

# Using the Commonwealth Procurement Rules Indigenous Exemption<sup>17</sup>

## About the Exemption

Exemption No. 17 (included in Appendix A) of the Commonwealth Procurement Rules (CPRs) allows a Commonwealth agency to approach a small or medium Indigenous business (at least 50 per cent Indigenous owned) directly (via limited tender) for a quote for the provision of goods or services.

### What is an Indigenous business?

An Indigenous business is any business that is 50 per cent or more Indigenous owned.

### What is a small to medium enterprise (SME)?

An SME is defined by the Department of Finance as an Australian firm with fewer than 200 full-time equivalent employees.

## About the Indigenous Procurement Policy

The Indigenous Procurement Policy commenced 1 July 2015. Its objective is to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy.

As the Indigenous business sector is dominated by SMEs, the new policy focuses effort on these enterprises to drive improvements in Indigenous economic development and Indigenous employment.

The policy is designed to use the Commonwealth's billion dollar procurement spend to drive demand for Indigenous businesses and employees in three ways. It requires that:

- Commonwealth agencies meet annual purchasing targets from Indigenous businesses. By 2020, three per cent of new domestic Commonwealth government contracts will be awarded to Indigenous businesses.
- Indigenous businesses who can show value for money are considered first for all Commonwealth government contracts:
  - delivered in remote Australia and
  - for all contracts valued between \$80,000 and \$200,000. (This is called the mandatory set aside process).

- Commonwealth contracts valued at \$7.5 million and above, where the majority of the goods and services will be delivered in one of the following sectors, require that contractors meet minimum Indigenous employment and/or supplier use targets.
  1. Building, construction and maintenance services
  2. Transportation, storage and mail services
  3. Education and training services
  4. Industrial cleaning services
  5. Farming and fishing and forestry and wildlife contracting services
  6. Editorial and design and graphic and fine art services
  7. Travel and food and lodging and entertainment services
  8. Politics and civic affairs services

A detailed list of services that fall within each of these sectors can be found at the [department's](#) web page [www.dpmc.gov.au/ipp](http://www.dpmc.gov.au/ipp)

### **Where can I find a list of Indigenous businesses and what they sell?**

[Supply Nation](#) provides a free list of registered Indigenous businesses see [www.supplynation.org.au](http://www.supplynation.org.au)

If a suitable business is not found on Supply Nation's directory, the procuring officer may elect to conduct additional searches for Indigenous SMEs.

In particular, where the procurement is likely to offer local Indigenous employment opportunities in a remote area, the procuring officer could consider contacting the department of the Prime Minister and Cabinet's regional network staff for advice on Indigenous SMEs.

The procuring officer may also wish to consult other lists of Indigenous suppliers that are maintained by organisations, such as Indigenous Chambers of Commerce see the [First Australians Chamber of Commerce and Industry](#) (FACCI) at [www.facci.org.au](http://www.facci.org.au)

## Is it up to me to determine if a business is 50% Indigenous owned?

Before using Exemption 17, the delegate must be satisfied that the business is 50 per cent or more Indigenous owned and that the business is an SME<sup>1</sup>.

Any Indigenous business which is registered with Supply Nation is taken to meet the definition of an Indigenous business.

If the business is not registered with Supply Nation, the delegate needs to take steps to satisfy himself or herself that the business is 50 per cent or more Indigenous owned. This could be done by:

- Requesting that the owners of the business provide evidence of Indigeneity. This could take the form of:
  - A statutory declaration, declaring that the enterprise is 50 per cent or more Indigenous owned; or
  - Certificate(s) or letters of Indigeneity of the Indigenous owners (this is not a document that every Indigenous Australian holds) provided by a recognised Indigenous organisation such as a land council.
- Checking whether the enterprise is listed with an Indigenous Chamber of Commerce or another business list.
- Checking whether the business is listed with the [Office of the Registrar of Indigenous Corporations](#) available [www.oric.gov.au](http://www.oric.gov.au)

## Does Exemption 17 apply to all of the CPRs?

No. The Exemption only applies to the additional rules set out in Division 2 of the CPRs for procurements with values over the relevant procurement threshold. The rules in Division 1 still apply to the procurement, including the requirement to achieve value for money.

## What type and size of procurements can the Exemption be applied to?

The Exemption can be applied to any procurement where its estimated value is at or above the relevant procurement threshold (\$80,000 for general goods and services, and \$7.5 million for construction services).

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<sup>1</sup> Defined in the Commonwealth Procurement Rules as an Australian or New Zealand firm with fewer than 200 full-time equivalent employees.

For more information, go to [www.dpmc.gov.au/ipp](http://www.dpmc.gov.au/ipp) or email [IndigenousProcurement@pmc.gov.au](mailto:IndigenousProcurement@pmc.gov.au)

The Exemptions at Appendix A cannot be used for the procurement of goods or services for which a mandatory whole of government arrangement is in place. A list of these can be found at the [department's website www.finance.gov.au/procurement/wog-procurement/](#)

### **Can I apply the Exemption to procurements under the relevant threshold?**

As the CPRs allow you to approach one or more Indigenous businesses directly via limited tender for procurements with an estimated value under \$80,000 for general goods and services (\$7.5 million for construction services), there is no need to apply the Exemption under the threshold. It is important that you check what your entity's internal operating processes are and follow them as required.

### **What's required when approaching an Indigenous business?**

It's the same process as any limited tender; you will need to issue a request for quote including key information to allow the business (es) to provide a competitive submission. As with any procurement, agencies will need to be satisfied that a procurement achieves value for money.

### **How do I demonstrate 'value for money' in the absence of competition?**

In the absence of an open tender, understanding the market, including an estimated cost, is a good start to demonstrating value for money.

For low risk procurements you could also:

- research comparable offerings on the internet;
- search AusTender ([www.tenders.gov.au](http://www.tenders.gov.au)) for similar contracts;
- talk to procurement officials both within and outside your entity about other similar procurements; or
- create competition by approaching more than one Indigenous SME.

In addition to understanding the market, you might also obtain benchmarks for other contract deliverables such as the delivery timeframe, quality or nature of materials to be used.

## **Should I measure the social benefit as part of the 'value for money' consideration?**

There is no specific requirement to measure the social benefit of procuring from an Indigenous business. Your assessment of value for money should be based around delivery of the goods or services of the quality you require. These should generally be in line with market rates.

## **How do I ensure accountability and transparency in the procurement process and in selecting Indigenous SMEs?**

In terms of accountability, officials must maintain records for each procurement commensurate with the scale, scope and risk of the procurement including:

- the requirement for the procurement;
- the process that was followed;
- how value for money was considered and achieved; and
- relevant decisions.

Documentation should also be commensurate with the scale, scope and risk profile of the procurement.

AusTender is the mechanism for transparency. All contracts awarded above \$10,000 must be reported on AusTender within 42 days of being entered into (or amended).


## **When applying the Exemption, what procurement method do I report on AusTender?**

Typically, where an Exemption has been used, the contract should be reported as 'limited tender'. Further information on the procurement methods is in the CPRs.

## **If I have issued an open tender via AusTender, then find an Indigenous business which can supply the service I need, can I cancel the RFT and engage the Indigenous business directly?**

You should avoid cancelling an approach to market in order to directly engage an Indigenous business. A decision to use the Exemption should be made prior to approaching the market.





**If I have previously unsuccessfully attempted to engage an Indigenous business through the Exemption, can I later include the same business in a tender process for the same procurement?**

Yes. If you have been unsuccessful in engaging an Indigenous business directly via the Indigenous Exemption, and subsequently broaden the approach to market it is reasonable to advise the Indigenous business of the opportunity to bid.

**Who can I contact for help with applying the Exemption?**

In the first instance contact your agency's Central Procurement Unit.

**Where can I find out more information about the policy?**

A webpage that includes a series of factsheets about the policy and a map of remote and non-remote areas can be accessed from the [department's](http://www.dpmc.gov.au/ipp) webpage [www.dpmc.gov.au/ipp](http://www.dpmc.gov.au/ipp)

**Queries about the policy?**

Questions about the Indigenous Procurement Policy can be sent to [IndigenousProcurement@pmc.gov.au](mailto:IndigenousProcurement@pmc.gov.au)