

Roles and Responsibilities, Construction Documents & Construction Contracts

Book 3



Procurement in Indigenous Communities



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About these books

The Procurement Books are a series of books to offer guidance to Indigenous communities who want to get better value for their money when they purchase goods and services. The books outline the general procurement principles, procedures and practices for those Indigenous communities interested to establish a procurement process. The books are designed to address many of the procurement challenges associated with Indigenous communities.

The goal of these books are to help Indigenous communities to purchase goods and services including the construction of homes are acquired by the Communities though a process that

is fair, open, transparent (gifting) , non-discriminatory, geographically neutral and accessible to qualified suppliers, subject only to established procurement policies.

The Procurement Books include:

1. Introduction to Procurement in Indigenous Communities
2. Construction & Procurement in Indigenous Communities
3. Roles and Responsibilities, Construction Documents & Construction Contracts
4. Pre- Contract Phase – Preparing the Bid
5. Contracting Phase
6. Contract Administration Phase
7. Post-Contract Phase
8. Guides & Resources
9. Terms & Conditions/Definitions

Acknowledgements

FNNBOA wants to thank Indigenous Services Canada (ISC) for the funding of this project. The association wants to thank those individuals who provide comments to the development of the books.

Disclaimer

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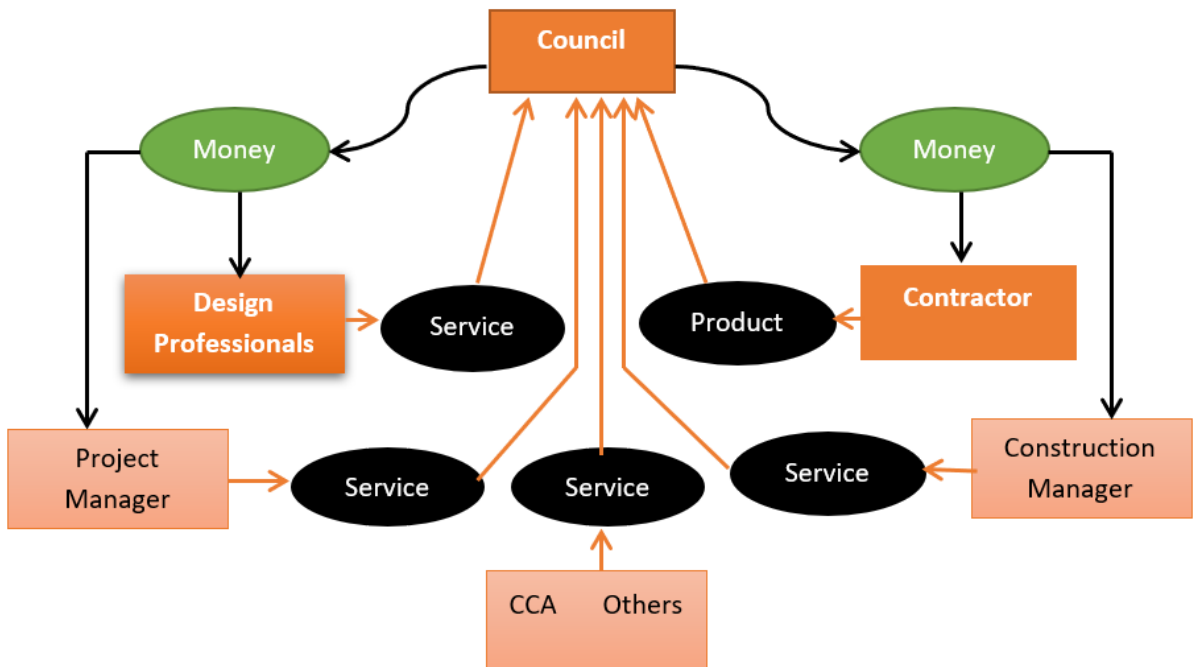
1. Construction and Procurement: Basic Understanding

This booklet focuses on construction team participants and construction documents. Construction contracts can vary in type and the extent of detail. Typically, construction contracts establish the procedures and responsibilities for implementing the contract.

2. Construction project team participants

The primary participants in a construction project include:

- Council/Owner
- Design Professionals/Consultants
- Project Manager (PM) and Construction Manager (CM)
- Contractor(s)
- Construction Contract Administrator (CCA)
- Building Inspector
- Other advisors and consultants including financiers, insurers and legal counsel



The definition and role of each participant can vary, depending on the construction project and delivery method.

In First Nations communities, the same person or group may occupy more than one role, or roles may be left unfilled. Each participant has a significant role in making clear and effective decisions during construction project phases. The decision about who participates, or not, potentially can have an impact on the risk level of a project. It is important to keep the public interest foremost when defining project roles.

2.1 The Chief and Council

In the construction of new homes and renovations, the chief and council can take on many roles. The chief and council can initiate the project, fund the project and become the overall project manager. The chief and council are also the maintain ownership of the homes and buildings (i.e., band owned homes). Most importantly, chief and council are also the authority having jurisdiction.

2.2 The Chief and Council is the “owner”

The term “owner” defines the person or persons that will establish the contract with the contractor or manufacturer who will build the project.

When chief and council exist as the owner, they are the ones identified in the construction agreement. The chief and council is generally the party to the construction contract who will own and pay for the improvement provided by the contract. The term “chief and council” can also mean the owner’s authorized agent or representative as designated to the contractor in writing. However, this does not include the consultant. An agent is a person who is authorized to enter into a contract on behalf of another party. Generally, this responsibility is given to the Council’s engineer or housing manager.

The chief and council may also be a design-builder. In this case, the chief and council is acting as the contractor of the project. The chief and council could also be the inspector. However, it is important to consider if assuming all these roles creates a real or potential conflict of interest, since in this type of situation the chief and council assumes the entire risk for the project.

2.3 Chief and Council responsibilities

The chief and council are required to provide project information to the contractor including:

- Legal information
- Financial arrangements
- Site survey
- Soil/geotechnical report
- Presence of any hazardous materials or conditions
- Copies of contract documents

The chief and council usually initiate a project and make the financial decisions regarding a project. Other chief and council responsibilities include:

- Describing project objectives
- Choosing key project participants
- Monitoring project progress
- Making timely decisions regarding the project

2.4 Chief and Council as AHJ

Chief and council can implement building permits according to specific sections of the *Indian Act*. The chief and council is the authority having jurisdiction (AHJ) and therefore is responsible for building to code.

AHJ refers to a governing body responsible for the enforcement of any part of the building code or the official or agency designated by that body to exercise such a function.

When building homes, the AHJ is typically the municipality, and the AHJ has passed bylaws that govern how drawings for buildings must be reviewed and accepted by both building department and fire departments plan reviewers, following application of a building permit. (For more information, see Booklet 2)

The word “building permit” is a term used off reserve and is not generally accepted in FN communities.

NOTE: Review the FNNBOA for a document on the implementation of building permits or building permission systems. First Nations Housing and Building Crisis:

Management of the Change Process – Web link: <https://www.fnnboa.ca/s/FNNBOA-First-Nation-Housing-and-Building-Crisis-Management-of-the-Change-March-2013.pdf>



2.5 The architect, designer or engineer

To reduce risk, the chief and council (or sometimes the contractor on design-build projects) hires qualified professionals such as architects, designers or engineers, who have expertise in design, construction, the construction process and contractual obligations. These professionals are registered or licensed by a province or territory to assure the public that they have the necessary qualifications and experience.

They are often the principal designer for preparing contract documents, particularly on large projects. The chief and council’s lawyer should review and confirm that the documents are appropriate for the project objectives. If chief and council do not have a lawyer, the chief and council may want to consider having any legal documents reviewed.

Design professionals should never act unilaterally without approval by the chief and council. They should restrict their advice to technical matters within their training and expertise.

There are few projects where a design professional functions alone as a prime consultant. To provide the services and expertise required, design consultants who are specialists in certain disciplines are often engaged as sub-consultants.

The National Building Code of Canada (NBC) provides prescriptive solutions for building certain types of buildings. In some provinces/territories, this allows the construction of housing and small buildings without requiring a design professional.

2.6 Project management team

In certain First Nations communities the Project Management Team (PMT) is the group that will assume all Project Management (PM), Construction Management (CM) and Housing Manager (HM) tasks. They provide guidance and counselling in construction projects for chief and councillors who might not have the experience.

2.7 Project manager & construction manager

A Project Manager (PM) is the person or firm responsible for the planning, coordination and controlling of a project from inception (including design and the preparation of the bidding documents) to completion (including commissioning and occupancy).

A Construction Manager (CM) is the individual or entity contracted to assume responsibilities for the general management of a project at a construction site, and may assist in the pre-construction phase of a project. The role of CM varies depending on the project delivery method assigned to the construction project.

In First Nations communities, the Housing Manager is often the person that performs both the PM and CM tasks. This means that they need to oversee the administrative and the implementation part of every aspect of the project during the construction.

2.8 General contractor

- The contractor is the person or company that will construct the building. The term “Contractor” means the contractor or contractor’s authorized representative as designated by the chief and council in writing. The contractor plays an important role as the project builder.
- The contractor agrees to build the project, under contract with chief and council, using their own labour force and subcontracting other specialty portions. The conditions established in the contract sets the guidelines that apply. Ultimately, a contractor assumes full and legal responsibility for successful completion of the construction process after design. The chief and council may require under the

contract that qualified members from the community be employed on these projects.

2.9 Building officer/inspector

Building inspectors review the plans for residential, commercial and industrial buildings to ensure the building design complies with national and/or provincial Building Code requirements. They also conduct on-site inspections to ensure that the building construction complies with the Building Code. Inspection work takes place prior to and during new construction or renovation.

Chief and councils or councils generally employ building inspectors. Construction companies, architectural firms and civil engineering consulting firms may also employ them.

Building officers in First Nations communities provide residential, commercial and institutional construction and renovation technical services, but their tasks often extend beyond the on-site inspection of buildings. Their services also include plans review, inspections, recommending repairs, technical advocacy and advisory services assisting on reserve construction.

3. Construction documents

Construction documents for a project typically include the project drawings and a project manual that includes specifications.

The documents are drafted at the preliminary design phase and the details and level of information become more defined with each stage of the project. The documents must be completed before the bidding phase of the project. However, the documents may change as the project progresses. Changes can be based on preliminary cost estimates, on unexpected developments in the project, or on changes in the original program requirements.

3.1 Project manual

Drawings convey measurements and geometric relationships for construction projects. A project manual is a collection of written documents that accompanies the drawings. Together they provide all the details and conditions required to complete the construction of a project.

In typical Design-Bid-Build projects, the project manual is assembled by a consultant and sub-consultants and organized into the following categories of information (in three functional groups of project requirements):

Procurement and Bidding Requirements	Contract Requirements	Technical Requirements
Bid information Bid Requirements Bid Securities, if required and	Agreement form General Conditions of the Contract Supplementary Conditions (if any) Bond (contract assurance)	All specification sections of Division 01 - General Requirements

Bid Forms		All Technical specifications (Divisions 02 - 49).
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As the project evolves, both the drawings and the project manual may be reissued at different stages and for different purposes.

3.2 Specifications

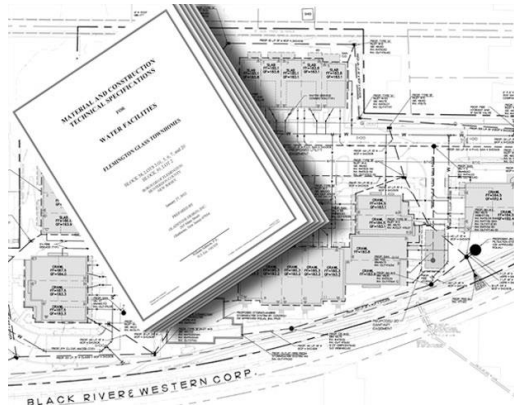
Specifications describe the kind of work or materials (products) and execution (installation methodology) you will need in order to achieve the project objectives.

Specifications *“form part of the contract documents that accompany and govern the construction of building and infrastructure projects. Specifications describe the quality and performance of building materials, using code citations and published standards, whereas the drawings or Building Information Model (BIM) illustrates quantity and location of materials”* (Wikipedia).

At the beginning of the project, specifications generally will be more outline style and not be very detailed. But as more decisions are decided upon, more specifically like what kind of roofing material you will need, what kind of wall enclosure (siding, insulation), or type of foundation system, etc., the specifications become more detailed in the project manual. There are many references similar to the National Master Specification system that can be utilized to help the chief and council to develop their own housing specifications. These include:

1. The Northern Construction Guide (Available in draft form from FNNBOA).
2. Construction Specifications Canada Section Format:
Web link: http://hosting.uaa.alaska.edu/afbeb/AET102/AET102_section_format.pdf
3. National Master Specifications (NMS): Web link: <https://www.tpsgc-pwgsc.gc.ca/biens-property/sngp-npms/bi-rp/tech/ddn-nms-eng.html>
4. National Master Specifications Users Guide: Web link: <https://slidex.tips/download/national-master-specification-user-s-guide>
5. OAA(Ontario Association of Architects) – Construction Documents – Specifications: web link: http://www.oaa.on.ca/images/docs/1304355977_2.3.8.pdf
6. Sample specification (Paintinfo) – Exterior painting guide specification: Web link: <http://paintinfo.com/mpi/guide/index.shtml>

Go to full spec painting, Exterior Painting Guide 09 11 13



3.3 Cost estimates

Combining the drawings and specifications will help in defining the cost estimate. This is important in order to validate project decisions with the chief and council's budget. Design professionals will often be able to provide a preliminary ballpark estimate based on similar types of projects.

Early in the process, the estimate will not likely be very precise. Therefore, a safety margin (or contingency or variance) is generally included. Depending on the project's complexity and associated risks, the margin (or contingency or variance) is usually between 20 and 30%. Note that as project needs become more detailed, the margin will decrease.

3.4 Bidding

This is the point where contractors get involved. At this point the construction documents and information about the tender for the work should be complete and ready for release. This is also the stage where the contractor prepares a more detailed estimate of costs and consideration of what work will be subcontracted to others are part of the construction build team.

3.5 Construction contracts

A contract is a voluntary agreement between two or more parties. The purpose of the contract is to set out the rights, responsibilities, and liabilities of the parties. On large and more complex construction projects, chief and councilors typically look to architects and/or engineers to lead in preparing contract documents.

The construction contract is the document that will be signed between chief and council and contractor and/or between chief and council and consultant. It is a legal document that will state exactly what is expected of all parties. Thus, it is extremely important that the contract be written with care and attention to detail. This will protect everyone in the project and will help to resolve conflict if it may arise.

A good contract anticipates and identifies possible risks and finds suitable solutions to any problems before they arise. The contract language must be very clear and must state the responsibilities and rights of each party.

The Canadian Construction Document Committee (CCDC) provides typical contracts for the construction industry. They are easy to use and complete. More information may be located at the following web link: <https://www.ccdc.org>

Since numerous construction projects have used CCDC contracts, they are time tested and good at preventing most problems that may occur during a project. They can also be amended to suit different situations and preferences.

For example, the often most used CCDC contract document – CCDC 2 (Stipulated Price Contract) general conditions describe:

- Chief and council (duties and responsibilities)
- Contractor (duties and responsibilities)
- Chief and council and contractor (joint duties and responsibilities)
- Consultant (duties and responsibilities)
- Sub-contractor (status to this contract)
- Others (meaning other contractors who are providing work to this project but are not included in this contract)
- Payment (application procedures)
- Changes (to the contract and to the work)
- Indemnification (of the two parties to the contract)
- Dispute settlement (between the two parties)
- Time (designated for completing the work)
- Termination (procedures for this contract)

The CCDC document includes 12 areas:

- The first six areas address the people and their duties and their representatives
- The last six areas address contract conditions, their rights and obligations to be executed under the terms of the contract

Other CCDC documents that may be used include:

- Cost Plus Contract
- Unit Price Contract
- Design-Build Stipulated Price Contract

The decision to select which contract form to use for a project depends upon the bidding process chosen by the specifier in consultation with the prime consultant, chief and council.

Contracts do not need to be in writing to be binding. However, it's best to have a contract in writing in order to avoid any possible disagreement. The problem with verbal contracts is that the parties often have different interpretations of what was agreed upon.

The chief and council may choose to write their own contracts. It is critically important to remember that a construction contract between a chief and council and a contractor **MUST** establish the ground rules for constructing a project. It is highly recommended to **NOT** use contracts provided by the contractors. It is important that chief and councilors protect their interests on construction projects.

3.6 Cost Plus vs Stipulated Sum vs Unit Price

Cost plus contracts can be much more demanding than **stipulated sum contracts**. This is because the cost of work is loosely calculated from the beginning. As the work proceeds, materials and methods of executing the work can be manipulated versus sticking to the fixed price quoted by a stipulated price contract.

The most common contract compensation method is stipulated sum. This is where the chief and council agree to pay the contractor a fixed price for the work outlined in the contract documents. In this contract arrangement the chief and council knows the price established through a competitive bidding process, and a competitive bid award agreement.

Sometimes construction costs may be based on unit prices. While entire projects are seldom based on this pricing method, portions of a project can be. For example, it may not be possible to accurately establish quantities at the time of bid for a project that involves unknown conditions for excavation, site work, buried debris, or perhaps that the water table is higher than reported in the geotechnical report. As much as possible, these unknown conditions should be clearly communicated and specified in the tender/bid documents.

3.7 Structure of standard contract forms

Construction industry contract forms use the same format:

- The agreement
- Definitions
- General conditions
- Supplementary conditions

The agreement should reflect the bid form. It may also include supplemental pricing changes and any further negotiations that may have been affected after the bids were received.

Definitions identify the words or terms that have a specific meaning in the agreement, including general conditions, supplementary conditions and technical terms.

General conditions contain statements associated with the parties to the contract and their duties and responsibilities.

Supplementary conditions are used to supplement or modify any specific chief and council or project requirements in the general conditions of the construction contract as required.

The chief and council have the right to perform construction on the project with chief and council's own workers, and to award separate contracts for certain work. However, exercising this right must be clearly specified during the bidding stage. Choosing this approach will require coordination of the work with the successful contractor to avoid problems and delays.

4. Project documents

The documents used in a construction project can vary from project to project and depend on the size and complexity of the project.

Documentation lays the foundation for quality, traceability and reliability for ensuring proper project management. Documents provide substantiation to safeguard that project requirements are fulfilled and establish traceability in managing a project.

Common documents for a construction project include:

1. Written agreements - signed by the parties
2. Statement of work – scope of work
3. Standard form general conditions
4. Special or supplementary conditions peculiar to the project
5. Bid quantities - depends on contract type
6. The technical specifications
7. The working (construction) drawings
8. Construction schedule – proposed or anticipated
9. Insurance or bonds – if required

The goal of these documents is to establish a way to solve claims and issues and to provide a legally recognized reference that can be used to settle claims and solve potential conflicts.

5. Need more information?

Construction contracts: https://www.ccdc.org/document_types/contract-forms/

Contracts (CHBA): <https://www.chba.ca/CHBA/Renovating/Contracts.aspx>

Construction bonds: <http://www.jml.ca/wp-content/uploads/publications/ConstructionBondsWhatEveryContractor.pdf>

Estimates: <https://carleton.ca/fmp/our-services/construction/estimates/>

Sample drawings and outline specifications: (TACBOC):
https://www.london.ca/business/Permit-Licences/Building-Permits/Documents/tacboc_details_2012_r001.3.pdf

Guide to Construction Predictability: <https://www.cca-acc.com/wp-content/uploads/2016/07/GuideCostPredictability.pdf>

