



Australian Government

# Indigenous Procurement Policy

Indigenous participation in high value Government contracts (\$7.5million or more)

Guide 1

Procuring officials and contract managers



**National Indigenous  
Australians Agency**

Employment and  
Economic Development

# Indigenous Procurement Policy

Indigenous participation in high value Government contracts (\$7.5million or more)

## Guide for Procuring officials and contract managers

### Document history

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Version 1	26 June 2020	Neil Williams, Branch Manager Economic and Business Policy
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# Indigenous Procurement Policy

A guide for procuring officials and contract managers

## This guide

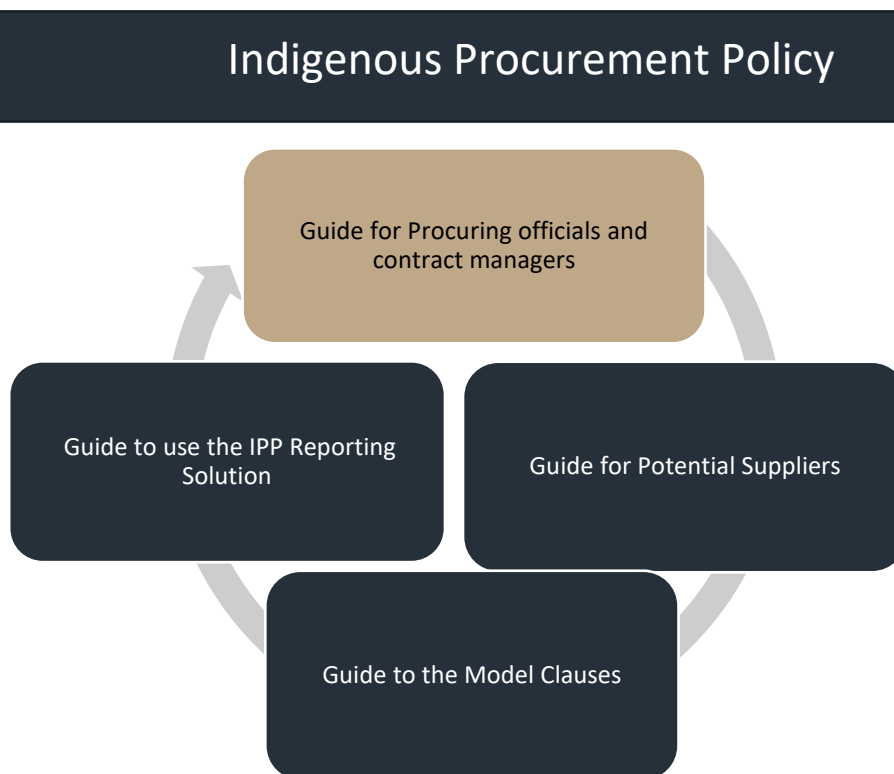
This guide aims to help Commonwealth procurement officials and contract managers conduct procurement activities that are subject to mandatory minimum requirements (MMR) under the Indigenous Procurement Policy (IPP).

This is one of several guidance documents designed to support the application of the MMR to high value contracts at each stage of the procurement life-cycle.

These documents should be read in conjunction with the IPP's overarching policy document – the Indigenous Procurement Policy.

Further information is available on the [NIAA website](#)

## IPP Policy Framework



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## Glossary

**AusTender** has the same meaning as in the Commonwealth Procurement Rules.

**Approach to market (open)** has the same meaning as in the Commonwealth Procurement Rules.

**Commonwealth entity** has the same meaning as set out in the *Public Governance, Performance and Accountability Act 2013*.

**Commonwealth Procurement Rules (CPRs)** mean the rules issued by the Minister for Finance under section 105B (1) of the *Public Governance, Performance and Accountability Act 2013*.

**Cooperative procurement arrangement** means an optional *panel arrangement* that *non-corporate Commonwealth entities* may use to approach the market together for the purposes of reducing expenditure by sharing administration costs. The Mandatory Set Aside (MSA) must be applied prior to a cooperative procurement arrangement is considered. An Indigenous business may also be contracted outside of this arrangement using Exemption 16 to Division 2 of the Commonwealth Procurement Rules.

**Coordinated procurement arrangement** means a *panel arrangement* established for commonly used goods or services by the Commonwealth. Once established, a coordinated procurement arrangement is mandatory for *non-corporate Commonwealth entities* to use. As a coordinated procurement arrangement forms part of Division 1 of the Commonwealth Procurement Rules, Exemption 16 and the MSA cannot be applied. The MMR may apply to coordinated procurement arrangements. A list of mandatory coordinated procurement arrangements is available on the Department of Finance [website](#).

**Corporate Commonwealth entity** has the same meaning as set out in the *Public Governance, Performance and Accountability Act 2013*.

**Contract** is an arrangement, as defined by section 23(2) of the PGPA Act, for the procurement of goods and/or services under which relevant money is payable or may become payable. Note: this includes standing offers and panels

**Contract manager** is responsible for oversight of the contract including compliance, financial aspects and ensuring reporting requirements are met.

**Contractor Portal** means the online reporting system used by suppliers to report their performance against contracts that contain the MMR. This is the external face of the IPP RS as defined below.

**Exemption 16** of the Commonwealth Procurement Rules means a procurement of goods and services from a SME meeting the definition of an Indigenous Enterprise in the IPP.

**High Value Contracts** means contracts delivered in Australia valued at \$7.5 million (GST inclusive) or more in specified sectors, and subject to Mandatory Minimum Indigenous Participation Requirements (MMR), as defined below.

**Indigenous Procurement Policy (IPP)** helps stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy. The IPP is a procurement connected policy under the Commonwealth Procurement Rules (CPRs).

**Indigenous Procurement Policy Reporting System (IPPRS)** means the online reporting system used to record and track data on IPP contracts. The system is managed by the NIAA.

**Indigenous small or medium enterprise (Indigenous SME)** means an Indigenous enterprise that meets the definition of SME in the Commonwealth Procurement Rules.

**Indigenous Participation Plan** means the document that must be submitted by organisations tendering for contract that are subject to the Mandatory Minimum Indigenous Participation Requirement. Tenderers outline in the Plan how they intend to meet (or exceed) Indigenous employment and or supply use targets over the contract term. The Plan assists procuring officials to determine which tenderer is most likely to achieve the strongest economic outcomes for Indigenous Australians.

**MMR** means mandatory minimum Indigenous participation requirements.

**MSA** means mandatory set aside. The MSA applies to procurement delivered in remote Australia and procurement valued between \$80,000 to \$200,000, with the exception of procurement made using a credit card in remote Australia or procurements covered by a coordinated arrangement.

**Model Clauses** are provided as examples of text that should be included in material for an Approach to Market or Contract terms where the entity determines that the IPP is applicable.

**NIAA** means the National Indigenous Australians Agency, the Commonwealth agency with responsibility for administering the Indigenous Procurement Policy.

**Non-corporate Commonwealth entity** has the same meaning as set out in the *Public Governance, Performance and Accountability Act 2013*.

**Panel arrangement** means a selected number of suppliers appointed through a contract or deed of standing offer that a Commonwealth entity can approach to procure regularly required goods or services. Panel arrangements are either *coordinated* or *cooperative procurements* (see definitions above).

**Portfolio** means the portfolios identified in the [Australian Government Organisations Register](#).

**Procuring official** means a Commonwealth official that has responsibility for purchasing a good or service on behalf of a Commonwealth entity.

**Potential supplier** is an entity or person who may respond to an approach to market.

**Remote area** means the areas identified in the Remote Indigenous Procurement Policy (RIPP) map on the NIAA website, as updated from time to time.

**Remote contract** means a contract where the majority (by value) of the goods or services will be delivered in a remote area.

**Remote procurement** means a procurement exercise for a remote contract, as per section 3.1 of this guide.

**Small and medium-sized enterprise (SME)** has the same meaning as in the Commonwealth Procurement Rules.

**Supplier** is an entity or person who has entered into a contract with the Commonwealth.

**Tender (open)** involves publishing an open approach to market and inviting submissions. This includes multi-stage procurements, provided the first stage is an open approach to market,

**Tenderer** is an entity or person who has responded with a submission to an approach to market.

**United Nations Standard Products and Services Code (UNSPSC)** is an open, global, multi-sector standard for the classification of products and services. Use of UNSPSC enables analysis of Australian Government procurement activity from approach to outcome by sector and across government.

# 1.0 The Indigenous Procurement Policy (IPP)

The primary purpose of the IPP is to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy.

Prior to the implementation of the policy on 1 July 2015, Indigenous enterprises secured limited business from Commonwealth procurement. The policy is intended to drive a significant increase the rate of purchasing from Indigenous enterprises, helping to drive Indigenous economic development.

The IPP applies to procurements made on behalf of non-corporate Commonwealth entities. If the procurement activity is subject to the Commonwealth Procurement Rules, it is likely subject to the IPP.

Corporate Commonwealth entities are encouraged to use best endeavours to apply the IPP. The IPP does not apply to Commonwealth grants.

## 2.0 Mandatory minimum requirements Indigenous participation requirements (MMR)

To ensure Indigenous Australians have the opportunity to participate in the delivery of high-value Australian Government contracts, the IPP sets the minimum threshold for Indigenous participation in certain procurements. These are known as mandatory minimum requirements or MMR. MMR apply to procurements valued at \$7.5 million or more (GST inclusive) that are delivered wholly in Australia and fall within specific industry sectors (see the MMR checklist at Table 1).

Once a Commonwealth procuring official or contract manager has established that MMR apply to a procurement, they are required to consider:

1. First, at the approach to market stage, the procuring official must advise tenderers of their obligations under the IPP. This includes that tenderers need to provide an Indigenous Participation Plan detailing the current levels of Indigenous participation within their organisation, a history of past performance against MMR targets and a commitment to achieving Indigenous participation outcomes throughout the delivery of the contract as part of their tender submission.
2. The procuring official must consider this information as part of the tender evaluation process as well as past performance against MMR targets.
3. During contract negotiations, the procuring official or contract manager must agree Indigenous participation targets with the supplier in line with MMR and include these in the contract. Targets should reflect an agreed level of Indigenous employment (workforce), or an agreed level of Indigenous businesses participation (supplier-use), or a combination of both, over the life of the contract. These targets should be applied to the contract itself or the supplier's Australian-based supply chain and or workforce (information on determining targets is at Section 3).
4. Over the life of the contract, the contract manager must monitor the supplier's progress against the agreed target by assessing and acknowledging performance reports in the Indigenous Procurement Policy Reporting System (IPPRS). This includes checking Indigenous businesses used in the supply chain and FTE employment figures are true and accurate.
5. At the conclusion of the contract, the contract manager must provide a final compliance assessment of the supplier through the IPPRS.



## 2.1 Determining whether MMR apply to a procurement

<b>Table 1. MMR Checklist</b>		
	<b>Procurements subject to MMR</b>	<b>Procurements NOT subject to MMR</b>
<b>1*</b>	The procurement is subject to the Commonwealth Procurement Rules (CPRs)	The procurement is subject to paragraph 2.6 of the CPRs (paragraph 2.6 deals with activities relating to international peace and security, human health, essential security interests and national treasures).
<b>2*</b>	The procurement is estimated to be \$7.5 million or more (inc GST) which includes options, extensions, renewals or other mechanisms that may be executed over the life of the contract. (refer 9.2 on Section 9 of the CPRs)	The procurement falls within sub-category exemptions listed in Figure 2 or a non-prescribed UNSPSC category.
<b>3*</b>	All the goods and services will be delivered wholly within Australia.	The goods and services will be delivered overseas in whole or in part.
<b>4*</b>	The majority of the procurement is expended in one or more of the 19 specified industry categories as listed in Figure 1.	The contract is valued less than \$7.5 million (GST inclusive) or less than half the value of the contact falls within the 19 specified industry categories.  Note: A contract variation that increases the value of a contract above the \$7.5 million threshold may result in the contract becoming subject to the MMR where the contract contains appropriate clauses or supplier agrees to voluntarily meet the MMR (refer to Section 10)
<b>5</b>	Coordinated or cooperative procurement arrangements in place after 1 July 2016	Is subject to a coordinated or cooperative procurement arrangements established prior to 1 July 2016.

\* Your procurement is subject to the MMR if all the first 4 conditions are met.

## 2.2 Requirement to estimate the value of a procurement

The CPRs state that when the maximum value of a procurement over its entire duration cannot be estimated, the procurement must be treated as being valued above the relevant procurement threshold. The procurement threshold in this case is \$7.5 million GST inclusive.

Please see below for information on the requirement to estimate the value of a procurement as at November 2025. For the latest information, go to Department of Finance website.

## **Commonwealth Procurement Rules, Section 9**

### **Requirement to estimate value of procurement**

- 9.2 The expected value of a procurement must be estimated before a decision on the procurement method is made. The expected value is the maximum value of the proposed contract, including options, extensions, renewals or other mechanisms that may be executed over the life of the contract.
- 9.3 The maximum value of the goods and services being procured must include:
- a. all forms of remuneration, including any premiums, fees, commissions, interest, allowances and other revenue streams that may be provided for in the proposed contract;
  - b. the value of the goods and services being procured, including the value of any options in the proposed contract; and
  - c. any taxes or charges.
- 9.4 When a procurement is to be conducted in multiple parts with contracts awarded either at the same time or over a period of time, with one or more suppliers, the expected value of the goods and services being procured must include the maximum value of all of the contracts.
- 9.5 A procurement must not be divided into separate parts solely for the purpose of avoiding a relevant procurement threshold.
- 9.6 When the maximum value of a procurement over its entire duration cannot be estimated the procurement must be treated as being valued above the relevant procurement threshold

Further guidance is available in the Commonwealth Procurement Rules.

**Figure 1. Industry sectors subject to MMR**

<b>Code</b>	<b>Industry Category</b>
64	financial instruments, products, contracts and agreements
70	farming and fishing and forestry and wildlife
71	mining and oil and gas services
72	building and facility construction and maintenance services
73	industrial production and manufacturing services
76	industrial cleaning services
77	environmental services
78	transportation, storage and mail services
80	management and business professionals and administrative services (sub-category exemptions apply)
81	engineering and research and technology-based services
82	editorial and design and graphic and fine art services
84	financial and insurance services (sub-category exemptions apply)
85	healthcare services
86	education and training services
90	travel and food and lodging and entertainment services
91	personal and domestic services
92	national defence and public order and security and safety services (sub-category exemption apply)
93	politics and civic affairs services
94	organisations and clubs

These sectors are determined by the United Nations Standards Products and Services Codes (UNSPSC) which is an open, global, multi-sector standard for efficient accurate classification of products and services for buying, selling or otherwise exchanging goods and services in the global marketplace.

The UNSPSC is used for reporting procurement activity across the Australian Government, including under the IPP. The UNSPSC is used by entities to decide whether a contract must meet MMRs.

To find out more, refer to the NIAA website: [www.niaa.gov.au/resource-centre/indigenous-affairs/united-nations-standard-products-and-service-codes](http://www.niaa.gov.au/resource-centre/indigenous-affairs/united-nations-standard-products-and-service-codes)

**Figure 2. The following are listed as sub-category exemptions from using the MMR**

80131500	Lease and Rental of property or building
80131501	Land Leases
80131503	Residential leases
84130000	Insurance and retirement services
84131800	Retirement funds
92110000	Military services and national defence
92111700	Military science and research

**Figure 3. Accessing the UNSPSC codes to confirm goods and services are subject to MMR**

The codes can be accessed at <https://www.ungm.org/Public/UNSPSC>

Non-members can access codes via the 'Search-Code' tab or by downloading a free pdf list of up-to-date codes from the 'Code set-Downloads' tab.

The easiest way to find a code is to search the code set online at <https://www.ungm.org/Public/UNSPSC> useful feature of the search the code function is to use "%" as a wild card. This can be used for the 'Search Code' field and 'Search Title' field.

As an example: to find a complete listing of all codes starting with 72 (Building and Facility Construction and Maintenance Services), enter '72%' in the Search Code field. The result returned is five pages of possible codes within this Industry sector range. All codes resulting from this search will apply to MMR contracts.

Searching the 'Title' field will find the most appropriate 8 digit code to use for a particular good or service.

Entering 'building%' in the title field returns a list of codes for goods or services that start with 'building'. Note results from this search may include categories that are not applicable to MMRs.

Entering '%building%' in the title field returns a list of codes for goods and services that include 'building' in the title. Note results from this search may include categories that are not applicable to MMRs

### Example 1. Confirming whether goods and services fall within the 19 specified industry categories

John was undertaking a procurement to acquire translation services. On looking at the 19 specified Industry categories subject to the MMR, John was not sure that translation services would fall under a category.

As John wanted to be sure, he undertook a search on the UNGM [website](#). Using the "Title" field, John searched *translation services* and found that it fell under 82 – editorial and design and graphic and fine art services, and was therefore subject to the MMR.

### Figure 4. AusTender

A portfolio's procurement team receives an alert from the IPP Reporting System (IPPRS) when a contract published on AusTender fits the MMR criteria. It is important that information published on AusTender contains the correct fields to enable this team to easily identify the area responsible for managing the contract.

### Figure 5. Voluntarily applying the MMR

A Commonwealth entity may choose to voluntarily apply the MMR to any procurement and require suppliers to report using the IPPRS. The entity representative – such as the procuring official or contract manager – must flag the contract as a voluntary MMR within the IPPRS. Making use of the IPPRS will also ensure that contracts reported by suppliers are counted against a portfolio's IPP target.

## 3.0 MMR targets

MMR targets for Indigenous employment or supply-use are applied to the work associated with delivering the contract (contract-based) or the supplier's organisation (organisation-based). If a contract is delivered in remote Australia, the targets must reflect a significant employment or supply-use outcome for Indigenous people in that area.

Procuring officials must advise all tenderers of their MMR obligations at the approach to market stage.

The Commonwealth entity has the option to:

- determine the MMR target before the approach to market and require tenderers to demonstrate their ability to meet the targets in their Indigenous Participation Plan; or
- allow tenderers to propose their targets and demonstrate their ability to meet them in their Indigenous Participation Plan and assess these as part of the evaluation.

To support this requirement, NIAA has developed [model clauses](#) - pre-drafted contract terms that can be used within existing contract templates as appropriate.

The Department of Finance's also maintains a general [clause bank](#).

**Table 2. MMR Targets**

	Employment	Supply	Combined
<b>Remote contract-level target</b>	<p><b>A significant employment outcome. This must be greater than 4 per cent</b> Indigenous employment (on average) of the full time equivalent Australian-based workforce deployed on the contracted project (by the end of the contract term). See section 3.1 for more detail.</p>	<p><b>A significant supply use outcome. This must be greater than 4 per cent</b> of the value of the goods and services provided under the contract must be awarded to Indigenous enterprises (by the end of the contract term). See section 3.1 for more detail.</p>	<p><b>A significant Indigenous participation outcome. This must be greater than 4 per cent.</b> The Employment and Supply target in total is greater than <b>4 per cent</b> (by the end of the contract term). See section 3.1 for more detail.</p>
<b>Organisation-level target</b>	<p><b>3 per cent</b> Indigenous employment (as a weighted average) of the full time equivalent Australian-based workforce of the supplier (by the end of the contract term). See Section 3.2.2 for more details.</p>	<p><b>3 per cent</b> of the value of the supplier's Australian supply chain must be awarded to Indigenous enterprises (by the end of the contract term). See section 3.1 for more detail.</p>	<p>Employment and Supply target total in value to <b>3 per cent</b> (by the end of the contract term). For example: a 2 per cent Indigenous employment outcome and a 1 per cent Indigenous supplier-use outcome delivers a combined outcome of <b>3 per cent</b>. See section 3.1 for more detail.</p>
<b>Non – remote contract-level target</b>	<p><b>4 per cent</b> Indigenous employment (as weighted average) of the full time equivalent Australian-based workforce deployed on the contracted project (by the end of the contract term). See Section 3.2.1 for more detail.</p>	<p><b>4 per cent</b> of the value of the goods and services provided under the contract must be awarded to Indigenous enterprises (by the end of the contract term). See Section 3.2.1 for more detail.</p>	<p>The Employment and Supply target <b>total 4 per cent</b> (by the end of the contract term). For example: a 1 per cent Indigenous employment outcome and a 3 per cent Indigenous supply-use outcome delivers a combined outcome of 4 per cent. See Section 3.2.1 for more detail.</p>

### 3.1 Minimum targets for **remote procurements**

Where a component of a contract will be delivered in remote Australia, the MMR must deliver a *significant* Indigenous employment or supply use outcome by the end of the contract term. **At a minimum, the target must exceed 4 per cent (4%) of the value of the contract.** Section 3.1.3 will help determine an appropriate target for a remote contract in line with MMR.

### 3.1.1 Determining the remote component of a contract



Remote Australia has a unique definition under the IPP, it includes highly populated cities and towns such as Darwin, Broome and Alice Springs as well as sparsely populated regions like Central Australia. The NIAA maintains an interactive map that allows users to search Australia by location to determine whether an area is remote: [www.niaa.gov.au/resource-centre/indigenous-affairs/ripp-map-data](http://www.niaa.gov.au/resource-centre/indigenous-affairs/ripp-map-data).

### 3.1.2 Identifying the delivery point

To determine if a component of a procurement is remote the procuring official will need to identify whether the delivery point for the goods and services falls within the IPP remote boundary.

For goods, the delivery point is where the procuring official assumes control of the goods. For a service, the delivery point is where the procuring official receives the service, even if the end user of the service is located elsewhere.

### 3.1.3 Determining a significant Indigenous outcome in a remote contract

The procuring official must agree a MMR target with the preferred tenderer that will ensure a *significant* Indigenous employment or supplier use outcome. The contract manager may also wish to be part of this discussion. The procuring official and/or the contract manager may wish to consider:

- **Local employment market conditions** such as the number of Indigenous businesses, workers and job seekers in the region and the relevant skills, qualifications and capabilities of the cohort.
- **The requirements of the contract** such as the skills and capabilities required to deliver the goods and services including the value and scale and size of the contract.
- **The availability of supply services** to support the meeting of any targets and assist in building the capacity of Indigenous businesses and job-seekers to take up opportunities.
- **Other government projects operating in the region that may impact on the capacity of Indigenous businesses and job-seekers to take up opportunities over the contract term.** Commonwealth contracts active in the region can be identified through the IPPRS.

## 3.2 Minimum targets for non-remote procurements

The targets for non-remote procurements may be determined by the Commonwealth entity at the approach to market stage or negotiated by the procurement official or contract manager and the supplier during contract negotiations.

Attachment A provides case studies for contract based and organisation based targets

### 3.2.1 Contract-based targets

A non-remote contract-based target must be, by the end of the initial term of the contract, **a minimum of 4 per cent (4%)**. This means that:

- 4 per cent of the full-time employees deployed on the contract must be Indigenous workers; or
- 4 per cent of the value of the contract must be awarded to Indigenous suppliers; or
- any combination of the above that adds up to 4 per cent (for example 3% employment and 1% supplier use).

### 3.2.2 Organisation-based targets

A non-remote organisation-based MMR must be, by the end of the initial term of the contract, a **minimum of 3 per cent (3%)**. This means that:

- 3 per cent of employment (on average) of the full time equivalent Australian- based workforce of the supplier or.
- 3 per cent of the value of the supplier's Australian supply chain must be awarded to Indigenous enterprises or
- any combination of the above that adds up to 3 per cent (for example 2% employment and 1% supplier use).

Organisations may have organisation-based MMR targets within multiple contracts with Commonwealth entities. The organisation will only need to report their organisation's employment and supply chain data once every quarter via the IPPRS. The IPPRS will automatically attribute this data against each contract to support contract managers and suppliers assess compliance against the IPP target.

## 3.3 Counting employment and supply-use against targets

### 3.3.1 Employment

#### Contract

A supplier's progress against employment targets are assessed by the number of hours an Indigenous person works for the supplier over the term of the contract in relation to the supplier's total workforce, expressed as full-time equivalent (FTE) and assessed as a weighted average. To calculate the average, suppliers report quarterly on the total number of Indigenous FTE deployed on the contract and the total number of non-Indigenous FTE deployed on the contract for that quarter. This ensures Indigenous Australians have access to meaningful employment over the life of the project.

A supplier's final performance against employment targets at the end of the contract term is calculated using the total number of Indigenous FTE divided by the total number of FTE reported by the supplier.

#### Organisation

A supplier's progress against organisation-based MMR employment targets is calculated using the average number of hours an Indigenous person has worked to deliver on the contract. To calculate the weighted average, suppliers report quarterly on the total number of Indigenous FTE employed by the organisation and the total number of FTE employed by the organisation in Australia each quarter.

At the end of the initial term the IPPRS will calculate the weighted average FTE by adding the total number of Indigenous FTE and the total number of non-Indigenous FTE reported by the supplier each quarter and dividing by the number of quarters over the initial term to find the weighted average.

Where the supplier has multiple contracts that contain organisation based MMR contracts (that contain different start and end dates) the supplier will only need to report once each quarter. The IPPRS will use the date ranges of the quarterly report and the start and end date of associated contracts to allocate

the workforce data accordingly. This is important as each contract is assessed against the average weighted FTE employed over the term of each individual contract.

**It is important to note:** the hours associated with an FTE will differ between industries. The supplier should report the FTE as defined by their industry. If multiple awards are in place, the supplier should use the FTE rate that is most representative of their workforce.

### 3.3.2 Supply-use

#### Contract-based

For contract-based MMR targets, the supplier may report any subcontract or purchase made with an Indigenous business that is directly related to delivery of the contract.

Each quarter the supplier will report the details of the Indigenous business that they have contracted with or purchased with that quarter through the IPPRS. At the end of the contract term, the total value of contracts and purchases awarded to an Indigenous business will be measured as a percentage against the value of the contract to determine if the MMR target was met.

#### Organisation-based

For organisation-based MMR supply use targets the supplier reports each quarter the total value of their Australian supply chain and value of contracts awarded to Indigenous businesses. The IPPRS measures as a percentage against the organisation's Australian supply chain.

Where the supplier has multiple contracts that contain organisation based MMR contracts (that contain different start and end dates) the supplier will only need to report once each quarter. The IPPRS will use the date of the purchase and the start and end date of associated contracts to allocate the supply use data accordingly. This is important as each contract is assessed against the average value of Indigenous supply use against the value of the organisation's total Australian supply chain over the term of that contract.

## 4.0 Procurement documentation

For procurements subject to the MMR, procuring officials must inform potential suppliers of their contractual obligations at the approach to market stage. This information will inform tender submission documents, which will be assessed in line with MMR requirements at the evaluation stage and then feature in the final contract. At each stage of the procurement process, procuring officials and/or contract managers should have regard to the conditions of the MMR. This section outlines the tools that will help procuring officials and suppliers comply with those conditions.

### 4.1 Model Clauses

The NIAA has prepared pre-drafted content (known as model clauses) for procuring officials and/or contract managers to include in the approach to market document and draft contract (if applicable) to ensure tenderers are accountable to the requirements of the IPP should they be successful in winning the contract. This information must also be included in the final contract, subject to any negotiations.

The IPP [model clauses](#) provide the following content:

- MMR employment and supply-use targets as determined by the policy
- the tenderer's obligation to prepare an Indigenous Participation Plan (see 4.2), including the plan to achieve significant Indigenous participation outcomes in remote Australia (as appropriate)
- the supplier's obligation to report via the IPPRS on a quarterly basis
- notification that information related to the MMR is not subject to the confidentiality provision and details of the contract may be published on the NIAA website.

If a procuring official plans to approach an Indigenous businesses using Exemption 16 of the CPRs, the approach to market documentation should include clauses that require the business to declare themselves as an Indigenous business and require that business to notify the contract manager in the event that ownership of the business changes during the term of the contract. There is a model clause to assist with this.

## 4.2 Indigenous Participation Plan

The Indigenous Participation Plan, prepared as part of a potential supplier's tender submission, should outline how they intend to meet the MMR over the life of the contract.

Procuring officials undertaking procurement from a standing offer or panel arrangement (where MMR have been identified in the Deed of Standing Offer) must ask the supplier/panel member to provide an Indigenous Participation Plan and details of their organisation's past compliance with MMR when the value of the contract meets MMR criteria. For all other procurements, the plan must be requested as part of the approach to market process.

**Table 3**

**The Indigenous Participation Plan should include:**

**Notes**

Clear indication of whether the supplier will meet contract-based (4%), organisation-based (3%) or remote contract-based participation requirements (>4%).

The supplier may choose any of these options or the awarding entity may provide direction on the target in the ATM documents,

Clear indication of whether the percentage target for Indigenous participation will be met through employment or supply use or a combination of employment and supply use.

The supplier may choose any of these options or the awarding entity may provide direction on the target in the ATM documents.

A commitment to Indigenous employment.

- Clearly identify roles for Indigenous Australians and the skills required for these roles. Where possible, the majority of the roles should be central to the goods/services being delivered and located within local communities
- Identify ways to source suitable Indigenous candidates where needed, for example through collaboration or memoranda of understanding with Commonwealth employment service providers such as Remote Australia Employment Service (RAES) and Workforce Australia available at [jobsearch.gov.au](http://jobsearch.gov.au); consulting with local Indigenous community controlled organisations available at the ORIC database; and/or advertising through

### Table 3

#### The Indigenous Participation Plan should include:

Indigenous owned media outlets, and/or hosting community information sessions.

- Identify ways to retain and train Indigenous candidates for the role and ongoing development, for example a mentoring or professional development programme for Indigenous employees and a commitment to building a cultural capability within the workplace, which may include working with Reconciliation Australia to agree a Reconciliation Action Plan.

- Clearly identify opportunities for Indigenous businesses in their supply chain.
- Methods for identifying Indigenous businesses and clear communicating opportunities, including: supplier diversity programs, business mentoring programs; assessing local Indigenous capability; consulting Supply Nation's Indigenous Business Direct and other Indigenous business databases; hosting community information sessions.

A commitment to significant participation of Indigenous workers and businesses in contracts delivered in remote Australia.

- Where the contract will be delivered in a remote area/s, clearly identify ways to achieve 'significant' (as a percentage) Indigenous employment and/or supplier use with regard to local Indigenous business sector and employment market.
- The plan should specify an employment target considerate of the proportion of working age Indigenous people in the area (using the Australian Bureau of Statistics as a guide)
- Supply target: This could include identifying Indigenous businesses that they will sub-contract in the delivery of the project.
- For large procurements with multiple tenders, it is important to consider the impact posed on small organisations to agree MoUs and collaborative agreements with multiple tenderers where only one will ultimately be contracted.
- The tenderer could demonstrate an existing relationship with the local stakeholder groups such as [RAES providers](#), [Land and Sea Councils](#), and local Indigenous community controlled organisations (see tip box below) or commit to develop a work relationship with specified stakeholders by a certain date if successful.
- Supply target: This could include identifying indigenous businesses that they will sub-contract in the delivery of the project.

## 4.3 Tender submission documents

To demonstrate their awareness of, and ability to meet the MMR as outlined in the approach to market documentation, tenderers must include the following information in their tender submission:

- details of the current levels of Indigenous participation (employment or supply-use) in their Australian-based organisation
- a declaration of their performance against targets for any previous contracts that included MMRs\*; and
- an Indigenous Participation Plan detailing the MMR target that they will achieve over the life of the contract and their strategy for achieving this. Table 3 outlines the information that tenderers should include in an Indigenous Participation Plan.

\*Commonwealth entities should search the IPPRS for a tenderer's past performance information.

## 4.4 Approaches to market for contracts of varying value

If a procurement may result in multiple contracts of varying value – with the initial contract lower or higher than the \$7.5 million threshold - it is recommended the approach to market documentation (including draft contract where applicable) includes a clause that grants tenderers the option to not submit an Indigenous Participation Plan if they are not intending to accept a contract above the MMR threshold.

The clause, available on NIAA's website, will only require the supplier to submit an Indigenous Participation Plan in the event the contract value increases above the \$7.5 million threshold. The clause will also encourage the use of best endeavours to informally increase Indigenous participation in the delivery of the contract.

For information on varying contracts, refer to Section 10.

### Example 2. Procurements with unknown values

The Department of Veteran Affairs approaches the market to engage potential suppliers to provide hearing devices to eligible veterans on demand over a 5 year period across the country. At the time of the approach to market, DVA estimates the total value of this procurement will be \$15 million but is unsure what the demand from veterans for new hearing devices will be in regional and remote locations over the 5 year period or how many tenderers will submit competitive bids. It is expected that the value of the contract will exceed \$7.5 million in some urban areas but could be as low as \$180,000 in regional areas.

#### TENDERER 1

Tenderer 1 is a small business that is interested in a contract to service a small region in NSW. The tenderer does not expect to be able to supply more than \$1.2 million in hearing equipment and services over the 5 year period. The tenderer elects not to be considered for more than \$7.5 million in work and does not submit an Indigenous Participation Plan at the time of tender.

Tenderer 1 is awarded a contract valued at \$1 million and signs the contract agreeing to use their best endeavors to increase Indigenous participation in the delivery of the contract. The tenderer contacts the local RAES or Workforce Australia provider to express an interest in hiring Indigenous job seekers and searches Supply Nation database for businesses they could engage with in the future work.

#### TENDERER 2

Tenderer 2 is a medium sized business based in Townsville and is keen to win as much work as possible through the tender.

Tenderer 2 is awarded a contract valued at \$6 million (GST inclusive).

The contract contains best endeavors clauses for Indigenous participation. During the first year of the contract, tenderer 2 accepts a contract variation that increases the total value of the contract to \$7.8 million (GST inclusive).

The contract manager does not request the supplier to submit an Indigenous Participation Plan, noting that the variation has only brought the total value of the contract to a value marginally above the \$7.5 million threshold. However, the contract manager and supplier discuss options to encourage Indigenous participation, including ways to involve Townsville's Indigenous business sector in the operations of Tender 2's business.

### **TENDERER 3**

Tenderer 3 is a small business in a metro area and is also keen to win as much work as possible through the tender. The tenderer submits an Indigenous Participation Plan. The tenderer is awarded a contract valued at \$5 million (GST inclusive).

The contract contains best endeavors clauses for Indigenous participation. In the second year of the contract, the tenderer accepts a contract variation that increases the total value of the contract to \$9 million (GST inclusive). The contract manager notes that, as the value of the contract is now above the \$7.5 million threshold, they want to discuss with the supplier opportunities for Indigenous participation over the next 4 years. Through an Indigenous Participation Plan they agree to set a target of 4% of the value of the goods or services provided under the contract from the point of the variation to Indigenous businesses.

## **5.0 Evaluating tender responses to the MMR**

When evaluating tender submissions, procuring officials should consider each tenderer's efforts to implement workforce and supply chain management strategies that support sustained engagement with Indigenous Australians.

Tender responses that do not include an Indigenous Participation Plan, data on the tenderer's current level of Indigenous participation rates in their Australian-based organisation do not comply with the IPP.

A tenderer that has no past experience with MMR will not be disadvantaged by this. Their response will be assessed on other actions it has taken in the past to increase Indigenous participation and on its proposed Indigenous Participation Plan.

It is important that procuring officials and/or contract managers talk to their procurement teams for specific advice on how their entity evaluates tenders including any weighting that should apply.

### **5.1 Assessing a significant outcome in remote Australia.**

Indigenous people and businesses based in remote locations have less frequent access to the benefits of Commonwealth procurement. It is therefore important that procuring officials and/or contract managers require more from Indigenous Participation Plans, including higher targets, when a contract is delivered in remote Australia.

To ensure that the benefits of Commonwealth procurement reach a remote area, targets should be applied to the contract rather than the supplier's Australian-based organisation (as typically an organisation's footprint is larger outside remote Australia).

When assessing the quality of an Indigenous Participation Plan with a remote component, the procuring official and/or contract manager should review the extent to which factors detailed in Section 3.1.3 have been demonstrated, and look to ensure:

- the MMR target is considerate of proportion of Indigenous people in the area (using the Australian Bureau of Statistics as a guide) in the local population (and exceeds, at the very least, 4 per cent for contract based targets)
- the tenderer has identified key stakeholder groups relevant to achieving employment and supply use outcomes in the delivery of the program
- if they intend to apply employment targets, the tenderer plans to connect with a local community development provider, or, if they intend to subcontract to Indigenous businesses, the tenderer plans to connect with local business chambers, land councils and councils
- the tenderer's commitment to building a culturally inclusive organisation demonstrated through a commitment such as a Reconciliation Action Plan.

Information on the Indigenous population percentages is available on the [Australian Bureau of Statistics website](#). The NIAA regional office network may also be of assistance. Details are located in the Resources Section at 12.0.

## 5.2 Assessing an Indigenous Participation Plan

An Indigenous Participation Plan is a critical tool for procuring officials, contract managers and tenderers/suppliers throughout the contract life-cycle. At the tender evaluation stage, the document helps tenderers outline how they intend to meet (or exceed) MMR targets over the contract term, and assists procuring officials to determine which tenderer is mostly likely to achieve the strongest economic outcomes for Indigenous Australians. Throughout the contract term, the Indigenous Participation Plan will help both parties manage and assess performance against MMR targets.

It is important that the Indigenous Participation Plan provides the procuring official and/or contract manager with confidence about when and how the proposed level of Indigenous participation will be achieved. The tenderer should identify who they intend to engage with, when and how they will engage with Indigenous job seekers and/or businesses and how they will support retention in their workforce and supply chain throughout the life of the contract and potentially beyond.

Table 3 provides guidance for what should be included in an Indigenous Participation Plan. This is a guide only; tenderers may include any content in their Indigenous Participation Plan that supports their tender.

## 5.3 Assessing current rates of Indigenous participation

If the current rate of Indigenous participation in an organisation is low, procuring officials and/or contract managers should consider how the tenderer seeks to obtain the required knowledge and relationships to engage and retain Indigenous Australians in their workforce and supply chain. An Indigenous Participation Plan will be stronger if the tenderer identifies and seeks to make use of the resources and tools listed below.

- Commonwealth providers such as Workforce Australia, or Remote Australia Employment Service;
- Commonwealth [Indigenous Business and Employment Hubs](#);
- local privately run labour Indigenous owned hire and recruitment companies with links to Aboriginal and Torres Strait Islander job seekers;
- local Indigenous associations or Land Councils;
- local Indigenous Business Chambers;

- Reconciliation Australia
- Supply Nations or ORIC public directory;
- Indigenous media;
- government and or community led networking opportunities;
- cultural awareness and diversity training;
- development of a Reconciliation Action Plan.

**Note:** Section 12.0 Resources provides website links to assist with locating the above services.

If the tenderer has failed to meet employment targets in past MMR contracts procuring officials and/or contract managers should consider whether the tenderer's proposed plan has measures in place to ensure that they can attract and retain Indigenous workers. This could include reviewing the current rate of Indigenous participation in their organisation.

## 5.4 Assessing past performance information

A tenderer's past MMR performance information is contained in the IPPRS and is accessible via each portfolio's central procurement team.

A tenderer can also access their own information via the contractor portal in the IPPRS.

For assistance, contact NIAA at [indigenousprocurement@niaa.gov.au](mailto:indigenousprocurement@niaa.gov.au).

# 6.0 Panel and other arrangements

## 6.1 Applying the MMR when establishing a new panel or cooperative arrangement that will award official orders of \$7.5 million or more.

If a panel meets one of the MMR industry categories, approach to market documentation must specify that any official order (contract) from the panel valued at \$7.5 million or more will be subject to the MMR. Where delivered in remote Australia, any official order (contract) subject to MMR must include the requirement to achieve a significant outcome for Indigenous Australians.

Potential suppliers responding to an approach to market from a panel arrangement that is subject to MMR must have the capacity to meet the MMR to be awarded a contract/work order/official order.

## 6.2 Applying MMR to official orders

Procuring officials undertaking a procurement from a standing offer or panel arrangement (where MMR have been identified in the Deed of Standing Offer) must ask the supplier/panel member to provide an Indigenous Participation Plan and details of their organisation's past compliance with the MMR when the value of the contract (or official order) meets the MMR criteria.

The Indigenous Participation Plan must demonstrate the supplier's ability to meet the MMR target including, if specified, in a remote area. The plan should be included as a contractual requirement in the official order. NIAA has developed [model clauses](#) to assist.

If an official order issued through a panel arrangement is valued at \$7.5 million, and meets the other MMR criteria, but the Head Agreement does not require the supplier to submit an Indigenous Participation Plan, the procuring official and/or contract manager should encourage the supplier to use their best endeavours to increase Indigenous participation over the delivery of the contract.

## 7.0 Contracting

In addition to the approach to market documentation and draft contract, the final contract must contain clauses (see Section 4.1) requiring the following:

- the employment and supply use target (see section 3);
- an Indigenous Participation Plan (see section 4.2);
- the requirement to report on progress against the targets via the IPPRS each quarter (see Section 9.1);
- notification that information related to the MMR is not subject to the confidentiality provision and may be published.

## 8.0 Publishing the contract

### 8.1 Contract Managers' confirmation

After the contract is published on AusTender, IPPRS uses the contract information to identify contracts that are likely subject to the MMR. The IPPRS captures AusTender data relating to industry category, contract start date, contract value and whether exemption 2.6 was applied.

The day following the publication on AusTender, the IPPRS will issue an alert to the relevant portfolio's procurement team that a contract potentially subject to the MMR is ready for reporting. The procurement team will contact the relevant policy or program area to initiate reporting through the IPPRS. It is important that contract managers move quickly to confirm whether the contract is subject to the MMR, and if it is, detail the targets that have been agreed with the supplier and initiate the quarterly reporting requirement from the supplier.

### 8.2 Appropriate use of MMR exemptions and 'other' category

AusTender is unable to filter out contracts delivered overseas or where less than half the value of the contract was awarded within the 19 specified industry categories. These will need to be filtered out of the IPPRS by the relevant portfolio.

The procuring officials and contract managers must consider carefully the MMR requirements (detailed in section 2) before deciding to apply any exceptions. For example, subcategories listed in Figure 2, contracts that are subject to paragraph 2.6 of the Commonwealth Procurement Rules or contracts delivered overseas in whole or in part can be exempt from the MMR.

In particular, the procuring officers and contract managers must be satisfied a valid exemption reason applies and should include detailed reasons in the IPPRS. The use of the 'Other' category should only be used in exceptional circumstances.

An annual report on the use of exemptions is provided to the Chief Operating Officers committee that plays an important role in supporting the Secretaries Board to focus on First Nations priorities and asks portfolios to report annually on their enforcement of MMRs. Portfolios must ensure suppliers are reporting against their MMR targets.

Where there is non-compliance with the MMR requirements, such as failure to embed MMR clauses in the contract or unwillingness by a supplier to accept such clauses, contract managers must engage immediately with NIAA to ensure it is appropriately recorded in IPPRS.

# 9.0 Contract Management

## 9.1 Reporting obligations

Suppliers are obliged to report quarterly on their progress against the MMR targets as outlined in their Indigenous Participation Plan. Quarterly performance reports must be submitted via the IPPRS. For guidance on using the IPPRS go to <https://www.niaa.gov.au/ipprs>

Reports must provide details of any participation by Indigenous businesses in the delivery of the contract. This includes the total full time equivalent (FTE) Indigenous workforce for the quarter and total Indigenous supply-use for the quarter. Table 4 outlines the details that contract managers and suppliers must enter into the IPPRS.

Table 4 Contract manager reporting obligations	Supplier's quarterly reporting obligations
<ul style="list-style-type: none"> <li>• Agreed MMR targets</li> <li>• Reporting start date</li> <li>• Delivery postcode</li> <li>• Suppliers' contact details</li> <li>• Acknowledgement that the contract manager has reviewed the quarterly performance report</li> <li>• Comments against the final performance report</li> </ul>	<p>Employment target: contract based</p> <ul style="list-style-type: none"> <li>• FTE total workforce</li> <li>• FTE Indigenous workforce</li> <li>• Subcontractors FTE total workforce</li> <li>• Subcontractors FTE Indigenous workforce</li> </ul> <p>Employment target: organisation based</p> <ul style="list-style-type: none"> <li>• FTE total Australian based workforce</li> <li>• FTE Indigenous workforce</li> </ul> <hr/> <p>Supply-use target:</p> <ul style="list-style-type: none"> <li>• Australian Business Number and name of enterprise</li> <li>• Value of contract/purchase</li> <li>• Date of contract/purchase</li> <li>• Description of goods/service purchased</li> <li>• Whether the contract/purchase was awarded by the supplier or by a subcontractor within their supply chain (direct or indirect contract/purchase)</li> </ul>

The IPPRS will cross reference the ABN with Supply Nation and ORIC databases to confirm a business is verified as Indigenous owned.

The IPPRS will issue a reminder to the supplier and contract manager (as listed in the IPPRS) by email when reports are due. Please ensure that the contact details of the person responsible for reporting are kept up-to-date in the IPPRS. If entities use group email inboxes, using this inbox to receive reminders would ensure that deadlines are not missed.

It is incumbent on the contract manager, to ensure suppliers submit the required report in a timely manner. The contract manager should review all the information provided and follow up with the supplier if targets are not being met.

## 9.2 Monitoring progress

While a supplier's overall performance against MMR targets is not assessed until the end of the contract (see Section 9.4), the IPPRS is a useful tool for contract managers and suppliers to monitor progress throughout the life of the contract. The system can produce an assessment of performance to date at any time, issue alerts if reports are overdue.

It is the responsibility of the contract manager to follow up with the supplier if progress is not tracking well against targets or is unlikely to meet the MMR by the end of the contract.

There are a number of ways a contract manager can support a supplier that is struggling to meet the MMR. These include:

- advise them to return to their Indigenous Participation Plan for strategies on how to move forward;
- ensure they are connected with local employment service providers, Indigenous community controlled organisations, land and sea council and business chambers, such as Supply Nation.
- suggest they consider a contract variation if circumstances have changed (see Section 10.1 on variations);
- refer them to the IPP Guide for Suppliers which contains information to assist meet employment and supply use targets; or
- reach out to the NIAA regional office for assistance (see resource information)

## 9.3 Verifying information

It is the responsibility of the contract manager to verify that the supplier has accurately reported Indigenous employment and supply-use outcomes. This can be challenging because it may rely on sensitive information regarding a person's heritage.

The supplier should have taken reasonable steps, through risk management practices, to confirm that the Indigenous workers or Indigenous suppliers contributing to the delivery of the contract can attest to their Indigenous heritage and Indigenous ownership. This could involve requiring an employee to provide this information as part of standard HR processes, with a warning that false information could lead to disciplinary action

As part of a Commonwealth entity's contract management control framework, it would be beneficial to integrate reviews of MMR documentation.

When considering requirements please note:

- when submitting data via the IPPRS, the supplier is notified that providing false information is a criminal offence
- for the supply-use target, the IPPRS will automatically verify whether the business is Indigenous owned by data matching with Supply Nation and ORIC and record this in the system.

The contract manager should specify the documentation the supplier must maintain as evidence of MMR performance, taking into consideration associated risks. From time to time the contract manager should take steps to assure themselves that information being reported by suppliers is accurate. This could, for example, include spot reviews of evidence to support the reported information, or site visits as appropriate.

Subject to privacy requirements, the documents associated with the MMR workforce target could include:

- payroll information that demonstrate hours worked by staff on the project;
- evidence that staff have identified as Aboriginal and/or Torres Strait Islander as part of a human resource processes where providing false information could risk their employment;

## 9.4 Final compliance assessment, contract end

Final compliance with MMR targets is calculated once the contract has been completed and the supplier's final report has been submitted and assessed. The IPPRS will assist with these calculations.

At the end of the contract the contract manager will provide a final assessment of the supplier's performance against MMR targets in the IPPRS. This assessment will be accessible to any future evaluation panel across Commonwealth entities when considering the past performance of the supplier.

For contract-based workforce, organisation-based workforce and organisation-based supply chain targets, final performance against the MMR target is calculated based on a weighted average over the term of the contract.

For contract-based supply chain targets, final performance against the MMR target is calculated based on the cumulative value of subcontracts to Indigenous businesses over the life of the contract.

The contract manager is required to add comments alongside the supplier's final compliance rating in the IPPRS. These records will be accessible to Commonwealth entities for consideration during the assessment of future tenders involving the same supplier. The final compliance rating is a rating of complied or not complied.

## 10.0 Contract variations

### 10.1 Varying a contract that is already subject to MMR

During the term of a contract, a supplier may identify the need to adopt a different approach to meeting the MMR. An entity may agree to revise the targets in the suppliers Indigenous Participation Plan at any time during the term of the contract providing any changes are consistent with the MMR.

Specifically, varied employment and supply-use targets must still add up to a minimum of 4 per cent for contract based targets or a minimum of 3 per cent for organisation-based targets and represent a significant Indigenous participation outcome for any component of the contract delivered in remote Australia following the variation.

The contract manager should ensure that the new targets are reflected in a revised Indigenous Participation Plan in the varied contract and MMR targets are updated within the IPPRS. Entities should ensure changes are agreed by both parties in writing and are carried out in accordance with the terms and conditions of the contract.

#### 10.1.1 MMR variations and the IPPRS

The IPPRS will identify if a contract subject to the MMR is varied the day after it is published on AusTender. Where a MMR target has been applied to the contract, the IPPRS will update the supply based target and the performance to date against the new percentage. The dates of reporting will also be updated.

### 10.2 Varying a contract to increase the value of the contract above the \$7.5 million threshold

Care needs to be taken to ensure new and unexpected requirements are not imposed on the supplier over the life of the contract.

When negotiating a contract variation, contract managers should have regard to whether the supplier has been notified that Indigenous participation may become a requirement at the ATM stage and in the initial contract. Procurement officials are encouraged to include model clauses in the approach to market documentation and initial contract to support this. The model clauses encourage suppliers to use their best endeavours to engage with Indigenous businesses and job seekers. These model clauses notify the supplier that, in the event that the contract value exceeds \$7.5 million (GST inclusive), the MMR may apply and that the contract manager may request an Indigenous participation plan.

Where a contract is varied and clauses, such as the model clauses described, have been included. The contract manager should initiate a conversation with the supplier to identify opportunities available for Indigenous participation in the remainder of the contract.

To support this discussion, the supplier and/or the contract manager should consider the number of Indigenous businesses on the Supply Nation Directory that could potentially be engaged on the remainder of the project and potential employment opportunities for the Indigenous workforce in the region.

Where opportunities are identified, they may be expressed as an employment and/or supply use target, and the strategy to achieve these targets should be documented in an Indigenous Participation Plan and included in a formal contract variation.

The varied contract should require the supplier to report progress against the Indigenous Participation Plan each quarter. Suppliers may prefer to report outcomes via the IPPRS using the voluntary reporting profile. The NIAA can advise how the IPPRS may be used to report the level of Indigenous participation achieved.

Where the model clauses have not been included, the contract manager should encourage the supplier to use their best endeavours to increase Indigenous participation over the delivery of the contract.

## 11.0 Compliance reporting responsibilities and risks

As explained in detail in section 2 and 3 above, meeting the MMR targets for Indigenous participation are contractual requirements. They specify a minimum level of Indigenous involvement in all high-value contracts delivered in Australia, where the majority of the goods or services are in one of the specified 19 industry sectors. Agreed targets are negotiated during the procurement process and can include:

- **Contract-based target is 4 per cent:** 4 per cent of the FTE workforce employed to deliver the contract must identify as Indigenous OR 4 per cent of the total value of the contract must be awarded to Indigenous suppliers (or a combination of both).
- **Organisation-based target is 3 per cent:** 3 per cent of the supplier's entire Australian-based workforce must identify as Indigenous OR 3 per cent of its entire Australian-based supply chain must include Indigenous businesses.

Responsibility for compliance management for MMR contracts primarily rests with the contracting agency. Indigenous businesses engaged by suppliers count towards the portfolio's performance against number and value targets.

Key areas of compliance focus for the MMR Contracts are:

- Ensuring supplier and contract manager reporting obligations are upheld;
- Monitoring supplier performance against MMR targets;
- Verification of non-supply nation businesses Recorded against MMR targets;

- Verification of workforce data reported by suppliers;
- Ensuring MMR targets are applied to all applicable contracts;
- Ensuring that past performance is considered in the tender evaluation process.

From a supplier's perspective, the primary mechanism to drive performance with MMR targets is that APS agencies are required to consider past IPP performance in evaluating tenders. In order for this to act as an effective deterrent of non-compliance, Agencies are encouraged to closely monitor adherence to this process in practice.

Compliance approaches should reflect that in most instances, suppliers want to comply with the policy. In the first instance, interventions should include providing guidance and information to support the supplier to achieve compliance. Where appropriate, after attempts to improve performance or achieve compliance have failed, a compliance response appropriate to the compliance risk and circumstances should be considered.

Table 5, below, provides several potential compliance risks and recommended mitigation measures.

**Table 5**

<b>Compliance Risk</b>	<b>Agency/Portfolio Recommended Mitigations</b>
<p><b>Failure to adhere to MMR reporting requirements</b></p>	<p>Agencies and portfolios to ensure IPP compliance included in relevant contract management and procurement procedures including proactively managing supplier reporting. Agencies encouraged to undertake a periodic review/audit to confirm processes are adhered to.</p>
<p><b>Failure to achieve agreed MMR targets due to lack of understanding/awareness of requirements</b></p>	<p>Agencies and portfolios to ensure IPP compliance included in relevant contract management and procurement procedures including proactively managing supplier performance</p> <ul style="list-style-type: none"> <li>- Early and regular engagement on IPP</li> <li>- Proactive follow up of contracts at risk;</li> <li>- Direct supplier to available guidance and resources</li> </ul>
<p><b>Failure to achieve agreed MMR targets due to external/contextual factors (location, lack of IB's to service)</b></p>	<p>Agencies and portfolios establish procedures to proactively manage supplier performance:</p> <ul style="list-style-type: none"> <li>- Early and regular engagement on IPP</li> <li>- Proactive follow up of contracts at risk;</li> <li>- Direct supplier to available guidance and resources</li> <li>- Monitor and document efforts by the supplier to achieve targets;</li> <li>- Ensure final assessment comments accurately represent the circumstances and efforts made by the supplier, for consideration in future tender evaluations.</li> </ul>
<p><b>Deliberate failure to achieve agreed MMR targets</b></p>	<p>Ensure final assessment comments sufficiently and accurately reflect the circumstances and efforts made by the supplier, for consideration in future tender evaluations.</p>
<p><b>Inaccurate information reported by supplier</b></p>	<p>Agencies encouraged to periodically review a sample of MMR reports to confirm:</p> <ul style="list-style-type: none"> <li>- Workforce data - Request and confirm evidence of policies and procedures in place to ensure accurate MMR reporting, human resources or management reports reflecting aggregated performance against targets, employee lists (de-identified as appropriate), recruitment and people policies, contracts with recruitment providers reflecting Indigenous recruitment policies/approach.</li> <li>- Verify non Supply Nation registered IB: Request and review evidence provided by supplier to verify IB status with additional information to confirm 50% Indigenous ownership for non-Supply Nations registered businesses, procedures in place to ensure</li> </ul>

<p><b>Lack of agency verification of information reported by suppliers</b></p>	<p>accurate MMR reporting, management reports reflecting performance against targets, policies are in place to achieve supply use targets.</p> <p>Agencies encouraged to undertake a periodic desktop review of information provided by suppliers against a sample of contract based targets. A risk based approach is recommended – factors which may increase risk include: poor progress against MMR targets; high value procurement in remote areas, supplier with limited experience in Commonwealth procurement, supplier with poor past performance against targets.</p>
<p><b>Failure to apply MMR to applicable contracts (where no exemption applies)</b></p>	<p>Agencies encouraged to establish processes to ensure compliance with the IPP Agencies undertake an audit to</p> <ul style="list-style-type: none"> <li>▪ Ensure the IPP is applied to individual procurements in accordance with the CPRs inc utilising MSA, MMRs where applicable;</li> <li>▪ Ensuring MMR targets and model clauses are included in the approach to market and contract.</li> <li>▪ Evidence that past MMR performance is taken into consideration during tender evaluations.</li> </ul>
<p><b>Agency does not take into consideration past performance in the assessment of future tenders</b></p>	<p>Agencies encouraged to incorporate IPP obligations into business processes to ensure compliance with the requirement to consider past MMR performance. Agencies encouraged to undertake a periodic review/audit to confirm processes are adhered to.</p>

## 13.0 Further assistance

If you have any questions, please contact your organisation's procurement area or your contract manager in the first instance.

Following this, guidance is also available through the NIAA:

- **Policy questions can be directed to:** [indigenousprocurement@niaa.gov.au](mailto:indigenousprocurement@niaa.gov.au)
- **IPPRS system questions can be directed to:** [ipprs@niaa.gov.au](mailto:ipprs@niaa.gov.au)

## 14.0 Resources

1. Australian Bureau of Statistics  
<https://www.abs.gov.au/websitedbs/D3310114.nsf/Home/2016%20search%20by%20geography>
2. NIAA Regional Office Network  
<https://www.niaa.gov.au/contact-us/regional-network-addresses>
3. Indigenous Procurement Policy  
<https://www.niaa.gov.au/resource-centre/indigenous-affairs/commonwealth-indigenous-procurement-policy>
4. NIAA Model Clauses  
<https://www.niaa.gov.au/resource-centre/indigenous-affairs/indigenous-procurement-policy-model-clauses>
5. How to use the IPPRS  
<https://www.niaa.gov.au/ipprs>
6. IPPRS Contractor Portal  
<https://www.niaa.gov.au/ippcp>
7. RIPP Map data  
<https://www.niaa.gov.au/resource-centre/indigenous-affairs/ripp-map-data>
8. Department of Finance – Buying for Government  
<https://www.finance.gov.au/government/procurement/buying-australian-government>
9. Commonwealth Procurement Rules  
<https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules>
10. Remote Australia Employment Service  
<https://www.niaa.gov.au/news-and-media/raes-new-employment-service-now-available-remote-communities>
11. Office of Registrar of Indigenous Corporations (ORIC)  
<https://www.oric.gov.au/>
12. ORIC – Registered Corporations database  
<https://register.oric.gov.au/PrintCorporationSearch.aspx?state=SA>
13. Indigenous Land and Sea Corporation  
<https://www.ilsc.gov.au/>
14. Aboriginal Land Councils  
<https://www.creativespirits.info/aboriginalculture/selfdetermination/aboriginal-land-councils>
15. Supply Nation - Indigenous Business Directory  
<https://supplynation.org.au/>
16. Employment Services Providers

<https://www.dewr.gov.au/employment/employment-services-providersGovernment>

17. Indigenous media outlet resource

<https://www.creativespirits.info/resources/newspapers-magazines>

18. National Indigenous Business Chamber Alliance

<https://www.nibca.com.au/>

19. Reconciliation Australia

<https://www.reconciliation.org.au/>

20. NSW Indigenous Chamber of Commerce

<https://nswicc.com.au/>

20. South East Queensland Indigenous Chamber of Commerce

<http://seqicc.com.au/>

21. Kinaway Chamber of Commerce – Victoria

<https://kinaway.com.au/>

22. Aboriginal Business Industry Chamber of South Australia

<https://abicsa.org.au/>

23. Aboriginal Business Directory WA

<https://abdwa.icn.org.au/>

# Attachment A

## Case Study One: Life cycle of a MMR with a contract-based target.

The Department of Land and Wildlife Conservation (DLWC) seek to procure services to restore sand dunes in Bryon Bay estimated to be valued at \$10 million.

As the procurement is valued at over \$7.5 million and will be delivered wholly in Australia, it is likely to be subject to the MMR.

To confirm, the responsible procuring officer conducts a search of *Erosion Control Services* on the UNSPSC website. The search produces a code of 70131503. The first two digits of that code – 70 – correspond with the broader industry category *Farming, fishing, forestry and wildlife contracting services*, an industry category subject to the MMR.

The procuring officer searches the electronic [IPP interactive map](#) and confirms that Byron Bay, the delivery location, is not defined as a remote location and therefore the higher MMR remote targets do not need to apply.

DLWC issues an approach to market (ATM) inviting potential suppliers to participate in the procurement. The ATM includes the MMR model clauses that require tenderers to submit an Indigenous Participation Plan. The DLWC tender documents include the requirement for the evaluation panel to consider tenders' past performance against the MMR and the draft contract (included in the ATM) includes MMR model clauses that require the successful tender to report quarterly against the MMR via the Commonwealth's IPPRS.

Roberto, owner-manager of Erosion Be Gone, is registered to receive AusTender alerts. Roberto reviews the ATM documentation. Roberto determines his company can meet a MMR contract-based target of 4 per cent, comprising 1 per cent employment and 3 per cent supply-use.

Since Roberto plans to quote \$11 million, the 3 per cent supply use target will require Roberto to use Indigenous businesses to deliver at least \$330,000 of the project.

Roberto has an existing relationship with a business that he knows is at least 50% Indigenous owned that he will use to supply landscaping equipment. Roberto uses the Supply Nation directory to identify two other businesses that he confirms can provide the required specialist vehicle and signage for the project.

Roberto calculates that he will require two additional staff to deliver on the project at Byron Bay. He searches for employment service providers on <https://www.dewr.gov.au/employment/finding-job#toc-find-an-employment-service-provider> to identify the local employment service providers. Based on a conversation with the local provider he is confident he can recruit at least one employee that identifies as Aboriginal to work on the project.

Roberto includes these details in the Indigenous Participation Plan as part of the tender submission alongside the current rates of Erosion Be Gone Indigenous employment and supply use. Roberto declares that Erosion Be Gone has never been subject to the MMR before and therefore does not have any past performance information to include.

The DLWC tender evaluation panel searches the IPPRS to confirm if tenders have previously been subject to the MMR. The panel considers strategies to meet MMR targets outlined in the Indigenous Participation Plans. It is confirmed Erosion Be Gone has not been subject to the MMR before. The panel forms the view that Erosion Be Gone's Indigenous Participation Plan has a clear strategy to connect with Indigenous businesses and job seekers.

Erosion Be Gone is assessed as the preferred supplier (having regard to the tender evaluation criteria and overall value for money assessment) and enters into a contract. DLWC publishes a contract notice on AusTender.

The IPPRS identifies (through data-matching with AusTender) DLWC has awarded a contract likely subject to the MMR and emails an alert to the DLWC portfolio contact.

The portfolio contact identifies the relevant contract manager who confirms that the contract is subject to the MMR. The contract manager enters the MMR targets included in the contract and the postcode for the delivery location into the system. The contract manager also enters the relevant email address for Erosion Be Gone – ideally the email address will allow for potential turnover or absence with the contracted firm so the company continues to comply. The IPPRS sends Erosion Be Gone an email to initiate quarterly reporting.

Each quarter Erosion Be Gone receives an email from the IPPRS reminding them to report. For each report, Roberto enters the total number of FTE working on the dune regeneration project and the total number of FTE that identify as indigenous working on the project.

Roberto also enters the ABN of the Indigenous businesses that he has engaged in the delivery of the project alongside the value of the purchase/contract, date of purchase and a brief description of the purchase. The IPPRS data matches the ABN with Supply Nation and ORIC to confirm these businesses meet the IPP eligibility criteria. For Indigenous businesses not registered with Supply Nation or ORIC, Erosion Be Gone is required to maintain documents confirming they have made appropriate checks to confirm the businesses meets the IPP eligibility criteria.

The DLWC contract manager receives an email from the IPPRS after Roberto has submitted a quarterly report. The contract manager is required to review the report, acknowledge receipt of the report in the system and may make any comments for Erosion Be Gone's attention.

In fulfilling its reporting obligations, Erosion Be Gone is able to track progress and make early adjustments to ensure his company's performance remains on track. During the life of the contract, Roberto may seek a contract variation to change the employment and supply use combination of the MMR target. In considering the request the DLWC contract manager confirm if the proposed change complies with the MMR. At the end of the contract, Erosion Be Gone's final performance against its MMR target is calculated by the IPPRS.

This performance history will be accessed by evaluation panels when Erosion Be Gone tenders for other contracts subject to the MMR.

## Case Study Two: Life cycle of a MMR with an organisation-based target

The Department of Hydro-Energy (DHE), based in Canberra, seeks a feasibility study to upgrade a dam in the Cairns water catchment area. DHE estimate the procurement is valued at \$20 million.

As the procurement is valued over \$7.5 million and delivered wholly in Australia it is likely subject to the MMR.

A search for Dam Engineering on the USPSC website produces a code of 81101507. The first two digits of that code – 81 – correspond with the broader industry category Engineering and Research and Technology Based Services, an industry sector subject to the MMR.

The procuring officer searches the electronic [IPP interactive map](#) and confirms Canberra, the delivery location is not defined as a remote location and the higher remote MMR targets will not need to be applied.

DHE issues an ATM that includes model clauses requiring the inclusion of an Indigenous Participation Plan in the tender submission. The DHE tender evaluation document includes the requirement to consider tenderers' past performance against the MMR and the draft contract (included in the ATM) includes model clauses requiring quarterly reporting against the MMR targets via the IPPRS.

Owner-manager, Sunita is registered to receive alerts via AusTender. Sunita reviews the ATM and determines that her company, JJ Engineering can meet an organisation-based MMR target of 3 per cent, comprising 2 per cent employment and 1 per cent supply-use. JJ Engineering has an active contract with the Department of Land and Wildlife Conservation (DLWC) that also contains a 3 per cent organisation based MMR target.

Sunita includes these details in the Indigenous Participation Plan in the tender submission, along with details of JJ Engineering's current rate of Indigenous employment and supply use. Sunita also declares that JJ Engineering has been subject to, and complied with, the MMR in the past and is currently subject to an organisation based MMR target through a contract with DLWC.

The DHE tender evaluation panel searches the IPPRS to confirm if tenders have previously been subject to the MMR. DHE confirms that JJ Engineering has previously complied with the MMR and is currently reporting against an organisation based MMR target contained in a DLWC contract. DHE also considered whether or not the strategy outlined in JJ Engineering's Indigenous Participation Plan is likely to support the achievement of the MMR over the life of the DHE contract.

JJ Engineering becomes the preferred supplier and enters a contract with DHE. DHE publishes a notice of this contract on AusTender.

The IPPRS identifies (through data-matching with AusTender) DHE has awarded a contract likely subject to the MMR and emails an alert to the Portfolio contact. The Portfolio contact identifies the relevant contract manager. The contact manager confirms that the MMR applies to the contract and enters the organisation based MMR target, the delivery postcode and Sunita's email address into the IPPRS. Sunita receives an email from the IPPRS to initiate quarterly reporting.

The contract requires Sunita to report JJ Engineering's performance against the organisation-based target in the IPPRS at least quarterly. However, suppliers are able to report more frequently against organisation-based MMR targets. Sunita has previously decided to report against the DWLC contract monthly as this aligns with other reporting requirement in her organisation. Sunita will only need to submit one report each month to meet the requirement of both contracts.

The IPPRS emails Sunita an alert when the report is due.

Sunita reports JJ Engineering's total FTE for their Australian based operations for that month and the total Indigenous FTE employed as part of JJ Engineering's Australian based operations for that month.

Sunita also reports the total Australian based supply chain spend for JJ Engineering for that month and all purchases and contracts JJ Engineering made with an Indigenous business that month.

The IPPRS uses the information to calculate performance to date against the DLWC and the DHE contracts. Sunita is able to track her progress against both contracts and make early adjustments to ensure her company's performance remains on track.

The DHE and the DLWC contract managers receive an email when Sunita submits the report and are able to review the reports and make comments in the system.

At the end of the DHE contract end, JJ Engineering's final performance against its MMR target is calculated by the IPPRS. This information is available to other Commonwealth officials required to consider the JJ Engineering's past performance in tender evaluations.