



Using the Commonwealth Procurement Rules Indigenous Exemption (No. 17)

About the exemption

Exemption No. 17 allows an entity to engage directly (via limited tender) with a Small and Medium Enterprise (SME) with at least 50 per cent Indigenous ownership.

Does the exemption apply to all of the Commonwealth Procurement Rules (CPRs)?

No. The exemption **only** applies to the additional rules set out in Division 2 of the CPRs. The rules in Division 1 still apply to the procurement, including the requirement to achieve value for money.

Is the exemption mandatory and how do I apply it?

None of the exemptions listed in Appendix A of the CPRs are mandatory. Entities have discretion on using the exemption, and when used, the delegate should be satisfied that the proposed supplier(s) to be approached:

- Meets the 50% Indigenous ownership requirement; and
- Is an SME¹.

A record of the delegate's decision to use the exemption should be made.

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

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

The exemptions at Appendix A cannot be used for the procurement of goods or services for which a mandatory whole of government arrangement is in place. A list of these can be found [here](#).

Can I apply the exemption to procurements under the relevant threshold?

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

What's required when approaching an Indigenous business?

It's the same process as any limited tender, you will need to issue a request for quote including key information to allow the business(es) to provide a competitive submission.

Is the exemption part of the Indigenous Opportunities Policy?

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

The Indigenous Opportunities Policy (IOP) is a separate policy and requires tenderers and contractors for certain projects to complete a plan outlining how they will engage Indigenous staff and/or suppliers.

When do I need to apply the Indigenous Opportunities Policy?

The IOP only applies to procurements valued over \$5 million (\$6 million for construction) and where the predominant procurement activity is in a region(s) of significant Indigenous population.

More information on the Indigenous Opportunities Policy can be found [here](#).

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

There are a number of Indigenous business directories, business links and organisations. These are detailed on the Indigenous Opportunities Policy's web pages and can be found [here](#). Note that these directories may apply different definitions of what constitutes an Indigenous business, including level of Indigenous ownership.

Supply Nation is a business-to-business membership body dedicated to growing diversity within the supply chain. Further information on Supply Nation can be found [here](#).

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

Yes. For low risk procurements, officials may rely on claims made by the business. For higher risk procurements, officials may seek declarations from the business regarding their ownership status, use a business which has been certified by Supply Nation (51% Indigenous ownership is currently required to obtain this certification), or certified by an Indigenous chamber of commerce, or seek independent verification.

How do I demonstrate 'value for money' when using the exemption in the absence of competition?

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

For low risk procurements you could also:

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

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

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

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

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

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

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

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

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

When applying the exemption, what procurement method do I report on AusTender?

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

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

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

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

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

Who can I contact for help with applying the exemption?

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