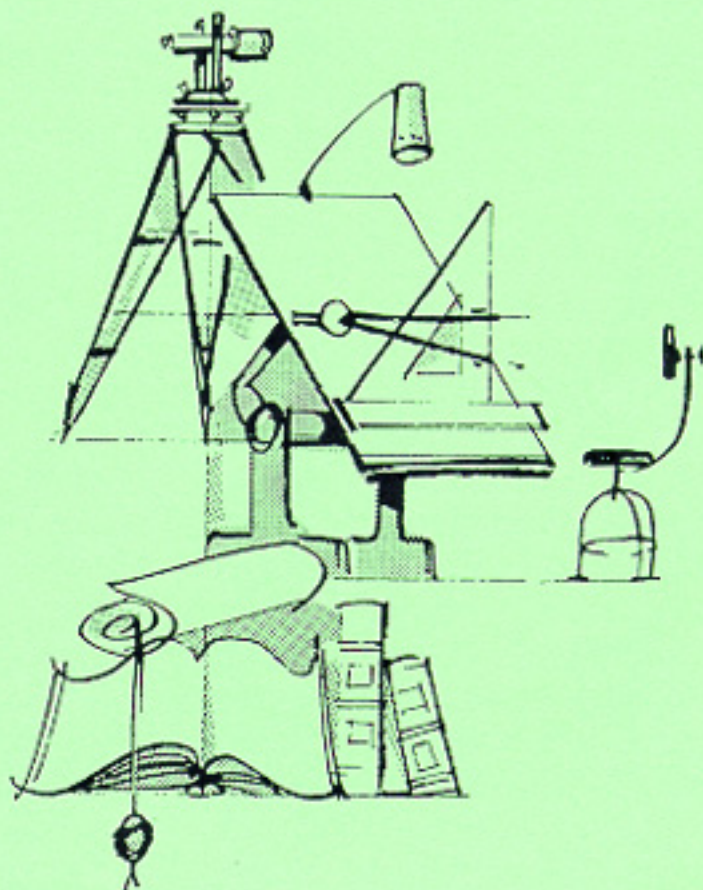




Indian and Northern  
Affairs Canada

Affaires indiennes  
et du Nord Canada

**CN2**  
**Contract Administration Training Publication**



**CONTRACTING FOR PROFESSIONAL SERVICES  
BY FIRST NATIONS AND ABORIGINAL COMMUNITIES**

Canada

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**CN2**

**Contracting for Professional Services  
by First Nations and Aboriginal Communities**

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**April 2002**

Prepared by Real Property Services for INAC  
(PWGSC) for Indian and Northern Affairs

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

# CONTRACTING FOR PROFESSIONAL SERVICES

## Table of Contents

	<b>Page</b>
<b>1.0 INTRODUCTION</b>	<b>1</b>
1.1 Purpose and Scope	1
1.2 Definitions	1
<b>2.0 PROPOSALS</b>	<b>3</b>
2.1 Guidelines	3
2.2 Preparation and Distribution of Request for Proposal Documents	3
2.3 Method of Payment	4
2.4 Issue of Amendments to Request for Proposals	5
2.5 Receipt and Opening of Proposals	5
2.6 Cancellation of Proposal Call	6
<b>3.0 CONTRACT AWARD</b>	<b>7</b>
3.1 Evaluation of Proposals	7
3.2 Award of Contract	8
3.3 Notification to Unsuccessful Firms or Individuals	8
3.4 Debriefing of Unsuccessful Firms or Individuals	8
3.5 Sole Source Selection	8
<b>4.0 ADMINISTRATION AND MANAGEMENT OF THE CONTRACT</b>	<b>9</b>
4.1 Contract Preparation	9
4.2 Insurance	10
4.3 Change Orders	10
4.4 Assignment of Contract	11
4.5 Default by the Contractor	11
4.6 Termination	13
4.7 Notices	15
4.8 Progress Payments	15
4.9 Evaluation	16
4.10 Records	17

## CONTRACTING FOR PROFESSIONAL SERVICES

### APPENDICES

1	Request for Proposals:	
	- Letter of Invitation - Attachment A	19
	- Terms of reference - Attachment B	20
	- Proposal Evaluation Criteria - Attachment C	21
	- Contract for Services (Long Form) - Attachment D (greater than \$10,000)	22
	- Contract for Services (Short Form) - Attachment E (less than \$10,000)	40
2	Register of Proposals Received by Opening Committee	43
3	Sample Proposal Evaluation Criteria and Assigned Weights	44
4	Procedure for Evaluation of Proposals	46
5	Sample Evaluation Committee Recommendation Letter	49
6	Sample Award Telex	51
7	Sample Change Order	52

## CONTRACTING FOR PROFESSIONAL SERVICES

### 1.0 INTRODUCTION

#### 1.1 Purpose and Scope

This publication outlines suggested policies and procedures which could be followed by bands when contracting with individuals or firms for professional services. Contracting should be carried out in such a manner as to ensure that the band obtains best value for the funds spent. The application of the procedures outlined will assist the band to deal with individuals or firms in a manner which is generally accepted practice.

When a band does not have the in-house resources to prepare documents, invite proposals, award a contract and carry out the administration and management duties the contract entails, the band should normally retain specialists to do this for them. In some cases, specialist assistance may only be required for some aspects of the overall contracting process.

#### 1.2 Definitions

Professional Services: services which are provided by firms/ individuals with a high level of ability and knowledge in a professional, scientific, technical or managerial field.

Band representative: in the rest of this publication called the manager; the officer who has been designated as responsible for the day to day management of the contract.

Band contract officer: in the rest of this publication called the contract officer; the officer responsible for contract administration.

**NOTE:** *The manager and the contract officer may be band members or outside specialists hired specifically to carry out the duties of these positions on behalf of the band.*

Throughout the contracting process, the manager and the contract officer should consult each other when either is contemplating taking any action which may affect any part of the process. While they each have specific duties, the actions of either one may require steps to be taken by the other to ensure the integrity of the contracting process. For small contracts both positions may, of course, be held by the same person.

Competition: a method used to acquire services from the private sector and by which a particular firm or individual is selected from among others who submitted proposals to carry out work.

Contractor: the firm or individual who proposes to provide professional services to the band. In the private sector these firms or individuals are usually referred to as consultants.

Contract administration: includes all duties relating to the preparation of source lists of potential contractors, proposal documents, contract documents, change orders, and the maintenance of administrative records.

Contract management: dealing with the contractor to ensure compliance with all contract terms and conditions, certifying progress payments as appropriate, maintaining proper records, and reporting as required on the progress of the work.

Cost estimate: the amount of money which the band council estimates will be required to carry out the work.

Closing date and time for receipt of proposals: the specified date and exact time by which proposals are to be received by the band council from firms or individuals in order to be considered valid.

Evaluation criteria: elements to be applied in the assessment of proposals in order to determine the best proposals for the required services. A sample of criteria generally used is included in Appendix 1.

Proposal: an offer to provide services submitted by firms or individuals in response to a request from the band council. A proposal is considered to be valid if it meets all of the requirements stated in the request for proposals.

Request for proposals: an invitation sent to selected qualified firms or individuals to submit proposals to provide the required services. This consists of a letter of invitation, terms of reference, proposal evaluation criteria, articles of agreement and general conditions. A sample letter and the supporting documents are included in Appendix 1.

Request for proposals amendment: an addition, deletion, correction or modification to the original request for proposals.

## 2.0 PROPOSALS

### 2.1 Guidelines

Professional services to be obtained from the private sector, that are estimated to cost \$10,000 or more, should be obtained by competition whenever possible in order to obtain best value.

Qualified firms and individuals should be given the opportunity to obtain contract work on a competitive basis.

Services should not be requested unless funds are available in an amount which the band council feels will be adequate to carry out the work.

### 2.2 Preparation and Distribution of Request for Proposal Documents

The band council should:

- a. prepare a cost estimate which they consider realistic to carry out the work so that funds may be made available before a contract is awarded;
- b. prepare a terms of reference which clearly states the objectives to be met and details the work the contractor will be required to carry out and which will form part of the contract document. A sample of the elements of a Terms of Reference is included in Appendix 1;
- c. indicate to firms and individuals being invited the specified method of payment (see 2.3);
- d. develop evaluation criteria on which proposals will be evaluated (a sample of criteria generally used is included in Appendix 1);
- e. determine the names of four or five firms or individuals who would be considered qualified to carry out the work;
- f. set a closing date and time for the receipt of the proposals -- a minimum of 10 working days should be allowed for contractors to prepare and submit proposals;
- g. compile a proposal package (the documents generally included in a proposal package are included in Appendix 1); and
- h. mail the proposal packages to the selected firms and individuals -- any other firm or individual may, on request, be forwarded a proposal package if the band council feels they are qualified, and wish to receive a proposal from them.

## 2.3 Method of Payment

The method of payment can be based either on a fixed price or on a maximum authorized amount.

When preparing the contract care must be taken to ensure that the method of payment is consistent with that in the proposal. The normally acceptable methods of payment are as follows:

- a. Fixed fees - all inclusive, it includes fees, travel, disbursements, overhead and profit. The typical clause used is "The fixed price includes all fees - travel and other costs required to complete the work". It is to be used when work can be clearly described in terms of quality or quantity. This is generally the preferred method.
- b. Fixed per diem or other time rates - with a ceiling price. The typical clause used is "The Contractor agrees to complete the work specified for an amount not exceeding \$xx,xxx." The per diems or other time rates should all be specified in the terms of payment. This is the appropriate method when the scope or quantity of work cannot be determined precisely but the contractor is agreeing to a maximum price.
- c. Fixed unit price - a maximum authorized amount based on a fixed cost per unit for an estimated quantity as stated in the proposal documents. This method is appropriate when the work consists of clearly defined units, such as the production of aerial mapping sheets. The unit price usually includes all expenses.
- d. Fixed price for fees - plus estimated expenses up to a maximum authorized amount. This method is appropriate when the quantity of work can be pre-determined precisely but the expenses involved are variable.
- e. Fixed per diem or other time rates with an estimated total number of days together with estimated expenses. This method is appropriate when the amount of work cannot be determined and may be altered as the work progresses.
- f. Payroll costs multiplied by a factor - This method is appropriate as in e. above when the amount of work cannot be determined.

*NOTE: The typical clause to be used for c., d. and e. is "not to be exceeded without the approval of the signing authority by means of a written change order".*

*When disbursements are made and they are to be paid at cost, or cost plus markup, the claim should be supported by receipts. These disbursements should be itemized in the proposal and placed in the terms of payment in the same way. A markup on disbursements is not standard practice. The terms of payment should specify limits for all expenses. These limits should have been made known to prospective proposers at the invitation stage.*



Contracts based on time and fixed per diem rates should be closely monitored to ensure schedules are maintained and requests for additional time are curtailed.

#### 2.4 Issue of Amendments to Request for Proposals

An addition, deletion, correction or modification may be made to a request for proposals after it has been sent to the firms and individuals. If the change is significant the band council may wish to extend the closing date.

Written notification of the amendment should be sent to all firms and individuals who were sent the original packages.

#### 2.5 Receipt and Opening of Proposals

The band council should:

- a. ensure that each proposal and amendment is recorded when received and initialed, together with the time and date received, and placed unopened in a locked cabinet -- letters and telexes amending the proposals already received should also be recorded in the same manner and placed with the unopened proposal;
- b. accept only written amendments (for example, by telegram or by telex), received prior to the time designated for receipt of proposals;
- c. ensure only proposals received at the band council office designated by the proposal invitation are considered -- a contractor delivering proposals to any other office is to be instructed to deliver them to the designated office;
- d. not divulge the names of firms invited to submit proposals or the number of proposals received to anyone prior to the specified closing date, but upon request from a contractor prior to opening, he/she may be advised whether their proposal has been received;
- e. not agree with any request from a contractor to withdraw his/her proposal prior to the closing time and date, unless the request is provided in writing and is signed by the contractor's authorized representative;
- f. not consider proposals received after the specified closing time -- these proposals should be dated and time stamped, and returned unopened within 24 hours after receipt to the contractor with an explanatory letter -- both sides of the proposal envelope should be photocopied and the copies placed on file for future reference;
- g. ensure proposals are opened as soon as practicable after the closing time and in the presence of only those contractors who have submitted proposals, and who wish to attend the opening;
- h. ensure proposals are opened by a band council proposal opening committee consisting of at least three persons;

- i. prior to their opening, have the chairperson state the following:
  - the official name of the project;
  - that all proposals are subject to evaluation and assessment; and
  - that no questions concerning proposals will be answered at the opening;
- j. provide the following information after opening each proposal:
  - the name and address of each contractor; and
  - the total amount of each proposal, including total increases or decreases by amendments with the revised total amount;
- k. ensure that the committee secretary records this information on the "Register of Proposals Received by the Opening Committee" (see Appendix 2). The register should be signed by the committee members who opened the proposals certifying they were received on or before the date and time stated in the request for proposals;
- l. ensure that no proposals are disqualified during the official proposal opening; and
- m. respond to enquiries received after the official opening, from contractors wanting information relating to proposals, with only the names and addresses of the firms who submitted proposals, and the total amount of each proposal.

## 2.6 Cancellation of Proposal Call

In cases where it appears advisable not to proceed with a proposal call or award of contract, after receipt of proposals, the band council should advise all bidders accordingly in writing.

### **3.0 CONTRACT AWARD**

#### **3.1 Evaluation of Proposals**

An evaluation committee (of at least three persons) should be formed and assigned to review and evaluate the proposals received. The committee would then recommend the most acceptable one. The committee should consist of a chairperson and at least 2 other individuals, all of whom are knowledgeable about the work being contracted.

An evaluation of all the proposals for a particular contract should be conducted by the evaluation committee to determine which one best meets the objectives of the proposed contract work and offers the best value. Before inviting the proposals, the committee should assign weights to each of the criteria contained in the request for proposals package. The assigning of weights before the invitation of the proposals ensures an unbiased rating. The weights should be disclosed to contractors before the award of the contract. See Appendix 3 for sample proposal evaluation criteria and assigned weights.

The evaluation committee should evaluate the proposals based on the established criteria and assigned weights. The evaluation should assess how well the proposals meet the requirements specified in the terms of reference in addition to the other criteria. All proposals should be reviewed or evaluated separately by each committee member in order to obtain an independent rating. When the individual evaluation is completed the committee should meet to arrive at a consensus and make a recommendation. A procedure for evaluating proposals is attached as Appendix 4.

Evaluation committee members should ensure that each proposal is evaluated on all criteria and that the evaluation is logical. For example the firm which submits the lowest bid should be given the highest rating under 'cost criteria'.

If the evaluation committee wishes to clarify some points in the proposal, they should arrange a meeting with the firm or individual involved. This should be done before the final rating is established. The band council should obtain written confirmation of any clarifications that affect the proposal as submitted.

The evaluation committee should not disqualify a proposal. The evaluation of the proposals in accordance with the rating criteria and weights should result in a deficient proposal receiving a rating which reflects the deficiencies.

### 3.2 Award of Contract

The band council should ensure that the evaluation supports the recommended award. A sample Evaluation Committee Recommendation Letter is attached as Appendix 5.

The band council may wish to award the contract before preparing the formal contract documents. The band council representative may issue an award telegram to the successful firm or individual. The award telegram represents acceptance of the offer and should refer to the request for proposals and any negotiated changes. Appendix 6 contains a sample award telex.

### 3.3 Notification to Unsuccessful Firms or Individuals

The band council should advise all other contractors of the name of the firm that has been awarded the contract, in writing.

### 3.4 Debriefing of Unsuccessful Firms or Individuals

If an unsuccessful contractor requests it, schedule a meeting to answer questions.

Unsuccessful contractors should only be provided with the names and addresses of other contractors, and the total amount of each proposal if the proposal had been called on the basis of a fixed price. If requested, contractors may be advised of the weak areas of their proposal. Details of other proposals should not be discussed. The band council should ensure that details of other proposals are kept confidential.

### 3.5 Sole Source Selection

If the band council wishes to select a contractor without competition, care should be taken. If the same contractor is always chosen by this method, others who might be able to provide a better price or quality of work will be discouraged. It is recommended that this selection method only be used when the contract is of a small dollar value, or when the particular contractor is the only one who has the expertise or resources available to do the work within the time frame required.

When using this method, the band council should ensure that the price is fair and reasonable, the contractor has the required knowledge and resources to carry out the work, and the proposal meets all the requirements of the terms of reference .

When selecting a contractor without a competition, the band should ensure that:

- a. a proper terms of reference has been developed;
- b. a written proposal has been received from the contractor; and
- c. the best price and quality of work will be obtained.

## 4.0 ADMINISTRATION AND MANAGEMENT OF THE CONTRACT

### 4.1 Contract Preparation

#### 4.1.1 Responsibility

The contract officer should prepare the contract document immediately following contract award. The contract must conform to the documents on which the contractor's offer is based. This includes the proposal, provided it is not at variance with the other contract documents, and any negotiated amendments agreed to prior to contract award. The inclusion of any document or work other than those specified in the proposal documents is considered to be a counter-offer and may be rejected by the contractor.

#### 4.1.2 Contract Document

For professional services, the contract should provide for the following:

- interpretation,
- general conditions,
- payment conditions, and
- terms of reference.

Samples of this type of contract are contained in the appendices.

#### 4.1.3 Contract Execution

The band council should sign three copies of the contract and the contract officer should mail them to the contractor for signature. A fourth copy should be retained for band records.

The Contractor should sign all three copies of the contract and return two of them to the contract officer.

The contract officer should scrutinize contract documents returned by the contractor to ensure that no alterations have been made. If the contractor has made changes they may not be acceptable to the band. The contract officer should ensure that the contract documents are handled as quickly as possible.

#### 4.1.4 Contract Distribution

Once the contract has been signed by both parties, the contract officer should distribute copies as follows:

- one original to the contract file;
- one original to the contractor;
- one original to the band council;
- one copy to the manager for the project file; and
- others as required.

## 4.2 Insurance

The contractor should maintain insurance, as the contract may require, to protect the interests of both parties to the contract.

## 4.3 Change Orders

### 4.3.1 Authority

The manager may, subject to the band council's authorization and within reason, alter, increase or reduce the work, adjusting the contract price and contract time accordingly, following discussion and agreement with the contractor, without invalidating the contract.

### 4.3.2 Procedures

Changes to the contract should be made in writing by means of a change order (see sample in Appendix 7).

The manager may request changes to the contract (in writing) and the contractor should submit his/her agreement in writing by way of a quotation specifying the cost increase or decrease. The manager should review the quotation, and if in agreement, authorize the contractor to proceed.

The manager should not permit the contractor to commence work involving increased costs before the required funds have been certified as available and the proper level of authority has approved the increase in the contract price.

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 fixed price offer, if it is deemed reasonable by the manager, who should make his/her own estimate to verify it;

- b. unit prices set out in the contract -- where the contract contains a unit price schedule, additional items of the same work merely require adjustments to the schedule of quantities, and to the price;
- c. negotiation of new unit prices -- this will be required when the new units of work differ from those already in the contract; or
- d. time x fixed per diem + travel + disbursements -- this method can be used where payment is on a time rate basis and additional expenses will be incurred by the contractor in the performance of the work covered by the change order.

#### 4.4 Assignment of Contract

Assignment of contract may be either by:

- a. assignment of the work to be done or service to be provided; or
- b. assignment of the contract amount (monies), or balance of contract amount.

What the contractor may, or may not do will depend upon the contract conditions. This must be covered in the contract conditions so that the manager and or band council can exercise some control in the case of an assignment so as to protect the band's interests. Assignments can only be made by the contractor with the prior approval of the band council.

#### 4.5 Default by the Contractor

##### 4.5.1 General Remarks

Whenever there is default by the contractor, the manager should obtain legal advice. This procedure should be used for all types of default, as outlined below.

##### 4.5.2 Failure to Commence Work

If, after signing the contract, the contractor fails to commence the work in accordance with the schedule provided, she/he is in default under the terms of the contract.

The manager should notify the contractor in writing of the remedial action the band council proposes to take under the general conditions of the contract.

The contract may be subject to "termination" under the "short form" contract or the "work taken out of the contractor's hands" under the "long form" contract if the contractor fails to commence the work as required.

#### 4.5.3 Failure to Perform

If, after commencement of the work, the contractor fails to carry out the work properly, abide by the schedule or fulfill any other provision of the contract, the manager should notify the contractor by registered letter that she/he is in default of her/his contractual obligations, and instruct her/him to correct the default or provide a schedule for correction within a reasonable time after receiving the notice (for example, ten working days).

#### 4.5.4 Remedial Measures

The contractor should advise the manager in writing if the default cannot be corrected within the time specified. If the manager concurs with the revised schedule proposed by the contractor, the contractor will then be considered to have complied with the manager's instructions.

The contractor shall subsequently:

- a. begin to correct the default within the specified time;
- b. provide the manager with an acceptable schedule for the correction;  
and
- c. complete the correction in accordance with the schedule.

If the contractor fails to comply with the above provisions, the band council may, by notice to the contractor, "terminate" the contract under the "short form" contract or "take the work out of the contractor's hands" under the "long form" contract as provided for in the general conditions. If the contractor fails to pay lawful claims against him/her, the band council may pay such claims directly to the claimants using money which is owed to the contractor under the "long form" contract.

*NOTE: All communications should be by registered letter.*



#### 4.5.5 Unavoidable Delay

If the contractor is delayed for any cause whatsoever beyond his/her control, the completion date may be extended for a time mutually decided by the contractor and the manager. In no case should the extension of time be less than the time lost as a result of the delay, unless the contractor so agrees. The contractor should not be reimbursed for any costs incurred by him/her as a result of such delay if the contract was on the basis of a fixed fee (lump sum).

#### 4.5.6 Extension of Completion Date

Extensions to the completion date should be issued by change order.

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

The manager should not extend the completion date to accommodate delays without receipt of a written notice from the contractor prior to the completion date specified in the contract. Again, the contractor should not be reimbursed for any costs incurred by her/him as a result of such delay if the contract was on the basis of a fixed fee (lump sum).

### 4.6 Termination

#### 4.6.1 Authority

The general conditions of the contract should provide for termination of the contract with respect to all or any part or parts of the work not completed for reasons other than the default of the contractor, e.g. the service is not required anymore by the band council.

#### 4.6.2 Procedures

Procedures for terminating a contract are as follows:

- a. The band council's authorization should be required to terminate the contract. The manager, on her/his own authority, should be allowed to place the contractor on notice.
- b. When the contract is terminated the manager shall immediately determine and record the following:

- (1) the total value of the work completed to date;
- (2) the total payments made to the contractor;
- (3) the total value of the contract, including approved change orders;
- (4) a list of all known creditors for the project showing the unpaid balance due to each (any claims from such creditors must be supported by affidavits).

#### 4.6.3 Completion by the Band

If the work is taken out of the contractor's hands (under the "long form" contract):

The manager, in consultation with the band council should take appropriate action (for example, call for proposals to have the project completed by others). The manager should confirm that funds are available if the costs are estimated to exceed the funds remaining in the contract. The second contract should 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 creditors with lawful claims against the original contractor have been paid for the portion done before the work was taken from her/him. All costs incurred in completing the contract should be accurately recorded by the manager. These costs are the basis for any claim against the original contractor if the funds remaining in the contract are inadequate.

#### 4.6.4 Band's Rights

If the contract is taken out of the contractor's hands, the band council should be entitled to:

- a. take possession and title to the products and utilize the whole, 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 final cost of the work is known; and
- 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 manager and will include reimbursement of the manager's costs for additional services) or, if such cost of finishing the work is less than the unpaid balance of the contract price, pay the contractor the difference subject to settlement of all outstanding legal claims.

These procedures, if followed, should protect the interest 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.

#### 4.7 Notices

All notices, whether issued by the manager or the contractor under the general conditions, must be in writing to ensure they will meet all legal and contractual requirements.

#### 4.8 Progress Payments

##### 4.8.1 Provision for Progress Payments

Progress payments, sometimes referred to as payment on account or progress claims, may be provided for in the contract. If so, the contractor may apply for these in the course of work, under the terms of payment specified in the contract. The amount claimed shall be for the value, proportionate to the amount of the contract, of work performed at that date. When unit prices have been provided for an item, the payment shall be based on quantity x unit price. All requests for payment must be in accordance with the terms of payment of the contract.

##### 4.8.2 Procedures

The contractor should sign the applications for payment. The manager should also sign the applications confirming their correctness.

Progress payments should be paid promptly in order for the contractor to meet her/his financial obligations under the contract. The time of payment should be specified in the terms of payment. Delays in making payments may result in the payment of interest to the contractor on the overdue amounts.

No certificate for payment nor any progress payments made thereunder should be allowed to constitute an acceptance of any work not in accordance with the contract.

##### 4.8.3 Certification

The manager should certify all progress payments before they are submitted for payment. He/she must be satisfied that the amount claimed is in proportion to the actual work performed.

#### 4.8.4 Adjustment of Progress Payment

If the manager finds the claim excessive in relation to the actual performance, or not in accordance with the contract terms of payment, she/he may request the contractor to submit a revised progress payment or, in consultation with the contractor, reduce the progress payment accordingly.

When payments are reduced, the manager shall inform the contractor in writing of the reasons for the adjustment.

### 4.9 Evaluation

#### 4.9.1 Procedure

The manager should carry out an evaluation of major contracts shortly after completion.

#### 4.9.2 Items Evaluated

The evaluation should evaluate the project by:

- a. assessing the contractor's performance;
- b. evaluating the communication among the contractor, manager and band (when applicable);
- c. rating the contractor's adherence to schedules;
- d. showing whether extras were kept to a minimum;
- f. assessing the quality of work; and
- g. having met the objectives.

It is essential that all evaluations be accurate and objective and that, where any judgmental comments are provided, they be supported by complete and factual supporting detail. This is particularly important when the evaluation is negative.

#### 4.9.3 Contractor's Comments

A copy of the evaluation should be given to the contractor and he/she should be encouraged to submit comments to the manager in writing. The evaluation and the contractor's comments should be placed on file for reference and possible use in evaluating the contractor on subsequent proposal calls.

#### 4.10 Records

The manager and the contract officer should 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 or later problems which may be encountered with the project. In general, the records should contain:

- a. preliminary and design notes, minutes and correspondence;
- b. the proposal with related documents and funding allocation records;
- c. award telegrams, letter and contract;
- d. correspondence to and from the contractor;
- e. minutes of meetings; and
- f. progress payments and certificates;
- g. change orders; and
- h. other related information.

## APPENDIX 1

### Request for Proposals

The request for proposals consists of the following documents:

- A Letter of Invitation - Attachment A
- A Terms of Reference - Attachment B
- Proposal Evaluation Criteria - Attachment C
- A copy of the "long form" contract document (\$10,000<sup>+</sup>) - Attachment D OR
- A copy of the "short form" contract document (\$10,000<sup>-</sup>) - Attachment E

**Appendix 1  
Attachment A**

**SAMPLE  
Letter of Invitation**

Dear

The Band Council invites you to submit a proposal for the following project:

\_\_\_\_\_.

Your proposal should be prepared in accordance with the requirements of the attached terms of reference , Proposal Evaluation Criteria, Articles of Agreement, and General Conditions. Please quote on the basis of

\_\_\_\_\_.\*

Three sealed copies of your proposal shall be delivered to the following address, in the attached envelope, on or before \_\_\_\_\_ (time and date).

Mailing address of the office where the proposals will be received:

\_\_\_\_\_.

In order to be considered, proposals must be received on or before the exact time set for the receipt of proposals. Proposals or amendments thereto received after this time will not be considered.

Telegraphic proposals will not be accepted; but where a formal proposal is received, the said proposal may be revised by letter, telegram, telex or fax before the specified closing time.

If you have any questions or wish to discuss the proposal, please contact

\_\_\_\_\_ at \_\_\_\_\_.

The lowest or any proposal will not necessarily be accepted.

Yours sincerely,

Attachs.

\* The Band Council must specify the basis and method of payment to be used.

**Appendix 1  
Attachment B**

**Terms of Reference  
Professional Services**

The terms of reference prepared by Band Council shall include as appropriate, (but is not necessarily confined to) the following elements:

Background

A statement outlining the situation leading to the requirements.

Objective

A statement describing that which is to be achieved.

Scope of Work

A description of the range and extent of the work.

Constraints

Details on any constraints imposed -- current and proposed related activities, security, sensitivity to other interests, protection of the environment, conservation of resources and other relevant restrictions.

Band Council Support

Details of any available Band Council support and responsibilities, the availability of relevant existing documents, and the manner in which work documents shall be presented.

Time Schedule

A schedule for the completion of each stage of the work and for the entire work.

Progress Reporting

Progress report requirements and other control procedures to be applied by the Band Council during the work.

Approval and Acceptance

Approval and acceptance requirements relating to performance of the several stages and of the work as a whole.



**Appendix 1  
Attachment C**

**Proposal Evaluation Criteria**

The following criteria should be used by Band Council to evaluate the proposals:

1) Contractor/Firm

Experience and satisfactory performance on similar work in the same subject area for Band Councils, the government or the private sector.

2) Project Team

The number, qualifications and experience of personnel to be assigned to the work or made available.

3) Proposal

The depth and detail of the submission which indicates the contractor's understanding of the size, complexity and time constraints of the work.

4) Schedule

The proposed time schedule for the work in relation to the time schedule proposed by the Band Council.

5) Control

The management of the work: delegation of responsibility, work plans, scheduling and cost control, reporting and quality control.

6) Methods

The methodology proposed, the technical methods to be utilized in the performance of the work and any innovative and constructive ideas presented.

7) Costs

The total cost of the work and the proposed fees.

**MODEL  
INSTRUCTIONS FOR COMPLETION OF  
CONTRACT FOR PROFESSIONAL SERVICES  
(LONG FORM)  
(\$10,000+)**

(To be detached by Band Contract Officer)

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**PAGE 1**

Enter the date of the contract in the space provided for that purpose. This is normally the date the Contractor is notified by the Band Council, verbally or in writing, that the Contractor is awarded the contract.

**SECTION 1**

Enter the name, position and address of the Band Representative.

**SECTION 2**

Enter the number of days within which the services have to be completed.

**SECTION 3**

Enter the estimated total sum to be paid under Section 4 of the contract. Being an estimate, this total amount may not necessarily be expended in its entirety. However, it represents the maximum amount that can be expended under the contract, unless an amendment has been approved at the appropriate level.

**SECTION 4**

Enter the basis of payment in the appropriate blanks. Enter N/A where not applicable.

For the per diem time rate, enter the normal working hours per day in the appropriate blank. The normal working hours per day are established in accordance with the current practice in the trade or the profession related to the contract and should never be less than 6 hours in a 24 hour period.

**MODEL**  
**INSTRUCTIONS FOR COMPLETION OF**  
**CONTRACT FOR PROFESSIONAL SERVICES**  
**(LONG FORM)**  
**(10,000+)**

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**SECTION 4 (cont'd)**

**Material and Special Equipment**

If required, enter details, e.g., specialized vehicles, boats, charter aircraft, electronic distance measuring devices, etc. Enter N/A if not applicable.

**Holdback**

If required, enter the percentage of holdback in the space provided. Enter N/A if not applicable.

**Payment Stages**

If partial payments other than monthly payments are to be made, enter details in the space provided. Enter N/A if not applicable.

**SIGNATURE PAGE**

Have the contract signed by the authorized signing officer(s) of the Contractor and at the appropriate level by the departmental officials. The Contractor's signatures should be as follows:

1. **Corporation** - The signature of the authorized signatories shall be affixed and the signatories' name and title typed or printed in the space provided and the corporate seal should be affixed. If the corporate seal is not affixed, the signatures shall be witnessed and proof of signing authority shall be provided.

In the Province of Quebec, signatures must be witnessed and proof of signing authority must be provided whether or not a corporate seal is affixed.

2. **Partnership** - 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 the signatory to execute the document on their behalf shall be provided.

**MODEL**  
**INSTRUCTIONS FOR COMPLETION OF**  
**CONTRACT FOR PROFESSIONAL SERVICES**  
**(LONG FORM)**  
**(10,000+)**

**Page 3 of 3**

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**SIGNATURE PAGE (cont'd)**

An adhesive coloured seal shall be affixed next to each signature except in the Province of Québec.

3. **Sole Proprietorship** - The signature of the sole proprietor shall be affixed and the name typed or printed in the space provided. The signature shall be witnessed. When the signatory is not a sole proprietor, a certified true copy of the agreement signed by the sole proprietor authorizing the signatory to execute the document shall be provided.

An adhesive coloured seal shall be affixed to the signature except in the Province of Québec.

4. **Joint Venture** - 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 signatories shall sign the document in the manner applicable to their particular business arrangements as described in paragraphs 1., 2, and 3. above.

**APPENDIX "A"**

Give a complete description of the services to be performed by the Contractor.

If necessary, further pages may be added to the Appendix; in this case, the pages must be numbered.

**MODEL  
CONTRACT FOR PROFESSIONAL SERVICES  
(LONG FORM)  
(\$10,000+)**

<b>Project Title</b>	<b>Contract No.</b>
	<b>File No.</b>
	<b>Financial Code</b>

This Contract is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**BETWEEN**

The Band Council of the \_\_\_\_\_ Band hereinafter referred to as the Band Council

**AND**

\_\_\_\_\_ (Name)

\_\_\_\_\_ (Business/Profession)

\_\_\_\_\_ (Address/Telephone)  
(hereinafter referred to as the "Contractor").

**The Band Council and the Contractor agree as follows:**

**1. INTERPRETATION**

**In this contract:**

.1 **"contract"** means this contract document and any amendment thereto and includes any appendices that may be referred to herein and hereunto annexed;

.2 **"Band Representative"** means:

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

and includes a person authorized by the Band Representative to perform any of the Band Representative's functions under the contract;

**MODEL  
CONTRACT FOR PROFESSIONAL SERVICES  
(LONG FORM)  
(\$10,000+)**

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**Page 2 of 14**

**1. INTERPRETATION (cont'd)**

- .3 **"Band Council"** includes a person acting for the Band Council or their representatives appointed for the purpose of the contract;
- .4 **"services"**, except where otherwise expressed in this contract, means everything that is necessary to be performed, furnished or delivered by the Contractor to meet the Contractor's obligations under the contract; and
- .5 **"technical documentation"** means designs, reports, photographs, surveys, drawings, plans, specifications, computer software, computer print-outs, calculations and other data, information and material prepared, collected, computed, drawn or produced for the services.

**2. PERFORMANCE OF SERVICES**

The Contractor shall perform and complete the services described in Appendix "A" hereto, within \_\_\_ days after the date of the contract with care, skill, diligence, efficiency and in a manner satisfactory to the Band Representative.

**3. PAYMENT**

- .1 Subject to the terms and conditions of this contract and in consideration for the performance of the services, the Band Council shall pay to the Contractor a fee as set out or calculated in accordance with Section 4.
- .2 The amount payable under the contract including disbursements shall not exceed the sum of \_\_\_\_\_ without the prior written authorization of the Band Representative. The amount payable under the contract includes all applicable taxes except GST which is extra.
- .3 It is understood and agreed by the Band Council and by the Contractor that the fee is only payable when the services have been performed to the satisfaction of the Band Representative. Payment in respect of the performance of a phase or part of a phase of the services may be made but this payment shall not be deemed a waiver of Band Council's rights of set-off at law or under the contract for costs or expenses arising from default of negligence of the Contractor in the performance of that phase or part of that phase of the services.

**MODEL  
CONTRACT FOR PROFESSIONAL SERVICES  
(LONG FORM)  
(\$10,000+)**

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**4. BASIS OF PAYMENT**

**.1 Fixed Fee**

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**.2 Time Rates**

**.1 Per Diem**

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Normal working hours per day shall be \_\_\_\_ hours. Portions of a day shall be paid on a pro rata basis.

**.2 Per Hour**

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**MODEL  
CONTRACT FOR PROFESSIONAL SERVICES  
(LONG FORM)  
(\$10,000+)**

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**4. BASIS OF PAYMENT (cont'd)**

.3 Payroll Cost multiplied by a factor of \_\_\_\_\_

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"Payroll cost" means the actual cost of any person employed by the Contractor or the Contractor's sub-contractors as a staff member including principals employed as staff members, and includes an amount for salary, statutory holidays, vacation with pay, unemployment insurance premiums where applicable, worker's compensation contributions, pension plan contributions, sick time allowance and such other employee benefits as may be approved by the Band Representative.

The multiplying factor shall not be applied to the premium portion of authorized overtime included in payroll cost.

.4 Travelling time authorized by the Band Representative during normal working hours shall be chargeable as time worked. Authorized travelling outside normal working hours shall be chargeable up to a maximum of 3 hours per day. However, not more than 8 hours in any one day shall be claimed for time spent in travelling.

**.3 Reimbursable Expenses**

.1 Miscellaneous expenses incurred by the Contractor (excluding normal business operating costs) that are not included elsewhere in the contract, and are related to the services and approved by the Band Representative, including, but not limited to, shipping charges for material samples, translation costs, extra copies of drawings and specifications, photographs, reports, long distance telephone, telex and telegram charges, shall be reimbursed at actual cost to the Contractor.



**MODEL  
CONTRACT FOR PROFESSIONAL SERVICES  
(LONG FORM)  
(\$10,000+)**

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**4. BASIS OF PAYMENT (cont'd)**

.2 Travel and Accommodation costs incurred by the Contractor for travel and accommodation authorized by the Band Representative shall be reimbursed to the Contractor.

**.4 Material and Special Equipment**

Payment for any material and special equipment used by the Contractor for the performance of the services, which is not provided for elsewhere in the contract, shall be determined as follows:

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**.5 Holdback**

A holdback of \_\_\_% shall be retained from all payments made prior to the final payment and shall be released with the final payment. The final payment shall be made when the services have been completed to the satisfaction of the Band Representative.

**.6 Payment Stages**

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**MODEL  
CONTRACT FOR PROFESSIONAL SERVICES  
(LONG FORM)  
(\$10,000+)**

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**5. PAYMENT CONDITIONS**

**.1 Progress Payments**

- .1 The Contractor shall be entitled to receive payment at monthly or other agreed intervals for services satisfactorily performed.
- .2 A claim for payment must be supported by sufficient detail and documentation to substantiate the amount claimed. The final claim for payment must also include a statement signed by the Contractor certifying that all amounts owing to the Contractor under the contract are included in the claim.
- .3 Subject to verification by the Band Representative, payment of claim submitted pursuant to paragraph 5.1.2 shall be made to the Contractor not later than 30 days after receipt. If additional information is requested by the Band Representative within 15 days of receipt of the claim for the purpose of verification, payment shall be made not later than 30 days after receipt of the requested information or a corrected claim.
- .4 The Contractor's invoice shall show as separate items:
  - .1 the amount of the progress payment being claimed for services satisfactorily performed excluding any GST charges,
  - .2 the amount for GST calculated in accordance with the applicable legislation, and
  - .3 the total amount which shall be the sum of the amounts referred to in subparagraphs 5.1.4.1 and 5.1.4.2 above.

**.2 Interest on Overdue Accounts**

- .1 If the Band Council fails to make a payment that is due in accordance with subsection 5.1, 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.

**MODEL  
CONTRACT FOR PROFESSIONAL SERVICES  
(LONG FORM)  
(\$10,000+)**

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**5. PAYMENT CONDITIONS (cont'd)**

- .2 Interest shall be paid automatically on all amounts that are not paid within 15 days after the due date. Interest shall not be paid on amounts paid within 15 days after the due date and the Band Council shall not be liable to pay to the Contractor any interest on unpaid interest.
- .3 The rate of interest shall be at the current prime lending rate established by the Band's banking institution.

**.3 Discharge of Contractor's Lawful Obligations**

- .1 Lawful obligations of and lawful claims against the Contractor relating to the performance of the services shall be discharged by the Contractor at least as often as payment is made by the Band Council to the Contractor for the services performed pursuant to the contract.
- .2 In the event that the Contractor fails to discharge and satisfy such lawful obligations and lawful claims in accordance with the provisions of paragraph 5.3.1, the Band Council may retain out of the amounts due or to become due to the Contractor the amounts required to discharge and satisfy such lawful obligations and lawful claims and may make the required payments directly to the claimants.
- .3 A payment made pursuant to paragraph 5.3.2 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.
- .4 The Band Representative may request a Statutory Declaration certifying that the Contractor has met the requirements of paragraph 5.3.1 above. The Contractor shall not be entitled to subsequent progress payments until such Statutory Declaration has been received by the Band Representative.

**.4 Errors and Omissions**

Notwithstanding any other provision of this contract, no payment shall be made by the Band Council to the Contractor in respect of the costs incurred by the Contractor in remedying errors and omissions in the performance of the services that are attributable to the Contractor, the Contractor's servants or agents, or persons for whom the Contractor has assumed responsibility.

**MODEL  
CONTRACT FOR PROFESSIONAL SERVICES  
(LONG FORM)  
(\$10,000+)**

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**5. PAYMENT CONDITIONS (cont'd)**

**.5 Additional Work**

Subject to subsection 5.4, payment for any additional costs incurred or to be incurred by the Contractor for changes, revisions or additions to the services performed or to be performed under this contract shall be agreed upon between the parties hereto and paid in accordance with the terms of this contract.

**6. GENERAL CONDITIONS**

**.1 Successors and Assigns**

This contract shall enure to the benefit of and be binding upon the parties hereto and their lawful heirs, executors, administrators, successors and assigns.

**.2 Assignment**

This contract shall not be assigned in whole or in part by the Contractor without the prior written consent of the Band and any assignment made without that consent is void and of no effect.

**.3 Privileged Information**

Any information made available to the Contractor related to the services shall be treated as privileged and confidential by the Contractor except where the nature of the services requires the release of such information or where such release is authorized by the Band Representative.

**.4 Property of Documents and Copyright**

Technical documentation conceived or developed or first actually reduced to practice in performing the services under the contract shall be the property of the Band Council and the Contractor shall have no rights in and to the same. The Contractor shall not divulge or use such technical documentation other than in performing the services under the contract.

**MODEL  
CONTRACT FOR PROFESSIONAL SERVICES  
(LONG FORM)  
(\$10,000+)**

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**6. GENERAL CONDITIONS (cont'd)**

**.5 Indemnification**

- .1 The Contractor shall indemnify and save harmless the Band Council, its servants, agents and contractors, and all those for whom the Band Council may in law be responsible, from and against all claims, demands, losses, damages, costs, suits, actions and other proceedings by whomever made, sustained, brought or prosecuted and in any manner based upon, occasioned by or attributed to the activities of the Contractor, the Contractor's servants, agents or persons for whom the Contractor is in law responsible in the performance or purported performance of this contract, including an infringement or an alleged infringement of a patent of invention or any other kind of intellectual property.
- .2 The Contractor's liability to indemnify or reimburse the Band Council under this contract shall not affect or prejudice the Band Council from exercising any other rights available to the Band Council at law or in equity.

**.6 Termination**

The Band Council may, at any time, terminate the contract by giving a notice of termination in writing to the Contractor. In the event of such termination, the Band Council's obligation to make payment to the Contractor shall cease when payment for the services satisfactorily performed up to the date of termination has been made.

**.7 Default of Contractor**

- .1 The Band Council may, by written notice to the Contractor, take the whole or any part of the services out of the Contractor's hands if
  - .1 the Contractor becomes bankrupt or insolvent, or a receiving order is made against the Contractor, or an assignment is made for the benefit of creditors, or if an order is made or resolution passed for the winding up of the Contractor, or if the Contractor takes the benefit of any statute for the time being in force relating to bankrupt or insolvent debtors, or

**MODEL  
CONTRACT FOR PROFESSIONAL SERVICES  
(LONG FORM)  
(\$10,000+)**

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**6. GENERAL CONDITIONS (cont'd)**

- .2 the Contractor fails to perform any of the Contractor's obligations under the contract or, in the Band Council's opinion, fails to make progress with respect to the performance of the services to such an extent as to amount to a failure to perform the contract in accordance with its terms.
  
- .2 If the whole or any part of the services are taken out of the Contractor's hands pursuant to paragraph 6.7.1,
  - .1 the Band Representative may arrange for the services that were so taken out of the Contractor's hands to be completed, upon such terms and conditions and in such manner as the Band Representative deems appropriate, and the Contractor shall be liable to the Band Council for any excess costs incurred by the Band Council relating to the completion of the services, and
  - .2 the Contractor's rights to any payment that is due or accruing due under this contract is then extinguished and the Band Council may withhold from the amounts that would otherwise have been due to the Contractor such sums as the Band Representative determines to be necessary to protect the Band Council against any excess costs that may be incurred for the completion of the services as the result of the Contractor's default.

**.8 Records to be Kept By Contractor**

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 estimates and actual costs to the Contractor of the services together with all proper quotations, contracts, correspondence, invoices, receipts and vouchers relating thereto, and shall make them available for copy, audit or inspection by the Band Council or any person or persons acting for or on behalf of the Band Council.

**.9 Subcontracting**

Neither the whole nor any part of the services may be subcontracted by the Contractor without the written consent of the Band Representative.

**MODEL  
CONTRACT FOR PROFESSIONAL SERVICES  
(LONG FORM)  
(\$10,000+)**

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**6. GENERAL CONDITIONS (cont'd)**

**.10 Decisions/Instructions**

Upon request by the Contractor, the Band Representative shall make every effort to provide promptly written decisions, instructions, acceptances and such other information related to the contract, as may be reasonably required by the Contractor.

**.11 Local Labour and Materials**

The Contractor shall use local labour and material in the performance of the services to the full extent to which they are procurable, consistent with proper economy and the expeditious performance of the services.

**.12 Conflict of Interest**

The Contractor declares that the Contractor has no pecuniary interest in the business of any third party that would cause a conflict of interest or seem to cause a conflict of interest in the performance of the services. Should such an interest be acquired during the term of the contract, the Contractor shall declare it immediately to the Band Representative.

**.13 Contractor Status**

This is a contract for the performance of services and the Contractor is engaged under the contract as an independent contractor for the sole purpose of providing the services. Neither the Contractor nor any of the Contractor's personnel is engaged under this contract as an employee, servant or agent of the Band Council. The Contractor agrees to 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.

**.14 Member of the Band Council**

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

**MODEL  
CONTRACT FOR PROFESSIONAL SERVICES  
(LONG FORM)  
(\$10,000+)**

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**6. GENERAL CONDITIONS (cont'd)**

**.15 Amendments and Waivers**

This contract may not be amended nor modified nor shall any of its terms and conditions be waived except by agreement in writing executed by both parties.

**.16 Notices**

Any notice, request, direction or other communication desired or required to be given or made hereunder by either party shall be given or made in writing and may be served personally on the Band Representative or the Contractor or forwarded by registered mail, by facsimile or by telex addressed to the Band Representative or to the Contractor at the address shown on page 1 of this contract, respectively, and any notice, request, direction or other communication so given or made shall be deemed to have been effectively given,

- (a) if served personally, on the day it is delivered;
- (b) if forwarded by registered mail, when the postal receipt is acknowledged by the other party;
- (c) if forwarded by facsimile, on the day it is transmitted, and
- (d) if forwarded by telex, on the day it is transmitted.

Either party may designate a change of address or another person or persons to receive notices by notice in writing to the other party served in the manner set out in this clause.

**.17 Entire Agreement**

This contract constitutes the entire agreement between the parties with respect to the subject matter of the contract and supersedes all previous negotiations, communications and other agreements relating to it, unless they are incorporated by reference herein.

**.18 Time of Essence**

Time is of the essence of the contract.



**MODEL  
CONTRACT FOR PROFESSIONAL SERVICES  
(LONG FORM)  
(\$10,000+)**

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**Page 13 of 14**

**6. GENERAL CONDITIONS (cont'd)**

**.19 Canadian Funds**

All amounts of money specified in this contract are in legal Canadian funds.

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

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

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

**in the presence of**

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

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

**in the presence of**

\_\_\_\_\_  
Signature of Witness (Print title of Signatory) Corporate Seal

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**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 (Print name of Partner) Seal

**in the presence of**

\_\_\_\_\_

Signature of Witness

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

\_\_\_\_\_  
Signature of Authorized Band Officer (Print name of Officer)

**in the presence of**

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

**and countersigned by**

\_\_\_\_\_  
Signature of Authorized Band Officer (Print name of Officer)

**in the presence of**

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

**Appendix 1  
Attachment D**

**MODEL  
CONTRACT FOR PROFESSIONAL SERVICES  
APPENDIX "A"  
(LONG FORM)  
(\$10,000+)**

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**DESCRIPTION OF SERVICES**

**MODEL  
CONTRACT FOR SERVICES (PROFESSIONAL)  
(Short Form) up to \$10,000**

**INSTRUCTIONS FOR COMPLETION (To be detached by Band Contract Officer)**

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1. Enter the date of the contract in the space provided for that purpose. **This is normally the date the Contractor is notified by the Band Council, verbally or in writing, that he is awarded the contract.**
2. In the contract cost block, enter the total sum to be paid under the contract. This sum should represent the estimated total of the amounts payable under Section 2. Being an estimate, this total amount may not necessarily be expended in its entirety. However, it represents the maximum amount that can be expended under the contract, unless an amendment has been approved at the appropriate level.
3. In Section 1, give a complete description of the services to be performed by the Contractor. Enter other conditions which may be required and are not included in the conditions of the contract.
4. Enter the method of payment in the appropriate blanks; enter N/A when not applicable.
5. **Materials and Special Equipment:** If required, enter details, e.g. specialized vehicles, boats, charter aircraft, electronic distance measuring devices, etc. Check off the N/A block if not applicable.
6. **Reimbursable Expenses:** If required, enter details, e.g. miscellaneous expenses, travel and accommodation. Check off the N/A block if not applicable.
7. **Holdback:** If required, enter the percentage of holdback in the space provided. Enter N/A if not applicable.
8. **Signatures:** Have the contract signed by the authorized signing officer(s) of the Contractor and at the appropriate level by the Band Council officials. Each signature must be duly witnessed.
9. **Appendix:** If more space is required, an appendix may be attached to the contract, in which case reference(s) to the appendix should be made in the appropriate space(s).

**MODEL  
CONTRACT FOR PROFESSIONAL SERVICES  
(Short Form)**

This form should not be used if contract cost exceeds \$10,000

<b>A Contract</b>  <b>BETWEEN</b> The Band Council of the _____ <b>Band</b> (the Band Council)  <b>AND</b>		Date of contract
		Contract number
Name _____ <span style="display: block; text-align: right;">(the "Contractor")</span>		File number
Nature of business or profession		Financial code
Address and telephone number		Start date
		Completion date
Band Representative (name, position and address)	Send invoice to:	Contract cost \$  Contract cost shall not exceed the above amount (including all disbursements) without the prior written authorization of the Band Representative. The Contract cost include all applicable taxes except GST which is extra.

**THE PARTIES AGREE AS FOLLOWS:**

<b>1. DESCRIPTION OF SERVICES</b>			
<b>2. METHOD OF PAYMENT</b>			
Fixed sum \$	Hourly rate \$	Payroll cost multiplied by a factor of:	Per diem rate \$
Materials and special equipment:			Reimbursable expenses
Holdback to be retained from progress payments and released with final payment < %			

3. INTERPRETATION

- .1 **Contract** means this contract document and any amendment thereto and includes any appendices that may be referred to herein and hereunto annexed;
- .2 **Band Representative** means the person designated herein and includes a person authorized by the Band Representative to perform any of the Band Representative's functions under the contract;
- .3 **Band Council** includes a person acting for or, their representatives appointed for the purpose of the contract;
- .4 **Services** means everything that is necessary to be performed, furnished or delivered by the Contractor to meet the Contractor's obligations under the contract;
- .5 **Technical documentation** means designs, reports, photographs, surveys, drawings, plans, specifications, computer software, computer print-outs, calculations and other data, information and material prepared, collected, computed, drawn or produced for the services.

4. GENERAL CONDITIONS

- .1 **Performance of Services:** The Contractor shall perform and complete the services described in the contract to the satisfaction of the Band Representative.
- .2 **Time of Essence:** Time is of the essence of the contract.
- .3 **Labour:** Consistent with efficiency and economy, the Contractor shall employ Local labour for the performance of the services.
- .4 **Legal Relationship of Parties:** The legal relationship between the Band Council and the Contractor under this contract is that of a contracting authority and an independent contractor.
- .5 **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 services including the Contractor's omissions, improper acts or delays in executing the services.
- .6 **Successors and Assigns:** The contract shall enure to the benefit of and be binding upon the parties hereto and their lawful heirs, executors, administrators, successors and assigns.
- .7 **Assignment:** This contract may not be assigned in whole or in part without the prior written consent of the Band Council.
- .8 **Property of Documents:** Technical documentation conceived or developed or first actually reduced to practice in performing the services under the contract shall be the property of the Band Council and the Contractor shall have no rights in and to the same.
- .9 **Privileged Information:** Any information made available to the Contractor related to the services shall be treated as privileged and confidential by the Contractor except where the nature of the services requires the release of such information or where such release is authorized by the Band Representative.
- .10 **Termination:** The Band Representative may, at any time, terminate the contract by giving a notice of termination in writing to the Contractor. In the event of such termination, the Band Council's obligation to make payment to the Contractor shall cease when payment for services satisfactorily performed up to the date of termination has been made.

.12 **Records:** 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 estimates and actual cost to the Contractor of the services, 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.

.13 **Conflict of Interest:** It is a term of this contract that the Contractor has no pecuniary interest in the business of any third party that would affect the Contractor's objectivity in carrying out the contract.

.14 **Canadian Funds:** All amounts of money specified in this contract are in legal Canadian funds.

5. PAYMENT CONDITIONS

.1 **Payment Period:** Payment for services completed shall be made within 30 days of receipt of an invoice containing sufficient information to permit verification. If further information is requested by the Band Representative within 15 days of receipt of the invoice for the purpose of verification, payment shall be made within 30 days of receipt of the required information or a corrected invoice.

.2 **Travelling Time:** Travelling time authorized by the Band Representative during normal working hours shall be chargeable as time worked. Authorized travelling time outside of normal working hours shall be chargeable up to a maximum of 3 hours per day. However, not more than 8 hours in any one day shall be claimed for the time spent travelling.

.3 **Payroll Cost:** "Payroll cost" means the actual cost of any employee of the Contractor, and includes an amount for salary, statutory holidays, vacations with pay, unemployment insurance premiums where applicable, worker's compensation contributions, pension plan contributions, sick time allowance and such other employee benefits as may be approved by the Band Representative.

The multiplying factor shall not be applied to the premium portion of the authorized overtime included in payroll cost.

.4 **Reimbursable Expense:** Miscellaneous expenses specified herein that are incurred by the Contractor and approved by the Band Representative shall be reimbursed at actual cost to the Contractor, and travel and accommodation costs authorized by the Band Representative shall be reimbursed to the Contractor.

.5 **Goods and Services Tax:** The Contractor's invoice shall show as separate items:

- .1 the amount of the progress payment being claimed for services satisfactorily performed excluding GST charges,
- .2 the amount for GST calculated in accordance with the applicable legislation, and
- .3 the total amount which shall be the sum of the amounts referred to in paragraphs 5.5.1 and 5.5.2 above.

.6 **Interest on Overdue Accounts:** If the Band Council fails to make payment that is due in accordance with subsection 5.1 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 date 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 after the due date. Interest shall not be paid on amounts paid within 15 days after the due date and the Band Council shall not be liable to pay interest on unpaid interest.

The rate of interest shall be the current prime lending rate established by the Band's banking institution.

6. **APPROPRIATE LAW:** This contract shall be governed by the law in force in the Province of \_\_\_\_\_.

FOR THE CONTRACTOR	FOR THE BAND COUNCIL
Signature	Signature
Title	Title
Witness	Witness
Signature	Signature
Title	Title
Witness	Witness

**APPENDIX 2**

**REGISTER OF PROPOSALS RECEIVED BY OPENING COMMITTEE**

Box Work (Project) Band Council Estimate

Project File No.

Contract No.

Closing Date

Valid for

Proposals opened

By

\_\_\_\_\_   
 Chairperson

\_\_\_\_\_   
 Secretary

\_\_\_\_\_   
 Witness

Contractor

Address and Telephone

Comments/Amount

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### SAMPLE PROPOSAL EVALUATION CRITERIA AND ASSIGNED WEIGHTS

This sample should be used as a guideline by the evaluation committee raters.

	<u>Assigned Weights*</u>
1. The criteria which accompanied the letter of invitation should be used to evaluate the proposals:	
.1 <u>Contractor/Firm</u>	
Experience and satisfactory performance on similar projects carried out for the band, government or private sector.	10-25
.2 <u>Project Team</u>	
The number, qualifications and experience of personnel to be assigned or made available for the job.	15-30
.3 <u>Proposal</u>	
.1 The depth and detail of the proposal indicates the contractor's understanding of the size, complexity and time constraints of the job.	20-30
.2 The proposed time schedule for the work in relation to the time schedule proposed by the band.	
.3 The management of the work: delegation of responsibility, work plans, scheduling and cost control, reporting and quality control.	
.4 The methodology proposed, the technical methods to be utilized in the performance of the work and any innovative and constructive ideas presented.	



Assigned  
Weights\*

.4 Costs

The total cost of the work and the proposed fees.

15-30

2. Keep on file a summary of the evaluation process.
3. Each contractor should be rated for each criterion according to the committee's opinion of how well the contractor will meet the requirement of the terms of reference . The following point system is recommended:

POINT SYSTEM

Poor	1 - 3
Fair	4 - 6
Good	7 - 8
Excellent	9 - 10

*NOTE: These criteria are suitable for most projects. For special projects, the band council will decide any changes or additional criteria required. In any event, the criteria used for evaluation should be the same as those forwarded to the contractor with the letter of invitation.*

*\* The set of criteria enclosed with the invitation to the contractor should disclose these weights. While a range of rates is shown for each of the criteria, the evaluation committee should decide upon a specific weight for each criteria, with the total equalling 100.*

**PROCEDURE FOR EVALUATION OF PROPOSALS**

Proposals should be evaluated using Table 1 (attached).

The following are points to be considered when evaluating each criterion:

1) Contractor/Firm

- Has the contractor conducted similar projects and has the quality of the work been acceptable?

2) Project Team

- Is the specialized training and academic background of the personnel assigned suitable and relevant to the project?
- Is the experience of the personnel assigned relevant to the subject area?

3) Proposal

- Is it significantly clear from the proposal that there is an appreciation of the scope and magnitude of the work and that all elements of the work set out in the terms of reference will be performed?
- Does the proposal contain any modification to the terms of reference which demonstrates innovative ideas?
- Is it clear from the proposal that each major element of the proposed work is well planned, detailed and broken down into tasks which will achieve the required results?
- Does the proposal indicate a well-balanced consideration of all aspects of the project and a good chance of success in providing an acceptable end product?
- Does the response to the terms of reference contain a realistic task schedule which commits all work to be completed on time?
- Is the project team set up to ensure internal and external coordination and cooperation and to ensure control and technical success (NOT "top heavy" with personnel)?

- Is it clear from the proposal that the contractor has adequate material resources and personnel, with the proper technical training, to efficiently conduct the work and be available as required?
- Does the proposal provide sufficient assurance that liaison with the band council will be adequately maintained?
- Does the response to the terms of reference contain a realistic statement of tasks, a detailed task schedule with person days quoted and substantiated?

#### 4) Cost

- In a normal evaluation the contractor with the lowest price should receive the highest rating for this factor. However, should a contractor with a price other than the lowest receive the highest rating the evaluation committee shall explain the reason.

Each committee member should:

- rate each proposal for criteria 1-4;
- calculate a score for each criterion by multiplying the weights by the rating -- for example, (weight 20 x rating 8 = 160 points); and
- add up each score to determine the sub-total.

After all have separately completed their individual ratings a meeting is held to discuss the proposals and to finalize the scores for items 1-4. After discussion, average sub-totals shall be calculated to determine the average rating.

The proposal with the highest points should receive the contract.

*NOTE: If there are significant differences in the committee members sub-total for one proposal, members should discuss the proposal in question. One member may have additional information concerning the contractor. Ratings may be changed by individual committee members during this discussion period.*

Table 1

**SAMPLE OF A CONTRACTOR PROPOSAL EVALUATION AND WEIGHTING TABLE**

The proposals are evaluated on the degree to which they fulfill a given set of criteria. The criteria are weighted in terms of relative importance.

Each unit weight is multiplied by the appropriate degree of satisfaction. Adding each score gives the overall degree of satisfaction. After this procedure is repeated for all the contractor's proposals, the selection committee will recommend the proposal with the highest score.

CRITERION	WEIGHT	CONTRACTOR PROPOSAL NO. 1	CONTRACTOR PROPOSAL NO. 2	CONTRACTOR PROPOSAL NO.3
1. Qualifications and experience based on similar work	20	6 x 20 (120)	5 x 20 (100)	5 x 20 (100)
2. Qualifications and experience of proposed team assigned to project	25	9 x 25 (225)	7 x 25 (175)	5 x 25 (125)
3. Depth and detail of the submission, practicality of time schedule, control of the work, and proposed methodology	30	8 x 30 (240)	7 x 30 (210)	5 x 30 (150)
4. Cost	15	6 x 15 (90)	8 x 15 (120)	9 x 15 (135)
<b>TOTAL:</b>		<b>675</b>	<b>605</b>	<b>510</b>
COSTS/		\$85,000	\$70,000	\$65,000

**SAMPLE EVALUATION COMMITTEE RECOMMENDATION LETTER**

CONFIDENTIAL:

File No.:

Contract No.:

Re: Recommendation of Acceptance for (give a brief project description)

Proposals from the following contractors were evaluated using the predefined criteria, assigned weights and point system.

The evaluation committee was composed of:

(name, profession and/or discipline), Chairperson and members

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In the evaluation process, each contractor's proposal was measured against the requirements specified in the request for proposals. A signed copy of each rating member's evaluation is attached.

After the weight factors were applied to the criteria, points were summarized and these overall point ratings were established:

	TOTAL POINTS	FEES \$
1. <hr/> Firm		
2. <hr/> Firm		
3. <hr/> Firm		
4. <hr/> Firm		
5. <hr/> Firm		

The committee recommends acceptance of the proposal submitted by  
(name & address \_\_\_\_\_),  
which ranked highest.

The approval of the band council is requested.

Signed: \_\_\_\_\_  
(Chairperson of the evaluation committee)

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Telephone: \_\_\_\_\_

**Appendix 6**

**SAMPLE AWARD FAX**

To: Contractor

From: Band Council

Your offer dated \_\_\_\_\_ and amendment thereto by  
telex dated \_\_\_\_\_ letter  
dated \_\_\_\_\_ for \_\_\_\_\_  
\_\_\_\_\_ is accepted in the fixed  
price/maximum authorized amount  
of \_\_\_\_\_. The work shall be completed not later  
than \_\_\_\_\_.

A formal contract will be prepared in accordance with the  
documents forming part of the request for proposals  
dated \_\_\_\_\_. You may commence work.

# Appendix 7

## CHANGE ORDER NUMBER RECTIFICATIF NUMÉRO

Page \_\_\_\_\_ of  
de \_\_\_\_\_

File no - N° du dossier

Contract no - N° du marché

Authority - Autorisation

Financial code - Code financier

All correspondence and invoices must show the file and contract numbers  
Le numéro du dossier et celui du marché doivent apparaître sur la correspondance et les factures

To - A

Work - Ouvrage

Date

The contract is amended as follows - Le marché est modifié comme suit

**A** Original contract value  
Valeur original du marché

**B** Net change by change order numbers  
Changement net attribuable aux rectificatif nos.

Add                      Subtract  
Ajouter                      Soustraire

**C** This change order number  
Valeur globale révisée du marché

Add                      Subtract  
Ajouter                      Soustraire

**D** Revised total value of contract  
Valeur globale révisée du marché

We acknowledge receipt of this change order number  
Nous accusons réception du présent rectificatif numéro

to the Terms and Conditions set out therein  
les conditions indiquées

and agree  
et acceptons

Signed, sealed and delivered  
Signé et délivré

\_\_\_\_\_  
Contractor - Entrepreneur (signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
By - Par

Band Representative  
Représentant de la bande