

**Annex 9.1: Requirements for the Set-aside Program for Aboriginal Business  
(2004-05-14)**

**Who is eligible?**

**An Aboriginal business**, which can be:

- a band as defined by the Indian Act
  - a sole proprietorship
- or
- a limited company
  - a co-operative
  - a partnership
  - a not-for-profit organization

in which Aboriginal persons have at least 51 percent ownership and control,

OR

**A joint venture** consisting of two or more Aboriginal businesses or an Aboriginal business and a non-Aboriginal business(es), provided that the Aboriginal business(es) has at least 51 percent ownership and control of the joint venture.

When an Aboriginal business has six or more full-time employees at the date of submitting the bid, at least thirty-three percent of them must be Aboriginal persons, and this ratio must be maintained throughout the duration of the contract.

The bidder must certify in its submitted bid that it is an Aboriginal business or a joint venture constituted as described above.

**Are there any other requirements attached to bidders in the Set-Aside Program for Aboriginal Business? - Yes.**

- In respect of a contract, (goods, service or construction), on which a bidder is making a proposal which involves subcontracting, the bidder 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 Aboriginal business. *Value of the work performed* is considered to be the total value of the contract less any materials directly purchased by the contractor for the performance of the contract. Therefore, the bidder must notify and, where applicable, bind the subcontractor in writing with respect to the requirements that the Aboriginal Set-Aside Program (the Program) may impose on the subcontractor or subcontractors.
- The bidder's contract with a subcontractor must also, where applicable, include a provision in which the subcontractor agrees to provide the bidder with information, substantiating its compliance with the Program, and authorize the bidder to have an audit performed by Canada to examine the subcontractor's records to verify the information provided. Failure by the bidder to exact or enforce such a provision will be deemed to be a breach of contract and subject to the civil consequences referred to in this document.
- As part of its bid, the bidder must complete the *Certification of Requirements for the Set-Aside Program for Aboriginal Business* (certification) stating that it:
  - i) meets the requirements for the Program and will continue to do so throughout the duration of the contract;
  - ii) will, upon request, provide evidence that it meets the eligibility criteria;

- iii) is willing to be audited regarding the certification; and
- iv) acknowledges that if it is found NOT to meet the eligibility criteria, the bidder shall be subject to one or more of the civil consequences set out in the certification and the contract.

### **How must the business prove that it meets the requirements?**

It is not necessary to provide evidence of eligibility at the time the bid is submitted. However, the business should have evidence of eligibility ready in case it is audited.

The civil consequences of making an untrue statement in the bid documents, or of not complying with the requirements of the Program or failing to produce satisfactory evidence to Canada regarding the requirements of the Program, may include: forfeiture of the bid deposit; retention of the holdback; disqualification of the business from participating in future contracts under the program; and/or termination of the contract. In the event that the contract is terminated because of an untrue statement or non-compliance with the requirements of the Program, Canada may engage another contractor to complete the performance of the contract and any additional costs incurred by Canada shall, upon the request of Canada, be borne by the business.

### **What evidence may be required from the business?**

#### **Ownership and control**

**Evidence of ownership and control of an Aboriginal business or joint venture** may include incorporation documents, shareholders' or members' register; partnership agreements; joint venture agreements; business name registration; banking arrangements; governance documents; minutes of meetings of Board of Directors and Management Committees; or other legal documents.

Ownership of an Aboriginal business refers to "beneficial ownership" i.e. who is the real owner of the business. Canada may consider a variety of factors to satisfy whether Aboriginal persons have true and effective control of an Aboriginal business. (See [Appendix A](#) for a list of the factors which may be considered by Canada.)

#### **Employment and employees**

Where an Aboriginal business has six or more full-time employees at the date of submitting the certification and is required by Canada to substantiate that at least thirty-three percent of the full-time employees are Aboriginal, the business must, upon request by Canada, immediately provide a completed *Owner/Employee Certification* form for each full-time employee who is Aboriginal.

**Evidence as to whether an employee is or is not full-time and evidence as to the number of full-time employees** may include payroll records, written offers for employment, and remittance and payroll information maintained for Canada Revenue Agency purposes as well as information related to pension and other benefit plans.

**A full-time employee**, for the purpose of this program, is one who is on the payroll, is entitled to all benefits that other full-time employees of the business receive, such as pension plan, vacation pay and sick leave allowance, and works at least 30 hours a week. It is the number of full-time employees on the payroll of the business at the date of bid submission that determines the ratio of Aboriginal to total employees of the business for the purpose of establishing eligibility under the Program.

Owners who are Aboriginal and full-time employees who are Aboriginal must be ready to provide evidence in support of such status. The *Owner/Employee Certification* to be completed by each owner and full-time employee who is Aboriginal shall state that the person meets the eligibility criteria and that the information supplied is true and complete. This certification shall provide the person's consent to the

verification of the information submitted.

**Subcontracts**

**Evidence of the proportion of work done by subcontractors** may include contracts between the contractor and subcontractors, invoices, and paid cheques.

**Evidence that a subcontractor is an Aboriginal business** (where this is required to meet the minimum Aboriginal content of the contract) is the same as evidence that a prime contractor is an Aboriginal business.

## Who is an Aboriginal Person for Purposes of the Set-Aside Program for Aboriginal Business?

*An Aboriginal person is an Indian, Metis or Inuit who is ordinarily resident in Canada.*

**Evidence of being an Aboriginal person** will consist of such proof as:

- Indian registration in Canada
- membership in an affiliate of the Metis National Council or the Congress of Aboriginal Peoples, or other recognized Aboriginal organizations in Canada
- acceptance as an Aboriginal person by an established Aboriginal community in Canada
- enrolment or entitlement to be enrolled pursuant to a comprehensive land claim agreement
- membership or entitlement to membership in a group with an accepted comprehensive claim

**Evidence of being resident in Canada** includes a provincial or territorial driver's licence, a lease or other appropriate document.

For further information on the Set-Aside Program for Aboriginal Business, contact the Access to Federal Procurement Directorate in the Department of Indian and Northern Affairs at (819) 997-8383 or (819) 997-8746 or fax (819) 994-0445.

## Certification Requirements for the Set-Aside Program for Aboriginal Business

A bidder who submits, under this program, a bid or proposal in response to a solicitation must complete and submit this certification. Failure to submit this certification will result in the proposal's being found non-compliant.

1.
  - i) I, \_\_\_\_\_ (*Name of duly authorized representative of business*) hereby certify that \_\_\_\_\_ (*Name of business*) meets, and shall continue to meet throughout the duration of the contract, the requirements for this program as set out in the attached document entitled "Requirements for the Set-Aside Program for Aboriginal Business", which document I have read and understand.
  - ii) The aforementioned business agrees to ensure that any subcontractor it engages with respect to the contract shall, if required, satisfy the requirements set out in "Requirements for the Set-Aside Program for Aboriginal Business."
  - iii) The aforementioned business agrees to provide to Canada, immediately upon request, information to substantiate a subcontractor's compliance with this program.

### Please Check the Applicable Boxes in 2 and 3 below

2.
  - i) The aforementioned business is an Aboriginal business which is a sole proprietorship, band, limited company, co-operative, partnership or not-for-profit organization, [  ]
  - OR
  - ii) The aforementioned business is a joint venture between two or more Aboriginal businesses or an Aboriginal business and a non-Aboriginal business. [  ]
3. The Aboriginal business or businesses have:
  - i) fewer than six full-time employees [  ]
  - OR
  - ii) six or more full-time employees [  ]
4. The aforementioned business agrees to immediately furnish to Canada, such evidence as may be requested by Canada from time to time, corroborating this certification. Such evidence shall be open to audit during normal business hours by a representative of Canada, who may make copies and take extracts from the evidence. The aforementioned business agrees to provide all facilities for audits and to furnish information requested by Canada with respect to the certification.
5. It is understood that the civil consequences of making an untrue statement in the bid documents, or of not complying with the requirements of the Program or failing to produce satisfactory evidence to Canada regarding the requirements of the Program, may include: forfeiture of the bid deposit; retention of the holdback; disqualification of the business from participating in future contracts under the Program; and/or termination of the contract. In the event that the contract is terminated because of an untrue statement or non-compliance with the requirements of the Program, Canada may engage another contractor to complete the performance of the contract and any additional costs incurred by Canada shall, upon the request of Canada, be borne by the aforementioned business.



## **The Set-Aside Program for Aboriginal Business**

Factors that may be considered in determining whether Aboriginal persons have at least 51% ownership and control of an Aboriginal business include:

- Capital Stock and Equity Accounts, i.e., preferred stock, convertible securities, classes of common stock, warrants, options
- Dividend policy and payments
- Existence of Stock Options to employees
- Different treatment of Equity transactions for Corporations, Partnerships, Joint Ventures, Community organizations, Cooperatives, etc.
- Examination of Charter Documents, i.e., corporate charter, partnership agreement, financial structure
- Concentration of ownership or managerial control in partners, stockholders, officers trustees and directors based definition of duties
- Principal occupations and employer of the officers and directors to determine who they represent, i.e. banker, vested ownerships
- Minutes of directors meetings and stockholders meetings for significant decisions that affect operations and direction
- Executive and employee compensation records for indication of level of efforts associated with position
- Nature of the business in comparison with the type of contract being negotiated
- Cash management practices, i.e., payment of dividends - preferred dividends in arrears
- Tax returns to identify ownership and business history
- Goodwill contribution/contributed asset valuation to examine and ascertain the Fair Market value of non cash capital contributions
- Contracts with owners, officers and employees to be fair and reasonable
- Stockholder authority, i.e. appointments of officers, directors, auditors
- Trust agreements made between parties to influence ownership and control decisions
- Partnership - allocation and distribution of net income, i.e., provision for salaries, interest on capital and distribution share ratios
- Litigation proceedings over ownership
- Transfer pricing from non-Aboriginal joint venturer
- Payment of management or administrative fees
- Guarantees made by the Aboriginal business

- Collateral agreements



## Owner/Employee Certification Form

### Set-aside Program for Aboriginal Business

1. I, \_\_\_\_\_, am an  
Name  
owner and/or full-time employee of \_\_\_\_\_,  
Name of business  
and an Aboriginal person, as described in the document "Requirements for the Set-Aside Program for Aboriginal Business".
2. I certify that the above statement is true and consent to its verification upon the request of Canada.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of owner and/or employee

\_\_\_\_\_  
Place