mechanisms related to contracts awarded to Indigenous businesses. These frameworks are to include details on how departments are to support Indigenous participation in their procurements, including guidance on how they will ensure fulfillment of the PSIB requirements as well as ensuring they are reporting adequately against the mandatory 5% target.

20. Having clear guidance to support and properly apply the PSIB when awarding contracts is vital so that departments know how to solicit, monitor, report and verify that they are meeting their responsibilities.

Indigenous Services Canada's fragmented direction undermines the integrity of Procurement Strategy for Indigenous Business administration

21. PSIB is not a standalone policy, but rather a strategy embedded within a broader federal procurement governance, particularly through the Directive on the Management of Procurement. The Directive outlines mandatory procedures for contracts awarded to Indigenous businesses, including planning, reporting, and meeting the mandatory minimum target of 5% of the total value of contracts awarded to Indigenous businesses.

22. Because there is no centralized policy governing the strategy, departments rely on guidance from ISC to carry it out.

23. ISC's direction on the strategy, however, is fragmented and spread across multiple sources. ISC's public website provides only a general overview, while most of the detailed, instructional elements are found in PSPC's Supply Manual. Additional information is often delivered through departmental presentations or *ad hoc* communications, such as emails.

24. The absence of a centralized, comprehensive source of PSIB requirements and guidance from ISC has led to widespread confusion and inconsistent application across departments. This lack of singular guidance has significantly undermined both the implementation and oversight of PSIB set-aside contracts.

25. The consequences are serious—impacting the integrity of the strategy itself. The observations made by OPO throughout this report illustrate the impacts of this cascading failure.

⁸ A procurement management framework (PMF) is a set of interrelated controls, procedures and systems designed to support management in its achievement of procurement-related objectives.

Outdated and inaccurate guidance creates confusion about Procurement Strategy for Indigenous Business rules

26. ISC refers departments to consult PSPC's Supply Manual, specifically Chapter 9.40 on the "Procurement Strategy for Indigenous Business" and its related annexes, for information regarding the requirements when awarding contracts under the PSIB.

27. The PSPC Supply Manual states it "is intended to help contracting officers from Public Services and Procurement Canada with their procurement activities". Although departments other than PSPC may use the Supply Manual as a reference tool, it is not mandatory for them to do so.

28. While ISC refers departments to rely on the Supply Manual for guidance, it is important to note that updates to the PSIB are not all reflected in the Supply Manual, sometimes leaving departments with outdated and inaccurate direction. For example, there is no explicit requirement in the Supply Manual for procurement officers to search the IBD to verify that a business is Indigenous-owned prior to awarding a PSIB set-aside contract. This has created confusion, inconsistent application of the strategy, and weakened oversight of PSIB set-aside contracts. For a strategy as significant as PSIB set-asides—central to advancing economic reconciliation—a clear, authoritative, accessible and current ruleset is essential.

Implementation and oversight

29. The implementation and oversight of the PSIB relies on a combination of guidance from ISC, PSPC's Supply Manual, and departmental procurement management frameworks. Together, these sources are intended to support contracting officers in applying PSIB requirements consistently and effectively.

30. As the identified repository for guidance on procurements under the PSIB, the information in PSPC's Supply Manual should be reflective of the guidance outlined on ISC's website.

31. ESDC, CSC and SSC vary in how they incorporate and reference the Supply Manual in their own procurement management frameworks. ESDC and CSC do not explicitly require procurement officers to consult PSPC's Supply Manual when awarding contracts set aside under PSIB. However, there are no restrictions preventing them from using it as a reference. Both departments have developed some internal resources, such as checklists and memos that reference key PSIB requirements supporting Indigenous procurement.

32. In contrast, SSC explicitly instructs contracting officers to consult the Supply Manual when awarding contracts under PSIB. Therefore, where limitations exist in the Supply Manual's guidance on PSIB contracts, those same limitations impact SSC.

33. PSPC uses the Supply Manual as its procurement management framework when conducting procurements on behalf of other departments. In addition, PSPC contracting officers can also refer to guidance documents available to all contracting officers known as "Procurement Nuggets"⁹ that help to explain key issues and provide extra support alongside the information found in the Supply

⁹ "Procurement Nuggets" are a PSPC tool that provides quick references on various procurement issues. They are located on GCpedia (accessible only on the Government of Canada network) and are available for use by all departments.

Manual. However, “Procurement Nuggets” are not always up to date on the internal to government GCpedia website where they are published.

Rationale for Indigenous participation missing despite established guidance

34. Effective procurement planning is essential to identify (a) situations where a PSIB set-aside is required or (b) opportunities to encourage broader Indigenous participation in federal procurement. A key element is understanding the extent of Indigenous supplier capacity, which can play a significant role in determining the appropriate procurement strategy and set-aside type.

35. There are three types of PSIB set-asides: mandatory, voluntary and conditional.

- A **mandatory** set-aside must be used for a procurement where an Indigenous population¹⁰ is the primary recipient or end user of the goods or services being procured and the value exceeds \$5,000.
- A **voluntary** set-aside may be used for a procurement if “Indigenous capacity exists and operational requirements, best value, prudence, probity and sound contracting management can be assured.”
- A **conditional** set-aside may be applied to a procurement when it’s not possible to determine Indigenous business capability. In such cases, non-Indigenous suppliers may submit bids. However, if two or more Indigenous businesses submit compliant bids, the procurement is then set aside and non-Indigenous suppliers become ineligible.

36. The decision to set aside a procurement under PSIB is the responsibility of the client department. When procuring on behalf of other departments, PSPC contracting officers are to support client departments with procurement planning in determining whether set-asides could be applied. PSPC’s “Procurement Nuggets” supplement this by suggesting approaches like conducting market research, assessing Indigenous capacity and choosing appropriate procurement strategies.

37. OPO’s review also found sufficient evidence that departments have internal mechanisms to encourage Indigenous businesses to participate under PSIB, such as CSC’s internal review boards for procurements. However, despite available guidance on the conditions for setting aside procurements under the PSIB and the possible strategies to support these determinations, OPO found that ESDC, CSC and SSC neglected to include documentation in the file providing a rationale for why a contract was either required to be set aside or was voluntarily set aside under the PSIB.

38. Of the 6 mandatory set-aside files reviewed, 3 files (2 for SSC under the same solicitation and 1 file for ESDC) did not include evidence to support why the services were to be provided to an Indigenous population. For 10 of the 21 voluntary set-asides reviewed (including the 2 conditional set-aside files), OPO noted there was insufficient evidence on file to

¹⁰ An Indigenous population means:

- a. an area, or community in which Indigenous people make up at least 51 percent of the population;
- b. a group of people for whom the procurement is aimed in which Indigenous people make up at least 51 percent of the group.

demonstrate ESDC, CSC and SSC determined Indigenous capacity during the procurement planning stage.

39. In the vast majority of files reviewed, the procurement planning documentation from the client department did not clearly identify the PSIB set-aside type (i.e., mandatory, voluntary or conditional). This was the case for over 75% of the files reviewed, including 9 ESDC files, 6 files for CSC and 6 files for SSC. Oftentimes, to make these determinations, OPO relied on Proactive Disclosure records to identify the type of set-aside applied.

40. When departments do not clearly identify the PSIB set-aside type in procurement planning documentation, the risk of inconsistent application of the strategy increases. This can result in missed opportunities to engage Indigenous businesses and support economic reconciliation. Additionally, when the rationale for the chosen set-aside type is not documented, departments may not be able to demonstrate that they assessed Indigenous capacity and considered whether the goods or services are intended for an Indigenous population.

Absence of guidance on conditional set-asides poses risks to fairness, openness and transparency

41. As mentioned in paragraph 35, conditional set-asides are one of the three types of set-asides available to contracting authorities and may be used when it is not possible to determine if qualified Indigenous businesses exist in the marketplace. In these procurements non-Indigenous suppliers can submit bids, but if two or more Indigenous businesses submit compliant bids, competition is then limited to only those Indigenous businesses and the procurement is set aside under the PSIB. However, if fewer than two compliant Indigenous supplier bids remain after bid evaluation (i.e., bids from Indigenous businesses are deemed to be non-compliant or non-responsive or are withdrawn), bids submitted by non-Indigenous businesses will be considered.

42. There is no guidance on ISC's website on when a conditional set-aside is to be used or how these procurements are to be administered. OPO was only able to locate information related to this set-aside type through presentations conducted by ISC to businesses and federal departments. In response to a document request from OPO, ISC confirmed that it does not have any specific guidance developed to help departments with conditional set-asides.

43. OPO has also found that support from ISC on this topic appears limited. In one ESDC file, the contracting authority contacted ISC's Indigenous procurement central mailbox to ask whether a conditional set-aside could be used after receiving no bids for a mandatory set-aside solicitation. Seven weeks later, ISC responded that they were not trained or specialized in federal procurement and advised the contracting authority to contact ESDC's Indigenous procurement coordinator or consult the PSPC Supply Manual.

44. It should be noted the PSPC Supply Manual does not provide guidance on when to apply a conditional set-aside or how to manage procurements that use this approach. While a 2022 "Procurement Nugget" acknowledges the existence of conditional set-asides under the PSIB, it falls short of offering detailed instructions on how to operationalize them within solicitation documents. Specifically, it does not explain what to clearly communicate to potential bidders regarding the fact that the procurement may become limited to Indigenous businesses only if two or more compliant bids are received from Indigenous suppliers.

45. Further, there are no standard clauses for solicitations that are conditionally set aside for Indigenous businesses. This is problematic as these procurements are subject to the provisions of applicable trade agreements unless two or more compliant bids are received from Indigenous businesses. To maintain the fairness, openness and transparency of the procurement process, it is critical that all potential bidders are aware of the possible limitations that may impact or exclude their bid in the context of a conditional set-aside, including limitations to their right to challenge contract award decisions with the Canadian International Trade Tribunal (CITT) or OPO.

46. If a conditional set-aside is administered incorrectly, it could result in a procurement being unjustly excluded from trade agreement obligations.

Conflicting guidance results in misapplication of Procurement Strategy for Indigenous Business eligibility requirements

47. Two key PSIB eligibility requirements have been in place since 1996 to ensure contracts and their intended benefits are reaching Indigenous communities:

1. a business is Indigenous where an Indigenous person or Indigenous firm has at least 51% ownership and control of the business (i.e., Indigenous ownership and control criterion).
2. at least 33% of the total value of work performed under a PSIB set-aside contract is performed by the Indigenous business awarded the contract or by a combination of that business and other businesses that also meet the 51% Indigenous ownership and control criterion (i.e., Indigenous content criterion).

48. Despite the longstanding nature of these eligibility requirements, OPO found that the guidance related to the requirements provided by ISC on their website and in PSPC's Supply Manual, was inconsistent. This has contributed to confusion and misapplication of the criteria across departments, as further detailed in the findings that follow.

Applying Procurement Strategy for Indigenous Business requirements to confirm eligible Indigenous businesses

49. For purposes of the PSIB, an Indigenous business must be one of the following, provided Indigenous persons have at least 51 percent ownership and control in the entity:

- a band as defined by the *Indian Act*¹¹
- a sole proprietorship
- a limited company
- a co-operative
- a partnership

¹¹ Use of the term "Indian" - Many Indigenous people in Canada prefer not to describe themselves as "Indians" and view this term as rooted in colonialism and racism. Under the *Indian Act*, the precise legal meaning of the term "Indian" refers to First Nations persons who are entitled to registration. It is often used in the context of historical government departments, documents, policies and laws. Today, the term "Indian" is used mostly in a legal sense. Most other uses are discouraged and considered offensive.

- a not-for-profit organization; or
- a joint venture consisting of two or more Indigenous businesses or an Indigenous business and a non-Indigenous business(es), provided that the Indigenous business(es) has at least 51 percent ownership and control of the joint venture.

50. Historically, a supplier's eligibility under the PSIB has been based on the attestation of their status as an Indigenous business when bidding on a set-aside requirement. Section 9.40.45 of the PSPC Supply Manual details the procedures related to these certifications and the Standard Acquisition Clauses and Conditions (SACC) Manual¹² clauses to be incorporated in PSIB solicitations and resulting contracts.

Required in the solicitation:

- Clause A3000T requires the bidder to certify that it meets, and will continue to meet throughout the duration of any resulting contract, the definition of an Indigenous business. Suppliers are required to agree that any subcontractor it engages under any resulting contract must satisfy the requirements related to its definition of an Indigenous business.
- Clause A3001T requires bidders to affirm they are the owner of their Indigenous business, and an Indigenous person.

Required in the resulting contract:

- Clause A3000C requires the supplier awarded the contract under PSIB to continue to meet the definition of an Indigenous business throughout the life of the contract.

51. Standardized contractual provisions and clauses play a critical role in federal procurement by ensuring consistency, legal compliance, and transparency across contracts. These clauses provide clear, legally sound language that helps contracting officers apply contract requirements uniformly, reducing ambiguity and risk. While PSPC's Supply Manual and standardized clauses were originally developed for use by PSPC contracting officers, departments such as ESDC, CSC, SSC and many others often reference or incorporate them, particularly when PSPC is involved or when using PSPC-developed templates. In the context of PSIB, contract clauses are used to confirm Indigenous business eligibility and outline verification procedures.

52. OPO found that while CSC's guidance appropriately referenced the required clauses for solicitations and contracts under PSIB, ESDC did not have guidance in place that included these required PSIB clauses. However, since SSC directs contracting officers to the Supply Manual, SSC procurement officers do have clear guidance that the clauses must be included. Despite this, OPO's review of procurement files revealed that the vast majority of files did not contain the required clauses.

¹² The SACC Manual is a reference document from the Canadian government that provides standard procurement clauses and conditions used by PSPC when buying goods and services. The SACC Manual is no longer being maintained as of June 2023. Clauses previously labelled as "Active" in the manual are now shown as archived. Contracts issued with SACC Manual clauses remain valid.

53. In 8 of the 17 competitive solicitations reviewed, OPO found the solicitation documents did not include the mandatory clauses A3000T and A3001T which require that suppliers submit their Indigenous certifications with their bids. In 5 of the 7 files for non-competitive processes or Advance Contract Award Notices (ACAN)¹³, OPO also found that the mandatory clauses were not provided to potential suppliers. As a result, the winning suppliers in these processes did not have to certify that they met the definition of an Indigenous business prior to contract award. These 13 procurement processes resulted in the award of 16 contracts.

54. In 1 of these 16 awarded contracts, clause A3000C was included, which requires the supplier to continue to meet the definition of an Indigenous business throughout the contract. The remaining 15 contracts reviewed did not include this clause.

55. When these clauses are missing, there is no formal mechanism to hold the Contractor accountable for not meeting PSIB requirements throughout the life of the contract.

New Indigenous Services Canada guidance: registry on the Indigenous Business Directory

56. In April 2022, ISC shared new guidance on their website stipulating Indigenous suppliers are to be registered on the IBD (unless exempted) to be eligible for contracts set aside under the PSIB. This new guidance aligns with section E.2.2.2.4 of the Directive on the Management of Procurement, which requires that the departmental procurement management framework “maintain a process that requires Indigenous Services Canada’s verification of an Indigenous business in accordance with the Indigenous Business Directory.” A supplier’s inclusion on the IBD indicates they meet the 51% Indigenous ownership and control criterion.

57. The PSPC Supply Manual does not reflect the requirement for contracting officers to check the IBD to confirm suppliers are registered there (or are exempted) before awarding set-aside contracts under the PSIB. As well, there are no available clauses detailing the requirement in a solicitation for suppliers to be listed on the IBD or part of an exemption in order to be considered eligible for a PSIB set-aside contract. In 2022, PSPC issued a “Procurement Nugget” titled “The 5% Mandate Commitment to Support Indigenous Businesses,” which informs contracting officers that suppliers must be listed on the IBD or exempted at the time of a PSIB contract award. However, this guidance does not instruct contracting officers to document this fact in the procurement file, which may lead to inconsistent record-keeping and oversight.

58. It is important that ISC communicates any updates to the eligibility requirements to departments as well as collaborate with PSPC to update their established communication platform – in this case, the PSPC Supply Manual – to ensure that contracting officers are aware of this change in a timely manner and can appropriately apply it to their requirements. Contracting officers must also have access to the necessary clauses in order to be able to enforce compliance to PSIB eligibility requirements. This gap in alignment can create confusion for procurement officers

¹³ An Advance Contract Award Notice (ACAN) is a public notice that a government department posts when it intends to award a contract to a specific supplier without a competitive process, but believes no other supplier can do the job. It gives other suppliers a chance to show they can meet the requirements—if no one comes forward, the contract is awarded as planned.

who rely on the Supply Manual for direction, increasing the risk that contracts may be awarded to suppliers who do not meet or continue to meet PSIB eligibility requirements.

59. ESDC's guidance directs contracting officers to check that a business is listed in the IBD before awarding a contract under the PSIB. CSC uses a checklist requiring contracting officers to confirm suppliers are on the IBD. SSC issued a memo advising officers to verify IBD listings. However, none of the departments require contracting officers to include evidence in the file that the IBD was checked.

60. As a result, in the majority of files reviewed (20 of 27 files), evidence was lacking to demonstrate that contracting authorities for ESDC, CSC, SSC or PSPC reviewed the IBD to confirm the supplier was registered or exempted prior to contract award.

61. OPO confirmed with ISC that 3 of the 27 suppliers selected for contract award were not listed on the IBD at the time of contract award and remained not listed as of the time of this report.

62. In one case, ESDC awarded a sole-source Indigenous set-aside contract to a supplier who was not registered on the IBD. Although ESDC advised the supplier to register prior to contract award, the contract proceeded without confirmation. The department after the fact defended its decision to OPO by citing concerns that the IBD registration process may feel exclusionary or burdensome for some Indigenous individuals. While the department aimed to support inclusive participation, it should not have made this decision unilaterally without any consultation or justification on file. Proceeding without confirming the supplier's Indigenous status through IBD registration raises questions about the supplier's eligibility and highlights limitations in the current process for verifying Indigenous business status in contracting.

63. This highlights a critical gap in compliance and documentation practices. To maintain the integrity of the PSIB, departments must ensure that suppliers are listed on the IBD prior to awarding a set-aside contract, and that any exemptions from IBD registration are clearly documented in the contract file.

Notifications to Indigenous suppliers of the set-aside opportunity

64. Per section 9.40.35(f) of the Supply Manual, when a contracting officer posts a PSIB set-aside solicitation on the Government Electronic Tendering System (GETS), they must advise potential suppliers that the procurement has been set aside under the PSIB and that suppliers must certify that they qualify as an Indigenous business as defined under the PSIB. This requirement applied to 15 solicitation processes.¹⁴ Of these, 3 of the 15 solicitations that were published on GETS did not include the required statement.

65. This omission can create uncertainty for potential suppliers regarding the applicability of the PSIB set-aside and may result in eligible Indigenous businesses not participating despite the procurement being set aside for their benefit. As well, this may also result in ineligible suppliers (i.e., non-Indigenous businesses) participating in the process in which they have no chance of

¹⁴ Some solicitation processes resulted in multiple contract awards: one process led to 3 contracts, and another to 2 contracts. These five contracts are associated with only two solicitations and are therefore counted once in the solicitation total to avoid duplication.

winning, potentially undermining the integrity of the procurement and the intended outcomes of the PSIB.

Ensuring meaningful Indigenous participation through content requirements

66. As originally stated in the archived Treasury Board Contracting Policy Notice 1996-2, the Indigenous content criterion was intended to ensure that at least 33% of the total value of the work performed under a PSIB set-aside contract is performed by the Indigenous contractor, or by a combination of that contractor and other Indigenous businesses. By mandating that a portion of the contract's value (one-third) be delivered by Indigenous businesses, the criterion supports Canada's commitment to advancing economic growth and reconciliation with Indigenous peoples.

67. This requirement is paramount for the integrity of the PSIB. If the 33% content criterion under the PSIB is not properly applied or enforced, it can lead to exploitation. Non-Indigenous businesses may use Indigenous businesses as shell companies—entities that meet the minimum ownership requirement on paper but do not actually perform the work—allowing them to unfairly access contracts intended to be set aside for Indigenous businesses.

68. OPO found that guidance to departments on this critical component of the PSIB was largely absent and that the minimal information provided was conflicting.

69. Per ISC's website, departments may request that ISC conduct a post-award audit to verify the 33% content criterion. However, according to ISC, the monitoring and oversight of the criterion is the primary responsibility of departments. OPO has found no evidence to demonstrate this expectation has been communicated to departments. Further, ISC indicated to OPO that they do not provide guidance to support federal departments regarding contract monitoring and that they "do not currently have guidance documents on the 33% content criterion."

70. Not only is ISC's direction on who is responsible for monitoring the 33% criterion inadequately defined, but even more alarming is the complete absence of clear guidance to departments on *when and how* this monitoring should be applied.

71. There is a conflict between ISC's website and the Supply Manual regarding in what context the 33% Indigenous content criterion should be verified. ISC's website offers a limited definition, stating that:

"at least 33% of the total value of work performed under a PSIB contract is performed by the Indigenous business awarded the contract or by a combination of that business and other businesses that also meet the 51% Indigenous ownership and control criterion."

72. In contrast, the Supply Manual addresses the 33% content criterion only in the context of supplier proposals involving subcontracting. It requires suppliers in these cases to certify in their bid that at least 33% of the contract's value will be performed by an Indigenous business. This guidance is narrowly focused and does not reflect the broader intent of the 33% content criterion.

73. As a result, the Supply Manual implies that the 33% content criterion only applies in the context of subcontracting and is not required for other contracts awarded under the PSIB set-aside. This conflict between ISC's website and the Supply Manual creates uncertainty and undermines the

intended purpose of ensuring that the 33% content criterion applies in all PSIB contracts, including joint ventures and subcontracting.

74. OPO agrees that departments are best positioned to monitor the 33% content criterion given their ability to provide timely oversight and their direct access to the information required for appropriate contract management. However, departments must also be clearly made aware of this responsibility, provided with guidance on what is to be monitored, and how this monitoring is to be done. As well, departments should be supported by ISC in understanding the potential circumstances that may give rise to the need to request a post-award audit from ISC.

75. OPO's review found no indication in ESDC, CSC or SSC's direction that the 33% requirement must be monitored either by the business owner or contracting authority, nor any indication of departmental communications reinforcing it. As ISC has failed to provide guidance to departments, this result is not surprising.

76. In the 23 files where the Contractor performed work under the contract to date¹⁵, there was no evidence to demonstrate ESDC, CSC or SSC verified the 33% content criterion was met during contract administration or evidence of mechanisms or tools to track supplier progress. Departments' failure to enforce this requirement undermines a fundamental objective of the PSIB and creates a risk that non-Indigenous entities disproportionately benefit from contracts intended to support Indigenous economic development.

77. Departments provided the following feedback to OPO with respect to tracking the 33% content criterion:

- ESDC: "Pursuant to sec. 9.4 of the Supply Manual on Canada Buys, in respect of a contract, (goods, service or construction), on which a supplier is making a proposal which involves subcontracting, the supplier 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 Indigenous business. ESDC does not formally monitor subcontracting, as this is optional. Monitoring for compliance with the 33% Indigenous participation requirement is only possible when proposals include planned subcontracting."
- ESDC went on to note to OPO that in the samples reviewed by OPO "none of the proposals submitted by the selected bidders included planned subcontracting, therefore the 33% monitoring does not apply to this contract."
- CSC: "There are currently not [sic] processes in place to ensure that 33% of a contract's value under the PSIB is performed by an Indigenous business. CSC usually works with individuals or community residential [facilities], which can be assumed to be done by the Indigenous people in question."
- SSC: "SSC had noted that the current guidance offered by ISC and clauses offered by PSPC...do not explicitly state that 33% of the work within a contract must be performed by an Indigenous business..."

¹⁵ For the remaining 4 files, no assessment could be made as work had not yet commenced under those contracts during this review's scope period.

78. OPO does not agree with the departmental views noted above. The 33% content criterion must be applied in all situations where the contract is awarded under the PSIB. Such situations include contracts involving subcontracting, as well as those not involving subcontracting.

79. Despite the longstanding nature of the PSIB and its role in awarding hundreds of millions of dollars of contracts annually, ISC has omitted to clearly communicate to departments their obligation to monitor and report on the 33% Indigenous content criterion. This oversight is not a minor administrative lapse—it reflects a systemic disregard for the fundamental purpose of the PSIB: to ensure Indigenous businesses are afforded meaningful and measurable economic opportunities through federal procurement. Without clear guidance, accountability mechanisms, or consistent departmental engagement, there is no reasonable assurance that Canada can credibly demonstrate that Indigenous businesses are meaningfully benefiting from these contracts.

Contract clauses to enforce the 33% Indigenous content criterion

80. In addition, OPO found that no contract clauses exist to support the 33% Indigenous content criterion in PSPC's Supply Manual, the SACC Manual or in departmental directives. As a result, none of the 27 contracts reviewed included clauses detailing the Contractor's obligation to ensure 33% of the value of the contract be conducted by Indigenous suppliers.

81. Contractual clauses are essential to ensure that suppliers are made aware of their obligations under the 33% content criterion before entering into a contract set aside under the PSIB, and that they are legally obligated to meet the criterion throughout the duration of the contract. As the department responsible for implementing and advising on the PSIB, ISC has a duty to collaborate with PSPC to ensure that federal departments have access to the necessary clauses to enforce PSIB requirements.

Audit gaps in the Procurement Strategy for Indigenous Business: a systemic weakness in oversight and control

82. ISC conducts three types of PSIB compliance audits:

- A **pre-award audit** is mandatory for PSIB contracts valued at or above \$2 million, and the award of the contract is conditional on the positive audit results.
- A **post-award audit** is **not** mandatory but is conducted if a department suspects the terms and conditions of the contract related to the participation of Indigenous suppliers are not being met.
- A **discretionary audit** is performed in cases where an ongoing or past contract that was awarded under PSIB is in question.

83. Pre-award audits are performed to verify that businesses meet the 51% Indigenous ownership and control criterion. Post-award and discretionary audits are performed to verify that businesses continue to meet this criterion, as well as the 33% Indigenous content criterion.

Neglect of pre-award audit obligations signals breakdown in oversight

84. Pre-award audits are an important control mechanism for contracts valued at or above \$2 million that are subject to the PSIB set-aside. These audits help ensure that all eligibility requirements under the PSIB are met before a contract is awarded. These audits ensure that

contracts are awarded to eligible businesses and mitigate risks of non-compliance. When the audit is completed the results are to be communicated by ISC to the audited business and to the contracting authority so they can proceed to contract award.

85. ISC's website clearly prescribes that pre-award audits are to be conducted as a condition of contract award for contracts valued at or above \$2 million, as well as the responsibilities of contracting authorities in requesting this audit. The website also details ISC's responsibilities once audits have been completed, as well as the impacts of audit results on contract award decisions and procurement processes. This requirement is also included in the mandatory training for all federal procurement officers offered by the Canada School of Public Service entitled 'Indigenous Considerations in Procurement'. Furthermore, this information has been incorporated in PSPC's Supply Manual.

86. OPO found that ESDC has communicated the pre-award audit obligation to its contracting officers. There was no evidence to demonstrate CSC issued similar internal guidance on this requirement. SSC refers to the Supply Manual for guidance on Indigenous procurement which provides appropriate direction regarding the requirement. CSC advised OPO that they were not aware of the requirement for pre-award audits for contracts over \$2 million.

87. Of the 27 contracts reviewed by OPO, 13 contracts were valued over \$2 million (1 for ESDC, 3 for CSC, 9 for SSC). In 9 of the 13 files, there was no evidence to demonstrate ISC was notified by the CSC, SSC or PSPC Contracting Authorities for a required mandatory pre-award audit. As a result, there was no evidence to suggest that pre-award audits were performed by ISC in these cases.

88. In 3 contracts stemming from the same solicitation for SSC, the SSC Contracting Authority contacted ISC advising of the successful bidders prior to award, but received no response. The Contracting Authority also sent two follow-up emails over the course of two months without response from ISC. SSC proceeded to award the contracts without receiving ISC's confirmation of the bidders' Indigenous business status so as not to prolong the contract award timeline.

89. In the 1 remaining file for a contract awarded by PSPC on behalf of ESDC, the PSPC Contracting Authority requested a mandatory pre-award audit from ISC, and in response, ISC stated that the bidder was registered and active on the IBD and that a contract could be awarded. OPO found no evidence that a pre-award audit was conducted by ISC.

90. The requirement for a pre-award audit to be conducted by ISC for contracts valued at or above \$2 million is a safeguard to ensure that suppliers awarded contracts intended for Indigenous businesses meet the 51% Indigenous ownership and control criteria. By not requesting and obtaining these audits, CSC, SSC and PSPC (when acting as the contracting authority on behalf of CSC), bypassed a key accountability mechanism, potentially allowing contracts to be awarded to ineligible suppliers. This is revealing of a systemic failure to comply with a mandatory control designed to uphold the integrity of the PSIB.

91. In addition, ISC does not monitor for audit compliance gaps. Departments submit to ISC their annual Indigenous contracting activity reports that include identification of contracts valued above \$2 million. ISC does not complete cross verifications of these reports to identify whether pre-award

audits were requested for all applicable contracts as per the procedure. By taking a more proactive role, ISC could increase departmental vigilance and improve compliance overall.

92. ISC should move beyond a passive role and take ownership of its joint responsibility in the pre-award audit process. While current practices rely on departmental requests, ISC is uniquely positioned to identify gaps and increase departmental vigilance. Closing this gap is essential to strengthening the strategy's oversight and ensuring that public funds are awarded with due diligence.

Limited use of post-award audits undermines compliance

93. Post-award audits conducted by ISC are intended to ensure continued compliance with the PSIB after a contract has been awarded. These audits verify that the awarded business maintains at least 51% Indigenous ownership and that a minimum of 33% of the contract value is being carried out by an Indigenous business throughout the duration of the contract. This oversight is critical to safeguarding the integrity of the strategy, preventing misrepresentation, and ensuring that the economic benefits intended for Indigenous communities are being realized. These audits are identified as optional by ISC, and as such, are not required under the PSIB.

94. ISC's website indicates that post-award audits should be requested when a department "suspects that the terms and conditions of the contract related to the participation of Indigenous suppliers are not being met", and in the case of a discretionary audit, "where an ongoing or past contract that was awarded under PSIB is in question." However, there is no guidance on how contracting authorities are expected to determine when they should contact ISC to trigger these audits.

95. The Supply Manual states that contracting authorities can request a compliance audit "where contracting officers believe it to be necessary", without providing any information regarding which circumstances would merit this. The value of the compliance audits is brought into question as contracting authorities are not provided any guidance on potential indicators of non-compliance.

96. The procurement management frameworks and guidance provided by ESDC, CSC and SSC to their contracting officers do not provide guidance regarding post-award audits. SSC's PMF refers to the Supply Manual for guidance on Indigenous procurement which does not clearly define when such audits should be triggered. Of the 27 files, 23 files have resulted in work being performed under the contract within the scope period of this review. For these 23 files, there was no evidence that a post-award audit was requested by the departments or conducted by ISC on a discretionary basis. For the remaining 4 files, no assessment could be made as work had not yet commenced under those contracts.

97. ESDC, CSC and SSC have confirmed to OPO that they have never requested post-award audits to be conducted by ISC for any contracts they have awarded within the scope period of this review.

98. Without defined criteria or indicators of non-compliance, contracting authorities are left to rely on subjective judgment, which may result in missed opportunities to detect and address issues in contract execution. This lack of clarity raises the risk that contracts warranting scrutiny are consistently overlooked. Departments may not recognize when an audit is appropriate, and without

clear triggers or guidance, the effectiveness of post-award and discretionary audits as a compliance tool is significantly diminished.

Procurement without accountability: Indigenous suppliers denied fair challenge in federal procurement

99. There are recourse mechanisms in place for suppliers who wish to challenge the award of federal contracts *not* subject to a PSIB set-aside. Suppliers may file a complaint with either the Canadian International Trade Tribunal (CITT) or OPO, depending on the nature of the issue and estimated contract value. The CITT addresses certain complaints related to procurement issues arising under free trade agreement obligations. In addition, OPO reviews certain complaints regarding procurements that are below the monetary thresholds of the Canadian Free Trade Agreement (CFTA). These recourse mechanisms offered by the CITT and OPO are vital because they provide suppliers with a formal avenue to seek redress, promote accountability in government contracting, and help ensure that procurement processes remain fair, open and transparent.

100. However, Indigenous suppliers who have complaints about the award¹⁶ of contracts awarded under the PSIB do not have access to either CITT or OPO recourse mechanisms due to such contracts' exempt status from trade agreements. As a result, Indigenous suppliers essentially have nowhere to turn if they feel a contract awarded under the PSIB violated procurement rules.

101. With no dedicated recourse mechanism for Indigenous suppliers to file complaints related to PSIB set-aside procurement processes, Indigenous suppliers are left with the option of turning to the Federal Court to challenge these contracts. This route can be costly, time-consuming and legally complex, rendering it an undesirable option for many Indigenous businesses. This creates an unfortunate paradox for Indigenous suppliers who wish to participate in the federal procurement system. On one hand, Canada seeks to attract participation from Indigenous suppliers through its 5% total value commitment, and its 51% ownership and 33% content criterion commitments under the PSIB. However, Indigenous suppliers participating in procurement processes under the PSIB set-aside have less access to formal challenge mechanisms and recourse options than do non-Indigenous suppliers participating in non-PSIB procurements.

102. ISC is aware of this gap. In the Procurement Ombud's comments at House of Commons Standing Committee on Government Operations and Estimates (OGGO) in February 2022, he highlighted the jurisdictional restrictions for both OPO and the CITT and the systemic barrier these restrictions pose for Indigenous businesses. The Ombud stated the following when noting proposed changes to the *Procurement Ombudsman Regulations*:

"...I would also like to propose an additional change that was not raised in my last annual report, which is that suppliers bidding on contracts awarded under the procurement set-aside for Indigenous businesses be given a right of recourse to my office in the event issues arise. I believe that when the set-aside program for Indigenous businesses was created, it was not well understood that complaints arising under this program would be outside the jurisdiction of my office and the Canadian International Trade Tribunal. This is a systemic barrier that must be removed."

¹⁶ Indigenous suppliers may seek recourse with OPO regarding complaints about the administration of PSIB set-aside contracts they have been awarded.

103. The CITT has also highlighted this inequity over the years, and did so again in December 2021 when in a statement of reasons, the CITT stated:

“Indigenous peoples and businesses who participate in government procurement opportunities [...] do not currently have access to the Tribunal’s bid challenge mechanism and can only turn to the courts when seeking a formal and impartial recourse mechanism whenever an [A]boriginal or minority small business set-aside is invoked. As a result, Indigenous suppliers currently have less rights of access to justice than non-[I]ndigenous Canadians, and foreign suppliers, who can access the Tribunal when the trade agreements are applicable.”

104. Further compounding the issue are miscommunications in procurement documents. In 8 of the 27 files reviewed, solicitation documents incorrectly stated that trade agreements applied. Further, in 8 files, suppliers were advised, via solicitation clauses or regret letters, that the CITT and OPO were available to receive complaints, despite these mechanisms being inaccessible for PSIB contracts. Such misinformation can mislead Indigenous suppliers into pursuing complaints that cannot be heard, wasting valuable time and compounding the frustration to ultimately learn that no CITT or OPO recourse exists.

105. OPO’s ability to maintain line of sight on issues related to PSIB-awarded contracts has been significantly constrained by its regulatory framework. As OPO cannot formally investigate complaints in this area, its ability to identify systemic issues early has been reduced. While stakeholders may share *ad hoc* feedback, the absence of regulatory authority makes OPO an unlikely point of contact and prevents any formal action. Consequently, these restrictions have hindered OPO’s oversight and delayed awareness of recurring challenges within PSIB-awarded contracts.

106. It is critical that the Government of Canada remove the exception in OPO’s enabling legislation to ensure that Indigenous suppliers have the same access to recourse as non-Indigenous suppliers. Without a fair and transparent mechanism to challenge contract award decisions, Indigenous suppliers face systemic disadvantages, undermining the goals of the PSIB and broader reconciliation efforts.

Recommendation 1: Indigenous Services Canada (ISC), in collaboration with First Nations, Inuit, and Métis and Public Services and Procurement Canada (PSPC), should expedite the development of a comprehensive Indigenous Procurement Policy that reflects the core objectives of PSIB, with a particular emphasis on fairness, openness and transparency in the procurement process.

This policy should consolidate and clarify strategy requirements, roles and procedures, particularly those related to procurement strategy planning, eligibility verification and maintenance, audit mechanisms, and documentation standards while ensuring eligibility persists throughout the duration of the contract. To enhance accountability, OPO will review and publicly report on progress on the policy based on 6 month intervals until successful implementation.

Recommendation 2:

- A. PSPC, in collaboration with the Department of Justice (JUS), should establish OPO as the interim recourse mechanism office to handle supplier complaints related to the award of PSIB set-aside contracts until a permanent mechanism is established.

- B. ISC, in consultation with PSPC, JUS, and First Nations, Inuit and Métis stakeholders, should also establish a permanent impartial recourse mechanism which provides a fair and transparent review of supplier complaints related to the award of PSIB set-aside contracts. Serious consideration should be given to establish this impartial recourse mechanism as Indigenous-led.

The Procurement Ombud understands the significant nature of the recommendations laid out in this report and the required involvement of additional organizations within the Federal Government not subjected to this review. Furthermore, should the Government of Canada enact a federal Procurement Statute, it is expected that the recommended Indigenous Procurement Policy be enshrined in the new statute as a binding obligation. It is the expectation of the Procurement Ombud that Treasury Board Secretariat and all other Federal Government organizations required to implement these recommendations will assist to the greatest extent required to ensure successful implementation.

Reporting obligations

Reporting against 5% target overstates Indigenous participation in federal procurement

107. OPO found that ISC had issued annual call letters requesting departmental procurement plans and annual results against the 5% total value target in accordance with the timelines set out in the Directive on the Management of Procurement for fiscal years 2022 – 2023 through 2024 – 2025. Departments are required to use standardized reporting templates, which support consistent tracking. ISC has also published government-wide performance information against the 5% target in line with the Directive’s timelines. ESDC, CSC and SSC have submitted their annual reports as required by ISC.

108. However, OPO observed that the reporting formula used to calculate the total value of contracts awarded to Indigenous businesses overstates the actual figures. Reporting on the 5% target is calculated as the total value of contracts awarded to Indigenous businesses during the fiscal year, divided by the total value of all contracts awarded during that fiscal year (minus any deputy head-approved exceptions), multiplied by 100. Contracts awarded to Indigenous businesses under PSIB set-asides and outside of PSIB are both counted toward the 5% total value Indigenous procurement target.

109. The portion of work completed by non-Indigenous businesses for a specific contract is not disaggregated from the total contract value when tabulating the 5%. While the Indigenous content criterion requires that at least 33% of the work be completed by Indigenous businesses, up to 67% may be carried out by non-Indigenous subcontractors. Because departments are not required to disaggregate the work performed by non-Indigenous entities, these contributions are still counted toward the 5% target, overstating the actual economic benefit to Indigenous businesses. Furthermore, because contracts awarded outside of PSIB to Indigenous businesses do not include an Indigenous content requirement, there is nothing preventing 100% of the work from being subcontracted to non-Indigenous businesses. These contracts can still be counted toward the 5% target, which may further distort the data.

110. While it was reported that Indigenous businesses received over \$1.24 billion in federal contracts in 2023 – 24—representing 6.1% of all eligible government procurements—this figure

overstates the actual benefit to Indigenous businesses. ISC's calculation method includes the full value of contracts including up to 67% of the work carried out by a non-Indigenous business in contracts awarded under PSIB. This approach creates a misleading impression that Indigenous businesses are receiving a larger share of federal procurement spending than they truly are. This misleading data undermines the transparency and accountability in reporting performance against the 5% target.

Recommendation 3: Indigenous Services Canada (ISC) should implement measures to ensure that, when calculating the 5% target for the total contract value awarded to Indigenous businesses, the amounts reported by departments and agencies are immediately updated to reflect the value of work that was paid and clearly documented as having been carried out by Indigenous businesses. This will ensure that reporting accurately reflects the actual impact on Indigenous businesses.

Correctional Service Canada

111. OPO found one significant reporting error which resulted in having to de-scope contracts from this review. As noted in paragraph 15, these files were initially part of OPO's review sample but then removed as OPO's scope is limited to PSIB contracts.

112. CSC reported 3 contracts to ISC in their annual performance report as well as in Proactive Disclosure as having been awarded under the PSIB. During this review, ISC confirmed to OPO these suppliers were not listed on the IBD at the time they were awarded contracts and should not have been counted toward the 5% target. These procurements were not identified at the time of solicitation as being set aside under the PSIB.

113. Based on OPO's calculations, when excluding the value of all contracts and amendments awarded to suppliers in OPO's sample that are not listed on the Indigenous Business Directory (IBD), CSC would not have met its 5% target for 2023 – 2024, as reported to ISC.

114. Accurate reporting of PSIB contracts in annual submissions to ISC ensures transparency and supports monitoring of Indigenous procurement targets. It prevents misrepresentation of contract eligibility and avoids undermining trust in the procurement process. Reliable data also enables informed policy decisions and reduces the risk of non-compliance.

Ombud's top 5 foundational change recommendations highlight Procurement Strategy for Indigenous Business challenges

115. The "Time for Solutions" report, released by the Office of the Procurement Ombud in July 2025, outlines five foundational changes needed to improve federal procurement. These changes aim to address long-standing issues such as diffused accountability, complexity, lack of oversight, and fragmented rules. Notably, four of the five proposed reforms, including the creation of a Chief Procurement Officer (CPO), a government-wide vendor performance management (VPM) system, unified procurement rules, and improved data collection would directly benefit the PSIB by strengthening oversight, simplifying processes, and enhancing transparency and accountability. The report can be found here: [Time for Solutions: Top 5 Foundational Changes Needed in Federal Procurement - Office of the Procurement Ombud](#)

A Chief Procurement Officer could provide centralized guidance for administering the Procurement Strategy for Indigenous Business

116. Departments continue to face confusion and lack of clarity around their responsibilities under the PSIB, with many officials unaware of the correct procedures or guidance. This leadership gap has contributed to inconsistent application of the PSIB across government. The appointment of a CPO could address this issue by serving as a central authority to interpret departmental responsibilities, provide consistent guidance and training, and ensure accountability. This role would help prevent reliance on inappropriate sources like the inappropriate PSPC Supply Manual and support proper implementation of Indigenous procurement policy.

Vendor Performance Management presents opportunities to monitor and penalize contractor non-compliance with Indigenous ownership and content requirements

117. A VPM framework would help strengthen supplier accountability under the PSIB by introducing performance indicators that include compliance with Indigenous procurement requirements for PSIB contracts. Suppliers who fail to meet these obligations would receive lower scores, affecting their eligibility for future contracts. A VPM system would also allow departments to track and share data on non-compliant suppliers, preventing them from bypassing accountability by seeking contracts with other departments.

118. Additionally, a VPM system would help ensure suppliers are aware of their responsibilities by embedding evaluation criteria directly into contracts. One PSPC/ESDC contract reviewed by OPO was included in a VPM 'pilot' project. The performance indicators in the VPM framework used to evaluate the supplier's performance included the following areas, which were to be assessed every 6 months by the Business Owner: Quality (Resource Quality and Continuity), Quality (Technical Compliance), Quality (Document Quality), Management (Communication and Coordination), Cost (Firm Price or Fixed Time Rate, according to Basis of Payment) and Schedule (Project Management).

119. While this file reflects a positive step towards holding suppliers to account for contract performance, OPO observed the VPM model did not have mechanisms to measure and ensure supplier post-award compliance with Indigenous Business requirements, such as the 51% ownership and control criterion and the 33% content criterion. Monitoring of PSIB compliance is a crucial element to ensuring sound contract management practices and avoiding the situation where a supplier is able to obtain high ratings against contract performance indicators, yet is non-compliant with PSIB obligations of the contract. If PSIB compliance is not integrated into the VPM system, this may result in the unwanted effect of awarding future set-aside contracts to suppliers who fail to comply with the 51% and 33% PSIB requirements.

The lack of guidance emphasizes the need for a single ruleset

120. As explored above, there is a widespread lack of understanding across departments and even within Indigenous Services Canada regarding the requirements of the PSIB. Departments either misunderstood the rules or struggled due to the absence of centralized guidance. This confusion is made worse by the fact that there is no single authoritative document that applies government-wide that clearly outlines PSIB requirements. The Directive on the Management of Procurement offers limited direction, and ISC's own website refers users to the Supply Manual. This fragmented and outdated guidance undermines consistent application of the PSIB.

121. To resolve this, Canada should develop a single, universally applicable set of procurement rules in legislation. Codifying these rules would improve clarity, eliminate conflicting guidance, and ensure departments understand and meet their obligations. It would also support modern procurement practices while aligning with Canada's commitments under trade agreements and to Indigenous peoples.

Establish a government-wide framework for procurement data collection to increase transparency of federal procurements

122. OPO identified significant issues with the quality and integrity of data collected by ISC for reporting on the PSIB and the 5% target. Inconsistencies between departmental procurement plans and the results data requested by ISC make it difficult to reliably track procurement trends. Departments also struggle to report on subcontracts awarded by Indigenous businesses due to limitations in their financial systems, resulting in inconsistent data on a key aspect of Indigenous procurement.

123. Additionally, ISC relies solely on departmental notifications to trigger mandatory pre-award audits for contracts over \$2 million, without cross-referencing procurement plans or results data to identify eligible procurements. This lack of data redundancy leads to missed audits and inconsistent application of the strategy's requirements.

124. These gaps reflect broader challenges in federal procurement data management. A more robust data collection framework is essential to improve visibility into Indigenous procurement activity, support better decision-making, and strengthen outreach to Indigenous businesses in support of Canada's commitment to economic reconciliation.

VII. Conclusion

125. The Procurement Ombud reviewed the procurement practices of 5 federal departments to determine whether procurement practices pertaining to the PSIB were consistent with applicable legislation, regulation, policies, procedures and guidance and support the principles of fairness, openness and transparency. OPO reviewed the guidance and support provided by ISC for conducting procurements under the PSIB as well as the procurement management frameworks and guidance established and developed by PSPC, ESDC, CSC and SSC in support of PSIB objectives. Further, this included a review of 27 PSIB set-aside contracts to assess the manner in which they were issued and monitored and reported. PSPC was the contracting department for 4 contracts, and the remaining 23 contracts were awarded by ESDC, CSC and SSC under their own contracting authorities.

126. The PSIB, particularly its set-aside component, is a key mechanism for advancing Indigenous economic development and reconciliation. However, OPO's review of the PSIB reveals significant deficiencies that undermine its effectiveness. The lack of clear roles and responsibilities, inconsistent departmental practices, and conflicting and outdated guidance contribute to weak controls and missed opportunities to fulfill the strategy's intent.

127. OPO's review of procurement practices related to the PSIB across ISC, PSPC, ESDC, CSC, and SSC revealed systemic gaps in guidance, oversight, and implementation. ISC, as the lead department for PSIB, has not provided consistent or comprehensive direction to departments,

resulting in fragmented application of the strategy's requirements. PSPC's Supply Manual, while widely referenced, lacks critical clauses and guidance, particularly regarding the 33% Indigenous content criterion, post-award audits, and Indigenous verification procedures. The absence of robust monitoring and reporting renders the strategy's outcomes opaque and risks reducing a critical reconciliation initiative to a symbolic gesture rather than a measurable, impactful strategy.

128. Departments conducting procurements independently face even greater challenges due to the absence of a standardized clause inventory and clear procedural expectations. Across the 27 contract files reviewed, OPO observed frequent omissions of required SACC clauses or equivalents, limited evidence of IBD verification, and a near-total absence of pre- and post-award audits. These deficiencies impact the enforceability of PSIB obligations and create a risk of awarding contracts to suppliers who do not meet or maintain Indigenous business eligibility. Moreover, the lack of mechanisms to monitor the 33% content requirement and inconsistent documentation of procurement strategy rationales further undermine transparency and accountability.

129. To uphold the integrity of the PSIB and ensure its intended economic benefits for Indigenous communities are realized, ISC must lead a coordinated effort to strengthen the strategy's guidance, while departments must enhance their procurement management frameworks and oversight practices.

130. In order to address issues identified, OPO made 3 recommendations. These recommendations can be found in Annex I of this report.

131. Urgent reform is needed to strengthen PSIB oversight and accountability. ISC, in collaboration with First Nations, Inuit, Métis, and PSPC, must develop a comprehensive Indigenous Procurement Policy that aligns with PSIB objectives and ensures fairness, openness, and transparency. The policy must clarify roles, procedures, and accountability measures, with OPO reviewing and publicly reporting progress every six months until implementation.

Additionally, PSPC and JUS should establish OPO as the interim impartial recourse mechanism for supplier complaints related to PSIB set-aside contracts while ISC, in consultation with PSPC, JUS, and First Nations, Inuit and Métis stakeholders, develops a permanent mechanism, giving serious consideration to it being Indigenous-led. Finally, ISC should update how departments and agencies calculate and report on the 5% total contract value awarded to Indigenous businesses, to ensure the amounts reflect the value of work clearly documented to have been carried out by Indigenous businesses. It is the Ombud's desire that the new Indigenous Procurement Policy, the dispute mechanism and the associated reporting are ultimately captured in a new Federal Procurement Statute to provide the most formal recognition of the importance of Indigenous Suppliers in federal procurement.

VIII. Organizational responses

Shared Services Canada

132. SSC acknowledges the vital role of Indigenous economic development as a foundation for reconciliation and is firmly dedicated to promoting Government of Canada's initiatives to foster opportunities for Indigenous businesses while upholding the principles of fairness, transparency,

and openness in the procurement process. As such, SSC supports and commends the insightful analysis and impactful recommendations presented in OPO's report and remains committed to working collaboratively with ISC, PSPC, First Nations, Inuit, and Métis communities, along with other stakeholders, in the broader effort to drive meaningful and sustainable economic growth of Indigenous communities. SSC also expresses its gratitude to the OPO and appreciates the opportunity to engage in this critical conversation about strengthening Indigenous procurement practices and advancing reconciliation through federal procurement.

Employment and Social Development Canada

133. Employment and Social Development Canada (ESDC) appreciates the Office of the Procurement Ombud's review of contracts awarded to Indigenous businesses. The department acknowledges areas for improvement and remains committed to strengthening reconciliation through its implementation of the Procurement Strategy for Indigenous Business (PSIB). [ESDC] will enhance procurement practices, reduce barriers, and adopt measures introduced by ISC and PSPC resulting from this audit.

Correctional Service Canada

134. Correctional Service Canada (CSC) supports the recommendations for ISC and PSPC outlined in the Office of the Procurement Ombud's review of contracts awarded to Indigenous businesses. The department acknowledges the importance of having the proper federal tools, guidance, and oversight mechanisms in place to better support federal departments' commitment to advancing economic growth and reconciliation with Indigenous peoples. CSC will participate and collaborate with ISC and PSPC on any recommendation-related actions that impact [them] and will implement any measures introduced as a result of this audit.

Public Service and Procurement Canada

135. Public Services and Procurement Canada (PSPC) welcomes the report of the Office of the Procurement Ombud (OPO) on Contracts Awarded to Indigenous Businesses. PSPC is committed to conducting procurements in an open, fair, and transparent manner. As the central purchasing agent for the federal government, PSPC awards contracts on behalf of client departments and agencies. While contract management is a shared responsibility between PSPC and its clients, PSPC is committed to improving and strengthening the federal procurement process.

136. The department takes note of Recommendation 2A in the report and supports the goal of ensuring that Indigenous businesses have an appropriate recourse mechanism under the Procurement Strategy for Indigenous Business (PSIB). Given the diversity of Indigenous representation in Canada—including over 630 First Nations communities, four Inuit regions within Inuit Nunangat, and seven Métis representative organizations—any recourse mechanism, whether interim or permanent, must be developed in collaboration with Indigenous partners and must respect the principles of self-determination and self-governance. For this reason, PSPC believes that Indigenous Services Canada (ISC), working in consultation with Indigenous partners and drawing on its leadership in the co-development of the Transformative Indigenous Procurement Strategy, is best positioned to identify and/or develop recourse mechanisms, including an interim one, for handling supplier complaints related to PSIB contracts.

137. PSPC will continue to support ISC as they modernize and transform the PSIB, and advance Canada's reconciliation commitments.

138. PSPC thanks the OPO team for this review.

Indigenous Services Canada

139. In response to OPO's request, Indigenous Services Canada has consolidated all of their comments directly into their Response and Action Plan, which outlines their actions regarding OPO's recommendation.

X. Acknowledgement

140. OPO wishes to express its appreciation to the staff at all organizations involved who provided information and extended assistance and cooperation to OPO during this review.

Annex I: Procurement Practice Review of contracts awarded to Indigenous businesses

Recommendation 1

Indigenous Services Canada (ISC), in collaboration with First Nations, Inuit, and Metis and Public Services and Procurement Canada (PSPC), should expedite the development of a comprehensive Indigenous Procurement Policy that reflects the core objectives of PSIB, with a particular emphasis on fairness, openness and transparency in the procurement process.

This policy should consolidate and clarify strategy requirements, roles and procedures, particularly those related to procurement strategy planning, eligibility verification and maintenance, audit mechanisms, and documentation standards while ensuring eligibility persists throughout the duration of the contract. To enhance accountability, OPO will review and publicly report on progress on the policy based on 6 month intervals until successful implementation.

Response / Action plan

ISC:

ISC agrees with the recommendation and is collaborating with First Nations, Inuit, and Métis and Public Services and Procurement Canada to update the current Indigenous procurement policy to reflect the current procurement realities and priorities of Indigenous partners.

It is expected that ISC, in collaboration with First Nations, Inuit, and Métis and Public Services and Procurement Canada, finalize a transformed Indigenous procurement strategy that reflects the current procurement landscape and Indigenous partners' priorities (e.g., Indigenous peoples are the ones verifying and validating which businesses are Indigenous).

The policy and strategy are expected to be finalized in the winter of 2026 and fully implemented by April 1, 2027.

Timeline for implementation

ISC:

Collaboration with Indigenous partners on the policy changes and proposed amendments (winter – fall 2026).

Engage with Public Services and Procurement Canada, Treasury Board of Canada Secretariat, and federal departments and agencies on the policy changes and proposed amendments (Fall 2026).

Cabinet approval on proposed changes (winter 2026).

Implementation (spring 2027).

Recommendation 2

- A. PSPC, in collaboration with the Department of Justice (JUS), should establish OPO as the interim recourse mechanism office to handle supplier complaints related to the award of PSIB set-aside contracts until a permanent mechanism is established.

- B. ISC, in consultation with PSPC, JUS, and First Nations, Inuit and Métis stakeholders, should also establish a permanent impartial recourse mechanism which provides a fair and transparent review of supplier complaints related to the award of PSIB set-aside contracts. Serious consideration should be given to establish this impartial recourse mechanism as Indigenous-led.

Response / Action plan

PSPC:

A. PSPC does not support unilaterally establishing the OPO as the interim recourse mechanism without the involvement of ISC and outside of the Transformative Indigenous Procurement Strategy (TIPS) co-lead by ISC and Indigenous partners. This recommendation should be redirected to ISC, with PSPC support.

Justification:

In August 2021, Indigenous Services Canada (ISC) was mandated to modernize the Procurement Strategy for Indigenous Business (PSIB), and lead the meaningful engagement to co-develop a longer-term transformative approach to Indigenous procurement (also known as the Transformative Indigenous Procurement Strategy, TIPS). This includes exploring the development of a recourse mechanism for PSIB set-asides.

ISC is best positioned to lead this recommendation, given it is responsible for the PSIB and the co-development of the TIPS with Indigenous partners. ISC chairs the TIPS Co-development Table, and participates in Canada's permanent bilateral mechanisms with First Nations, Métis and Inuit leaders to identify joint priorities, co-develop policy, and monitor progress. These established relationships and governance structures ensure that engagement is not only consultative but collaborative and nation-to-nation in nature.

The development or identification of any recourse mechanisms, whether interim or not, should be done in collaboration with Indigenous partners and respect the principles of self-determination and self-governance of Indigenous nations and communities.

Given that ISC detains the knowledge and expertise on PSIB and TIPS, both built through continuous engagement with Indigenous partners, it is important that they lead the development of any recourse mechanisms, including an interim one. They will be able to advise, for instance, on how an interim recourse mechanism can align with Indigenous rights and will be able to ensure that it is well received by Indigenous partners.

ISC:

ISC agrees with the recommendation and with Indigenous stakeholders will codevelop an Indigenous-led impartial recourse mechanism to review supplier complaints related to the award of PSIB set-aside contracts. ISC will consult Public Services and Procurement Canada and the Department of Justice in doing so.

An Indigenous-led impartial recourse mechanism will be established to provide Indigenous businesses improved means to redress complaints related to the award of PSIB set-aside contracts.

The Indigenous-led impartial recourse mechanism will be finalized in the winter of 2027 and implemented by April 2028.

Timeline for implementation

PSPC:

None provided.

ISC:

Engage with Indigenous partners on the recourse mechanism (winter – fall 2027).

Consult with Public Services and Procurement Canada and Department of Justice (winter – fall 2027).

Cabinet approval on proposed changes (winter 2027).

Implementation (spring 2028).

Recommendation 3

Indigenous Services Canada (ISC) should implement measures to ensure that, when calculating the 5% target for the total contract value awarded to Indigenous businesses, the amounts reported by departments and agencies are immediately updated to reflect the value of work that was paid and clearly documented as having been carried out by Indigenous businesses. This will ensure that reporting accurately reflects the actual impact on Indigenous businesses.

Response / Action plan

ISC:

ISC agrees that there is an opportunity to improve the methodology used to calculate the 5% target to better reflect the impact on Indigenous businesses.

- ISC will continue to encourage Treasury Board of Canada, the owner of the Directive that defines the 5% target calculation, to re-evaluate the methodology for the 5% target.
- ISC will consult with the Indigenous Procurement Coordinator Network to identify how the value of the work carried out by Indigenous businesses can be reported on, considering the limitations of the various integrated financial management systems in use.
- ISC will endeavor to publish as much data as possible for the 2024-25 reporting period including information on subcontracts, and contracts awarded under the Procurement Strategy for Indigenous Business.

The expected outcome will depend on the results of a feasibility assessment.

The proposed changes necessarily impact all departments and agencies who are mandated to report on the 5% target, will require significant resource allocation and adjustments to integrated financial management systems, changes to how information is collected and reported at all levels, and would require a unified, mandated effort from across the whole of government.

If feasible, a change of this scale would likely require 2-3 years to implement fully.

Timeline for implementation

ISC:

Publish additional data on the Procurement Strategy for Indigenous Business subcontracting by April 1, 2026.

Engage with Treasury Board of Canada Secretariat, Public Services and Procurement Canada, and other federal organizations on the proposed changes (spring, 2026).

Conduct feasibility assessment to better understand the implications of this recommendation (fall, 2026).

Implementation – to be determined (TBD).