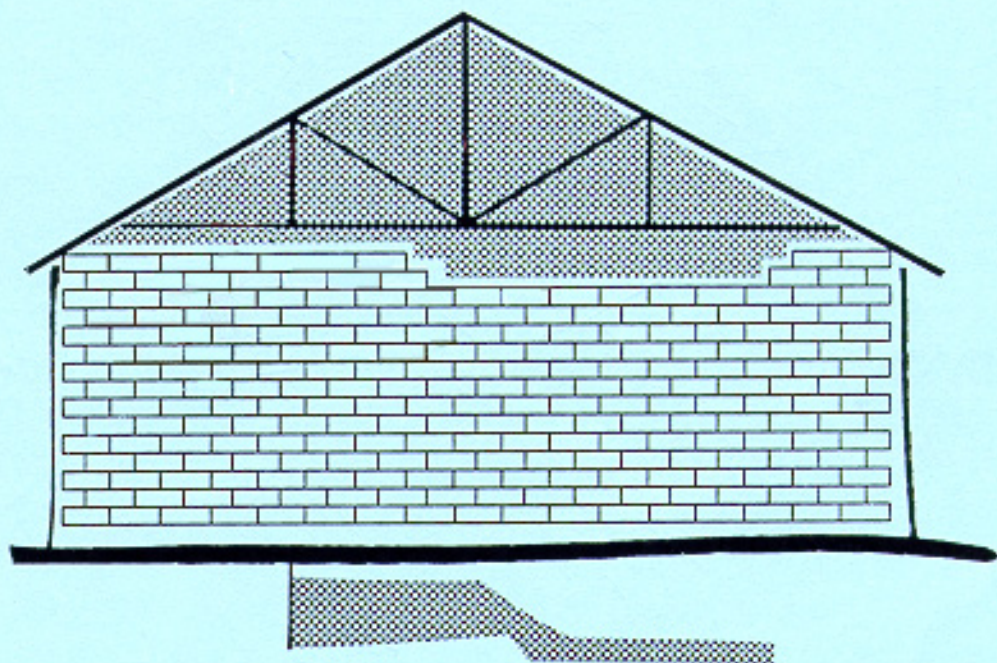




Indian and Northern  
Affairs Canada

Affaires indiennes  
et du Nord Canada

**CN1**  
**Contract Administration Training Publication**



**CONSTRUCTION CONTRACTING GUIDELINES  
FOR FIRST NATIONS AND ABORIGINAL COMMUNITIES**

Canada

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CN-1

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

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April 2002

Prepared by Real Property Services for INAC  
for Indian and Northern Affairs Canada

This publication has been developed for use  
by the Public Service, First Nations and  
Aboriginal Communities only

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**CONSTRUCTION CONTRACTING GUIDELINES  
FOR FIRST NATIONS AND ABORIGINAL COMMUNITIES**

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## **CONSTRUCTION CONTRACTING**

### **GUIDELINES FOR FIRST NATIONS AND ABORIGINAL COMMUNITIES**

#### **Section 1**

#### **INTRODUCTION**

##### **1.1 General Remarks**

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.

A construction contract is an agreement entered into between the Band Council and a contractor for the construction of buildings and structures, and the repair, renovation or restoration of any work. This includes:

- a. construction of a building or structure;
- b. demolition of a structure;
- c. dredging a river or building retaining walls;
- d. construction or extending water supply and sewage disposal systems;
- e. construction or reconstruction of roads and bridges; and
- f. hire of equipment to be used in or incidently to the execution of a work.

##### **1.2 Contracting Approaches**

There are two main contracting approaches that Band Councils can use to address their construction needs; General Contracting and Construction Management. The different contracting approaches are characterized by different divisions of the roles and responsibilities of the Band Council and the contractor(s) within the construction project. Each approach involves a different division of the "Risk" assumed by the Band and the contractor(s). The Tendering Thresholds for federally funded construction projects, excluding housing, vary in accordance with this division of risk associated with each of the approaches.

### 1.2.1 General Contracting

When a General Contracting Approach is used to address capital projects, construction firms in the private sector are encouraged to tender on Band construction works through the competitive process. Competitively Awarded Procurement (CAP) of the work to a General Contractor will give Band Councils a measure of assurance that they are obtaining best value. The application of the procedures outlined in the various sections of this Manual will ensure compliance with band policies, and together with generally accepted practices in the construction industry, will provide protection for both the Band Council and contractors.

When a General Contracting Approach is used the “Framework to Guide the Development of a First Nation Tendering Policy” applies. The Framework encourages the development and application of strategies to maximize the participation of Aboriginal Firms and local content within the construction project.

### 1.2.2 Construction Management

When a Construction Management Approach is used to address capital projects, excluding housing, the Band hires a qualified Construction Manager to work for and report directly to the Band Council. The Construction Manager assumes the role of the General Contractor for the project

When a Construction Management Approach is used the “Operational Parameters for the Review and Evaluation of Construction Management Projects” applies. The Operational Parameters call for development, review and approval of a project specific Business Plan, in accordance with the parameters.

A Construction Management Approach normally consists of two components; a Competitively Awarded Procurement portion and an Own Forces Procurement portion.

Within the Competitively Awarded Procurement portion, the Band Council still has a measure of assurance that they are obtaining best value. The application of the procedures outlined in the various sections of this Manual will ensure compliance with band policies, and together with generally accepted practices in the construction industry, will provide protection for both the Band Council and contractors.

Within the Own Forces Procurement portion, the Band Council uses its own staff and directly employs local First Nations labour, equipment and materials to carry out the work. First Nations must demonstrate the capacity to conduct the work in the sub trades to the required standards and the availability of the local equipment and materials.

Within the Own Forces Procurement portion, the measure of assurance that appropriate value is being achieved for the work of the sub trades comes with independent evaluations of the value of the sub trade work being consistent with industry standards. The type of validation required for the sub trade work varies with the value of the work contemplated. Again these thresholds reflect the assumption of risk by the Band Council associated with the project implementation.

Construction contracting, regardless of the approach selected, should be carried out in such a manner as to ensure the Band Council and its delegated officers are above reproach and that the Band Council receives best value for monies spent.

In all sections, the recommended responsibilities of the Band Council, Band Council representative and the band's technical representative have been defined for the various actions required in the procurement, administration and management of construction contracts.

From time to time bands may be advised of suggested changes to this publication.

### 1.3

#### Definitions

Band representative: the officer who has been formally designated by the Band Council as responsible for the overall contract administration for the project.

Project manager: the person appointed by the Band Council and designated in the contract to perform technical functions specifically assigned to the Engineer in the terms and conditions of the contract, which includes its management.

**Section 2**  
**TENDER CALL**

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## **Section 2** **TENDER CALL**

### 2.1 General Remarks

This section outlines policies, principles and procedures for obtaining tenders for construction and repairs. Appendix 2-1 outlines the work flow of the construction tendering process.

### 2.2 Definitions

Tender: a bid or offer submitted by a contractor in response to an invitation from the Band Council. A tender is considered to be valid if it meets all the requirements stipulated in the invitation.

Bid bond: a bond given to guarantee entry into a contract (this is a surety bond given to indemnify the Band Council against increased costs if the tenderer does not carry out its undertaking to enter into a contract).

Security deposit: this is either:

- a. a certified cheque, bank draft, or money order made payable to the Band Council and drawn on a recognized banking institution; or
- b. a letter of credit issued by a recognized banking institution; or
- c. a government guaranteed bond.

Addendum: any change in the plans and specifications, the other tender documents or the conditions of tender issued during the tender call period.

### 2.3 Policy

2.3.1 It should be the policy of the band to call public tenders to ensure best value, except where the cost is minor and public advertising is not feasible; or in the case of an emergency.

2.3.2 Obtaining tenders by direct invitation should be restricted to the situations mentioned in Section 2.3.1. (For additional information and guidance refer to Appendix 2-2.)

2.3.3 All bidders must bid on identical information and terms, and must be treated equally.



## 2.4 Assembling Tender Documents

2.4.1 The documents which make up the tender package will depend on the size of the construction or repairs project:

a. For projects valued up to \$25,000, the Work Order contract form may be used. The tender documents would consist of:

- the invitation to tender
- the work order form (see Appendix 2-7)

b. For projects valued between \$25,000 and \$100,000, a Minor Works Construction tender and contract form may be used. The tender documents in this case would consist of the following attached as Appendix 2-8 (samples only):

- Instructions to Bidders,
- Tender and Acceptance Form,
- General Conditions,
- Labour Conditions, (Provincial)
- Insurance Schedule, (if specified)
- Plans and Specifications, and
- Contractors Qualification Statement.

c. For projects valued in excess of \$100,000 The Standard Construction contract form should be used and in this case the tender documents would consist of the following attached as Appendix 2-9 (samples only):

- Instructions to Bidders,
- Tender Form,
- Articles of Agreement,
- Terms of Payment,
- General Conditions,
- Labour Conditions (Provincial),
- Insurance Schedule,
- Contract Security Conditions,
- Plans and Specifications, and
- Contractors Qualification Statement.

d. Band Councils may wish to develop their own tender and contract forms in consultation with their legal representative.

2.4.2 The band representative must make sure that plans and specifications are ready for the tender call.

2.4.3 Labour conditions should be accompanied by a wage rate schedule which the band representative may obtain from the provincial department of labour where the project is located.

- 2.4.4 All other tender documents are prepared by the band representative.
- 2.4.5 The band representative arranges for the assembly of the complete tender package.
- 2.5 Tender Advertising
- 2.5.1 The band representative determines the area of advertising, which should be small enough to promote the employment of local labour but broad enough to ensure adequate competition. In general, jobs estimated at \$500,000 or less are advertised locally, works estimated at more than \$500,000 but not less than \$2,000,000 are advertised within the region, and works estimated at more than \$2,000,000 are advertised on a national basis.
- 2.5.2 The band representative decides:
- a. the band office or offices at which tender documents may be obtained or inspected;
  - b. the builder's exchange at which tender documents will be on view;
  - c. the tender closing time and date; and
  - d. whether tender documents are to be on display at local post offices and other band offices, and if so, which one.
- 2.5.3 The band representative is responsible for making a list of newspapers in which the tender advertisement is to appear.
- 2.5.4 Normally, only one advertisement is inserted in each newspaper for each tender call. (See sample at Appendix 2-10).
- 2.5.5 The Band Council may combine more than one project in an advertisement in order to save money.
- 2.6 Distribution of Tender Documents
- 2.6.1 Tender documents will be issued from the offices indicated in the tender advertisement.
- 2.6.2 Tender documents should be displayed as widely as possible within the general advertising area of the tender call. Tender documents for small jobs should be displayed at band offices, builder's exchange, and local post office.
- 2.6.3 Documents for "invited" tenders are normally supplied only to those contractors who have been directly invited to tender. However, other contractors who specifically request tender documents and ask to be allowed to tender should not be refused.

- 2.6.4 Normally, tender documents are issued only to general contractors and major trades. Other persons may view documents at the display locations set out in the tender advertisement. Normally, only one set of documents is issued to each contractor; a maximum of two sets may be issued to one contractor provided the required deposit is supplied for each set.
- 2.6.5 If the distribution of tender documents is restricted in any way, enough sets must be available for display and viewing.
- 2.6.6 The offices issuing tender documents are responsible for informing the tender calling office of the names of contractors who have asked for documents.
- 2.6.7 Requests from the public for the names of contractors who have taken tender documents should be agreed to.

2.6.8 Deposits for tender documents should be for the following amounts:

Estimated Contract Value of

\$25,000 or less .....	none
From \$25,000 to \$100,000 .....	\$ 25.00
From \$100,000 to \$500,000 .....	\$ 50.00
From \$500,000 to \$1,000,000 .....	\$100.00
From \$1,000,000 to \$5,000,000 .....	\$250.00
over \$5,000,000 .....	\$500.00

Deposits should be in the form of cheques drawn on recognized financial institutions, bank drafts or other similar financial instruments made payable to the Band Council. Cash is acceptable.

- 2.6.9 Deposits for tender documents should be handled as follows:
  - a. If refundable, deposits in the form of cheques, bank drafts, etc. will be held uncashed in a safe place by the tendering office until the tender documents are returned to the tendering office in good condition. If the tender documents are not returned within the required time, deposits will be credited to the Band Council. Cash deposits will be deposited immediately.
  - b. The successful bidder's deposit for tender documents is sometimes returned after issuance of the contract award letter, and he/she keeps the tender documents. However, the deposit will not be returned before the contract award letter has been sent as it could indicate that the contract has been awarded to him/her.
- 2.6.10 a. In addition to the general practice of displaying tender documents at band offices, construction associations/builders' exchanges and local post offices, documents may be provided on request to microfilm companies at no charge and to publishing companies on payment of the required deposit.

- b. Band Councils may wish to ask for non-refundable payments for tender documents. Contractors would not be required to return the tender documents nor would they have their payment returned. The payment would automatically be deposited. This would help to pay for the costs of producing tender packages.

## 2.7 Listing of Trades

- 2.7.1 The band representative decides for each project which trades will be listed in the tender form. (Refer to Appendix 2-3 for guidance on selecting these trades).
- 2.7.2 The low bidder will be given 48 hours after being asked to do so by the band representative during the tender review period, to provide the name of the subcontractor for each of the listed trades.

## 2.8 Issue of Addenda

- 2.8.1 Addenda to the plans and specifications are prepared by the band representative in consultation with the band's technical expert. Addenda to the tender documents, other than the plans and specifications, are prepared by the band representative.
- 2.8.2 Addenda prepared by the band representative are sent to the tender calling office for distribution.
- 2.8.3 The tender calling office distributes addenda to all recipients of the tender documents by registered mail.
- 2.8.4 Normally addenda are not issued less than 14 days before the tender closing date.
- 2.8.5 An addendum is not issued verbally. In exceptional circumstances, the tender calling office may issue an addendum by fax.
- 2.8.6 The office issuing the addendum confirms, before the tender closing date, that all contractors who have taken out tender documents, and all offices which display or issue tender documents, have received the addendum.

## 2.9 Extension of Tender Closing Date

- 2.9.1 The tender closing date established and published in the tender advertisement should be changed only in the most exceptional circumstances.
- 2.9.2 Notices of change of tender closing date should be issued at least one week before the original tender closing date.

- 2.9.3 The tendering office notifies all contractors who have drawn tender documents, by registered mail, of any changes of tender closing date, and all offices at which tender documents are on display or are available.
- 2.9.4 When a contractor has placed a tender in the mail before the extension, he/she should be advised that the tender may be amended providing the amendment is received at the designated office before the revised closing date.
- 2.10 Receipt and Opening of Tenders
- 2.10.1 Only tenders submitted on the form supplied by the Band Council and delivered to the designated office before the time set for reception of the tenders should be considered.
- 2.10.2 Tender amendments in writing or by fax are permitted and will be considered if received prior to the time designated for reception of tenders.
- 2.10.3 All tender envelopes and amendments are to be stamped with the time and date upon receipt by the tendering office. Fax amendments will be stamped with the time and date upon receipt. The band representative should ensure a check is made immediately before the tender closing time to determine if any fax amendments have been received.
- 2.10.4 All tender envelopes received are kept unopened by the tendering office in a locked cabinet until the time and date set for the opening of tenders.
- 2.10.5 Tenders are received only at the office designated in the tender advertisement for the receipt of tenders. A contractor delivering tenders to any other office is to be instructed to deliver them to the designated office.
- 2.10.6 Under no circumstances are the names of bidders or the number of bids received given out to anyone before tenders are opened.
- 2.10.7 Except as prescribed in 2.10.9 and 2.10.16 below, no tenders or amendments received after the exact time designated for the closing of tenders are considered. Tenders received late are returned unopened to the bidder with an explanatory letter. In these cases, both sides of the tender envelope should be photocopied and the photocopies should be placed on file for future reference.
- 2.10.8 A bidder will be permitted to withdraw his/her tender before the tender closing time and date, if a request is received in writing prior to this time, and is signed by a responsible officer of the firm.
- 2.10.9 If no tenders are received by the time and date set for the closing of tenders, any late tenders which have been mailed and are post marked before such closing time and date and received within 48 hours after the closing time and date may be considered.

- 2.10.10 Tenders should be opened immediately or as soon as practicable after the closing time. Public tenders are opened in public. "Invited" tenders are opened in the presence of only those contractors who have submitted bids, if they so request.
- 2.10.11 Tenders are opened by the band representative or by a responsible official designated by her/him. The opening is witnessed by a second responsible official.
- 2.10.12 After the official time set for closing of tenders, but before their opening, the responsible officer announces to those present for the opening:
- a. the official name of the project;
  - b. that all tenders received will be subject to audit and technical assessment before any recommendation is made for contract award; and
  - c. that no questions concerning tenders will be entertained at the opening.
- 2.10.13 As tenders are opened, the responsible officer announces only:
- a. the name and address of each bidder;
  - b. the amount of each bid, including total amount of any amendments and revised total tender amount.
- The second responsible officer records this information on the tender opening report as well as the type and amount of bid security, if security was called for in the tender document.
- 2.10.14 The two officers opening tenders initial all tenders, amendments and sign the tender opening report.
- 2.10.15 Decisions relative to the acceptability or disqualification of a tender are not to be made during the formal tender opening.
- 2.10.16 An amendment, reducing the low bid, which has been received after the tender closing time will be considered as a post-tender negotiation. If the low bidder insists on withdrawing the late amendment which reduced his/her tender, the Band Council cannot insist that the amendment be allowed to stand. It is in the best interest of the band, however, to obtain the best possible tender price for a project and consequently the low bidder should be encouraged to honor the late amendment.
- 2.10.17 An amendment increasing the low bid and received after the tender closing time will not be considered. Cases have arisen where amending faxes increasing the low bid on a project have been sent in ample time, but due to delays, the faxes have been delivered after the time set for the receipt of tenders. In such cases, the late amendments cannot be considered. However, when there is evidence of a substantial error in the low tender the procedure detailed in 2.12.8, dealing with withdrawal will be followed.
- 2.10.18 Enquiries for tender results after opening are answered with only the names and addresses of bidders, and the total amounts of the bids.

## 2.11 Bid Security

- 2.11.1 For tenders over \$25,000, the Band Council should request bid security of at least 10% of the tender price to guarantee entry into contract. (See Appendix 2-6 for an approved form for the bid bond). In special circumstances the project manager may decide to call for tender security for projects estimated at less than \$25,000. The types of bid security acceptable to, and the amounts of such bid security required by the Band Council might consider asking for are those described in Appendix 2-4.
- 2.11.2 If a tender, for which tender security is required, is not accompanied by such security, then the tender should be disqualified during the tender review period, except in the situation described in 2.11.6.
- 2.11.3 When a tender is less than \$25,000 and no bid security has been provided, a bidder who amends her/his tender to an amount in excess of \$25,000 must ensure that bid security is provided by the time set for the reception of tenders. If this is not done, the tender should be disqualified during the tender review period, except in the situation described in Section 2.11.6.
- 2.11.4 When no security is submitted with a tender, even though advice has been received from a bonding company before the time set for reception of tenders that a bid bond has been issued but not in sufficient time to be available for tender opening, the tender must be disqualified during the tender review period since the requirement to provide security has not been adequately met. An exception is described in Section 2.11.6.
- 2.11.5 In cases where the bid bond submitted with a tender has not been signed by the contractor (principal), the bid bond is acceptable as security provided all other details on the bond have been correctly filled out. The contractor should be asked to sign the document before the contract is awarded.
- 2.11.6 If as a result of a tender call only one tender is received and such tender does not meet the bid security requirement of the tender documents, then the tender should not be disqualified if it is acceptable to the Band Council in all other respects. The band representative must however ensure that the bidder supplies to the Band Council the required bid security as a post-tender negotiation.
- 2.11.7 Bid security is handled as follows:
- a. Security deposits received with a tender: after the opening of tenders, all security deposits except those from the two low valid bidders are returned by registered mail. If a security deposit from one or both of the two low bidders is a certified cheque or a government guaranteed bond, it is held uncashed by the tendering office until the contract is awarded.
  - b. Bid bonds received with a tender: after the opening of tenders all bid bonds other than those from the two low valid bidders are returned.

- 2.11.8 If the bid security received with the lowest tender is not in the proper amount or form, the lowest bidder is allowed 48 hours to rectify the situation if the security is:
- a. marginally less than the amount required;
  - b. a certified cheque on other than an acceptable banking institution;
  - c. a bid bond issued by a company whose bonds are not acceptable to the Band Council; or
  - d. a bid bond not in the approved form.

Failure to replace it with security in the proper amount or form within 48 hours results in rejection of the tender.

Where it is evident that the low bidder has purposely submitted a bid security substantially less than the amount required, the Band Council should consider rejecting the tender without allowing the bidder the opportunity to submit the correct amount of bid security.

- 2.11.9 A security deposit from a person or party other than the bidder, or from one of the parties to a joint tender, is not returned to that person or party unless specific instructions are submitted with the tender. If no specific instructions are received, the deposit is returned to the bidder, that is personally to a sole tenderer; jointly to the persons submitting a joint tender; and, to the company submitting a tender.

## 2.12 Review of Tenders

- 2.12.1 After the tenders have been opened, they shall be forwarded to the band's project manager for technical review and assessment.

- 2.12.2 The band representative is responsible for the administrative review of all tenders, including the identification of anomalies, alternatives and qualifications.

- 2.12.3 The tenders will be assessed for the following:

- a. comparison with the Band Council's estimate;
- b. accuracy of tender computations; (refer to Appendix 2-5 for additional guidance);
- c. completeness of the tender in all respects;
- d. extent of compliance with local contract requirements;
- e. evaluation of alternatives which may have been included in the tender;
- f. availability of adequate equipment to carry out the work;
- g. previous record with the Band Council; and
- h. capability to undertake the full extent of the work.



- 2.12.4 A tender will normally be disqualified for the following reasons:
- a. failure to tender on the band's tender form or to complete the tender form in all respects;
  - b. failure to bid in accordance with the requirements of the tender documents; and
  - c. failure to supply proper tender security within 48 hours (as per 2.11.8).
  - d. the contractor is unable to provide the necessary equipment to undertake the work;
  - e. the contractor is unable to carry out the full extent of the work;
  - f. a previous unsatisfactory record with the Band Council; or
  - g. unbalanced unit prices included in the tender;
  - h. if it is a conditional or qualified bid.
- 2.12.5 All recommendations by the band representative to disqualify a tender should be submitted to Band Council for approval.
- 2.12.6 A disqualification situation does not exist where a bidder has agreed to withdraw the tender. While withdrawal could occur for the reasons outlined in 2.12.4.d and 2.12.4.e above, it is unlikely to arise under 2.12.4.f and 2.12.4.g (refer also to 2.12.7 dealing with withdrawal).
- 2.12.7 If the two lowest tenders submitted are identical in price and all other conditions are equal, the recommendation to award must take into account the following criteria:
- a. A bidder with an overall satisfactory performance record is to be given preference over a bidder who is known to have an unsatisfactory performance record.
  - b. Where delivery is an important factor, the bidder offering the best delivery date is to be given preference.
  - c. A tenderer who is in a position to provide adequate after-sales service and has a good record in this regard is to be given preference over a bidder who is not in position to provide adequate service or who has a poor record.
  - d. Where bid security was a requirement of the tender call and a request to withdraw a tender is received during the tender review period, a decision should only be made after reviewing the bid security conditions. In cases where bid security is not involved, such requests may be dealt with immediately upon request.

NOTE: In cases where a low bidder asks to withdraw his/her tender because of a proven substantial error in its preparation, the Band Council may permit the low bidder to withdraw the tender without penalty and award the contract to the second lowest valid bidder who, in effect, becomes the low bidder.

- 2.12.8 If the tender of the low bidder is too high in relation to the Band Council estimate, the following practice should apply:
- a. The Band Council should negotiate with the low bidder to obtain a reduction in price provided the change in the scope of the work is minor in nature and that the reduction being sought is less than 10% of the value of the low tender. If the Band Council is unable to obtain a satisfactory reduction in the low tender in relation to the changes proposed, then the Band Council may authorize the inviting of new tenders from the three low bidders on the original tender call.
  - b. When changes in the scope of work are estimated to exceed 10% of the value of the low tender, tenders should be invited from at least the three low bidders with consideration being given to re-inviting bids from all bidders on the original tender call.
  - c. Where changes in the scope of the work take on major proportions or substantially change the character of the work, consideration should be given to recalling public tenders.
  - d. Prior to re-inviting or recalling tenders, the band should make some changes to the plans, specifications and tender form so as to change the extent of the work being retendered.

## 2.13 Cancellation of Tender Call After Receipt of Tenders

- 2.13.1 In cases where it appears advisable not to proceed with an award of contract after receipt of tenders, the Band Council may approve cancellation of the tender call. The file should contain the reasons for cancellation. All contractors who submitted tenders should be informed of the cancellation.

## Appendix 2-1

### WORK FLOW - CONSTRUCTION TENDER CALL

#### ASSEMBLING TENDER DOCUMENTS

<u>ACTION BY</u>	<u>STEP</u>	<u>DETAIL</u>
Band Representative	1	Obtains from provincial ministry of labour the minimum rates of pay for the labour trades and labour conditions.
	2	Ensures final plans and specifications are available.
	3	Prepares, in consultation with the band's project manager, technical instructions for bidders with a detailed breakdown of quantities and units of measure (where applicable), a detailed cost estimate, and determines the contract completion date.

#### TENDER ADVERTISING

Band Representative	4	The band representative establishes the following in consultation with the Engineer: <ul style="list-style-type: none"><li>a. the time and date tenders are to be received;</li><li>b. the office or offices from which tender documents will be issued;</li><li>c. the builder's exchanges at which tender documents will be available for display;</li><li>d. the number of sets of tender documents which will be available at each display point; and</li><li>e. the locations in which the tender call will be advertised.</li></ul>
	5	Prepares tender advertisement.
	6	Assembles one complete set of tender documents into a complete tender package.
	7	Reviews complete tender package to establish any special instructions to bidders and the need or otherwise for each of the individual tender form pages.

## Appendix 2-1 (cont'd)

<u>ACTION BY</u>	<u>STEP</u>	<u>DETAIL</u>
	8	Prepares required number of complete tender packages in accordance with approved sample.
	9	Prepares list of newspapers in which the tender call will be advertised.
	10	Forwards appropriate number of complete sets of tender documents and copies of advertising notices to distributing offices and each of the builder's exchanges at which they will be displayed.
	11	Prepares and sends publication orders to newspapers.

### DISTRIBUTION OF TENDER DOCUMENTS

Tender Distribution Office	12	Issues tender documents to contractors in return for appropriate deposit.
	13	Holds tender document deposits uncashed in safe until plans and specifications are returned in good condition.
	14	Reports the names of contractors who have taken tender documents to the tendering office.
Band Representative	15	Answers, as required, queries from the public and from construction associations as to those contractors who have taken tender documents.
	16	Prepares amendments to tender documents if required. Prepares addenda to plans and specifications in consultation with the project manager.
	17	Issues addenda to all persons who have taken tender documents and requests acknowledge-ment from the contractors.
	18	Issues addenda to all offices at which tender documents are displayed.

## EXTENSION OF TENDER CLOSING DATE

Band Representative	19	Receives requests for extension of tender closing date (from contractor, construction association, etc).
	20	Reviews request with Band Council where appropriate.
	21	If request is approved, prepares extension notice.
	22	Sends copies of the notice to all offices where the tender documents are on display. Advises by registered mail all contractors who have taken tender documents.

## RECEIPT AND OPENING OF TENDERS

Band Representative	23	Receives sealed tenders and amendments from contractors. Stamps date and time of receipt.
	24	Prepares tender opening worksheet including names of bidders and of any amendments as they are received.
	25	Holds unopened tenders and amendments in a locked cabinet until the time and date set for opening.
	26	Immediately after the time of the tender closing, removes sealed tender envelopes from locked cabinet. Checks that all envelopes relate to the specific tender call and that all envelopes and amending telegrams match the tender opening worksheet.
	27	Attends official tender opening as Band Council representative.
	28	Initials all tenders and amendments during the opening and has the official witness do the same.
	29	Checks bid security received for completeness, eligibility and amount. Notes details of bid security on face of each tender.
	30	At the opening, discloses only the individual bidder's name and address, the total amount of the tender. Calculates any revisions by amendments and announces the revised total tender amount. All information is recorded on tender opening worksheet and signed by both the band representative and the official witness.

## Appendix 2-1 (cont'd)

<u>ACTION BY</u>	<u>STEP</u>	<u>DETAIL</u>
	31	After tender opening, returns bid security of all but the two low bidders. If the securities retained are certified cheques, government guaranteed bonds, bid bonds etc, holds them in the tender office in a locked cabinet until the tender is accepted or rejected.
	32	Photocopies both sides of the envelopes of the late tenders and places the photocopies on file for future reference.
	33	Returns any late tenders unopened to the bidders with appropriate letter.
	34	Prepares tender docket and forwards all tender documents and schedule of tenders to the Band Council.
<u>REVIEW OF TENDERS</u>		
Band Representative/ Project Manager	35	Reviews tenders for conformance with requirements and makes recommendation for award to Band Council.
<u>CANCELLATION OF TENDER CALL AFTER RECEIPT OF TENDERS</u>		
Band Representative	36	In cases where the tender call must be cancelled after tenders have been called and received, consults with the Band Council and cancels the tender call.
	37	Files a copy of the tender summary and reasons for cancellation.
	38	Returns the bid security of the two low bidders with a letter informing them of the cancellation and thanking them for submitting tenders.

## Appendix 2-2

### **"INVITATION" TENDERS ON CONSTRUCTION PROJECTS**

When planning and scheduling projects, every effort should be made to avoid situations where the standard Public Tender Call Procedures cannot be followed. However, there could be situations arising where "invited" bids are necessary because of exceptional circumstances. These include very low cost work or an emergency situation.

The decision to obtain tenders by direct invitation from a preselected list of contractors rather than by Public Tender Call rests with the Band Council. Obtaining tenders by direct invitation on projects should be held to a minimum and a decision to proceed in this manner must be cleared with the Band Council.

Care must be taken when directly inviting tenders to ensure that equal opportunity is given to those contractors who are capable of carrying out the work and who wish to tender for it.

A recommendation to Band Council to proceed by direct invitation tender must include all necessary information to support this course of action.

In situations where the nature of an emergency is such that remedial action must proceed immediately due to the possibility of loss of, or damage to property or danger to the general public, Band Council may authorize that essential remedial work be carried out immediately by a contractor on a negotiated price basis with the remaining work put out to public or "invited" tender later.

## Appendix 2-3

### LISTING OF SUBCONTRACTORS IN THE TENDER FORM

The reasons for listing subcontractors by the contractor are:

- a. To eliminate or reduce bid shopping which is detrimental to the interest of the construction industry and can increase problems in construction supervision.
- b. To permit a review of the capabilities of the subcontractors.
- c. To identify subcontract arrangements so that the management of the contract is made more easy.

The following procedures will apply to the listing of subcontractors:

- a. Trades asked for from the contractor must be of great importance to the Band Council at the time of receiving the tender to permit a proper evaluation of the tender.
- b. The following paragraph is to be inserted in the Instructions to Bidders:

"The bidder with the lowest acceptable tender will be required to submit, within 48 hours of receiving a notice in writing, the names of subcontractors and suppliers for the parts of the work listed in the said notice. Failure to do so could result in the disqualification of his/her tender".



## Appendix 2-4

### ACCEPTABLE TYPES AND AMOUNTS OF BID SECURITY

Where bid security is to be provided to ensure entry into contract, it shall be in accordance with the following:

A bid bond in a form approved by the Band Council and issued by an insurance company whose bonds are acceptable to the Band Council, (See Appendix 2-6) OR a security deposit in the form of a certified cheque, bank draft, money order or letter of credit drawn on a recognized banking institution payable to the Band Council. Government guaranteed bonds are also acceptable. A government guaranteed bond is a bond of the Government of Canada or a bond unconditionally guaranteed as to principal and interest by the Government of Canada that is:

- (1) payable to the bearer,
- (2) hypothecated to the Band Council in accordance with the Domestic Bonds of Canada Regulations,
- (3) registered in the name of the Band Council, or
- (4) provided on the basis of their market value current at the date of the tender.

The Bid Bond or Security Deposit must be in an amount of at least 10% of the tender.

## **Appendix 2-5**

### **UNIT PRICE TENDERS - ERRORS IN CALCULATIONS**

From time to time, unit price tenders are received in which there appear to be errors in the unit prices listed, or errors in the extensions and the tender total.

In such cases the following principles will apply:

- a. Unit prices, as tendered, govern and are not changed after tender closing.
- b. Errors in extensions or in the tender total are corrected by the review team during the tender review period to establish the actual tender amount. The corrected tender will then be placed in the appropriate order in the tender schedule.
- c. Contractors affected by the adjustment of their tender amount will be advised of the adjustment before the contract is awarded.
- d. Normal Band Council contract award procedures apply.

**Bid Bond**

No. \_\_\_\_\_ \$ \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS, that \_\_\_\_\_

as Principal, hereinafter called the Principal, and \_\_\_\_\_

as Surety, hereinafter called the Surety, are, subject to the conditions hereinafter contained, held and firmly bound unto the Band Council of the \_\_\_\_\_ band hereinafter called the Band Council in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), lawful money of Canada, for the payment of which sum, well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

SIGNED AND SEALED this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

WHEREAS, the Principal has submitted a written tender to the Band Council dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ for \_\_\_\_\_

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that if:

- (a) the Principal, should his tender be accepted within the period specified by the Band Council, or, if no period be specified, within sixty (60) days after closing date of the tender, does execute within a period specified by the Band Council, or, if no period be specified therein, within fourteen (14) days after the prescribed forms are presented to him for signature, execute such further contractual documents, if any, as may be required by the terms of the tender as accepted, and does furnish a Performance Bond and a Labour and Material Payment bond, each in the amount of 50% of the Contract price and satisfactory to the Band Council, or other security acceptable to the Band Council, or
- (b) the principal does pay to the Band Council the difference between the amount of the Principal's tender and the amount of the Contract entered into by the Band Council for the work, supplies and services which were specified in the said tender, if the latter amount be in excess of the former,

then this obligation shall be void; otherwise it shall remain in full force and effect.

PROVIDED, HOWEVER, that the Surety and the Principal shall not be liable to the Band Council for an amount greater than the amount specified in this bond.

PROVIDED FURTHER that the Surety shall not be subject to any suit or action unless such suit or action is instituted and process therefore served upon the Surety at its Head Office in Canada, within twelve (12) months from the date of this bond.

IN TESTIMONY WHEREOF, the Principal has hereto set its hand and affixed its sealed, and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its authorized signing authority, the day and year first above written.

SIGNED, SEALED AND DELIVERED  
in the presence of:

\_\_\_\_\_  
Principal

\_\_\_\_\_

\_\_\_\_\_  
Surety

NOTE: "Affix Corporate Seal if applicable"

## **Appendix 2-7**

**NOTE:** Appendix 2-7 includes the following documents:

- Sample Letter of Invitation to Tender
- Work Order Form (not signed by Band Representative)

**Appendix 2-7**

**Sample Letter of Invitation to Tender**

Date: //

To: \_\_\_\_\_ contractor

\_\_\_\_\_

\_\_\_\_\_ address

\_\_\_\_\_

\_\_\_\_\_

Re: Project N° \_\_\_\_\_

Project Title: \_\_\_\_\_

You are invited to submit a tender for the referenced work. The tenders will be received until \_\_\_\_\_ am/pm \_\_\_\_\_.  
(time) (date)

Your tender must be submitted in accordance with the requirements of the attached tender documents.

For additional information in connection with this invitation to tender please contact

\_\_\_\_\_ (Band Representative)

\_\_\_\_\_

\_\_\_\_\_ (Address of Band Representative)

\_\_\_\_\_

Yours truly,

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Subject to the **GENERAL CONDITIONS** and in accordance with your quotation dated \_\_\_\_\_ you are authorized to proceed with the work described below.

+)), For confirmation only  
. ))-

Contractor's name and address:

Send invoice to:

<b>Location of work -</b>							
<b>Description of work -</b>							
<b>Special Instructions -</b>							
<b>Start Date</b>	<b>Completion Date</b>	<b>Work authorized by Band Representative</b>	<b>Work cost including applicable taxes except GST</b>				
		<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;">Signature</td> <td style="width: 50%; border: none;">Date</td> </tr> </table>	Signature	Date	<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;">\$</td> <td style="width: 50%; border: none;">(GST extra)</td> </tr> </table>	\$	(GST extra)
Signature	Date						
\$	(GST extra)						

**GENERAL CONDITIONS**

1. **EXECUTION OF THE WORK.** The Contractor shall furnish all necessary labour, materials, tools and equipment and shall carry out in a careful and workmanlike manner and to the satisfaction of the Band Representative, the work set out under the work description hereon, or more particularly described in the drawings and specifications when applicable. All materials used in the execution of the work must be new and of the best quality.
2. **CHANGES.** Changes to the work shall only be made on receipt of written instructions from the Band Representative. Any resulting adjustment to the cost of the work shall be agreed upon by the Band Representative and the Contractor and will represent the reasonable and proper costs incurred by or savings accruing to the Contractor.
3. **TIME OF ESSENCE.** Time is of the essence of the contract.
4. **LABOUR.** Consistent with efficiency and economy, the Contractor shall employ only local labour to the extent that such labour is available and qualified and shall make use of the Band office in the recruitment of such labour.
5. **PERMITS AND BY-LAWS.** The Contractor shall comply with all laws and regulations relating to the work, whether Federal, Provincial or Municipal, as if the work were for a person other than the Band Council, and shall pay for all permits and certificates required in respect of the work.
6. **INDEMNIFICATION.** The Contractor shall indemnify and save harmless the Band Council from and against all claims, losses, costs, damages, suits, proceedings or actions arising out of or related to the Contractor's activities in executing the work, including his omissions, improper acts or delays in executing the work.

7. **PROPERTY OF THE BAND COUNCIL.** The Contractor shall be liable to the Band Council for any loss or damage to any property of the Band Council arising out of the performance or non-performance of the work whether or not such loss arises from causes beyond his/her control.

8. **CO-OPERATION AND MAKING GOOD.** (a) The Contractor shall perform the work with the minimum disturbance to personnel and the public. (b) The Contractor shall obtain the approval of the Band Representative for the hours during which he/she proposes to perform the work and for the work schedule. (c) The Contractor shall repair and make good all parts of the existing building affected by the work of the contract. (d) All work shall be equal in kind, quality and finish to that of the existing work. (e) Where the work affects occupied portions of a building, the Contractor shall ensure continuity of building services and necessary access for personnel and vehicles.

9. **ACCESS TO WORK.** The Contractor shall permit the Band Representative or any officer authorized by him/her to have access to the work at all times during the execution of the work.

10. **REMOVE DEBRIS.** The Contractor shall remove from the premises, from time to time and as directed by the Band Representative, all building rubbish or debris resulting from the work.

11. **DELAY.** No payment shall be made to the Contractor for delay encountered during the execution of the work.

12. **SUSPENSION OF WORK.** In the event that the work is suspended, the Contractor shall arrange for protection of the work as directed by the Band Representative. The Contractor will be reimbursed for reasonable and proper expenses incurred in protecting the work.

13. **RECTIFICATION OF DEFECTS.** The Contractor shall, upon notice from the Band Representative, rectify at his/her own expense any defects which appear in the work within 12 months of the date of completion of the work.

14. **SIGNS AND ADVERTISING.** The Contractor shall not erect or permit the erection of any sign or advertising at the site of the work.

15. **MEMBERS OF THE BAND COUNCIL.** No member of the Band Council shall be admitted to any share or part of the contract or any benefit arising therefrom.

16. **INTERPRETATION.** Should any dispute arise concerning the meaning or intent of the contract, the decision of the Band Representative shall be final.

17. **RECORDS TO BE KEPT.** The Contractor shall during the term of this contract and for a period of two years from the date of completion of the contract maintain and keep full records of his/her estimates of and actual cost to him/her of the work together with all proper quotations, contracts, correspondence, invoices, receipts and vouchers relating thereto, and shall make them available for copy, audit or inspection by any person acting on behalf of the Band Council.

18. **TERMINATION.** The Band Representative may terminate the contract by giving notice in writing to the Contractor to that effect. The Band Council's obligation to make payment to the Contractor shall cease when payment for work satisfactorily performed has been made.

19. **PAYMENT.** The Contractor may submit monthly progress claims. Subject to verification by the Band Representative, payment of the Contractor's invoice for work satisfactorily completed shall be made not later than 30 days after receipt thereof. If, within 15 days of receipt of the invoice, additional information is requested by the Band Representative, the 30 day payment period shall commence upon receipt of the requested information. Any monthly progress payment made to the Contractor shall be subject to a 10% holdback which shall be released to the Contractor with the final payment unless the amount held back is required by the Band Council to remedy any defect in the Contractor's work. The Contractor's invoice is to show the amount being claimed for work satisfactorily performed, excluding GST charges, and a separate amount for the GST calculated in accordance with the applicable tax legislation.

20. **INTEREST ON OVERDUE ACCOUNTS.** If the Band Council fails to make a payment that is due in accordance with Clause 19, and such payment is overdue for 15 days or more after the due date, the Contractor shall be entitled to receive interest on the amount that is overdue from the date on which the amount is overdue to the day previous to the date on which the overdue amount is paid. Such date of payment shall be deemed to be the date on the cheque given for payment of the overdue amount.

Interest shall be paid automatically on all amounts that are not paid within 15 days of the due date. Interest shall not be paid on amounts paid within 15 days of the due date and the Band Council shall not be liable to pay to the Contractor any interest on unpaid interest.

The rate of interest shall be the rate of interest charged by the Band Council's Banking institution for that purpose.

21. The Band Council may, in order to discharge lawful obligations of and satisfy lawful claims against the Contractor or a subcontractor arising out of the execution of the work/service pay any amount which is legally due and payable to the Contractor under the contract, directly to the obligees of and the claimants against the Contractor or the subcontractor.

## Appendix 2-8

**NOTE:** Appendix 2-8 includes the following documents:

- Instructions to Bidders
- Tender and Acceptance
- General Conditions
- Labour Conditions (to be inserted by Project Manager)
- Insurance Conditions
- Contractor's Qualification Statement
- Plans and Specifications (to be included in the contract package)



Appendix 2-8

**SAMPLE TENDER DOCUMENTS FOR CONSTRUCTION**  
**JOBS VALUED BETWEEN \$25,000 AND \$100,000**

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**CONSTRUCTION AND REPAIRS  
MINOR WORKS  
TENDER AND CONTRACT**

---

**INSTRUCTIONS  
TO BIDDERS**

Page 1 of 5

1. Receipt of tenders:

- 1.1 Tenders will be received at the tendering office until the tender closing time shown on the face of the Tender and Acceptance Form.

***Note: Band Council should specify here if they are prepared to accept fax or electronic tenders.***

2. Unacceptable Tenders:

- 2.1 Tenders not submitted on the accompanying Tender and Acceptance Form will not be considered.

- 2.2 Tenders received after the tender closing date and time will not be considered.

- 2.3 Incomplete tenders may be rejected.

- 2.4 In the event that bid security is required under these instructions and it is not provided with the tender, the tender is subject to disqualification.

3. Revision of Tender:

- 3.1 A tender submitted in accordance with these instructions may be revised by letter or fax provided the revision is received at the tendering office on or before the time and date set for the closing of tenders. A fax must be on the contractor's letterhead or bear a signature that identifies the contractor. A revision to a unit price tender must clearly identify the change(s) in the unit price(s) and the specific unit(s) to which such change applies.

4. Security Requirements:

- 4.1 Bid Security: Tenders valued at \$25,000 or more shall be accompanied by bid security in the form of either:

- 4.1.1 A bid bond in amount equal to not less than 10% of the tender amount.

- 4.1.2 A security deposit, as described in clause 4.2.2 herein, in an amount equal to not less than 10% of the tender amount.

## Appendix 2-8 (cont'd)

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**CONSTRUCTION AND REPAIRS  
MINOR WORKS  
TENDER AND CONTRACT**

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**INSTRUCTIONS  
TO BIDDERS**

Page 2 of 5

4.2 Contract Security:

- 4.2.1 The successful bidder shall, when the tender amount is \$25,000 and over, provide contract security which shall be in the form of a Performance Bond and a Labour and Material Payment Bond each in the amount of 50% of the contract value OR a Labour and Material Payment Bond in the amount of 50% of the contract value and a Security Deposit in the amount of 10% of the contract value OR a Security Deposit in the amount of 20% of the contract value.

When the security provided with the tender is in the form of a security deposit, such security deposit may be converted to contract security.

When a security deposit is in the form of a bill of exchange, it will be deposited in the Band Council's bank account.

4.2.2 A security deposit shall be either:

- 4.2.2.1 A bill of exchange such as a certified cheque, bank draft or letter of credit drawn on a recognized banking institution.

- 4.2.2.2 Government guaranteed bonds; bonds of the Government of Canada or bonds unconditionally guaranteed as to the principal and interest by the Government of Canada which are:

.1 payable to the bearer, or

.2 accompanied by a duly executed instrument of transfer of the bonds to the Band Council in the form prescribed by the Domestic Bonds of Canada Regulations, or

.3 registered, as to principal or as to principal and interest in the name of the Band Council pursuant to the Domestic Bonds of Canada Regulations, and

.4 provided on the basis of their market value current at the date of the tender or contract.

5. Acceptance of Offer:

- 5.1 The Band Council will not necessarily accept the lowest or any of the offers.

6. Completion of Tender and Acceptance Form:

- 6.1 If NO classes of labour, plant or material, units of measure and estimated quantities are shown on the Tender and Acceptance form, insert the total amount of the tender in Clause 3 only and make NO entry in Clause 4.

## Appendix 2-8 (cont'd)

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**CONSTRUCTION AND REPAIRS  
MINOR WORKS  
TENDER AND CONTRACT**

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**INSTRUCTIONS  
TO BIDDERS**

Page 3 of 5

- 6.2 If classes of labour, plant or material, units of measure and estimated quantities are shown on the Tender and Acceptance form, insert the price per unit against each item, multiply by the respective estimated quantity, extend the answers in the Total Column and add the Total column to obtain the Total Amount of Tender in Clause 4 and make NO entry in Clause 3.
- 6.3 Type or legibly print the tenderer's full business name and address under the spaces provide for Contractor's Full Business Name and Contractor's Business Address respectively.
- 6.4 Sign the Tender and Acceptance form in the space provided indicated below.
- Sole Proprietorship:** Signature of sole proprietor in the presence of a witness who will sign where indicated. Insert the words "Sole Proprietor" under Title(s).
- Partnership:** Signatures of all partners in the presence of a witness or witnesses who will sign where indicated. Insert the word "Partner" against each signature under Title(s).
- Limited Company:** If this tender is made by a Limited Company, the tender must be signed by duly authorized signing officers of the company in their normal signatures designating against each signature the official capacity in which the signing officer acts. The corporate seal of the company must also be affixed to the tender. If the tender is signed by officials other than the President and Secretary of the company or the President and Secretary-Treasurer of the company a copy of a by-law or resolution of the Board of Directors authorizing them to do so must be submitted with the tender documents.
- 6.5 Do not make any entry in the signature section marked "(for Band Council use only)".
- 6.6 Tenders are to be submitted in two copies, duly completed, in the envelope provided and the name and address of the tenderer entered in the "Submitted by" space in the lower left-hand corner on the face of the envelope. The tenderer should retain the third copy of the Tender for his record.

7. List of Suppliers and Subcontractors:

The bidder with the lowest acceptable tender will be required to submit, within 48 hours of receiving a notice in writing, the names of subcontractor and suppliers for the parts of the work listed in the said notice. Failure to do so could result in the disqualification of his/her tender.

## Appendix 2-8 (cont'd)

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**CONSTRUCTION AND REPAIRS  
MINOR WORKS  
TENDER AND CONTRACT**

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**INSTRUCTIONS  
TO BIDDERS**  
Page 4 of 5

8. Contractor's Qualification Statement:

The "Contractor's Qualification Statement" must be completed and submitted to the Band Council within 24 hours of being called upon to do so by the Band Council.

9. Local Content:

Bidders are to note that there are special requirements included in the tender form and specifications in connection with : labour, equipment, material and training.

- 9.1 A list of local tradespeople available at the work site is attached to these instructions. It is the responsibility of the Contractor to establish their qualifications and to make the necessary arrangement for their employment.
- 9.2 A list of available local construction material is also attached to these instructions. It is the responsibility of the contractor to make his/her own arrangements for the purchase of the materials which must meet the requirements of the specifications.
- 9.3 A list of available local construction equipment is also attached to these instructions. The contractor is responsible for making his/her own arrangements for the examination and local rental of the required equipment.

**Appendix 2-8 (cont'd)**

<b>CONSTRUCTION AND REPAIRS MINOR WORKS TENDER AND CONTRACT</b>		<b>TENDER AND ACCEPTANCE</b>
(Tendering Office)		Tender Closing Time Hour:            P.M. Date:
File No.	Description of works	
Contract No.		
Requisition No.		

1. Offer:

The undersigned bidder (hereinafter called the "Contractor") hereby offers to the Band Council to supply all necessary tools, plant, services, materials and labour to execute and complete in a careful and workmanlike manner the work set out under the "Description of Works" herein, which is more particularly described in the Plans and Specifications or Scope of Work numbered \_\_\_\_\_ and dated \_\_\_\_\_ for the \_\_\_\_\_ ( lump sum or unit price) as set out in clause \_\_\_\_\_ (3 or 4) hereof.

2. General Agreement:

The Contractor agrees:

- 2.1 to complete the work within \_\_\_\_\_ days from the date of notification of acceptance of this tender.
- 2.2 to provide contract security, in accordance with Clause 4 of the Instructions to Bidders, within 14 days of receipt of notice in writing from the Band Council of the Acceptance of the Contractor's tender.
- 2.3 that this Tender and Acceptance, the Instructions to Bidders, the Specifications referred to in Clause 1 above, the General Conditions, the Labour Conditions and the Insurance Conditions attached to the Specifications or Scope of Work shall be and are the complete tender and this offer is made subject to the provisions contained therein.
- 2.4 that this tender supersedes and cancels all communications, negotiations and agreements relating to the work other than contained in the completed tender.
- 2.5 that this tender may not be withdrawn for a period of 30 days following the tender closing time.

**Appendix 2-8 (cont'd)**

**CONSTRUCTION AND REPAIRS  
MINOR WORKS  
TENDER AND CONTRACT**

**TENDER AND  
ACCEPTANCE**

Page 2 of 4

- 2.6 that in the event that bid security is provided with this tender and this tender is duly accepted, such security will be forfeited if the contractor refuses a contract.
- 2.7 that the complete tender together with and subject to all provisions contained therein shall, when accepted and executed by the Band Council constitute a binding contract between the contractor and the Band Council.
- 2.8.1 that he/she will employ the local people listed hereunder for the period specified.

<u>TRADE</u>	<u>PERSON MONTHS</u>	<u>No. OF PERSONS</u>

(use additional sheet if required)

and should employment of any person identified be terminated prior to completion of the term indicated above, he/she shall provide the Engineer with justification for such termination, and shall replace such person with a local person to the extent that a replacement person is available and qualified before attempting to recruit elsewhere.

- 2.8.2 that he/she will purchase the following local supplies, if available when required for the work:

List of Materials:

---



---



---

(use additional sheet if required)

and that he/she may substitute such material with other material of his/her choice subject however to the prior approval of the Engineer and subject to the material meeting the requirements of the contract.

**Appendix 2-8 (cont'd)**

**CONSTRUCTION AND REPAIRS  
MINOR WORKS  
TENDER AND CONTRACT**

**TENDER AND  
ACCEPTANCE**

2.8.3 that he/she shall use the following local pieces of construction equipment if available when required for the project:

List of equipment:

---

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---

(use additional sheet if required)

and he/she may substitute such equipment with other equipment of his/her choice, subject however to the prior approval of the Engineer.

2.8.4 that he/she agrees to implement a formal training program in accordance with clause \_\_\_\_\_ of the section entitled " \_\_\_\_\_ " of the Specifications and that he/she further agrees to engage under the said training program \_\_\_\_\_ local people listed hereunder for the period specified:

<u>TRADES</u>	<u>No. OF TRAINEE POSITIONS</u>	<u>PROPOSED DURATION OF TRAINING HR/PERS.</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

(attach additional sheets if required)

3. The Contractor agrees that the following is the lump sum referred to in Clause 1 hereof excluding GST:\*

\_\_\_\_\_ dollars (\$ \_\_\_\_\_)  
(amount to be in words) 100

**Appendix 2-8 (cont'd)**

**CONSTRUCTION AND REPAIRS  
MINOR WORKS  
TENDER AND CONTRACT**

**TENDER AND  
ACCEPTANCE**

Page 4 of 4

4. The Contractor agrees that the following are the unit prices referred to in Clause 1 hereof excluding GST:\*

Item	Labour, plant or material	unit measure	est. quantity	\$ p. unit	Total
				TOTAL AMOUNT OF TENDER	

\* GST equals \$ \_\_\_\_\_

ATTESTED TO AND DELIVERED ON BEHALF OF THE CONTRACTOR  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20 \_\_\_\_\_ IN PRESENCE OF

signature(s) and seal	title(s)	witness signature(s)

ACCEPTED AND EXECUTED ON BEHALF OF THE BAND COUNCIL THIS  
\_\_\_\_\_ DAY OF \_\_\_\_\_ 20 \_\_\_\_\_ IN PRESENCE OF

signatures (For Band Council use only)	titles	witness signature(s)



**CONSTRUCTION AND REPAIRS  
MINOR WORKS  
TENDER AND CONTRACT**

1. DEFINITION OF TERMS: In the contract:
  - (a) "the Engineer" means the project manager specifically designated by or on behalf of the Band Council upon the award of this contract, and includes a person specially authorized by the project manager to act on her/his behalf;
  - (b) "work" includes the whole of the works, materials, matters and things to be done, furnished and performed by the Contractor under the contract; and
  - (c) "Band Council" means the Band Council of the \_\_\_\_\_ Band.
2. ASSIGNMENT AND SUBCONTRACTING: This contract may not be assigned without the written consent of the Band Council, and neither the whole nor any part of the work may be subcontracted by the Contractor without the consent of the Engineer. Every subcontract shall incorporate all the terms and conditions of the contract which can reasonably be applied thereto.
3. MEMBERS OF THE HOUSE OF COMMONS: No Member of the House of Commons shall be admitted to any share or part of the contract or to any benefit arising therefrom.
4. INDEMNIFICATION: The Contractor shall indemnify and save harmless the Band Council from and against all claims, losses, costs, damages, suits, proceedings, or actions arising out of or related to the contractor's activities in executing the work, including his/her omissions, improper acts or delays in executing the work under the contract.
5. PROPERTY OF BAND COUNCIL: The Contractor shall be responsible for any loss of or damages to any property of the Band Council arising out of the performance of the work whether or not such loss arises from causes beyond his/her control. Such property shall only be used by the Contractor as may be directed by the Engineer and the Contractor shall, at any time when requested to do so, account to the Engineer for the use of such property.
6. PERMITS AND BY-LAWS: The Contractor shall comply with all laws and regulations whether federal, provincial or municipal and shall pay for all permits and certificates required in respect of the execution of the work. The construction shall also comply with Band by-laws.
7. LOCAL LABOUR AND MATERIALS: Insofar as is practicable, the Contractor shall employ and use only Canadian labour and materials in the execution of the work. The Contractor shall employ labour, materials and equipment from the locality of the work in accordance with clause 2.8 of the Tender and Acceptance and the Contractor shall make use of the services of the Band office in the recruitment of such labour.
8. PUBLICITY: The Contractor will neither permit any public ceremony nor erect or permit the erection of any sign or advertising, in connection with the work without the approval of the Band Council.

**CONSTRUCTION AND REPAIRS  
MINOR WORKS  
TENDER AND CONTRACT**

**GENERAL  
CONDITIONS**

9. MATERIALS, EQUIPMENT, ETC. TO BECOME PROPERTY OF THE BAND COUNCIL:  
All materials and plant used or provided for the work shall be the property of the Band Council, shall not be removed from the site of the work and shall be used only for the purpose of the work, until the Engineer shall certify that they are no longer required for the purpose of the work. The Contractor shall be liable for all loss or damage to material or plant that is the property of the Band Council by virtue of this section.
  
10. CONTRACTOR'S SUPERINTENDENT: The Contractor will keep a competent superintendent on the site of the work at all times during the progress of the work unless otherwise authorized by the Engineer. The superintendent must be acceptable to the Engineer and have the authority to receive on behalf of the contractor any order or communication in respect of the contract. Any superintendent not acceptable to the Engineer will be removed and replaced forthwith.
  
11. CO-OPERATION WITH OTHER CONTRACTORS: The Contractor will co-operate fully with other contractors or workers sent on to the site of the work by the Engineer. If the sending on to the work of other contractors and workers could not have been reasonably foreseen by the Contractor when entering into the contract, and if, in the opinion of the Engineer, the Contractor has incurred additional expense by such action, and if the Contractor has given written notice of claim within thirty days of such action, the Band Council will pay the cost of such additional expense to the Contractor calculated in accordance with Section 20.
  
12. CLAIMS AGAINST AND OBLIGATIONS OF THE CONTRACTOR OR SUBCONTRACTOR:
  - (a) The Contractor shall ensure that all its lawful obligations and lawful claims against the Contractor arising out of the performance of the Work are discharged and satisfied at least as often as the contract requires the Band Council to discharge its obligations to the Contractor. The Contractor shall provide the Engineer with a Statutory Declaration deposing to the existence and condition of such claims and obligations when called upon to do so.
  
  - (b) The Band Council may, in order to discharge lawful obligations of and satisfy lawful claims against the Contractor or a subcontractor arising out of the performance of the work, pay an amount, which is to be determined in accordance with Section 12 (c) from money that is due and payable to the Contractor pursuant to the contract directly to the obligees of and the claimants against the Contractor or the subcontractor.
  
  - (c) The amount referred to in Section 12 (b) shall be that amount which the Contractor would have been obliged to pay to such claimant had the provisions of the Provincial or Territorial lien legislation, or in the province of Quebec, the law relating to privileges, been applicable to the work. Any such claimant need not comply with the provisions of such legislation setting out the steps by way of notice, registration or otherwise as might have been necessary to preserve or perfect any claim for lien or privilege which the claimant might have had.

- (d) For the purposes of Section 12 (b) a claim shall be considered lawful when it is so determined
- 12.(d)i by a court of competent jurisdiction, or
  - 12.(d)ii by an arbitrator duly appointed to arbitrate the said claim, or
  - 12.(d)iii by a written notice delivered to the Engineer and signed by the Contractor authorizing payment of the said claim or claims.
- (e) A payment made pursuant to Section 12 (b) is, to the extent of the payment, a discharge of the Band Council's liability to the Contractor under the contract and may be deducted from any amount payable to the Contractor under the contract.
- (f) Section 12 (b) shall only apply to claims and obligations
- 12.(f)i the notification of which has set forth the amount claimed to be owing and the person who by contract is primarily liable. The notification must be received by the Engineer in writing before final payment is made to the Contractor and within 120 days of the date on which the claimant
    - 12.(f)i.1 should have been paid in full under the claimant's contract with the Contractor or subcontractor where the claim is for money that was lawfully required to be held back from the claimant; or
    - 12.(f)i.2 performed the last of the services, work or labour, or furnished the last of the material pursuant to the claimant's contract with the Contractor or subcontractor where the claim is not for money referred to in 12(f)i.1, and
  - 12.(f)ii the proceedings to determine the right to payment of the claim shall have commenced within one year from the date that the notice referred to in Section 12(f)i was received by the Engineer.
- (g) The Band Council may, upon receipt of a notification of claim referred to in Section 12(f)i, withhold from any amount that is due and payable to the Contractor pursuant to the contract the full amount of the claim or any portion thereof.
- (h) The Engineer shall notify the Contractor in writing of receipt of any notification of claim and of the intention of the Band Council to withhold funds pursuant to Section 12(g). The Contractor may, at any time thereafter and until payment is made to the claimant, post with the Band Council security in a form acceptable to the Band Council in an amount equal to the value of the said claim. Upon receipt of such security the Band Council shall release to the Contractor any funds which would be otherwise payable to the Contractor, that were withheld pursuant to the provisions of Section 12(g).

13. ENGINEER'S RIGHTS AND OBLIGATIONS: The Engineer shall:
- (a) have access to the work at all times during its execution and the Contractor will provide the Engineer with full information and assistance in order that he/she may ensure that the work is executed in accordance with the contract;
  - (b) decide any question as to whether anything has been done as required by the contract or as to what the Contractor is required by the contract to do, including questions as to the acceptability of, the quality or quantity of any labour, plant or material used in the execution of the work, and the timing and scheduling of the various phases of the work; and
  - (c) have the right to order additional work, dispense with, or change the whole or any part of the work provided for in the plans and specifications. The Engineer shall decide whether anything done or not done as a result of directions given under this sub-section has increased or decreased the cost of the work to the Contractor and the amount payable under the contract to the Contractor will be increased or decreased accordingly by an amount calculated in accordance with Section 20.

The Contractor shall comply with any decision or direction of the Engineer given under this section.

14. DELAY, NON-COMPLIANCE OR DEFAULT BY THE CONTRACTOR:  
If the Contractor delays in the commencement, execution or completion of the work, fails to comply with a direction or decision of the Engineer properly given, or is in default in any other manner under the contract, the Engineer may do such things as she/he deems necessary to correct the Contractor's default. The Contractor will reimburse the Band Council for all costs, expenses and damage incurred or sustained by the Band Council by reason of the Contractor's default, or in correcting the default. In addition to the aforementioned remedies in this section, the Band Council may, if the default continues for six (6) days after the notice in writing of default has been given to the Contractor by the Engineer, terminate the contract in accordance with Section 17(b).
15. CHANGES IN SOIL CONDITIONS, DELAY BY THE BAND COUNCIL ETC:
- (a) No extra payment will be made to the Contractor for any extra expense, loss or damage for any reason unless the Engineer shall certify that such extra expense, loss or damage is directly attributable to:
    - (i) a substantial difference between the soil conditions at the site of the work indicated by plans and specifications and the actual soil conditions found there; or
    - (ii) neglect or delay by the Band Council occurring after the date of contract in providing any information or doing any act which is required expressly by the contract or by usage of the trade, or suspension of the work by the Band Council.

15. (cont'd)

- and, the Contractor has within ten (10) days of encountering such soil conditions, or of the commencement of such neglect or delay, given written notice to the Engineer of a claim for such extra expense, loss or damage. The amount of any extra payment to be made under this section will be calculated in accordance with Section 20.
- (b) If, in the opinion of the Engineer, any difference in soil conditions referred to in sub-section (a)(i) results in the saving of expenditure to the Contractor the amount of such saving shall be paid to the Band Council by the Contractor.
16. PROTESTING ENGINEER'S DECISION: If the Contractor, within ten (10) days of receiving a decision or direction of the Engineer, gives written notice to the Engineer that the decision or direction is accepted under protest, the Band Council will pay to the Contractor the cost, calculated according to Section 20, of anything that the contractor was required to do, as a result of the decision or direction, beyond what the contract correctly understood would have required her/him to do.
17. SUSPENSION OR TERMINATION OF THE CONTRACT:
- (a) Band Council may upon notice in writing to the Contractor suspend or terminate the Contract at any time. The Contractor will comply with such notice immediately.
- (b) If the Band Council terminates the contract because of default by the Contractor, the insolvency of or the commission of an act of bankruptcy by the Contractor, the obligation of the Band Council to make payments to the Contractor shall cease and no further payments shall be made to the Contractor unless the Engineer shall certify that no financial prejudice will result to the Band Council from such further payments. Termination under this subsection shall not relieve the Contractor of any legal or contractual obligations other than the physical completion of the work. In such circumstances the Engineer may complete or have the work completed as he/she sees fit and all costs and damages incurred by the Band Council due to the non-completion of the work by the Contractor shall be payable by the Contractor to the Band Council.
- (c) If the Band Council suspends the work for 30 days or less, the Contractor must, subject to his/her remedy under Section 15 hereof, complete the work when called upon to do so. If the Band Council suspends the work for a period in excess of 30 days, the Contractor may request that the Band Council terminate the work under subsection 17(d).
- (d) If the Band Council terminates the work other than in accordance with sub-section (b) the Band Council will pay to the Contractor the lesser of the amount calculated in accordance with Section 20 subject to any additions or deductions otherwise provided by the general conditions or labour conditions less any amount paid pursuant to Section 26(c) and the amount which would have been payable to the Contractor had the contract been completed.

**CONSTRUCTION AND REPAIRS  
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18. **SECURITY DEPOSIT:** If any security deposit is provided by the Contractor pursuant to this contract and if the Contractor is in breach or default under the contract, the Band Council may convert or negotiate such security deposit to its own use. If a Labour and Material Payment Bond is provided pursuant to the contract the Contractor shall post on the site of work a notice to that effect which shall include the name and address of the Surety, definition of those persons protected therein and an outline of the procedure for submitting a claim.
19. **NO ADDITIONAL PAYMENTS:** The amount payable to the contractor under this contract will not be increased or decreased by reason of any increase or decrease in the cost of plant labour or material, except that in the event of a change in any tax that affects the cost of the work to the Contractor imposed under the Excise Act, the Excise Tax Act, the Old Age Security Act, the Customs Act, the Customs Tariff or Provincial Sales Tax made public after the date of the submission of the tender by the Contractor, an adjustment may be made.
20. **DETERMINATION OF COSTS:** For the purposes of Section 11, 13(c), 15, 16 and 17(d) the amount payable to the Contractor shall, subject to the provisions of Section 26 (b) (ii), be based on the unit prices, if any set out in Clause 4 of the Tender and Acceptance. If such unit prices are not applicable the Engineer and the Contractor may mutually agree on the amount payable. Failing such agreement the amount payable shall be the reasonable and proper expenses paid or legally payable by the Contractor directly attributable to the work plus 10% of such expenses to cover overhead and profit, as certified by the Engineer.
21. **RECORDS TO BE KEPT:** The Contractor shall for a period of two years from the date of the Final Certificate of Completion, maintain and keep full records, vouchers, other writings and information in respect of her/his estimates and actual cost of the work and shall make them available for copy, audit or inspection by any persons acting on behalf of the Band Council.
22. **EXTENSION OF THE TIME:** The Band Council may, on the application of the Contractor, made before the day fixed for the completion of the work, extend the time for completion of the work. The contractor shall pay to the Band Council an amount equal to the Band Council's expenses and damages incurred or suffered by reason of the delay in completion of the work unless, in the opinion of the Band Council, such delay was due to causes beyond the control of the Contractor.
23. **CLEANING OF WORK:** The Contractor will upon completion of the work, clear and clean the work and its site to the satisfaction of and in accordance with any directions of the Engineer.
24. **ENGINEER'S CERTIFICATE:**
  - (a) On the day that the work has been completed and the Contractor has complied with the contract and all orders and directions pursuant thereto to the satisfaction of the Engineer, the Engineer will issue to the Contractor a Final Certificate of Completion. In the case of a unit price contract, the Engineer will at the same time issue a Final Certificate of Measurement setting out the final quantities used or employed in respect of the classes and units set out in the unit price table, and any subsequent amendments thereto, under Clause 4 of the Tender and Acceptance, such certificate to be binding upon the Contractor and the Band Council.

## 24. (cont'd)

- (b) If the Engineer is satisfied that the work is substantially completed and is acceptable for use by the Band Council he/she may at any time before issuance of a Final Certificate of Completion, issue to the Contractor an Interim Certificate of Completion and shall describe therein the portions of the work not completed to his/her satisfaction and all things which must be done by the Contractor before a Final Certificate of Completion can be issued.
- (c) The Engineer, before issuing a Final Certificate of Completion, may, in addition to the matters described in the Interim Certificate of Completion, require the contractor to rectify any other portions of the work not completed to the satisfaction of the Engineer and to do any other things necessary for the completion of the work.

25. **RECTIFICATION OF DEFECTS:** The Contractor will, upon notice from the Engineer and within such time as specified in said notice, rectify at her/his own expense any defect or fault, however caused, which appears in the work within twelve (12) months of the date of the Final Certificate of Completion.

26. **PAYMENT:**

- (a) The Band Council will pay and the Contractor will accept as full consideration for the work performed and executed an amount by which the amount referred to in Clause 1 of the Tender and Acceptance together with the aggregate of the amounts payable by the Band Council under sections 11, 13(c), 15(a), 16, and 19 exceed the aggregate of any payments by the Band Council under Section 12 and indemnification and amounts payable to or costs and damages incurred by the Band Council under sections 4, 5, 9, 13(c), 14, 15(b), 17(b), 19 and 22.
- (b) In the case of a unit price contract:
  - (i) The amount referred to in Clause 1 of the Tender and Acceptance will be deemed to be the amount computed by totalling the products of the unit prices set out in Clause 4 and the actual quantities of such units as set out in the Engineer's Final Certificate of Measurement, subject to any adjustment provided for in subparagraph (ii) of this subsection.
  - (ii) The Engineer and the Contractor may, by agreement in writing, add to the aforesaid unit price table other classes of labour, etc., units of measure, estimated quantities and prices per unit, and may, if the actual quantities as set out in the aforesaid Final Certificate of Measurement exceed or fall short of the estimated quantities in respect of any item(s) shown in the aforesaid unit price table by more than 15%, amend the unit prices shown in the unit price table for such items. Where the Engineer and the Contractor fail to agree on the amount of any adjustment as contemplated by this subsection the revised or new prices per unit shall be determined in accordance with Section 20.

- (c) The Contractor shall be entitled to receive progress payments upon submitting Progress Claims which must be approved by Progress Reports issued by the Engineer at monthly intervals. The amount to be paid to the Contractor for a progress payment shall be 90% of the value of the work certified by the Engineer in the Progress Report as having been completed since the date of the immediately preceding Progress Claim, if any. When a Labour and Material Payment Bond has been furnished under the Contract, the amount to be paid under this subsection shall be 95% of the value certified by the Engineer.
- (d) Forty-five (45) days after receipt by the Engineer of the Progress Claim and if the Contractor has made and delivered to the Engineer his/her Statutory Declaration pursuant to Section 12, the amount of the Progress Claim, subject to subsection (c) of this section shall become due and payable.
- (e) Sixty (60) days after the issue by the Engineer of the Final Certificate of Completion there shall become due and payable to the Contractor the amount described in subsection (a) of this section less the aggregate of the amounts, if any, paid pursuant to subsection (c) of this section.
- (f) Notwithstanding subsection (c), (d) and (e) of this section, no payments shall be due or payable to the Contractor if he/she has failed to supply a Statutory Declaration pursuant to Section 12, and contract security pursuant to Clause 2.2 of the Tender and Acceptance.
- (g) A payment by the Band Council pursuant to this section shall not be construed as evidence that the work is satisfactory or in accordance with the contract.
- (h) Delay in making a payment by the Band Council under this section shall not be deemed to be a breach of the contract. However, subject to subsection (f) of this section, if payment of any progress claim under subsection (c) of this section is not made within fifteen (15) days of the date upon which it becomes due and payable, the Contractor shall be entitled to interest on the amount overdue and the Band Council will, when making payment of the amount overdue, pay to the Contractor interest on the amount overdue calculated for the period of the said delay at the current prime lending rate established by the Band Council's banking institution.
- (i) The Band Council may set-off against any amount payable or debt due by the Band Council under this contract the amount of any debt due to the Band Council under this contract or any other contract between the Contractor and the Band Council.

**27. INSURANCE:**

- (a) The Contractor shall at his/her own expense, obtain and maintain insurance contracts in respect of the work in accordance with the requirements of the Insurance Conditions.
- (b) All property damage insurance contracts maintained by the Contractor pursuant to subsection 27(a) shall provide that the proceeds thereof are payable to the Band Council and that the proceeds of a claim under a General Liability Insurance contract are paid to the claimant.



**LABOUR CONDITIONS**

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Project Manager/Contract Manager  
(attach Provincial Labour Conditions)

**INSURER'S CERTIFICATE OF INSURANCE**

(To be completed by Insurer (not broker) and delivered to the Band Council within 30 days following acceptance of tender)

**CONTRACT**

Description of Work	Contract No.	Award Date
Location		

**INSURER**

**BROKER**

Name	Name
Address	Address

**INSURED**

**ADDITIONAL NAMED INSURED**

Name of Contractor	The Band Council of the _____ Band
Address	Address

This document certifies that the following policies of insurance are at present in force covering all operations of the Insured, in connection with the Band Council contract made between the named insured and the Band Council

POLICY				Limits of Liability	Deductible
Type	Number	Inception Date	Expiry Date		
Commercial General Liability					
Builder's Risk "All Risks"					
Installation Floater "All Risks"					

Each of these policies includes coverages/provisions as specified in the Insurance Coverage Requirements in this document which form part of this Contract and each policy has been endorsed to cover the Band Council as an Additional Named Insured.

The Insurer agrees to notify the Band Council and the Named Insured in writing 30 days prior to any material change in, or cancellation of any policy or coverage. The Insurer further agrees to provide the Engineer in writing with the cost, nature and date of each claim within 30 days of its being received by the Insurer and to advise the Engineer in writing of the final settlement thereof.

Name of Insurer's Officer or Authorized Employee	Signature	Date
		Telephone Number

ISSUANCE OF THIS CERTIFICATE SHALL NOT LIMIT OR RESTRICT THE RIGHT OF THE BAND COUNCIL TO REQUEST AT ANY TIME DUPLICATE CERTIFIED COPIES OF SAID INSURANCE POLICIES.

**IC 1 Proof of Insurance**

Within thirty (30) days after acceptance of the Contractor's tender, the Contractor shall, unless otherwise directed in writing by the Engineer, deposit with the Engineer the Insurer's Certificate of Insurance displayed on page 1 of this document and, if requested by the Engineer, the originals or certified true copies of all contracts of insurance maintained by the Contractor pursuant to the Insurance Coverage Requirements shown hereunder.

**IC 2 Risk Management**

The provisions of the Insurance Coverage Requirements contained hereunder are not intended to cover all of the Contractor's obligations under the General Conditions of the contract. Any additional risk management measures or additional insurance coverages the Contractor may deem necessary to fulfill its obligations under the contract shall be at its own discretion and expense.

**IC 3 Payment of Deductible**

The payment of monies up to the deductible amount made in satisfaction of a claim shall be borne by the Contractor.

## INSURANCE COVERAGE REQUIREMENTS

### PART I GENERAL INSURANCE COVERAGES (GIC)

**GIC 1 Insured**

Each insurance policy shall insure the Contractor, and shall include, as an Additional named insured, the Band Council of the \_\_\_\_\_ Band.

**GIC 2 Period of Insurance**

Unless otherwise directed in writing by the Engineer, the policies required hereunder shall be in force and be maintained from the date of contract award until the day of issue of the Engineer's Final Certificate of Completion.

**GIC 3 Proof of Insurance**

Within twenty five (25) days after acceptance of the Contractor's tender, the Insurer shall, unless otherwise directed in writing by the Contractor, deposit with the Contractor the Insurer's Certificate of Insurance displayed on page 1 of this document and, if requested, the originals or certified true copies of all contracts of insurance maintained by the Contractor pursuant to the requirements of these Insurance Coverages.

**GIC 4 Notification**

Each Insurance policy shall contain a provision that thirty (30) days prior written notice shall be given by the Insurer to the Band Council in the event of any material change in or cancellation of coverage. Any such notice received by the Contractor shall be transmitted forthwith to the Band Council.

### PART II COMMERCIAL GENERAL LIABILITY

**CGL 1 Scope of Policy**

The policy shall be written on a form similar to that known and referred to in the insurance industry as IBC 2100 - Commercial General Liability policy (Occurrence form) and shall provide for limit of liability of not less than \$2,000,000 inclusive for Bodily Injury and Property Damage for any one occurrence or series of occurrences arising out of one cause. Legal or defence costs incurred in respect of a claim or claims shall not operate to decrease the limit of liability.

**CGL 2 Coverages/Provisions**

The policy shall include but not necessarily be limited to the following coverages/provisions.

- 2.1 Liability arising out of or resulting from the ownership, existence, maintenance or use of premises by the Contractor and operations necessary or incidental to the performance of this contract.
- 2.2 "Broad Form" Property Damage including the loss of use of property.
- 2.3 Removal or weakening of support of any building or land whether such support be natural or otherwise.
- 2.4 Elevator liability (including escalators, hoists and similar devices).
- 2.5 Contractor's Protective Liability
- 2.6 Contractual and Assumed Liabilities under this contract.
- 2.7 Completed Operations Liability - The insurance, including all aspects of this Part II of these Insurance Conditions shall continue for a period of at least one year beyond the date of the Engineer's Final Certificate of Completion for the Completed Operations.
- 2.8 Cross Liability - The Clause shall be written as follows:  
"Cross Liability  
The insurance as is afforded by this policy shall apply in respect to any claim or action brought against any one Insured by any other Insured. The coverage shall apply in the same manner and to the same extent as though a separate policy had been issued to each Insured. The inclusion herein of more than one Insured shall not increase the limit of the Insurer's liability".
- 2.9 Severability of Interests - The Clause shall be written as follows:  
"Severability of Interests  
This policy, subject to the limits of liability stated herein, shall apply separately to each Insured in the same manner and to the same extent as if a separate policy had been issued to each. The inclusion herein of more than one insured shall not increase the limit of the Insurer's liability".

**CGL 3 Additional Exposures**

The policy shall either include or be endorsed to include the following exposures or hazards if the Work is subject thereto:

- 3.1 Blasting
- 3.2 Pile driving and caisson work
- 3.3 Underpinning
- 3.4 Risks associated with the activities of the Contractor on an active airport
- 3.5 Radioactive contamination resulting from the use of commercial isotopes
- 3.6 Damage to the portion of an existing building beyond that directly associated with an addition, renovation or installation contract. (The care custody and control exclusion shall not apply)
- 3.7 Marine risks associated with the construction of piers, wharves and docks.

**CGL 4** Insurance Proceeds from this policy are usually payable directly to a Claimant/Third Party.

**CGL 5 Deductible**

The policy shall be issued with a deductible amount of not more than \$2,500 per occurrence applying to Property Damage claims only.

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**PART III  
BUILDER'S RISK - INSTALLATION FLOATER-  
ALL RISKS****BR 1 Scope of Policy**

The policy shall be written on an "All Risks" basis granting coverages similar to those provided by the forms known and referred to in the insurance industry as "Builder's Risk Comprehensive Form" or "Installation Floater - All Risks".

**BR 2 Property Insured**

The property insured shall include:

- 2.1 The Work and all property, equipment and materials intended to become part of the finished Work at the site of the project while awaiting, during and after installation, erection or construction including testing.
- 2.2 Expenses incurred in the removal from the construction site of debris of the property insured, including demolition of damaged property, de-icing and dewatering, occasioned by loss, destruction or damage to such property and in respect of which insurance is provided by this policy.

**BR 3 Insurance Proceeds**

- 3.1 Insurance proceeds from this policy are payable in accordance with the General Conditions of the contract.
- 3.2 The policy shall provide that the proceeds thereof are payable to the Band Council.
- 3.3 The Contractor shall do such things and execute such documents as are necessary to effect payment of the proceeds.

**BR 4 Amount of Insurance**

The amount of insurance shall not be less than the sum of the contract value plus the declared value (if any) set forth in the contract documents of all material and equipment supplied by the Band Council at the site of the project to be incorporated into and form part of the finished Work.

**BR 5 Deductible**

The policy shall be issued with a deductible amount of not more than \$2,500.

**BR 6 Subrogation**

The following Clause shall be included in the policy:

"All rights of subrogation or transfer of rights are hereby waived against any corporation, firm, individual or other interest, with respect to which, insurance is provided by this policy".

**BR 7 Exclusion Qualifications**

The policy may be subject to the standard exclusions but the following qualifications shall apply:

- 7.1 Faulty materials, workmanship or design may be excluded only to the extent of the cost of making good thereof and shall not apply to loss or damage resulting therefrom.
- 7.2 Loss or damage caused by contamination by radioactive material may be excluded except for loss or damage resulting from commercial isotopes used for industrial measurement, inspection, quality control radiographic or photographic use.
- 7.3 Use and occupancy of the project or any part or section thereof shall be permitted where such use and occupancy is for the purposes for which the project is intended upon completion.

**Appendix 2-8 (cont'd)**

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**CONTRACTOR'S QUALIFICATION STATEMENT  
(BUILDING CONSTRUCTION)**

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(Required from the lowest bidder in advance of award of contract to establish whether a contractor possesses the capacity, skill and integrity necessary to the faithful performance of the work).

Submitted to the Band Council of the \_\_\_\_\_ Band

By \_\_\_\_\_ A Corporation \_\_\_\_\_

Address \_\_\_\_\_ A Partnership \_\_\_\_\_

An Individual \_\_\_\_\_

If a Corporation, answer below:

If a Partnership, answer below:

Year incorporated \_\_\_\_\_  
Federal \_\_\_\_\_ or  
Provincial \_\_\_\_\_  
(which Province)

Date of organization  
\_\_\_\_\_

or Year registered \_\_\_\_\_  
(which Province) \_\_\_\_\_  
President's name \_\_\_\_\_

Names and addresses of all partners:

Name(s) of Vice-President(s):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

How many years has the organization been in business as a contractor in Canada ?

Approximate total Canada volume of construction work for the last five years ?

\_\_\_\_\_ 19 \_\_\_\_, \_\_\_\_\_ 19 \_\_\_\_, \_\_\_\_\_ 20 \_\_\_\_,  
\_\_\_\_\_ 20 \_\_\_\_, \_\_\_\_\_ 20 \_\_.

**Appendix 2-8 (cont'd)**

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**LIST BELOW THE RELATED CONSTRUCTION EXPERIENCE OF THE PRINCIPAL INDIVIDUALS IN THE CONTRACTOR'S ORGANIZATION:**

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Individual's Name and Professional Qualifications	Present Position/ Office	Years of Construction Experience	In What Capacity
---	--------------------------	----------------------------------	------------------

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**LIST MAJOR PROJECTS YOUR ORGANIZATION HAS COMPLETED IN CANADA IN THE PAST FIVE YEARS:**

---

Project	Officer	Architect/ Engineer	When Completed	Contract Amount
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**LIST OF THE MAJOR CONSTRUCTION PROJECTS YOUR ORGANIZATION HAS UNDER WAY ON THIS DATE:**

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Project	Owner	Architect/ Engineer	Value	% Complete	Scheduled Completion
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**Appendix 2-8 (cont'd)**

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**DATA ON PROJECT BEING BID**

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Name of Project Superintendent to be Assigned to this Project	Years of Construction Experience	Typical \$ Amount and Type of Work for Which Responsible	In What Capacity
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Other Key Supervisors:

Additional Data:

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REFERENCES:

(a) Banking \_\_\_\_\_

(b) Bonding \_\_\_\_\_

The answers to the foregoing questions and all statements therein contained are true and correct.

Name of Organization : \_\_\_\_\_

Authorized Signature : \_\_\_\_\_

Title : \_\_\_\_\_

This \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ .

Note : Please use a blank sheet if additional space needed for any replies.



## Appendix 2-9

### **NOTE:**

Appendix 2-9 includes the following documents:

- Instruction to Bidders  
Major Construction Contract
- Tender Form (Combined Price)  
Major Construction Contract
- Articles of Agreement
- Plans and Specifications "A"  
(to be included by Project Manager)
- Terms of Payment "B"
- General Conditions "C"
- Labour Conditions "D"  
(to be attached by Project Manager)
- Insurance Conditions "E"
- Contract Security Conditions "F"
- Local Content Conditions "G"
- Contractor's Qualification Statement

**Sample Tender Documents for Jobs  
Valued at More than \$100,000**

**Instructions to Bidders  
Major Construction Works**

- 
- |   |                                 |                            |   |
|---|---------------------------------|----------------------------|---|
| 1 | <u>List of Tender Documents</u> | .1<br>.2<br>.3<br>.4<br>.5 | <p>Instructions to Bidders</p> <p>Tender Form</p> <p>Contract Documents</p> <p>.1 Articles of Agreement</p> <p>.2 Plans and Specifications "A"</p> <p>.3 Terms of Payment "B"</p> <p>.4 General Conditions "C"</p> <p>.5 Labour Conditions "D"</p> <p>.6 Insurance Conditions "E"</p> <p>.7 Contract Security Conditions "F"</p> <p>.8 Local Content Conditions "G"</p> <p>Any Addenda issued before the date set for tender closing.</p> <p>Contractor's Qualification Statement.</p>  |
| 2 | <u>Completion of Tender</u>     | .1<br>.2<br>.3             | <p>The tender shall</p> <p>.1 be submitted on the tender form provided, no substitutes will be accepted;</p> <p>.2 be based on the tender documents listed above;</p> <p>.3 be signed in accordance with the signing procedures set out herein;</p> <p>.4 be accompanied by the bid security specified herein;</p> <p>.5 be correctly completed in all respects;</p> <p>.6 be enclosed and sealed in the envelope provided and the name and address of the Tenderer shall be typed or printed on the tender envelope.</p> <p>.2 Any alteration to the pre-printed or pre-typed sections of the tender form may render the tender liable to disqualification. Alterations, corrections, changes or erasures made to statements or figures entered on the tender form by the Tenderer shall be initialled by the person or persons signing the tender.</p> <p>.3 <u>Signing Procedures:</u> The tender shall be signed in accordance with the following requirements:</p> <p>.1 <u>Corporation</u> - The signatures of the authorized signatories shall be affixed and their names and titles typed or printed in the space provided and the corporate seal should be affixed. If the corporate seal is not affixed to the tender, the signatures shall be witnessed and proof of signing authority shall be provided.</p> <p style="padding-left: 40px;">In the Province of Quebec signatures must be witnessed and, except when a director signs the tender, proof of signing authority shall be provided whether or not a corporate seal is affixed.</p> <p>.2 <u>Partnership</u> - The signatures of the partners shall be affixed and their names typed or printed in the space provided. The signatures shall be witnessed, and if not all of the partners sign or if the signatory is not a partner then a certified true copy of the agreement signed by all partners authorizing such person or persons to execute the</p> |

**Sample Tender Documents for Jobs  
Valued at More than \$100,000**

**Instructions to Bidders  
Major Construction Works**

- 
- |   |   |   |
|---|---|---|
| 2 | <u>Completion of Tender</u><br>(continued)      | <p>An adhesive coloured seal shall be affixed next to each signature except in the province of Quebec.</p> <p>.3 <u>Sole Proprietorship</u> - The signature of the sole proprietor shall be affixed and the name typed or printed in the space provided. The signature shall be witnessed. In the event that the signatory is not the sole proprietor then a certified true copy of the agreement signed by the sole proprietor authorizing such person or persons to execute the document shall accompany the tender.</p> <p>An adhesive coloured seal shall be affixed next to each signature except in the province of Quebec.</p> <p>.4 <u>Joint Venture</u> - The signatures of the authorized signatories of each member of the joint venture shall be affixed and their names and titles typed or printed in the space provided. Each of the participating signatories shall sign the document in the manner applicable to their particular business arrangement which is more particularly described in Clauses 2.3.1 to 2.3.3 above.</p> |
| 3 | <u>Submission of Tender</u>                     | <p>.1 Tenders shall be received at the office designated for the receipt of tenders, on or before the date and time set for tender closing. Late tenders will be returned unopened.</p>   |
| 4 | <u>Revision of Tenders</u>                      | <p>.1 A tender submitted in accordance with these instructions may be revised by letter, telegram or facsimile provided the revision is received at the office designated for the receipt of tenders, on or before the date and time set for the closing of tender. The facsimile must be on the contractor's letterhead or bear a signature that identifies the contractor. A revision to a unit price tender must clearly identify the change(s) in the unit price(s) and the specific item(s) to which each change applies.</p>  |
| 5 | <u>Approval of Alternative Materials</u>        | <p>.1 Whenever materials are specified by trade names or by manufacturer's names, the tender shall be based on the use of the named materials. During the tendering period, alternative materials will be considered provided full technical data is received in writing at the address given in clause 8 of these Instructions to Bidders at least ten (10) days prior to the date set for the closing of the tender. If the alternative materials are approved for the purposes of the tender an addendum to the contract documents will be issued.</p>   |
| 6 | <u>Listing of Sub-Contractors and Suppliers</u> | <p>.1 The lowest acceptable Tenderer shall, within 48 hours of receipt of a notice in writing, submit the names of subcontractors and suppliers for the part or parts of the work listed in the said notice.</p>  |

**Sample Tender Documents for Jobs  
Valued at More than \$100,000**

**Instructions to Bidders  
Major Construction Works**

- 
- 7 Acceptance of Tender
- .1 The lowest or any tender may not necessarily be accepted. Any or all tenders may be rejected.
  - .2 Without limiting the generality of Clause 7.1, the Band Council may reject any tender, based on an unfavourable assessment as to
    - .1 the adequacy of the tendered price to carry out the work and, in the case of a tender providing unit prices, whether the unit prices reasonably reflect the cost of performing the work related to those prices;
    - .2 whether the Bidder has the necessary management structure, skilled personnel, experience and equipment to perform competently the work under the contract; and
    - .3 the Bidder's performance on other contracts.
    - .4 specified mandatory requirements including local content conditions must be met
  - .3 In assessing the Bidder's performance on other contracts pursuant to clause 7.2.3, the Band Council may consider, but not be limited to, such matters as
    - .1 the efficiency and workmanship of the Bidder in performing the work; and
    - .2 the extent to which the Bidder executed the work in accordance with terms and conditions of the contract.
- 8 Tender Enquiries
- .1 All enquiries submitted prior to the date and time set for tender closing shall be addressed to:  

Name	Title	Phone No.	Fax No.	E mail
<hr/>				
<hr/>				
- 9 Bid Security Requirements
- .1 The Bidder shall submit a bid security of 10% of the tender amount with its tender in the form of a bid bond or a security deposit. The maximum amount of bid security with any tender is \$250,000.00.
  - .2 A bid bond shall be in an approved form and issued by an approved company whose bonds are acceptable to the Band Council.
  - .3 A security deposit shall be either
    - .1 a certified cheque, bank draft, money order, etc.,
      - .1 payable to the Band Council, and
      - .2 certified by or drawn on a recognized banking institution

**Sample Tender Documents for Jobs  
Valued at More than \$100,000**

**Instructions to Bidders  
Major Construction Works**

- 
- |    |   |    |   |
|----|---|----|---|
| 9  | <u>Bid Security Requirements</u><br>(continued) | .2 | .2 bonds of the Government of Canada or bonds unconditionally guaranteed as to principal and interest by the Government of Canada that are  |
|    |   | .1 | .1 payable to bearer, or  |
|    |   | .2 | .2 accompanied by a duly executed instrument of transfer of the bonds to the Band Council in the form prescribed by the Domestic Bonds of Canada Regulations, or  |
|    |   | .3 | .3 registered as to principal or as to principal and interest in the name of the Band Council pursuant to the Domestic Bonds of Canada Regulations, and   |
|    |   | .4 | .4 provided on the basis of their market value current at the date of the contract.   |
|    |   | .3 | .3 a letter of credit drawn on a recognized banking institution.  |
| 10 | <u>Contract Security Requirements</u>           | .1 | .1 The successful Bidder shall be required to provide contract security in accordance with the Contract Security Conditions "F" of the Tender Documents listed above within fourteen (14) days after receipt of a notice in writing that the tender was accepted by the Band Council. |
| 11 | <u>Contractor's Qualifications Statement</u>    | .1 | .1 The "Contractor's Qualification Statement" must be completed by the lowest acceptable bidder and submitted to the Band Council within 24 hours of being called upon to do so by the Band Council.  |
| 12 | <u>Local Content</u>                            | .1 | .1 Bidders are to note that there are special requirements included in the Tender form and Contract documents in connection with Local Labour, Equipment, Material and Training.  |
|    |   | .1 | .1 a list of local trades people and contractors available at the work site is attached to these instructions. It is the responsibility of the contractor to establish their qualifications and to make the necessary arrangement for their employment.                               |
|    |   | .2 | .2 a list of available local construction material is also attached to these instructions. It is the responsibility of the contractor to make his/her own arrangements for the purchase of the materials which must meet the requirements of the specifications.                      |
|    |   | .3 | .3 a list of available local construction equipment is also attached to these instructions. The contractor is responsible for making his/her own arrangements for the examination and local rental of the required equipment.   |
|    |   | .4 | .4 a list of local trades people available at the work site is attached to these instructions. It is the responsibility of the contractor to establish their requirements and to make the necessary arrangements for a training program for them.                                     |

**Tender Form  
Major Construction Works  
COMBINED PRICE**

Project Identification

TENDER CLOSING TIME \_\_\_\_ DATE \_\_\_\_\_

PROJECT NO. \_\_\_\_\_ FILE NO. \_\_\_\_

DESCRIPTION: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

1.2 Business Name and Address of Bidder

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone (\_\_\_\_)-\_\_\_\_\_  
Area Code Number

1.3 Offer

I/We, the Bidder, hereby offer to the Band Council of the \_\_\_\_\_ Band (hereinafter referred to as the Band Council) to perform and complete the work for the above named project in accordance with the Plans and Specifications and other Tender Documents, at the place and in the manner set out therein for the Total Tender Amount (to be expressed in numbers only) of:

\$\_\_\_\_\_.\_\_\_\_, (GST extra\*)

which consists of

.1 the Amount of \$\_\_\_\_\_ for the Fixed Price portion of the work, and

.2 the Total Estimated Amount of \$\_\_\_\_\_.

for the Unit Price portion of the work.

The above amount is inclusive of all applicable Federal, Provincial and Municipal taxes except that in the event of a change in any tax imposed under the Excise Act, the Excise Tax Act, the Old Age Security Act, the Customs Act, the Customs Tariff or any provincial sales tax legislation imposing a retail sales tax on the purchase of tangible personal property incorporated into Real Property, that occurs

.1 after the date this tender was mailed or delivered, or

.2 if this tender is revised, after the date of the last revision

\*(GST equals \$\_\_\_\_\_.\_\_\_\_)

1.3            Offer Continued

the amount of this offer shall be increased or decreased in the manner provided for in GC22 of the General Conditions of the Contract Documents.

1.4            Acceptance and Entry into Contract

I/We undertake, within fourteen (14) days of receipt of notification of acceptance of my/our offer, to sign a contract in the Band Council form for the performance of the work provided we are notified, by the Band Council, of the acceptance of my/our offer within 30 days of the tender closing date.

1.5            The Band Council contract document is described in Article A1 of the Articles of Agreement being part of this tender document.

1.6            Construction Time

I/We agree to complete the work within the time stipulated in the specification from the date of notification of acceptance of my/our offer.

**Tender Form  
Major Construction Works  
COMBINED PRICE**

1.7 Unit Price Table

I/We agree that the following table is the Unit Price Table to be used for the purposes of the Contract.

Col. 1 Item No.	Col. 2 Class of Labour, Plant or Material	Col. 3 Unit of Measurement	Col. 4 Estimated Quantity	Col. 5 Price per Unit \$ . ¢	Col. 6 Estimated Total Price \$ . ¢
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
<b>TOTAL ESTIMATED AMOUNT</b>					\$ . ¢

**Note:**                      **Transfer the Total Estimated Amount to Clause 1.3.2 on Page 1 of the Tender Form.**

**The Price per Unit column and the Estimated Total Price column must be completed for each Unit Price Item.**

1.8 I/We agree that the Price(s) per Unit as tendered govern in calculating the Total Estimated Amount. I/We understand that any errors in the extension of the Price per Unit and in the addition of the Estimated Total Price will be corrected in order to obtain the Total Estimated Amount.



1.9 Bid Security

I/We herewith enclose bid security in accordance with Clause 9 of the Instruction to Bidders.

I/We understand that if a security deposit is furnished as bid security and if I/we refuse to enter into a contract when called upon to do so, my/our security deposit shall be forfeited by the Band Council.

I/We understand that if the security furnished is not in the approved form as described in Clause 9 of the Instructions to Bidders, my/our tender is subject to disqualification.

1.10 Contract Security

Within fourteen (14) days after receipt of written notification of the acceptance of my/our offer, I/we will furnish contract security in accordance with the Contract Security Conditions "F" of the Contract Documents.

I/We understand that the contract security referred to herein, if provided in the form of a bill of exchange, will be deposited into the Band Council's bank account.

1.11 Appendices

This Tender Form includes Appendix No(s). \_\_.

1.12 Addenda

The Total Tender Amount provides for the Work described in the following Addenda:

No.	Date	No.	Date

(Bidders shall enter numbers and dates of addenda)

1.13 Local Content

1.13.1 I/We will employ the local people listed hereunder for the period specified

<u>Trade</u>	<u>Person Months</u>	<u>No. of Persons</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

and should employment of any person identified be terminated prior to completion of the term indicated above, I/We shall provide the Engineer with justification for such termination, and shall replace such person with a local person to the extent that he/she is available and qualified before I/We attempt to recruit elsewhere.

1.13.2 I/We will purchase the following local supplies, if available when required for the work:

**List of Materials:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(use additional sheet if required).

and I/We may substitute such material with other material of my choice subject however to the prior approval of the Engineer and subject to the such material meeting the requirements of the contract.

1.13.3 I/We shall use the following local pieces of construction equipment if available when required for the project:

**List of equipment**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(attach additional sheet if required)

and that I/We may substitute such equipment with other equipment of my choice, subject however to the prior approval of the Engineer

1.13.4 I/We shall implement a formal training program in accordance with clause \_\_\_\_ of the section entitled "\_\_\_\_\_" of the Specifications and I/we further agree to engage under the said training program \_\_\_\_\_ local people listed hereunder for the period specified:

<b>Trades</b>	<b>No. of Trainee Positions</b>	<b>Proposed Duration of Training hr/pers</b>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(attach additional sheets if required)

1.13.5 I/We agree that for the purposes of this tender the word "local" shall mean "from the Aboriginal Community in which the work is located".

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**Tender Form  
Major Construction Works  
COMBINED PRICE**

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1.14 Execution of Tender

The Tenderer shall refer to Clause 2.3 of the Instructions to Bidders.

SIGNED, ATTESTED TO AND DELIVERED on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ on behalf of \_\_\_\_\_

\_\_\_\_\_  
(Type or print the business name of the Tenderer)

WITNESSES

\_\_\_\_\_  
(Signature of Witness)

\_\_\_\_\_  
(Signature of Witness)

AUTHORIZED SIGNATORY(IES)

)  
\_\_\_\_\_  
(Signature of Signatory)

)  
\_\_\_\_\_  
(Print name & title of Signatory)

)  
\_\_\_\_\_  
(Signature of Signatory)

)  
\_\_\_\_\_  
(Print name & title of Signatory)

SEAL

These Articles of Agreement made in duplicate this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Between

The Band Council of the \_\_\_\_\_ Band (referred to in the contract documents as the Band Council).

and

(referred to in the contract documents as the "Contractor")

Witness that in consideration for the mutual promises and obligations contained in the contract, the Band Council and the Contractor covenant and agree as follows:

**A1 Contract Documents**

- 1.1 Subject to A1.4 and A1.5, the documents forming the contract between the Band Council and the Contractor, referred to herein as the contract documents, are
  - 1.1.1 these Articles of Agreement,
  - 1.1.2 the documents attached hereto, marked "A" and entitled "Plans and Specifications", referred to herein as the Plans and Specifications,
  - 1.1.3 the document attached hereto, marked "B" and entitled "Terms of Payment", referred to herein as the Terms of Payment,
  - 1.1.4 the document attached hereto, marked "C" and entitled "General Conditions", referred to herein as the General Conditions,
  - 1.1.5 the document attached hereto, marked "D" and entitled "Labour Conditions", referred to herein as the Labour Conditions,
  - 1.1.6 the document attached hereto, marked "E" and entitled "Insurance Conditions", referred to herein as the Insurance Conditions,
  - 1.1.7 the document attached hereto, marked "F" and entitled "Contract Security Conditions", referred to herein as the Contract Security Conditions,
  - 1.1.8 the document attached hereto, marked "G" and entitled "Local Content Conditions", and
  - 1.1.9 any amendment or variation of the contract documents that is made in accordance with the General Conditions.
- 1.2 The Band Council hereby designates \_\_\_\_\_ of \_\_\_\_\_, as the Engineer for the purposes of the contract, and for all purposes of or incidental to the contract, the Engineer's address shall be deemed to be:  
\_\_\_\_\_  
\_\_\_\_\_

- 1.3 In the contract
  - 1.3.1 "Fixed Price Arrangement" means that part of the contract that prescribes a lump sum as payment for performance of the work to which it relates; and

- 1.3.2 "Unit Price Arrangement" means that part of the contract that prescribes the product of a price multiplied by a number of units of measurement of a class as payment for performance of the work to which it relates.
- 1.4 Any of the provisions of the contract that are expressly stipulated to be applicable only to a Unit Price Arrangement are not applicable to any part of the work to which a Fixed Price Arrangement is applicable.
- 1.5 Any of the provisions of the contract that are expressly stipulated to be applicable only to a Fixed Price Arrangement are not applicable to any part of the work to which a Unit Price Arrangement is applicable.

**A2 Date of Completion of Work and Description of Work**

- 2.1 The Contractor shall, between the date of these Articles of Agreement and the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, in a careful and workmanlike manner, diligently perform and complete the following work:

which work is more particularly described in the Plans and Specifications.

**A3 Contract Amount**

- 3.1 Subject to any increase, decrease, deduction, reduction or set-off that may be made under the contract, the Band Council shall pay the Contractor at the times and in the manner that is set out or referred to in the Terms of Payment
  - 3.1.1 the sum of \$ \_\_\_\_\_ in consideration for the performance of the work or the part thereof that is subject to a Fixed Price Arrangement, and
  - 3.1.2 a sum that is equal to the aggregate of the products of the number of units of measurement of each class of labour, plant and material that is set out in a Final Certificate of Measurement referred to in GC44.8 multiplied in each case by the appropriate unit price that is set out in the Unit Price Table in consideration for the performance of the work or the part thereof that is subject to a Unit Price Arrangement.
- 3.2 For the information and guidance of the Contractor and the persons administering the contract on behalf of the Band Council, but not so as to constitute a warranty, representation or undertaking of any nature by either party, it is estimated that the total amount payable by the Band Council to the Contractor for the part of the work to which a Unit Price Arrangement is applicable will not exceed \$ \_\_\_\_\_.
- 3.3 A3.1.1 is applicable only to a Fixed Price Arrangement.
- 3.4 A3.1.2 and A3.2 are applicable only to a Unit Price Arrangement.

**A4 Contractor's Address**

- 4.1 For all purposes of or incidental to the contract, the Contractor's address shall be deemed to be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**A5 Unit Price Table**

5.1 The Band Council and the Contractor agree that the following table is the Unit Price Table for the purposes of the contract:

<b>Column 1 Item</b>	<b>Column 2 Class of Labour Plant or Material</b>	<b>Column 3 Unit of Measurement</b>	<b>Column 4 Estimated Total Quantity</b>	<b>Column 5 Price per Unit</b>	<b>Column 6 Estimated Total Price</b>

5.2 The Unit Price Table that is set out in A5.1 designates the part of the work to which a Unit Price Arrangement is applicable.

5.3 The part of the work that is not designated in the Unit Price Table referred to in A5.2 is the part of the work to which a Fixed Price Arrangement is applicable.

IN WITNESS WHEREOF the parties hereto have executed this contract as of the day and year first above written.

**FOR LIMITED COMPANY OR INCORPORATED COMPANY  
SEALED, ATTESTED TO AND DELIVERED on behalf of the Contractor by**

\_\_\_\_\_  
Signature of Authorized Signatory  
in the presence of

\_\_\_\_\_  
(Print name of Signatory)

\_\_\_\_\_  
(Print title of Signatory)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
(Print name of Signatory)

\_\_\_\_\_  
Signature of Authorized Signatory  
in the presence of

\_\_\_\_\_  
(Print title of Signatory)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Corporate Seal

**FOR PARTNERSHIP OR SOLE PROPRIETORSHIP  
SEALED, ATTESTED TO AND DELIVERED on behalf of the Contractor by**

\_\_\_\_\_  
Signature of Partner or  
Sole Proprietor

\_\_\_\_\_  
(Print name of Partner or  
Sole Proprietor)

\_\_\_\_\_  
Seal

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Partner  
in the presence of

\_\_\_\_\_  
(Print name of Partner)

\_\_\_\_\_  
Seal

\_\_\_\_\_  
Signature of Witness

**EXECUTED ON BEHALF OF THE BAND COUNCIL BY**

\_\_\_\_\_  
Signature of Authorized Band Officer  
in the presence of

\_\_\_\_\_  
(Print name of Officer)

\_\_\_\_\_  
Signature of Witness  
and countersigned by

\_\_\_\_\_  
(Print title of Officer)

\_\_\_\_\_  
Signature of Authorized Band Officer  
in the presence of

\_\_\_\_\_  
(Print name of Officer)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
(Print title of Officer)



**Appendix 2-9**

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**Plans and Specifications**

**A**

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Project Manager  
(attach Plans and Specifications)

**TP1 Amount Payable - General**

- 1.1 Subject to any other provisions of the contract, the Band Council shall pay the Contractor, at the times and in the manner hereinafter set out, the amount by which
- 1.1.1 the aggregate of the amounts described in TP2 exceeds
  - 1.1.2 the aggregate of the amounts described in TP3
- and the Contractor shall accept that amount as payment in full satisfaction for everything furnished and done by him in respect of the work to which the payment relates.

**TP2 Amounts Payable to the Contractor**

- 2.1 The amounts referred to in TP1.1.1 are the aggregate of
- 2.1.1 the amounts referred to in the Articles of Agreement, and
  - 2.1.2 the amounts, if any, that are payable to the Contractor pursuant to the General Conditions.

**TP3 Amounts Payable to the Band Council**

- 3.1 The amounts referred to in TP1.1.2 are the aggregate of the amounts, if any, that the Contractor is liable to pay the Band Council pursuant to the contract.
- 3.2 When making any payment to the Contractor, the failure of the Band Council to deduct an amount referred to in TP3.1 from an amount referred to in TP2 shall not constitute a waiver of the right to do so, or an admission of lack of entitlement to do so in any subsequent payment to the Contractor.

**TP4 Time of Payment**

- 4.1 In these Terms of Payment
- 4.1.1 The "payment period" means a period of 30 consecutive days or such other longer period as is agreed between the Contractor and the Engineer.
  - 4.1.2 An amount is "due and payable" when it is due and payable by the Band Council to the Contractor according to TP4.4, TP4.7 or TP4.10.
  - 4.1.3 An amount is overdue when it is unpaid on the first day following the day upon which it is due and payable.
  - 4.1.4 The "date of payment" means the date of the negotiable instrument of an amount due and payable by the Band Council and given for payment.
  - 4.1.5 The "Bank Rate" means the current prime lending rate established by the Band Council's banking institution.
- 4.2 The Contractor shall, on the expiration of a payment period, deliver to the Engineer in respect of that payment period a written progress claim that fully describes any part of the work that has been completed, and any material that was delivered to the work site but not incorporated into the work, during that payment period.
- 4.3 The Engineer shall, not later than ten days after receipt by him of a progress claim referred to in TP4.2,
- 4.3.1 inspect the part of the work and the material described in the progress claim; and

- 4.3.2 issue a progress report, a copy of which the Engineer will give to the Contractor, that indicates the value of the part of the work and the material described in the progress claim that, in the opinion of the Engineer,
- 4.3.2.1 is in accordance with the contract, and
- 4.3.2.2 was not included in any other progress report relating to the contract.
- 4.4 Subject to TP1 and TP4.5 the Band Council shall, not later than 30 days after the receipt by the Engineer of a progress claim referred to in TP4.2, pay the Contractor
- 4.4.1 an amount that is equal to 95% of the value that is indicated in the progress report referred to in TP4.3.2 if a labour and material payment bond has been furnished by the Contractor, or
- 4.4.2 an amount that it equal to 90% of the value that is indicated in the progress report referred to in TP4.3.2 if a labour and material payment bond has not been furnished by the Contractor.
- 4.5 It is a condition precedent to the Band Council's obligation under TP4.4 that the Contractor has made and delivered to the Engineer a statutory declaration described in TP4.6 in respect of a progress claim referred to in TP4.2.
- 4.6 A statutory declaration referred to in TP4.5 shall contain a deposition by the Contractor that up to the date of the Contractor's progress claim, the Contractor has complied with all his lawful obligations with respect to the Labour Conditions and that all lawful obligations of the Contractor to subcontractors and suppliers of material in respect of the work under the contract have been fully discharged.
- 4.7 Subject to TP1 and TP4.8, the Band Council, not later than 30 days after the date of issue of an Interim Certificate of Completion referred to in GC44.2, pay the Contractor the amount referred to in TP1 less the aggregate of
- 4.7.1 the sum of all payments that were made pursuant to TP4.4;
- 4.7.2 an amount that is equal to the Engineer's estimate of the cost to the Band Council of rectifying defects described in the Interim Certificate of Completion; and
- 4.7.3 an amount that is equal to the Engineer's estimate of the cost to the Band Council of completing the parts of the work described in the Interim Certificate of Completion other than the defects referred to in TP4.7.2.
- 4.8 It is a condition precedent to the Band Council's obligation under TP4.7 that the Contractor has made and delivered to the Engineer a statutory declaration described in TP4.9 in respect of an Interim Certificate of Completion referred to in GC44.2.
- 4.9 A statutory declaration referred to in TP4.8 shall contain a deposition by the contractor that up to the date of the Interim Certificate of Completion the Contractor has
- 4.9.1 complied with all of the Contractor's lawful obligations with respect to the Labour Conditions;
- 4.9.2 discharged all of the Contractor's lawful obligations to the subcontractors and suppliers of material in respect of the work under the contract.

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**Terms of Payment  
B**

- 4.10 Subject to TP1 and TP4.11, the Band Council shall, not later than 60 days after the date of issue of a Final Certificate of Completion referred to in GC44.1, pay the Contractor the amount referred to in TP1 less the aggregate of
- 4.10.1 the sum of all payments that were made pursuant to TP4.4; and
  - 4.10.2 the sum of all payments that were made pursuant to TP4.7.
- 4.11 It is a condition precedent to the Band Council's obligation under TP4.10 that the Contractor has made and delivered a statutory declaration described in TP4.12 to the Engineer.
- 4.12 A statutory declaration referred to in TP4.11 shall, in addition to the depositions described in TP4.9, contain a deposition by the Contractor that all of the Contractor's lawful obligations and any lawful claims against the Contractor that arose out of the performance of the contract have been discharged and satisfied.

**TP5 Progress Report and Payment Thereunder Not Binding on the Band Council**

- 5.1 Neither a progress report referred to in TP4.3 nor any payment made by the Band Council pursuant to these Terms of Payment shall be construed as an admission by the Band Council that the work, material or any part thereof is complete, is satisfactory or is in accordance with the contract.

**TP6 Delay in Making Payment**

- 6.1 Notwithstanding GC7 any delay by the Band Council in making any payment when it is due pursuant to these Terms of Payment shall not be a breach of the contract by the Band Council.
- 6.2 The Band Council shall pay, without demand from the Contractor, simple interest at the Bank Rate on any amount which is overdue pursuant to TP4.1.3, and the interest shall apply from and include the day such amount became overdue until the day prior to the date of payment except that
- 6.2.1 interest shall not be payable or paid unless the amount referred to in TP6.2 has been overdue for more than 15 days following
    - 6.2.1.1 the date the said amount became due and payable, or
    - 6.2.1.2 the receipt by the Engineer of the Statutory Declaration referred to in TP4.5, TP4.8 or TP4.11, whichever is the later, and
  - 6.2.2 interest shall not be payable or paid on overdue advance payments if any.

**TP7 Right of Set-off**

- 7.1 Without limiting any right of set-off or deduction given or implied by law or elsewhere in the contract, the Band Council may set off any amount payable to the Band Council by the Contractor under this contract or under any current contract against any amount payable to the Contractor under this contract.
- 7.2 For the purposes of TP7.1, "current contract" means a contract between the Band Council and the Contractor
- 7.2.1 under which the Contractor has an undischarged obligation to perform or supply work, labor or material, or

- 7.2.2 in respect of which the Band Council has, since the date on which the Articles of Agreement were made, exercised any right to take the work that is the subject of the contract out of the Contractor's hands.

**TP8 Payment in Event of Termination**

- 8.1 If the contract is terminated pursuant to GC41, the Band Council shall pay the Contractor any amount that is lawfully due and payable to the Contractor as soon as is practicable under the circumstances.

**TP9 Interest on Settled Claims**

- 9.1 The Band Council shall pay to the Contractor simple interest on the amount of a settled claim at an average Bank Rate from the date the settled claim was outstanding until the day prior to the date of payment.
- 9.2 For the purposes of TP9.1,
  - 9.2.1 a claim is deemed to have been settled when an agreement in writing is signed by the Engineer and the Contractor setting out the amount of the claim to be paid by the Band Council and the items of work for which the said amount is to be paid.
  - 9.2.2 an "average Bank Rate" means the bank rate in effect at the end of each calendar month averaged over the period the settled claim was outstanding.
- 9.2.3 a settled claim is deemed to be outstanding from the day immediately following the date the said claim would have been due and payable under the contract had it not been disputed.
- 9.3 For the purposes of TP9 a claim means a disputed amount subject to negotiation between the Band Council and the Contractor under the contract.

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**GC1 Interpretation**

- 1.1 In the contract
- 1.1.1 where reference is made to a part of the contract by means of numbers preceded by letters, the reference shall be construed to be a reference to the particular part of the contract that is identified by that combination of letters and numbers and to any other part of the contract referred to therein;
- 1.1.2 "contract" means the contract documents referred to in the Articles of Agreement;
- 1.1.3 "contract security" means any security given by the Contractor to the Band Council in accordance with the contract;
- 1.1.4 "Engineer" means the officer or qualified employee of the Band Council who is designated pursuant to the Articles of Agreement and includes a person specially authorized by him/her to perform, on his/her behalf, any of his/her functions under the contract and is so designated in writing to the Contractor;
- 1.1.5 "material" includes all commodities, articles and things required to be furnished by or for the Contractor under the contract for incorporation into the work;
- 1.1.6 Band Council includes the duly elected Chief and Councillors of the \_\_\_\_\_ Band and includes their successors in office.
- 1.1.7 "person" includes, unless the context otherwise requires, a partnership, proprietorship, firm, joint venture, consortium and a corporation;
- 1.1.8 "plant" includes all animals, tools, implements, machinery, vehicles, buildings, structures, equipment and commodities, articles and things other than material, that are necessary for the due performance of the contract;
- 1.1.9 "subcontractor" means a person to whom the Contractor has, subject to GC4, subcontracted the whole or any part of the work;
- 1.1.10 "superintendent" means the employee of the Contractor who is designated by the Contractor to act pursuant to GC19;
- 1.1.11 "work" includes, subject only to any express stipulation in the contract to the contrary, everything that is necessary to be done, furnished or delivered by the Contractor to perform the contract.
- 1.2 The headings in the contract documents, other than in the Plans and Specifications, form no part of the contract but are inserted for convenience of reference only.
- 1.3 In interpreting the contract, in the event of discrepancies or conflicts between anything in the Plans and Specifications and the General Conditions, the General Conditions govern.
- 1.4 In interpreting the Plans and Specifications, in the event of discrepancies or conflicts between
- 1.4.1 the Plans and Specifications, the Specifications govern;
- 1.4.2 the Plans, the Plans drawn with the largest scale govern; and
- 1.4.3 figured dimensions and scaled dimensions, the figured dimensions govern.

**GC2 Successors and Assigns**

- 2.1 The contract shall inure to the benefit of and be binding upon the parties hereto and their lawful heirs, executors, administrators, successors and assigns.

**GC3 Assignment of Contract**

- 3.1 The contract may not be assigned by the Contractor, either in whole or in part, without the written consent of the Band Council.

**GC4 Subcontracting by Contractor**

- 4.1 Subject to this General Condition, the Contractor may subcontract any part of the work.
- 4.2 The Contractor shall notify the Engineer in writing of his/her intention to subcontract.
- 4.3 A notification referred to in GC4.2 shall identify the part of the work, and the subcontractor with whom it is intended to subcontract.
- 4.4 The Engineer may object to the intended subcontracting by notifying the Contractor in writing within six days of receipt by the Engineer of a notification referred to in GC4.2.
- 4.5 If the Engineer objects to a subcontracting pursuant to GC4.4, the Contractor shall not enter into the intended subcontract.
- 4.6 The contractor shall not, without the written consent of the Engineer, change a subcontractor who has been engaged by him/her in accordance with this General Condition.
- 4.7 Every subcontract entered into by the Contractor shall adopt all of the terms and conditions of this contract that are of general application.
- 4.8 Neither a subcontracting nor the Engineer's consent to a subcontracting by the Contractor shall be construed to relieve the Contractor from any obligation under the contract or to impose any liability upon the Band Council.

**GC5 Amendments**

- 5.1 No amendment or change in any of the provisions of the contract shall have any force or effect until it is reduced to writing.

**GC6 No Implied Obligations**

- 6.1 No implied terms or obligations of any kind by or on behalf of the Band Council shall arise from anything in the contract and the express covenants and agreements therein contained and made by the Band Council are the only covenants and agreements upon which any rights against the Band Council are to be founded.
- 6.2 The contract supersedes all communications, negotiations and agreements, either written or oral, relating to the work that were made prior to the date of the contract.

**GC7 Time of Essence**

- 7.1 Time is of the essence of the contract.



**GC8 Indemnification by Contractor**

- 8.1 The Contractor shall indemnify and save the Band Council harmless from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings by whomever made, brought or prosecuted and in any manner based upon, arising out of, related to, occasioned by or attributable to the activities of the Contractor, his/her servants, agents, subcontractors and sub-subcontractors in performing the work including an infringement or an alleged infringement of a patent of invention or any other kind of intellectual property.
- 8.2 For the purposes of GC8.1, "activities" includes any act improperly carried out, any omission to carry out an act and any delay in carrying out an act.

**GC9 Indemnification by the Band Council**

- 9.1 The Band Council shall indemnify and save the Contractor harmless from and against all claims, demands, losses, costs, damage, actions, suits or proceedings arising out of his/her activities under the contract that are directly attributable to
- 9.1.1 lack of or a defect in the Band Council's title to the work site whether real or alleged; or
- 9.1.2 an infringement or an alleged infringement by the Contractor of any patent of invention or any other kind of intellectual property occurring while the Contractor was performing any act for the purposes of the contract employing a model, plan or design or any other thing related to the work that was supplied by the Band Council to the Contractor.

**GC10 Members of the Band Council Not to Benefit**

- 10.1 No member of the Band Council shall be admitted to any share or part of the contract or to any benefit arising therefrom.

**GC11 Notices**

- 11.1 Any notice, consent, order, decision, direction or other communication, other than a notice referred to in GC11.4, that may be given to the Contractor pursuant to the contract may be given in any manner.
- 11.2 Any notice, consent, order, decision, direction or other communication required to be given in writing, to any party pursuant to the contract shall, subject to GC11.4, be deemed to have been effectively given
- 11.2.1 to the Contractor, if delivered personally to the Contractor or the Contractor's superintendent, or forwarded by courier, mail, electronic mail or fax to the Contractor at the address set out in A4.1, or
- 11.2.2 to the Band Council, if delivered personally to the Engineer, or forwarded by courier, mail, electronic mail or fax to the Engineer at the address set out in A1.2.1.
- 11.3 Any such notice, consent, order, decision, direction or other communication given in accordance with GC11.2 shall be deemed to have been received by either party
- 11.3.1 if delivered personally, on the day that it was delivered,
- 11.3.2 if forwarded by mail, on the earlier of the day it was received and the sixth day after it was mailed, and
- 11.3.3 if forwarded by electronic mail or fax, 24 hours after it was transmitted.

- 11.4 A notice given under GC38.1.1, GC40 and GC41, if delivered personally, shall be delivered to the Contractor if the Contractor is doing business as a sole proprietor or, if the Contractor is a partnership or corporation, to an officer thereof.

**GC12 Material, Plant and Real Property Supplied by the Band Council**

- 12.1 Subject to GC12.2, the Contractor is liable to the Band Council for any loss of or damage to material, plant or real property that is supplied or placed in the care, custody and control of the Contractor by the Band Council for use in connection with the contract, whether or not that loss or damage is attributable to causes beyond the Contractor's control.
- 12.2 The Contractor is not liable to the Band Council for any loss or damage to material, plant or real property referred to in GC12.1 if that loss or damage results from and is directly attributable to reasonable wear and tear.
- 12.3 The Contractor shall not use any material, plant or real property referred to in GC12.1 except for the purpose of performing this contract.
- 12.4 When the Contractor fails to make good any loss or damage for which he/she is liable under GC12.1 within a reasonable time after being required to do so by the Engineer, the Engineer may cause the loss or damage to be made good at the Contractor's expense, and the Contractor shall thereupon be liable to the Band Council for the cost thereof and shall, on demand, pay to the Band Council an amount equal to that cost.
- 12.5 The Contractor shall keep such records of all material, plant and real property referred to in GC12.1 as the Engineer from time to time requires and shall satisfy the Engineer, when requested, that such material, plant and real property are at the place and in the condition in which they ought to be.

**GC13 Material, Plant and Real Property Become Property of the Band Council**

- 13.1 Subject to GC14.7 all material and plant and the interest of the Contractor in all real property, licences, powers and privileges purchased, used or consumed by the Contractor for the contract shall, after the time of their purchase, use or consumption be the property of the Band Council for the purposes of the work and they shall continue to be the property of the Band Council
- 13.1.1 in the case of material, until the Engineer indicates that he/she is satisfied that it will not be required for the work, and
- 13.1.2 in the case of plant, real property, licenses, powers and privileges, until the Engineer indicates that he/she is satisfied that the interest vested in the Band Council therein is no longer required for the purposes of the work.
- 13.2 Material or plant that is the property of the Band Council by virtue of GC13.1 shall not be taken away from the work site or used or disposed of except for the purposes of the work without the written consent of the Engineer.
- 13.3 The Band Council is not liable for loss of or damage from any cause to the material or plant referred to in GC13.1 and the Contractor is liable for such loss or damage notwithstanding that the material or plant is the property of the Band Council.

**GC14 Permits Licences and Certificates**

- 14.1 The laws of the place where the work is located shall govern the work.
- 14.2 The Contractor shall obtain all permits licences and certificates, and pay all fees required for the performance of the work which are in force at the final date for receipt of tenders by the Band Council (but this shall not include the obtaining of permanent easements or rights of servitude).

- 14.3 The Contractor shall give all required notices and comply with all laws, ordinances, rules, Band by-laws, regulations, codes and orders of all authorities having jurisdiction relating to the work, to the preservation of the public health and construction safety which are or become in force during the performance of the work.

**GC15 Performance of Work under Direction of Engineer**

- 15.1 The Contractor shall
- 15.1.1 permit the Engineer to have access to the work and its site at all times during the performance of the contract;
  - 15.1.2 furnish the Engineer with such information respecting the performance of the contract as he/she may require; and
  - 15.1.3 give the Engineer every possible assistance to enable the Engineer to carry out his/her duty to see that the work is performed in accordance with the contract and to carry out any other duties and exercise any powers specially imposed or conferred on the Engineer under the contract.

**GC16 Cooperation with Other Contractors**

- 16.1 Where, in the opinion of the Engineer, it is necessary that other contractors or workers with or without plant and material, be sent onto the work or its site, the Contractor shall, to the satisfaction of the Engineer, allow them access and cooperate with them in the carrying out of their duties and obligation.
- 16.2 If:
- 16.2.1 the sending onto the work or its site of other contractors or workers pursuant to GC16.1 could not have been reasonably foreseen or anticipated by the Contractor when entering into the contract, and
  - 16.2.2 the Contractor incurs, in the opinion of the Engineer, extra expense in complying with GC16.1, and
  - 16.2.3 the Contractor has given the Engineer written notice of his/her claim for the extra expense referred to in GC16.2.2 within 30 days of the date that the other contractors or workers were sent onto the work or its site,

The Band Council shall pay the Contractor the cost, calculated in accordance with GC48 to GC50, of the extra labour, plant and material that was necessarily incurred.

**GC17 Examination of Work**

- 17.1 If, at any time after the commencement of the work but prior to the expiry of the warranty or guarantee period, the Engineer has reason to believe that the work or any part thereof has not been performed in accordance with the contract, the Engineer may have that work examined by an expert of his/her choice.
- 17.2 If, as a result of an examination of the work referred to in GC17.1, it is established that the work was not performed in accordance with the contract, then, in addition to and without limiting or otherwise affecting any of the Band Council's rights and remedies under the contract either at law or in equity, the Contractor shall pay the Band Council, on demand, all reasonable costs and expenses that were incurred by the Band Council in having that examination performed.

**GC18 Clearing of Site**

- 18.1 The Contractor shall maintain the work and its site in a tidy condition and free from the accumulation of waste material and debris, in accordance with any directions of the Engineer.
- 18.2 Before the issue of an interim certificate referred to in GC44.2, the Contractor shall remove all the plant and material not required for the performance of the remaining work, and all waste material and other debris, and shall cause the work and its site to be clean and suitable for occupancy by the Band Council's servants, unless otherwise stipulated in the contract.
- 18.3 Before the issue of a final certificate referred to in GC44.1, the Contractor shall remove from the work and its site all of the surplus plant and material and any waste material and other debris.
- 18.4 The Contractor's obligations described in GC18.1 to GC18.3 do not extend to waste material and other debris caused by the Band Council's servants or contractors and workers referred to in GC16.1

**GC19 Contractor's Superintendent**

- 19.1 The Contractor shall, forthwith upon the award of the contract, designate a superintendent.
- 19.2 The Contractor shall forthwith notify the Engineer of the name, address and telephone number of a superintendent designated pursuant to GC19.1.
- 19.3 A superintendent designated pursuant to GC19.1 shall be in full charge of the operations of the Contractor in the performance of the work and is authorized to accept any notice, consent, order, direction, decision or other communication on behalf of the Contractor that may be given to the superintendent under the contract.
- 19.4 The Contractor shall, until the work has been completed, keep a competent superintendent at the work site during working hours.
- 19.5 The Contractor shall, upon the request of the Engineer, remove any superintendent who, in the opinion of the Engineer, is incompetent or has been conducting himself/herself improperly and shall forthwith designate another superintendent who is acceptable to the Engineer.
- 19.6 Subject to GC19.5, the Contractor shall not substitute a superintendent without the written consent of the Engineer.
- 19.7 A breach by the Contractor of GC19.6 entitles the Engineer to refuse to issue any certificate referred to in GC44 until the superintendent has returned to the work site or another superintendent who is acceptable to the Engineer has been substituted.

**GC20 Security of the Band**

- 20.1 If the Band Council is of the opinion that the work is of a class or kind that involves the security of the Band, it may order the Contractor
- 20.1.1 to provide the Band Council with any information concerning persons employed or to be employed by him/her for purposes of the contract; and
- 20.1.2 to remove any person from the work and its site if, in the opinion of the Band Council, that person may be a risk to the security of the Band.
- 20.2 The Contractor shall, in all contracts with persons who are to be employed in the performance of the contract, make provision for his/her performance of any obligation that may be imposed upon him/her under GC19 to GC21.

20.3 The Contractor shall comply with an order of the Band Council under GC20.1.

#### **GC21 Unsuitable Workers**

21.1 The Contractor shall, upon the request of the Engineer, remove any person employed by him/her for purposes of the contract who, in the opinion of the Engineer, is incompetent or has conducted himself/herself improperly, and the Contractor shall not permit a person who has been removed to return to the work site.

#### **GC22 Increased or Decreased Costs**

22.1 The amount set out in the Articles of Agreement shall not be increased or decreased by reason of any increase or decrease in the cost of the work that is brought about by an increase or decrease in the cost of labour, plant or material or any wage adjustment arising pursuant to the Labour Conditions.

22.2 Notwithstanding GC22.1 and GC35, an amount set out in the Articles of Agreement shall be adjusted in the manner provided in GC22.3, if any change in a tax imposed under the Excise Act, the Excise Tax Act, the Old Age Security Act, the Customs Act, the Customs Tariff or any provincial sales tax legislation imposing a retail sales tax on the purchase of tangible personal property incorporated into Real Property

22.2.1 occurs after the date of the submission by the Contractor of his/her tender for the contract,

22.2.2 applies to material, and

22.2.3 affects the cost to the Contractor of that material.

22.3 If a change referred to in GC22.2 occurs, the appropriate amount set out in the Articles of Agreement shall be increased or decreased by an amount equal to the amount that is established by an examination of the relevant records of the Contractor referred to in GC51 to be the increase or decrease in the cost incurred that is directly attributable to that change.

22.4 For the purpose of GC22.2, where a tax is changed after the date of submission of the tender but public notice of the change has been given by the Minister of Finance before that date, the change shall be deemed to have occurred before the date of submission of the tender.

#### **GC23 Local Labour, Material, Equipment and Training**

23.1 The Contractor shall use Canadian labour and material in the performance of the work to the full extent to which they are procurable, consistent with proper economy and the expeditious carrying out of the work and that he/she shall employ local labour, purchase local supplies, hire local equipment and implement a training program, all in accordance with the requirements of Appendix G attached hereto.

#### **GC24 Protection of Work and Documents**

24.1 The Contractor shall guard or otherwise protect the work and its site, and protect the contract, specifications, plans, drawings, information, material, plant and real property, whether or not they are supplied by the Band Council to the

Contractor, against loss or damage from any cause, and he/she shall not use, issue, disclose or dispose of them without the written consent of the Band Council, except as may be essential for the performance of the work.

- 24.2 The Contractor shall provide all facilities necessary for the purpose of maintaining security, and shall assist any person authorized by the Band Council to inspect or to take security measures in respect of the work and its site.
- 24.3 The Engineer may direct the Contractor to do such things and to perform such additional work as the Engineer considers reasonable and necessary to ensure compliance with or to remedy a breach of GC24.1 to GC24.2.

**GC25 Public Ceremonies and Signs**

- 25.1 The Contractor shall not permit any public ceremony in connection with the work without the prior consent of the Band Council.
- 25.2 The Contractor shall not erect or permit the erection of any sign or advertising on the work or its site without the prior consent of the Engineer.

**GC26 Precautions against Damage, Infringement of Rights, Fire, and Other Hazards**

- 26.1 The Contractor shall, at his/her own expense, do whatever is necessary to ensure that
- 26.1.1 no person, property, right, easement or privilege is injured, damaged or infringed by reasons of the Contractor's activities in performing the contract;
  - 26.1.2 pedestrian and other traffic on any public or private road or waterway is not unduly impeded, interrupted or endangered by the performance or existence of the work or plant;
  - 26.1.3 fire hazards in or about the work or its site are eliminated and, subject to any direction that may be given by the Engineer, any fire is promptly extinguished;
  - 26.1.4 the health and safety of all persons employed in the performance of the work is not endangered by the method or means of its performance;
  - 26.1.5 adequate medical services are available to all persons employed on the work or its site at all times during the performance of the work;
  - 26.1.6 adequate sanitation measures are taken in respect of the work and its site; and
  - 26.1.7 all stakes, buoys and marks placed on the work or its site by or under the authority of the Engineer are protected and are not removed, defaced, altered or destroyed.
- 26.2 The Engineer may direct the Contractor to do such things and to perform such additional work as the Engineer considers reasonable and necessary to ensure compliance with or to remedy a breach of GC26.1.
- 26.3 The Contractor shall, at his/her own expense, comply with a direction of the Engineer made under GC26.2.

**GC27 Insurance**

- 27.1 The Contractor shall, at his/her own expense, obtain and maintain insurance contracts in respect of the work and shall provide evidence thereof to the Engineer in accordance with the requirements of the Insurance Conditions "E".

- 27.2 The insurance contracts referred to in GC27.1 shall
- 27.2.1 be in a form, of the nature, in the amounts, for the periods and containing the terms and conditions specified in Insurance Conditions "E", and
  - 27.2.2 provide for the payment of claims under such insurance contracts in accordance with GC28.

**GC28 Insurance Proceeds**

- 28.1 In the case of a claim payable under a Builders Risk/Installation (All Risks) insurance contract maintained by the Contractor pursuant to GC27, the proceeds of the claim shall be paid directly to the Band Council, and
- 28.1.1 the monies so paid shall be held by the Band Council for the purposes of the contract, or
  - 28.1.2 if the Band Council elects, shall be retained by the Band Council, in which event they vest in the Band Council absolutely.
- 28.2 In the case of a claim payable under a General Liability insurance contract maintained by the Contractor pursuant to GC27, the proceeds of the claim shall be paid by the insurer directly to the claimant.
- 28.3 If an election is made pursuant to GC28.1, the Band Council may cause an audit to be made of the accounts of the Contractor and of the Band Council in respect of the part of the work that was lost, damaged or destroyed for the purpose of establishing the difference, if any, between
- 28.3.1 the aggregate of the amount of the loss or damage suffered or sustained by the Band Council, including any costs incurred in respect of the clearing and cleaning of the work and its site and any other amount that is payable by the Contractor to the Band Council under the contract, minus any monies retained pursuant to GC28.1.2, and
  - 28.3.2 the aggregate of the amounts payable by the Band Council to the Contractor pursuant to the contract up to the date of the loss or damage.
- 28.4 A difference that is established pursuant to GC28.3 shall be paid forthwith by the party who is determined by the audit to be the debtor to the party who is determined by the audit to be the creditor.
- 28.5 When payment of a deficiency has been made pursuant to GC28.4, all rights and obligations of the Band Council and the Contractor under the contract shall, with respect only to the part of the work that was the subject of the audit referred to in GC28.3, be deemed to have been expended and discharged.
- 28.6 If an election is not made pursuant to GC28.1.2 the Contractor shall, subject to GC28.7, clear and clean the work and its site and restore and replace the part of the work that was lost, damaged or destroyed at his/her own expense as if that part of the work had not yet been performed.
- 28.7 When the Contractor clears and cleans the work and its site and restores and replaces the work referred to in GC28.6, the Band Council shall pay him/her out of the monies referred to in GC28.1 so far as they will there unto extend.

28.8 Subject to GC28.7, payment by the Band Council pursuant to GC28.7 shall be made in accordance with the contract but the amount of each payment shall be 100% of the amount claimed notwithstanding TP4.4.1 and TP4.4.2.

### **GC29 Contract Security**

29.1 The Contractor shall obtain and deliver contract security to the Engineer in accordance with the provisions of the Contract Security Conditions.

29.2 If the whole or a part of the contract security referred to in GC29.1 is in the form of a security deposit, it shall be held and disposed of in accordance with GC43 and GC45.

29.3 If a part of the contract security referred to in GC29.1 is in the form of a labour and material payment bond, the Contractor shall post a copy of that bond on the work site.

### **GC30 Changes in the Work**

30.1 Subject to GC5, the Engineer may, at any time before he/she issues his Final Certificate of Completion,

30.1.1 order work or material in addition to that provided for in the Plans and Specifications; and

30.1.2 delete or change the dimensions, character, quantity, quality, description, location or position of the whole or any part of the work or material provided for in the Plans and Specifications or in any order made pursuant to GC30.1.1,

if that additional work or material, deletion, or change is, in his/her opinion, consistent with the general intent of the original contract.

30.2 The Contractor shall perform the work in accordance with such orders, deletions and changes that are made by the Engineer pursuant to GC30.1 from time to time as if they had appeared in and been part of the Plans and Specifications.

30.3 The Engineer shall determine whether or not anything done or omitted by the Contractor pursuant to an order, deletion or change referred to in GC30.1 increased or decreased the cost of the work to the Contractor.

30.4 If the Engineer determines pursuant to GC30.3 that the cost of the work to the Contractor has been increased, the Band Council shall pay the Contractor the increased cost that the Contractor necessarily incurred for the additional work calculated in accordance with GC49 or GC50.

30.5 If the Engineer determines pursuant to GC30.3 that the cost of the work to the Contractor has been decreased, the Band Council shall reduce the amount payable to the Contractor under the contract by an amount equal to the decrease in the cost caused by the deletion or change referred to in GC30.1.2 and calculated in accordance with GC49.

30.6 GC30.3 to GC30.5 are applicable only to a contract or a portion of a contract for which a Fixed Price Arrangement is stipulated in the contract.

30.7 An order, deletion or change referred to in GC30.1 shall be in writing, signed by the Engineer and given to the Contractor in accordance with GC11.



**GC31 Interpretation of Contract by Engineer**

- 31.1 If, at any time before the Engineer has issued a Final Certificate of Completion referred to in GC44.1, any question arises between the parties about whether anything has been done as required by the contract or about what the Contractor is required by the contract to do, and, in particular but without limiting the generality of the foregoing, about
- 31.1.1 the meaning of anything in the Plans and Specifications,
  - 31.1.2 the meaning to be given to the Plans and Specifications in case of any error therein, omission therefrom, or obscurity or discrepancy in their wording or intention,
  - 31.1.3 whether or not the quality or quantity of any material or workmanship supplied or proposed to be supplied by the Contractor meets the requirements of the contract,
  - 31.1.4 whether or not the labour, plant or material provided by the Contractor for performing the work and carrying out the contract are adequate to ensure that the work will be performed in accordance with the contract and that the contract will be carried out in accordance with its terms,
  - 31.1.5 what quantity of any kind of work has been completed by the Contractor, or
  - 31.1.6 the timing and scheduling of the various phases of the performance of the work,
- the question shall be decided by the Engineer whose decision shall be final and conclusive in respect of the work.
- 31.2 The Contractor shall perform the work in accordance with any decisions of the Engineer that are made under GC31.1 and in accordance with any consequential directions given by the Engineer.

**GC32 Warranty and Rectification of Defects in Work**

- 32.1 Without restricting any warranty or guarantee implied or imposed by law or contained in the contract documents, the Contractor shall, at his/her own expense,
- 32.1.1 rectify and make good any defect or fault that appears in the work or comes to the attention of the Band Council with respect to those parts of the work accepted in connection with the Interim Certificate of Completion referred to in GC44.2 within 12 months from the date of the Interim Certificate of Completion;
  - 32.1.2 rectify and make good any defect or fault that appears in or comes to the attention of the Band Council in connection with those parts of the work described in the Interim Certificate of Completion referred to in GC44.2 within 12 months from the date of the Final Certificate of Completion referred to in GC44.1.
- 32.2 The Engineer may direct the Contractor to rectify and make good any defect or fault referred to in GC32.1 or covered by any other expressed or implied warranty or guarantee.

32.3 A direction referred to in GC32.2 shall be in writing, may include a stipulation in respect of the time within which a defect or fault is required to be rectified and made good by the Contractor, and shall be given to the Contractor in accordance with GC11.

32.4 The Contractor shall rectify and make good any defect or fault described in a direction given pursuant to GC32.2 within the time stipulated therein.

### **GC33 Non-Compliance by Contractor**

33.1 If the Contractor fails to comply with any decision or direction given by the Engineer pursuant to GC18, GC24, GC26, GC31 or GC32, the Engineer may employ such methods as he/she deems advisable to do that which the Contractor failed to do.

33.2 The Contractor shall, on demand, pay the Band Council an amount that is equal to the aggregate of all costs, expenses and damage incurred or sustained by the Band Council by reason of the Contractor's failure to comply with any decision or direction referred to in GC33.1, including the cost of any methods employed by the Engineer pursuant to GC33.1.

### **GC34 Protesting Engineer's Decisions**

34.1 The Contractor may, within ten days after the communication to him/her of any decision or direction referred to in GC30.3 or GC33.1, protest that decision or direction.

34.2 A protest referred to in GC34.1 shall be in writing, contain full reasons for the protest, be signed by the Contractor and be given to the Band Council by delivery to the Engineer.

34.3 If the Contractor gives a protest pursuant to GC34.2, any compliance by the Contractor with the decision or direction that was protested shall not be construed as an admission by the Contractor of the correctness of that decision or direction, or prevent the Contractor from taking whatever action he/she considers appropriate in the circumstances.

34.4 The giving of a protest by the Contractor pursuant to GC34.2 shall not relieve him/her from complying with the decision or direction that is the subject of the protest.

34.5 Subject to GC34.6, the Contractor shall take any action referred to in GC34.3 within three months after the date that a Final Certificate of Completion is issued under GC44.1 and not afterwards.

34.6 The Contractor shall take any action referred to in GC34.3 resulting from a direction under GC32 within three months after the expiry of a warranty or guarantee period and not afterwards.

34.7 Subject to GC34.8, if the Band Council determines that the Contractor's protest is justified, the Band Council shall pay the Contractor the cost of the additional labour, plant and material necessarily incurred by the Contractor in carrying out the protested decision or direction.

34.8 Costs referred to in GC34.7 shall be calculated in accordance with GC48 to GC50.

### **GC35 Changes in Soil Conditions and Neglect or Delay by the Band Council**

35.1 Subject to GC35.2 no payment, other than a payment that is expressly stipulated in the contract, shall be made by the Band Council to the Contractor for any extra expense or any loss or damage incurred or sustained by the Contractor.

- 35.2 If the Contractor incurs or sustains any extra expense or any loss or damage that is directly attributable to
- 35.2.1 a substantial difference between the information relating to soil conditions at the work site that is contained in the Plans and Specifications or other documents supplied to the Contractor for his/her use in preparing his/her tender or a reasonable assumption of fact based thereon made by the Contractor, and the actual soil conditions encountered by the Contractor at the work site during the performance of the contract, or
- 35.2.2 any neglect or delay that occurs after the date of the contract on the part of the Band Council in providing any information or in doing any act that the contract either expressly requires the Band Council to do or that would ordinarily be done by an owner in accordance with the usage of the trade,
- he/she shall, within ten days of the date the actual soil conditions described in GC35.2.1 were encountered or the neglect or delay described in GC35.2.2 occurred, give the Engineer written notice of his/her intention to claim for that extra expense or that loss or damage.
- 35.3 When the Contractor has given a notice referred to in GC35.2, he/she shall give the Engineer a written claim for extra expense or loss or damage within 30 days of the date that a Final Certificate of Completion referred to in GC44.1 is issued and not afterwards.
- 35.4 A written claim referred to in GC35.3 shall contain a sufficient description of the facts and circumstances of the occurrence that is the subject of the claim to enable the Engineer to determine whether or not the claim is justified and the Contractor shall supply such further and other information for that purpose as the Engineer requires from time to time.
- 35.5 If the Engineer determines that a claim referred to in GC35.3 is justified, the Band Council shall make an extra payment to the Contractor in an amount that is calculated in accordance with GC47 to GC50.
- 35.6 If, in the opinion of the Engineer, an occurrence described in GC35.2.1 results in a savings of expenditure by the Contractor in performing the contract, the amount set out in the Articles of Agreement shall, subject to GC35.7, be reduced by an amount that is equal to the saving.
- 35.7 The amount of the saving referred to in GC35.6 shall be determined in accordance with GC47 to GC49.
- 35.8 If the Contractor fails to give a notice referred to in GC35.2 and a claim referred to in GC35.3 within the times stipulated, an extra payment shall not be made to him/her in respect of the occurrence.

**GC36 Extension of Time**

- 36.1 Subject to GC36.2, the Engineer may, on the application of the Contractor made before the day fixed by the Articles of Agreement for completion of the work or before any other date previously fixed under this General Condition, extend the time for its completion by fixing a new date if, in the opinion of the Engineer, causes beyond the control of the Contractor have delayed its completion.
- 36.2 An application referred to in GC36.1 shall be accompanied by the written consent of the bonding company whose bond forms part of the contract security.

**GC37 Assessments and Damages for Late Completion**

- 37.1 For the purposes of this General Condition
- 37.1.1 the work shall be deemed to be completed on the date that an Interim Certificate of Completion referred to in GC44.2 is issued, and
  - 37.1.2 "period of delay" means the number of days commencing on the day fixed by the Articles of Agreement for completion of the work and ending on the day immediately preceding the day on which the work is completed but does not include any day within a period of extension granted pursuant to GC36.1, and any other day on which, in the opinion of the Engineer, completion of the work was delayed for reasons beyond the control of the Contractor.
- 37.2 If the Contractor does not complete the work by the day fixed for its completion by the Articles of Agreement but completes it thereafter, the Contractor shall pay the Band Council an amount equal to the aggregate of
- 37.2.1 all salaries, wages and travelling expenses incurred by the Band Council in respect of persons overseeing the performance of the work during the period of delay;
  - 37.2.2 the cost incurred by the Band Council as a result of the inability to use the completed work for the period of delay; and
  - 37.2.3 all other expenses and damages incurred or sustained by the Band Council during the period of delay as a result of the work not being completed by the day fixed for its completion.

**GC38 Taking the Work Out of the Contractor's Hands**

- 38.1 The Band Council may, at its sole discretion, by giving a notice in writing to the Contractor in accordance with GC11, take all or any part of the work out of the Contractor's hands, and may employ such means as it sees fit to have the work completed if the Contractor
- 38.1.1 has not, within six days of the Band Council or the Engineer giving notice to the Contractor in writing in accordance with GC11, remedied any delay in the commencement or any default in the diligent performance of the work to the satisfaction of the Engineer;
  - 38.1.2 has defaulted in the completion of any part of the work within the time fixed for its completion by the contract;
  - 38.1.3 has become insolvent;
  - 38.1.4 has committed an act of bankruptcy;
  - 38.1.5 has abandoned the work;
  - 38.1.6 has made an assignment of the contract without the consent required by GC3.1; or
  - 38.1.7 has otherwise failed to observe or perform any of the provisions of the contract.
- 38.2 If the whole or any part of the work is taken out of the Contractor's hands pursuant to GC38.1,

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- 38.2.1 the Contractor's right to any further payment that is due or accruing due under the contract is, subject only to GC38.4, extinguished, and
- 38.2.2 the Contractor is liable to pay the Band Council, upon demand, an amount that is equal to the amount of all loss and damage incurred or sustained by the Band Council in respect of the Contractor's failure to complete the work.
- 38.3 If the whole or any part of the work that is taken out of the Contractor's hands pursuant to GC38.1 is completed by the Band Council, the Engineer shall determine the amount, if any, of the holdback or a progress claim that had accrued and was due prior to the date on which the work was taken out of the Contractor's hands and that is not required for the purposes of having the work performed or of compensating the Band Council for any other loss or damage incurred or sustained by reason of the Contractor's default.
- 38.4 The Band Council may pay the Contractor the amount determined not to be required pursuant to GC38.3.

**GC39 Effect of Taking the Work Out of the Contractor's Hands**

- 39.1 The taking of the work or any part thereof out of the Contractor's hands pursuant to GC38 does not operate so as to relieve or discharge him/her from any obligation under the contract or imposed upon him/her by law except the obligation to complete the performance of that part of the work that was taken out of his/her hands.
- 39.2 If the work or any part thereof is taken out of the Contractor's hands pursuant to GC38, all plant and material and the interest of the Contractor in all real property, licences, powers and privileges acquired, used or provided by the Contractor under the contract shall continue to be the property of the Band Council without compensation to the Contractor.
- 39.3 When the Engineer certifies that any plant, material, or any interest of the Contractor referred to in GC39.2 is no longer required for the purposes of the work, or that it is not in the interests of the Band Council to retain that plant, material, or interest, it shall revert to the Contractor.

**GC40 Suspension of Work by the Band Council**

- 40.1 The Band Council may, when in its opinion it is in the public interest to do so, require the Contractor to suspend performance of the work either for a specified or an unspecified period by giving a notice of suspension in writing to the Contractor in accordance with GC11.
- 40.2 When a notice referred to in GC40.1 is received by the Contractor in accordance with GC11, he/she shall suspend all operations in respect of the work except those that, in the opinion of the Engineer, are necessary for the care and preservation of the work, plant and material.
- 40.3 The Contractor shall not, during a period of suspension, remove any part of the work, plant or material from its site without the consent of the Engineer.
- 40.4 If a period of suspension is 30 days or less, the Contractor shall, upon the expiration of that period, resume the performance of the work and he/she is entitled to be paid the extra cost, calculated in accordance with GC48 to GC50, of any labour, plant and material necessarily incurred by him/her as a result of the suspension.

- 40.5 If, upon the expiration of a period of suspension of more than 30 days, the Band Council and the Contractor agree that the performance of the work will be continued by the Contractor, the Contractor shall resume performance of the work subject to any terms and conditions agreed upon by the Band Council and the Contractor.
- 40.6 If, upon the expiration of a period of suspension of more than 30 days, the Band Council and the Contractor do not agree that performance of the work will be continued by the Contractor or upon the terms and conditions under which the Contractor will continue the work, the notice of suspension shall be deemed to be a notice of termination pursuant to GC41.

**GC41 Termination of Contract**

- 41.1 The Band Council may terminate the contract at any time by giving a notice of termination in writing to the Contractor in accordance with GC11.
- 41.2 When a notice referred to in GC41.1 is received by the Contractor in accordance with GC11, he/she shall, subject to any conditions stipulated in the notice, forthwith cease all operations in performance of the contract.
- 41.3 If the contract is terminated pursuant to GC41.1, the Band Council shall pay the Contractor, subject to GC41.4, an amount equal to
- 41.3.1 the cost to the Contractor of all labour, plant and material supplied by him/her under the contract up to the date of termination in respect of a contract or part thereof for which a Unit Price Arrangement is stipulated in the contract, or
- 41.3.2 the lesser of
- 41.3.2.1 an amount, calculated in accordance with the Terms and Payment, that would have been payable to the Contractor had he/she completed the work, and
- 41.3.2.2 an amount that is determined to be due to the Contractor pursuant to GC49 in respect of a contract or part thereof for which a Fixed Price Arrangement is stipulated in the contract
- less the aggregate of all amount that were paid to the Contractor by the Band Council and all amounts that are due to the Band Council from the Contractor pursuant to the contract.
- 41.4 If the Band Council and the Contractor are unable to agree about an amount referred to in GC41.3 that amount shall be determined by the method referred to in GC50.

**GC42 Claims Against and Obligations of the Contractor or Subcontractor**

- 42.1 The Band Council may, in order to discharge lawful obligations of and satisfy claims against the Contractor or a subcontractor arising out of the performance of the contract, pay any amount that is due and payable to the Contractor pursuant to the contract directly to the obligees of and the claimants against the Contractor or the subcontractor but such amount if any, as is paid by the Band Council shall not exceed that amount which the Contractor would have been obliged to pay to such claimant had the provisions of the Provincial or Territorial lien legislation, or, in the Province of Quebec, the law relating to privileges, been applicable to the work. Any such claimant need not comply with the provisions of such legislation setting out the steps by way of notice, registration or otherwise as might have been necessary to preserve or perfect any claim for lien or privilege which claimant might have had.

- 42.2 The Band Council will not make any payment as described in GC42.1 unless and until that claimant shall have delivered to the Band Council:
- 42.2.1 a binding and enforceable Judgment or Order of a court of competent jurisdiction setting forth such amount as would have been payable by the Contractor to the claimant pursuant to the provisions of the applicable Provincial or Territorial lien legislation, or, in the Province of Quebec, the law relating to privileges, had such legislation been applicable to the work; or
  - 42.2.2 a final and enforceable award of an arbitrator setting forth such amount as would have been payable by the Contractor to the claimant pursuant to the provisions of the applicable Provincial or Territorial lien legislation, or, in the Province of Quebec, the law relating to privileges, had such legislation been applicable to the work; or
  - 42.2.3 the consent of the Contractor authorizing a payment.
- For the purposes of determining the entitlement of a claimant pursuant to GC42.2.1 and GC42.2.2, the notice required by GC42.8 shall be deemed to replace the registration or provision of notice after the performance of work as required by any applicable legislation and no claim shall be deemed to have expired, become void or unenforceable by reason of the claimant not commencing any action within the time prescribed by any applicable legislation.
- 42.3 The Contractor shall, by the execution of this contract, be deemed to have consented to submit to binding arbitration at the request of any claimant those questions that need be answered to establish the entitlement of the claimant to payment pursuant to the provisions of GC42.1 and such arbitration shall have as parties to it any subcontractor to whom the claimant supplied material, performed work or rented equipment should such subcontractor wish to be adjoined and the Band Council shall not be a party to such arbitration and, subject to any agreement between the Contractor and the claimant to the contrary, the arbitration shall be conducted in accordance with the Provincial or Territorial legislation governing arbitration applicable in the Province or Territory in which the work is located.
- 42.4 A payment made pursuant to GC42.1 is, to the extent of the payment, a discharge of the Band Council's liability to the Contractor under the contract and may be deducted from any amount payable to the Contractor under the contract.
- 42.5 To the extent that the circumstances of the work being performed for the Band Council permit, the Contractor shall comply with all laws in force in the Province or Territory where the work is being performed relating to payment period, mandatory holdbacks, and creation and enforcement of mechanics' liens, builders' liens or similar legislation or in the Province of Quebec, the law relating to privileges.
- 42.6 The Contractor shall discharge all his/her lawful obligations and shall satisfy all lawful claims against him/her arising out of the performance of the work at least as often as the contract requires the Band Council to pay the Contractor.
- 42.7 The Contractor shall, whenever requested to do so by the Engineer, make a statutory declaration deposing to the existence and condition of any obligations and claims referred to in GC42.6.
- 42.8 GC42.1 shall only apply to claims and obligations

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- 42.8.1 the notification of which has been received by the Engineer in writing before payment is made to the Contractor pursuant to TP4.10 and within 120 days of the date on which the claimant
- 42.8.1.1 should have been paid in full under the claimant's contract with the Contractor or subcontractor where the claim is for money that was lawfully required to be held back from the claimant; or
  - 42.8.1.2 performed the last of the services, work or labour, or furnished the last of the material pursuant to the claimant's contract with the Contractor or subcontractor where the claim is not for money referred to in GC42.8.1.1, and
- 42.8.2 the proceedings to determine the right to payment of which, pursuant to GC42.2, shall have commenced within one year from the date that the notice referred to in GC42.8.1 was received by the Engineer, and
- the notification required by GC42.8.1 shall set forth the amount claimed to be owing and the person who by contract is primarily liable.
- 42.9 The Band Council may, upon receipt of a notice of claim under GC42.8.1, withhold from any amount that is due and payable to the Contractor pursuant to the contract the full amount of the claim or any portion thereof.
- 42.10 The Engineer shall notify the Contractor in writing of receipt of any claim referred to in GC42.8.1 and of the intention of the Band Council to withhold funds pursuant to GC42.9 and the Contractor may, at any time thereafter and until payment is made to the claimant, be entitled to post, with the Band Council, security in a form acceptable to the Band Council in an amount equal to the value of the claim, the notice of which is received by the Engineer and upon receipt of such security the Band Council shall release to the Contractor any funds which would be otherwise payable to the Contractor, that were withheld pursuant to the provisions of GC42.9 in respect of the claim of any claimant for whom the security stands.

**GC43 Security Deposit - Forfeiture or Return**

- 43.1 If
- 43.1.1 the work is taken out of the Contractor's hands pursuant to GC38,
  - 43.1.2 the contract is terminated pursuant to GC41, or
  - 43.1.3 the Contractor is in breach of or in default under the contract,
- The Band Council may convert the security deposit, if any, to its own use.
- 43.2 If the Band Council converts the contract security pursuant to GC43.1, the amount realized shall be deemed to be an amount due from the Band Council to the Contractor under the contract.
- 43.3 Any balance of an amount referred to in GC43.2 that remains after payment of all losses, damage and claims of the Band Council and others shall be paid by the Band Council to the Contractor if, in the opinion of the Engineer, it is not required for the purposes of the contract.



**GC44 Engineer's Certificates**

- 44.1 On the date that
- 44.1.1 the work has been completed, and
  - 44.1.2 the Contractor has complied with the contract and all orders and directions made pursuant thereto,
- both to the satisfaction of the Engineer, the Engineer shall issue a Final Certificate of Completion to the Contractor.
- 44.2 If the Engineer is satisfied that the work is substantially complete he/she shall, at any time before he/she issues a certificate referred to in GC44.1, issue an Interim Certificate of Completion to the Contractor, and
- 44.2.1 for the purposes of GC44.2 the work will be considered to be substantially complete,
    - 44.2.1.1 when the work under the contract or a substantial part thereof is, in the opinion of the Engineer, ready for use by the Band Council or is being used for the purposes intended; and
    - 44.2.1.2 when the work remaining to be done under the contract is, in the opinion of the Engineer, capable of completion or correction at a cost of not more than
      - 44.2.1.2.1 - 3% of the first \$500,000, and
      - 44.2.1.2.2 - 2% of the next \$500,000, and
      - 44.2.1.2.3 - 1% of the balanceof the value of the contract at the time this cost is calculated.
- 44.3 For the sole purpose of GC44.2.1.2, where the work or a substantial part thereof is ready for use or is being used for the purposes intended and the remainder of the work or a part thereof cannot be completed by the time specified in A2.1, or as amended pursuant to GC36, for reasons beyond the control of the Contractor or where the Engineer and the Contractor agree not to complete a part of the work within the specified time, the cost of that part of the work which was either beyond the control of the Contractor to complete or the Engineer and the Contractor have agreed not to complete by the time specified shall be deducted from the value of the contract referred to GC44.2.1.2 and the said cost shall not form part of the cost of the work remaining to be done in determining substantial completion.
- 44.4 An Interim Certificate of Completion referred to in GC44.2 shall describe the parts of the work not completed to the satisfaction of the Engineer and all things that must be done by the Contractor
- 44.4.1 before a Final Certificate of Completion referred to in GC44.1 will be issued, and
  - 44.4.2 before the 12-month period referred to in GC32.1.2 shall commence for the said parts and all the said things.

- 44.5 The Engineer may, in addition to the parts of the work described in an Interim Certificate of Completion referred to in GC44.2, require the Contractor to rectify any other parts of the work not completed to his/her satisfaction and to do any other things that are necessary for the satisfactory completion of the work.
- 44.6 If the contract or a part thereof is subject to a Unit Price Arrangement, the Engineer shall measure and record the quantities of labour, plant and material, performed, used and supplied by the Contractor in performing the work and shall, at the request of the Contractor, inform him/her of those measurements.
- 44.7 The Contractor shall assist and co-operate with the Engineer in the performance of his/her duties referred to in GC44.6 and shall be entitled to inspect any record made by the Engineer pursuant to GC44.6.
- 44.8 After the Engineer has issued a Final Certificate of Completion referred to in GC44.1, he/she shall, if GC44.6 applies, issue a Final Certificate of Measurement.
- 44.9 A Final Certificate of Measurement referred to in GC44.8 shall
- 44.9.1 contain the aggregate of all measurements of quantities referred to in GC44.6, and
  - 44.9.2 be binding upon and conclusive between the Band Council and the Contractor as to the quantities referred to therein.

**GC45 Return of Security Deposit**

- 45.1 After an Interim Certificate of Completion referred to in GC44.2 has been issued, the Band Council shall, if the Contractor is not in breach of or in default under the contract, return to the Contractor all or any part of the security deposit that, in the opinion of the Engineer, is not required for the purposes of the contract.
- 45.2 After a Final Certificate of Completion referred to in GC44.1 has been issued, the Band Council shall return to the Contractor the remainder of any security deposit unless the contract stipulates otherwise.
- 45.3 If the security deposit was paid into the Band Council's bank account, the Band Council shall pay interest thereon to the Contractor at a rate established from time to time by the Band Council's banking institution for such deposits.

**GC46 Clarification of Terms in GC47 to GC50**

- 46.1 For the purposes of GC47 to GC50,
- 46.1.1 "Unit Price Table" means the table set out in the Articles of Agreement, and
  - 46.1.2 "plant" does not include tools customarily provided by a tradesman in practising his trade.

**GC47 Additions or Amendments to Unit Price Table**

- 47.1 Where a Unit Price Arrangement applies to the contract or a part thereof the Engineer and the Contractor may, by an agreement in writing,
- 47.1.1 add classes of labour, plant or material, and units of measurement, prices per unit and estimated quantities to the Unit Price Table if any labour, plant or material that is to be included in the Final Certificate of Measurement referred to in GC44.8 is not included in any class of labour, plant or material set out in the Unit Price Table; or

- 47.1.2 subject to GC47.2 and GC47.3, amend a price per unit set out in the Unit Price Table for any class of labour, plant or material included therein if the Final Certificate of Measurement referred to in GC44.8 shows or is expected to show that the total quantity of that class of labour, plant or material actually performed, used or supplied by the Contractor in performing the work is
- 47.1.2.1 less than 85% of that estimated total quantity, or
  - 47.1.2.2 in excess of 115% of that estimated total quantity.
- 47.2 In no event shall the total cost of an item set out in the Unit Price Table that has been amended pursuant to GC47.1.2.1 exceed the amount that would have been payable to the Contractor had the estimated total quantity actually been performed, used or supplied.
- 47.3 An amendment that is made necessary by GC47.1.2.2 shall apply only to the quantities that are in excess of 115%.
- 47.4 If the Engineer and the Contractor do not agree as contemplated in GC47.1, the Engineer shall determine the class and the unit of measurement of the labour, plant or material and, subject to GC47.2 and GC47.3, the price per unit therefor shall be determined in accordance with GC50.

**GC48 Determination of Cost - Unit Price Table**

- 48.1 Whenever, for the purposes of the contract it is necessary to determine the cost of labour, plant or material, it shall be determined by multiplying the quantity of that labour, plant or material expressed in the unit set out in column 3 of the Unit Price Table by the price of that unit set out in column 5 of the Unit Price Table.

**GC49 Determination of Cost - Negotiation**

- 49.1 If the method described in GC48 cannot be used because the labour, plant or material is of a kind or class that is not set out in the Unit Price Table, the cost of that labour, plant or material for the purposes of the contract shall be the amount agreed upon from time to time by the Contractor and the Engineer.
- 49.2 For the purposes of GC49.1, the Contractor shall submit to the Engineer any necessary cost information requested by the Engineer in respect of the labour, plant and material referred to in GC49.1.

**GC50 Determination of Cost - Failing Negotiation**

- 50.1 If the methods described in GC47, GC48 or GC49 fail for any reason to achieve a determination of the cost of labour, plant and material for the purposes referred to therein, that cost shall be equal to the aggregate of
- 50.1.1 all reasonable and proper amounts actually expended or legally payable by the Contractor in respect of the labour, plant and material that falls within one of the classes of expenditure described in GC50.2 that are directly attributable to the performance of the contract,

- 50.1.2 an allowance for profit and all other expenditures or costs, including overhead, general administration costs, financing and interest charges, and every other cost, charge and expenses, but not including those referred to in GC50.1.1 or GC50.1.3 or of a class referred to in GC50.2, in an amount that is equal to 10% of the sum of the expenses referred to in GC50.1.1, and
- 50.1.3 interest on the costs determined under GC50.1.1 and GC50.1.2, which interest shall be calculated in accordance with TP9,

provided that the total cost of an item set out in the Unit Price Table that is subject to the provisions of GC47.1.2.1 does not exceed the amount that would have been payable to the Contractor had the estimated total quantity of the said item actually been performed, used or supplied.

- 50.2 For purposes of GC50.1.1 the classes of expenditure that may be taken into account in determining the cost of labour, plant and material are,
- 50.2.1 payments to subcontractors;
- 50.2.2 wages, salaries and travelling expenses of employees of the Contractor while they are actually and properly engaged on the work, other than wages, salaries, bonuses, living and travelling expenses of personnel of the Contractor generally employed at the head office or at a general office of the Contractor unless they are engaged at the work site with the approval of the Engineer;
- 50.2.3 assessments payable under any statutory authority relating to workmen's compensation, unemployment insurance, pension plan or holidays with pay;
- 50.2.4 rent that is paid for plant or an amount equivalent to the said rent if the plant is owned by the Contractor that is necessary for and used in the performance of the work, if the rent or the equivalent amount is reasonable and use of that plant has been approved by the Engineer;
- 50.2.5 payments for maintaining and operating plant necessary for and used in the performance of the work, and payments for effecting such repairs thereto as, in the opinion of the Engineer, are necessary to the proper performance of the contract other than payments for any repairs to the plant arising out of defects existing before its allocation to the work;
- 50.2.6 payments for material that is necessary for and incorporated in the work, or that is necessary for and consumed in the performance of the contract;
- 50.2.7 payments for preparation, delivery, handling, erection, installation, inspection, protection and removal of the plant and material necessary for and used in the performance of the contract;
- 50.2.8 any other payments made by the Contractor with the approval of the Engineer that are necessary for the performance of the contract.

**GC51 Records to be Kept by Contractor**

- 51.1 The Contractor shall
- 51.1.1 maintain full records of his/her estimated and actual cost of the work together with all tender calls, quotations, contracts, correspondence, invoices, receipts and vouchers relating thereto;
  - 51.1.2 make all records and material referred to in GC51.1.1 available to audit and inspection by the Band Council or by persons acting on its behalf when requested;
  - 51.1.3 allow the persons referred to in GC51.1.2 to make copies of and to take extracts from any of the records and material referred to in GC51.1.1; and
  - 51.1.4 furnish any person referred to in GC51.1.2 with any information he/she may require from time to time in connection with such records and material.
- 51.2 The records maintained by the Contractor pursuant to GC51.1.1 shall be kept intact by the Contractor until the expiration of two years after the date that a Final Certificate of Completion referred to in GC44.1 was issued or until the expiration of such other period of time as the Band Council may direct.
- 51.3 The Contractor shall cause all subcontractors and all other persons directly or indirectly controlled by or affiliated with the Contractor and all persons directly or indirectly having control of the Contractor to comply with GC51.1 and GC51.2 as if they were the Contractor.

**GC52 Contractor Status**

- 52.1 The Contractor shall be engaged under the contract as an independent contractor.
- 52.2 The Contractor and any employee of the said Contractor is not engaged by the contract as an employee, servant or agent of the Band Council.
- 52.3 For the purposes of GC53.1 and GC53.2 the Contractor shall be solely responsible for any and all payments and deductions required to be made by law including those required for Canada or Québec Pension Plans, Unemployment Insurance, Worker's Compensation or Income Tax.

**Appendix 2-9**

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**Labour Conditions  
D**

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Project Manager  
to attach Provincial/Territorial Labour Conditions

**Major Construction Works  
Insurance Conditions  
"E"**

**(Construction)**  
Page 1 of 4

**IC 1 Proof of Insurance**

Within thirty (30) days after acceptance of the Contractor's tender, the Contractor shall, unless otherwise directed in writing by the Engineer, deposit with the Engineer the Insurer's Certificate of Insurance displayed on page 4 of this document and, if requested by the Engineer, the originals or certified true copies of all contracts of insurance maintained by the Contractor pursuant to the Insurance Coverage Requirements shown hereunder.

**IC 2 Risk Management**

The provisions of the Insurance Coverage Requirements contained hereunder are not intended to cover all of the Contractor's obligations under GC8 of the General Conditions "C" of the contract. Any additional risk management measures or additional insurance coverages the Contractor may deem necessary to fulfill its obligations under GC8 shall be at its own discretion and expense.

**IC 3 Payment of Deductible**

The payment of monies up to the deductible amount made in satisfaction of a claim shall be borne by the Contractor.

**INSURANCE COVERAGE REQUIREMENTS**

**PART I  
GENERAL INSURANCE COVERAGES (GIC)**

**GIC 1 Insured**

Each insurance policy shall insure the Contractor, and shall include, as an Additional named insured, the Band Council of the \_\_\_\_\_ Band.

**GIC 2 Period of Insurance**

Unless otherwise directed in writing by the Engineer, the policies required hereunder shall be in force and be maintained from the date of contract award until the day of issue of the Engineer's Final Certificate of Completion.

**GIC 3 Proof of Insurance**

Within twenty five (25) days after acceptance of the Contractor's tender, the Insurer shall, unless otherwise directed in writing by the Contractor, deposit with the Contractor the Insurer's Certificate of Insurance displayed on page 4 of this document and, if requested, the originals or certified true copies of all contracts of insurance maintained by the Contractor pursuant to the requirements of these Insurance Coverages.

**GIC 4 Notification**

Each Insurance policy shall contain a provision that thirty (30) days prior written notice shall be given by the Insurer to the Band Council in the event of any material change in or cancellation of coverage. Any such notice received by the Contractor shall be transmitted forthwith to the Band Council.

**PART II  
COMMERCIAL GENERAL LIABILITY****CGL 1 Scope of Policy**

The policy shall be written on a form similar to that known and referred to in the insurance industry as IBC 2100 - Commercial General Liability policy (Occurrence form) and shall provide for limit of liability of not less than \$2,000,000 inclusive for Bodily Injury and Property Damage for any one occurrence or series of occurrences arising out of one cause. Legal or defence costs incurred in respect of a claim or claims shall not operate to decrease the limit of liability.

**CGL 2 Coverages/Provisions**

The policy shall include but not necessarily be limited to the following coverages/provisions.

- 2.1 Liability arising out of or resulting from the ownership, existence, maintenance or use of premises by the Contractor and operations necessary or incidental to the performance of this contract.
- 2.2 "Broad Form" Property Damage including the loss of use of property.
- 2.3 Removal or weakening of support of any building or land whether such support be natural or otherwise.
- 2.4 Elevator liability (including escalators, hoists and similar devices).
- 2.5 Contractor's Protective Liability
- 2.6 Contractual and Assumed Liabilities under this contract.
- 2.7 Completed Operations Liability - The insurance, including all aspects of this Part II of these Insurance Conditions shall continue for a period of at least one year beyond the date of the Engineer's Final Certificate of Completion for the Completed Operations.
- 2.8 Cross Liability - The Clause shall be written as follows:  
"Cross Liability  
The insurance as is afforded by this policy shall apply in respect to any claim or action brought against any one Insured by any other Insured. The coverage shall apply in the same manner and to the same extent as though a separate policy had been issued to each Insured. The inclusion herein of more than one Insured shall not increase the limit of the Insurer's liability".
- 2.9 Severability of Interests - The Clause shall be written as follows:  
"Severability of Interests  
This policy, subject to the limits of liability stated herein, shall apply separately to each Insured in the same manner and to the same extent as if a separate policy had been issued to each. The inclusion herein of more than one insured shall not increase the limit of the Insurer's liability".

**CGL 3 Additional Exposures**

The policy shall either include or be endorsed to include the following exposures or hazards if the Work is subject thereto:

- 3.1 Blasting
- 3.2 Pile driving and caisson work
- 3.3 Underpinning
- 3.4 Risks associated with the activities of the Contractor on an active airport
- 3.5 Radioactive contamination resulting from the use of commercial isotopes



3.6 Damage to the portion of an existing building beyond that directly associated with an addition, renovation or installation contract. (The care custody and control exclusion shall not apply)

3.7 Marine risks associated with the construction of piers, wharves and docks.

**CGL 4** Insurance Proceeds from this policy are usually payable directly to a Claimant/Third Party.

**CGL 5 Deductible**

The policy shall be issued with a deductible amount of not more than \$2,500 per occurrence applying to Property Damage claims only.

**BR 1 Scope of Policy**

The policy shall be written on an "All Risks" basis granting coverages similar to those provided by the forms known and referred to in the insurance industry as "Builder's Risk Comprehensive Form" or "Installation Floater - All Risks".

**BR 2 Property Insured**

The property insured shall include:

2.1 The Work and all property, equipment and materials intended to become part of the finished Work at the site of the project while awaiting, during and after installation, erection or construction including testing.

2.2 Expenses incurred in the removal from the construction site of debris of the property insured, including demolition of damaged property, de-icing and dewatering, occasioned by loss, destruction or damage to such property and in respect of which insurance is provided by this policy.

**BR 3 Insurance Proceeds**

3.1 Insurance proceeds from this policy are payable in accordance with the General Conditions of the contract.

3.2 The policy shall provide that the proceeds thereof are payable to the Band Council.

3.3 The Contractor shall do such things and execute such documents as are necessary to effect payment of the proceeds.

**BR 4 Amount of Insurance**

The amount of insurance shall not be less than the sum of the contract value plus the declared value (if any) set forth in the contract documents of all material and equipment supplied by the Band Council at the site of the project to be incorporated into and form part of the finished Work.

**BR 5 Deductible**

The policy shall be issued with a deductible amount of not more than \$2,500.

**BR 6 Subrogation**

The following Clause shall be included in the policy:

"All rights of subrogation or transfer of rights are hereby waived against any corporation, firm, individual or other interest, with respect to which, insurance is provided by this policy".

**BR 7 Exclusion Qualifications**

The policy may be subject to the standard exclusions but the following qualifications shall apply:

7.1 Faulty materials, workmanship or design may be excluded only to the extent of the cost of making good thereof and shall not apply to loss or damage resulting therefrom.

7.2 Loss or damage caused by contamination by radioactive material may be excluded except for loss or damage resulting from commercial isotopes used for industrial measurement, inspection, quality control radiographic or photographic use.

7.3 Use and occupancy of the project or any part or section thereof shall be permitted where such use and occupancy is for the purposes for which the project is intended upon completion.

**INSURER'S CERTIFICATE OF INSURANCE**

(To be completed by Insurer (not broker) and delivered to the Band Council within 30 days following acceptance of tender)

**CONTRACT**

Description of Work	Contract No.	Award Date
Location		

<b>INSURER</b>	<b>BROKER</b>
Name	Name
Address	Address

<b>INSURED</b>	<b>ADDITIONAL NAMED INSURED</b>
Name of Contractor	The Band Council of the _____ Band
Address	Address

This document certifies that the following policies of insurance are at present in force covering all operations of the Insured, in connection with the Band Council contract made between the named insured and the Band Council

POLICY				Limits of Liability	Deductible
Type	Number	Inception Date	Expiry Date		
Commercial General Liability					
Builder's Risk "All Risks"					
Installation Floater "All Risks"					

Each of these policies includes coverages/provisions as specified in the Insurance Coverage Requirements in this document which form part of this Contract and each policy has been endorsed to cover the Band Council as an Additional Named Insured.

The Insurer agrees to notify the Band Council and the Named Insured in writing 30 days prior to any material change in, or cancellation of any policy or coverage. The Insurer further agrees to provide the Engineer in writing with the cost, nature and date of each claim within 30 days of its being received by the Insurer and to advise the Engineer in writing of the final settlement thereof.

Name of Insurer's Officer or Authorized Employee	Signature	Date
		Telephone Number

ISSUANCE OF THIS CERTIFICATE SHALL NOT LIMIT OR RESTRICT THE RIGHT OF THE BAND COUNCIL TO REQUEST AT ANY TIME DUPLICATE CERTIFIED COPIES OF SAID INSURANCE POLICIES.

**CS1 Obligation to provide Contract Security**

- 1.1 The Contractor shall, at the Contractor's own expense, provide one or more of the forms of contract security prescribed in CS.2.
- 1.2 The Contractor shall deliver to the Engineer the contract security referred to in CS.1 within 14 days after the date that the Contractor receives notice that the Contractor's tender or offer was accepted by the Band Council.

**CS2 Prescribed Types and Amounts of Contract Security**

- 2.1 The Contractor shall deliver to the Engineer pursuant to CS1
- 2.1.1 a performance bond and a labour and material payment bond each in an amount that is equal to not less than 50% of the contract amount referred to in the Articles of Agreement, or
- 2.1.2 a labour and material payment bond in an amount that is equal to not less than 50% of the contract amount referred to in the Articles of Agreement, and a security deposit in an amount that is equal to
- 2.1.2.1 not less than 10% of the contract amount referred to in the Articles of Agreement where that amount does not exceed \$250,000, or
- 2.1.2.2 \$25,000 plus 5% of the part of the contract amount referred to in the Articles of Agreement that exceeds \$250,000, or
- 2.1.3 a security deposit in an amount prescribed by CS2.1.2 plus an additional amount that is equal to 10% of the contract amount referred to in the Articles of Agreement.
- 2.2 A performance bond and a labour and material payment bond referred to in CS2.1 shall be in a form and be issued by a bonding or surety company that is approved by the Band Council.
- 2.3 The amount of a security deposit referred to in CS2.1.2 shall not exceed \$250,000 regardless of the contract amount referred to in the Articles of Agreement.
- 2.4 A security deposit referred to in CS2.1.2 and CS2.1.3 shall be in the form of
- 2.4.1 a certified cheque, bank draft, money order
- 2.4.2.1 Payable to the Band Council, and
- 2.4.2.2 Certified by or drawn on a recognized banking institution or
- 2.4.2 bonds of or conditionally guaranteed as to principal and interest by the Government of Canada, or
- 2.4.3 letters of credit drawn on a recognized banking institution.
- 2.5 The bonds referred to in CS2.4.2 shall be
- 2.5.1 made payable to bearer, or
- 2.5.2 accompanied by a duly executed instrument of transfer of the bonds to the Band Council in the form prescribed by the Domestic Bonds of Canada Regulations, or
- 2.5.3 registered, as to principal or as to principal and interest in the name of the Band Council pursuant to the Domestic Bonds of Canada Regulations, and
- 2.5.4 provided on the basis of their market value current at the date of the contract.

**LOCAL CONTENT CONDITIONS  
G**

L.C.1 LOCAL LABOUR

1.1 The contractor shall employ the local people listed hereunder for the period specified.

<u>TRADE</u>	<u>PERSON MONTHS</u>	<u>No. OF PERSONS</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(use additional sheet if required)

and should employment of any person identified above be terminated prior to completion of the term indicated above, the Contractor shall provide the Engineer with justification for such termination, and shall replace such person with a local person to the extent that such person is available and qualified, before the Contractor attempts to recruit elsewhere.

L.C.2 LOCAL MATERIAL:

2.1 The Contractor shall purchase the following local supplies, if available when required for the work:

List of Materials:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(use additional sheet if required)

and he/she may substitute such material with other material of his/her choice subject however to the prior approval of the Engineer and subject to the material meeting the requirements of the contract.

**LOCAL CONTENT CONDITIONS**  
**G**

**L.C.3 LOCAL EQUIPMENT**

3.1 The contractor shall use the following local pieces of construction equipment if available when required for the project:

List of equipment:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(use additional sheet if required)

and he/she may substitute such equipment with other equipment of his/her choice, subject however to the prior approval of the Engineer.

**L.C.4 TRAINING PROGRAM:**

4.1 The Contractor shall implement a formal training program in accordance with clause \_\_\_ of the section entitled "\_\_\_\_\_" of the Specifications and that he/she shall engage under the said training program \_\_\_\_\_ local people listed hereunder for the period specified:

<u>TRADES</u>	<u>No. of TRAINEE POSITIONS</u>	<u>PROPOSED DURATION OF TRAINING HR/PERS.</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(attach additional sheets if required)

**L.C.5. DEFINITION OF "LOCAL":**

5.1 "Local" shall mean "from the aboriginal community in which the work is located."

---

**CONTRACTOR'S QUALIFICATION STATEMENT  
(BUILDING CONSTRUCTION)**

---

(Required from the lowest bidder in advance of award of contract to establish whether a contractor possesses the capacity, skill and integrity necessary to the faithful performance of the work).

Submitted to the Band Council of the \_\_\_\_\_ Band

By \_\_\_\_\_ A Corporation \_\_\_\_\_

Address \_\_\_\_\_ A Partnership \_\_\_\_\_

An Individual \_\_\_\_\_

If a Corporation, answer below:

If a Partnership, answer below:

Year incorporated \_\_\_\_\_

Date of organization \_\_\_\_\_

Federal \_\_\_\_\_ or \_\_\_\_\_

Provincial \_\_\_\_\_

(which Province)

Names and addresses of all partners:  
\_\_\_\_\_  
\_\_\_\_\_

or Year registered \_\_\_\_\_

(which Province) \_\_\_\_\_

President's name \_\_\_\_\_

Name(s) of Vice-President(s):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

How many years has the organization been in business as a contractor in Canada?  
\_\_\_\_\_

Approximate total Canada volume of construction work for the last five years?

\_\_\_\_\_ 19\_\_\_\_, \_\_\_\_\_ 19\_\_\_\_, \_\_\_\_\_ 20\_\_\_\_,

\_\_\_\_\_ 20\_\_\_\_, \_\_\_\_\_ 20\_\_\_\_.

Appendix 2-9 (cont'd)

---

**LIST BELOW THE RELATED CONSTRUCTION EXPERIENCE OF THE PRINCIPAL INDIVIDUALS IN THE CONTRACTOR'S ORGANIZATION:**

---

Individual's Name and Professional Qualifications	Present Position/ Office	Years of Construction Experience	In What Capacity
---	--------------------------	----------------------------------	------------------

---

---

**LIST MAJOR PROJECTS YOUR ORGANIZATION HAS COMPLETED IN CANADA IN THE PAST FIVE YEARS:**

---

Project	Officer Architect/	When Engineer	Contract Amount Completed
---------	--------------------	---------------	---------------------------

---

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**LIST OF THE MAJOR CONSTRUCTION PROJECTS YOUR ORGANIZATION HAS UNDERWAY ON THIS DATE:**

---

Project	Owner Architect/ Engineer	Value	% Complete	Scheduled Completion
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**DATA ON PROJECT BEING BID**

---

Name of Project Superintendent to be Assigned to this Project	Years of Construction Experience	Typical \$ Amount and Type of Work for Which Responsible	In What Capacity
---	----------------------------------	--	------------------

---

Other Key Supervisors:

Additional Data:

---

REFERENCES:

(a) Banking \_\_\_\_\_

(b) Bonding \_\_\_\_\_

The answers to the foregoing questions and all statements therein contained are true and correct.

Name or Organization: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Title: \_\_\_\_\_

This \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

Note: Please use a blank sheet if additional space needed for any replies.



**Appendix 2-10**

**Sample Newspaper Advertisement**

Sealed tenders for the projects listed below, addressed to the Band Council of the

\_\_\_\_\_ Band

\_\_\_\_\_

\_\_\_\_\_ *address of Band Council*

\_\_\_\_\_

will be received until \_\_\_\_\_ am/pm \_\_\_\_\_.  
(Time) (Date)

Tender documents can be obtained from the Band Council at the above address

Telephone N° \_\_\_\_\_

Fax N° \_\_\_\_\_

**Projects**

"Interior renovations of the Band office located at (provide short description of work)

\_\_\_\_\_ "

The lowest or any tender not necessarily accepted.

**Sample Letter of Invitation to Tender**

Date: / /

To: \_\_\_\_\_ contractor

\_\_\_\_\_  
\_\_\_\_\_ address

\_\_\_\_\_  
\_\_\_\_\_

Re: Project N° \_\_\_\_\_

Project Title: \_\_\_\_\_

You are invited to submit a tender for the referenced work. The tenders will be received until \_\_\_\_\_ am/pm \_\_\_\_\_.

(time)

(date)

Your tender must be submitted in accordance with the requirements of the attached tender documents.

For additional information in connection with this invitation to tender please contact

\_\_\_\_\_ (Band Representative)

\_\_\_\_\_  
\_\_\_\_\_ (Address of Band Representative)

\_\_\_\_\_

Yours truly,

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 3**  
**CONTRACT AWARD**

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### **Section 3** **CONTRACT AWARD**

#### 3.1 General Remarks

This section outlines accepted practices, principles and procedures in the construction industry in the award of contracts for construction and repair.

#### 3.2 Policy

3.2.1 It should be the policy of the band to award a contract to the lowest acceptable bidder, provided that the contractor's tender is proper and complete and he/she appears capable of successfully completing the work.

3.2.2 With public tenders, the capability of contractors must be carefully reviewed before a contract is awarded. On "invited" tenders, only capable contractors should be invited.

#### 3.3 Approval of Contract Awards

3.3.1 Contract awards are approved within the limits delegated by the Band Council.

3.3.2 The approval of a contract award is contingent upon funds being available.

3.3.3 A contract award may be approved any time after the closing of tenders but a contractor is not bound to accept the award if it is offered to her/him after the tender acceptance period specified in the tender documents, normally 30 days.

#### 3.4 Notification of Award to Contractor

3.4.1 The Contractor is notified of the award and all conditions and qualifications thereto by the authorized band representative.

3.4.2 In urgent situations, notification of contract award may be made by fax but must always be confirmed by letter.

3.4.3 In the event that a contract award is approved after the specified tender acceptance period, the contract will be offered to the lowest acceptable bidder at his/her tendered price. If the offer is declined, new bids will be invited from at least the three lowest bidders on the original tender call, with a 15 day tender acceptance period. Subject to the lowest of the invited bids being within the project approved budget, the contract may then be awarded to the low bidder.

NOTE: Notwithstanding the above procedures, a substantial delay in awarding the contract may warrant recalling public tenders in preference to inviting the three low bidders.

3.4.4 The Band Council should be consulted before the action is taken.

#### 3.5 Notification of Award to Other Agencies

The band representative shall make sure the normal contract award information procedures are followed before notifying the contractor of the award. (see Appendix 3-1, Work Flow - Steps 1 to 8)

### 3.6 Contract Security

- 3.6.1 The Band Council would normally request contract security for tenders over \$25,000. In special circumstances the Band Council may decide to call for contract security for projects estimated at \$25,000 or less. The types of contract security acceptable to, and the amounts required by the Band Council are described in Appendices 2-8 and 2-9 of this manual, "Instructions to Bidders".
- 3.6.2 The contract documents are not signed on behalf of the Band Council nor are payments made under a contract for which contract security is required, until the security has been furnished.
- 3.6.3 If the contract security is Surety bonds i.e. Performance and Labour and Material Payment Bonds, they are held by the Band Council (see Appendices 3-2 and 3-3 for approved forms).
- 3.6.4 If the contract security is government guaranteed bonds or a letter of credit, they must be retained by the Band in a secure place until the contract is completed.
- 3.6.5 If the security is a certified cheque, bank draft or other form of acceptable negotiable security, it shall be deposited in the band's bank to earn interest until the contract is completed, unless the contractor specifies the security is to be held uncashed.

### 3.7 Insurance

- 3.7.1 All contractors having a contract for construction or repair of buildings and structures in excess of \$50,000 must provide Direct Damage and Liability Insurance policies covering the work under the contract.
- 3.7.2 The insurance policies must be in a form approved by the Band Council.
- 3.7.3 The loss, if any, under the Direct Damage policy is payable to the Band Council.
- 3.7.4 The original or a certified true copy of the policies can be deposited with the Band Council if the Engineer requests it.
- 3.7.5 No contracts should be signed on behalf of the Band Council or payments made under the contract until the specified insurance requirements have been met.

### 3.8 Preparation of Contract Documents

- 3.8.1 The contract documents in the approved form are prepared by the band representative.
- 3.8.2 The exact terms of the tender must be incorporated in the contract documents.

### 3.9 Signing of Contract Documents

- 3.9.1 The band representative must ensure that three copies of the contract documents are signed promptly by the Band Council and the Contractor (see Appendix 3-4).
- 3.9.2 The contract documents are not signed on behalf of the Band Council before they have been properly signed by the contractor.
- 3.9.3 The contract documents may be signed on behalf of the Band Council only by those officers specifically authorized to do so.

**WORK FLOW - CONSTRUCTION CONTRACT AWARD**

<u>ACTION BY</u>	<u>STEP</u>	<u>DETAIL</u>
<b>APPROVAL OF CONTRACT AWARD</b>		
Band Representative	1.	Band representative recommends award to specific bidder and forwards recommendation to the Band Council.
Band Council	2.	Reviews recommendation for award and signs award fax or letter.
Band Representative	3.	Confirms that site is clear and that contract can proceed.
	4.	Notes any special conditions attached to award (for example, requirement of security on a contract of \$25,000 or less).
<b>NOTIFICATION OF CONTRACT AWARD</b>		
Band Representative	5.	If contract is on the contract form for a work order or for minor works, prepares, obtains appropriate signature and sends award letter on award date confirming acceptance of contractor's tender (quotes accepted alternatives, if any) and instructs him/her to proceed with work. If the contract is valued between \$25,000 and \$100,000 requests contract security from contractor in confirming letter, noting that no payments can be made under the contract until it is provided. Includes all other pertinent information and instructions. If urgent, the contract award may be made by fax or electronic mail, but must be confirmed by letter.
	6.	If the contract is on the contract form for major works i.e. greater than \$100,000, prepares award fax or letter for the signature of the Band Council. Sends award letter on award date confirming acceptance of contractor's tender (quotes accepted alternatives, if any) and instructs her/ him to proceed with work. Requests contract security and insurance from contractor in confirming letter, noting that no payments can be made until they are provided.

Appendix 3-1 (cont'd)

Includes all other pertinent information and instructions. If urgent, the contract award may be made by fax and must be confirmed by letter.

7. Advises appropriate officers of contract award. Files copies of award letter, contractor's tender and any pertinent correspondence.
8. Informs the provincial workers' compensation board of contract award and name of contractor's bonding company, if applicable. Reports these details to Health and Welfare Canada only when work camps are required as part of the construction contract.

INSURANCE AND CONTRACT SECURITY

Band Representative

9. Upon receipt of insurance certificate checks for correctness of form, amount of coverage and term. If not correct, returns to contractor for correction. Upon receipt of correct insurance, files with contract documents.
10. Upon receipt of surety bonds, checks to see that they are in proper form, in the correct amount and from a bonding company whose bonds are acceptable. If any deficiencies, returns to contractor for correction. When correct bonds received, files with contract documents.
11. If security is government guaranteed bonds, checks that amount of bonds is adequate and that coupons are attached, and retains in a secure place.
12. If security is a certified cheque, letter of credit etc., checks to see that the amount is correct.
13. Deposits certified cheque to band account unless cheque is to be held uncashed at request of contractor.
14. If the contractor asks to exchange the security deposit provided with his/her tender for an alternative type of acceptable security, the Band Council can permit this to be done.

**Appendix 3-1 (cont'd)**

**PREPARATION AND SIGNING OF CONTRACT DOCUMENTS FOR WORK ORDER CONTRACT LESS THAN \$25,000**

- |                     |     |   |
|---------------------|-----|---|
| Band Representative | 15. | Obtains the signature of the Band Council.            |
|                     | 16. | Forwards one copy of signed work order to contractor. |

**PREPARATION AND SIGNING OF CONTRACT DOCUMENTS FOR MINOR WORKS  
i.e. between \$25,000 and \$100,000**

- |                     |     |   |
|---------------------|-----|---|
| Band Representative | 17. | Checks contract (Tender and Acceptance) signed by contractor. When contract security and insurance requirements have been met, obtains the signature of the Band Council. |
|                     | 18. | Forwards one copy of signed contract to contractor.   |

**PREPARATION AND SIGNING OF CONTRACT DOCUMENTS FOR MAJOR WORKS  
i.e. greater than \$100,000**

- |                     |     |   |
|---------------------|-----|---|
| Band Representative | 19. | Prepares contract documents, assigns contract number and forwards two sets of contract documents to contractor for signature. Requests contract security and insurance if not yet received. |
|                     | 20. | Upon receipt of the signed contract documents, checks to see that they are properly signed.   |
|                     | 21. | When contract insurance and contract security requirements have been met, obtains the signature of the Band Council.  |
|                     | 22. | Forwards one set of signed contract documents to the contractor.  |



Performance Bond

No. \_\_\_\_\_ \$ \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS, that \_\_\_\_\_ as Principal, hereinafter called the Principal, and \_\_\_\_\_ as Surety, hereinafter called the Surety, are, subject to the conditions hereinafter contained, held and firmly bound unto the Band Council of the \_\_\_\_\_ Band as Obligee, hereinafter called the Band Council in the amount of (\$ \_\_\_\_\_), lawful money of Canada, for the payment of which sum, well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

SIGNED AND SEALED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

WHEREAS, the Principal has entered into a contract with the Band Council dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_ for (Project Name) \_\_\_\_\_ which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, the conditions of these obligations are such that if the Principal shall well and faithfully observe and perform all the obligations on the part of the Principal to be observed and performed in connection with the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

- (1) Whenever the Principal shall be, and declared by the Band Council to be, in default under the Contract, the Surety shall
  - (a) if the work is not taken out of the principal's hands, remedy the default of the Principal,
  - (b) if the work is taken out of the Principal's hands, and the Band Council directs the Surety to undertake the completion of the work, complete the work in accordance with the Contract provided that if a contract is entered into for the completion of the work
    - (i) it shall be between the Surety and the completing contractor, and
    - (ii) the selection of such completing contractor shall be subject to the approval of the Band Council
  - (c) if the work is taken out of the Principal's hands and the Band Council, after reasonable notice to the Surety, does not direct the Surety to undertake the completion of the work, assume the financial responsibility for the cost of completion in excess of the moneys available to the Band Council under the Contract,
  - (d) be liable for and pay all excess costs of completion of the Contract, and
  - (e) not be entitled to any Contract moneys earned by the Principal, up to the date of his/her default on the Contract and any holdbacks relating to such earned Contract moneys held by the Band Council, and the liability of the Surety under this bond shall remain unchanged provided, however, and without restricting the generality of the foregoing, upon the completion of the Contract to the satisfaction of the Band Council, any Contract moneys earned by the Principal or holdbacks related thereto held by the Band Council may be paid to the Surety by the Band Council
- (2) The Surety shall not be liable for a greater sum than the amount specified in this bond.
- (3) No suit or action shall be instituted by the Band Council herein against the Surety pursuant to these presents after the expiration of two (2) years from the date on which final payment under the Contract is payable.

IN TESTIMONY WHEREOF, the Principal has hereto set its hand and affixed its seal, and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its authorized signing authority, the day and year first above written.

SIGNED, SEALED AND DELIVERED  
in the presence of:

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Witness

## Labour and Material Payment Bond

No. \_\_\_\_\_ \$ \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS, That \_\_\_\_\_  
 as Principal, hereinafter called the Principal, and \_\_\_\_\_ Surety, hereinafter contained, held and firmly  
 bound unto the Band Council of the \_\_\_\_\_ Band as Obligee, hereinafter called the  
 Band Council in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), lawful money of Canada, for the payment  
 of which sum, well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors  
 and assigns, jointly and severally, firmly by these presents.

SIGNED AND SEALED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

WHEREAS, the Principal has entered into a Contract with the Band Council dated the \_\_\_\_\_ day of \_\_\_\_\_  
 \_\_\_\_\_ 20 \_\_\_\_ for \_\_\_\_\_  
 (Project Name)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that, if payment is promptly made to all Claimants who have  
 performed labour or services or supplied material in connection with the Contract and any and all duly authorized modifications and  
 extensions of the Contract that may hereafter be made, notice of which modifications and extensions to the Surety being hereby waived,  
 then this obligation shall be void, otherwise it shall remain in full force and effect, subject, however, to the following conditions:

- (1) For the purpose of this bond, a Claimant is defined as one having a direct contract with the Principal or any Sub-Contractor of  
 the Principal for labour, material or both, used or reasonably required for use in the performance of the Contract, labour and  
 material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of  
 equipment (but excluding rental of equipment where the rent pursuant to an agreement is to be applied towards the purchase  
 price thereof) directly applicable to the Contract.
- (2) For the purpose of this bond, no payment is required to be made in respect of a claim for payment for labour or services  
 performed or material supplied in connection with the Contract that represents a capital expenditure, overhead or general  
 administration costs incurred by the Principal during the currency or in respect of the Contract.
- (3) The Principal and the Surety hereby jointly and severally agree with the Band Council that if any Claimant has not been paid  
 as provided for under the terms of his/her contract with the Principal or a Sub Contractor of the Principal before the expiration  
 of a period of ninety (90) days after the date on which the last of such Claimant's labour or service was done or performed or  
 materials were supplied by such Claimant, the Band Council may sue on this bond, have the right to prosecute the suit to final  
 judgement for such sum or sums as may be due and execution thereon; and such right of the Band Council is assigned to such  
 Claimant.
- (4) For the purpose of this bond the liability of the Surety and the Principal to make payment to any claimant not having a contract  
 directly with the Principal shall be limited to that amount which the Principal would have been obliged to pay to such claimant  
 had the provisions of the applicable provincial or territorial legislation on lien or privileges been applicable to the work. A  
 claimant need not comply with provisions of such legislation setting out steps by way of notice, registration or otherwise as might  
 have been necessary to preserve or perfect any claim to recover judgement hereunder subject to the terms and notification  
 provisions of the Bond.
- (5) Any material change in the Contract between the Principal and the Band Council shall not prejudice the rights or interest of any  
 Claimant under this bond who is not instrumental in bringing about or has not caused such change.
- (6) No suit or action shall be commenced hereunder by any Claimant:
  - (a) Unless such Claimant shall have given written notice withing the time limits hereinafter set forth to the Principal and Surety  
 above named, stating with substantial accuracy the amount claimed. Such notice shall be served by mailing the same  
 by registered mail to the Principal and the Surety at any place where an office is regularly maintained for the transaction  
 of business by such persons or served in any manner in which legal process may be served in the Province or other part  
 of Canada in which the subject matter of the Contract is located. Such notice shall be given

- (i) in respect of any claim for the amount or any portion thereof required to be held back from the Claimant by the Principal or by the Sub-Contractor of the Principal under either the terms of the Claimant's Contract with the Principal or the Claimant's Contract with the Sub-Contractor of the Principal within one hundred and twenty (120) days after such Claimant should have been paid in full under the Contract,
  - (ii) in respect of any claim other than for the holdback or portion thereof referred to above within one hundred and twenty (120) days after the date upon which such Claimant did or performed the last of the service, work or labour or furnished the last of the materials for which such claim is made under the Claimant's Contract with the Principal or Sub-Contractor of the Principal;
- (b) After the expiration of one (1) year following the date on which the Principal ceased work on the said Contract, including work performed under the guarantees provided in the Contract;
  - (c) Other than in a court of competent jurisdiction in the province or district of Canada in which the subject matter of the Contract or any part thereof is situated and not elsewhere, and the parties hereto hereby agree to submit to the jurisdiction of such court.
- (7) The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.
  - (8) The Surety shall not be entitled to claim any moneys relating to the Contract and the liability of the Surety under this Bond shall remain unchanged and, without restricting the generality of the foregoing, the Surety shall pay all valid claims of Claimants under this Bond before any moneys relating to the Contract held by the Band Council are paid to the Surety by the Band Council.
  - (9) The Surety shall not be liable for a greater sum than the amount specified in this bond.

IN TESTIMONY WHEREOF, the Principal has hereto set its hand and affixed its seal, and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its authorized signing authority, the day and year first above written.

SIGNED, SEALED AND DELIVERED  
in the presence of:

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Surety

Note: Affix Corporate seal if applicable

## Appendix 3-4

### SIGNATURE OF CONTRACT DOCUMENTS BY CONTRACTOR

The Band Council should ensure that the contract documents are signed as follows by the contractor:

1. STANDARD MAJOR WORKS CONSTRUCTION CONTRACT (i.e. greater than \$100,000)
  - 1.1 Limited Company:
    - 1.1.1 The full name of the company and the name(s) and titles of the authorized signing officer(s) must be printed in the space provided for that purpose.
    - 1.1.2 The authorized signing officers of the company must sign the contract in the appropriate space. If the contract documents are signed by officials other than the president and secretary of the company or the president and secretary-treasurer of the company, a copy of a by-law or resolution of the board of directors authorizing them to do so must be obtained.
    - 1.1.3 The corporate seal of the company must be affixed to the contract in the appropriate space. \*
  - 1.2 Partnership:
    - 1.2.1 The name of the firm and the name(s) of the person(s) signing must be printed in the space provided for that purpose.
    - 1.2.2 The word "partner" must be inserted under title(s) against each signature.
    - 1.2.3 All partners must sign the contract in the appropriate space and in the presence of a witness who must also sign.
  - 1.3 Sole Proprietorship:
    - 1.3.1 The business name and the name of the sole proprietor must be printed in the space provided for that purpose.
    - 1.3.2 The words "Sole Proprietor" must be inserted under the title.
    - 1.3.3 The sole proprietor must sign the contract in the appropriate space and in the presence of a witness who must also sign.

\* The seal concept does not apply in the Province of Quebec. Therefore, seals are not required for contracts in that province.

**Section 4**  
**ADMINISTRATION AND MANAGEMENT OF THE CONTRACT**

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## **Section 4**

### **ADMINISTRATION AND MANAGEMENT OF THE CONTRACT**

#### **4.1 General Remarks**

This section is intended to help Band Councils, band representatives and project managers by outlining a unified approach to the preparation and management of construction contracts.

The procedures outlined will provide guidance to officers administering these contracts, specifically in taking action related to the general conditions and terms of payment of the contract.

Upon award of contract, several actions must take place before a contract is formalized. Certain of these actions are the responsibility of the band representative and the project manager.

Once the contractor has been notified of acceptance of the offer by award telex or signed tender/contract, the band representative shall ensure that a confirmation letter is sent. It will include contract security and insurance requirements and specify the deadlines for submission of these documents.

Note: References in this section to clause numbers refer to "The General Conditions for Contracts over \$100,000", in Appendix 2-9. Similar clauses are contained in the General Conditions for Contracts under \$100,000, in Appendix 2-8, however the numbers will be different.

#### **4.2 Contract Preparation**

4.2.1 The band representative should prepare the contract document within a reasonable time after the award of contract/acceptance of tender. The contract must conform to the documents on which the contractor's offer is based, including the tender and any negotiated amendments agreed to before contract award.

4.2.2 The inclusion of any document or work apart from those specified in the tender documents is considered to be a counter-offer and may be rejected by the contractor.

#### **4.3 Contract Documents**

4.3.1 A standard major works construction contract, (see Appendix 2-9) should be used for all contracts in excess of \$100,000.

4.3.2 The standard major works construction contract could also be used for contracts valued at less than \$100,000, for special situations.

4.3.3 The Tender and Contract (Minor Works) form (see Appendix 2-8) which is shorter, should only be used as a contract when the estimated price of the contract is between \$25,000 and \$100,000.

4.3.4 The Work Order form (see Appendix 2-7) should be used when the estimated value of the contract is less than \$25,000.

4.3.5 The following documents must be included when the standard major works construction contract is used:

- a. Articles of Agreement, and Plans and Specifications;
- b. Terms of Payment;
- c. General Conditions;
- d. Labour Conditions (Provincial);
- e. Insurance Schedule;
- f. Contract Security Conditions;
- g. Local Content Conditions;

See Appendix 2-9 for samples of this contract and support documents.

4.3.6 The following documents must be included when the minor works contract document is used:

- a. Instructions to Bidders;
- b. Tender and Acceptance;
- c. General Conditions;
- d. Labour Conditions (Provincial);
- e. Insurance Schedule (if required);
- f. Specifications;
- g. Plan;

See Appendix 2-8 for samples of this contract and support documents.

4.3.7 The following documents must be included when the Work Order contract document is used:

- a. the Contractor's quotation/tender
- b. the Work Order (see Appendix 2-7)

#### 4.4 Signing the Contract

4.4.1 The contractor shall sign all copies of the contract sent to him/her.

4.4.2 The band representative shall check the contract documents returned by the contractor to ensure that no alterations have been made by the contractor.

4.4.3 Once the contractor has returned the completed documents, the Band Council shall sign the contract.

4.4.4 The band representative must ensure that the contract documents are handled quickly to prevent any delays in their completion.

4.4.5 Once the contract has been signed by both parties, the band representative shall distribute copies as follows:

- one original to the contract file;
- one original to the contractor;
- one original to the band paying office;
- one copy to the project manager for the project file.

#### 4.5 Failure to Enter into Contract

- 4.5.1 When a contract is awarded within the tender acceptance period, the contractor must enter into contract. If the contractor refuses to do so, the Band Council should immediately notify the contractor in writing of the consequences of this failure. Sometimes the threat of forfeiting the bid security deposit or bid bond prompts the contractor to enter into the contract and satisfactorily complete the work. If the contractor still fails to enter into contract, the bonding company must be advised if a bid bond was provided as bid security.
- 4.5.2 When the contractor has provided a bid security deposit it can be confiscated by the Band Council and used to make up the difference in cost between the contractor's tender price and the next lowest valid tender which the Band Council will accept, up to the limit of the bid security. If the difference is not as great as the bid security, the balance is due and payable to the original contractor.
- 4.5.3 When the contractor has provided a bid bond as bid security, both the bonding company and the contractor are notified immediately of the consequences of the failure to enter into contract and of the action the Band Council proposes to take. The bonding company must be given an opportunity to respond within a specified time. The bonding company may arrange for the contractor to enter into the contract and complete the work. If the bonding company fails to respond and the contractor still fails to sign the contract, the company is liable up to the limit of the bid bond for the difference in cost of awarding a contract to the next lowest valid bidder which the Band Council will accept.
- 4.5.4 Whenever there is failure to enter into contract, the band representative should seek legal advice before proceeding with any action available under the terms of the tender documents.

#### 4.6 Contract Security

- 4.6.1 When contract security is required, it is a condition of the award of contract that the contractor provide security in one of the specified forms and amounts within 14 days. Even though the contract is signed, the project manager should not permit the contractor to commence work until the proper contract security has been received. This should be carefully monitored by the band representative.
- 4.6.2 A contractor who fails to provide the required contract security within the specified time is in default under the terms of the contract. The Band Council shall immediately advise the contractor in writing of the remedial action which the Band Council proposes to take pursuant to sections 11 and 38 of the general conditions of the contract.
- 4.6.3 The only exceptions to this are where delay may be injurious to the public interest. In a case of this nature, the Band Council may decide to authorize the contractor to commence work before the receipt of the contract security knowing the possible consequences of the decision. The contractor must also be advised at the same time that no progress payments will be authorized until the contract security is received.
- 4.6.4 The implication of this action is that a contractor may default before providing contract security, and the sub-contractors, sub-sub-contractors and suppliers may be affected by the Band Council's decision.



- 4.7        Insurance
- 4.7.1      The contractor must provide property damage and liability insurance, when called for, within thirty (30) days after award of contract.
- 4.7.2      The band representative must review the insurance certification insofar as description of payee, amounts and endorsements are concerned, to ensure compliance with the requirements as specified in the insurance schedule.
- 4.8        Bid Security Release
- 4.8.1      Upon receipt of acceptable contract security, the band representative must return the bid security to the contractor within 48 hours. Failure of the band representative to return a bid security immediately may prevent a contractor from bidding on other projects or tie up her/his capital
- 4.8.2      The band representative, at the request of the contractor, may convert the bid security deposit to contract security.
- 4.9        Failure to Commence Construction
- 4.9.1      If, after signing the contract and providing contract security and insurance, the contractor fails to commence construction in accordance with the schedule provided to the project manager, he/she is in default under the terms of the contract.
- 4.9.2      The Band Council will notify the contractor in writing of the remedial action the Band Council proposes to take pursuant to sections 11 and 38 of the general conditions of the contract.
- 4.9.3      When the contractor has provided a performance bond as contract security, the bonding company must also be served with notice, as the Band Council may be calling on the bonding company to remedy the default pursuant to section 38 of the general conditions of the contract and the conditions of the performance bond.
- 4.10      Additional Work or Changes
- 4.10.1     The Band Council may, within reason, change, increase or reduce the work adjusting the contract price and contract time accordingly without invalidating the contract.
- 4.10.2     Changes to the contract must be made in writing and should be kept to a minimum.
- 4.10.3     The project manager must always order changes to the contract in writing and the contractor will be asked to submit in writing a quotation specifying the cost increase or decrease. The project manager then reviews the quotation, and if agreed, authorize the contractor to proceed with the work. (see Appendix 4-1).
- 4.10.4     The project manager must not permit the contractor to commence work involving increased costs before the required funds have been certified as available and the Band Council has approved the increase in the contract price.

- 4.10.5 The value of any change may be determined by one or more of the following methods:
- a. preparation of a cost estimate for the work and acceptance of the contractor's lump-sum offer;
  - b. unit prices set out in the contract;
  - c. negotiation of new unit prices; or
  - d. cost, plus a fixed or percentage fee.

4.10.6 When a change in the work is proposed or required, the contractor is asked to present her/his quotation for any change in the contract price and/or change in contract time to the project manager for approval. The project manager then recommends the quotation to Band Council for approval and, if approved, the project manager orders the contractor in writing to proceed with the change. The work performed in the change must be included for payment with the regular certificates for payment.

4.10.7 If negotiations for a proposed change fail, the project manager then refers to section 50 of the General Conditions for the recommended course of action.

#### 4.11 Advice to Bonding Company

If the contractor has provided contract security in the form of surety bonds, the band representative shall ensure that the bonding company is advised and its consent has been obtained by the contractor before substantially increasing the contract price, changing the work, location, or completion date. Failure to obtain the concurrence of the bonding company may void the bonds and relieve the company of its obligations under its surety bond thereby leaving the Band Council in the embarrassing position of having no contract security.

#### 4.12 Delays in Construction

4.12.1 When the contractor fails to follow the construction schedule, the project manager must notify the contractor and, through negotiation, remedy the delay and have the contractor submit a revised schedule acceptable to the project manager, indicating how she/he will compensate for the delay while remaining within the overall completion date.

4.12.2 All communications shall be in writing.

4.12.3 If the contractor is unable to meet the schedule to the satisfaction of the project manager and if contract security is in the form of a performance bond, the Band Council shall inform the bonding company, as the contractor may be in default under the terms of the contract.

4.12.4 If the contractor is delayed for any causes beyond his/her control, the completion date may be extended for a period decided by the project manager. These delays might be caused by adverse weather conditions, labour disputes (including lock-outs decreed or recommended for its members by a recognized contractor's association of which the contractor is a member), fire, unusually slow common carriers etc. The contractor shall not be reimbursed for any costs incurred by him/her as a result of such delay.

4.12.5 If a delay occurs which is within the contractor's control and the contractor requests an extension in writing, the project manager may agree to a new completion date, as long as he/she feels that the delay is acceptable.

4.12.6 The project manager shall not extend the completion date to accommodate delays without receipt of written notice before the completion date specified in the contract. Again, the contractor shall not be reimbursed for any costs incurred by her/him as a result of such delay.

4.12.7 When the contractor has delayed in completing the work and the completion date has not been extended he/she is liable for all costs associated with the delay, as specified in the General Conditions, section 37.

4.12.8 Extensions to the completion date shall be issued by change order.

4.13 Notices

All notices whether issued by the project manager, the Band Council or the contractor pursuant to the general conditions, must be in writing.

4.14 Claims from Subcontractors, Sub-Subcontractors and Suppliers

4.14.1 Claims received in writing from subcontractors, sub-subcontractors and suppliers relating to the non-payment of accounts must be dealt with quickly by the project manager and the band representative in view of times established in the contract documents for reporting claims. Where the contractor has provided a Labour and Material Payment Bond as contract security, claimants must be advised in writing to direct their claims to the contractor's bonding company. A copy of the Labour and Material Payment Bond should also accompany the letter, as the bond outlines the time and procedures for submitting claims in order to be considered. The Band Council or its representatives should limit their involvement in these claims to this.

4.14.2 When the contractor has provided a security deposit as contract security and a claim from a subcontractor, sub-subcontractor or a supplier has been received, the claim shall be dealt with immediately. The contractor shall be advised of the claim and asked to resolve it within a specified time. These claims are also subject to specific reporting periods. Delays may be injurious to the claimant. No claims will be considered unless submitted in writing. Should the contractor or a sub-contractor fail to meet his/her obligation for payment of a lawful claim arising out of the performance of the contract, and the claim was received within 120 days after the claimant performed the last of the work, or supplied the last of the material, the Band Council may satisfy such legal claims pursuant to section 42 of the General Conditions of the contract. The amounts must be paid directly to the claimants or, if the amount is in dispute and the claimant has registered the claim in the court, the amount may be paid into the court for disbursement as the court rules. The Band Council may satisfy such legal claims pursuant to the general conditions of the contract.

To be considered legal, the claim must have been determined to be so

- by a court judgement;
- by an arbitrator;
- by a written notice by the contractor authorizing the payment.

4.15 Progress Payments and Holdbacks

4.15.1 Progress payments, sometimes referred to as payment on account or progress claims, are provided for in the contract, and the contractor may apply for these monthly in the course of the work (see Appendix 4-2).

4.15.2 Before making the first application for payment, the contractor must submit a breakdown of the bid price for payment purposes upon which the progress payments will be based. Such applications shall be dated the last day of the agreed monthly payment period. The amount claimed shall be for the value, proportionate to the amount of the contract, of work performed and material incorporated into the work or delivered to the site during the payment period for which a payment is claimed. When unit prices have been provided for an item, the payment shall be based on quantity x unit price.

- 4.15.3 The contractor must sign these applications for payment. The project manager must also sign the applications and issue a certificate attesting to their correctness.
- 4.15.4 Progress payments must be paid promptly in order for the contractor to meet her/his financial obligations to sub-contractors and suppliers. The times for certification and subsequent payment are specified in the terms of payment. Delays in making payments may result in the payment of interest to the contractor on the overdue amounts.
- 4.15.5 All progress payments are subject to deduction of a holdback, the amount of which is dependent upon the type of contract security provided. When a labour and material payment bond is part of the contract security, the holdback retained from each progress payment is 5%. When a contract security deposit is provided instead of a Labour and Material Payment bond, the holdback is 10%.
- 4.15.6 Holdbacks are mandatory, and the amounts specified in the contract shall be neither increased nor decreased.
- 4.15.7 Certificates for payment, any progress payments or any partial or entire use or occupancy of the work by the Band Council shall not constitute an acceptance of any work or products which is not in accordance with the contract documents.
- 4.16 Statutory Declarations
- 4.16.1 All applications from the contractor for progress payment, must be accompanied by a statutory declaration (see appendix 4-3) attesting that no accounts remain unpaid for which money was received by the contractor on the progress payment immediately preceding the progress payment now being submitted.
- 4.16.2 Applications from the contractor for final payment must be accompanied by a final statutory declaration (Appendix 4-3) attesting to the full payment of all accounts and wages and lawful deductions.
- 4.17 Certification of Progress Payments
- 4.17.1 The project manager must certify all requests for progress payments before they are submitted to the Band Council for payment. The project manager will issue a progress report after visiting the site, inspecting the work and being satisfied that the amount claimed is equal to the actual work performed, or the quantity of material incorporated into the work or delivered to the site during the payment period for which a payment is requested.
- 4.17.2 If, after inspection, the project manager finds the claim excessive in relation to the actual performance, or material incorporated or delivered to the site, she/he may request the contractor to submit a revised progress payment or, in consultation with the contractor, reduce the claim for progress payment accordingly.
- 4.17.3 When payments are reduced, the project manager shall inform the contractor in writing of the reasons for the adjustment.
- 4.18 Interim Certificate of Completion
- 4.18.1 Within 10 days of receipt of an application from the contractor for an Interim Certificate of Completion (Appendix 4-4) based on substantial completion of the work, the project manager shall inspect and assess the work to verify the application's validity. If the project manager finds the work to substantially completed or the building ready for beneficial occupancy, she/he may issue an Interim Certificate of Completion. The date

of this certificate shall be the date of substantial completion of the contract as certified by the project manager. Immediately following the issuance of the Interim Certificate of Completion, the project manager, in consultation with the contractor, shall establish a reasonable date for the total completion of the contract.

4.18.2 The Interim Certificate of Completion shall list the deficiencies and/or unfinished work with a cost estimate for each item. The cost estimate should be sufficient to cover the cost of another contractor performing the work should the original contractor fail to meet his/her obligations. These monies shall be retained until the items listed have been completed.

4.18.3 When all documentation required by the contract has been received, the project manager may issue a certificate for payment of the holdback monies. These holdback monies, less the amount retained to cover deficiencies and unfinished work and the unpaid accounts of subcontractors and sub-subcontractors, shall become due and payable within 30 days after the date of the Interim Certificate of Completion.

4.18.4 Upon issuance of the Interim Certificate, the Band Council agrees that the contract is basically completed and therefore waives all rights to any claims against the contractor relating to late completion after the date of the certificate.

#### 4.19 Inspections

4.19.1 Within 10 days of receipt of an application for progress payment, the project manager shall carry out an inspection to verify performance of the specified work and, if satisfied, issue a progress report.

4.19.2 Periodic inspections must be carried out by the project manager to ensure that the contractor is performing the work in accordance with the plans, specifications, and contract documents, and that materials meet the required standards.

#### 4.20 Warranties

4.20.1 The contractor must correct, at her/his own expense, any defects in the work due to faulty products and/or work appearing within a warranty period of 12 months from the date of issuance of the Interim Certificate of Completion.

4.20.2 The contractor shall correct and/or pay for any damage to other work resulting from any corrections performed under the contract.

4.20.3 Neither the project manager's final certificate nor payment thereunder shall relieve the contractor of his/her responsibility during the warranty period.

4.20.4 The project manager shall promptly notify the contractor by registered letter of observed defects.

4.20.5 The project manager shall inspect the completed works one month before the expiry date of the warranty to ensure there are no defects at the expiry date.

4.20.6 With regard to other warranties and guarantees called for in the specifications and which are provided by manufacturers, subcontractors, suppliers, and the contractor, the project manager shall ensure that these documents are received before release of the final payment.

#### 4.21 Clearances

- 4.21.1 Depending upon the type of work, and before release of the final payment, the contractor is required to provide certificates of approval or clearance from various federal and provincial bodies.
- 4.21.2 The most common clearances apply to the workers' compensation board, provincial energy authority, public health and environmental agencies.
- 4.21.3 If the provincial department of labour has requested the Band Council to retain monies relating to wage claims from workers, clearance must be obtained from that office before the final payment is made to the contractor.
- 4.21.4 Should Revenue Canada request retention or payment from monies remaining under a contract, the matter must be resolved before release of the final payment to the contractor.
- 4.21.5 The project manager must ensure that the contractor provides all clearances required by the specifications.
- 4.21.6 The band representative shall obtain releases from Revenue Canada when required.

#### 4.22 Deficiencies

- 4.22.1 If the project manager issues an Interim Certificate of Completion listing deficiencies, the contractor must set a time for their completion or correction which will be agreed to by the project manager through negotiation. This should be followed up to ensure completion of the work within the agreed time.
- 4.22.2 Should any defect occur during the 12-month guarantee period, the contractor must be notified in writing to correct it immediately under the terms of the contract. Where a performance bond is held as contract security and the contractor fails to correct any defect, the bonding company must be advised to meet its obligations under the terms of the bond.

#### 4.23 Failure of Contractor to Perform

- 4.23.1 If the contractor fails to carry out the work properly or to fulfil any provisions of the contract, the project manager will notify the contractor by registered letter that he/she is in default of his/her contractual obligations, and instruct him/her to correct the default or provide a schedule for correction within six working days of receiving the notice.
- 4.23.2 The contractor shall advise the Band Council in writing if the default cannot be corrected within the time specified and, if the project manager concurs, the contractor will then be considered to have complied with the project manager's instructions.
- 4.23.3 The contractor shall subsequently:
  - a. begin to correct the default within the specified time;
  - b. provide the project manager with an acceptable schedule for the correction; and
  - c. complete the correction in accordance with the schedule.
- 4.23.4 If the contractor has provided a contract security deposit and fails to comply with the above provisions, the Band Council may correct such default and deduct the cost from the payment then or thereafter due to the contractor. This can only be done, however,

after consultation with the project manager in connection with both the action and the amount subsequently charged to the contractor.

- 4.23.5 When the contractor has provided a Performance Bond as contract security and the contractor fails to comply after receiving written notice, the bonding company must be requested in writing to take the necessary remedial action.

#### 4.24 Taking Work Out of the Contractor's Hands

##### 4.24.1 Circumstances

4.24.1.1 Construction contracts provide certain safeguards or remedies by which the Band Council may counteract delay, default, insolvency, bankruptcy, non-compliance, or abandonment of work on the part of the contractor. One such provision allows the Band Council to take the work out of the contractor's hands. Before doing so, however, the Band Council should obtain the project manager's recommendations and seek legal advice.

4.24.1.2 The conditions under which the Band Council may take the work out of the contractor's hands and the effects of this action are outlined in section 38 of the general conditions of the contract. These conditions also describe the methods by which notices, orders, and so on must be given or delivered. Therefore, all persons administering work undertaken by construction contract must carefully review these conditions.

4.24.1.3 Only the Band Council is empowered to take all or any part of the work away from the contractor, although the project manager may place the contractor on notice. To do this, however, the project manager must have factual evidence and document it carefully. For example, a certified copy of a petition of bankruptcy or of a court order appointing a trustee is considered minimum evidence of bankruptcy. Rumour, hearsay, or even radio or newspaper reports cannot be accepted as factual evidence. The Band Council must immediately determine the authenticity of such accounts and subsequently take appropriate action.

4.24.1.4 The procedures for taking the work from the contractor are the same regardless of the reasons for doing so. However, if a bonding company has provided a Labour and Material Payment bond and a Performance bond as contract security, the bonding company and the contractor shall be notified by a registered letter signed by the Band Council. A copy of the letter to the contractor shall accompany the letter to the bonding company.

4.24.1.5 Where a contract document does not contain provisions for taking the work out of the contractor's hands, the Band Council may nevertheless terminate the contract for just cause.

##### 4.24.2 Procedure - General Measures

- 4.24.2.1 When the work is to be taken away from the contractor, the project manager should immediately determine and record the following:

- a. the total value of the work completed to date;
- b. the total value of all unused materials on site;
- c. total payments made to the contractor;
- d. total value of the contract, including approved change orders;
- e. a list of all equipment on site;
- f. a list of all known subcontractors, sub-subcontractors and suppliers for the project showing the unpaid balance due to each;
- g. an evaluation of the cost of completing the work under the contract (this must be a fair estimate of the amount needed, regardless of whether it exceeds the balance left in the contract); and

- h. all additional costs pertaining to the contract, such as loss of revenue; additional charges for supervision and inspection; and the costs of providing alternate services, shelter or security on the site after the contractor has been removed.

4.24.2.2 The project manager, when taking action pursuant to paragraphs 4.24 and 4.25 of this publication, should make every effort to have the contractor verify and confirm a., b., c., e., and f. of section 4.24.2.1. If a bonding company is involved, its agreement on these items should also be obtained. If the appropriate parties receive verification and confirmation of these items, disputes with, and claims from, the contractor tend to be eliminated or at least reduced.

#### 4.24.3 Specific Measures When No Bonding Company is Involved

4.24.3.1 When no bonding company is involved, the Band Council must take appropriate action (for example, call tenders or negotiate a contract to have the project completed by others.). The second contract must be completed and the second contractor paid before any remaining monies are paid over to the original contractor or her/his successors or assigns, and not even then until subcontractors, sub-subcontractors and suppliers with lawful claims against the original contractor or subcontractor have been paid for the portion done before the work was taken from the contractor. All costs (including those suggested in h. of section 4.24.2.1) incurred in completing the contract shall be accurately recorded by the project manager. These costs are the basis for claim against the original contractor if the funds remaining in the contract are inadequate. The project manager's responsibilities in such instances are clearly defined in sections 37, 38 and 39 of the general conditions of the contract.

4.24.3.2 If the contract is removed from the contractor under the above conditions, the Band Council is entitled to:

- a. take possession of the premises and products and utilize the construction machinery and equipment, subject to the rights of third parties, and to finish the work by whatever method is deemed expedient, but without undue delay or expense;
- b. withhold any further payments to the contractor until the work is finished;
- c. upon completion of the work, charge the contractor the amount by which the full cost of finishing the work exceeds the unpaid balance of the contract price (this cost will be certified by the project manager and will include reimbursement of the project manager's costs for additional services and a reasonable allowance determined by the project manager to cover the cost of any corrections required by warranty); or, if such cost of finishing the work plus the cost of paying the unpaid account of creditors registered under section 42 of the general conditions is less than the unpaid balance of the contract monies, pay the contractor the difference; and
- d. on expiry of the 12-month warranty period, charge the contractor the amount by which the cost of corrections under warranty exceeds the allowance provided for such corrections or, if the cost of such corrections is less than the allowance, pay the contractor the difference.

#### 4.25 Completion by the Band Council

4.25.1 If the bonding company does not respond satisfactorily within the time stipulated, a second letter shall be forwarded to the company, advising it that the Band Council is completing the work at the expense of the bonding company under the said Performance bond.



- 4.25.2 Immediately thereafter, the Band Council shall engage a second contractor to complete the contract. All costs (including those for extra inspection, supervision, and administration) incurred in completing the contract shall be accurately recorded. These costs will form the basis of a claim against the bonding company if the funds remaining in the original contract are inadequate.
- 4.25.3 When a contractor has provided a performance bond as contract security, the Band Council must advise the bonding company of all actions taken. The Band Council may request the bonding company's assistance in getting the contractor to remedy any default.
- 4.25.4 These procedures, if followed, should protect the interests of the band at all times and the work should be completed with a minimum of delay, if not within the time stipulated in the original contract.
- 4.26 Completion by the Bonding Company
- When the work is taken out of the contractor's hands and a bonding company is involved, its written agreement should be obtained on a. b. c. e. and f. of paragraph 4.24.2.1 above. This letter must also request that the bonding company take the necessary action under the performance bond to complete the project within the time stipulated in the contract, or be subject to the same liquidated damages applicable to the original contractor. The bonding company must officially reply by a date stipulated in the letter, usually one week after the dispatch of the notification and request.
- 4.27 Termination of Contract
- 4.27.1 Section 41 of the general conditions of the contract provides for its termination for reasons other than the default of the contractor e.g. the building under construction is not required by the Band anymore. The Band Council may, without prejudice to any other right or remedy it may have, terminate the contract by giving the contractor written notice. The Band Council should consult the engineer and its legal representative before undertaking this action.
- 4.27.2 In order to obtain the Band Council's approval of such action, the band representative shall submit a detailed report in support of the action, together with a recommendation from the project manager.
- 4.28 Contract Security Deposit Retention
- 4.28.1 Surety bonds are retained on file after completion.
- 4.28.2 Contract security deposit is to be released within 60 days from the date of the Final Certificate of Completion.
- 4.28.3 Contract security deposit may be retained for a 12-month guarantee period for underground works, provided the bidders are advised at the time of tendering, by way of a special clause in the General Conditions.
- 4.29 Final Certificate of Completion
- 4.29.1 Within 10 working days of receipt of the contractor's application for payment upon completion of the contract, the project manager shall inspect and assess the work to verify the application's validity. The project manager shall notify the contractor of his/her approval or disapproval of the application. When the project manager finds the work

satisfactory, he/she shall issue a Final Certificate of Completion (Appendix 4-5) and certify for payment the remaining monies due to the contractor under the contract, including any holdback monies which were retained under the interim certificate. The date of this certificate shall be the date of the completion of the work, as certified by the project manager. The Band Council shall pay the contractor within 60 days of issuing such a certificate.

4.29.2 All holdback monies shall become due and payable within 60 days of the issuance of the Final Certificate of Completion, provided all necessary final documents stipulated in the contract have been supplied.

4.29.3 Issuance of the Final Certificate of Completion constitutes a waiver of all claims by the Band Council against the contractor, except those previously made in writing and still unsettled, and those arising from the provisions of the warranty.

4.29.4 When the Final Certificate of Completion or the payment due under it is accepted, all claims by the contractor against the Band Council shall be waived, except those made in writing, prior to this application for payment, and still unsettled.

#### 4.30 Release of Security and Insurance

Upon issuance of the Final Certificate of Completion, the contractor is entitled to the return of the property damage insurance policy. The General Liability Insurance policy must be retained for 12 months after the date of the Final Certificate of Completion. The contractor's cash security should also be returned within 60 days if she/he has supplied all final documents, warranties, etc. with the final payment, and there are no outstanding claims for work performed under the contract. Tender documents which specify that the contract security deposit is to be retained for a 12-month warranty period are the exception.

#### 4.31 Post-evaluation

4.31.1 The project manager should carry out a post-evaluation of the project shortly after its completion.

4.31.2 The post-evaluation should evaluate the contractor's performance in terms of:

- a. assessing the contractor's performance;
- b. evaluating the communication among the contractor, project manager and band;
- c. rating the contractor's adherence to schedules;
- d. showing whether extras were kept to a minimum;
- e. identifying the problems encountered; and
- f. quality of work.

4.31.3 The post-evaluation should be placed on file for reference and possible use in evaluating the contractor on successive bids.

#### 4.32 Records

4.32.1 The band representative and the project manager must maintain complete records of the project from start to finish. If every step of the project is fully documented, the Band Council will have the necessary supporting data in case of dispute of later problems with the project. In general, the records should contain:

- a. preliminary and design notes, minutes, and correspondence;
- b. tender and related documents (including plans and specifications);
- c. award telegrams, letter and contract;
- d. construction correspondence;
- e. minutes of project meetings;
- f. progress payments and certificates;
- g. change orders;
- h. shop drawings;
- i. warranties;
- j. as-built drawings and maintenance manuals; and
- k. the contract surety bonds and the insurance certificate.

4.32.2 The band representative should maintain records of the actual cost of the work, together with all proper tender calls, quotations, contracts correspondence, invoices, receipts and vouchers and, if required, shall make them available for audit and inspection and shall allow auditors to make copies and take extracts.

The Band Council shall keep these records intact for at least two years after the issuance of the Final Certificate of Completion or longer if all claims are not settled by that date.

**Appendix 4-1**

**CHANGE ORDER**

Project No.	Change Order No.	Contract No.	
Location of Work		Description of Work	
Consultant		Contractor's Name and Address	
Original Amount of Contract	Approved C.O. Amount to date	Present C.O. Amount	Revised Contract Amount
Description of Change -			
Necessity For Change -		Category	
Recommended -			Date
Date	Approved -		

REQUEST FOR PROGRESS PAYMENT

							Request No.	
Payment period	From	Y	M	D	To	Y	M	D
Contractor (name and address)							File no.	
Description and location of work							Contract no.	
							Project no.	

**NOTE:** The GST is to be entered as a separate amount in the spaces provided in Parts 1, 2 and the Finance portion herein and is not to be included in any other dollar amounts shown on the "Request for Progress Payment" form and the "Cost Breakdown" sheet. The GST will be paid to the Contractor as an additional sum for remittance by the Contractor to Revenue Canada on behalf of the Band.

PART 1 - PROGRESS CLAIM	This period	Total to
A Portion of work completed	\$	\$
B Material delivered to the site but not incorporated into work	\$	\$
<b>CONTRACT AMOUNT CLAIMED</b> <	\$	\$
<b>GST</b>	\$	\$

This claim is submitted in accordance with the Terms of Payment of the above contract for work completed and material delivered to the site but not incorporated into the work, the whole as described in the attached "Cost Breakdown".

**CONTRACTOR:** \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_  
 Authorized signing officer

PART 2 - PROGRESS REPORT	Total amount	Less (Holdback)	Net Amount
A Work completed to date	\$	\$	\$
B Material delivered to the site but not incorporated into work	\$	\$	\$
<b>TOTALS TO DATE</b>	\$	\$	\$
		<b>Less previous payments</b>	\$
		<b>CONTRACT AMOUNT PAYABLE</b>	\$
		<b>GST</b>	\$

The value of the portion of the work completed and material delivered to site, described in the above Progress Claim, is as shown in the Progress Report.

**BAND:** \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_  
 Authorized signing officer

FINANCE			
Original contract amount	Approved additions	Approved deductions	Authorized contract amount to date
\$	\$	\$	\$
Reference no.	Account coding		Amount
			CR
Cheque no.			
Cheque date			
Service officer	<b>TOTAL</b>		
	<b>GST</b>		

**Appendix 4-3**

Canada  
Province or Territory  
of \_\_\_\_\_

**STATUTORY DECLARATION**

**IN THE MATTER OF** a contract bearing no. \_\_\_\_\_ and dated the  
\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ between the \_\_\_\_\_

\_\_\_\_\_ Band and \_\_\_\_\_  
(Insert full name of Contractor)  
hereinafter referred to as the Contractor, for \_\_\_\_\_  
(Description and location of work)  
\_\_\_\_\_, and

**IN THE MATTER OF (indicate by CHECKMARK - / in APPLICABLE BOX )**

- +)), a **PROGRESS CLAIM** covering work done thereunder up to  
.))- the day of \_\_\_\_\_ 20\_\_\_\_.
- +)), the **INTERIM CERTIFICATE OF COMPLETION** relating  
.))- thereto.
- +)), the **FINAL CERTIFICATE OF COMPLETION** of the work  
.))- thereunder.

TO WIT:

I \_\_\_\_\_, of \_\_\_\_\_,  
(Print or type name of Declarant) (Declarant's address)

do solemnly declare

(1) that I am \_\_\_\_\_  
(Print or type Declarant's title or position with the Contractor or state that Declarant is the Contractor)

and as such have personal knowledge of the said Contract and of the facts and matters stated herein.

**(indicate by CHECKMARK - / in APPLICABLE BOX)**

- (2) +)), that, up to the date of the attached Progress Claim, the **CONTRACTOR** has complied with all its lawful obligations  
.))- in respect of the Labour Conditions, discharged all its lawful obligations to workmen in respect of the work contracted for and has discharged all its lawful obligations to its subcontractors and suppliers except for the amounts owing which total \$ \_\_\_\_\_ (if nil, state nil. A detailed explanatory statement of the amounts owing, including any amounts in dispute must be attached as part of this Statutory Declaration); or
- +)), that, up to the effective date of the **INTERIM CERTIFICATE OF COMPLETION**, the **CONTRACTOR** has  
.))- complied with all obligations in respect of the Labour Conditions, fully discharged all its lawful obligations to workmen, its subcontractors and suppliers in respect of the work contracted except for the amount owing which total \$ \_\_\_\_\_ (if nil, state nil. A detailed explanatory statement of the amounts owing, including any amounts in dispute must be attached as part of this Statutory Declaration); or
- +)), that, up to the date of the **FINAL CERTIFICATE OF COMPLETION**, the **CONTRACTOR** has complied with  
.))- all its lawful obligations in respect of the Labour Conditions, fully discharged all its lawful obligations to workmen, its subcontractors and suppliers in respect of the work contracted for and discharged and satisfied all lawful claims against it that arose out of the performance of this Contract except for the amounts owing which total \$ \_\_\_\_\_ (if, nil, state nil. A detailed explanatory statement of the amounts owing, including any amounts in dispute must be attached as part of this Statutory Declaration).

And I make this **SOLEMN DECLARATION** conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the **CANADA EVIDENCE ACT**.

Declared before me at \_\_\_\_\_

\_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
(Signature of person before whom the declaration is made)

\_\_\_\_\_  
(Print name of person before whom the Declaration is made)

\_\_\_\_\_  
(Signature of Declarant)

A Notary Public, Commissioner, etc. \_\_\_\_\_

\_\_\_\_\_  
(Please state authority for receiving Declarations-Notaries to affix Notarial Seal)

**NOTICE**

If this declaration is not complete in every detail, it will be returned for completion and payment will be delayed.

Sections 131 and 361 of the Criminal Code of Canada which deal with offences relating to affidavits are hereby brought to the attention of the Declarant.

INTERIM CERTIFICATE OF COMPLETION

Contractor (name and address)	file no.
Description and location of work	Contract no.
	Project no.
	Contract award date

CERTIFICATES	
1. Authorized contract amount to date	\$
2. Less total to be retained (as per Part "D" - form 1795)	\$
3. Gross amount payable (1-2)	\$
4. Assessments (see list below)	\$
5. Previous payments (net amount to date of previous Progress Report)	\$
6. Total deductions (4 + 5)	\$
7. Contract amount payable (3 - 6)	
8. GST	

I **CERTIFY** that the work under this contract is substantially complete in accordance with the General Conditions of the contract and is ready for use by Band Council, except for the portions of the work listed under Part "D" of form 1795 Inspection and Acceptance. Pursuant to the authority of the General Conditions of the contract I hereby issue this Interim Certificate of Completion effective \_\_\_\_\_.

I **RECOMMEND** that the Security Deposit, less \$ \_\_\_\_\_ be returned to the Contractor.

**Comments and assessments:**

**BAND:** \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_  
Authorized signing officer

FINANCE			
Original contract amount	Approved additions	Approved deductions	Authorized contract amount to date
\$	\$	\$	\$
Reference no.	Account coding		Amount CR
Cheque no.			
Cheque date			
Service officer	<b>TOTAL</b>		
	<b>GST</b>		

FINAL CERTIFICATE OF COMPLETION

<b>Contractor (name and address)</b>	file no.
<b>Description and location of work</b>	Contract no.
	Project no.
	Contract award date

**CERTIFICATES**

1. Authorized contract amount	\$
2. Previous payments (gross amount payable on Interim Certificate of Completion or net amount to date on previous Progress Report)	\$
3. Gross amount payable (1-2)	\$
4. Assessments (see list below)	\$
5. Contract amount payable (3-4)	\$
6. GST	\$

**I CERTIFY** that the work has been completed and that the Contractor has complied with the contract and all orders and directions thereto. Pursuant to the authority of the General Conditions of the contract I hereby issue this Final Certificate of Completion effective \_\_\_\_\_.

**I RECOMMEND** that the Security Deposit be returned to the Contractor.

**Comments and assessments:**

**BAND:** \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_  
 Authorized signing officer

Original contract amount	Approved additions	Approved deductions	Authorized contract amount to date	
\$	\$	\$	\$	
Reference no.	Account coding		Amount	CR
Cheque no.				
Cheque date				
Service officer	<b>TOTAL</b>			
	<b>GST</b>			

Form 1797 - Form 1795 must accompany this certificate







**Section 5**  
**CLAIMS AND DISPUTES**

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## **Section 5**

### **CLAIMS AND DISPUTES**

#### 5.1 General Remarks

The purpose of this section is to provide Band Councils with a document that will assist them to review, assess and finalize construction contract claims and disputes presented by contractors. It should be read in conjunction with the General Conditions of the contract between the Band Council and the contractor.

#### 5.2 Definitions

Change order: a document by which the band project manager may order additional work or other changes to the contract, subject to approval of the Band Council. It describes in writing the extent of the additional work agreed to and the payment for this additional work.

Claim: a request for payment in addition to the amount agreed to in the contract. A claim, if unresolved, becomes a dispute.

Dispute: a disagreement about some aspect of a contract that cannot be resolved by the band project manager and the contractor.

General Condition (GC): General Conditions of the contract between the Band Council and the contractor.

#### 5.3 Policy

It should be the policy of the Band Council to review and resolve contract disputes in a speedy and fair manner. This is particularly important because prolonged disputes can delay the completion of the work as defined in the contract as well as the payment to the contractor.

#### 5.4 Responsibilities

5.4.1 The project manager is responsible for the implementation of a project within budget and schedule. Thus she/he has the responsibility for receiving, reviewing and resolving claims and disputes. The project manager should utilize all the assistance that can be provided by professional, technical and legal experts in the resolution of claims and disputes.

5.4.2 In the case of contract claims and disputes, the decisions of the band can be challenged in court. Thus it is important that legal experts be consulted in order that the actions and decisions of the Band Council on a contractor's claims be defensible in court.

#### 5.5 Basis for Claims and Disputes

5.5.1 The changes most frequently encountered in construction contracts are the following:

- a. the actual ground conditions (subsoil or water table) differ substantially from those described in the tendering documents;
- b. some additional work or change in the work is required of the contractor; or

- c. the estimated quantities of work specified in the contract documents are more than 115% or less than 85% of the actual work performed. An amendment must be considered.

Generally, construction contracts provide a mechanism for adjusting the contract price in the event a change is ordered. Routine changes are frequent and, with rare exceptions, are resolved without difficulty. These are normally dealt with by change orders. Sometimes the changes are so fundamental that the scope of the work is radically altered and the contractor is really being asked to build something different from what is described in the contract.

- 5.5.2 A completion date is specified for all construction contracts. Before the commencement of the work, the contractor must submit a detailed schedule of construction for the different parts of the work. This schedule can be adjusted for any changes that occur during construction. Any change to the schedule is subject to approval by the project manager, in consultation with the band's technical expert. Delays whether caused by the band or the contractor, may prevent performance of the contract on schedule, and may therefore increase the costs incurred by the contractor.
- 5.5.3 If the delays are caused by poor performance by the contractor, he/she must bear the increase in costs and the project manager has every right to demand that the performance of the work be accelerated, by increasing either the personnel or the equipment on the site, or by double-shifting. In this case, no claim can be considered by the project manager in relation to the increased costs incurred by the contractor.
- 5.5.4 Acceleration can be demanded by the project manager when the contractor lags behind the approved schedule. If the project manager asks the contractor to accelerate the performance of the work so that the Band Council can take possession of the structure sooner than described in the approved schedule, the contractor must be compensated for any additional costs.
- 5.5.5 If the delays are caused by the Band through failure to perform some specific obligation (unimpeded access to the site, supply of materials, drawings, etc.), the Band Council can expect a claim from the contractor.
- 5.5.6 If a party to a contract fails to live up to its legal obligations, that party is in default. The Band Council may be in default for the reasons described below.
- 5.5.7 Incomplete or inaccurate information concerning ground conditions (subsoil or water table) may have been given to the contractor in the tendering documents. The contractor is then entitled to a reimbursement for any additional cost incurred because of the actual soil conditions encountered during construction.
- 5.5.8 The contractor is entitled to carry out the work without interference by the Band Council. Hence, in, the absence of a contractual provision to the contrary, the project manager cannot dictate the manner or order in which works are to be carried out.
- 5.5.9 If the band project manager delays the performance of the work, the contractor is not obliged to follow the time schedule and cannot be penalized for late completion.
- 5.5.10 In the absence of any provision to the contrary, it is implied that the Band Council will make the site available within a reasonable time of signing the contract. The contractor is normally entitled to exclusive use of the entire site.

- 5.5.11 If the project manager fails to issue detailed drawings at the proper time and thus delays the contractor, he/she will commit a default for which the Band Council may be liable for extra costs to the contractor.
- 5.5.12 Whenever extra costs are incurred by Band Council on a project due to lack of performance by the contractor in terms of time or quality, the question of assessing those costs against the contractor must be considered.
- 5.5.13 Following are the most frequent causes of default by the contractor, with references to the relevant contract clauses:
- a. Damage to material, plant and real property supplied by the Band Council:  
Under section 12 of the General Conditions "Materials, Plant and Real Property supplied by the Band Council".
  - b. Late completion:  
In the case of late completion as defined in General Condition 37, the actual costs incurred by the Band Council, due to the delayed completion, may be assessed against the contractor. For example, late completion of a school could force the Band Council to rent other facilities for the start of a school year; the cost of such rental should be assessed against the contractor.
  - c. Failure to meet specified requirements:  
There may be occasions when the Band Council is forced to accept a lower quality product than called for in the contract. This may apply to materials or equipment. In such cases, an assessment should be made to compensate the Band Council for the failure of the contractor to meet the required standards set by the specifications.
- 5.5.14 Assessments must be properly prepared. Each one must be considered on its own merit and in some cases it may be advisable to obtain legal advice. Three main points require consideration:
- a. The Band Council has the right to make the assessment under the terms of the contract.
  - b. The items included in the assessment must be identifiable and the amounts must be substantiated.
  - c. In all cases the band should notify the contractor in writing of its intent to make the assessment.
- 5.5.15 Other assessments that do not imply default can be made against the contractor:
- a. Soil conditions:  
Under GC 35 "Changes in Soil Conditions and Neglect or Delay by the Band Council" the contractor has the right to claim for extra costs incurred if soil conditions are substantially different from those which could reasonably be expected. The Band Council also has the right to a reduction in the contract amount if the different conditions result in savings.

b. Unit prices:

The contract provides for amending unit prices. It should not be overlooked that unit prices may be negotiated downward as well as upward; this applies to increased or decreased quantities.

5.6 Procedures

5.6.1 As previously stated, the Band Council's policy should be to review and resolve contract disputes in an expeditious and equitable manner. The following procedures should assist project managers in a rapid resolution of disputes.

5.6.2 Immediate attention must be given to disputes that arise out of contracts. They should be resolved, if at all possible, by negotiations between the project manager and the contractor. The Band Council should be kept informed of these negotiations.

5.6.3 Legal council should be obtained to assist in the resolution of claims and in the interpretation or application of various sections of the contract documents as they relate to disputes.

5.6.4 On all projects, the project manager should keep detailed records of the progress of the work, with significant milestones registered. These records are essential in the resolution and quantification of claims.

5.6.5 Job records should include the following:

- a. contract documents, including change orders;
- b. minutes of meetings;
- c. clerk of work reports;
- d. job diaries;
- e. progress photographs;
- f. job schedules;
- g. consultant's reports related to the claim;
- h. correspondence related to the claim; and
- i. notices issued and received.

Moreover, both the contractor and the project manager should put their communications in writing.

5.6.6 As soon as the contractor submits a claim or states her/his intention to claim information should be assembled from the job records in order to analyse it. A logical and complete presentation must include the following information:

- a. name of contractor;
- b. project scope and location;

- c. contract number and value, with the number and values of change orders;
- d. type and amount of contract security;
- e. percentage of work completed and amount paid to date;
- f. amount of holdback retained to date;
- g. value of material on site;
- h. date of contractor's written notice of intent to claim;
- i. basis of claim;
- j. amount of claim
- k. history of claim:
  - (1) date of actual commencement of work;
  - (2) date of completion of stages of the work, for example, foundations, framework, masonry or roofing that has a particular reference to the stage or stages affected by the claim;
  - (3) reasons for delay or disruption of work;
  - (4) a breakdown of the cost incurred by the contractor, directly related to the claim;
  - (5) a breakdown of the cost incurred by the band, directly related to the claim, for example, consultant fees and inspection charges;
  - (6) other background information that will assist in assessing the claim; and
  - (7) a legal opinion.

5.6.7 Claims that arise during the performance of a project are often unforeseeable. In some cases, however, it is possible for the project manager to foresee that a change in the contract is probable, thereby giving rise to a claim by the contractor. The project manager should then keep precise records concerning the potential claim area, in order to facilitate the settlement of the claim.

## 5.7 Review and Analysis of Claims and Disputes

5.7.1 Under the contract, the Contractor must notify the Engineer of his/her intention to claim or present any protest against the interpretation of the contract by the project manager, in writing within ten days of the date that the event occurred or written notice of interpretation was given. If this time frame is not respected, extra payment shall not be made to the contractor in respect of the occurrence.

5.7.2 Once the written notice of claim has been given by the contractor, the quantities and costs of the labour, plant or material involved in the claim must be verified.



- 5.7.3 The proposed contract between the Band Council and the contractor lists three possible ways of quantifying changes, namely:
- a. by using applicable contract unit prices (GC 48);
  - b. if the Unit Price Table does not contain an applicable unit price, the detailed cost of the labour, plant or material shall be the amount agreed upon by the contractor and the band project manager (GC 49); or
  - c. if the parties cannot agree on a lump sum price and no applicable unit prices are part of the contract, by payment pursuant to the actual reasonable costs sustained by the contractor in performing the extra or modified work, plus 10% of the above costs (GC 50).
- 5.7.4 If the contractor is entitled to additional compensation, he/she is also entitled to be reimbursed for profit and overhead. GC 50 of the General Conditions of the proposed contract between the Band Council and the contractor allows 10% for this item.
- 5.7.5 If the contractor rents equipment, the pertinent invoices are treated as a supply of material, and the contractor is entitled to 10% for overhead and profit.
- 5.7.6 If the equipment is owned by the contractor, a reasonable monthly, weekly, daily or hourly rate has to be agreed to between the band and the contractor. Generally, the rental rate includes profit and overhead.
- 5.7.7 Subcontractor charges are considered as a supply of material and treated accordingly.
- 5.7.8 It must be remembered that not every claim of a subcontractor is payable by the Band Council. There are situations when the general contractor may be liable to a subcontractor without being able to pass on such a liability to the Band Council.
- 5.7.9 The extra costs claimed by the contractor must be reasonable, that is, the extra work must be performed efficiently. This principle should be kept in mind, although it is rather difficult to prove inefficiency.
- 5.7.10 It should be noted that most construction contracts demand that a schedule of the work be submitted for approval and/or correction. This schedule of the work, once approved by the project manger, constitutes the target for the contractor's performance, and any delay by the Band Council may be a basis for a claim from the contractor.
- 5.7.11 Costs associated with delay and/or acceleration include the following:
- a. Direct costs are based on time, and are directly increased by an extended duration. Examples of such direct costs are: site supervision and administration, temporary services, temporary offices and storage facilities, insurance, permits and bonds. The cost is taken directly from the contractor's books.
- Besides the time-oriented non-production cost items mentioned above, there are other costs which may be encountered on a project that has been subject to significant delays. These include the cost of escalation (labour, material and equipment), and the loss of productivity due to changed conditions.

The costs outlined above are typical general contractor's costs. The same principles apply for the calculation of damages payable to the band when the contractor is responsible for the delay.

Another direct cost relating to extension of time is loss of head office overhead. It is the practice of most contractors to add a single percentage to their estimate to cover this. During a delay, a contractor continues to incur the expenses of head office overhead without having any construction activity to charge them against. GC 50 provides for this cost.

Finally the regular business of the contractor is further hampered by having a substantial portion of bonding capacity tied up.

- b. The direct costs of extended duration are easily identified, as they are proportional to the delays or disruptions. There are, however, some other losses that may derive from delay or disruption, regarding efficiency and cost of construction. These are called the impact costs.
- c. Costs usually incurred for accelerated construction are the following:
  - increased cost of supervision;
  - additional equipment rental;
  - additional materials;
  - extra moves (formwork, equipment, etc);
  - additional mobilization (for example, additional accommodation);
  - overtime premiums;
  - overstaffing; and
  - loss of efficiency resulting from overtime work.

## 5.8 Possible Ways to Resolve Claims

- 5.8.1 Whatever pricing technique has been used to evaluate the claim, it is essential that good communications be maintained with the contractor, in order that he/she be satisfied that his/her claim is given proper consideration and that a fair assessment is taking place.
- 5.8.2 It is to the advantage of both the Band Council and the contractor to resolve contract claims as soon as possible and not to allow them to become full-fledged disputes. This is particularly important because prolonged claims can delay performance as well as the payment to the contractor. Further, a prompt settlement can avoid the expenses incurred in the preparation and study of a formal claim. An honest negotiation of claims between the project manager and the contractor is always profitable to both parties.
- 5.8.3 When a claim has not been resolved by negotiation, the assistance of a third party may be used, if acceptable to both the Band Council and the contractor.
- 5.8.4 There are three processes available for the resolution of disputes:
  - .1 mediation
  - .2 arbitration
  - .3 litigation

- 5.8.5 Mediation is a process whereby the mediator uses persuasion to bring about a resolution of the dispute. The mediator does not adjudicate. The mediator selected must be acceptable to both parties to the contract.
- 5.8.6 Unlike mediation, the awards made by the arbitrator are binding on the parties and will normally be confirmed by the courts. Only in the cases of misconduct of the arbitrator (fraud, bias, impropriety), failure on the part of the arbitrator to observe the rules of natural justice, ambiguity in the award and clear errors of law, will a court review and set aside an award.
- 5.8.7 Every province has promulgated an Arbitrations Act that gives the procedures to be followed when the arbitration process is used. Reference should be made to the relevant provincial Act before proceeding with the arbitration process.
- 5.8.8 Litigation, which is going to court, is a very formal means of resolving the difference in respect of a claim. It can be lengthy and expensive and should be used for complex situations or when the dispute concerns a legal interpretation of the contract.
- 5.8.9 When litigation is to be used, the presence of a lawyer conversant with the construction industry is required and this lawyer sets up the strategy for the court action. It is therefore vital that full confidence can be established with the lawyer and that she/he be made aware of all aspects of the claim.