

# Western Region Modern Treaty Guide

## Your requirement is in a Modern Treaty Area. What's next? (Early Engagement)

### Purpose

The purpose of this document/resource is to provide PSPC's clients with an overview of the key activities required to be taken or considered when completing a procurement project within a Modern Treaty (CLCA) area.

This document is separated into three sections:

1. Summary of Key Activities
2. Annex "A" - Summary of activities specific to Modern Treaty area
3. Annex "B" - Summary of activities specific to the Nunavut Settlement Area
  - a. Appendix A – Inuit Benefits Plan Example
4. One-pager Modern Treaty Guide

When reviewing this document, in general, if you have any questions regarding a Western Region (WR) requirement (for Alberta, Saskatchewan, Manitoba, Northwest Territories, or Nunavut) for which you have/will submit a 9200 to Western Allocations, please contact:

- The Contracting Authority (CA) assigned to your procurement; or
- The PSPC WR Modern Treaty Support (MTS) team at [pwgsc.wstssoclca-rossoclca.tpsgc@tpsgc-pwgsc.gc.ca](mailto:pwgsc.wstssoclca-rossoclca.tpsgc@tpsgc-pwgsc.gc.ca) (if you do not have a CA assigned).
- For all other regions, please contact PSPC's Indigenous Procurement Policy Directorate (IPPD) team at [TPSGC.PAApprovisionAutochtone-APIIndigenousProc.PWGSC@tpsgc-pwgsc.gc.ca](mailto:TPSGC.PAApprovisionAutochtone-APIIndigenousProc.PWGSC@tpsgc-pwgsc.gc.ca).

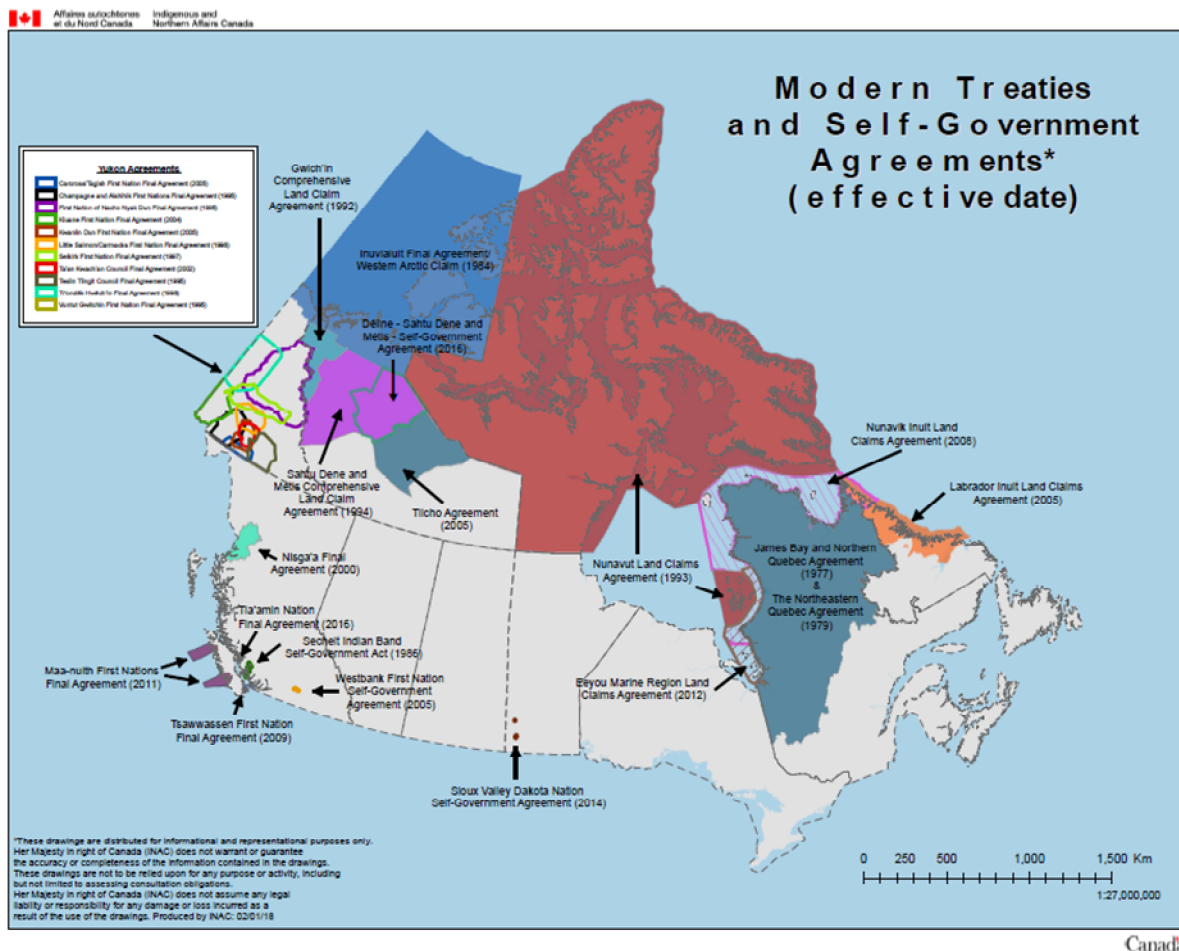
**Note:** The term "you" in this document predominantly refers to the Other Government Departments (OGD) project and/or technical authority. However, it can also refer to the PSPC Project Manager/ Coordinator (as applicable) depending on the level of service agreed upon and/or any memorandum of understanding (MOUs) signed.

# Modern Treaty

When completing requirements in a Modern Treaty area, also known as Comprehensive Land Claim Agreements (CLCA) area, the Government of Canada has obligations and specific roles and responsibilities that must be met. This document will focus on Western Region Procurement Client Departments' (Project Authority/Technical Authority/Business Owner) obligations and responsibilities. It should be understood that the overall effort to understand and fulfill Modern Treaty obligations are a collaborative effort between PSPC and Client Departments.

Modern Treaties give clarity to how land and resource rights and ownership will be managed. They are in place to ensure fair treatment of Indigenous and Inuit interests with respect to cultural, social, political and economic rights, including rights to lands, and to fish and hunt and practice their own cultures ([Section 9.35.1 of the Supply Manual](#)). To this end, any procurements in a Modern Treaty area must include an Indigenous Participation Plan (IPP).

In Canada, there are 25 modern treaties. Their locations: Yukon (11), Northwest Territories (4), Nunavut (1), Quebec (4), Newfoundland and Labrador (1) and British Columbia (4).



Please note, there are other Indigenous, Inuit, and Métis communities outside the above mentioned Modern Treaty areas that can have an impact on your requirement and considerations should be taken.

An ATRIS search will indicate Modern Treaties and other communities that should be considered. Please refer to the "Modern Treaty Identification" section below for more information.

# Key Activities

Prior to submitting your requirement to PSPC, key activities (#1 – 5) should be actioned and key activities (# 6 – 8) should be reviewed and considered. Please keep in mind that many of these key activities are not included in PSPC's standard procurement timelines and should be done as soon as possible to avoid any potential delays.

If you require assistance with any of these activities, please contact the Contracting Authority (CA) assigned to your procurement first, if you do not have a CA assigned, please contact the PSPC WR Modern Treaty Support (MTS) team at [pwgsc.wstssocla-rossocla.tpsgc@tpsgc-pwgsc.gc.ca](mailto:pwgsc.wstssocla-rossocla.tpsgc@tpsgc-pwgsc.gc.ca).

## 1. Modern Treaty Identification

Determine which Modern Treaty(ies) apply to your requirement by using the [Aboriginal and Treaty Rights Information System](#) (ATRIS), a web-based map and information system.

Go to [Section 9.35.5 of the Supply Manual](#) (Modern Treaties in Effect) to review and understand the applicable agreement and Canada's obligations. For assistance you may contact:

Crown-Indigenous Relations and Northern Affairs Canada's (CIRNAC) Modern Treaty Implementation Office (MTIO): [bmtmtio@rcaanc-cirnac.gc.ca](mailto:bmtmtio@rcaanc-cirnac.gc.ca).

**Break Shipment:** If the final destination of the goods/ service is in a Modern Treaty(ies) area, Modern Treaty obligations may still apply.

## 2. Duty to Consult and Accommodate

Canada has a Duty to Consult and, where appropriate, accommodate when it contemplates conduct that might adversely impact potential or established Indigenous/ Inuit or Treaty rights. For further information on consultation and accommodation, you can find information via [Guidelines for Federal Officials to Fulfill the Duty to Consult](#). Where there is no legal duty, engagement that involves seeking feedback is encouraged. For assistance you may contact:

Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC): [indigenous.consultations.autochtones@canada.ca](mailto:indigenous.consultations.autochtones@canada.ca).

## 3. Access to Indigenous-Owned Lands and Interpretation

There may be provision for access to Indigenous/Inuit-owned lands. For guidance, determination, and permits for access to Indigenous/Inuit-owned lands, you may contact Crown-Indigenous Relations and Northern Affairs Canada's (CIRNAC):

Contact Tannis Bujaczek for assistance with **Sahtu Dene and Metis, Tlicho, Déline, and Sioux Valley Dakota Nation Agreements**: [tannis.bujaczek@canada.ca](mailto:tannis.bujaczek@canada.ca)

Contact Monica van Huystee for assistance with **Gwich'in and Inuvialuit Agreements**: [monica.vanhuystee@canada.ca](mailto:monica.vanhuystee@canada.ca)

Contact Eve Gendron for assistance with the **Nunavik Inuit and Marine Region Agreements**: [eve.gendron@canada.ca](mailto:eve.gendron@canada.ca)

Contact Laura Gemmell for assistance with **Nunavut Agreement (and other eastern agreements)**: [laura.gemmell@canada.ca](mailto:laura.gemmell@canada.ca)

#### **4. Reasonable Opportunity (Structuring)**

Consider/ determine if there are any significant activities/events/conditions that may be taking place during your tender and/or contract period that would impact your timelines and/or probability of Indigenous/Inuit participation. This may include challenges such as weather, cultural practices, seasonal hunting, fishing, and other projects, etc. It is mandatory to consider these elements when structuring your requirement. For assistance you may contact:

Indigenous Services Canada (ISC): [indigenousprocurement@canada.ca](mailto:indigenousprocurement@canada.ca)  
(for all Modern Treaty requirements outside of Nunavut) or  
[aadnc.nunavutprocurement-approvisionnementanunavut.aandc@canada.ca](mailto:aadnc.nunavutprocurement-approvisionnementanunavut.aandc@canada.ca) (for  
Nunavut requirements only)

#### **5. Requirement Definition (Unbundling)**

Determine whether the procurement's operational requirements permit separating requirements into commodity or geographic groupings to permit smaller and more specialized firms to submit a bid/offer/arrangement. For assistance you may contact:

PSPC's Indigenous Procurement Policy Directorate (IPPD) team:  
[TPSGC.PAAprovisionAutochtone-APIndigenousProc.PWGSC@tpsgc-pwgsc.gc.ca](mailto:TPSGC.PAAprovisionAutochtone-APIndigenousProc.PWGSC@tpsgc-pwgsc.gc.ca)

**For Modern Treaty(ies) (non-Nunavut) requirements, please see Annex "A".  
For Nunavut requirements, please see Annex "B".**

# ANNEX “A” MODERN TREATY (non-Nunavut)

## 6. Market and Capacity Research

Work with ISC and PSPC to determine if there are potential businesses that can perform the work. You may use [Section 9.35.60 of the Supply Manual](#) (Indigenous Business Directories or Lists) for research. You may also utilize business lists and registries, internet search, your contacts and knowledge, etc.

For assistance you may contact:

Indigenous Services Canada (ISC): [indigenousprocurement@canada.ca](mailto:indigenousprocurement@canada.ca)

PSPC’s Procurement Assistance Canada (PAC): [SACOuest-PACWest@tpsgc-pwgsc.gc.ca](mailto:SACOuest-PACWest@tpsgc-pwgsc.gc.ca)

**Right of First Refusal:** Dependent upon the requirement (such as archaeology, forestry, heritage, parks, and/or surveying), competition for a procurement may be restricted to businesses of the applicable Modern Treaty.

## 7. Indigenous Participation Plan (IPP)

Several Modern Treaties contain provisions requiring the inclusion of socio-economic evaluation criteria in the solicitation document (whenever it is practical and consistent with sound procurement management). The purpose of including socio-economic evaluation criteria is to increase the opportunities for Modern Treaty beneficiaries to experience benefits from the procurement such as:

- a. Employment Opportunities for Land Claim Beneficiaries;
- b. Training and Skills Development for Land Claim Beneficiaries;
- c. Subcontracting to Land Claim Beneficiary Businesses; and
- d. Existence/ establishment of an office location within the Modern Treaty area.

Points are assigned to each criterion and the IPP will account for a percentage of the point rated evaluation.

It is recommended you begin developing your IPP as soon as possible. It is strongly encouraged that you engage the impacted community(ies) to determine how participation can be maximized through the course of the requirement. For assistance you may contact:

Indigenous Services Canada (ISC): [indigenousprocurement@canada.ca](mailto:indigenousprocurement@canada.ca)

PSPC’s Indigenous Procurement Policy Directorate (IPPD) team:  
[TPSGC.PAAprovisionAutochtone-APIndigenousProc.PWGSC@tpsgc-pwgsc.gc.ca](mailto:TPSGC.PAAprovisionAutochtone-APIndigenousProc.PWGSC@tpsgc-pwgsc.gc.ca)

**Note:** You may also see the term “Indigenous Opportunities Considerations (IOC)” or “ - Modern Treaty name- Benefits Plan” used (for example: Tłchq Benefits Plan).

## 8. Solicitation Period

A longer solicitation period should be considered depending on the remoteness of some of the areas. For example, poor weather conditions, lack of stable internet connection, or local events (such as cultural practices, seasonal hunting, etc.) which may slow down or delay the submission of bids. Please keep this in mind when considering timelines.

It is strongly suggested to schedule a Bidder's Conference for interested bidders (discuss with the CA) to review the scope of the requirement, including the IPP, to help bidders better understand the government bidding process and as a forum for interested bidders to raise any concerns related to your requirement.

## 9. Evaluation

The evaluation team is responsible for evaluations in accordance with the procedures set out in the solicitation, including the IPP. The MTS team can provide support in terms of interpretation and guidance but will not be a part of the evaluation team, please consult with your Contracting Authority (CA) prior to seeking advice from the MTS team.

## 10. Achievements and Assessment

Throughout the life of the requirement, you will be responsible for obtaining updates on IPP progress from the awarded firm(s). IPP performance will need to be monitored closely and proactively. Requirements may have varying tracking strategies, depending on the type and duration. More information below.

## 11. Report

There are reporting requirements specific to Modern Treaties and the end user department is required to report to Indigenous Services Canada (ISC) and Treasury Board of Canada Secretariat (TBS).

Client departments (non-PSPC) may have access to the "CLCA.net" system ran by ISC to generate and report on their requirement.

**Note:** PSPC employees will only be able to access the public site.

For assistance, (non-PSPC) users will have access to the Help documents.

For more information on Modern Treaty reports, please see [Federal Contracting in Comprehensive Land Claims Areas](#).

Public Site: [Search for Comprehensive Land Claim Agreement Quarterly Reports](#)

**Note:** Your department or team may have a centralized method to collect and report, please follow your internal processes.

# ANNEX “B” NUNAVUT AGREEMENT

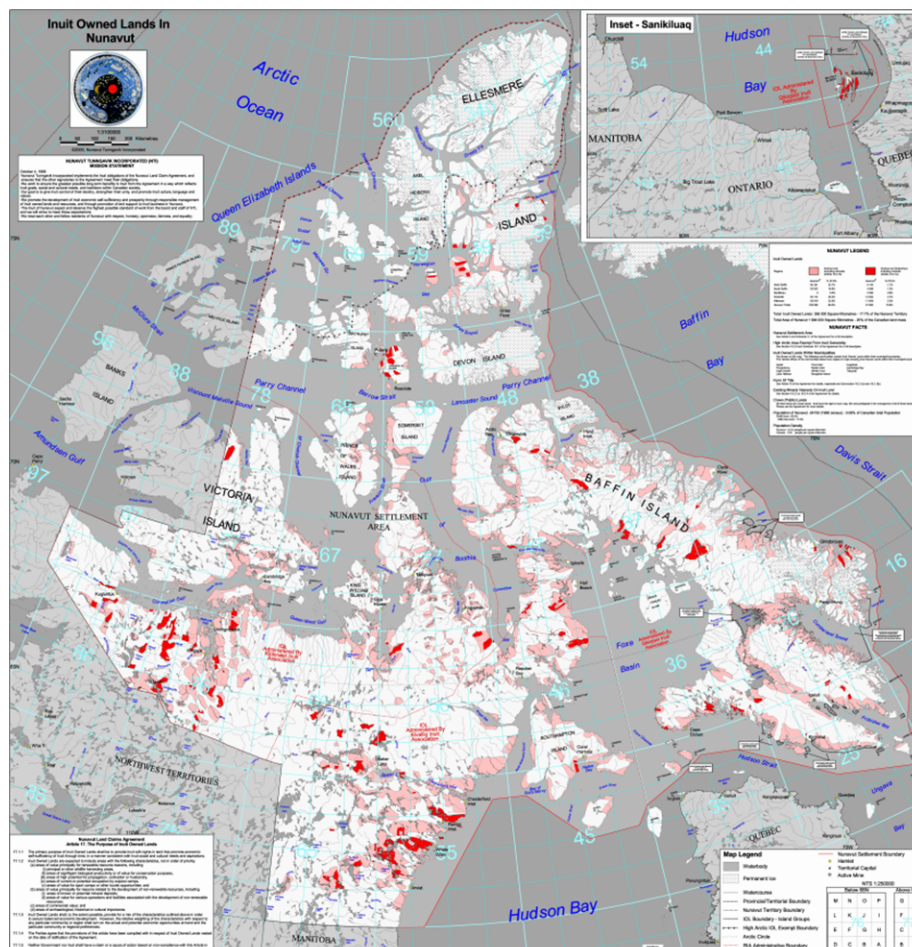
## Nunavut Agreement and Directive

If your requirement is located in the Nunavut Settlement Area (NSA), it is subject to Article 24 (A24) of the [Nunavut Agreement](#) (NA) and the [Directive on Government Contracts, Including Real Property Leases, in the Nunavut Settlement Area](#) (Nunavut Directive).

The creation of the Nunavut Directive was due to the lack of implementation of A24 which resulted in a lawsuit against Canada in 2006. As part of the settlement, the Nunavut Directive was issued on December 2019 to further support the Government of Canada in fulfilling its obligations under A24 (and it is the only Modern Treaty with a directive).

The objective of the Nunavut Directive is to provide reasonable support and assistance to Inuit firms in order to enable them to compete for government contracts. When contracting in the NSA and whenever practicable, the Government of Canada is obliged to contract in such a way that strives to achieve increased participation of Inuit firms in business opportunities in the NSA economy, improve capacity of Inuit firms to compete for government contracts; and to promote employment of Inuit at a representative level in the NSA work force.

Please also review the [Guide on Government Contracts in the Nunavut Settlement Area](#) (Nunavut Guide) for further assistance.



## 6. Market and Capacity Research

Work with ISC and PSPC to determine if there are potential businesses that can perform the work. When contracting in the Nunavut Settlement Area (NSA), there may be an obligation for the to limit the competition for the requirement to Inuit firms only.

You must use the [Inuit Firm Registry \(IFR\)](#) to determine if there are two or more Inuit firms listed on the IFR for the commodity or service, if so the tender must be limited to Inuit Firms (please see Annex F of the [Nunavut Guide](#)) – this will also determine the Inuit Benefits Plan (IBP) strategy. You may also utilize other business lists and registries, internet search, your contacts and knowledge, etc. For assistance you may contact:

Indigenous Services Canada (ISC): [aadnc.nunavutprocurement-approvisionnement@canada.ca](mailto:aadnc.nunavutprocurement-approvisionnement@canada.ca)

PSPC's Procurement Assistance Canada (PAC): [SACOuest-PACWest@tpsgc-pwgsc.gc.ca](mailto:SACOuest-PACWest@tpsgc-pwgsc.gc.ca)

**Right of First Refusal:** If your requirement is for the operation or maintenance of park facilities and/or archaeological work in the NSA, there may be preferential treatment to qualified Inuit firms when soliciting or inviting bids.

## 7. Inuit Benefits Plan (IBP)

The Nunavut Agreement contains provisions requiring the inclusion of socio-economic evaluation criteria in the solicitation document. The purpose of including socio-economic evaluation criteria is to increase the opportunities for Inuit beneficiaries to experience benefits from the procurement such as:

### Inuit Benefit Criteria (IBC)

- a. IBC – Inuit Employment;
- b. IBC – Inuit Training and Skills Development;
- c. IBC – Inuit Ownership (of prime/subcontractors); and

### Nunavut Benefit Criteria (NBC)

- d. NBC – Location in the Nunavut Settlement Area (NSA) (head offices, administrative offices, and/or other facilities).

Points are assigned to each criterion and the IBP must account for a minimum of 30% to 35% of the point rated evaluation (please see Annex G of the [Nunavut Guide](#)). We have also attached an example IBP below for your reference (Appendix A).

It is recommended you begin developing your IBP as soon as possible. It is strongly encouraged that you engage the impacted communities to determine how participation can be maximized through the course of the requirement. For assistance you may contact:

Indigenous Services Canada (ISC): [aadnc.nunavutprocurement-approvisionnement@canada.ca](mailto:aadnc.nunavutprocurement-approvisionnement@canada.ca)

PSPC's Indigenous Procurement Policy Directorate (IPPD): [TPSGC.PAContratsNunavut-APNunavutContracts.PWGSC@tpsgc-pwgsc.gc.ca](mailto:TPSGC.PAContratsNunavut-APNunavutContracts.PWGSC@tpsgc-pwgsc.gc.ca)



## 8. Solicitation Period

A longer solicitation period should be considered depending on the remoteness of some of the areas. For example, poor weather conditions, lack of stable internet connection, or events (such as cultural practices, seasonal hunting, etc.) which may slow down or delay the submission of bids. Please keep this in mind when considering timelines.

Consider having a Bidder's Conference (discuss with the CA) to review the scope of the requirement, including the IBP, to help bidders better understand the government bidding process.

## 9. Evaluation

The evaluation team is responsible for evaluations in accordance with the procedures set out in the solicitation, including the IBP. The MTS team can provide support in terms of interpretation and guidance but will not be a part of the evaluation team, please consult with your Contracting Authority (CA) first.

## 10. Achievements and Assessment

Throughout the life of the requirement, you and your client will be responsible for obtaining updates on IBP progress from the awarded firm(s). IBP performance will need to be monitored closely and proactively. Requirements may have varying tracking strategies, depending on the type and duration. Guidelines and more information below.

## 11. Report

There are reporting requirements specific to Modern Treaties and the end user department is required to report to Indigenous Services Canada (ISC) and Treasury Board of Canada Secretariat (TBS).

When contracting in the NSA there are two mandatory TBS reports – Appendix A and Appendix B. The Contracting Authority (CA) can provide assistance when filling out the report.

- **Appendix A:**
  - Award (and amendment) information and Inuit Benefits Plan (IBP) commitments
  - Appendix A report must be completed at contract award (and each contract amendment)
- **Appendix B:**
  - Inuit Benefits Plan (IBP) achievements
  - Depending on the duration of the Contract, Appendix B report must be completed either at the **end of the contract** (requirement **under 2 years**) or **annually** (requirement **over 2 years**)

You are responsible for reporting this information and have 30 days after the end of the government fiscal quarter (within 60 days if on last government fiscal quarter) to report to ISC (and copy TBS) in the fiscal quarter the requirement was awarded. The CA can provide assistance by providing any information it has on the contract, including any specific reporting criteria it has that is required for government contracts in the NSA, please contact the CA as soon as possible.

You are required to send the completed reports to ISC:  
[aadnc.nunavutprocurementapprovisionnement@canada.ca](mailto:aadnc.nunavutprocurementapprovisionnement@canada.ca)  
and copy TBS: [nunavut@tbssct.gc.ca](mailto:nunavut@tbssct.gc.ca)

For more information on Nunavut reporting, please see the [TBS Reporting Guidelines](#) and [TBS Reporting Template](#). For general assistance you may contact:

Treasury Board of Canada Secretariat (TBS): [nunavut@tbsct.gc.ca](mailto:nunavut@tbsct.gc.ca)

**Note:** Your department or team may have a centralized method to collect and report, please follow your internal processes.

## Appendix A – Inuit Benefits Plan Examples

### IBC – Inuit Employment

- Total amounts: of Inuit Labour (dollar value and hours) of prime contractor and subcontractors
- Percentage: of overall Inuit Labour (dollar value and hours) of prime contractor and subcontractors
  - Obtain total amounts for Inuit and non-Inuit labour (dollar value and hours)
- Proposal: plan of engagements, measures, and proposed procedures they will implement to deliver their Inuit labour commitment. For example:
  - list of specific positions and categories that will be staffed by Inuit;
  - overall percentage of labour that will be staffed by Inuit;
  - labour hours that will be staffed by Inuit;
  - description and duration of the work to be carried out for each position proposed to be filled by Inuit;
  - the opportunity for skills development;
  - experience to be gained;
  - the sustainability of the jobs;
  - human resource strategies for Inuit recruitment, retention, succession planning and staff management; and
  - IBP Commitment Schedule detailing how the commitments will be broken down per fiscal year

### IBC – Inuit Training and Skills Development

- Total amounts: of Inuit Training and Skills Development (dollar value and hours) of prime contractor and subcontractors
- Percentage: of overall Inuit Training and Skills Development (dollar value and hours) of prime contractor and subcontractors
  - Obtain total amounts for Inuit and non-Inuit Training and Skills Development (dollar value and hours)
- Proposal: plan of engagements, measures, and proposed procedures for their deliver on the Inuit Ownership criteria. For example:
  - demonstrable Inuit ownership of prime and/or subcontractor(s) through registration on the on the Inuit Firm Registry (IFR);
  - list of specific Inuit businesses that will be subcontractors/suppliers;
  - the type of work to be carried out by Inuit businesses on the IFR;
  - the total contract value of the work to be performed by Inuit businesses on the IFR; and
  - IBP commitment schedule detailing how the commitments will be broken down per fiscal year.

### IBC – Inuit Ownership (of prime/subcontractors)

- Total value: of IFR contracting (dollar value) of prime contractor, subcontractors, and suppliers
- Percentage: of overall value of IFR contracting (dollar value) of prime contractor, subcontractors, and suppliers
  - Obtain total value for IFR and non-IFR (dollar value) of prime contractor, subcontractors, and suppliers
- Proposal: plan of engagements, measures, and proposed procedures to be taken to deliver on the Inuit Training and Skills Development criteria. For example:
  - details on the type of training being offered and how it is relevant to the procurement (such as apprenticeships, school programs, internal/external training);
  - total number of Inuit training hours proposed;
  - the skills the training will develop (such as specialization, certification, or accreditation obtained);
  - effectiveness of the training delivery approach (such as classroom or fieldwork);
  - strategies for retaining Inuit who have completed training;

- the duration of training; and the number of Inuit to be trained; and
- IBP commitment schedule detailing how the commitments will be broken down per fiscal year

**IBC – Location of in the Nunavut Settlement Area (NSA)** (head offices, administrative offices, and/or other facilities)

- Location: of prime contractor and subcontractors in the NSA
  - head offices;
  - administrative offices; and/or
  - other facilities
- Proposal: provide details regarding the locations submitted. For example:
  - a description of the locations, including addresses;
  - describe the nature of the firm's presence in the NSA; and
  - number of years the firm has been in the identified locations in the NSA.

# WESTERN REGION MODERN TREATY GUIDE

## One-pager For Client Departments

### Modern Treaty Identification

Determine which Modern Treaty(ies) apply to your requirement by using the Aboriginal and Treaty Rights Information System (ATRIS).



### Duty to Consult and Accommodate

Consult CIRNAC to determine whether you have a duty to consult or accommodate, because of project may impact Indigenous/Inuit Treaty rights.

### Access to Indigenous-Owned Lands

Consult with CIRNAC to determine whether you need permits to access Indigenous/Inuit-owned lands.



### Reasonable Opportunity (Structuring)

Determine if there are any activities or events that taking place during your project and/or contract that could impact timelines and/or Indigenous/Inuit participation.

### Requirement Definition

Determine whether the procurements can be separated into commodity or geographic groupings to allow smaller firms to participate.



### Market and Capacity Research

Consult ISC, PSPC, and Indigenous/Inuit Business Directories to determine if there are potential businesses that can perform the work.

### Indigenous Participation Plan/ Inuit Benefits Plan

Develop socio-economic evaluation criteria to increase opportunities to Indigenous/Inuit beneficiaries via IPP/IBP.



### Solicitation Period

Consider using a longer solicitation period for your project, depending on the remoteness of some of the areas.

### Evaluation

Conduct evaluations in accordance with the solicitation, including the IPP/IBP criteria.



### Achievement and Assessment

Proactively track updates of the IPP/IBP progress from the awarded contractor(s).

### Report

Activities in Modern Treaties must be reported to ISC and TBS. Client departments have access to the "CLCA.net" to report on their project. Projects within the NSA also require TBS reports shown in Appendix A & B of the full Modern Treaty Guide.



## Key Points

1. Target Audience for this Guide is Western Region's Procurement Branch Client Departments' (Project / Technical Authority).
2. This guide **must** be read in conjunction with the full WR Modern Treaty Guide. Request a copy of the guide here: [PWGSC.WTSSOCLCA-ROSSOCLCA.TPSGC@tpsgc-pwgsc.gc.ca](mailto:PWGSC.WTSSOCLCA-ROSSOCLCA.TPSGC@tpsgc-pwgsc.gc.ca)
3. Modern Treaties give clarity to how land and resource rights must be managed. They ensure fair treatment of Indigenous and Inuit interests, including cultural, social, political and economic rights to lands and practice their own cultures.
4. Prior to submitting your requirement to PSPC, steps 1 – 5 should be actioned.
5. Activities 6 – 8 should be reviewed and considered.
6. Steps 1- 9 are not included in PSPC's standard procurement timelines, therefore they should be done as soon as possible to avoid any potential delays.

\*\*\* New as of December 2019:

If your requirement is located in the Nunavut Settlement Area (NSA), it is subject to Article 24 (A24) of the Nunavut Agreement (NA) and the Nunavut Directive. The Nunavut Directive is to provides reasonable support and assistance to Inuit firms in order to enable them to compete for government contracts. \*\*\*