

# Introduction to procurement in indigenous communities

Book 1



**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**

*The views in these books are those of the authors and do not necessarily reflect the views and policies of ISC or the Board of FNNBOA. FNNBOA does not guarantee the accuracy of the information in these books and accepts no responsibility for any consequence of their use. The reference of specific websites does not imply that they are endorsing the information in the books. The information contained in these books are provided for general information purposes only and do not constitute legal or professional advice on any subject matter. FNNBOA does not accept any liability for actions arising from its use and cannot be held responsible for the contents of any pages referenced by an external link. Given the nature of procurement, it is recommended that Indigenous communities seek advice from legal counsel or a professional procurement expert regarding their procurement policies.*

# 1. Introduction

First Nations are responsible for building and maintaining their schools, offices, arenas, houses, roads and other capital assets. Like other governments and institutions, First Nations need to procure goods and services to carry out their responsibilities.

It is estimated that the total volume of procurement in First Nations for purchasing goods, services and work accounts for some 22 to 30 percent of general expenditures. Therefore, all First Nations must ensure that planning, managing and fully documenting the process to acquire goods and services and construction is conducted in a careful and unbiased manner.

Goods and services are generally acquired through a public procurement process. In a public procurement process, a government or First Nations entity contracts with a private sector company to furnish a good or to provide a service for a fee, subject to the legal terms and conditions contained in a contract.

The goal of public procurement is to satisfy the public interest, or to give the community value for the money spent. A good procurement process is one that obtains goods, works or services:

- in the correct quantity,
- of the appropriate quality,
- at the required time,
- from the best supplier,
- with the optimum terms, and
- under appropriate contractual obligations.

Good procurement should:

- meet community needs;
- secure value for money for the community, and
- be fair to bidders.

These objectives cannot be met unless contracts are awarded on a **truly competitive basis** under a system that has **clear guidelines** incorporating **transparency, efficiency, economy, accountability** and **fairness**.

Public procurement involves several stages between the decisions to buy and the actual purchase, including:

- the initial needs assessment
- confirming budget allocations
- market research
- preparing the tender
- evaluating applications
- awarding contracts
- contract implementation and administration (including change orders)
- auditing and evaluation

Major procurements such as water projects or large-scale construction works can involve numerous contract awards, forming a broader project cycle.

The main purpose of a procurement policy is to award a contract to the private sector. The interaction between the First Nations and the private sector may lead to unethical or illegal activities that include:

- bribery
- receiving gifts
- favouritism, special treatment and preference given to friends or colleagues

Consider the fact that accepting hospitality or other benefits that have a real, perceived or even potential influence on a person's objectivity and neutrality in performing your duties.

## **2. Legal and policy framework**

*Chief and Council are elected members of the community. Chief and Council need to be aware of their legal obligations to ensure that homes are built in accordance with NBC and other standards. There is also a need to include audits, verifications, and performance measures to ensure the construction process is legitimate and without conflicts of interest.*

Source: [First Nations Housing and Building Crisis – Web link](#):

The following legal and policy frameworks govern procurement in First Nations:

### **2.1 Criminal Code of Canada**

Paragraph 121(1)(c) of the Criminal Code makes it an offence for a public officer to receive a benefit of any kind for cooperation, assistance, exercise of influence, or an act of omission in connection with any matter of business relating to the government.

<https://laws-lois.justice.gc.ca/eng/acts/C-46/page-29.html#h-52>

### **2.2 Construction Contracting Guidelines for First Nations and Aboriginal Communities**

This publication is intended to assist Band Councils by outlining accepted practices and principles applicable to the procurement of construction services by contract. The process from identification of the need to completion of the warranty period is given in detail.

<https://www.sac-isc.gc.ca/eng/1493132907312/1533649929381>

### **2.3 Protocol for ISC (INAC)-funded infrastructure**

The purpose of the Protocol for INAC-Funded Infrastructure (PIFI) is to provide an up-to-date listing of applicable statutes and regulations that must be complied with (Section 1.5) as well as a listing of additional policies, codes, directives, standards, protocols, specifications, guidelines, and procedures to which a Council of a First Nation is required by INAC to adhere to as a condition of funding under the Capital Facilities and Maintenance Program (CFMP).

[https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-IH/STAGING/texte-text/protocol\\_2016\\_1476993446793\\_eng.pdf](https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-IH/STAGING/texte-text/protocol_2016_1476993446793_eng.pdf)

The legal and regulatory framework applicable to public procurement provides a basis for the First Nations to deliver on the main objectives of sound public finance management, namely transparent and efficient delivery of services. This framework is incorporated within the First Nations procurement policies and procedures.

An excellent example of these policies and procedures can be found on the First Nations Financial Management Board's website at <https://fnfmb.com/en/tools-and-templates/finance/procurement>.

These policies and procedures are also incorporated under the chief and council's requirement for the authority having jurisdiction. **See Booklet 3: Construction Contracts and Roles and Responsibilities for more information on the role of chief and council and Authority Having Jurisdiction (AHJ).**

### **3. Key principles for procurement**

Procurement policies are governed by guiding principles. These principles aim to ensure the integrity of a First Nations procurement process through fair and open competition, while minimizing the risk of conflict of interest and exposure to fraud and collusion.

Each First Nations can identify key principles for procurement, but they generally include:

**Accountability** – The concept of accountability, as it applies to the First Nations council and financing institution and borrowers, combines the requirements of transparency and responsibility, and holds those involved in the procurement process accountable for their actions (or inactions).

**Transparency** – The principle of transparency requires that the organization (First Nation council) enable appropriate review of the procurement activities, supported by appropriate documentation and disclosure. Transparency requires:

- that relevant procurement information be made publicly available to all interested parties, consistently and in a timely manner, through readily accessible and widely available sources at reasonable or no cost;
- appropriate reporting of procurement activities; and
- the use of confidentiality provisions in contracts only where justified.

**Value for Money** – The principle of value for money means:

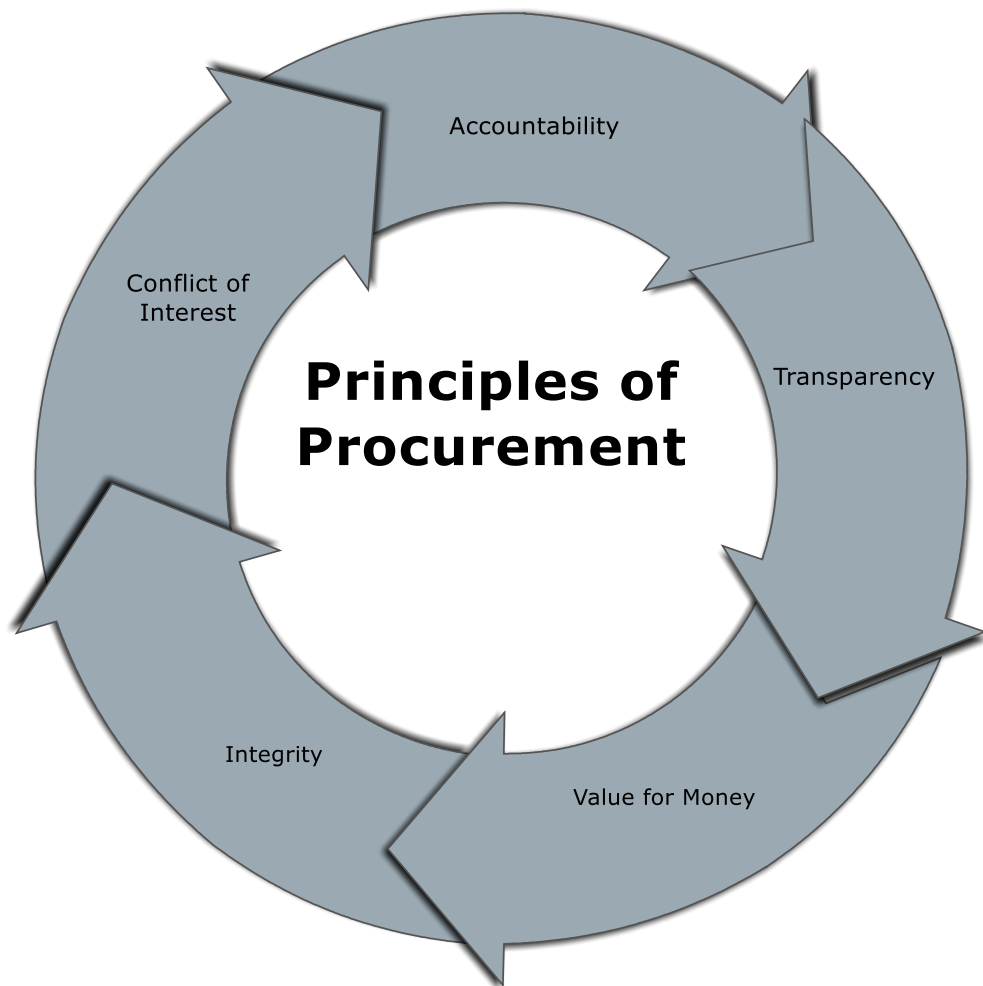
- the effective, efficient, and economic use of resources, which requires an evaluation of relevant costs and benefits,
- an assessment of risks,
- and non-price attributes and/or life cycle costs, as appropriate.

***Price alone may not necessarily represent value for money.***

**Integrity** – The principle of integrity refers to the use of funds, resources, assets, and authority according to the intended purposes and in a manner that is well informed, aligned with the public interest, and aligned with broader principles of good governance.

This principle requires that all parties involved in the procurement process, including without limitation: borrowers and sub-borrowers (and other beneficiaries); bidders, consultants, contractors, and suppliers; any subcontractors, sub-consultants, service providers or suppliers; any agents (whether declared or not); and any of their personnel, observe the highest standard of ethics during the procurement process and refrain from fraud and corruption.

**Conflict of Interest** – The principle of conflict of interests requires that all parties involved in the procurement process not have a conflict of interest, unless such a conflict has been resolved in a manner acceptable to the community and funding agency.





These principles of procurement should be incorporated into your First Nations management policies. The individual responsible for public procurement should also be bound by an ethical code of conduct and is accountable for what you do or fail to do when managing these projects.

*If your First Nation's chief and council and staff follows good governance and finance practices, they are more likely to be able to deliver the high-quality services members want and deserve. This leads to a happier and healthier community.*

Source: <https://fnfmb.com/en/benefits/benefits-council>

## 4. Procurement and a code of conduct

A Code of Conduct for procurement unites the legal and policy frameworks into a concise and transparent statement of the expectations that the chief and council has of its employees and its suppliers. The Code of Conducts ensures that the staff and/or employees of the council and suppliers are working from the same statement of expectations and commitment that clearly outlines what is acceptable conduct when contracting with the First Nations. The Government of Canada's ***Standard Acquisition Clauses and Conditions Manual*** provides one of the best examples of a Code of Conduct for Procurement. See: <https://www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/contexte-context-eng.html>

A Code of Conduct for procurement may include the following principles:

- **Serving the community's interest.** First Nations employees (or agents of the council) are expected to maintain and strengthen the community's trust and confidence in their organization by demonstrating the highest standards of professional competence, efficiency and effectiveness, upholding their by-laws, laws and policies, and seeking to advance the public good at all times.
- **Transparency and accountability.** First Nations employees are expected to use powers and resources for the community good, in accordance with the law and council's policy. They should be prepared to be accountable for the decisions they make and to justify their official decisions and actions to a relevant authority, or publicly, as appropriate in the circumstances.
- **Integrity.** First Nations employees are expected to make decisions and act without consideration of their private interests. Officials working on behalf of their community must have the community's trust. The improper use of their position for private advantage is regarded as a serious breach of professional integrity.
- **Legitimacy.** First Nations employees are required to administer the laws and government policy, and to exercise legitimate administrative

authority under delegation. That power and authority should be exercised impartially and without fear or favour for its proper public purpose as determined by the council, as appropriate in the circumstances.

- **Fairness.** First Nations employees should make authorized decisions and act in a fair and equitable manner, without being affected by bias or personal prejudice, taking into account only the merits of the matter, and respecting the rights of community members.
- **Responsiveness.** First Nations employees are required to serve the legitimate interests and needs of the Council and the community members in a timely manner, with appropriate care, respect and courtesy.
- **Efficiency and effectiveness.** First Nations employees are required to obtain best value in expenditure of Council's funds, and efficient use of assets deployed in or through public management, and to avoid waste and extravagance in the use of resources in public programmes and official activities<sup>1</sup>.

## 5. Procurement process overview

What exactly is "procurement"? (aka: Acquisition, purchasing)

Procurement is the process that involves purchasing or acquiring products, services or the result of a project. Procurement is conducted in the process obtaining responses to an invitation to bid, making selections and by awarding a contract.

Procurement contracts typically include terms and conditions and can incorporate other items that buyer establishes as to what the seller is to perform or provide. In the example of a construction contract the documents would typically include general conditions for bids, construction drawing, specification and reference to terms and conditions such an agreement or contract that will satisfy the identified requirements for the project.

On large and more complex projects there may be needs to consider additional support, and if so what to acquire. This can include outside expertise such as architects, engineers, lawyers, project manager, etc.

Another area that requires careful consideration is the area of project risk. Risk can be mitigated based on a number of different factors including:

- Capability
- Budget constraints
- Type of contract

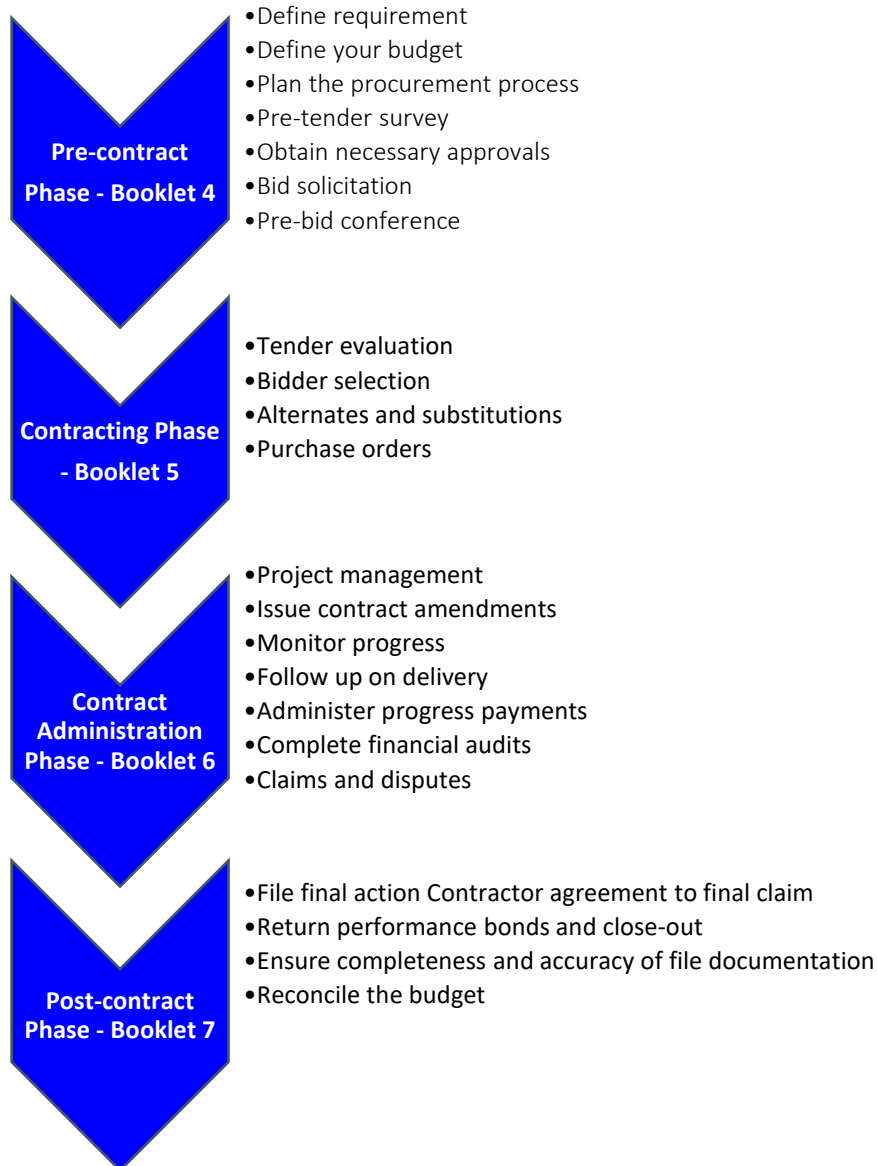
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<sup>1</sup> OECD, 2009: Tool: Code of Conduct for Procurement Practitioners. See: <https://www.oecd.org/governance/procurement/toolbox/search/code-of-conduct-procurement-practitioners.pdf>

- Managing multiple suppliers
- Coordination of work
- Scheduling
- Establishing pre-qualified to perform the work
- Requirements for performance bonds

A statement of work should be developed based on the project work scope that is required within the related contract.

The complexity and level of detail for procurement should be consistent with the value and risk associated with the planned project procurement. Further criteria are listed below and explained in more detail in the procurement books.



# Construction & Procurement in Indigenous Communities

BOOK 2



**Procurement in Indigenous Communities**



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# 1. Construction and Procurement: Basic Understanding

Typical construction projects involve three key participants, the council/owner, designer and general contractor. Each play an important function – the council approves and pays for the project, the designer is responsible for professional and technical accuracy of the project drawing and specifications and the contractor is responsible for the construction means, methods and techniques to “build” the project.

Primarily construction projects in First Nations are the responsibilities of chief and council. First Nations have fairly broad discretion to regulate the design of structures. First Nations operating under the **Indian Act** have the authority to regulate the construction, repair and use of buildings, whether owned by the council or by individual members of the community establish their own building code under section 81(1) (h).

***Although national and provincial building codes may be similar, it is important for developers and those working on First Nations construction projects to know the exact building code that applies in order to ensure compliance with the correct building code.***

Generally, under this section, the council would generally identify whether the community will follow the National Building Code or provincial building code where they are applicable. In most cases, First Nations pass bylaws to ensure the construction of buildings conform to the National Building Code. First Nations can also pass bylaws that refer to their respective provincial building code.

It is also assumed that the building is meeting any environmental assessment regulations and is being built according to the community’s comprehensive plans.

## 1.1 Responsibilities and Authority Having Jurisdiction

It is important to understand the term “authority having jurisdiction” (AHJ).

In land development, the AHJ is shared among all levels of government. The local government has control over local planning issues, the province protects their interest through provincial regulations, and federal government regulates housing standards through the National Building Code.

During the planning of a building, zoning and planning boards of the AHJ will review the overall proposal for compliance with the development standards outlined in the municipal comprehensive plan and zoning regulations.

As part of the building process, the AHJ can require conditions of any permits that are issued. For example, the AHJ can require that all drawings, specifications and plot plans be prepared and signed by the architect, and that construction be carried out under the supervision of an architect or professional engineer.

***Before a council can introduce a building permit system it is important that they pass appropriate bylaws.***

Once the proposed building has been approved for compliance with local requirements, detailed civil, architectural, and structural plans must be submitted to the municipal building department. They will circulate the proposal to departments and agencies of interest to determine compliance with the building code and the availability of infrastructure. Similarly, the municipal fire department should review the plans for compliance with fire-safety ordinances and regulations.

If there are no issues, two separate permits are issued: a development permit indicating compliance with all local requirements, and a building permit indicating compliance with the National Building Code.

During the construction stages, the building inspection officer will conduct several inspections. At the end of the construction process, the AHJ will issue a final occupancy permit to allow individuals to move into the building.

Finally, while reference to AHJ is the municipalities (building department or fire department) with respect to the building official enforcing the building codes, the term AHJ encompasses more than just building code compliance.

## **2. First Nations Communities, Chief and Councillors, and AHJ**

In First Nation communities, the chief and councillors are the AHJ with respect to building homes in their communities. Equally as important, the chief and council carry out as the AHJ by passing essential bylaws.

The bylaws are passed by a chief and council to help control certain activities within the community, including implementation of building permit processes, complete with the authority to apply and enforce building codes, standards and construction practices. These plans must also be reviewed by the building inspector, health department, department responsible for infrastructure and the fire safety services/department.

The federal government maintains that First Nations are the AHJ for housing, meaning that they are the level of government with the authority to enact bylaws in relation to building codes on reserves.

However, in many communities, chief and councillors have not properly exercised their AHJ. They have not passed any bylaws under section 81 (1) (h) to ensure homes are constructed according to a building code.

There may not be any inspection requirements, except for the minimum inspections indicated in federally funded projects. Without bylaws, there is no process to approve the site where the home is to be built or the plans. Without bylaws, homes may not be inspected to make sure they are constructed according to a building code.



Without bylaws, inspections are not based on code compliance, but rather on a housing policy. Without bylaws, the inspectors may not be qualified or have the power to stop the construction if the home is not being built to code or to force the contractor to fix the problem.

Without bylaws, the home may be unsafely occupied without a final inspection, or the issuance of an occupancy permit, or a letter to state it is safe to move in. Without bylaws, the chief and council will ultimately be responsible to pay for repairs to homes. The chief and council may also be legally responsible to fix private homes that are not built in accordance with their bylaws. Finally, if the chief and councils have not adopted the national or provincial building codes by passing a bylaw, the codes have no legal status but may held legally responsible.

### 3. Building framework

The key elements that should be in place prior to tendering any projects are:

- Bylaws (zoning, buildings, land survey)
- Building permits
- Inspection requirements

### 4. Bylaws

A band bylaw is a local law that is passed by a chief and council to help control certain activities within the community, including the implementation of building permit processes, and the authority to apply and enforce building codes, standards, and construction practices.

Chief and councillors have legal authority to make their own local laws through sections 81, 83, and 85.1 of the *Indian Act*. These bylaws are passed by councils. All councils, whether they have been elected pursuant to the provisions of the *Indian Act*, or chosen under band custom, may enact bylaws in accordance with these sections. Band bylaws have absolutely no effect outside reserve boundaries. A bylaw is strictly a local law.

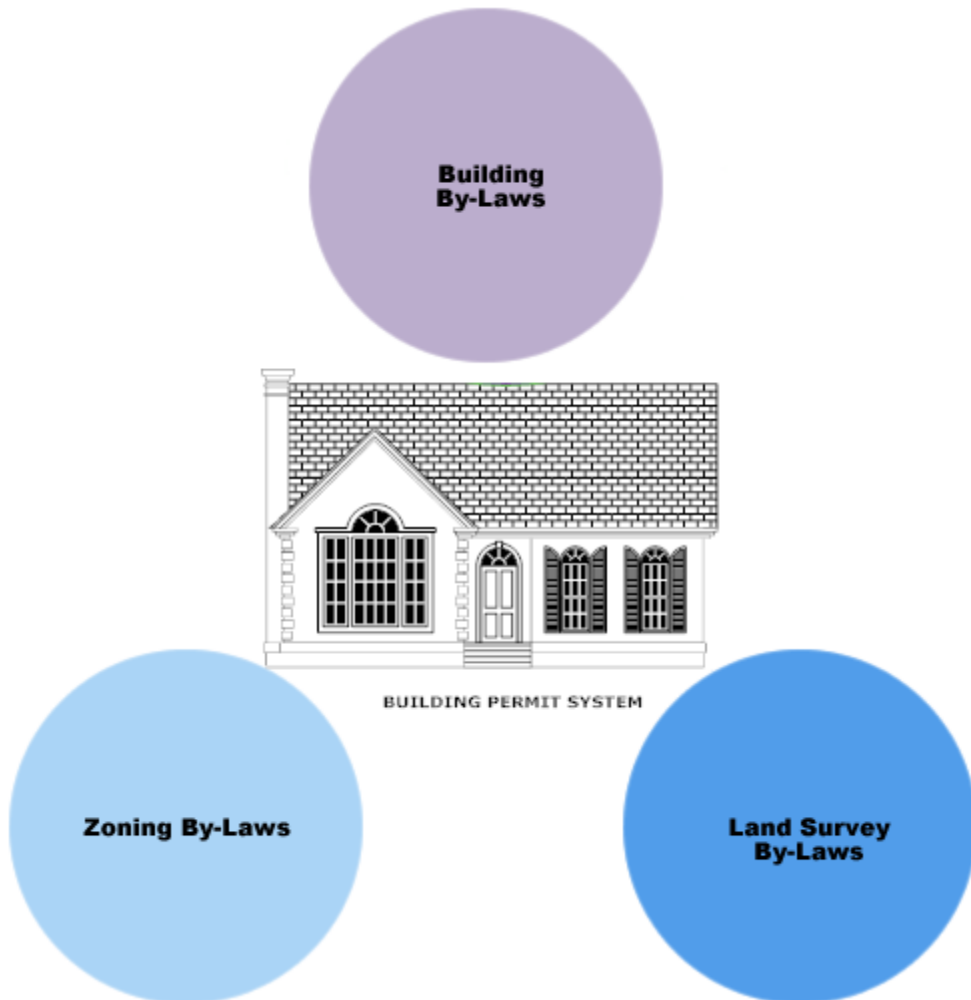
Sample of bylaws can be found at:

<http://www.ramafirstnation.ca/bylaws/Bylaw%20No.%2006-01%20Land%20Use%20and%20Development,%20Replaces%20bylaw%20Nos.%2079-10,%2095-21%20and%2095-22.pdf>

To implement a permit system to build or renovate homes, three basic categories of bylaws are essential to a building permit system in developing land in First Nations communities. Section 81 of the *Indian Act* mandates the council to make bylaws for the following activities:

- **Zoning** - Section 81(g) the dividing of the reserve or a portion thereof into zones and the prohibition of the construction or maintenance of any class of buildings or the carrying on of any class of business, trade or calling in any zone.

- **Buildings** - Section 81(h) the regulation of the construction, repair and use of buildings, whether owned by the council or by individual members.
- **Land Survey** - Section 81(i) the survey and allotment of reserve lands among the members of the council and the establishment of a register of Certificates of Possession and Certificates of Occupation relating to allotments and the setting apart of reserve lands for common use, if authority therefore has been granted under section 60.



Without these three types of bylaws, it may be a challenge for a community to introduce a building permit system.

#### **4.1 Zoning bylaws**

Under zoning, the council can control the following areas:

- Land use
- Location and boundaries of commercial, residential, industrial, institutional and conservation zones
- Cottage sites
- Protection of forests and other natural resources

- Campsites, including setting fees
- Requirement of building permits for building in specific zones
- Community plan

Zoning bylaws are important as they control the use of land and establish standards according to which the land can be developed. All lands within a First Nations community can be placed into a specific zone that is presented in a zoning map.

Zoning is particularly important before homes are constructed. The council must first divide the communities into zones before the construction of any buildings or the carrying on of any type of activity or business. The zoning bylaw is important as councils can require building permits.

## **4.2 Building bylaws**

Under building bylaws, the council can control the following areas:

- Property maintenance standards and the obligation to keep houses in good repair
- Occupancy standards
- Pest prevention (e.g., cockroaches, ants, termites)
- Fire safety and protection including fire-resistance ratings - must comply with the National Building Code and the National Fire Code
- Thermal insulation - must comply with the National Building Code and National Energy Code
- Building standards - must comply with the National Building Code and National Fire Code
- Building standards for cottages
- Requirements for smoke and CO (carbon monoxide) detectors

Bylaws can state that homes be built to the National Building Code or in accordance with provincial building codes. They can require stricter standards or construction practices if necessary. A building bylaw must be established in conjunction with an existing zoning bylaw so that the permit can state where the home can be built (e.g., specific location, lot, etc.)

## **4.3 Land survey bylaws**

Under land survey bylaws, the council can control the following:

- Allotment of lands for a community centre, churches, schools, stores (subsection 18(2) of the Act)
- Allotment of lands to members
- Land registry for Certificates of Possession and Certificates of Occupation

These bylaws are important to a building-permit system as they clearly identify the home- and landowner. A “lands” officer may need to be consulted and involved in this process.

## 5. Permits

A building permit gives builders and homeowners legal permission to start construction of a project in accordance with approved drawings and specifications. Building permit systems are beneficial to First Nations communities. The building permit system will:

- Ensure the construction, renovation and other projects requiring permits are built right
- Control where homes are built
- Provide for inspection to make sure the home will be safe for the occupant
- Protect housing stock
- Make the builder and homeowner accountable



Other types of permits may be required, depending on the AHJ and the bylaws. These may include:

1. A plumbing permit to install any plumbing, gas or drainage piping work or any fixture or water heating, or to install any treatment equipment or alter, repair or replace, unless specifically exempted by the plumbing codes.
2. Electrical permits to install any electrical system or alter, repair, replace or remodel, unless specifically exempted by electrical codes.
3. A permit to install a private sewage disposal or septic system.

In some cases, the building permit includes plumbing and electrical permits, but may require licenced plumbers or electricians to conduct the inspection and provide a certificate of approval. The sewage disposal or septic system may need to be approved by either health or environment agencies, while hydro/electrical power suppliers may conduct electrical inspections. These issues need to be addressed and incorporated into bylaws.

## 6. Required building inspections

For the most part, inspections on reserve relate to CMHC's Native Inspection Services Initiative (NISI). NISI was developed in 1995 to provide greater First Nations involvement in inspections for new construction and renovations funded through CMHC housing programs, such as the non-profit rental-housing program and the Residential Rehabilitation Assistance Program (RRAP).

Under NISI, First Nations technical-service providers undertake technical reviews (plans examination and inspections) under contract to CMHC.

While these technical reviews are not specifically for code compliance, they confirm to CMHC that the construction reasonably meets codes, standards and specifications, and provide an indication of percentage of completion for loan-advancing purposes. NISI is also seen as a capacity-development initiative and an important step to improving the quality of construction in First Nations communities.

Typically, up to six inspections are carried out under NISI. Communities implementing a building permit process may want to adopt this process.

1. Site inspection
2. Ready for backfill
3. Framing
4. Ready for drywall
5. Final
6. Progress advance inspection (any time during construction period)

In addition, other agencies and authorities are relied upon to ensure equipment and systems are safe and acceptable, such as electrical authority or master electricians for electrical installations, and Health Canada environmental-health officers for private sewage-disposal systems. Certificates from these authorities must be produced before final advance of funds.

Off reserve, provincial building codes require several mandatory inspections during construction to ensure all work is done according to the approved permit drawings and the provincial building code.

The following is a list of items that must be inspected for a typical residential unit. It is important to point out that several items may be inspected during one inspection visit/stage. The number of inspection stages can vary:

1. Prior to backfill of storm and sanitary sewers or water services
2. Prior to pouring concrete for footings (forms in place)
3. Prior to backfill of foundations
4. Prior to covering plumbing rough-in (including water systems)
5. Prior to covering duct work for heating, ventilation, air-conditioning and air-contaminant removal systems (HVAC systems)
6. Completion of structural framing
7. Prior to covering in insulation and vapour barriers for all walls and ceilings of finished areas
8. Completion of interior finishes and HVAC equipment installation and all fire-protection systems
9. After all plumbing fixtures are in place (final air test)
10. Final inspection - completion of project

In some jurisdictions, eight inspections are required. For example, in Ontario the following inspections must take place:

1. Excavation/footings, before footings are poured
2. Foundation, prior to backfilling
3. Framing
4. Mechanical
  - a. Duct work and pipes for heating and air-conditioning system
  - b. Underground plumbing (test on)
  - c. Rough-in plumbing (test on)
5. Insulation/vapour barriers/fire protection
6. Fireplace/wood stove
7. Occupancy inspection, including plumbing smoke test
8. Final exterior

For sewage systems, the following inspections are conducted:

- Readiness to construct sewage system (base cut)
- Final inspection of sewage system prior to backfill

In Alberta, the City of Calgary requires the following types of inspections<sup>1</sup>:

### **Pre-Backfill Phase**

This phase of construction includes the following inspection types:

- Building footing and foundation
- Electrical underground
- Plumbing, sanitary and storm

### **Pre-Board Phase**

(You must pass all inspections in the previous phase to continue to this phase.)

This phase of construction includes the following inspection types:

- Framing
- Basement developments (as required)
- Wood-burning stove or fireplace (as required)
- Gas rough-in
- Gas fireplace (as required)
- Plumbing rough-in
- Electrical rough-in
- HVAC rough-in

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<sup>1</sup> For more information see: The City of Calgary Development and Building Approvals, Building Regulation Division SCO Handbook, New Home Inspection Process. BR2005-71-4.2 August 30, 2007. [http://www.calgary.ca/DocGallery/BU/dba/building/new\\_home\\_inspection\\_process.pdf](http://www.calgary.ca/DocGallery/BU/dba/building/new_home_inspection_process.pdf)

## Pre-Possession Phase

(You must have passed all inspections in the previous phase to continue to this phase.) This phase of construction includes the following inspection types:

- Building final
- Plumbing final
- Gas final
- Electrical final
- HVAC final

For example, off reserve, some municipalities may require other types of inspections such as:

- Life safety
- Renovations
- Partial occupancy of an unfinished building
- Sewer and water service
- Property standards
- Curbs and driveways
- Etc.

While inspection processes may vary, they incorporate all the essential components of an inspection under the building codes.

***Band bylaws should clearly state the types of inspections required.***



## Conducting Inspections

To carry out an inspection, the contractor or homeowner must contact the building department to request an inspector at least 24 hours before work proceeds from one inspection stage to the next.

For rural and remote communities where access is difficult or by air or water, this lead time may be one week or more. When the building permit is issued, a list of required inspections

should be provided. If inspections are not performed, the contractor may have to uncover and expose the work for inspections.

Band bylaws need to clearly state how the community plans to enforce the bylaws where code infractions are found. In this case, it is important to consult with the Bylaw Advisory Group of the Band Governance and Indian Estates Directorate of the Department of Indian and Northern Affairs.

As part of the development of bylaws, the community may want to provide the inspector with the power to issue certain types of orders, such as stop-work orders and an order to comply.

A qualified inspector who has been certified to carry out such inspections should complete all inspections. For example, the inspector may be a member of FNNBOA and certified to carry out specific inspections.

Upon completion of the final inspections, and where no outstanding concerns remain, the building department will typically issue an occupancy permit or certificate.

Where the construction is semi-detached or row housing, additional inspections are required relating to fire separations between dwelling units.

FNNBOA can provide further advice regarding mandatory inspections.



### **Occupancy Certificate or Permit for Occupancy**

An occupancy certificate or permit will be issued upon completion of all requirements of the approved plans and specifications, building-permit conditions, approval of related ancillary permits and approvals from other applicable agencies.

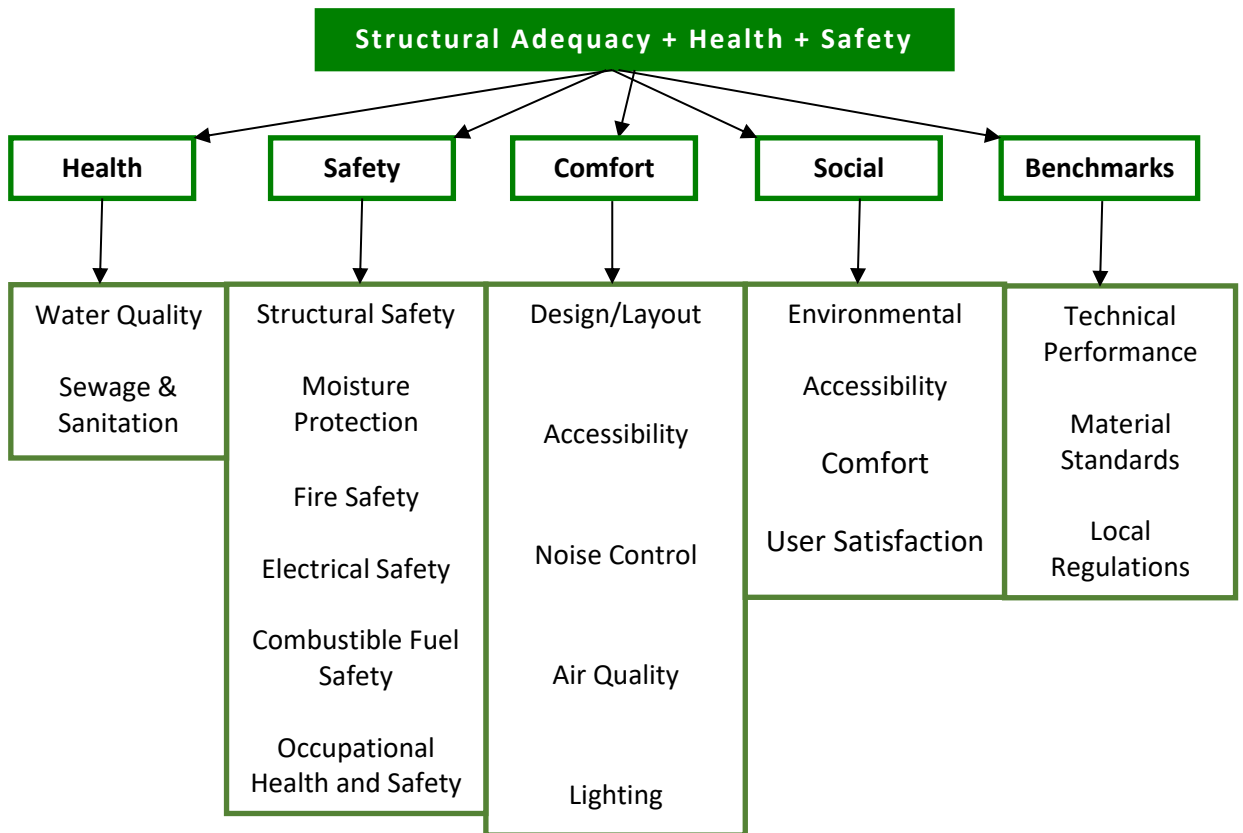
All outstanding fees due to the council must be paid prior to issuance of an occupancy certificate or permit. In many cases, the building-inspection record card or final-inspection report must be submitted before a certificate is issued.



In some cases, the department or building inspector may issue a temporary occupancy permit where minor corrections are noted at the final inspection.

Temporary occupancy will not be approved for a building or portions of a building if outstanding life-safety requirements have not been mitigated in an approved manner. Temporary occupancy also will not be approved if outstanding site issues create an environmental hazard, a drainage or erosion hazard and/or a traffic hazard. The occupant must make an application for the certificate of permit to occupy the home. The following is an example of an occupancy permit.

## 7. Building Code Goals



***Most building codes and regulations were established to protect the public, thus to prevent and alleviate hazards such as structural collapse, fire, accidents and health related concerns.***

# Roles and Responsibilities, Construction Documents & Construction Contracts

Book 3



**Procurement in Indigenous Communities**



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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

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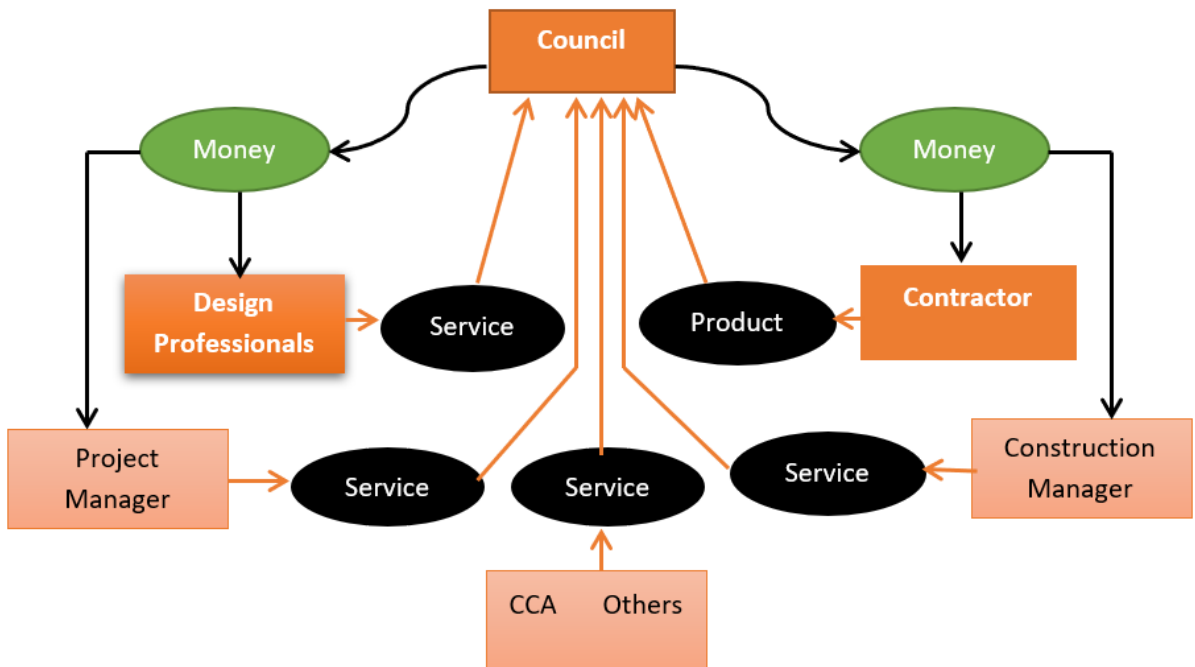
# 1. Construction and Procurement: Basic Understanding

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

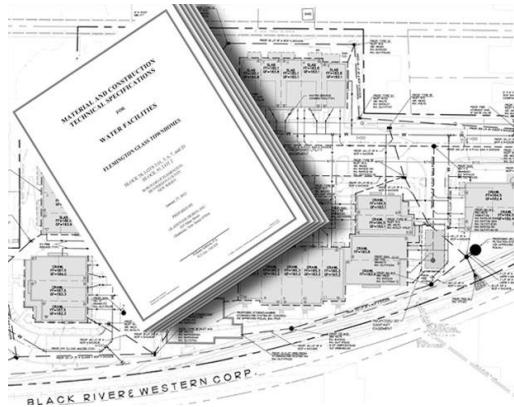
Specifications describe the kind of work or materials (products) and execution (installation methodology) you will need in order to achieve the project objectives.

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](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](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/](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](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>



# Pre-contract Phase – Preparing the Bid

Book 4



**Procurement in Indigenous Communities**





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# 1. Introduction

This section introduces requirement definitions, preliminary procurement planning and issuing the bid (or tender) solicitation.

The pre-contract phase includes the planning required to issue a bid before a contractor is selected and a contract is signed.

Activities include:

- Defining and writing your requirements
- Defining your budget
- Defining and writing the procurement considerations
- Choosing the appropriate procurement approach
- Confirming approvals for the procurement process
- Identifying and writing environmental performance considerations
- If applicable, defining and writing the non-competitive justification
- Writing and verifying security requirements
- Writing and verifying intellectual property considerations
- Defining and writing the evaluation criteria
- Developing the bid solicitation document
- Writing and verifying the statement of work
- Defining and writing the appropriate contractor selection methodology

## 2. Define your requirements

Defining your requirements is where you describe and write the objectives for the project. The description can be detailed or general. A more detailed the description is likely to result closer to the chief and council's vision.

***Brainstorm and write down a list of requirements.***

***What is the purpose of the building? What role will it play in the community? Is it multi-purpose, accessible and flood proof? Does it use green technology? What is the budget? What is the ideal construction schedule? Who will be living there? Do they have any accessibility needs?***

***Keep checking your list to make sure you have not missed anything.***

The program requirements must also include drawings and specifications to convey the chief and councils' and designers' intentions. It must be clearly conveyed to the contractors responsible for constructing the project. Also be aware of constraints including limited resources, delivery limitations, weather related limitations, unknown soil conditions or environmental regulations.

*It is important to understand the risks associated with the project. No construction project is risk free.*

### **3. Define your budget**

Every project can face constraints based on time and/or money. The budget is the money available to complete a project. While project costs can be overestimated, they should not go over budget. Surpassing the project's budget involves finding additional source of financing, which can hinder finishing the project.

A budget is typically created in the initial phase of the project because money is available, or a council seeks funding to conduct a project. In some cases, the budget is an allocated resource, which will guide the design activities to limit the costs within the allocated budget. In other cases, a budget may be prepared to evaluate the costs for a specific construction requirement in order to secure the proper funding.

Budget costs can be calculated by using past project information. Past estimates of cost can provide a valuable resource to determine an approximate cost. Maintaining information on past project costs helps to document general costs per unit (e.g. dollar per square foot), which can be used to establish future budgets.

Chief and councilors can also seek costing expertise through consultants or design professionals who are familiar with construction costs. Budgets should include contingencies to allow for unforeseen cost increases during the construction.

### **4. Plan the procurement process**

#### **4.1 Expertise level**

The approach to project delivery can vary. What level of expertise is required for the project? Can this contract work be accomplished under other professional expertise, or can it be based on a project similar in scope? (Architect, engineer, contractor, subcontractors or local builder)

#### **4.2 Contract documents**

Contract documents typically include drawings, specifications, change orders and other forms. **Accurate, complete drawings are a must.** Poorly prepared drawings and specifications can raise questions in the mind of bidders about what is required. To cover unforeseen items, a contractor is likely going to add extra costs into a bid to cover unknowns.

#### **4.3 Open request for bids or prequalified bidders**

Bidding may be open to any contractor or can be based on a limited list of bidders who have been prequalified by the council. Prequalification helps identify those contractors that meet a standard for reliability, experience, financial stability and performance.

#### **4.4 Enough bidders to ensure competitive pricing**

Knowledge of local market conditions and any limitations should be considered in advance of the project award. Costs of similar construction projects are useful to use as guidelines. A cost estimate for a project provides a translation of the design information detailed in the bidding documents. There should be enough bidders to encourage price competition.

#### **4.5 Alternates and Substitutions**

- Bidders may offer alternates and substitutions in their submissions. There are different ways to deal with alternatives and substitutions:
- Refuse all alternatives and substitutions - refuse any equivalent to what you have described on specifications or drawings, and eliminate any bids that offer alternatives and substitutions
- Accept alternatives only at bidding time
- Establish rules about when and how an alternative can be considered

#### **4.6 First Nations supplier considerations**

Another procurement consideration can be to whether or not to exclude private and band-owned business operations.

To be eligible to use their own labour, suppliers, equipment, etc., the First Nation must demonstrate that it has the capacity to fully complete all aspects of the subtrade work in accordance with the standards and specifications contained within the approved project submission, in providing skilled labour, appropriate equipment or the required material.

For off reserve contractors, requirements should be clearly specified for the project under consideration.

#### **4.7 Fiduciary trust**

Purchasing materials, equipment and services is a significant part of the overall cost of a project. Project procurement decisions require a high degree of legal obligations.

#### **4.8 Period of modifications or withdrawals for bidders**

A bid condition can specify that by submitting a bid, the bidder agrees not to modify or withdraw its bid for a specified period of time (i.e., typically 30 to 60 days).



## **5. Pre-tender (or pre bid) survey**

Pre-tender refers to activities in the tendering process prior to the award of the project and includes:

- Budgeting and scheduling for the project
- Defining capable bidders
- Defining and writing project conditions such as soil reports and testing

A pre-tender survey should include:

- Council's ownership
- Responsibilities (who does what)
- A list of any specific chief and council's requirements
- A list of conditions that exist for the start of construction
- Accurate cost information to enable the council to make an informed decision about the feasibility of the proposed project
- Consideration about whether using local First Nations labour, equipment and materials is realistic for the project
- Proper bonds, insurance and worker's compensation (where/if required).

The pre-tender survey is opportunities to review and assess solutions that can benefit and deliver the project objectives in the most economic manner without adversely affecting the outcome of the project.

## **6. Obtain necessary approvals**

Chief and councillors may need to have the necessary approvals to commence a build project. These include environmental assessments, zoning requirements and building permits. A building permit gives builders legal permission to start a construction project. Construction permits ensure that all building projects are studied and inspected, and that drawings and specifications are reviewed for compliance before the construction actually begins.

## **7. Bid solicitation (or issuing the tender)**

### **7.1 Obtaining bids**

At the outset of the project, the following must be determined:

- Form of project delivery
- Type of construction contract
- Method for awarding the contract

### **7.2 Instruction to bidders**

The Instructions to Bidders document is a collection of instructions to all bidders, outlining specific criteria for preparing and submitting the bid form. It also outlines the intended process for bid evaluation.

It does not contain any information that would need to be enforced during the execution of the work. It is not necessary to include this document among the contract documents.

### **7.3 Bid closing time**

Problems have been encountered with certain wordings associated with construction bid closing time. Here is an example of a well-worded instruction: ***Bids must be received before 3:00 P.M. local time on Thursday, February 19, 2020.***

### **7.4 Forms and supplements**

Developing a bid form for a project requires careful planning and assessment of the council's needs. The bid form is the project-specific form, initially prepared by the bid-calling authority. Each bidder is required to complete and submit the bid form, in a secure manner, to the bid-calling authority.

This Bid Form has been developed for use with the CCDC 2, Stipulated Price Contract. With minor modifications, it is useful when implementing either project specific or other CCDC standard forms of contract.

A sample of bid forms is available in the annex portion of this document – “Guide to Calling Bids” [http://www.marant.ca/media/CCDC\\_23\\_Guide\\_to\\_Bidding.pdf](http://www.marant.ca/media/CCDC_23_Guide_to_Bidding.pdf)

The bid form should include:

- The project name
- The project identifying number, if any
- The legal name of the council and its legal address on the reserve
- A place for the bidder to insert its legal name
- The name of the consultant, project manager or other project leader
- A place for the bidder to insert and identify any addenda issued during bidding, and issued during the preparation of their bid
- A place for the bidder to insert the bid price, in both words and numbers
- A listing of any allowances, taxes (including a description of how Value Added Taxes are to be dealt with) and any duties that may be applicable
- A statement confirming that the bidder agrees to perform the work within the identified time period, or a blank line for bidders to indicate the proposed project or task completion schedule
- Special criteria, such as a preference to use local labour, environmental standards, security requirements, etc.
- A series of appendices, allowing the bidder to submit any requested supplemental information
- A listing of the bid documents upon which the bid is based on
- The time period for which the bid will remain open to acceptance
- A place for a bidder to apply its signature(s) and either its corporate seal or a witness signature, as appropriate to its individual business requirements

Supplements to a bid form may include:

- A form or listing that identifies all the bid documents
- A form for a bidder to identify primary subcontractors/suppliers being proposed
- A form for a bidder to identify the value of requested unit prices
- A form for a bidder to identify the value of requested alternative prices and
- A form for a bidder to identify the value of requested itemized prices

Bid-calling authorities sometimes issue specially prepared bid forms to subcontract mechanical, electrical or other special portions of the work. However, this practice is neither supported nor recommended by Construction Specifications Canada or the Canadian Construction Documents Committee (CCDC).

Since the bid calling authority is only awarding a contract with a primary or singular contractor, and not with subcontractors, subcontract bid forms are neither appropriate nor of any real or legal value.

## **7.5 Assessing Bids**

The bidding process usually involves three criteria for a council's consideration:

1. Price
2. Time
3. Competency of the bidder to perform the work

Other criteria, such as a preference to use local labour could be used to evaluate bids, provided these criteria have been identified in the bid documents.

## **7.6 Determining the successful bidder**

Bids should be opened immediately after the closing time, allowing bidders or their representatives to be in attendance. Once the bids are received and have been opened, the bid calling authority requisite work begins to carefully review each bid. They must determine that all conditions have been met. Provided the bid conditions have been met and that no errors in the bid are identified, and with all other considerations being equal, the contract is generally awarded to the lowest bidder.

Note that public sector bid calling authorities often have policies where selection of the successful bidder is based solely on the lowest price submitted. Using the lowest cost to award a contract may not always be in the best interest of the parties, particularly when the selected bidder may have made an error, either mathematical or as a result of incorrect assumptions, on which the bid price has been based.

The form of construction contract which the successful bidder is required to enter into should be stated in the bid documents. Where the Council issues a "letter of intent," which does not provide for unconditional acceptance of the bid, the contract may or may not be created at that point, depending on the wording of the letter. A letter of intent should only be used where significant issues are yet to be negotiated or where the bidder has not yet formally agreed to some conditions.



## **8. Pre-bid conference**

On some projects it is useful to hold a conference or “on site meeting” prior to bid submission. This gives bidders an opportunity to become familiar with the site and to ask the council and/or architect/engineer/designer questions.

During this session, notes should be taken to help bidders get a better understanding of the project, site conditions and any other related requirements. All bidders should receive a copy of the session notes to provide the latest bidding information.

## **9. Examples and more information**

For CCDC documents:

[http://csc-dcc.ca/ccdc+\(canadian+construction+documents+committee\)/](http://csc-dcc.ca/ccdc+(canadian+construction+documents+committee)/)

For Government of Canada – The Procurement Rules and Process, see Chapter 2 and Chapter 3.

<https://buyandsell.gc.ca/for-government/buying-for-the-government-of-canada/the-procurement-rules-and-process/phases-of-the-procurement-process>

Stipulated Price Bid Form (Ottawa Construction Association):

<http://www.o.ca/docs/resources/modelbid/Stipulated%20Price%20Bid%20Form.pdf>

# Contracting Phase

Book 5



**Procurement in Indigenous Communities**



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## About these books

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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

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# 1. Introduction

Book 5 focuses on issuing the bidder selection, alternates and substitutions, purchasing and awarding the contract, and debriefing. Topics include:

- Responding to inquiries from potential bidders
- Evaluating bids (tenders)
- Bidder selection
- Awarding a contract
- FN engagement
- Debriefing unsuccessful bidders
- Responding to challenges to procurement decisions
- Dealing with alternates and substitutions
- Purchase orders



The contracting phase does not tend to involve the council/client as much on a day to day level. The vast majority of activities and responsibilities lie with other parties, namely, the PM, Design Team, Contractor, and Subcontractors.

## 1.1 Respond to inquiries from potential bidders

The chief and council should have only one point of contact during the solicitation (advertisement) phase of the project. The person responsible for the solicitation ensures all technical information is appropriately shared with all the bidders through any amendments or letters of clarification or change notices. Similarly, all requests for information or clarification from the bidder must be in writing with reference name to the project name. A response can be made by email back to the individual bidder. If required, clarification can also be sent to all bidders through a letter of clarification. If a bidder's question can be answered or easily clarified by simply pointing out the location of an item in the tendering documents, this would be considered an insignificant question that could be answered up until the day before the tender.

The solicitation phase for tenders ends when the bids are open.

## 2. Tender evaluation

Sealed bid proposals are sent to the chief and council or the council's representative (e.g., housing manager, applicable authority) up to the specified time of bid closing. Once the deadline for submitting bids is passed, the council or council's representative opens the sealed bids and discloses the complete contents of the bid submissions. Ideally this should take place as an open process with those that have submitted a bid. This ensures an open, fair and impartial bidding process. Even with private work contracts, the bidding process should be conducted with integrity and fairness.

A valid bid must conform to the exact requirements of the advertisement or invitation to bid and the instructions to bidders. If a bid does not, it must be deemed unacceptable. Likewise, if the bid submission is late, it should be rejected.

***The bidding process is intended to secure fair competition and to present council or client with bidders who commit to perform the identified task according to a description of the task, an allotted schedule, budget and level of quality.***

In general construction tendering requirements, the bid document most often appears similar to these two examples. (Stipulated price and unit price)

<http://www.o.ca/docs/resources/modelbid/Stipulated%20Price%20Bid%20Form.pdf>

<http://www.o.ca/docs/resources/modelbid/Unit%20Price%20Bid%20Form.pdf>

If a bid solicitation or tender is well thought out and clearly documented, the bid should hopefully not exceed the budgeted price. Recommended guidelines that should be considered if the bid price exceeds the estimated budget can be based on 2 situations:

- (1) the overall bid amount must be reduced by LESS than 15% - Negotiate with low bidder to identify changes and conclude a new contract. Failing Negotiation, invite 3 lowest compliant bidders to re-bid on modified bid documents.
- (2) the overall bid amount must be reduced by MORE than 15% - Council may undertake EITHER of the preceding steps, at its discretion.

***Mistake: A bidder may wish to withdraw their bid; if for example, they find soon after bid opening that the bid contains substantial mathematical or computational errors. In such an instance if the bid is allowed to be withdrawn, all other bids should be considered as if they were the only bids submitted.***

Similarly, councils are expected to award a contract in accordance with the terms and conditions of the tender call and not to provide an unfair advantage to one bidder. Where appropriate, bidders can be advised immediately after the tender closing as to whether their bid was or was not used in the making up of the successful bidder's bid.

On the technical side of bid submissions, it is common practice that on large and more complex projects bidders are required to submit a bid bond and if awarded the contract a performance bond. These act as a form of guarantees in the case of default. In some cases the bidders may even be required to list any specific subcontractors for the councils review and approval to protect against prior bad experience as well as list of itemized prices such as various trades performing work such as mechanical, electrical, structural, etc.

Sample list of subcontractors: <http://www.oca.ca/docs/resources/modelbid/Appendix%20-%20List%20of%20Subcontractors.pdf>

Sample list of itemized prices: <http://www.oca.ca/docs/resources/modelbid/Appendix%20-%20Itemized%20Prices.pdf>

### **3. Bidder selection**

Once a submitted bid has been selected, the chief and council (or a party legally authorized to act on their behalf) must decide which bidder will be awarded the contract.

A contract is often awarded to the lowest bidder, if all requirements are met and if construction funds are available to award the contract. However, accepting the lowest price is not necessarily the best value for money. Other criteria such as higher quality, taking less time, additional resources, etc. may make a bidder a better choice even if the price is higher.

A contract has been awarded when the council says, “I accept” to a bid. Notice of award is a formality to authenticate the bid acceptance. This can be simply issued as a “letter of intent”, indicating acceptance of the bid that will lead to a formal contract. Fundamentally the contract begins at that moment in time.

The two contract parties then meet and begin the process of getting construction administration and site activities underway.

It is important that chief and council need to establish a process to any challenges to their procurement decisions. In some instance a debriefing may be required. Debriefing is simply the act of meeting with an unsuccessful bidder to explain why their bid was not deemed to be the most attractive. Debriefing can be a fragile process. You want to be as helpful as possible to the unsuccessful bidder, but you also must maintain the confidentiality of other bidder’s information.

As part of the debriefing process, the chief and council can provide helpful information to the bidder that will help them by focusing on the strengths and weaknesses of the bidder’s tender and the reasons for not accepting the bidder’s tender.



### **3.1 A word about engagement**

For the successful contract recipient, it is important to determine who the appropriate First Nation and community contacts are, particularly if it is where the successful bidder is not familiar with community customs and traditions. Ensure they are kept informed throughout the duration of your project - not just at the beginning when you need to have them on-side.

Furthermore, uphold due diligence to learn about, respect and follow community protocols and/or best practices.

### **4. Alternates and substitutions**

Alternatives and substitutions are materials and products submitted by the contractor replacing what was specified in the tender. Alternates or substitutions may be useful; however, they can also be the result of a deceitful contractor wanting to increase their profit at the expense of the project's quality.

Studying and comparing alternatives with the initial bid requirements is time consuming. If alternatives are not equal to the original bid requirements, quality, durability, and return on investment can suffer. (See section on alternates and substitutions when writing a bid in pre-contract section.)

***Irregularities: The bidding and selection process should not be used to promote favouritism, nor be an opportunity for a bidder to gain additional time or information in order to manipulate the award of a contract.***

Sample alternatives prices document:

<http://www.o.ca/docs/resources/modelbid/Appendix%20-%20Alternative%20Prices.pdf>

### **5. Purchase orders**

A purchase order is another form of acquiring labour, materials and or equipment for a construction contract by a buyer. Typically purchase orders deal more directly with a supplier.

As such a purchase order or its abbreviated equivalent is simply a document issued by a buyer to a seller and is considered a binding agreement between the parties.

Purchase orders typically include the following:

- Order reference number
- Identification of the buyer and seller
- Product or material description
- Quantity
- Price



- Terms of payment
- Shipment – method and dates

Purchase orders may be used by most any of the parties such in case of the contractor to buy materials, or in the case of the chief and council to purchase office supplies.

## **6. References**

- Government of Canada – Contracting Policy
- From the website: Explains the requirements to meet the objective of acquiring goods and services, and carry out construction in a manner that enhances access, competition and fairness, and that results in best value, if appropriate, the optimal balance of overall benefits to the Crown and Canadian people.
- Web link: <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=14494>

### **Government of Canada – The Procurement Rules and Process**

- [Chapter 4: Solicitation Process](#)
- [Chapter 5: Evaluation and Selecting the Contractor](#)
- [Chapter 6: Approvals and Authorities](#)
- [Chapter 7: Award of Contracts and Issuance of Standing Offers and Supply Arrangements](#)

### **Impact of NAFTA on Aboriginal Business in North America**

Web link: <https://law.usask.ca/documents/research/estey-journal/EsteyCentreConference%20AboriginalBusiness.pdf>

# Contract Administration Phase

BOOKLET 6



**Procurement in Indigenous Communities**



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# **1. Introduction**

This is the part where we actually see the construction build process take shape and come to life.

The contract administration phase can also be considered a “project management stage” typically includes all works required to help achieve the project build objectives. The actual build stage requires a lot of attention to coordinating the various trades; and insures they have the materials and equipment that they need to do their work. Additionally, this is the time where it is important to vigilantly monitor that the work is completed in accordance with the contract documents.

## **2. Project management**

Project management involves the coordination of the construction project works in order to complete the work in accordance with the contract and contract documents. It requires very strong communication skills and a clear definition of what needs to be done, who will accomplish each task and manage and control how much it will cost.

### **2.1 Pre-start job meeting**

This generally involves all the major parties of the contract to attend a meeting to introduce the parties to each other, review the roles that each provides and examine the overall project requirements. Often on larger duration projects this will include periodic scheduling for regular job site meetings. These site meetings are intended to help provide control, advise and review of the work. Typically meeting minutes are recorded and distributed as part of the ongoing project records.

Site meetings are also necessary for proper management and distribution of information to the construction team.

### **2.2 Planning work**

Planning work for a project consists of arranging work activities in a practical order for construction. This includes the use of scheduling to apply dates to start and finish specific work activities. Planning is a key to monitor a project to its intended schedule, to help control costs and if necessary, make any needed adjustments.

Construction contracts commonly require the contractor to submit a schedule of work. This schedule helps form the basis of identifying work progress through to completion.

### **2.3 Contract start-up (project mobilization)**

Construction start-up requires analyzing, planning, scheduling, purchasing, hiring and mobilization.

## **3. Issue contract amendments**

Changes are not uncommon on construction projects. One of the key issues to be resolved prior to the signing of a contract is to ensure that no changes or modifications are required. Changes and modifications can happen after bid closing or during construction. Change

orders provide the chief and council and the contractor flexibility in addressing unexpected conditions during construction.

Changes in the contract work can have a devastating impact on the final cost of a project. The final contract amendment must include the approved changes or modifications if any, in the original contract.

Two of the most common changes are:

- **Addendum** – This change typically happens before the end of the bidding period. Sufficient notice is given to the bidders advising them of the required change, and any subsequent change in price must be reflected and acknowledged in the bid submission.
- **Change order** – Change orders are used to change or modify the construction agreement. This is when the chief and council wishes to know what the cost of a change will be during a project. Change orders modify a construction contract and there must be agreement between the parties regarding the required change. Another point to consider is changes can inevitably lead to possible delays.

If changes are proposed that have a significant impact on the contractor's scope of work, a contractor can request that the chief and council come to an agreement over new contract terms and conditions.



## 4. Monitor progress

Architects and engineers typically have a representative on the job site to monitor the progress of construction work. It is also best for the council/client to have a project manager representative on site to monitor project activity.

It is common to request a schedule of work in order to identify various trades and tasks required to complete the project. A common format adopted is normally that of a Gantt chart. Each activity is listed and given a timescale. The activities are related to each other to build up a full profile of the project. This aids in monitoring the contractors' progress against the plan and provide regular progress reports to the council/client. Web link to Gantt chart - <https://www.gantt.com>

Representatives may be responsible for reporting or recording activities such as measurement (quantities) of materials; actual activity times or taking photographs of construction progress and activities.

Monitoring the work as it progresses can provide a means to verify as well as record and confirm costs or payments to be released based on determining the percentage of work completed.



## **5. Follow up on delivery**

As noted earlier, a monitoring process should include periodic site visits to review the progress of a project. Since payment due to the contractor is often based on the progress draws (consideration of the percentage of work completed) this review can help reduce risk of overpayment.

It is common practice to require the contractor to provide an affidavit, statutory declaration, sworn statement, or alternatively a labour and material payment bond is used indicating that the contractor has paid all bills for the contract work. This assures the chief and council that there will be no claims against the property.

### **5.1 Check proof of delivery**

Materials and other related project supplies can be tracked by delivery slips, or by an onsite inspection. On some large projects it is recorded by a “clerk of works”. Purchasing can involve large sums of money and materials and can provide opportunities for unscrupulous behaviour.

Examples of potential dishonesty: materials, supplies and consumable items are wrongly charged to projects.

Suppliers and/or contractors may conspire to cheat chief and council in cost-plus-fee contracts and may use false invoices.

## **6. Administer progress payments**

To ensure that you are not being overcharged, or that dishonest practices are taking place, check materials and other project supplies through delivery slips, or by an onsite inspection.

Your procurement standards should thrive on its reputation of fairness, quality and reliability.



## **7. Complete financial audits**

Accurate records are an important part of the procurement process. An audit process should include periodic site visits to review the progress of a project. Since payment due to the contractor is often based on the progress draws (consideration of the percentage of work completed) this comparative review helps reduce the risk of overpayment.

It is common practice to require the contractor to provide an affidavit, statutory declaration, or sworn statement to the chief and council indicating that the contractor has paid all bills for the contract work. This assures the chief and council that there will be no claims against the property.

## **8. Claims and disputes**

The CCDC documents cover the topic of dispute resolution that contains a resolution process. However, short of that there may be times when a problem arises that become disputable.

Let's consider one case in point: *As an example, the architect's drawings provided for a contract for a new public municipal building. The tendered construction drawings did not indicate a sewer connection to the building. Furthermore, there was no information regarding the sewer connection in the specifications. At a job site meeting the question was raised regarding the sewer. The contractor claimed it would be an extra while the municipality claimed it should have been a given that a sewer connection would be required. The estimated cost for the work was in the range of \$20,000. Thus, an item claimed to be outside of the contract work was in dispute.*

Eventually an adjudicator was appointed that eventually determined that it was clear that the sewer connection was not on, in, or documented or part of the tender documents, and ultimately the contractor should be entitled to the extra to cover the cost. Alternatively, the adjudicator also recommended that the council could perform the work at their own cost. As a point of clarification - adjudication is a process in which a neutral third party will give a decision based on analyzing the facts in a dispute.

A claim is a request by a contractor for a time extension based on an occurrence that is beyond the control of the contractor. Events such as unforeseen site conditions, long delays



in delivery, extreme weather or even changes directed by the council can cause a claim to extend the proposed work schedule.

### **8.1 Contract termination**

The council or contractor may terminate a contract for breach of contract. This could be caused where a council fails to make payment or where there are delays in the project for an unreasonable period of time. Of course, there could be other reasons, but this provides a couple of examples.

## **9. Need more information?**

Government of Canada – The Procurement Rules and Process  
Chapter 8 – Contract Management

<https://buyandsell.gc.ca/policy-and-guidelines/supply-manual/section/8>

# Post-Contract Phase

Book 7



**Procurement in Indigenous Communities**



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# 1. Introduction

This booklet focuses on the post-contract phase and includes closing out the project and final actions with the file.

The completion of the project is the time to ensure that all required final inspections have been completed and that all construction records and documents are also ready to hand over to the council. Final completion includes not only the actual construction work but all contractual obligations such as submission of specific documents.

Common activities often include:

- Providing the occupancy permit (if required)
- Providing equipment and appliance warranty and operating instruction manuals
- Ensure cleanliness of the construction site (construction debris has been cleared)
- Supply an affidavit indicating that payment for all materials, labour and subcontractors have been satisfied
- Addressing any outstanding contractor claims
- Review approval for last payment
- Returning contract financial security and holdbacks
- Initiating the audit of a cost-reimbursable contract
- Ensuring that all Crown-owned intellectual property and government furnished equipment are returned (if applicable)

## 2. File final action contractor agreement to final claim

This phase determines if the work or a designated portion of it is “substantially” complete or if additional items need to be completed or corrected.

Substantial completion is defined as the stage of the work when it is sufficiently complete in accordance with the contract documents. This should be considered as stage where the chief and council can occupy or utilize the place for its intended purpose?

Substantial completion means the work has progressed to the point where the chief and council can occupy or utilize the work or designated portions thereof for the use for which it was intended.

Final completion typically refers to the “authority” (such as architect/engineer) determines whether the contractor has completed the project and is entitled to receive final payment.

When the contractor deems the building project complete, it is common to notify the chief and council or the project representative in writing that the contract work has been completed.

The acceptance of a completed project is based on a final inspection performed by the council’s representative. It also based upon the correction of any deficiencies. If the chief

and council or project representative does not agree, they should provide a written report detailing any outstanding work and deficiencies. Alternatively, a wrap-up meeting can be scheduled at the close of the project. This meeting should be recorded.

The chief and council's report should be based on an overall project review and final project inspection to identify any deficiencies. Have the deliverables been delivered? Conditions may be provided in writing to address seasonal based deficiencies (e.g., landscaping) that are outstanding. A holdback in the payment should accompany and reflect the value of these seasonal deficiencies.

The date of substantial completion is also the conclusion of the contractor's schedule for the project. Any minor outstanding contract work may be completed or corrected, then a final inspection should take place to ensure the project is complete.

If the work has been satisfactorily completed, the chief and council must remit the amount due to the contractor.



### **3. Return performance bonds and obtain close-out**

When the contractor has fulfilled all the requirements of the contract, the obligations come to an end. At this point, the chief and council or representative should release the performance bond or any other type of security bonding that was required for the project.

Close-out of the project refers to answering the questions of have the deficiencies been resolved, have final inspections completed, and if all certificates, schedules and documents required provided by the contract been submitted.

#### **3.1 Closeout documentation**

Substantially complete implies that the project is ready for use by the council. If any bonds were required under the contract, upon the determination of "substantial completion" the contractor would be released from bonding requirements.

Additionally, documents such as warranties, as-built drawings, manufacturer's guides, etc. are all part of the information that the council requires to operate the building efficiently. These documents need to be collected and handed over to the council in a timely fashion.

#### **3.2 Retainage – aka: holdback**

Sometimes referred to as "holdback" is the process where the chief and council hold back money from the contractor as protection against the potential failure by the contractor to

complete the work according to contract requirements. The contract must stipulate the exact terms related to this hold back.

### **3.3 Final billing and payment**

Generally, at the end of construction a final billing is submitted by the contractor. Likewise, it is important that the council realize the importance of ensuring that all work is complete and that the payment is promptly completed in a timely manner.

It is common practice in off-reserve jurisdictions for the chief and council to apply to the building department for a certificate of occupancy. This document confirms that the work has been completed in accordance with drawings and specifications and has passed inspection approvals.

## **4. Ensure completeness and accuracy of file documentation**

Good business practice mandates that proper records and documents must be kept and filed in an orderly manner. Documentation from the construction phase can include items such as:

- Copy of approved shop drawings
- Field test reports (if required)
- Inspection certificates
- Record drawings (as built)
- Warranties/guarantees
- Acceptance documents and permits
- Operation and maintenance manuals

Ultimately, these documents must be handed over to the chief and council's project manager.

### **4.1 Operations and Maintenance Manuals**

If requested in the specifications, operating and maintenance manuals (user guides), are issued by the contractor to explain how to maintain the building and its systems.

Maintenance and operation manuals are required to assist the chief and council in maintaining and operating the building and its equipment efficiently and effectively.

Manual(s) usually include:

- A copy of all warranties/guarantees for the different elements of the project (roof, windows & doors, HVAC system, etc.)
- A technical data sheet of all the products installed in the building
- Instructions on how to use all the equipment installed
- Appliance/equipment manuals
- Maintenance information documents provided by manufacturers

Property maintenance is very important to protect your housing investments. There is a growing necessity to have better operating manuals for completed buildings to achieve this objective.

## 4.2 Occupancy

This phase is where the chief and council and occupants gain access to the building and can start occupying. If it is included in your contract, there will be a final visit from the design professionals.

During this visit, the design professional - usually the architect – will conduct an inspection to ensure that has been built according to the contract documents. The resulting report is known as a **deficiency list or punch list** and includes all items that the contractor needs to address in order for the build to conform to the drawings and specifications.

If the design professional or architect is satisfied with the completed state of the building, they issue a Certificate of Substantial Performance, which legally transfers the building to the chief and council. From that point on, the chief and council is responsible for insuring and maintaining the building.

This is also the phase for final building and required inspections such as fire inspections.

If everything is deemed acceptable and the design professionals, project manager or housing manager are satisfied with the work completed, then a certificate of completion is issued, and the project holdback funds are released. At this point, the design professionals (if party to the work) are considered to have completed their services.

The chief and council may also consider providing tenants/occupants with basic maintenance courses or programs.





## 5. Reconcile the budget

Another key point in a procurement process is review and reconciling the financial side, at or near the project end. This is a good time to reconcile the cost and budget. Are there any outstanding invoices or expenses? What was learned in this process?

Even for future consideration the cost of every project provides a valuable reference for future work

Examples: Materials, supplies and consumable items are wrongly charged to projects.

Suppliers and contractors might conspire to cheat chief and councils in cost-plus-fee contracts and use false invoices.

## 6. Need more information?

Government of Canada – The Procurement Rules and Process  
Chapter 8 – Contract Management

<https://buyandsell.gc.ca/policy-and-guidelines/supply-manual/section/8>

Close out Checklist (OAA)

[http://www.oaa.on.ca/oaamedia/procedures/procedure-33/ContractClosoutForm\\_vOct%2024-2014.pdf](http://www.oaa.on.ca/oaamedia/procedures/procedure-33/ContractClosoutForm_vOct%2024-2014.pdf)

# Guides & Resources

BOOKLET 8



## 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

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# 1. Guides

Booklet 8 focuses on providing some key guides and resources that the project manager and contractors must refer to with respect to design, costing, management and inspection of a project.

Guides are available through:

- Canada Mortgage Housing Corporation (CMHC)  
<https://cmhc-schl.gc.ca/en/library>
- National Research Council (National Building Codes)  
<https://nrc.canada.ca/en/certifications-evaluations-standards/codes-canada/codes-canada-publications/how-order>
- First Nations National Building Officers Association (FNNBOA)  
<https://www.fnnboa.ca/>
- Canadian Construction Association  
<https://www.cca-acc.com/>
- Canadian Home Builders Association  
<http://www.chba.ca/>
- Construction Specifications Canada/ Construction Specifications Institute (CSC/CSI)  
<https://csc-dcc.ca/>
- Canadian Construction Materials Centre (CCMC)  
<https://nrc.canada.ca/en/certifications-evaluations-standards/canadian-construction-materials-centre/construction-product-approvals-canada>
- Canadian Institute of quantity Surveyors  
<http://www.ciqs.org/english/index>

## 2. CCMC

The Canadian Construction Materials Centre (CCMC), which operates within the National Research Council of Canada, offers a national evaluation service innovative building construction material, products, systems and services. CCMC evaluations are supported by the latest technical research and expertise and are based on the requirements of the National Building Code of Canada or provincial/territorial building codes.

CCMC-evaluated products are used in commercial and residential buildings.

CCMC operates under the general policy and technical advice of the Canadian Commission on Construction Materials Evaluation (CCCME), whose members are drawn from across the country.

CCMC also organizes its information through the MasterFormat™ and Uniformat™ classification systems.

### **3. Standards**

Standards are another tool to ensure quality construction. Standards are documents describing tests and level of acceptable performances for materials, processes, installation methods and administrative procedures. Most of the standards referenced in national codes are standards developed by recognized public or private standard development organizations (SDOs) through a consensus process, often with public input.

In Canada, many SDOs are recognized. For example, you can reference standards from:

- CSA Group  
[https://www.csagroup.org/standards/?utm\\_referrer=http%3A%2F%2Fwww.bing.com%2Fsearch%3Fq%3Dcsa%26qs%3Dds%26form%3DQBRE](https://www.csagroup.org/standards/?utm_referrer=http%3A%2F%2Fwww.bing.com%2Fsearch%3Fq%3Dcsa%26qs%3Dds%26form%3DQBRE)
- Underwriters Laboratories of Canada  
<https://canada.ul.com/>
- ASTM International  
<https://www.astm.org/>
- International Standard Organization  
<https://www.iso.org/home.html>
- Warnock Hersey, CGSB, Etc.  
<https://www.intertek.com/marks/wh/>

The full list of standards development organizations accredited by the Standards Council of Canada can be found on their website:

<http://www.scc.ca/en/accreditation/standards/directory-of-accredited-standards-development-organizations>

### **4. National Master Specification (NMS)**

The Canadian National Master Construction Specification (NMS) is the most comprehensive master specification in Canada, serving as an easy-to-use framework for writing construction project specifications.

The NMS is a reference document containing approximately 785 master specifications in both English and French. Each section is designed to be adapted from the original master to produce a project-specific document. It is intended for use by the federal government, other public organizations, and the private sector in the preparation of construction and renovation contract documents.

The content reflects the expertise of many of Canada's foremost authorities on specifications, contract documents, and construction technology. A complete set of specifications in both official languages can be purchased in print or electronic format from one of NMS licensed publishers.

Individual specialty packages are also available for specifications related to: Architecture, Air Transportation, Building Services, Electrical, Heavy Civil Engineering, Interior Design, Landscape Architecture, Mechanical, Restoration-Conservation, and Structural Engineering.

Numbers and Titles Link: <https://www.edmca.com/media/35207/masterformat-2016.pdf>

The NMS contains information about recommended materials and installation procedures that can help inform project managers and housing managers. Even if the document is not an easy read in its unedited version, it is useful for the writing specifications sections and start project manuals.

Construction Specifications Canada link: <http://csc-dcc.ca/Document+Store/MasterFormat/>

Consistent use of Section Format reduces the chance of omissions or duplication in project specifications.

## 4.1 Master Specifications: Example of NMS

Section format is designed with three parts:

**Part 1: General** - defines the specific administrative and procedural requirements unique to the section; complements Division 1 subject content without duplicating statements.

- Summary
- References
- Definitions
- System description
- Submittals
- Quality assurance
- Delivery, storage and handling
- Project conditions or site conditions
- Sequencing
- Scheduling
- Warranty
- System start-up
- Council's instruction
- Commissioning
- Maintenance

**Part 2: Products** – presents the description and quality of items that are required for the project under that section in detail:

- Manufacturers
- Existing products
- Materials
- Manufactured units
- Equipment
- Components
- Accessories
- Mixes
- Fabrication
- Finishes
- Source quality control

**Part 3: Execution** – Describes preparatory actions and how the products are to be incorporated into the project in detail:

- Acceptable installers
- Examination
- Preparation
- Erection
- Installation
- Application
- Construction
- Repair/restoration
- Reinstallation
- Field quality control
- Adjusting
- Cleaning
- Demonstration
- Protection
- Schedules

While the NMS is NOT directed at residential construction, information included about bidding and technical requirements can be useful for residential construction in FN communities.

## **4.2 Overview & how it works**

NMS is an extensive library of construction specification sections, which are used by government and the private sector. Available in English and French, NMS is a resource tool designed for the Canadian building construction industry, containing more than 780 specification sections and comprising about 7000 pages in each language.



NMS is supported by major construction industry associations and is updated regularly by industry specialists to incorporate changes in:

- Technology
- Environmentally responsible options for materials, products and systems
- Installation requirements and methods
- Current industry practices

NMS is a resource tool and reference document. It is a delete master that provides bracketed optional text and blank spaces requiring selection and editing by the project specification writer.

Reference to materials and methods in NMS does not necessarily preclude the use of other suitable materials and methods.

NMS is divided into divisions and sections in accordance with MasterFormat™ and UniFormat™.

NMS prescriptive sections are formatted in accordance with SectionFormat™, which is a recommended three-part format for construction specifications that is jointly produced by CSC/CSI (Construction Specifications Canada/ Construction Specifications Institute).

NMS performance sections are formatted following recommendations outlined in CSI's PPDFormat (PPD stands for Preliminary Project Description). The format was later adapted to better capture information available at later stages of the project.

NMS is available in various electronic formats through authorized publishers. Each publisher produces software applications that enhance the ease of use of NMS.

### **4.3 NMS development**

NRC's Construction Research Centre is responsible for ensuring that NMS is current, concise, and practical. To this end, the NMS Technical Team manages and maintains NMS by:

- Developing work plans for the maintenance and updating of NMS database
- Administering the NMS technical review process
- Maintaining the integrity, style, and format of NMS

NRC co-ordinates the continuing development, maintenance, and updating of:

- General construction specification sections
- Sections on historic structures and conservation for Parks Canada, Canadian Heritage, and Environment and Climate Change Canada
- Specialty sections for Public Services and Procurement Canada, National Defence, and the private sector
- A list of reference standards

## 4.4 Use of NMS

Most design firms, government agencies, architects and engineers use a master specification to draft their project specification. NMS is primarily used for public projects, but can also be used on private projects.

For FN communities, NMS might not be the first choice to use as a master specification for projects; however, it is a useful source that can provide a base for Chiefs and Councils to develop their own documents.

The NMS serves the following purposes:

- Speeds up and improves efficiency for the preparation of specifications
- Provides technical text offering known choices to be selected that expands decision making capability
- Provides a checklist of items to consider and coordinate with the construction drawings
- Provides standardization that reflects good construction practices

## 5. Need more information?

- Specification – Samples (ARCAT)  
<https://www.arcata.com/sd/specifications.shtml>
- Construction and Design Standards (Region of Waterloo)  
<https://www.regionofwaterloo.ca/en/doing-business/Construction-Design-Standards-and-Guidelines.aspx>
- Construction Contracting Guidelines for First Nations/Aboriginal Communities  
<https://www.sac-isc.gc.ca/eng/1493132907312/1533649929381>
- Residential Occupancy Permit Checklist (Lambton, Ontario sample)  
[https://www.lambtononline.ca/home/residents/buildingservices/Documents/TACB\\_OC\\_Residential\\_Occupancy\\_Permit\\_Checklist.pdf](https://www.lambtononline.ca/home/residents/buildingservices/Documents/TACB_OC_Residential_Occupancy_Permit_Checklist.pdf)

# Terms & Conditions / Definitions

Book 9



**Procurement in Indigenous Communities**



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# 1. Terms and Definitions

The terminology below is intended as a reference to create a common understanding. In reviewing the terms and contents of the guide, you'll note that an individual or group may play multiple roles, for example the Chief & Council may be the "Owner" and

**Addenda:** *The plural word of "Addendum" means a document that calls attention to additions, deletions, and amendments to the bid documents in a brief and concise manner.*

**Alternatives:** *Anything for which bidders provide a price in a manner that gives the Owner options in determining the actual work of the contract. An alternative could be an optional product, system, installation method, design, requirement, scope of work, etc.*

**Approved Equal:** *An approved material or process that is deemed of equal quality and similar value.*

**Architect (See also design professional):** *Architect is the design professional who generally coordinates the work of the design professional's team. Architects are in charge of ensuring Codes conformity. The architect is also the referee for the agreement between and Owner and Contractor.*

**Authority having jurisdiction:** *The governmental body with authority to administer and enforce the applicable codes or the local by-laws.*

**Bid or Tender:** *Bid or tender is a process that involves stating for what price the contractor will assume a contract to be evaluated by the owner.*

**Bidder(s):** *The entity (individual or company) that is submitting a bid.*

**Bid Security:** *A statement of whether bid security is required.*

**Bid Documents:** *Includes all documents to be included in the executed contract, including the agreement, specifications and drawings, as a minimum.*

**Building Permit:** *A permit to build or construct is issued by a city or town or authority and is required for construction of a new building or structure, for additions, fireplaces and woodstoves, and for most alterations to existing buildings. Building permits are also a type of authorization that must be granted by a government or other "regulatory" authority before the construction of a new or existing building can legally occur.*

**ByLaw:** *Rule or regulation enacted under the Indian Act. (Reference to Section 81- Powers of Council - 81 (1) The council of a band may make by-laws not inconsistent with this Act or with any regulation made by the Governor in Council or the Minister, for any or all of the following purposes, namely, et al.*

**Contract:** *A contract is a voluntary binding agreement between two or more parties.*

**Contract Documents:** All documents including the engineering and architectural drawings and specifications as defined in the construction contract(s) for the project.

**Chief and council:** Is an elected group lead by an elected chief and councilors based on the number of members of the First Nation. Chief and council are the authority having jurisdiction.

**Change Order (CO):** A Change Order is a written contract amendment prepared by the Consultant and signed by the Owner and the Contractor stating their agreement upon:

- a change in the Work;
- the method of adjustment or the amount of the adjustment in the Contract Price, if any; and
- the extent of the adjustment in the Contract Time, if any.

**Client:** The client is the building project initiator and this person or group usually decides when to proceed with the various phases of development of a construction project. The most basic ingredient a client provides to a project is money to design, construct and subsequently operate the facility over its life cycle. The client may be from either the public sector, such as government, or private sector such as a corporation.

**Commissioning:** A process by which building operating systems are activated, tested and verified for correct function.

**Construction Budget:** The sum established by an owner as available for construction of a project, including contingencies for cost increases during construction.

**Construction Team:** Refers to design professionals including the project manager, contractors, subcontractors and others who are directly involved in the construction or design phase of the project.

**Corporations:** Corporations include what are commonly referred to as companies, and are legal entities created by law.

**Design build:** is a project delivery system used in the construction industry. It is a method to deliver a project in which the design and construction services are contracted by a single entity known as the design–builder or design–build contractor.

**Designer:** An architect or engineer licensed to practice in the province or territory where the project is constructed and who designs all or part of the project.

**Design professional:** Individuals are registered or licensed by a province or territory to assure the public that individuals calling themselves architects or engineers have the qualifications necessary to practise their profession.

**Directive Change (DC):** A written instruction prepared by the Consultant and signed by the Owner directing the Contractor to proceed with a change in the Work within the general

*scope of the Contract Documents prior to the Owner and the Contractor agreeing upon adjustments in the Contract Price and the Contract Time.*

**Construction Drawings:** *The graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the work, generally including plans, elevations, sections, details, and diagrams.*

**Engineer:** *(See also Design professional): The consulting engineer or engineers who are sub-consultants to the prime consultants.*

**Entity:** *Refers to a body with distinct and independent existence, such as an organization or an institution.*

**Estimate:** *A reliable cost/time evaluation of an item or project both in part and in total, both for the present and for the life cycle.*

**Facility:** *A broad term used in the construction industry for all or any portion of a physical complex, including buildings, structures, equipment, grounds, roads, parking lots, etc.*

**Fiduciary Trust:** *a person (or a business like a bank or stock brokerage) who has the power and obligation to act for another (often called the beneficiary) under circumstances which require total trust, good faith and honesty.*

**Feasibility:** *A study of the economic feasibility of a development project, usually based on a concept or preliminary cost study.*

**First Nations Building Officer:** *An individual who has received training and is certified by a provincial building officials association to conduct compliance under the National Building Code or provincial building codes.*

**General Contractor:** *A common term used to define the prime contractor, who typically oversees sub-contractors to do some or all of the work.*

**General Requirements:** *Establishes conditions that apply to the entire project.*

**Holdback:** *Retaining funds due to the contractor for work completed to assure substantial project completion.*

**Insurance:** *A contract in which one party agrees to pay for another party's financial loss for a set fee resulting from a specified event.*

**Intellectual Property:** *creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce*

**Liability:** *The state of being liable or accountable. Something for which one is liable: an obligation, responsibility or debt.*

**Life Cycle:** *The continuous evolution of a property which starts as an empty space, becomes a concept, then a design, is constructed into a useable construction entity, is used, and then*



*decommissioned to one again be an empty piece of property. The evolutionary process can then begin again.*

**Owner** (See also Chief and Council): *Identifies the Owner or the Owner's authorized agent or representative as designated to the Contractor in writing but does not include the Consultant.*

**Phased Construction:** *A design-construction process in which design and construction overlap, thus shortening the project time.*

**Prime Consultant:** *The individual who, or firm which, is registered with a professional association, and who or which has the responsibility to coordinate the design and the field reviews of the various design professionals (such as structural, mechanical, electrical, geotechnical, architectural) for the project.*

**Procurement:** *The action of obtaining (buying) or procuring material and/or services.*

**Project:** *A construction undertaking in which the work or construction contract may be whole or part.*

**Project Budget:** *The sum established by an owner as available for an entire project including the construction budget, professional fees, cost of land, rights of way, furnishings, equipment, financing and all other costs for a project.*

**Project Manager:** *A person employed or appointed by an owner or an agent in a construction project.*

**Punch List:** *A list of items of work or deficiencies to be attended to prior to completion.*

**Risk:** *The possibility of suffering harm or loss; danger. A factor, thing, element or course involving uncertain danger; a hazard.*

**Request for proposals:** *A document that solicits proposal, often made through a bidding process, by an agency or company interested in procurement of a commodity, service, or valuable asset, to potential suppliers to submit business proposals.*

**Shop Drawings:** *Drawings, diagrams, illustrations, schedules, performance charts, brochures, product data, and other data which the contractor provides to illustrate details of portions of the work.*

**Specification:** *That portion of the Contract Documents, wherever located and whenever issued, consisting of the written requirements and standards for products, systems, workmanship, quality, and the services necessary for the performance of the work.*

**Statement of interests:** *A formal business letter that is sent with a resume and/or documentation to indicate one's interest in a project or work.*

**Statement of work:** is a document routinely employed in the field of project management. It is referred to as the narrative description of a project's work requirement. It defines project-specific activities, deliverables and timelines for a vendor providing services to the client.

**Subconsultants:** is a professional who is appointed and paid by another discipline (usually an architectural or engineer practice) to carry out design or surveys work that requires specialization.

**Subcontract:** A party to a contract who does a specific category of work.

**Submittals:** Documents or items required by the contract documents to be submitted by a contractor before the portion of the work that they represent can be incorporated into the work. (For example, shop drawings, samples, models, mock-ups, record drawings, etc.)

**Substantial Completion:** Complete performance such as the work is ready and useable for the purpose intended for which it was constructed.

**Substitution:** A proposal by bidders to provide similar products, materials and equipment not originally specified, for consideration before or after the contract award.

**Temporary facilities:** Services and similar prerequisites for work that is provided on site by a contractor, which is related to the project work.

**Tender:** (see bid)

**Work:** The total construction and related services required by the contract documents.

**Work Schedule:** A work plan showing tasks or phase durations along with the dates for the start and completion of tasks and phases for the entire project. This is sometimes referred to as a "critical path" method of project scheduling.

## 2. For more information

For additional definitions see:

- Government of Canada – Standard Acquisition Clauses and Conditions (SACC) Manual  
<https://buyandsell.gc.ca/policy-and-guidelines/supply-manual/glossary/1>
- Business dictionary – Procurement defined  
<http://www.businessdictionary.com/definition/procurement.html>
- What's the difference between procurement and purchasing (Blog)  
<https://blog.procurify.com/2014/02/07/what-is-the-difference-between-procurement-and-purchasing/>