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Inclusion of Indigenous Peoples in the Public Procurement Market

Lessons for Latin America and the Caribbean from International Experiences

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Abstract*

This paper discusses the numerous ways that Indigenous peoples are excluded from or disadvantaged in public procurement markets, as well as international best practices regarding their inclusion in these markets. Five countries were identified as having relevant programs and initiatives to incorporate Indigenous peoples in the public procurement market: Australia, Canada, New Zealand, South Africa, and the United States. This exploratory paper analyzes their policies, the institutional frameworks and regulations that govern them, their eligibility criteria, and the results obtained. It concludes with recommendations for replicating such programs in Latin America and the Caribbean.

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Index

1. Introduction

The Indigenous population tends to be excluded from or disadvantaged with respect to their participation in the national economies of Latin American and Caribbean (LAC) countries. Specifically, Indigenous enterprises and businesses are not fully or adequately included in the national economies of the member countries of the LAC region. Accordingly, it is important to study the policy tools developed by other countries to remedy this situation and adapt them in LAC as appropriate with the aim of seeking the inclusion of Indigenous peoples into the economies of the region.

Globally, 476.6 million people—238.4 million women and 238.2 million men—comprise the Indigenous population and constitute 6 percent of the world's population distributed in all regions (ILO, 2019). Of this total, 11.5 percent are in the LAC region. That is, some 52.8 million Indigenous people live in the region, belonging to more than 400 culturally and linguistically diverse groups. The highest proportion of Indigenous people live in Mexico with 17 million, and 6 million live in Peru. In Bolivia, there are 4.2 million Indigenous people, comprising about 42 percent of the total population. The countries with smallest Indigenous populations are Costa Rica, Paraguay and Uruguay, with populations of between 80,000 and 100,000 (ILO, 2019).

Despite the large populations of Indigenous peoples in the LAC region, in socioeconomic terms, they have been and continue to be historically marginalized (CEPAL, 2014). This marginalization is expressed in a high incidence of poverty relative to the non-Indigenous population. This situation is not exclusive to LAC countries, since at the global level, the probability of Indigenous people living in poverty is higher than that of non-Indigenous people. (ILO, 2019). The persistent poverty among Indigenous people is reflected in lower socioeconomic indicators, such as those related to educational attainment, access to basic services, wage gaps, and informality. Other significant inequalities and vulnerabilities include territorial segregation within the countries of the region, which has created disproportionately disadvantageous conditions for Indigenous people in LAC countries.

The employment rate of Indigenous people in the LAC region is 62.1 percent, which is 2.6 percent higher than that of non-Indigenous people. However, the labor force participation of the region's Indigenous women is only 44.9 percent, which is lower than the employment rate of both Indigenous men (79.2 percent) and non-Indigenous women (47.7 percent). The reasons for this include social and historical vulnerability, low educational attainment, and fewer traditional labor opportunities for Indigenous women in rural sectors, together with the absence of basic services and infrastructure that make paid employment possible for women outside the home, and the greater burden of unpaid work in larger and extended families (ILO, 2019).

Indigenous people tend to reside in rural areas, which limits their employment expectations to agricultural or traditional activities related to their local environments. Consequently, the Indigenous population's occupation in agriculture is 55 percent globally, compared to 26.9 percent of the non-Indigenous population (ILO, 2019). This overrepresentation of jobs linked to agriculture and traditional activities may account for the wage gap, since these economic sectors are the least productive, the most informal, and the most precarious. Notwithstanding the above, Indigenous entrepreneurs are creating businesses and generating employment and seek to integrate into the national economies of the countries of the region (CEPAL, 2014).

The unfavorable general situation of Indigenous peoples worldwide is also observed with respect to the economic participation of the Indigenous population in the national economies of LAC countries. At the global level, the Indigenous population tends to be employed in the informal sector; the probability of Indigenous people having salaried jobs is 19.8 percent below that of non-Indigenous people. In LAC, the informality rate of Indigenous people rises to 86.6 percent in contrast to 51.1 percent of informality among non-Indigenous people (ILO, 2019). Indigenous informality rates could swell further considering the increase in the speed of transformations such as migration for economic reasons or environmental change, which exert pressure on the economies of urban centers (CEPAL, 2014).

Consequently, there is significant income inequality. The wage gap between Indigenous populations and the rest of the population is estimated to reach 40 percent in some LAC countries (ILO, 2019). This wage discrimination is observed in the incomes of Indigenous men in the region, whose salaries are 24.4 percent lower than those of non-Indigenous men. The income gap between Indigenous and non-Indigenous women is 8.2 percent, indicating that the income gap in terms of gender affects Indigenous and non-Indigenous women alike (ILO, 2019).

Given the high volumes of public resources expended in LAC countries and the business opportunities that they represent, one public policy tool that could be used to remedy the economic inequality between Indigenous and non-Indigenous peoples is public procurement and public contracting systems. The importance and potential of public procurement systems can be observed in European countries. According to data from the European Commission, public procurement systems currently account for around 14 percent of GDP and 23 percent of total public spending in the European Union members (European Commission, 2020).

Public procurement and contracting systems can play a significant economic role in the national economies of the LAC region. This role is consistent with the demands of these countries' governments, as they will continue to require a vast and growing variety of goods, inputs, and services to function effectively. Therefore, as in European countries, economic resources managed by LAC governments through their public procurement systems can not only foster economic efficiency, accessibility, and transparency, but also advance cross-cutting and strategic objectives. In LAC countries, these cross-cutting objectives have mainly focused on the participation of micro, small and medium enterprises and the promotion of women's participation in national economies. Accordingly, public procurement is a public policy tool that can significantly promote the inclusive development of disadvantaged groups and vulnerable or underrepresented populations. The inclusion of Indigenous peoples in public procurement systems represents a significant opportunity for their effective insertion into the national economies of these countries. Thus, this exploratory research was motivated by the need to highlight the potential of public procurement as a strategic tool to promote the inclusion of Indigenous peoples in the national economies of LAC countries.

The economic importance of public procurement is heterogeneous in LAC: in Peru, public procurement represents 9.9 percent of GDP and 46.4 percent of government spending, while in Mexico, it represents only 3.6 percent of GDP and 16.0 percent of public spending (OECD, 2020a). This paper discusses international best practices regarding the inclusion of Indigenous peoples in the public procurement market and how lessons learned from those experiences can be applied in the LAC region.

The analysis identified five countries that have a significant tradition of important Indigenous policies, programs, and initiatives aimed at incorporating Indigenous peoples into the public procurement market. The countries are Australia, Canada, New

Zealand, South Africa, and the United States. Their public procurement systems cover a broad range of types of initiatives.

This exploratory analysis describes the background and objectives of these systems, the main mechanisms used (e.g., quotas, set-asides, market reserves), eligibility criteria, levels of government implementation (i.e., central, regional, local or municipal), and the expected or obtained results of each. The paper is divided into four sections, including the introduction. Section 2 discusses the background and main characteristics of these policies and methods used. Section 3 examines the Indigenous public procurement practices of the selected countries, their institutional frameworks, regulations, and features (background and objectives, elements of the Indigenous procurement policy, and results). Section 4 presents the main conclusions with recommendations.

The exploratory policy comparison reveals a variety of approaches and configurations of Indigenous procurement policies in the countries analyzed. The main mechanisms identified range from set-asides and market reserves in Australia, Canada, and the United States to preference point systems in South Africa. Eligibility criteria in Australia, Canada, New Zealand, and the United States are similar. Likewise, federal or central agencies supply mechanisms and guidelines to other governmental agencies to apply in their procurement activities and public contracts while providing technical support to Indigenous entrepreneurs to improve their competitiveness.

The results of these efforts have been mixed, according to their domestic assessments. While Australia's Indigenous procurement policy has been praised for its continuos positive results, Canada assessed its policy outcomes as disappointing after two decades of implementation. The Canadian assessment used this result to restructure all Indigenous-oriented institutions and policies. Australia's Indigenous procurement policy is highlighted as the most comprehensive model of all those analyzed. Finally, the study offers recommendations on adopting and implementing these policies as best practices to promote Indigenous peoples' inclusion in public procurement in the LAC region.

2. Public Procurement for Supporting Disadvantaged Groups: Background and Methods

Public procurement for promoting social policies has a long history in Europe and North America, where linkages between public procurement to improve labor standards and employment (e.g., disabled workers) have been attempted since the second half of the 19th century (McCrudden, 2007). During the first few decades of the 20th century, these governments also used public procurement to enhance national industrial policies. After World War II, public procurement was considered an important tool, particularly in the United States, to address racial inequality, discrimination, and civil rights, specifically of the African American population (McCrudden, 2004; 2007).

In subsequent decades, public procurement for the promotion of social policies spread geographically and thematically. These policies can be understood as horizontal initiatives aimed at supporting labor conditions and economic opportunities for disadvantaged groups (Arrowsmith, 2010). They include a set of mechanisms—market reserves, set-asides, or quotas, contract requirements, and affirmative actions—which seek to repair historical discrimination and promote racial, ethnic, and gender equality in countries such as Canada, the European Community, Malaysia, and South Africa (McCrudden, 2004; 2007).

In recent decades, international organizations such as the Organization for Economic Cooperation and Development (OECD) and the European Commission (OECD, 2003; European Commission, 2017, 2020) have recognized the strategic role of public procurement systems in achieving priority development policy. Specifically, the OECD recognizes that regulatory frameworks for public procurement and contracting constitute a strategic public policy tool to achieve high-priority public policy and development objectives. Consequently, it has defined recommendations and criteria for member countries' sustainable public procurement systems, aimed at good environmental performance in public procurement, or "green procurement." Meanwhile, the European Commission has defined guidelines for socially responsible public procurement, which aims to achieve the best positive social outcomes through public contracts. The idea behind it is that through smart and strategic purchasing, public contracts can promote broad compliance with social standards such as labor formalization and social inclusion (European Commission, 2020).

Along similar lines, the inclusion of Indigenous peoples in the public procurement systems of member countries can be a cardinal mechanism for improving their economic rights as outlined by the UN Declaration on the Rights of Indigenous Peoples adopted by UN General Assembly in 2007. Likewise, these policies align with the Sustainable Development Goals (SDGs) of the UN 2030 Agenda for Sustainable Development. Specific SDGs focusing on the promotion of preferential procurement are SDG 8: Promote inclusive and sustainable economic growth, employment and decent work for all, and SGD 12: Responsible consumption and production (Panezi, 2020). This SDG establishes in its Target 7 the promotion of public procurement practices under the criteria of sustainability, following the national policies and priorities of the states. Consequently, the inclusion of Indigenous peoples can be understood as part of the social dimension in developing sustainable public procurement and contracting systems in LAC countries.

Selected Countries: Background of Indigenous Procurement Policies

The countries selected for this study have Indigenous populations or ethnic minorities within their territories that have suffered historical marginalization. As a result, these populations remain less integrated into their respective national economies than the majority or non-Indigenous populations. The selected countries also possess a tradition of significant milestones in their relationship with Indigenous or historically marginalized peoples, from international treaties in the case of New Zealand (Treaty of Wuagati, 1840), to constitutional recognition and promotion of ethnic minorities in the case of South Africa (1994) and the more recent Truth and Reconciliation Commission in Canada (ended in 2015). Accordingly, they have implemented a significant range of inclusive Indigenous public policies and have developed specific programs aimed at incorporating Indigenous peoples into their government procurement systems.[1]

A common background in this set of public procurement policies is the influence of the U.S. experience, where inclusion and affirmative action mechanisms for ethnic minorities or disadvantaged populations emerged in the 1960s. In the ensuing decades, similar public procurement policies were developed and justified in Canada and South

[1] Although there are other countries with relevant Indigenous public procurement policies (e.g., Kenya, Malaysia, or the Philippines), this case study selection is based on availability and accessibility of official documents in the English language.

Africa, the latter to address and overcome the historical racial discrimination caused by apartheid, and later in Australia and New Zealand to increase the participation of Indigenous groups and Indigenous-owned companies.

The Indigenous procurement policies share a similar set of mechanisms. Three of the five policies—those of Australia, Canada, and the United States—consider mandatory reserve mechanisms for Indigenous businesses. Four countries—Australia, Canada, New Zealand, and the United States—have established similar eligibility criteria. Australia and the United States emphasize promoting Indigenous entrepreneurs and enterprises. While Canada, New Zealand, and South Africa have established guidelines for the promotion of Indigenous entrepreneurs and businesses, there is particular interest in promoting the hiring of Indigenous peoples, seeking the inclusion of the economically active population among these vulnerable populations in the formal labor market of these countries.[2]

In these policies, a federal or central agency provides guidance and determines the mechanisms or tools to be implemented by other public agencies. In the cases analyzed, these agencies encourage or mandate other governmental, regional or local agencies to adapt aspects of the Indigenous inclusion mechanisms according to their administrative possibilities and specific demands for goods and services. However, the extent of this decentralization varies significantly from case to case, depending on the administrative organization of each country, among other characteristics. In this respect, it is relevant to note the particularity of the complementary policy represented by the U.S. HUBZones program, which has a territorial approach, focusing preferential mechanisms for Indigenous companies from areas officially or traditionally recognized as Indigenous ("Native Americans"). The other cases have a similar territorial focus, although eligibility or preference criteria are within the general Indigenous procurement policy. The particularity of the HUBZone program is that it stands out as an independent policy, complementary to the older 8(a) program in the United States.

In South Africa, current policies aimed at the inclusion of disadvantaged social groups in the public procurement system are closely related to the country's recent

[2] In South Africa, the current social procurement policy aims to include disadvantaged groups of Black South African populations that have historically been marginalized or excluded from the national economy. In this regard, the South African case has been included because its mechanisms, although not precisely targeted to Indigenous populations, can be referential to be implemented in the LAC countries.

history. Before the end of apartheid, the public procurement and contracting system in South Africa followed social and state guidelines that asymmetrically and unequally favored large South African businesses belonging to the dominant population. This situation made it extremely difficult for new companies or competitors from disadvantaged sectors to enter the public procurement system (Bolton, 2006, 2013). In 1994, public procurement achieved constitutional status, and it was reoriented to address past discriminatory public policies, following similar cases of redress experiences of historically marginalized populations such as in Malaysia (Bolton, 2006; McCrudden, 2004). With the end of apartheid policies and the drafting of the new Constitutions of 1993 and 1996, the South African state assumed that the public procurement system could become a tool for the inclusion of historically marginalized Black South African populations (Bolton, 2006, 2013; Watermeyer, 2003). Consequently, the South African public procurement system, considered as a wealth redistribution mechanism, seeks to redress inequalities, allowing public resources to be channeled to disadvantaged groups (Bolton, 2006; 2013).

Methodology

The purpose of this study is to compare policies and experiences of other countries of including Indigenous peoples in public procurement systems. It attempts to deliver relevant recommendations for LAC countries. It is not intended as academic research but rather as a referential work for LAC policymakers. The method of analysis consisted mainly of desk reviews of official reports and documents published online by government agencies from Australia, Canada, New Zealand, South Africa, and the United States, complemented by relevant scholarly literature. The information collected contains the characteristics of Indigenous public procurement policies. In some cases, it include results, assessments, and recommendations for improving the policies. This information was organized into the following seven comparable policy elements: approach or orientation (organizational, territorial, or mixed), main tools or mechanisms to favor Indigenous peoples, eligibility criteria, governmental levels of implementation,[3]

[3] This paper focuses on federal and central levels of implementation. Indigenous procurement policy initiatives at the provincial or regional levels, as in Canada or Australia, have not been systematically listed or analyzed within case studies.

presence of technical advisory agencies, and results obtained. These elements are defined in table 1 and are presented in a comparative chart at the end of Section 3.

Table 1. Indigenous Procurement Policies Elements or Characteristics

Policy approach/orientation	The policy favors Indigenous companies or businesses in general (organizational) or specific Indigenous businesses in specific territories (territorial).
Main tools/mechanisms	Mechanisms of inclusion or special preferences for Indigenous peoples, whether mandatory and voluntary reservations of market quotas, preferential evaluation bonuses, or others.
Eligibility criteria	Definitions of 'Indigenous business' or 'Indigenous ownership' that are required to be included and benefited by Indigenous procurement policy mechanisms.
Governmental level of implementation	National, regional/provincial, local/municipal
Technical advisory agencies	Public agencies commissioned to supervise or assist Indigenous businesses to facilitate their participation in public bidding processes.
Expected or obtained results	Targets and actual results.

Source: Authors' elaboration.

The policies considered are those beginning in the 1970s (United States), 1990s (Canada), 2000s (South Africa) and 2010s (Australia and New Zealand[4]) until the COVID-19 pandemic in 2020 and the subsequent years up to 2024 in some cases. It is assumed that Indigenous public procurement policies were disrupted by the pandemic, as were many other government initiatives around the globe. The cases are presented chronologically, from older to newer implementation of their Indigenous procurement policy. Section 3 describes these policies. The comparative analysis in Table 5 summarizes the Indigenous procurement policy characteristics according to the seven elements described above. Not all of the countries selected have instituted a consolidated or integrated Indigenous procurement policy. The latter implies that a distinction should be made between Indigenous procurement policies structured as

[4] New Zealand launched the Government Procurement Rules in 2015. Its Rule 17 was aimed at Māori and Pasifika peoples. However, this paper reviews the expanded Indigenous procurement strategy, announced in 2020, called the Progressive Procurement Policy.

national strategies, as in Australia (2015), Canada (2016), and New Zealand (2015, 2020), and those as in South Africa and the United States, where no national strategies can be observed. In the latter two countries, elements of Indigenous procurement policy are fragmented and dispersed into different pieces of legislation. Hence, specialized scholarly literature and official reports have been used to complete these cases. Table 2 includes the official national guidelines and reports reviewed. Other relevant updated information and sources available on official websites are referenced herein,

Table 2. Indigenous Procurement Policies: National Guidelines and Official Reports

Country	Implementation year	Official documents/reports
United States	1978	• Small Business Administration HUBZone Program. Congressional Research Service Report. Dilger, R. J. 2017. • SBA's "8(a) Program": Overview, History, and Current Issues. Congressional Research Service Report. Dilger, R. J. 2020 (and 2022 update). • Report to the U.S. Congress on Minority Small Business and Capital Ownership Fiscal Year 2023 408 Development 8(a) Business Development Program. U.S. SBA.
Canada	1996	• Procurement Strategy for Aboriginal Business: Booklet. Government of Canada. Aboriginal Affairs and Northern Development Canada (AANDC) (undated) • Industry and Inclusion: An Analysis of Indigenous Potential in Federal Supply Chains. 2019. • Evaluation of the Procurement Strategy for Aboriginal Businesses. 2014. • Industry and Inclusion: An Analysis of Indigenous Potential in Federal Supply Chains. Canadian Council for Aboriginal Business. 2019
South Africa	2000–2001	• Preferential Procurement Policy Framework Act. National Treasury, Ministry of Finance, Government of South Africa. 2001.
Australia	2015	• Indigenous economic development strategy 2011–2018. Canberra: Australian Government. 2011. • Third Year Evaluation of the Indigenous Procurement Policy Commonwealth of Australia. Australian Government, Canberra, Australia 2019. • Commonwealth Indigenous Procurement Policy. Australian Government, Canberra, Australia. 2020.
New Zealand	2015–2020	• Progressive Procurement Policy. 2020 • Government Procurement Rules, Rules for Sustainable and Inclusive Procurement 4th Edition. 2019.

Source: Authors' elaboration.

Table 3. Availability of Information in Secondary Sources Reviewed

National Strategies for Indigenous Procurement Policies	Absent or not available in the United States and South Africa
Main tools/mechanisms	Available in all cases
Eligibility criteria	Available in all cases
Results obtained	Partially available in South Africa

Source: Authors' elaboration.

The following analysis of the country case studies depicts the diversity of approaches and characteristics of the Indigenous procurement policies. The subsections provide background information and objectives, elements of each Indigenous procurement policy, eligibility criteria, and expected or obtained results.

3. Case Studies: The United States, Canada, South Africa, Australia and New Zealand

The countries selected for this study have important traditions of Indigenous public policies, as well as specific programs and initiatives aimed at incorporating Indigenous peoples into their government procurement and contracting systems. These countries are, in chronological order of policy implementation: the United States, Canada, South Africa, Australia, and New Zealand. While each country's socio-political history is different, all have Indigenous populations or ethnic minorities that have suffered historical marginalization and who are currently in an unfavorable socioeconomic situation and are less integrated into their respective national economies than the non-Indigenous populations.

The countries studied share some characteristics. They all have an Anglo-Saxon tradition. Except for the United States, they have parliamentary political systems and, except for New Zealand and South Africa, they maintain a federal administrative organization. They also have Indigenous policies that grant varying degrees of territorial autonomy to their native peoples. With respect to their procurement and contracting systems, they all have regulations or norms aimed at the inclusion of Indigenous enterprises or companies belonging to ethnic minorities and indigenous peoples. However, they use different mechanisms to achieve this objective.

Several of these countries imported and adapted some of the strategies initially developed in the United States starting in the 1960s to address discrimination against African American citizens (Table 4). All have sought to implement policies to benefit Indigenous companies or businesses in their public procurement systems. The mechanisms used include reserved market quotas or preferential bonuses in bid evaluation for Indigenous companies that bid in public tenders.

Table 4. Indigenous Public Procurement Policy Implementation Years, by Country

Country	Initial policy name	Year initially implemented
United States	8(a) Business Development Program (Small Business Administration)	1978
Canada	Public Procurement Strategy For Aboriginal Businesses	1996
South Africa	Public Procurement Act And Preferential Procurement Regulations	2000 – 2001
Australia	Australian Government Indigenous Procurement Policy	2015
New Zealand	New Zealand Progressive Procurement Policy	2020

Source: Authors' elaboration.

The analysis is organized by each Indigenous procurement policy's characteristics and components: (i) background and objectives; (ii) main policy elements or tools; (iii) eligibility criteria; and (iv) results expected or obtained. While Australia, Canada, and the United States have favored mandatory and voluntary reserves or quotas, the United States has also opted for a complementary mechanism with a territorial approach, known as the HUBZone program, to promote Indigenous companies and businesses in certain geographic areas. South Africa has a highly decentralized preferential evaluation system, and New Zealand's public procurement system includes Indigenous peoples through general cross-cutting regulations that pursue the participation of Indigenous companies or businesses. In 2020, New Zealand launched a specific Indigenous procurement policy to promote and level up Māori enterprises without including quotas or market reserves. Australia, Canada, the United States, and recently, New Zealand have conducted extensive assessments of the results of their policies. Finally, the characteristics and tools of the Indigenous public procurement systems analyzed are summarized in a comparative table (Table 5).

a. United States: 8(A) Business Development and Hubzone Programs

Background and Objectives

The first federal preferential procurement initiatives were established in the United States in the 1940s. These policies focused on promoting and improving the financial conditions of U.S. small businesses. In the 1950s, the federal government centralized the authority for these policies in the U.S. Small Business Administration (SBA), created by the U.S. Small Business Investment Act of 1958. At its inception, the SBA's authority was not limited to the promotion of small businesses owned or controlled by socially and economically disadvantaged populations; it focused on improving the financial, lending, and procurement conditions for small businesses in general, even though this authority was enshrined in Section 8(a) of the Small Business Investment Act of 1958 (Dilger, 2020).

It was not until the 1960s and 1970s, specifically with the Kerner Commission reports, that elements of strategic public procurement policies were established in the United States specifically to stimulate the development of African American entrepreneurs. These policies primarily responded to the urban crises and riots that occurred in 1966 and to the struggles for civil rights that took place in the 1960s. In 1970, the first regulation under Section 8(a) was drafted that explicitly sought to encourage small, disadvantaged-owned businesses to become viable, self-sufficient enterprises capable of competing effectively in the marketplace. Later, in 1973, the regulations defined disadvantaged persons as Black Americans, Hispanic Americans, Asian-Pacific Americans, Arctic Peoples (Inuit, Yupik/Yupiit, and Aleut), and Native Americans who have been subjected to racial or ethnic prejudice or discrimination, or cultural bias because of their identity as a member of a group (Dilger, 2020).[5] The approach, officially established in the 8(a) Business Development Program or "8(a) Program" of 1978, was the model followed by countries that adopted policies for the inclusion of minorities in their public procurement and contracting systems (McCrudden, 2004, 2007).

[5] Note that the names used for the different ethnic groups have been updated to reflect current definitions in the Code of Federal Regulations.

The official measures provided for in the 8(a) Program for promoting disadvantaged groups were the implementation by the SBA of set-asides, sole-awards and price-evaluation preferences (Dilger, 2017). These measures sought to bring growth and stability to African American communities in urban areas. However, they were quickly expanded to benefit other ethnic minorities, including Native American peoples (Dilger, 2020).

A complementary mechanism was established in 1997 that made it possible to allocate resources to disadvantaged groups and ethnic minorities using a territorial approach. This perspective aimed to assign reserves or quotas to companies or entrepreneurs located in areas considered to be socioeconomically disadvantaged. This policy was named Historically Underutilized Business Zone Empowerment Contracting, or the "HUBZone Program." The program was created through the HUBZone Act of 1997, and the SBA has administered and implemented it since 1999. The HUBZone Program approach provides government assistance to geographic areas with specific characteristics rather than individuals or companies. It is inspired by a British public policy experience of urban revitalization initiated in the late 1970s and was conceived in the United States as a supplement to existing government assistance programs (Dilger, 2017). The program provides small businesses located in low-income, high-poverty, and high unemployment areas with preferential contracting opportunities in public procurement tenders, using the same tools as the 8(a) program (quotas or set-asides, sole-awards, and price-evaluation preferences). As a result, the HUBZone Program is a federal small business contracting assistance program whose primary objective is job creation and increased capital investment in distressed communities (Dilger, 2017).

However, domestic political actors in the United States have questioned these inclusive or affirmative policies for disadvantaged African American populations, other ethnic minorities and territorial areas considered to be socioeconomically disadvantaged. This questioning initially alleged their unconstitutionality based on violations of the principle of equality before the law. The claim pointed out the risk or propensity for fraudulent or non-transparent practices, among other arguments (Dilger, 2017). In addition, concerns were expressed about the decline of business participation in the 8(a) Program in recent years (Dilger, 2020). However, both of these strategic procurement policies still exist in the United States and have significantly benefited targeted groups of African Americans, Native Americans and, more recently, female entrepreneurs (Dilger, 2017, 2020).

Furthermore, in recent years, the U.S. Department of the Interior updated the Buy Indian Act, a rarely used, century-old federal law drafted to promote economic development in Native American communities. The Buy Indian Act, amended in December 2020,[6] states that Native American labor shall be employed, and purchases of Native American industry products may be made in the open markets by the Department of the Interior. It has been implemented through the Bureau of Indian Affairs, the Bureau of Indian Education, and the offices of the Assistant Secretary for Indian Affairs of the Department of the Interior. The Buy Indian Act shares objectives and purposes with the 8(a) and HUBZone programs and uses similar mechanisms (i.e., set-asides) and eligibility criteria. However, this additional Indigenous procurement policy is oriented toward larger purchases made by the U.S. government (i.e., building contracts), considering opportunities in annual contracts estimated at US$300 million available to Native American-owned businesses and joint ventures that meet the government's needs.[7] Although fragmented, these policies are important for promoting Native American businesses among other minority firms within the U.S. procurement system.

Elements of the Indigenous Public Procurement Policy

The SBA seeks to increase opportunities for federal public contracting and subcontracting by helping small businesses compete for these contracts by maintaining a statutory quota (or set-aside) of 23 percent of total federal solicitations—US$500 billion—for small businesses in general. Of the total amount, 5 percent is set aside for small, disadvantaged businesses under the 8(a) Program and 3 percent for entities from HUBZones.

Small Business Administration 8(a) Program

The SBA 8(a) Program uses set-asides or mandatory quotas involving preferences in public contracts with small businesses owned by women or socially or economically

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[6] For more information, see: https://www.bia.gov/as-ia/ocfo (accessed May 2024).
[7] A detailed description of the current 2020 Buy Indian Act and its elements has not been included in this review.

disadvantaged ethnic minority groups. To be considered poor, companies must demonstrate net worth values of less than US$750,000 to enter and continue in the program (expanded from the original US$500,000 coverage), with a maximum time limit of nine years divided into two stages: development and transition. Following this strategic procurement policy, all federal agencies established percentage goals for public contracts awarded to such businesses, requiring contractors or awardees with contract values greater than US$500,000 (or US$1 million, in some construction or infrastructure solicitations) to establish percentage goals for the use of subcontractors from ethnic minority or disadvantaged groups.

The SBA 8(a) Program elements consider set-asides or contracts for which only certain bidders may compete and sole-awards or contracts awarded to a single bidder in a non-competitive procurement. Eligibility to participate in the 8(a) Program is limited to small businesses whose "ownership is unconditionally controlled by one or more persons who are socially and economically disadvantaged, who are of good character, and who are citizens residing in the United States…" (Dilger 2020: 9).[8] It includes bidders officially recognized as belonging to Native Americans who may be subject to set-asides and sole-awards for values less than US$4.5 million in standard bids, with maximum values of US$7.5 million in manufacturing contracts or over US$4.5 million, when there are at least two certified Indigenous bidders with reasonable economic offers in direct awards (Dilger, 2020). In addition, a further price-evaluation preference, consisting of a 10 percent preference or bonus, was authorized in 1994 in the economic evaluations of bids from these firms.

Beginning in 1991, the federal government's initial goal was to award 5 percent of the total value of all contracts and subcontracts each fiscal year to small businesses owned by ethnic minorities or disadvantaged groups. To meet these objectives, the SBA established annual goals with each federal agency to ensure progress toward the overall goal.

[8] 8(a) Program eligibility is limited to "small business[es] which [are] unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of and residing in the United States, and which demonstrates potential for success."' 13 C.F.R. §124.101 (Dilger, 2020: 9).

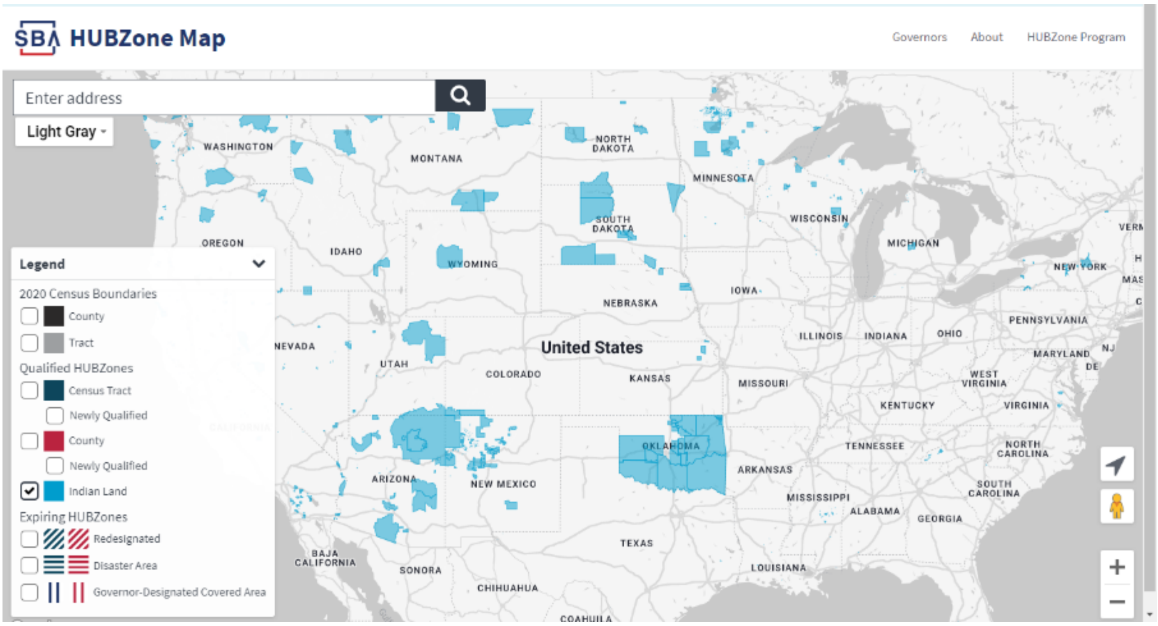
HUBZone PROGRAM

The HUBZone program has defined six types or classes of geographic areas considered economically disadvantaged under a set of criteria (poverty level, unemployment rate, among others). These are: qualified census tracts; qualified nonmetropolitan counties, difficult development areas, qualified Indian reservations/Indian Country, closing military bases, and qualified disaster areas (Dilger, 2017).

The SBA's analysis of economic conditions in these areas indicated that income averages are exceptionally low, while unemployment rates are high compared to overall state averages. The latter was particularly notorious in those states where Indian reservations are numerous and extensive, implying an economic underrepresentation of Indian entrepreneurs and businesses. The HUBZone program considers eligible businesses or ventures located within the boundaries of a qualified Indian reservation/Indian Country, including Indian trust lands and other lands covered under the term “Indian lands” used by the Bureau of Indian Affairs (e.g., Native villages in Alaska). Some Indian geographic areas have not been included within HUBZones because they uniquely correspond to high economic development areas primarily due to the availability of resources such as oil or casinos (i.e., the Osage Native American reservations in Oklahoma and reservations in Connecticut, Michigan, and Rhode Island) (Dilger, 2017).

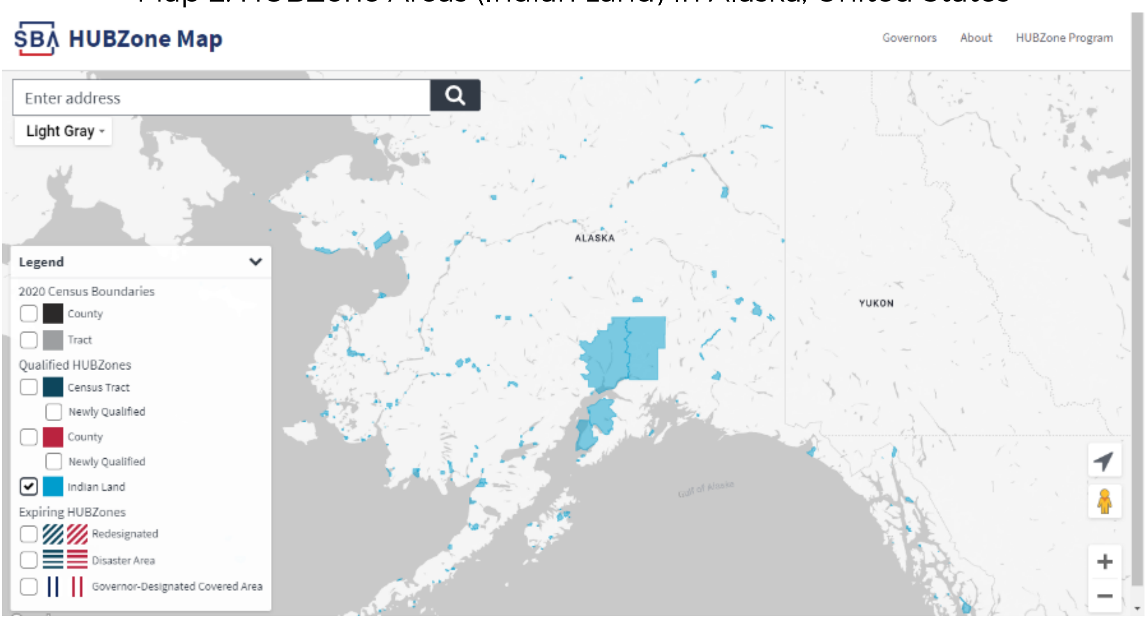
Similar to the 8(a) Program, HUBZone quotas or set-asides restrict competition in bidding on federal contracts to benefit specific contractors. These market reserves may be exclusive or partial, depending on whether all or only part of the procurement is restricted. Competition may be limited exclusively to SBA-certified HUBZone firms if there are at least two certified bidders with reasonable offers. Quotas or set-asides are the most widely used mechanism in the HUBZone program, accounting for about 95.3 percent of the program’s contracts (US$1.61 billion out of US$1.69 billion in 2015). Sole awards or direct contracts are federal contracts with no competition among offerors. Direct contracts accounted for 2.7 percent of contracts, about US$45 million, in 2015. Finally, price-evaluation preferences consider that in any open competition for a federal contract involving HUBZone businesses, the price offered by certified HUBZones will be considered lower than the price of another bidder if the HUBZone business’ price offer is no more than 10 percent higher than that of a non-HUBZone business. Preferential economic evaluations corresponded to about 2 percent of the HUBZone program contracts, or about US$36.4 million in 2015 (Dilger, 2017). Maps 1 and 2 show the HUBZone areas corresponding to Indian lands and reserves considered in the program.

Map 1. HUBZone Areas (Indian Land) in the United States



Source: Authors' elaboration based on information available at the SBA official website.

Map 2. HUBZone Areas (Indian Land) In Alaska, United States



Source: Authors' elaboration based on information available at the SBA official website.

In terms of technical assistance, the SBA has set up an agency for mentoring Indigenous businesses or enterprises participating in the 8(a) and HUBZone programs: the Office of Native American Affairs (ONAA). Its aims to ensure that Indigenous or Native American, Alaska Native, and Native Hawaiian entrepreneurs who seek to create, develop, and expand small businesses or enterprises have full access to business expansion and development tools. Thus, within ONAA's scope of action is the support of Indigenous companies and entrepreneurs seeking to expand their participation in the SBA's technical, financial, and contractual assistance and training programs, as well as in the 8(a) and HUBZone programs and other available public contracting and procurement processes.

Eligibility Criteria: 8(a) Program

Small businesses owned by Native American individuals or entities (Native American Indian, Alaska Native, Native Hawaiian; tribally owned businesses, Alaska Native Corporations; and Native Hawaiian Organizations) may qualify for a Small Disadvantaged Business Certification. These companies are eligible to participate in the 8(a) Program based on the following criteria: small businesses established by the SBA that are at least 51 percent owned by one or more socially and economically disadvantaged individuals and whose management and daily operations are controlled by such individuals (ownership and control). To be considered economically disadvantaged, firms owned by Native American individuals must comply with the SBA's net worth requirements common to other socially disadvantaged groups (African American or Hispanic American individuals). While Native American-owned firms are deemed to be socially disadvantaged, they must present documentation to establish their condition as "economically disadvantaged" by the SBA (except for Alaska Native Corporations, which are deemed disadvantaged) (Dilger and Blackford, 2022). Additionally, to be eligible, these businesses must be considered 'small' under the SBA's size standards and they must be for-profit firms as defined by the SBA. Thus, they cannot be foundations or nongovernmental organizations. Finally, "good character" requirements are retained, where there are expected to be no legal problems on the part of their executives, directors, or shareholders, as are requirements for submitting financial statements to the SBA and undergoing other audits (Dilger, 2020).

Native American-owned firms tend to be governed by the same regulations as other 8(a) firms, such as maximum participation of nine years in the program and limits on subcontracting, among others. Likewise, as with other 8(a) firms, there are requirements for Native American firms about achieving revenue percentages from non-8(a) sources at various stages of their participation in the program (Dilger and Blackford, 2022), with some specifications for Native American entity-owned firms.

Eligibility Criteria: HUBZone Program

To obtain HUBZone certification, applicant firms must complete and submit forms to the SBA showing that they meet criteria similar to those of the 8(a) Program. These include being at least 51 percent owned and controlled by Native American citizens or by designated Native American partnerships or corporations, as well as meeting the SBA's size standards and for-profit orientation. Additionally, firms must meet the following territorial criteria: maintain a principal office located in a HUBZone; ensure that at least 35 percent of their employees reside in a HUBZone area; and commit to retaining at least 35 percent of their employees living in a HUBZone during the performance of any HUBZone contracts they are awarded (Dilger, 2017).

Expected Or Obtained Results: 8(a) and HUBZone Programs

From 2010 to 2019, participating 8(a) Program firms were awarded an annual average of 5.42 percent of all federal contracts. During this ten-year period, 8(a) firms received about US$274.8 billion in federal contracts, of which US$75.7 billion was through quotas or set-asides, or 27.6 percent of all 8(a) contracts; US$92.2 billion or 33.6 percent through direct awards or set-asides; and $106.7 billion or 38.8 percent, through open solicitations or other tools that give preference to small businesses (such as the HUBZone program). In 2019, participating firms received US$30.3 billion, representing 5.15 percent of all federal contracts awarded, of which US$8.6 billion was awarded through quotas or set-asides and US$9.9 million in direct procurements (sole awards) (Dilger, 2020). The amount of these contracts and financial resources was similar in 2020, with US$34.0 billion awarded to 8(a) firms (Dilger and Blackford, 2022). However, these amounts have increased dramatically in recent years: an official 8(a) Program Report to Congress for Fiscal Year 2023 (SBA, 2023a) highlighted the historic levels of the contracts to small, disadvantaged businesses. The amount reached a staggering US$76.2 billion investment to participating firms, an all-time high of 12.1 percent of the over US$630 billion in procurement spending eligible for small business contracting in the 56th year of the program. The 2023 report specifies contracts awarded to Native American companies owned by 5,273 socially disadvantaged participants. Of these, 260 or 4.9 percent were individual Native American companies, and 716 or 13.6 percent were firms owned by Native American entities (including Alaska Native Corporations, Native Hawaiian Organizations, and tribally owned). This report indicated that federal contracts awarded to Native American individuals and Native American entity-owned firms surpassed US$10 billion in FY 2023.

In the case of the HUBZone program, the federal government awarded 76,503 contracts valued at US$6.77 billion to the program's certified participating companies during FY 2015 (Dilger, 2017). Of this amount, about US$1.69 billion was awarded through set-asides, US$45 million through sole awards, US$34.6 million through price-evaluation preference, US$1.480 million through open bids, and the remainder was awarded through other preferential tools (quotas or set-asides for small businesses in general, or small business set-asides; quotas or set-asides for veteran-owned small businesses; among others).[9] In 2017, 6,026 certified HUBZone small businesses were counted (Dilger, 2017). A recent report from FY 2022 (SBA, 2023b) showed that the number of HUBZone firms was 4,634, although the total amount exceeded US$14.3 billion in prime contracts, a significant increase compared with FY 2015.

b. Canada: Public Procurement Strategy for Indigenous Businesses: Background and Objectives

The first public policies or economic regulations imposed in Canada in the second half of the 19th century marginalized Indigenous peoples (First Nations) economically and territorially. These laws were based on discriminatory colonial regulations that made it impossible for Indigenous people to own land or businesses or to obtain mortgage or business loans. Such historical restrictions explain why the number of Indigenous businesses grew very slowly during the first and second half of the 20th century and why

[9] In this review, no specifications were reviewed regarding contracts particularly awarded to Native American companies in Indian reservations and other Indian Country locations qualified as HUBZones.

the Canadian government did not award significant contracts to Indigenous companies during these periods (CCAB, 2019).

However, in subsequent decades, Canadian Indigenous leaders and communities attempted to address the historical effects of colonization, federal paternalism, and consequent economic disadvantage. In this context, the growth of Canadian Indigenous businesses became remarkable in terms of the number of ventures, the scale of business operations, and the diversity of economic and productive areas developed by Indigenous businesses and entrepreneurs (CCAB, 2019).

Along these lines, in the 1990s the Canadian federal government asked the Public Sector Accounting Board (PSAB), an agency established in 1981 to improve and harmonize the Canadian government's public finance standards, to develop a strategy for the inclusion of Indigenous peoples in the federal public procurement policy (Treasury Board Contracting Policy). According to the policy, the main objective of Canadian public procurement is the acquisition of goods and services through improved access, competition, and fairness, as well as seeking the best possible value or optimal balance of benefits for the Crown and the Canadian people.

The result was the establishment of the Procurement Strategy for Aboriginal Business (PSAB) in 1996. Its overall objective was to increase opportunities for Aboriginal businesses to access Canadian federal procurement processes. The PSAB was a government of Canada initiative that included all federal agencies and departments and was led by the Aboriginal Affairs and Northern Development Canada (AANDC) in coordination with Public Works and Government Services Canada, the agency in charge of managing the Canadian public procurement system and whose mandate is to provide support to all federal departments in their public procurement programs. With more than 37,000 Indigenous-owned businesses that manage individual or community enterprises covering various economic sectors (mining, construction, petroleum, hotel services), the strategy aimed to provide more significant economic opportunities and improve the well-being and quality of life of Canada's Indigenous peoples.

The PSAB was recognized as a critical element of the Canadian federal government's Aboriginal Entrepreneurship Program, as it is a tool for the economic development of Indigenous peoples. It also has an impact on strengthening the country's economy in general. The PSAB was updated between 2019 and 2021. As a result, the policy changed its name to Procurement Strategy to Indigenous Businesses

(PSIB). The agency that originally led the initiative, the AANDC, was replaced by a new structure that combined the Crown-Indigenous Relations and Northern Affairs Canada and Indigenous Services Canada.

Finally, during the last decade, the original PSAB was extended and implemented in other Canadian provinces, such as Manitoba, Ontario, and Nunavot,[10] and later, Alberta, British Columbia, and Quebec. Canadian provinces have generally replicated the federal government's eligibility criteria and procurement tools, adding some elements such as Mandatory Aboriginal Business Participation, Desirable Aboriginal Business Participation, and Aboriginal Business Standards (CIRNAC, 2014). Accordingly, it is reasonable to expect that these policies will be updated following the implementation of the PSIB policy.

Elements of the Public Procurement Policy

The Procurement Strategy for Indigenous Businesses or PSIB (formerly PSAB)[11] considers several elements, emphasizing the economic development of Canada's Indigenous peoples through public procurement planning. This planning is implemented through tools in public contracting above a certain threshold and requirements for the hiring or subcontracting of Aboriginal labor in certain public procurements.

The PSIB considers four key elements: (i) mandatory set-aside, (ii) voluntary set-aside, (iii) joint ventures, and (iv) Indigenous subcontracting criteria. The strategy is open to all types of Indigenous businesses, including sole proprietorships, limited partnerships, cooperatives, business associations, and non-profit organizations.

i. Mandatory set-aside is applied in those areas or communities where the Indigenous population reaches at least 80 percent of the local population, where the contracts are for more than 5,000 Canadian dollars and where the Indigenous population receives the goods, services, or public facilities.

[10] It is important to note that the Nunavummi Nangminiqaqtunik Ikajuuti (NNI) policy established in 2000 and updated in 2017 (NNI Implementation Act), has been considered the most significant Indigenous procurement policy regime in Canada (Pazeti, 2020). It requires the governments of Canada and Nunavut to support Inuit firms when bidding for government contracts.

[11] These mechanisms correspond to those included in the former PSAB policy that were still in place when this review was performed. Thus, the mechanisms and eligibility criteria might change during the current and further implementation of the updated PSIB policy.

In these cases, the tenders are open exclusively for Indigenous suppliers to bid and compete.

ii. Voluntary set-asides are applied when the public service or agency voluntarily decides to use the strategy of exclusively Indigenous contracting to take advantage of the capacity of Indigenous businesses and suppliers, and when it is possible to ensure adequate operational management and probity of contracts.

iii. Joint venture agreements/partnerships allow Indigenous and non-Indigenous companies or ventures to jointly bid on opportunities that have been reserved (mandatory or voluntary).

iv. Indigenous contracting criteria require Indigenous subcontracting plans, either as a mandatory or nominal requirement, and can be applied only if exempt from free trade agreements.

Eligibility Criteria: Definition of Indigenous Companies

The eligibility criteria for Indigenous businesses under Mandatory Set-aside considers businesses in which Indigenous people have at least 51 percent ownership and control. A joint venture in which Indigenous entrepreneurs or companies have at least 51 percent ownership and control can also be considered potential suppliers. Additionally, if the Indigenous business has six or more full-time workers, at least 33 percent of the employees or workers must be Indigenous individuals. Under this directive, "Indigenous persons" will be Canadian citizen who are ordinarily residents of Canada and meet the following conditions:

- They are registered under the Canadian Indian Act (Indian Act, 1985).
- They are on a band list or small groups of Indian families under the Indian Act.
- They are members of an affiliate of the "Metis National Council" or the "Congress of Aboriginal People."
- They are involved in a land reclamation agreement.
- They belong to an established Aboriginal Community in Canada with recognized Aboriginal ancestry.

Expected or Obtained Results

When the first phase of the original PSAB came into effect in 1996, all agencies and organizations were required to establish quotas or mandatory set-asides in public contracts of over C$5,000 or where the local population is 80 percent Indigenous or more. In the beginning, government agencies also authorized and encouraged voluntary set-asides. Subsequently, all departments and agencies with an annual procurement budget of more than C$1 million were allowed to develop procurement targets for Indigenous businesses. Since the establishment of the PSAB, more than 100,000 contracts have been awarded to Indigenous suppliers for total values more than C$5.2 billion, and more than C$1 billion have been delivered through mandatory or voluntary set-asides alone.

However, despite the large sums spent by the Canadian federal government and policies, assessments commissioned by Canadian agencies indicated that Indigenous businesses continued to be underrepresented in the Canadian federal supply chain (CCAB, 2019). The evaluations showed that the PSAB did not have outstanding results considering the low representation of annual federal government spending on Indigenous contracting, which reached only 0.32 percent of C$20 billion in 2015. This assessment of the PSAB's progress as insufficient was also linked to the overall process of updating and restructuring the institutions responsible for Canadian Indigenous policies.[12] As a result, the original PSAB was renamed Procurement Strategy for Indigenous Businesses, or PSIB. The original agency that led the initiative, the AANDC, was replaced by a new structure: Crown-Indigenous Relations and Northern Affairs Canada and Indigenous Services Canada.

In this context, after a participatory review process with Indigenous actors and stakeholders started in 2019, the government of Canada renewed its commitment with Indigenous entrepreneurs and communities. In August 2021, the government established a mandatory requirement of a minimum of 5 percent of the total value of public contracts to be awarded to Indigenous businesses. This minimum is compulsory for all federal departments and agencies. It includes public reporting with expected full implementation in 2025 distributed in three incremental phases (32 organizations to

[12] This institutional reorganization was performed during the same period of implementation of the actions committed in the Canadian Truth Commission and Reconciliation, which ended in 2015.

meet or exceed the 5 percent target in FY 2022 to 2023; 20 organizations by 2023 to 2024; and 44 organizations by 2024 to 2025). Additional modifications to the PSIB included a broadened definition of "Indigenous business" and expanding the size and number of geographic areas where federal agencies must consider procuring with Indigenous businesses.[13] The updated definition of "Indigenous business" includes the following:

- Businesses owned and operated by Elders, bands, and tribal councils
- Businesses registered in the government of Canada's Indigenous Business Directory
- Businesses registered on a modern treaty beneficiary business list

c. South Africa: The Preferential Procurement Policy Framework Act

Background and Objectives

In the case of South Africa, current policies aimed at the inclusion of disadvantaged social groups in the public procurement system are closely related to this country's recent history. Before the end of apartheid, the public procurement and contracting system in South Africa followed social and state guidelines that asymmetrically and unequally favored large South African businesses belonging to the dominant population. This situation made it extremely difficult for new companies or competitors from disadvantaged sectors to enter the public procurement system (Bolton, 2006, 2013).

In 1994, public procurement achieved constitutional status, and it was recognized as a means to address past discriminatory public policies, following similar cases of redress experiences of historically marginalized populations such as in Malaysia (Bolton, 2006; McCrudden, 2004). With the end of apartheid policies and the drafting of the Constitutions of 1993 and 1996, the South African state assumed that the public procurement system could become a tool for the inclusion of Black South African populations that had historically been marginalized and excluded from the national economy (Bolton, 2006, 2013; Watermeyer, 2003). In this regard, the South African right to equality complementarily considers a principle of equity that implies the right to redress past inequalities and injustices (Bolton, 2006, 2013). Thus, the South African case

[13] https://www.canada.ca/en/indigenous-services-canada.html (accessed May 2024)

considers that policies of inclusion in the public procurement system promote the development of disadvantaged groups while including elements to redress inequalities and injustices that these groups have historically suffered.

The South African state considers inclusion in public procurement as a wealth redistribution mechanism that allows public resources to be channeled to these previously disadvantaged groups in South Africa (Bolton, 2006). This principle is significant, as South Africa's public procurement market represented approximately 22 percent of the country's gross domestic product (GDP) in 2002 (Bolton, 2013).

The South African public procurement system was established under these principles in the Preferential Procurement Policy Framework Act (or Procurement Act) of 2000, following the objectives determined by Section 217 of the Constitution of the Republic of South Africa (Act 108 of 1996). The section stipulates that national, provincial, or local government bodies, or any other institution identified in the legislation, may apply a procurement policy aimed at the promotion of persons or categories of persons considered disadvantaged or discriminated against, including categories of preference in the allocation or award of contracts (Bolton, 2006; Watermeyer, 2003).

Elements of Indigenous Public Procurement and Eligibility Criteria

In operational terms, when bidding for goods and services, government agencies must take into consideration a series of factors when awarding contracts to a particular bidder. This evaluation is carried out by ranking the socioeconomic objectives of bidders through a system called preference points, described and defined in the Procurement Preference Regulations of 2001. The allocation of preference points is determined by the value of the contracts, where the higher the value of the contracts, the lower the number of preference points that can be allocated, with a maximum of 20 out of 100 points (Bolton, 2006). The ranking of socioeconomic objectives in the selection process is done along the lines of the Black Economic Empowerment Act (BEE) of 2003, enacted and in full force and effect with the 2011 Procurement Act contracting regulations.

The BEE Act aims to adopt a uniform approach to Black economic empowerment in South Africa, including procurement practices by state bodies. Hence, the South African preference point system is made using the list of BEE social policy objectives, which, if included by bidders, will imply a higher number of preference points when evaluating bids. These objectives consider the recruitment of persons or categories of persons historically disadvantaged by unfair discrimination based on race (historically disadvantaged individual or HDI, a constitutionally defined category), gender or disability, and the development and implementation of reconstruction and development programs. In this regard, there does not seem to be an eligibility criterion for an Indigenous company as such in the South African system, as these companies would score according to the BEE policy ranking to the extent that they include in their bids the preferential elements described above.

Another significant feature of the South African legislation and system is the decentralization of procurement authority and functions. The South African procurement system has moved toward granting relative autonomy to the different state organs in procuring goods and services within the framework of existing national legislation. This decentralization involves 14 specific rules governing procurement procedures at the national, provincial, and local government levels. Thus, the bodies that can design or include these strategic or inclusive procurement guidelines correspond to any department or organ of state administration at one of the three levels of South African government (national, provincial, or local) considered in the Procurement Act. This definition extends to other public finance management or municipal legislation governed by Section 217 of the South African Constitution (Bolton, 2006).

A special division of the South African National Treasury, Ministry of Finance, is responsible for issuing practice manuals, guidelines, and circulars on public procurement policy. These guidelines define the general conditions of contract and standard bidding documents, the appointment of consultants, codes of conduct for supply chain management professionals, and threshold values for competitively priced and competitively bid tenders.

Expected or Obtained Results

This review found no documents or reports with official results of South Africa's BEE preferential procurement policy. However, the specialized literature points out significant obstacles in implementing the South African procurement policy. Specifically, issues related to procurement fraud and corruption, noncompliance with policies and regulations, and inadequate measures for monitoring and evaluation are highlighted as relevant difficulties (Ambe and Badenhorst-Weiss, 2012; Bolton, 2016). Considering corruption and fraudulent activities in the field of public procurement, a

2014 report (Bolton, 2016) cited unauthorized expenditure of public funds amounting to R2.9 billion per year and irregular expenditures of R28.3 billion (approximately US$160 million and US$1.4 billion, respectively, at current exchange rates). Another estimate found that around 20 percent of the government's procurement budget is wasted by unethical, corrupt, or fraudulent practices (Ambe and Badenhorst-Weiss, 2012). Thus, it has been acknowledged that the South African procurement process has become flawed, with disadvantageous conditions to emerging HDI-owned companies and their prospects of success, risking the effectiveness of broad-based BEE policies (Ambe and Badenhorst-Weiss, 2012). Considering the latter, the South African procurement system has been undergoing reforms, with new regulations established in 2017 and in 2022 (although these modifications are not included in this review).

d. Australia: Australian Government Indigenous Procurement Policy

Background and Objectives

The Australian government established the Indigenous Procurement Policy in 2015 as part of the overall public procurement framework delivered by the government's Commonwealth Procurement Rules, also launched in 2015. The policy was developed from the objectives previously set out in the Indigenous Economic Development Strategy 2011–2018 (2011). It found that, despite some significant progress, Indigenous Australians continue to face substantial economic disadvantages, such as being less likely to complete formal schooling, have stable employment, own property, or run businesses.

In view of this assessment, the Australian government designed and implemented public policies aimed at closing these socioeconomic gaps ("closing the gap" policies). One of these tools is support for the growth of Indigenous businesses and entrepreneurship through the public procurement system, subsequently formalized in the Indigenous Procurement Policy 2015. The National Indigenous Australian Agency (NIAA) administers this federal public policy. Its main objective is to stimulate Indigenous entrepreneurship and economic development, providing Indigenous Australian peoples with greater opportunities to participate in the national economy. Before its implementation, Indigenous Australian businesses had limited access to the Australian procurement market. Hence, the policy seeks to significantly increase the amounts awarded and the number of Indigenous businesses in demand for goods and services from the Australian government.

The Australian Indigenous procurement policy can be adapted and implemented at the federal-state level and even at the municipal contracting levels of Australian metropolitan districts. Thus, the six Australian states—New South Wales, Queensland, South Australia, Tasmania, Victoria, and Western Australia—as the second government tier, have been developing their own Indigenous public procurement strategies since 2015. These strategies will generally follow the guidelines, mechanisms, and goals or objectives set out in the federal government's Indigenous procurement policy described below.

Elements of the Indigenous Public Procurement Policy

The Indigenous Procurement Policy seeks to increase Indigenous procurement in the Australian Commonwealth using the following mechanisms:

- Annual targets for volumes and values of contracts to be awarded to Indigenous companies by the government.
- Reserves or mandatory Set-aside that provide opportunities for Indigenous companies to bid on tenders before their opening to the market. Mandatory set-asides apply to all procurements in “remote Australia” and to all Australian tenders with an estimated value of between AUD$80,000 and AUD$200,000.
- Indigenous participation goals on high-value contracts. These Indigenous participation goals are referred to as Mandatory Minimal Requirement (MMR) and are required on contracts of AUD$ 7.5 million or more in specific contracting categories. Thus, evaluations of these tenders are subject to MMRs that consider a bidder’s past performance against the MMR targets contained in previous contracts with the Australian Commonwealth.

These three main elements are also incorporated into the policies of each Australian state. However, there are some differences in terms of contract volume amounts, values, and participation targets.

The Indigenous procurement policy also identifies two key performance indicators:

- The increase in the number of Indigenous companies contracted by the Australian Commonwealth; and

- The increase in the volume and value of contracts awarded by Indigenous companies.

Eligibility Criteria: Definition of Indigenous Companies

The policy defines certain conditions that must be met by Indigenous companies that are awarded public contracts and purchases under these special conditions. Businesses must have at least 50 percent Indigenous ownership and be registered on the Indigenous Business Direct register of the Australian national supplier system (Supply Nation) to meet eligibility and "Indigenous business" designation requirements. This definition is also adopted by the Indigenous procurement strategies of the six Australian states.

Indigenous business owners must, therefore, provide evidence of Indigenous status through a legal or notarized statement that the business is 50 percent owned by Indigenous persons or through certificates of Indigenous status of the owners provided by a recognized Indigenous organization, such as a land council. Businesses must also be listed on an Indigenous Chamber of Commerce or other commercial register to confirm that the company meets the eligibility criteria of the Indigenous Contracting Strategy.

The policy also allows the formation of joint ventures by Indigenous and non-Indigenous companies. To be recognized as part of the policy, the Indigenous joint venture must also prove that it has at least 50 percent Indigenous ownership and at least 50 percent of the company's control in Indigenous participation. In addition, the Indigenous joint venture must have strategies to increase its Indigenous workforce and capacity building or skills development of Indigenous business partners.

Some policies of the Australian states may contain more progressive clauses, such as those in the Queensland Indigenous Procurement Policy. This regulation contemplates the possibility of conducting tendering processes exclusively with Indigenous companies voluntarily by the state's public agencies if they deem it possible and relevant. In this case, they must follow the abovementioned criteria for defining "Indigenous businesses" while justifying the existence of a sufficiently competitive market of Indigenous suppliers and an adequate ratio of results versus risks and costs.

Expected or Obtained Results

In terms of policy evaluation, the Australian model considers the execution of periodic comprehensive assessments by external agencies, which have provided assessments and recommendations for the improvement of the Indigenous Procurement Policy. Among these recommendations is the search to reduce the gaps caused by the historical geographic and socioeconomic segregation since it has been observed that Indigenous companies in urban centers are in a position of significant advantage in relation to Indigenous companies in rural or geographically isolated sectors (remote Australia). In this regard, simplifying documentation and formal language in tenders and contracts used by the Australian government was recommended to facilitate access and participation of Indigenous businesses (NIAA and Deloitte Australia, 2019).

As expected outcomes, the Indigenous Procurement Policy defines a volume equivalent to 3 percent of public contracts and procurements awarded to Indigenous businesses for each fiscal year. This target is expected to be achieved progressively, as the Australian government set targets for each year starting in 2019 through the 2027–2028 fiscal cycle, starting at 1 percent and increasing by 0.25 percent annually until 3 percent is reached in the annual procurement portfolio.

The results show that since its launch in 2015, the initiative has become effective in driving Indigenous economic development. The above can be observed in an evaluation report prepared by the NIAA and Deloitte Australia (2019) and commissioned by the Australian Department of the Prime Minister and Cabinet, which indicates that the Australian Indigenous Procurement Policy has had a significant positive impact since its establishment. It has delivered more than AUD$594 million between 2015 to 2017 to Indigenous businesses in the country representing 5 percent of the total number of contracts, as well as 1 percent of the total value of tenders awarded to Indigenous businesses. Data provided by the OECD estimates that as of 2020, the IPP had awarded 13,700 contracts to more than 1,550 Indigenous businesses for an approximate value of AUD$2.2 billion (OECD, 2020b). Updated results from the NIAA indicate a significant increase in these overall results since its implementation. By 2022–23, contracting opportunities had reached over AUD$9.5 billion awarded to more than 3,900 Indigenous business through over 64,000 contracts.[14] These results are remarkable

[14] https://www.niaa.gov.au/our-work/employment-and-economic-development (accessed May 2024)

considering that by 2013, only AUD$6 million had been awarded to just under 30 Indigenous companies.

The Australian states define different targets according to their own regional assessments. Hence, in Western Australia, a target of 3 percent of the total value of contracts awarded by Indigenous businesses was established, considering values over AUD$50,000 for FY 2020–2021. In the case of Queensland, the same target of 3 percent was established but to be reached by 2022 without specifying the value of contracts awarded.

e. New Zealand: Government Procurement Rules

Background and Objectives

In 2015, the New Zealand central government launched a national policy for public procurement and contracting called the Government Procurement Rules. These rules correspond to standards of good public procurement practices and consist of 71 provisions or rules divided into six sections. These standards follow the Principles of Government Procurement, which act as general values of procurement policy. Accordingly, the Principles are guidelines to be applied by all government agencies to guide and assist in making good procurement decisions, even where the Government Procurement Rules do not apply. In addition to these principles and rules, the New Zealand public procurement system considers cross-cutting guidelines to be used by all government agencies and bodies (Government Procurement Chart).

The 2015 Government Procurement Rules consider special provisions for the preservation or pre-eminence of Indigenous Māori and Pasifika peoples. These provisions provide flexibility for the New Zealand central government to implement domestic policies concerning these populations, including fully complying with the 1840 Treaty of Waitangi obligations between Great Britain and several New Zealand Māori tribes. Under the terms of the 2015 public procurement policy, the New Zealand government adopted measures necessary to accord favorable treatment to the Indigenous Māori population, requiring that such measures not be used as arbitrary or unjustified forms of discrimination or as a disguised form of restriction on trade in goods, services, or investment.

In this context, the critical focus of the New Zealand public procurement system lies in the importance given to open and transparent competition as a systemic core value, seeking to provide all businesses with the necessary opportunities to participate. In addition, the Rules strive to meet secondary or cross-cutting objectives such as promoting strategic procurement approaches, fostering competition and innovation, and promoting broader environmental, social, cultural and economic outcomes. According to the Principles of Government Procurement, the guiding value of the New Zealand public procurement system is to achieve the best possible outcome from a public purchase by following five values or principles, namely: (i) plan for excellent results; (ii) be fair to all suppliers; (iii) get the right supplier; (iv) get the best deal for everyone; and (v) play by the rules. Under principle (ii), fair and equitable treatment is sought for all suppliers, specific guidelines are established for inclusion, and opportunities are sought for Indigenous New Zealand Māori and Pasifika businesses.

Furthermore, in 2020, the New Zealand government advanced provisions enacted in Rule 17 to a particular procurement strategy starting with Māori businesses, called the Progressive Procurement Policy[15] or Te Kupenga Hao Pāuaua ("cast the fishing net wide and be enterprising").[16] The Ministry for Business, Innovation and Employment, responsible for New Zealand procurement policy, has implemented the policy in collaboration with the Ministry of Māori Development, or Te Puni Kōkiri, which will assist government and local agencies in implementing procurement practices. This policy implied a progression following the principle of fair dealing with suppliers and creating favorable conditions for the participation of Māori businesses. The latter is in line with the understanding that public procurement can help Indigenous peoples achieve socioeconomic and environmental objectives, supporting New Zealand's polluting waste reduction targets and its transition toward a low-emission economy at the same time.

[15]https://www.tpk.govt.nz/en/a-matou-whakaarotau/maori-economic-resilience/progressive-procurement (accessed December 2022).

[16] https://auditnz.parliament.nz/resources/procurement/progressive-procurement (accessed December 2022).

Elements of the Indigenous Procurement Policy

The Government Procurement Rules seek to support sustainable and inclusive procurement by promoting good practices in procurement planning, supplier engagement, and execution. The Rules make them mandatory if the procurement exceeds NZ$100,000, or NZ$9 million for new construction or infrastructure works; and if the following government agencies conduct the tender: government departments and public or state services; the New Zealand Police; and the New Zealand Defense Force. Nevertheless, it is explicitly stated in these rules that the opportunities outlined cannot preclude the participation of non-Indigenous suppliers and that the procurement decision must be justified by the best public value offer principle (in line with the Non-Discrimination and Compensation Rule 3).

Rule 17 states that public agencies must create opportunities for Māori and Pasifika businesses in public procurement. Also, it stipulates that large contract tenders should be structured in separate parts and published in different procurement subcategories. In this regard, Rule 17 considers that splitting procurement processes will benefit small New Zealand businesses that may not be able to compete in large tenders, thus allowing suppliers that cannot win national contracts to do so by separating or splitting such contracts into multiple regional tenders. This structure of small contracts or tenders also makes it possible for Māori or Pasifika businesses to participate in the public procurement system, with the understanding that these ventures are often small and are not able to compete in large procurement processes, as are many other small New Zealand businesses. Nevertheless, it should be noted that the review of the Government Procurement Rules does not identify any Indigenous procurement tools or instruments, eligibility criteria or specific definitions of what in this public policy is understood as Māori and/or Pasifika business.

Accordingly, the recently launched 2020 strategy Progressive Procurement Policy, aimed explicitly at Māori businesses, provides the further elements that complete the previous Rule 17 of New Zealand 2015 Government Procurement Rules. This policy is a partnership between the Ministry of Māori Development or Te Puni Kōkiri and the overall responsible agency of public procurement, the Ministry of Business, Innovation and Employment. This policy does not consider market reserves, set-asides, or quotas, as it follows the aforementioned principle of fair competition between tender bidders. Thus, the policy seeks to foster the ability of Māori businesses to participate and win public tenders through a set of capacity-building measures: increasing employment and training opportunities for Māori peoples; supporting greater innovation and creating more economic activity and opportunities in provincial New Zealand; and diversifying the customer base for Māori businesses.

The Progressive Procurement Policy considers sustainable, long-term behavioral change in public sector procurement practices to identify and remove barriers to competition as a key policy objective. This principle applies to all 150 approximately New Zealand's government agencies involved in public procurement and considers some of the following actions: a clear understanding of how they are implementing progressive procurement, with updated tools, approaches, templates, and guidance; complete and up-to-date information on their current suppliers to identify the Māori business among them; a good understanding of possible barriers that prevent Māori businesses from engaging with procurement processes and plans to remove these barriers; and enough knowledge of all suppliers to demonstrate they are "casting the net wide." Moreover, a Māori business will be subject to participation in this strategy if it has a minimum of 50 percent Māori ownership or if it corresponds to a "Māori authority" as classified by the Inland Revenue Department (a Māori authority is a figure that acts as a trustee by administering communally owned Māori property on behalf of individual Māori members).

Expected or Obtained Results

In December 2020, the New Zealand government officially agreed to new minimum targets for government agencies in their Indigenous procurement policies. The 2020 Progressive Procurement Policy required government agencies to ensure that a minimum of 5 percent of their contracts are awarded to Māori companies. This minimum was raised to 8 percent in 2023 as a key policy objective. With an estimated NZ$42 billion worth of goods and services demanded by the New Zealand government annually, the measure aims to increase the diversity of Indigenous suppliers and provide more significant opportunities for these businesses.

The available results from two exercises in 2021 and 2022[17] show that this policy has been impactful. Between July and December 2021, the 5 percent objective of public contracts awarded to Māori businesses was surpassed, reaching 5.7 percent, or 2070 public contracts (although 90 percent of them were awarded to only 35 companies). Consequently, this achievement resulted in the further increase to 8 percent of public contracts to be awarded to Māori businesses in 2022. Moreover, in the period between July and December 2022, 4.6 percent of public contracts were awarded to Māori businesses, considering the 5.4 percent that remained active, in which 60 percent of those contracts were under NZD$100.000 (only 22 agencies, or 6.3 percent, were awarded contracts over NZD$1 million). The main category of public contracts awarded to Māori businesses was the healthcare sector (38.4 percent), followed by Education and Training (14.5 percent). In contrast, although the construction sector only represents a small number of awarded contracts (2.8 percent), it had the highest median value (NZD$600.000). Finally, these promising results in 2021 and 2022 incentivized the New Zealand government to secure funding for the Progressive Procurement Policy strategy and programs of NZS$ 26 million for 2023 and 2024.

[17] https://www.tpk.govt.nz/en/a-matou-whakaarotau/maori-economic-resilience/progressive-procurement/buyers-government-agencies (accessed May 2024)

Table 5. Elements of Indigenous Public Procurement Policies: United States, Canada, South Africa, Australia, and New Zealand

COUNTRY	INDIGENOUS PROCUREMENT POLICY	APPROACH / ORIENTATION	ELIGIBILITY CRITERIA	MAIN TOOLS USED	GOVERMENTAL LEVEL OF IMPLEMENTATION	TECHNICAL ADVISORY BODIES	OBTAINED OR EXPECTED RESULTS
UNITED STATES	Section 8(a) of the Small Business Investment Act of 1958 '8(a) Business Development Program' or '8(a) Program' 1978 HUBZone Act 1997 Buy Indian Act 2020/22 (not included in this review)	ORGANIZATIONAL AND TERRITORIAL (MIXED) Indigenous companies and entrepreneurs (8a) program (and Buy Indian Act) Native American Territories HUBZone program	Small socially and economically disadvantaged enterprises (including Indigenous enterprises) or enterprises that are at least 51 percent owned by one or more socially and economically disadvantaged individuals and whose management and day-to-day operations are controlled by such individuals (including Indigenous individuals).	Market quotas or reserves (set-asides) Sole-award contracts are federal contracts with no competition among bidders. Price-evaluation preferences	Federal level and HUBZone territories	American Indian Procurement Technical Assistance Centers (AIPTACs) Office of Native American Affairs (ONAA) of the Small Business Administration (SBA)	In 2019, participating firms received US$30.3 billion, representing 5.15 percent of all federal contracts awarded. These amounts remained similar in 2020, with US$34.0 billion awarded to 8(a) firms. However, the amounts awarded have increased dramatically in recent years reaching a staggering $76.2 billion investment to participant firms during the Fiscal Year 2023, 12.1 percent of US$630 billion. In 2023, 5,273 contracts were awarded to 'socially and economically disadvantaged' owners. From these, 260 or 4.9 percent were individual Native American companies, and 716 or 13.6 percent were firms owned by Native American entities. In the fiscal year 2023 Federal contracts awarded to Native American individuals and Native American entities owned firms surpassed US$10 billion. In 2017, there were 6,026 certified HUBZone small businesses. A recent report from the fiscal year 2021 showed that the number of HUBZone firms was 4,634, although reaching over US$14.3 billion in prime contracts.

CANADA	Procurement Strategy for Aboriginal Business 1996 Aboriginal Entrepreneurship Program (complementary program)	ORGANIZATIONAL AND TERRITORIAL (MIXED) Indigenous businesses and entrepreneurs Areas or communities where the Indigenous population makes up at least 80 percent of the local population.	Businesses in which Indigenous persons have at least 51 percent ownership and control Joint ventures in which Indigenous entrepreneurs or companies have at least 51 percent ownership. Indigenous businesses and entrepreneurs are registered under the Canadian Indian Act (Indian Act, 1985). Belong to an established Aboriginal Community in Canada with recognized Aboriginal ancestry or are on the Band List. Members of an affiliate of the "Metis National Council" or the "Congress of Aboriginal Peoples"; or are involved in a land claim agreement.	Mandatory Set-aside Voluntary Set-aside Joint ventures and Indigenous subcontracting criteria.	Federal Provincial governments are allowed to elaborate their own IPPs.	Public Procurement Canada (former Office of Small and Medium Enterprises) Crown-Indigenous Relations and Northern Affairs Canada and Indigenous Services Canada (former Aboriginal Affairs and Northern Development Canada)	Since the establishment of the PSAB in 1996, more than 100,000 contracts have been awarded to Indigenous suppliers for C$5.2 billion. Over C$1 billion has been delivered through mandatory or voluntary set-asides. Despite the large sums spent, evaluations indicate that Indigenous businesses remain underrepresented, accounting for only 0.32 percent of C$20 billion of federal procurement in 2015. In August 2021, the government of Canada established a mandatory requirement of a minimum of 5 percent of the total value of public contracts to be held by Indigenous businesses. This minimum is compulsory for all federal departments and agencies. It includes full implementation in 2025 distributed in three incremental phases.

SOUTH AFRICA	Procurement Act 2000 Procurement Preference Regulations of 2001 Black Economic Empowerment Act (BBE) 2003 South African Constitution 1996 (Article 217)	ORGANIZATIONAL The preference points system is applied across the board, being used by those companies that can demonstrate the BBE objectives.	The South African preference point system uses the BBE's list of social policy objectives to add points to bidders if included. These objectives include: Hiring of individuals or categories of individuals historically disadvantaged by unfair discrimination based on race (Historically Disadvantaged Individual or HDI; gender or disability. Implementation of Reconstruction and Development Programs.	Ranking of socioeconomic objectives of bidders or bidders, called Preference points system. The allocation of preference points is determined by the value of the contracts, where the higher the value of the contracts, the lower the number of preference points that can be allocated, with a maximum of 20 out of 100.	Central or semi-Federal, and regional governments should implement the IPP.	The 'Specialist Functions Division' of the National Treasury, Ministry of Finance, is responsible for the issuing of practice notes, guidelines and circulars on procurement policy: general conditions of contract and standardized bidding documents; the appointment of consultants; codes of conduct for supply chain management practitioners (Bolton, 2013)	No documents or reports with official results of South Africa's BEE preferential procurement policy were found in this review.
AUSTRALIA	Indigenous Economic Development Strategy 2011–2018 Indigenous Procurement Policy (IPP) 2015	ORGANIZATIONAL AND TERRITORIAL (MIXED) Indigenous businesses and entrepreneurs Preference for companies in "Remote Australia"	Businesses must have at least 50 percent Indigenous ownership and must be registered on the Indigenous Business Direct register of Australia's national supplier system.	Annual targets for contract volumes and values Market Quotas or Reserves Indigenous Participation Targets in High Value Contracts Key performance indicators (no. of companies and increase in contracts awarded)	Federal States and municipal/local Government are allowed to elaborate their own IPPs.	Supply Nation and Indigenous Business Australia And National Indigenous Australian Agency	The Australian IPP defines a volume equivalent to 3 percent of public contracts awarded to Indigenous businesses for each fiscal year. This target is expected to be achieved progressively starting in 2019 through the 2027–2028 fiscal cycle, starting at 1 percent and increasing by 0.25 percent annually until 3 percent is accomplished in the annual procurement portfolio. By 2022–23 contracting opportunities reached over AUD$9.5 billion awarded to more than 3,900 Indigenous business through over 64,000 contracts. In contrast, by 2013, only AUD$6 million were awarded to just under 30 Indigenous companies.

NEW ZEALAND	The Government Procurement Rules 2015 Progressive Procurement Policy 2020	ORGANIZATIONAL The policy applies to approximately 150 New Zealand public agencies.	Māori businesses with a minimum of 50 percent Māori ownership. Māori suppliers that correspond to a “Māori authority” as classified by the Inland Revenue Department.	Sustainable, long-term behavioral change in public sector procurement practices to identify and remove barriers to competition. Includes a set of capacity-building measures, such as: increasing employment and training opportunities for Māori peoples; supporting economic activity and opportunities in provincial New Zealand; and the diversification of the customer base for Māori businesses.	Central Government No initiatives have been identified at the regional or provincial level.	Ministry of Māori Development or Te Puni Kōkiri. And Ministry for Business, Innovation and Employment	In December 2020 it was established that public bodies must ensure that a minimum of 5 percent of their contracts are awarded to Māori companies. In December 2021, public contracts awarded to Māori reached 5.7 percent, or 2070 public contracts. In 2023, the 5 percent target was increased to 8 percent, and the Progressive Procurement Policy secured NZD$26 million funding for 2024 and 2025.

Source: Authors’ elaboration.

4. Conclusions And Recommendations for Latin America and the Caribbean

The cases reviewed share many similar characteristics. Four Indigenous procurement policies utilize primary or direct mechanisms to benefit historically marginalized groups: Australia, Canada, and the United States include market reserve mechanisms, and South Africa's procurement system uses preference points. New Zealand's IPP takes an indirect or secondary measures approach, seeking to strengthen the supply chain and fostering the ability of Indigenous businesses to participate and win public tenders. Likewise, Australia, Canada, New Zealand and the United States have similar eligibility criteria and definitions of Indigenous businesses and ownerships.

As mentioned in Section 2, even if they share similar eligibility criteria, the Indigenous procurement policies reviewed have significant differences when observing their target audiences. There is a greater focus on promoting Indigenous entrepreneurs and enterprises in Australia and the United States. Although Canada, New Zealand, and South Africa include guidelines for the promotion of Indigenous firms, they explicitly manifest their interest in promoting the hiring of Indigenous peoples as an inclusion mechanism to their formal labor market.[18] These differences in emphasis on whether to prioritize Indigenous entrepreneurship or encourage the inclusion of Indigenous workers into the general workforce might express different ideological approaches or assumptions from policymakers in each context.

Additionally, the Indigenous procurement policies reviewed can be considered decentralized and horizontal (Arrowsmith, 2010), with a central or federal agency providing the specific mechanisms to be implemented together with main strategic guidelines. These agencies will mandate other governmental, regional, or local public entities to implement these inclusion mechanisms while providing technical and advisory support. It should be noted, however, that not all cases present consolidated IPP national strategy documents or manuals, as South Africa and the United States do. The analysis shows that these national strategies are influential. The elaboration of national strategy seems relevant in explaining contextual backgrounds that justify respective policies and in making explicit policy goals, assessments, and accountability

[18] This emphasis might be changing and evolving in the cases of Canada, where the IPP is being restructured; and New Zealand, where it is being fully implemented.

mechanisms. For example, in the case of Canada, the original PSAB policy targets were considered unmet, supporting the IPP updating in a broader context of Indigenous policy revision. In the case of Australia, where regional and even local governments adopted their own Indigenous procurement policies, the national strategy was used as a model.

The U.S. SBA's 8(a) and HUBZones programs are the oldest initiatives with the largest number of contracts and financial resources awarded to Indigenous firms in this comparative analysis. As mentioned above, a recent 2023 report highlighted the highest historical contracts and public funds awarded to small businesses owned by socially disadvantaged owners, including Native American firms, after 56 years of the 8(a) program.[19] However, the Australian Indigenous Procurement Policy (IPP) is currently the most complete, organized, and well-grounded design. This sophisticated system of social procurement for Indigenous businesses has also been recognized in recent specialized literature (Panezi, 2020). It represents, so far and to some extent, the synthesis of the experiences developed by these countries. The Australian IPP has a strategic assessment that justified its creation (Indigenous Economic Development Strategy 2011–2018, 2011), a regulatory framework for implementation (Australian Government's Commonwealth Procurement Rules), as well as eligibility criteria, performance indicators and evaluations, and short- and medium-term goals or objectives.

Of the characteristics of the Australian IPP model, three implementation mechanisms should be considered: (i) annual procurement and public contracting targets to be awarded to Indigenous companies; (ii) mandatory reserves or quotas that allow Indigenous companies to bid in public tenders prior to their opening to the market; and (iii) the definition of "mandatory minimum requirement" for Indigenous participation in high-value public procurement or contracting processes. These mechanisms differ in the levels of complexity required to be implemented, where the definition of annual Indigenous public procurement goals or objectives will require high levels of institutional commitment at the governmental level, whether national, regional or local, for those objectives to be achieved. On the other hand, the implementation of

[19] 8(a) Business Development Program FY 2023 408 Report to the Congress. U.S. Small Business Administration, Office of Business Development. Available: https://www.sba.gov/document/report-408-report-us-congress-minority-small-business-capital-ownership-development (accessed May 2024).

mandatory minimum requirements could be considered less complex, as it would be similar to cross-cutting inclusion practices, such as gender-based procurement requirements, already contained in some of the public procurement systems of LAC countries.

The Australian model also contemplates at least two key indicators for the evaluation of the IPP that constitute the metric of compliance with the annual Indigenous contracting objectives or goals: (i) the increase in the number of companies contracted by the Australian government; and (ii) the increase in the number and value of contracts awarded to Indigenous companies. These indicators have demonstrated the notable and significant increase in Indigenous businesses and contracts, from AUD$6 million awarded to just under 30 Indigenous firms in 2013, to AUD$9.5 billion in 64,000 contracts awarded to over 3900 Indigenous businesses.[20] The evidence encouraged federal authorities to make more ambitious or progressive commitments. It also allowed Australian regional and local governments to flexibly adapt compliance targets, preferential mechanisms, and eligibility criteria to their respective contexts.

Concerning quotas or mandatory reserves, these are mechanisms that seem to imply a greater degree of complexity for the contracting systems, as they will necessarily require eligibility criteria for the definition of Indigenous companies that will be able to participate in the quotas or reserves during the bidding process. The Australian model defines an Indigenous company as one that is at least 50 percent owned by Indigenous people. In comparison, the Canadian and U.S. models require not only ownership but also 50 percent control of the companies by Indigenous people, in line with recommendations that seek to mitigate the risk of creating fraudulent Indigenous companies that seek to participate in the reserves during the bidding processes (NIAA and Deloitte Australia, 2019). In this regard, it is important to note the obstacles highlighted by the specialized literature related to lack of accountability, procurement fraud, and corruption as relevant difficulties for the implementation of IPP by the specialized literature (Ambe and Badenhorst-Weiss, 2012; Bolton, 2016; Panezi, 2020).

Several policy research questions can be derived from these experiences. For instance, why did these public procurement systems adopt direct or indirect strategies? Is there any relationship between political systems with the preferred option, set-asides,

[20] https://www.niaa.gov.au/our-work/employment-and-economic-development (accessed May 2024)

or preference points/capability building? Preferred mechanisms will imply different metrics to assess outcomes and results. Hence, direct or indirect Indigenous public procurement systems would answer differently to the following questions: What should policymakers monitor to know if these programs are successful? Should they monitor amounts, or public contracts awarded? Or number of Indigenous firms that graduate from “assisted” programs and are competitive without subsidies? These and additional questions could be addressed in future research. Nevertheless, instructive preliminary lessons from these experiences can be extracted for LAC countries.

Recommendations for the LAC Region

From what was observed in the countries analyzed, it is possible to affirm that the differences and nuances of these Indigenous hiring policies are probably related to the different assessments and legal and social justifications implemented by their respective governments. Likewise, their characteristics and implementation vary significantly according to national histories and the leading institutions involved in creating the policies. For these reasons, although considering the shared history of marginalization that has led to the current situation of socioeconomic disadvantage of the Indigenous population in LAC countries, the strategic approaches to Indigenous social contracting should also be adapted in accordance with the specific contexts, regulations, and institutionality of the countries in the region.

In this regard, it is worth highlighting the importance and usefulness of building a broad, comprehensive set of public policies aimed at the inclusion of Indigenous peoples or ethnic minorities, where the five models of Indigenous public procurement are significant examples. For LAC countries, a variety of options and tools should be evaluated and considered when implementing procurement policies to benefit Indigenous peoples. These include training, the preparation of manuals or guides in Indigenous languages, assessment of Indigenous peoples' needs, and the development of a comprehensive strategy for the inclusion of Indigenous peoples or ethnic minorities.

However, before introducing these tools, it is necessary to evaluate the existence of conditions enabling their development and application. These conditions include a legal framework that recognizes Indigenous peoples and an institutional framework that promotes their rights and development, and a definition of the condition of Indigenous peoples to facilitate their identification in public procurement systems.

Along these lines, a study or survey should be conducted on the Indigenous business market and the capacities to produce and offer the products and services required by the public sector. Additionally, the interest and capacities of public agencies to promote Indigenous businesses and include them in the public market should be evaluated, as well as the availability of auditing procedures, the monitoring of progress and the achievement of previously defined objectives and results of the actions taken.

To implement recognition, registration, accreditation, promotion, and participation of Indigenous companies and businesses in public procurement systems in the region, the practices of inclusion of the gender perspective, which several countries in the region have already implemented with positive results, could be emulated.[21] To promote gender equality through public procurement, the first step was to collect data to identify and subsequently certify women-owned businesses through the "Women's Business Certification" (Sello Mujer) programs.

Given our experience in supporting LAC countries in certification programs, we believe that strong political support is necessary to implement this type of program. This support would make it possible to involve the public procurement ecosystem and the institution in charge of policies and programs in favor of Indigenous peoples. This would include the ministries that address the needs of Indigenous peoples, chambers of commerce, NGOs, and others. It is also essential to have quality data and information for assessment and baseline data collection, measurement, monitoring and evaluation of results, as well as to design a strategy and collaborative work with public and private actors and beneficiaries to promote dissemination and communication plans. In addition, it is important to build capacities in both the public sector (contracting entities) and the private sector (Indigenous companies), which would be a considerable change in the approach to public procurement.

A final element to consider in the Australian, Canadian and U.S. experiences is the presence of technical advisory bodies or agencies for the Indigenous businesses or entrepreneurs participating in the programs. Their purpose is to train Indigenous entrepreneurs in public procurement systems and build networks among Indigenous supplier companies. They could also create other spaces for the promotion of indigenous companies interested in participating as bidders for public contracts—that

[21] https://blogs.iadb.org/gestion-fiscal/es/participacion-de-las-mujeres-contratacion-publica/

is, “support hubs” to chambers of commerce that bring together indigenous companies. Institutions responsible for Indigenous policies in LAC countries, such as the National Commission for the Development of Indigenous Peoples (CDI) in Mexico, the Guatemalan Indigenous Development Fund (FODEGUA) in Guatemala, the National Institute of Indigenous Affairs (INAI) in Argentina or the National Corporation for Indigenous Development (CONADI) in Chile, could assume these functions. Having this type of support and technical advice would strengthen the institutions and avoid overloading public procurement and contracting agencies, while supporting the public bodies and agencies that require goods and services.

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