

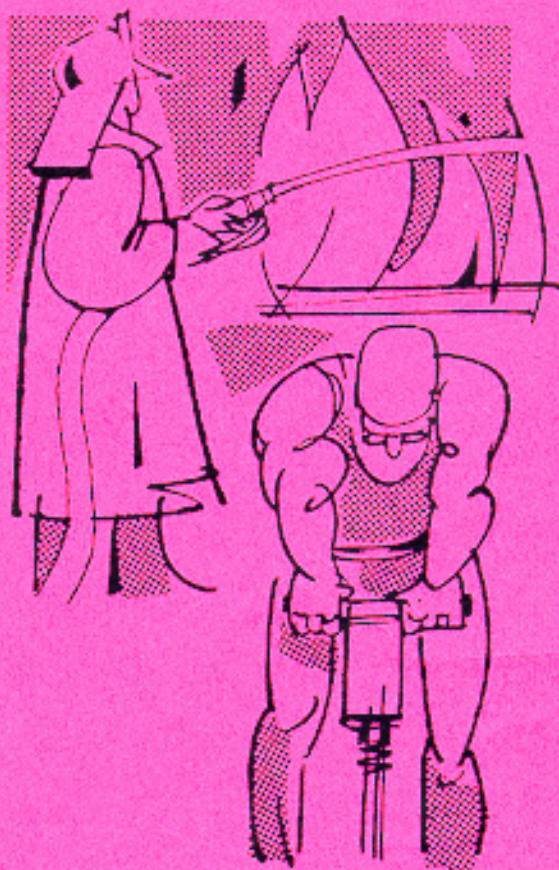


Indian and Northern
Affairs Canada

Affaires indiennes
et du Nord Canada

CN3

Contract Administration Training Publication



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

Canada

CN3

**Contracting for Non-Professional Services
By First Nations and Aboriginal Communities**

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 NON-PROFESSIONAL SERVICES

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CONTRACTING FOR NON-PROFESSIONAL SERVICES

Section 1 INTRODUCTION

1.1 General Remarks

This publication outlines generally accepted practices, principles and procedures to be followed by Band Councils in the procurement, general administration and management of non-professional service contracts. "Non-professional services" refers to services normally provided by non-professionals or tradespersons and includes the hiring of personal property. Examples of such services are:

- a. services relating to the operation and maintenance of facilities, for example, electrical, mechanical, or janitorial services, snow removal, grass cutting and garbage disposal; and
- b. equipment rental (not related to construction work), bussing, catering, security and custodial services, firefighting and water delivery.

It is recommended that:

- a. requirements be defined in terms that allow competition wherever possible so as to get best value for money;
- b. the method of pricing chosen ensures best value and effective cost control; and
- c. wherever practical, all qualified firms be given an equal opportunity to compete for band contracts.

The use of these procedures will ensure a consistent approach in obtaining non-professional services.

This publication also describes the responsibilities of the band representative and project manager in relation to the various actions required in the procurement, administration and management of non-professional service contracts.

1.2 Definitions

Non-professional services: a type of service normally provided by non-professionals or tradespeople and includes the renting of equipment and property. Examples of such services are:

- a. services relating to the operation and maintenance of facilities:
 - (1) electrical, mechanical and plumbing services; and
 - (2) janitorial services, snow removal, grass cutting and garbage disposal;

- b. the rental of equipment and property;
- c. bussing services;
- d. catering services;
- e. firefighting;
- f. security and custodial services; and
- g. water delivery.

Band representative: the officer appointed by the Band Council who is 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 specific functions which may include management.

Section 2
TENDER CALL

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Section 2 **TENDER CALL**

2.1 General Remarks

This section outlines the generally accepted practices, principles and procedures to be followed when Band Councils call tenders for non-professional services.

2.2 Definitions

Tender: a bid or offer submitted by a contractor (bidder) 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 security: is a financial instrument given by the bidder to indemnify the Band Council against increased costs if the bidder does not carry out her/his undertaking to enter into a contract.

Bid bond: a bid security in the form of a bond issued by a surety company which guarantees entry into a contract.

Bid Security deposit: a bid security which can be:

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

Contract security: a form of financial security provided by the contractor to guarantee performance of the contract.

2.3 Policy

2.3.1 Tendering for non-professional service contracts should be carried out so as to ensure best value and reflect fairness in the spending of Band funds.

2.3.2 Tenders should be called through public advertising to ensure the Band receives best value.

2.3.3 The securing of tenders by direct invitation from a predetermined list of contractors should be restricted as much as possible to low cost projects or emergency situations. (For additional information refer to Appendix 2-1).

2.3.4 All tenderers must bid on identical information and terms, and must be treated equally..

2.4 Assembling of Tender Documents

2.4.1 The project manager is responsible for the preparation of the specifications (and plans if any) and any special technical instructions to bidders.

2.4.2 All other tender documents are prepared by the band representative in consultation with the project manager.

2.4.3 The band representative puts together the complete tender package, reviews it with the project manager to make sure it is complete and prepares the required number of sets of tender documents.

2.4.4 The documents which make up the tender package for projects exceeding \$25,000 should consist of the following: (see model package at Appendix 2-7)

- Instructions to bidders,
- Tender and Acceptance Form,
- General Conditions,
- Labour Conditions (Provincial),
- Insurance Schedule (if any), and
- Specifications, and Plans (if any).

For projects under \$25,000 the tender package should consist of the following documents: (see model package at Appendix 2-6)

- Invitation to Tender,
- Work Order Form,
- Labour Conditions (Provincial), and
- Other appropriate support documents.

2.4.5 The Band Council, in consultation with their legal adviser, may wish to develop their own tender and contract forms.

2.5 Tender Advertising in Newspapers (see Appendix 2-9)

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, contracts of \$25,000 or less should be advertised locally. Contracts more than \$25,000 should be advertised within the province. On some occasions the Band may wish to advertise in two or three provinces in an effort to get greater competition.

2.5.2 The band representative decides:

- a. the tender calling office where tenders will be received;
- b. the band office or offices at which tender documents may be obtained or inspected;

- 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 ones.

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. To save money, more than one project can be included in the advertisement.

2.6 Distribution of Tender Documents

2.6.1 Tender documents are made available, as 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, including band offices and local post offices where available.

2.6.3 Documents for tenders invited directly are normally only supplied to those contractors who have been invited to tender. However, other contractors, who are considered by the band representative to be qualified and who ask to tender, should not be refused.

When inviting tenders directly the band representative should ensure that certain contractors do not have a greater number of tendering opportunities compared with other contractors with similar skills and capabilities.

2.6.4 The offices issuing tender documents on a public tender call are responsible for informing the tender calling office of the names of contractors who have drawn documents.

2.6.5 On non-professional service contracts there is little subcontracting. Consequently there will be few requests from subcontractors for the names of prime contractors who are tendering. Requests for the name of prime contractors who have drawn tender documents should be provided on request.

2.6.6 Deposits for tender documents on publicly advertised projects should be as follows, based on the estimated contract value:

\$100,000 or less	no deposit
Over \$100,000	\$50.00

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

2.6.7 Deposits for tender documents will be handled as follows:

- a. Deposits in the form of cheques, bank drafts, etc. will be held uncashed in a secure place by the tendering office until the tender documents are returned to the tendering office in good condition. If tender documents are not returned within the required time, deposits will be credited to the Band Council. Cash deposits should be deposited immediately.
- b. The successful tenderer's deposit is normally returned after the contract award letter has been sent, and he/she retains the tender documents.

Band Councils may wish to consider 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 be automatically deposited and would help to defray the costs of producing tender packages.

2.7 Issue of Addenda

2.7.1 Addenda to the specifications are compiled by the project manager in consultation with the band representative. Amendments to the other tender documents are made by the band representative.

2.7.2 Addenda and amendments are sent to the tender calling office for issue by the band representative.

2.7.3 The tender calling office distributes by registered mail addenda and amendments to all contractors who have received tender documents.

2.7.4 Addenda and amendments are normally issued to all recipients of tender documents not less than 14 days before the tender closing date.

2.7.5 An addendum or amendment is not issued verbally. In exceptional circumstances, the tender calling office may issue an addendum or amendment by telegram or telex, but this must always be confirmed by registered letter.

2.7.6 The band representative should confirm with all document display or issuing offices that the addendum or amendment has been issued to all contractors, before the closing date.

2.8 Extension of Tender Closing Date

2.8.1 The tender closing date published in the tender advertisement should be changed only in the most exceptional circumstances.

2.8.2 Any notice of change of tender closing date should be issued at least one week before the original tender closing date.

2.8.3 The tendering office notifies, by registered mail, all contractors who have drawn tender documents of any changes of tender closing date and also notifies all offices at which tender documents are on display or are available.

- 2.8.4 If a contractor has already placed a tender in the mail, she/he should be advised that it may be amended providing the amendment is received at the designated office before the new closing date.
- 2.9 Receipt and Opening of Tenders
- 2.9.1 Only tenders submitted on the form supplied by the Band Council will be considered. This will ensure that the contractors are bidding on all of the requirements of the documents issued by the Band Council.
- 2.9.2 Tender amendments in writing, by telegram, by telex, or by fax are allowed and will be considered if received at the correct office before the tender closing date.
- 2.9.3 All tender envelopes and amendments are to be time and date stamped upon receipt by the tendering office. Fax or telex amendments will be time and date stamped upon receipt by the telex/fax receiving room. The band representative will check with the telex/fax receiving room immediately before the tender closing time to determine if any telex/fax amendments have been received.
- 2.9.4 On a tender opening worksheet, record only the names and addresses of the bidders from the envelopes, and any amendments received.
- 2.9.5 All tender envelopes are retained unopened by the tendering office in a locked cabinet until the time and date set for the opening of tenders. Amendments should be treated as confidential and attached to the unopened tender envelope.
- 2.9.6 Tenders are received only at the office named in the tender advertisement. A contractor delivering tenders to any other office is to be instructed to deliver them to the correct one. Tenders should not be accepted by any other office.
- 2.9.7 Under no circumstances shall the names of bidders or the number of tenders received be divulged to anyone before tenders are opened.
- 2.9.8 Tenders or amendments received after the exact time and date designated for the closing of tenders shall not be considered (for exceptions, see 2.9.10 and 2.9.18).
- Tenders received late must have the date and time of receipt recorded on the envelope and be returned unopened to the bidders with an explanatory letter. In these cases, both sides of the tender envelope should be photocopied and the photocopies placed on file for future reference.
- 2.9.9 A bidder will be allowed to withdraw his/her tender before the tender closing time provided that the request is received in writing prior to this time and signed by a responsible officer of the company concerned.
- 2.9.10 If no tenders are received by the time and date set for the closing of tenders, any late tenders which have been mailed before the closing time and date and received within forty-eight (48) hours after the closing time and date may be considered.

- 2.9.11 Immediately after the time set for the closing of tenders, all tender envelopes are removed from the locked cabinet, and checked to make sure they are for the right project and that each envelope and amendment match the details on the tender opening worksheet.
- 2.9.12 Tenders should be opened as soon as possible after the closing time. Invited tenders are opened in the presence of those contractors who have submitted tenders, if they wish to attend.
- 2.9.13 Tenders are opened by the band representative or by a responsible person named by her/him. The opening is witnessed by at least one other responsible person.
- 2.9.14 Before the opening of tenders the band representative announces:
- a. the official name of the project;
 - b. that all tenders received will be reviewed and evaluated before any recommendation is made for contract award; and
 - c. that no questions concerning tenders will be answered at the opening.
- 2.9.15 As tenders are opened, the band representative announces only:
- a. the name and address of each tenderer; and
 - b. the total amount of each tender, including total amount of any amendments and revised total tender amount.
- The second responsible person records this information on the tender opening report as well as the amount and type of bid security, if it is required. Both officials sign this record.
- 2.9.16 The two officials opening tenders initial all tenders and amendments and sign the tender opening report.
- 2.9.17 Decisions as to whether to accept or disqualify a tender are not made during the formal tender opening.
- 2.9.18 An amendment received after the tender closing time which reduces the low tender price will be considered as a post tender negotiation. If the low bidder insists on withdrawing this late amendment, the Band Council cannot insist that it be allowed to stand. It is in the Band's interest, however, to secure the best possible tender price for a project and consequently the low bidder should be encouraged to honour a late amendment.

- 2.9.19 An amendment received after the tender closing time which increases the low tender price will not be considered. Cases have arisen where amending telegrams increasing the low tender on a project have been sent in ample time but, due to delays caused by the telecommunication company, 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 described in 2.11.7d. dealing with withdrawal will be followed.
- 2.9.20 Enquiries received after tender opening, asking for tender details, are answered by giving only the names and addresses of bidders and the total amount of each bid. No further details of the tenders are to be provided.
- 2.10 Bid Security Deposits and Bid Bonds
- 2.10.1 Band Council should ask for bid security for tenders of \$25,000 and over. The Band Council may decide to call for bid security for projects estimated at less than \$25,000. When a decision is taken to call for bid security for projects estimated at less than \$25,000, contract security must also be required. In such cases, the band representative will ensure that this requirement is stated in the standard tender documents. The types and amounts of bid security which may be asked for by the Band Council are described in Appendix 2-2.
- 2.10.2 Where bid security must be submitted with a tender, the tender would normally be disqualified during the tender review period if:
- a. no bid security accompanies the tender; or
 - b. the bid security is not in the form required by the tender documents.
- 2.10.3 When a tender is less than \$25,000, and no bid security has been provided, a tenderer who changes her/his tender to an amount of \$25,000 or over must ensure that bid security is provided by the tender closing time. If this is not done, the tender would normally be disqualified, except in the situation described in 2.10.6.
- 2.10.4 When the necessary bid security has not been submitted with a tender, even though advice has been received from a bonding company before the tender closing time that a bid bond has been issued, but not in time to be available for tender opening, the tender should be disqualified since the requirement to provide bid security has not been adequately fulfilled, except in the situation described in 2.10.6.
- 2.10.5 In cases where the bid bond submitted with a tender has not been signed and/or sealed by the 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 bond before the tender is reviewed.

2.10.6 If, as a result of a tender call, only one tender is received and this does not meet the bid security requirement, it should not be disqualified if it is acceptable in all other respects. The bidder must, however, supply the Band Council with the required bid security as a post-tender negotiation.

2.10.7 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 bidders, are returned to the bidders by registered mail.

If a security deposit from one or both of the two low bidders is a certified cheque or bank draft, money order etc., it is held uncashed in a secure place by the tendering office until the contract is awarded. If the security is government guaranteed bonds, or letter of credit, they should be placed in a locked cabinet until returned to the contractor.

- b. Bid bonds received with a tender: after the opening of tenders all bid bonds other than those from the two low tenderers are returned. Bid bonds from the two low bidders should be kept in a secure place until the contract is awarded.

2.10.8 The lowest bidder is allowed 48 hours to provide bid security in the proper amount or form if the bid security he/she submitted is:

- a. slightly less than the amount required;
- b. a certified cheque or bank draft drawn on other than a recognized banking institution;
- c. a financial instrument which meets the intent of the security requirements but is not in a form approved by the Band Council;
- d. a bid bond issued by a company whose bonds are not acceptable to the Band Council; or
- e. a bid bond not in a form approved by the Band Councils; (see Appendix 2-3);

If the lowest bidder fails to provide proper security when asked to do so the tender will be rejected.

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

- 2.10.9 A security deposit from someone other than the bidder, or from one of the parties to a joint tender is not returned to him/her unless specific instructions are submitted with the tender. If no specific instructions are received, the deposit is returned to the bidder, that is, for a sole bidder to him/her personally; for a joint tender, jointly to those making the tender; and, for a tender by a company, to that company.
- 2.10.10 A combination of bid bond and security deposit is unacceptable bid security, as this indicates that the bonding company is not prepared to bond the full amount.
- 2.11 Review of Tenders Received
- 2.11.1 The tenders will be reviewed for:
- a. conformity with the Band Council's estimate;
 - b. accuracy of tender computations (see Appendix 2-4);
 - c. completeness of the tender in all respects - this includes ensuring that the tender price includes any addenda;
 - d. alternatives and qualifications which may have been included in the tender;
 - e. extent of compliance with local labour and material requirements;
 - f. availability of adequate equipment to carry out the work;
 - g. previous record with the Band Council;
 - h. capability to undertake the full scope of the work; and
 - i. correct signing of the documents by the contractor (see Appendix 2-5).
- 2.11.2 After the administrative review of the tenders has been completed by the band representative, the tenders are sent to the project manager for technical review and assessment together with a copy of the schedule of tenders and all tender documents.
- 2.11.3 The tender acceptance period is normally 30 days with an option to extend to 60 days. If the initial review indicates it unlikely that an award can be made within the 30 days (for example, if an additional investigation of the firm is required), action must be taken within 15 days after the tender closing time to extend the tender acceptance period to 60 days. The tender form must provide for this if it is intended to extend the tender acceptance period.
- 2.11.4 A tenderer will normally be disqualified for:
- a. failure to submit the tender on Band Council forms;
 - b. failure to complete the tender form properly;

- c. failure to bid in accordance with the requirements of the tender documents;
- d. failure to supply proper bid security (also see 2.10.8);
- e. unavailability of the necessary equipment to undertake the work;
- f. lack of capability to carry out the full scope of the work;
- g. previous unsatisfactory record with the Band Council; or
- h. unbalanced unit prices included in the tender.

2.11.5 Action for disqualification is as follows:

- a. Tenders may be disqualified for reasons in 2.11.4.e.f.g.h., only after very careful review and evidence is placed on file to justify such action. This serious action must only be taken by the Band Council.
- b. A disqualification situation does not exist where a bidder has agreed to withdraw his/her tender. While withdrawal could occur for the reasons outlined in 2.11.4.e. and f. above, it is unlikely to arise under g. and h. (also see 2.11.7, which deals with withdrawal).

2.11.6 If the two low tenders are identical, a recommendation with full supporting details should be made to the Band Council for a decision on the contract award. The recommendation must take into account the following factors:

- a. how much use is made of local labour and material by each tender.
- b. past performance of each bidder.
- c. the nearness of each bidder to the location of the work; and
- d. what contracts have been awarded in the past - an equitable distribution should be aimed for.

The contract will normally be awarded to the contractor who appears to be most deserving based on an evaluation of these factors.

2.11.7 Action for tender withdrawal is as follows:

- a. In cases where bid security is a requirement of the tender call, and security has been provided, a request from the low bidder to withdraw a tender during the tender review period should be carefully reviewed before permitting withdrawal to establish if the contractor was sincere in submitting the tender.
- b. In cases where bid security is not a requirement of the tender call, requests to withdraw should be allowed. However, if the contractor continually requests withdrawal of bids, it indicates a lack of seriousness. These contractors should not be asked to submit tenders on future works.
- c. A decision to allow withdrawal of a tender automatically entitles the contractor to the return of her/his bid security.

- d. In cases where a low bidder has demonstrated, to the satisfaction of the Band Council, that a substantial error was made in the preparation of the tender, the low bidder may be allowed to withdraw her/his tender without penalty and the contract may be awarded to the second low bidder.
 - e. If the error made by the low bidder was valued at less than 10% of the value of his/her tender, the low bidder should not be allowed to withdraw without penalty.
- 2.11.8 If the lowest acceptable tender is too high in relation to the Band Council estimate, the band representative and Band project manager may negotiate with the low bidder to secure a satisfactory reduction. If this cannot be achieved, public tenders should normally be recalled and the area of advertising expanded in an effort to obtain more competitive tenders. The contractors tendering on the original tender call should be informed of the new one.
- 2.12 Cancellation of Tender Call After Receipt of Tenders
- 2.12.1 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 Band Council should not cancel a tender call without good reason as it should be realized that it costs contractors money and time to prepare a tender.
- 2.12.2 When a tender call is cancelled, the bid security of each bidder is to be returned with an appropriate letter informing them of the cancellation and thanking them for submitting tenders.
- 2.12.3 In each case where the tender call is cancelled the reasons should be documented on file.

INVITATION TENDERS FOR NON-PROFESSIONAL SERVICE CONTRACTS

1. Tenders for non-professional service contracts may be obtained by public tender call or by direct invitation from a representative list of qualified contractors.
2. Care must be taken when directly inviting tenders to ensure that equal opportunity to tender is given to those contractors who are capable of carrying out the work and who wish to tender.

ACCEPTABLE TYPES AND AMOUNTS OF BID SECURITY

Where bid security is to be provided to ensure entry into contract, it should be one of the following:

- a. a bid bond in a form approved by the Band Council (see Appendix 2-3) and issued by a surety company whose bonds are acceptable to the Band Council.

OR

- b. a bid security deposit in the form of a certified cheque, bank draft, money order, letter of credit, etc. or bonds as follows:
 - (1) Certified cheques, bank drafts, etc., must be drawn on a recognized financial institution and made payable to the Band Council.
 - (2) Bonds of the Government of Canada or bonds unconditionally guaranteed as to principal and interest by the Government of Canada that are: payable to bearer; hypothecated to the Band Council in accordance with the Domestic Bonds of Canada Regulation or registered in the name of the Band Council.

Current market value should be used in establishing the value of government bonds submitted.

If the tender amount is \$250,000 or less, the bid security shall be 10% of the tender amount. If the tender amount is greater than \$250,000, the bid security shall be equal to 10% of the first \$250,000 plus an amount equal to 5% of the part of the tender amount that exceeds \$250,000 but the maximum bid security required with any tender shall be \$250,000.

Model 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/her 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/her 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"

UNIT PRICE TENDERS - ERRORS IN CALCULATION

From time to time unit price tenders are received in which there appear to be errors in the unit price 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. The corrected tender will then be placed in the appropriate order in the tender schedule. When errors are significant, the contractor should be asked to confirm her/his total tender price before an award is recommended.
- c. Contractors affected by the adjustment of their tender amount or by a resulting change in the order of listing will be advised accordingly prior to award of contract.

Deviations from these principles require the prior approval of the Band Council.

SIGNING OF TENDER AND CONTRACT DOCUMENTS BY THE CONTRACTOR

The band representative should ensure that the tender and contract documents are signed as follows by the contractor:

1. Limited Company: the names and status of the authorized signing officers must be printed in the space provided for that purpose. The signatures of the authorized signing officers and the corporate seal must be affixed. If the document 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 obtained.
2. Partnership: the names of the persons signing must be printed in the space provided. The word "partner" must be inserted for title. The document should be executed by all the partners, who must sign in the presence of a witness who must also sign. Except in the Province of Quebec an adhesive coloured seal must be affixed.
3. Sole Proprietorship: the name of the sole proprietor must be printed in the space provided. The words "sole proprietor" must be inserted under title. The sole proprietor must sign in the presence of a witness who must also sign. Except in the Province of Quebec an adhesive coloured seal must also be affixed.

Appendix 2-6

**Tender Documents for
Non-Professional Services
up to \$25,000 (Short Form)**

Package includes the following documents:

- Invitation to Tender
- The Work Order Form

Model
Invitation to Tender For Non-professional Services
(up to \$25,000)

To: _____ (Contractor)

_____ (Address)

Dear Sir/Madam:

Re: Tender/Quotation for _____

(short description of work)

You are hereby invited to submit a tender/quotation for the above referenced work which is described in more detail in the attached specification.

The successful contractor's work will be performed subject to the General Conditions of the Specimen Work Order form attached hereto.

Please submit your tender/quotation to:

_____ (Band Council)
_____ (Address)
_____ (Phone No.)

on your own letterhead in 2 copies before _____pm/am _____(date).

Model
Invitation to Tender For Non-professional Services
(up to \$25,000)

All enquiries concerning this invitation to tender are to be addressed to:

_____ (Band Representative)

_____ (Address)

_____ (Phone No.)

The lowest or any tender not necessarily accepted.

Yours truly,

Signature

**WORK ORDER FORM
NON-PROFESSIONAL SERVICES
(For Work up to \$25,000)**

Subject to the **GENERAL CONDITIONS** and in accordance with your tender/quotation dated _____ you are authorized to proceed with the work or service described below.

Contractor's name and address:

For confirmation only
+)) ,
.)) -
Send invoice to:

Description of work or services			
Special Instructions -			
Start Date	Completion Date	Work authorized by Band Representative	Work cost including applicable taxes except GST
		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.

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/her 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 defective work prior to 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. 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 2-7

**Tender and Contract Document
for Non-Professional Services
Greater than \$25,000 (Long Form)**

Package includes the following documents:

- Instructions to Bidders
- Tender and Acceptance Form
- General Conditions

**Sample Tender & Contract Document
For Non-Professional Services
Greater than \$25,000**

Instructions to Bidders

Page 1 of 4

- | | |
|------------------------|---|
| 1 Completion of Tender | <p>.1 The tender must be submitted in two copies on the Tender and Acceptance form provided. The bidder should retain the third copy of the Tender and Acceptance for his/her records.</p> <p>.2 Type or print legibly the total amount of the tender in Clause 1 of the Tender and Acceptance Form.</p> <p>.3 Type or print legibly the bidder's full business name and address in the space provided for Contractor's Full Business Name and Address.</p> <p>.4 The tender must be executed in accordance with the following requirements:</p> <p style="margin-left: 20px;">(a) <u>Limited Company</u>: The name(s) and status of the authorized signing officer(s) must be printed in the space provided for that purpose. The signature(s) of the authorized signing officer(s) and the corporate seal must be affixed.</p> <p style="margin-left: 20px;">(b) <u>Partnership</u>: The name(s) of the person(s) signing must be printed in the space provided. Insert the word "Partner" for title. The tender must be executed by all the partners who must sign in the presence of a witness who must also sign. An adhesive coloured seal must also be affixed next to each partner's signature.</p> <p style="margin-left: 20px;">(c) <u>Sole Proprietorship</u>: The name of the sole proprietor must be printed in the space provided. Insert the words "Sole Proprietor" for title. The sole proprietor must sign in the presence of a witness who must also sign. An adhesive coloured seal must also be affixed next to the sole proprietor's signature.</p> <p>.5 Insert the date of signature in the space provided above the signature blocks.</p> <p>.6 The tender must be enclosed in the envelope provided, the envelope sealed and the project description and name and address of the bidder written on the tender envelope together with the date and time of tender closing.</p> <p>.7 Any alteration to the printed sections of the Tender and Acceptance form may render it liable to rejection. Alterations, corrections, changes or erasures made to statements or figures entered on the Tender and Acceptance form by the bidder must be initialled by the person(s) signing the tender.</p> |
| 2 Submission of Tender | <p>Tenders must be received at the designated Tendering office on or before the tender closing time. Telegraphic and facsimile tenders will be accepted if they are followed by a hard copy which must be received prior to the tender closing date and time.</p> |

**Sample Tender & Contract Document
For Non-Professional Services
Greater than \$25,000**

- 3 Revision of Tender
A tender submitted in accordance with these instructions may be revised by letter, telegram, telex or facsimile provided the revision is received at the office designated for the reception of tenders on, or before, the time and date set for the closing of tenders. 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.
- 4 Security Requirements
- .1 **Bid Security:** Tenders estimated at \$25,000 and over shall be accompanied by bid security in the form of a bid bond or security deposit, and
- .1 if the tender amount is \$250,000.00 or less, the said bid security shall be equal to not less than 10% of the tender amount;
- .2 if the tender amount is greater than \$250,000.00, the said bid security shall be equal to not less than 10% of the first \$250,000.00 plus an amount that is equal to not less than 5% of that part of the tender amount that exceeds \$250,000.00;
- .3 a bid bond shall be in an approved form and issued by an approved company whose bonds are acceptable to the Band Council;
- .4 a security deposit shall be in accordance with Clause 4.3 herein;
- .5 the maximum amount of bid security required with any tender is \$250,000.00.
- .2 **Contract Security:** The successful bidder
- .1 shall, when the contract amount is \$25,000.00 and over, provide contract security at his/her own expense. The contract security shall be in the form of a Performance Bond in the amount of 50% of the contract value OR a security deposit in the amount of 10% 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.
- .3 A security deposit shall be either
- .1 a bill of exchange such as a certified cheque, bank draft, money order or letter of credit
- .1 payable to the Band Council, and
- .2 certified by or drawn on a recognized banking institution.

**Sample Tender & Contract Document
For Non-Professional Services
Greater than \$25,000**

Instructions to Bidders

- | | |
|-------------------------------------|---|
| 4 Security Requirements (continued) | <p>.2 Government guaranteed bonds: bonds of the Government of Canada or bonds unconditionally guaranteed as to principal and interest by the Government of Canada that are</p> <p style="margin-left: 20px;">.1 payable to bearer, or</p> <p style="margin-left: 20px;">.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</p> <p style="margin-left: 20px;">.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</p> <p style="margin-left: 20px;">.4 provided on the basis of their market value current at the date of the contract.</p> |
| 5 Additional Information | <p>Prior to contract award, bidders may be required to submit within 48 hours of being asked to do so by the Band Council, information concerning their experience, supervisory staff, breakdown of tender price or any other information relating to their tender.</p> |
| 6 Procurement of Materials | <p>The Band Council cannot give any assistance in the procurement of any equipment, materials or products to be provided by the Contractor for the carrying out of the work. The Band Council may require the bidders to show evidence that satisfactory arrangements have been made for the procurement of equipment, materials and products required to carry out the work.</p> |
| 7 Acceptance of Tender | <p>The lowest or any tender not necessarily accepted.</p> |
| 8 Enquiries | <p>All enquiries prior to tender closing time shall be addressed to:</p> <p>_____</p> <p>_____</p> |
| 9 Local Content | <p>Bidders are to note that there are special requirements included in the Tender and Acceptance form in connection with local labour.</p> <p>.1 a list of local people available for employment at the site of the work is attached to these Instructions. It is the responsibility of the Contractor to establish their qualifications and to make the necessary arrangements for their employment.</p> |

**Sample Tender & Contract Document
For Non-Professional Services
Greater than \$25,000**

Instructions to Bidders
Page 4 of 4

9 Local Content (continued) .2 the Contractor shall employ labour from the locality of the work in accordance with Clause 2.9 of the Tender and Acceptance and the Contractor shall make use of the Band Office in the recruitment of such labour.

Tendering Office:			TENDER CLOSING TIME HOUR: 3:00 P.M. DATE:
CODE NO.	REQUISITION NO.	CONTRACT NO.	FILE NO.
PROJECT TITLE/DESCRIPTION			

- 1 Offer The undersigned bidder (herein called the "Contractor") hereby offers to the Band Council of the _____ Band (herein called the Band Council) to supply all labour, materials, tools and equipment necessary for the performance of the work and, to carry out in a careful and workmanlike manner the work described in the Specifications numbered _____ and dated _____ at the times provided for in the said Specifications for the period of _____ years (herein called the "Term") for the total amount of (\$_____).
- 2 General Agreement The Contractor agrees:
- .1 that the Term mentioned in Clause 1 above will commence on such date as the Band Representative shall set by notice in writing;
 - .2 that this Tender and Acceptance, the Instructions to Bidders, the Specifications referred to in Clause 1 above and the General Conditions shall be and are the complete tender (hereinafter called the "Tender");
 - .3 that this Tender supersedes and cancels all communications, negotiations and agreements relating to the work other than those contained in the completed Tender;
 - .4 that this Tender is made only after carrying out a close examination of the site of the work and after studying the said specifications in the light of such examination, and that he/she is satisfied as to the scope of the work and as to the labour, materials, tools and equipment that will be required to perform the work;
 - .5 that this Tender may not be withdrawn for a period of 30 days following the tender closing time; however, this 30 day period may be extended to 60 days by the Band Representative if he/she so notifies the Contractor within 15 days after the tender closing time;
 - .6 that the Tender shall constitute the contract between the Contractor and the Band Council when this Tender and Acceptance has been signed on behalf of the Band Council and delivered to the Contractor;

Appendix 2-7 (cont'd)

**Non-Professional Services
Tender & Contract**

**Tender and Acceptance
Page 2 of 3**

- 2 General Agreement (continued)
- .7 to provide contract security, in accordance with Clause 4.2 the Instructions to Bidders, within 14 days of receipt of a notice in writing from the Band Representative;
 - .8 that when a security deposit is provided with the Tender and after Acceptance of the Tender, the Contractor refuses to commence the execution of the work, the security deposit shall be forfeited to the Band Council;
 - .9 that he/she will employ the local persons 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 the period indicated above, he/she shall provide the Band Representative with justification for such termination, and shall replace such person with a local person to the extent of that a replacement person is available and qualified before attempting to recruit elsewhere.

SIGNATURES (Refer to "Instructions to Bidders")

CORPORATE SEAL

CONTRACTOR'S FULL BUSINESS NAME AND ADDRESS
(Type or Print)

ATTESTED TO AND DELIVERED ON BEHALF OF THE CONTRACTOR THIS _____ DAY OF
20 ____ IN THE PRESENCE OF

SIGNATURE NAME AND TITLE (Type or Print) SIGNATURE OF WITNESS

SIGNATURE NAME AND TITLE (Type or Print) SIGNATURE OF WITNESS

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

SIGNATURE

TITLE

SIGNATURE OF WITNESS

SIGNATURE

TITLE

SIGNATURE OF WITNESS

This document is the document referred to as "General Conditions" in the Tender and Acceptance submitted by _____ (contractor) and signed on behalf of the Band Council on the _____ day of _____ 20 ____.

1 Interpretation

.1 In this contract

- .1 "Contract" means the whole of the signed Tender and Acceptance, the Specifications numbered _____, as well as these General Conditions.
- .2 "Band Council" includes a person acting for the Band Council and any of his/her representative appointed for the purpose of the contract.
- .3 "Band Representative" means _____

_____ and includes a person designated by him/her to perform on his/her behalf any function under the Contract.
- .4 "Superintendent" means the employee of the Contractor who is designated by the Contractor as being in full charge of the site operations of the Contractor for the purpose of the Contract.
- .5 "Work" includes the whole of the works, materials, matters and things required to be done, furnished and performed by the Contractor under the Contract.
- .6 "Herein", "hereby", "hereof", and similar expressions refer to the Contract as a whole and not to any particular sub-division or part thereof.

.2 The marginal notes in the Contract form no part of the Contract but shall be deemed to be inserted for the convenience of reference only.

2 Successors and Assigns

The Contract shall enure to the benefit of and be binding upon the parties hereto and their executors, administrators, successors and assigns.

3 Assignment and Subcontracting

- .1 The Contract may not be assigned without the written consent of the Band Council.
- .2 Neither the whole or any part of the work may be subcontracted by the Contractor without the written consent of the Band Council and every subcontract shall incorporate all the terms and conditions of this Contract which can reasonably be applied thereto.

Appendix 2-7 (cont'd)

		Non-Professional Services Tender & Contract	General Conditions Page 2 of 6
4	Members of the Band Council	.1	No member of the Band Council shall be admitted to any share or part of the Contract or to any benefit arising therefrom.
5	No Implied Obligations		No implied obligation of any kind by or on behalf of the Band Council shall arise from anything in the Contract, and the express covenants and agreements herein contained and made by the Band Council are and shall be the only covenants and agreements upon which any rights against the Band Council are to be founded.
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/her 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 of 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	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.
9	Local Labour and Materials		The Contractor shall employ and use only Local Labour in the execution of the work in accordance with Clause 2.9 of the Tender & Acceptance.
10	Publicity		The Contractor shall not 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 Representative.
11	Contractor's Superintendent and Employees		The Contractor shall ensure that the work is competently supervised at all times by a superintendent who shall be acceptable to the Band Representative and have authority to receive on behalf of the Contractor any order or communication relating to the work. The Contractor shall, at the request of the Band Representative, remove from the site of the work any person employed on the work who, in the opinion of the Band Representative, is incompetent, or has been conducting himself improperly.
12	Security Clearance		The Contractor shall, on request of the Band Representative, provide and cause all persons employed on the work to provide personal data for security clearance purposes.
13	Light, Heat, Power and Water		The Band Council will supply all heat, light power, hot and cold water reasonably required for the work.
14	Elevator Service		Where applicable, the Contractor will be permitted the use of elevators, escalators, conveyors and dumbwaiters and shall be responsible for their safe operation.

		Non-Professional Services Tender & Contract	General Conditions Page 3 of 6
15	Co-operation with Other Contractors	The Contractor shall co-operate fully with other contractors or workers sent onto the site of the work by the Band Representative.	
16	Band Representative Rights and Obligations	.1	The Band Representative shall decide whether the work has been performed in accordance with the Contract and whether the labour, materials, tools and equipment used in the execution of the work are adequate for the performance of the work.
		.2	The Band Representative may order additional work, dispense with, or change any part of the work required by the Contract. The Band Representative shall decide whether anything done or not done as a result of directions given under this subsection has increased or decreased the cost of the work to the Contractor and the contract amount will be increased or decreased accordingly by an amount calculated in accordance with section 25.
		.3	In reaching a decision under subsection 16.1, the Band Representative may establish and utilize such a system or systems of inspection and rating of the work as he/she sees fit.
		.4	The Contractor shall comply with any direction of the Band Representative given under subsection 16.1 and 16.2.
17	Delay, Non-Compliance or Default by the Contractor	If the Contractor fails to comply with a direction of the Band Representative properly given, or is in default in any other manner under the Contract, the Band Representative may do such thing as he/she 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.	
18	Extension of Contract	The Term of the Contract may be extended at the same terms and conditions as stipulated in the Contract provided that written notice of the request for extension is given by one party to the Contract to the other party at least sixty days prior to the date of completion of the Contract and the other party agrees, in writing, to the request for extension referred to therein no later than fifteen days after receipt of the said notice.	
19	Taking the Work Out of the Contractor's Hands	.1	In any of the following cases, namely,
		.1	where the Contractor has defaulted or delayed in commencing or in executing the work or any portion thereof to the satisfaction of the Band Representative and the Band Representative has given notice thereof to the Contractor and has by such notice required the Contractor to put an end to such default or delay, and such default or delay continues after such notice was communicated;
		.2	where the Contractor has defaulted in the completion of the work, or any portion thereof, within the time limit for such completion required by the Contract;

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|--|---|--|
| 19 Taking the Work Out of the Contractor's Hands (continued) | <ul style="list-style-type: none"> .3 where the Contractor has become insolvent; .4 where the Contractor has committed an act of bankruptcy; .5 where the Contractor has abandoned the work; .6 where the Contractor has made an assignment of the Contract without the required consent; or .7 where the Contractor has otherwise failed to observe or perform any of the provisions of the Contract; | |
|--|---|--|

the Band Council may, without any other authorization, take all or any portion of the work out of the Contractor's hands and may employ such means as the Band Council may see fit to complete the work.

- | | | |
|----|---|--|
| 20 | <ul style="list-style-type: none"> .2 Where the work or any portion thereof is taken out of the Contractor's hands under subsection 19.1: <ul style="list-style-type: none"> .1 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 Band Representative shall certify that no financial prejudice will result to Band Council from such further payments; .2 the Contractor shall not be relieved of any legal or contractual obligations other than the physical execution of that portion of the work so taken out of his/her hands; .3 the amount of all loss and damage suffered by Band Council by reason of the non-completion of such work shall be payable by the Contractor to the Band Council. | |
|----|---|--|

20 Termination of Contract	<p>The Band Council may by giving thirty (30) days notice in writing to the Contractor terminate the Contract on such day as the Band Council set in the notice. The Band Council's obligation to make payment to the Contractor shall cease when payment calculated in accordance with section 26 for work performed up to and including the day set in such notice has been made.</p>	
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21 Notices, Orders, etc.	<p>Any notice, order, decision, direction or communication given or required to be given by the Band Council under the Contract shall be in writing, and shall be deemed to have been received by the Contractor on the day it was delivered in person to the Contractor, the superintendent, or left at the Contractor's site office, or if it was mailed to the Contractor at the address indicated on the Tender and Acceptance, on the sixth day next following the day on which it was mailed. If it was forwarded by fax or telex, it shall be deemed to have been received 24 hours after it was transmitted.</p>	
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22	Security Deposit	.1	Upon satisfactory completion of the work or termination of the Contract, the security deposit will be returned to the Contractor.
		.2	If the work is taken out of the Contractor's hands pursuant to section 19 or if the Contractor is in breach of or in default under the Contract the Band Council may convert the security deposit provided by the Contractor to its own use. Any portion of such security deposit not required for the purposes of the Contract will be returned to the Contractor.
		.3	If the security deposit was deposited in the Band Council's bank account, the Band Council will pay to the Contractor interest thereon at rates paid by the Band Council's banking institution for such purpose.
23	No Additional Payments		The contract amount will not be increased or decreased by reason of any increase or decrease in the cost of the work brought about by any increase or decrease in the cost of labour, materials, tools or equipment.
24	Records to be Kept		The Contractor shall during the Term of the 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 of him/her of the work together with all proper quotations, contracts, correspondences, 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.
25	Determination of Cost		For the purpose of subsection 16.2, the amount of the increase or decrease in the contract amount shall be:
		.1	in the case of additional work, an amount mutually agreed upon by the Band Representative and the Contractor. Failing such agreement, the amount shall be the reasonable and proper costs paid or legally payable by the Contractor directly attributable to the additional work plus 10% of the total of such costs being an allowance for overhead, including finance and interest charges, and profit;
		.2	in the case of a reduction in the work, an amount mutually agreed upon by the Band Representative and the Contractor which is a fair and reasonable estimate of the saving in costs to the Contractor resulting from the reduction in the work.
26	Payments	.1	Progress payments shall be made at monthly intervals. The amount of the monthly progress payment shall be the contract amount shown in Clause 1. of the Tender and Acceptance divided by the number of months in the Term of the Contract. The amount of a progress payment may be increased or decreased from time to time by the Band Representative to provide for additions to or reductions in the contract amount authorized under the terms of the Contract.

	Non-Professional Services Tender & Contract	General Conditions Page 6 of 6
26 Payments (continued)	.2	<p>Notwithstanding subsection 26.1:</p> <p>.1 the Contractor shall not be entitled to any payment until he/she has provided contract security pursuant to Clause 2.7 of the Tender and Acceptance.</p> <p>.2 the Contractor shall not be entitled to the progress payments until he/she has provided a Statutory Declaration testifying as to the payment of labour, materials, tools and equipment supplied under the contract.</p> <p>.3 The Band Representative may decrease the amount of a progress payment when, in his/her opinion, the Contractor has failed to execute any part of the work in accordance with the terms of the Contract. Such a decrease in a progress payment will constitute a decrease in the contract amount.</p> <p>.4 Any amount payable to the Contractor under this Contract may be decreased by set-off of any amount payable to Band Council by the Contractor under this Contract or any other contract between the Band Council and the Contractor.</p> <p>.5 If the Band Council fails to make a payment that is due in accordance with this Clause 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.</p>
27 Lawful Obligations of Contractor		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, 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.
28 Non-Waiver		A waiver or acquiescence by the Band Council or the Band Representative of a default by the Contractor in any of its obligations under the Contract, or the choice of a remedy by the Band Council or the Band Representative as a result of any such default on the part of the Contractor, shall not affect or prejudice the rights of the Band Council or the Band Representative, either in respect of any future default by the Contractor in any of its obligations under the Contract, or in the choice of a remedy as a result of any such future default.

**STANDING OFFER AGREEMENT
FOR NON-PROFESSIONAL SERVICES**

For repetitive maintenance type services such as snow removal, grass cutting, landscaping, janitorial services, catering service, typewriting, general maintenance (electrical, mechanical) etc. it might be more effective to use a Standing Offer Agreement approach instead of the regular contracting process.

With the Standing Offer Agreement method, the Band Representative estimates the amount of work of a certain category that could be required over a certain period of time; for example, a certain number of times the grass will have to be cut in a certain area over the summer. Tenders are then invited from contractors on a unit price basis and an agreement is signed with a contractor for grass cutting for the summer. As the requirement arises, the Band Representative calls on the contractor to come and cut the grass. The contractor is then paid at the agreed unit price each time he/she cuts the grass.

The document attached hereto and marked Appendix 2-8 is a model document which could be used by Band Councils when the use of the Standing Offer Agreement method of contracting is appropriate.

**MODEL AGREEMENT
STANDING OFFER AGREEMENT
FOR NON-PROFESSIONAL SERVICES**

1. RECEIPT OF OFFERS

Sealed offers will be received at the Bidding Address until the Offer Closing Time shown on the face of the Offer and Acceptance Form.

2. UNACCEPTABLE OFFERS

- .1 Offers not submitted on the accompanying Offer and Acceptance form will not be considered.
- .2 Offers by telegram, Telex, or facsimile means are permitted when followed by a hard copy.
- .3 Offers received after the Offer Closing Time will not be considered.
- .4 Incomplete offers may be rejected.

3. REVISION OF OFFERS

- .1 An offer submitted in accordance with these instructions may be revised by letter, Telex, telegram, or facsimile, provided that the revision is received at the office designated for the receipt of offers (Bidding Address) on or before the date and time set for the closing of offers. The facsimile must be on the contractor's letterhead or bear a signature that identifies the contractor.
- .2 A revision to the unit price schedule must clearly identify the change(s) in the unit price(s) and the specific item(s) to which each change applies.

4. ACCEPTANCE OF OFFER

The Band Council will not necessarily accept the lowest or any of the offers. Acceptance of an offer does not bind the Band Council to any set amount of work to be assigned to the contractor. Offers may be accepted from more than one contractor, in which case the Band Council may issue a Call-Up against any of the Standing Offer Agreements resulting from this invitation to bid for any given work project.

5. GENERAL

- .1 Insert the hourly rate or unit price against each class of labour, plant, or item of specified material listed on the Unit Price Schedule of the Offer and Acceptance form. Insert the mathematical extensions against all items and Total Estimated Amount, GST extra.
- .2 Type or legibly print the offeror's full business name and address in the spaces provided for Contractor's full Business Name and Contractor's Business Address respectively.
- .3 Sign the Offer and Acceptance form in the space provided as follows:
 - .1 **Corporation** - 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.

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.
 - .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 such person or persons to execute the document on their behalf shall accompany the tender.

**MODEL AGREEMENT
STANDING OFFER AGREEMENT
FOR NON-PROFESSIONAL SERVICES**

- .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. 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.

- .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 participating signatories shall sign the document in the manner applicable to their particular business arrangement which is more particularly described in Clauses 5.3.1 to 5.3.3 above.

- .4 Do not make any entry in the signature section marked "(for Band Council only)".

- .5 Offers are to be submitted in two copies, duly completed, in the envelope provided and the name and address of the offeror entered in the "Submitted by" space in the lower left-hand corner of the face of the envelope. The offeror should retain a third copy of the offer for his/her record.

- 6. **TAXES**

The Contractor is responsible for all applicable taxes. All offers are to be submitted on the basis of Goods and Services Tax (GST) extra. Invoices for work performed under any resulting contract shall show separate amounts for the value of the work performed satisfactorily and the applicable GST respectively. The Contractor will be responsible for remitting the appropriate amount to Revenue Canada.

- 7. **EVALUATION**

Offers will be evaluated on the basis of the prices quoted (GST extra).

- 8. **OFFER ENQUIRIES**

All enquiries submitted prior to the date and time set for closing of offers shall be addressed to:

Note: These **Instructions to Bidders** do not form part of the formal offer and need not be submitted with the offer.

**STANDING OFFER AGREEMENT
FOR NON-PROFESSIONAL SERVICES**

Bidding address	Offer closing time Hour: P.M. S.T. Date:
File no.	Description of work
Standing Offer Agreement no.	
Requisition no.	
Code no.	

1. OFFER

The undersigned offeror, hereinafter called the "Contractor", hereby offers to the Band Council of the _____ Band, hereinafter called the "Band Council", to furnish all necessary tools, plant, equipment, services, materials and labour to execute and complete in a careful and workmanlike manner the work described above and, more particularly, as set out in individual Call-Ups to be issued by the Band Representatives, from time to time during the period of ___ years following acceptance of this offer, hereinafter called the "Term", or until the financial limit as described in Clause 3.1 is expended, whichever comes first, in consideration of payment by the Band Council for completed work at the prices and terms described in Clauses 3 and 4 of this Offer and Acceptance, for a total estimated amount not to exceed the maximum amount shown in Clause 3.1.

2. GENERAL AGREEMENT

The Contractor agrees:

- .1 that this Offer and Acceptance, signed by or on behalf of the Contractor, as well as the General Conditions and the Labour Conditions attached hereto, shall be and are the complete offer and that this offer is made subject to the provisions contained therein;
- .2 that the Unit Price, as offered, govern in calculating each Total Estimated Price and that any errors in the extension of the Unit Price and in the addition of the Total Estimated Prices will be corrected in order to obtain the actual Total Estimated Amount;
- .3 that this offer supersedes and cancels all communications, negotiations and agreements relating to the work other than those contained in the offer;
- .4 that this offer may not be withdrawn for a period of 30 days following the offer closing time; however, this 30-day period may be extended to 60 days by the Band Council if the Contractor is so notified within 15 days after the Offer Closing Time;
- .5 that the complete offer with, and subject to, all the provisions contained therein shall, when accepted and executed on behalf of the Band Council, constitute a binding contract between the Contractor and the Band Council;

2. GENERAL AGREEMENT (cont'd)

- .6 that on acceptance of this offer
 - .1 he/she will carry out individual work as requisitioned from time to time by the Band Representatives in **Call-Ups Against a Standing Offer Agreement**, copies of which forms the Contractor acknowledges to have in his/her possession, in accordance with the requirements set out therein and the General Conditions attached hereto and in consideration of payment of amounts to be determined pursuant to Clause 3. below;
 - .2 to commence work promptly upon receipt of Call-Ups issued pursuant to this Standing Offer Agreement, duly signed by a Band Representative.

3. FINANCIAL TERMS

- .1 The maximum amount payable by the Band Council under this Standing Offer Agreement shall not exceed a total amount of _____, GST extra.
- .2 The maximum amount payable by the Band Council for work associated with any one Call-Up pursuant to this Standing Offer Agreement shall not exceed the sum of _____, GST extra.
- .3 The Contractor shall notify the Band Representative when 80% of the amount shown in Clause 3.1 is expended on this Standing Offer Agreement.
- .4 The amount payable to the Contractor for work associated with a Call-Up pursuant to this Standing Offer Agreement shall be based on the prices set out in Clause 4 of the Offer and Acceptance or established pursuant thereto.
- .5 The prices set out in the Unit Price Schedule in Clause 4.1 include wages, travelling time and costs, allowances, supervision, liabilities as employer, insurance, and the use of all tools, tackle, etc. overhead, profit and all other liabilities whatsoever.
- .6 The estimated number of hours, the quantities or class of work set out in the Unit Price Schedule are for the purposes of comparative evaluation of the tenders and do not express or imply an obligation on the part of the Band Council to order any or all of the work listed therein.
- .7 The prices inserted in the Unit Price Schedule include all applicable federal, provincial, and municipal taxes. However, they do not include any amount for the Goods and Services Tax (GST). The appropriate GST amounts will be paid by the Band Council to the Contractor in addition to the amounts paid against the amount of the Contract. The Contractor will make appropriate remittance to Revenue Canada in accordance with the legislation.

4. PRICES

The Contractor agrees that the following are the prices referred to in Clauses 2 and 3 above:

.1 Unit Price Schedule

Item	Class of Labour or Work	Unit	Estimated hrs/days	Unit Price		Estimated Total Price	
				\$	¢	\$	¢
Total estimated amount GST extra							

SIGNATURES (refer to "Instructions to Bidders")

Contractor's full business name (type or print)	Contractor's business address (for contract purposes)
Attested and delivered on behalf of the Contractor this ___ day of _____ 20 ___ in the presence of: Signature(s) and seal Title (type or print) Signature(s) of witness(es)	
Accepted and executed on behalf of the Band Council this ___ day of _____ 20 ___ in the presence of; Signatures (for Band Council use only) Titles (type or print) Signature(s) of witness(es)	

1. ASSIGNMENT AND SUBCONTRACTING

The contract may not be assigned by the Contractor, either in whole or in part, without the written consent of the Band Council. Neither the whole nor any part of the work may be subcontracted by the Contractor without the written consent of the Band Representative, and every subcontract shall incorporate all the terms and conditions of this contract that can reasonably be applied thereto.

2. TIME OF ESSENCE

Time is of the essence of the contract.

3. LABOUR AND MATERIALS

3.1 All materials used in the execution of the work must be new and of the best quality.

3.2 Consistent with proper economy and the expeditious carrying out of the work, the Contractor shall employ only Canadian labour and materials, employ labour from the locality of the work, and utilize the services of the Band Council Employment Centre in the recruitment of such labour.

4. PERMIT AND BY-LAWS

The Contractor shall comply with all laws and regulations 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.

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 work, including the Contractor's omissions, improper acts or delays in executing the work.

6. 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 the Contractor's control.

7. CO-OPERATION AND MAKING GOOD

- .1 The Contractor shall perform the work with minimum disturbance to personnel and the public.
- .2 The Contractor shall obtain the approval of the Band Representative for the hours during which the Contractor proposes to perform the work and for the work schedule.
- .3 The Contractor shall repair and make good all parts of the existing building affected by the work performed under this Standing Offer Agreement.
- .4 All work shall be equal in kind, quality and finish to that of the existing work.
- .5 Where the work affects occupied portions of a building, the Contractor shall ensure continuity of building services and necessary for personnel and vehicles.

8. ACCESS TO THE WORK

The Contractor shall permit the Band Representative or any officer authorized by the Band Representative to have access to the work at all times during the execution of the work.

9. REMOVAL OF 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.

10. SUSPENSION OF THE WORK

The Band Representative may suspend the work associated with a particular Call-Up, in which event 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.

11. RECTIFICATION OF DEFECTS

The Contractor shall, upon notice from the Band Representative, rectify at the Contractor's own expense any defective work prior to the date of completion of the work covered by the Call-Up.

12. SIGNS AND ADVERTISING

The Contractor shall not erect or permit the erection of any sign or advertising at the site of the work.

13. MEMBERS OF THE BAND COUNCIL

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

14. INTERPRETATION

Should any dispute arise concerning the meaning or intent of the Standing Offer Agreement or of any Call-Up, the decision of the Band Representative shall be final.

15. RECORDS TO BE KEPT

The Contractor shall, during the term of this Standing Offer Agreement and for a period of two years from the date of completion of the Standing Offer Agreement, maintain and keep full records of the Contractor's estimates of, and actual cost to the Contractor 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.

16. TERMINATION

The Band Representative may terminate a Call-Up by giving notice in writing to the Contractor to that effect. The Band Council's obligation to make payment to the Contractor for that work shall cease when payment for work satisfactorily performed pursuant to that Call-Up has been made.

17. PAYMENT

The Contractor shall submit a separate invoice for each Call-Up to the Band Representative named in the Call-Up and in accordance with any invoicing instructions set out therein. Each invoice shall show (a) an amount for the value of the work performed satisfactorily; (b) an amount for the GST applicable thereto; and (c) the total of the amounts in (a) and (b). Subject to verification by the Band Representative, payment of an invoice submitted by the Contractor for work completed to the satisfaction of the Band Representative shall be made not later than 30 days after receipt thereof. If additional information is requested by the Band Representative within 15 days of receipt of the invoice for the purpose of verification, the 30-day payment period will commence upon receipt of the requested information.

18. INTEREST ON OVERDUE ACCOUNTS

If the Band Council fails to make a payment that is due in accordance with Clause 17, 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.

19. CONTRACTOR'S WORKMEN

The Contractor shall remove and replace forthwith any superintendent or workman not acceptable to the Band Representative because of incompetency, improper conduct or security risk.

20. SECURITY CLEARANCE

The Contractor shall, on request of the Band Representative, provide, and cause all persons employed on the work to provide, personal data for security clearance purposes. Such security clearance may include fingerprinting.

21. INSPECTION AND ACCEPTANCE

All work performed against a Call-Up pursuant to this Standing Offer Agreement shall be subject to inspection and acceptance by the Band Representative shown in the Call-Up.

22. 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 Call-Up, directly to the obligees of and the claimants against the Contractor or the subcontractor.

**STANDING OFFER AGREEMENT
FOR NON-PROFESSIONAL SERVICES**

<p>CALL UP AGAINST A STANDING OFFER AGREEMENT</p> <p>L All correspondence and invoices must show the file and Standing Offer Agreement number</p>	File number
	Standing offer agreement number
	Call-Up number
	Financial code
To:	Title
	Date
Call-Up details	

A Total standing offer agreement value	\$	Signed and delivered on behalf of the Band Council _____ _____
B Total amount of previous Call-Ups	\$	
C Amount of this Call-Up (number _____)	\$	
D Balance	\$	

We acknowledge receipt of this Call-Up, number _____ and agree to the terms and conditions set out therein.

 Contractor

 Date

Appendix 2-9

Sample Newspaper Advertisement

Sealed tenders for the project/service 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° _____

Project/Service

"Interior cleaning of the school at _____"

(short description of work/service to be performed).

The lowest or any tender not necessarily accepted.

Section 3

CONTRACT AWARD

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Section 3 **CONTRACT AWARD**

3.1 General Remarks

This section outlines the generally accepted practices, principles and procedures to be followed when Band Councils are awarding contracts for non-professional services.

3.2 Policy

3.2.1 A contract is normally awarded to the lowest valid 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 to tender.

3.2.3 The Band representative is responsible for ensuring that accepted contract award practices, principles and procedures are followed.

3.3 Approval of Contract Awards

3.3.1 Contract awards are approved by the Band Council or someone delegated by them.

3.3.2 The approval of a contract award depends on 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 specified tender acceptance period, normally 30 days or 60 days if it has been extended within 15 days after tender closing (see 2.11.3).

3.3.4 When delays are encountered in the evaluation of tenders or for other reasons, and the award of contract may be delayed beyond the normal tender acceptance period, the band representative should take action as specified in 3.3.5.

3.3.5 When the tender acceptance period for service contracts is extended as per 2.11.3 there must be no increase in the tender price.

3.3.6 The normal tender acceptance period begins at the exact date and time of the tender closing and expires at midnight on the day specified, normally the 30th day following. Where the tender acceptance period has been extended, it expires at midnight on the final day of the extended period.

3.3.7 The general rule of law is that acceptance is effected when the letter of acceptance is placed in the post. The same rule applies to telegraphic communications, with acceptance effected at the moment the message is delivered to the telegraphic authority. In the case of fax, telex communications the acceptance is effected the moment the message is transmitted to the contractor.

3.4 Signing of Contract Documents

The contract documents should be signed by the Band Council or its authorized officers.

3.5 Notification of Contract Award to Contractor

3.5.1 The contractor may be notified of the contract award by fax, telex or telegram, followed by a registered letter bearing the same date as the telecommunication.

3.5.2 The letter shall refer to the contractor's tender and specify the contract amount and any requirements for contract security or insurance. The letter shall also make reference to the documents which will comprise the contract. A complete contract package consists of:

a) For contracts greater than \$25,000

- Tender and Acceptance form,
- General Conditions,
- Insurance Schedule (if any),
- Statement of Work (specification).

b) For contracts up to \$25,000

- The Work Order,
- Statement of Work (specification), and other appropriate support documents.

3.5.3 Where bid security and contract security were not a requirement of the tender call, but a decision has been made to request contract security during the tender review period, the Band should negotiate the provision of contract security with the contractor before award of contract. The cost of providing security can be claimed by the contractor.

3.5.4 If a contract is not awarded before the expiry of the tender acceptance period, or an agreed extended period, the contract will be first offered to the lowest acceptable bidder at his/her tendered price or negotiate a revised price up to the value of the second lowest bidder. If this is declined by the lowest bidder, the Band Council may make an offer to the second lowest acceptable bidder or recall tenders. The original low tenderer's bid security cannot be forfeited in this case.

3.5.5 If a contract is awarded within the acceptance period and the contractor refuses to enter into contract, the Band Council may award to the next lowest acceptable tenderer. In this case the original low tenderer's security will be used to make up the difference between the two prices. The balance (if any) would be returned to the original bidder.

3.5.6 Notification of Contract Award to Others

The band representative is responsible for informing the provincial Workers' Compensation Board of the details of the contract award at the same time as the contractor is notified of the award.

3.7 Contract Security

- 3.7.1 The Band Council should require contract security for contracts of \$25,000 and over but may also request it for contracts of a lesser value. In special circumstances the Band Council may decide to request contract security from the successful tenderer even though it was not a requirement of the tender call (sec. 3.5.3). The acceptable types of contract security and the amounts required by the Band Council are described in Appendix 3-1.
- 3.7.2 The contract security must be provided by the contractor within the time limit specified in the tender documents. The procedure to be followed when the contractor does not meet this requirement is described in Appendix 3-3.
- 3.7.3 If the contract security is a surety bond, it is held by the tendering office.
- 3.7.4 If the contract security is government guaranteed bonds, they should be retained by the Band Council in a security cabinet and uncashed for the duration of the contract.
- 3.7.5 If the contract security is a certified cheque, bank draft, etc. it should be held uncashed or deposited in the Band's bank account if the contractor wishes. If there are no instructions from the contractor, the cheque is deposited in the Band's bank account to earn interest at the bank rate, which is payable to the contractor.
- 3.7.6 At any time during the period of the contract, the contractor may replace his/her contract security with security in any other acceptable form.

3.8. Insurance

- 3.8.1 Insurance coverage is not normally required for non-professional service contracts, however, it may be necessary in certain cases because of special risks, or to meet the specific requirements of a work or service.
- 3.8.2 If insurance coverage is specified, it is wise to wait until it has been provided before signing the contract documents (see 3.5) or allowing the contractor to begin work.

**ACCEPTABLE TYPES AND AMOUNTS
OF CONTRACT SECURITY**

Where contract security is to be provided for the due performance of a contract, it shall be in accordance with one of the following:

- a. a performance bond in an amount of at least 50% of the amount payable under the contract -- this bond must be in a form approved by the Band Council (see Appendix 3-2) and issued by an insurance company whose bonds are acceptable to the Band Council;

OR

- b. a security deposit in an amount of 10% of the contract value -- the security deposit must be in the form of a bank draft, certified cheque, money order, letter of credit or government or bonds as follows:
 - (1) certified cheques, bank drafts, money orders, letters of credit etc., these must be payable to the Band Council and drawn on a recognized financial institution;
 - (2) government bonds: bonds of the Government of Canada or bonds unconditionally guaranteed as to principal and interest by the Government of Canada that are: payable to bearer; hypothecated to the Band Council in accordance with the Domestic Bonds of Canada Regulations; or registered in the name of the Band Council.

Current market value is to be used in establishing the value of bonds submitted as a security deposit.

When the security provided with the tender is in the form of a security deposit, it may be converted to contract security at the request of the contractor.

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

Witness

Surety

PROVISION OF CONTRACT SECURITY

The contract security must be provided by the contractor within the time limit specified in the tender documents. The following procedure applies:

a. No Contract Security Was Required

Where contract security was not a requirement of the tender call, but a decision has been taken to request it because the Band Council is not certain the contractor can perform the work. In such cases, a letter is to be sent to the contractor requesting her/him to provide the contract security within 14 days of receipt of notice.

If the requirement contract security is not provided within the specified time period, Band Council should disqualify the tender.

b. When Bid Security Was Provided

1. Where the bid security provided by the bidder under consideration is in the form of a security deposit, it may be converted to contract security. In such cases the award letter should give the contractor the option of converting the bid security deposit or providing a performance bond in the amount of 50% of the contract value.
2. Where the bid security provided by the bidder under consideration is in the form of a bid bond, the award letter should request that the 50% performance bond be provided within 14 days of receipt of notice.

If the required contract security is not provided within the specified time period, the contractor is in default under the terms of the contract. If a decision is made to ask the Bonding Company to pay the Band Council's additional costs of awarding a contract to the next lowest acceptable bidder, it will be necessary to inform the bonding company immediately. If the bid security was a security deposit, it is confiscated and used by the Band to pay for these additional costs.

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 designed to assist Band Councils and band representatives by outlining a consistent approach to the preparation and management of non-professional service contracts.

The procedures outlined will provide guidance to those administering and managing these contracts in accordance with their terms and conditions.

4.2 Roles and Responsibilities

4.2.1 Upon award of contract, several actions must take place before a contract is formalized. Certain of these are the responsibility of the Band Council, the band representative and project manager, and these are described in this Section.

4.2.2 The band representative and project manager should consult with the Band Council when they propose to take any action which might affect the contract. Copies of correspondence relating to negotiations, extensions, cost increases etc. must be sent to the band representative by the project manager.

4.3 Contract Preparation

4.3.1 Once the contractor has been notified by award telex or fax of acceptance of the offer, the band representative ensures that a confirmation award letter is sent. It will include contract security and insurance requirements (if any) and give the deadlines for their submission.

4.3.2 The band representative should, if possible, prepare the contract document within two days of the award of contract. The contract must conform to the documents on which the contractor's offer is based, including the tender and any negotiated amendments or contractor's recommended alternatives which have been agreed to before contract award. The inclusion of any document or work other than those specified in the tender documents is considered to be a counter-offer and may be rejected by the contractor.

4.3.3 The contract document should contain:

a. For contracts not exceeding \$25,000 (short form):

- Work Order (see Appendix 2-6),
- Statement of Work/Specification,
- Other appropriate supporting document.

b. For contracts exceeding \$25,000 (long form - see Appendix 2-7):

- Instructions to Bidders,
- Tender and Acceptance,
- General Conditions,
- Statement of Work/Specifications,
- Labour Conditions, and
- Insurance Schedule (if any).

4.3.4 The Band Council or officer delegated by the Band Council shall sign three copies of the Tender and Acceptance and send one to the contractor.

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

4.3.6 Once the Tender and Acceptance or Work Order has been signed, the band representative shall distribute copies as follows:

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

4.4 Insurance and Security Requirements

It is decided at the tendering stage whether contract security is required (see Section 2 "Tender Call" Subsection 10).

4.4.1 When contract security is required, it is a condition of the award of contract that the contractor provide security in one of the approved forms and amounts within 14 days. Even though the contract is signed, the project manager shall not permit the contractor to begin work until the proper contract security has been received. This shall be carefully monitored by the project manager, and the band representative kept informed.

4.4.2 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 representative shall immediately write the contractor and insist that the security be provided as required. Should the contractor still fail to provide it, the manager shall write a registered letter advising him/her of the possible action which the Band Council may take under the Bid bond or with respect to the bid security deposit.

4.4.3 The only exception to this is where it may be injurious to the Band or the public interest. In a case of this nature, the Band Council may decide to authorize the contractor to begin the work or services 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. The implication of this action is that a contractor may default before providing contract security leaving the Band Council in a very vulnerable position.

- 4.4.4 Upon receipt of acceptable contract security, the band representative must return the bid security to the contractor within 48 hours. Failure to return a bid security immediately may prevent a contractor from bidding on other projects or tie up her/his capital.
- 4.4.5 At the request of the contractor, the band representative may convert negotiable bid security to contract security.
- 4.4.6 Surety bonds are kept for 2 years from the date that the last payment become payable for the contract.
- 4.4.7 The contractor must provide insurance, when required, within 30 days after award of contract.
- 4.4.8 The band representative must review the policies to make sure the payee, amounts and endorsements comply with the Band Council's requirements, as described in the insurance schedule. A certificate of insurance may be provided by the contractor which indicates he/she has insurance in effect. However, the Band Council should obtain copies of the policies to ensure the Band is fully protected and knows all the conditions for making claims.
- 4.4.9 Once the work is completed, the contractor is entitled to the immediate return of the insurance policies. The contractor's contract security deposit should also be returned with the final payment, and provided there are no outstanding claims against the contractor under the contract.
- 4.5 Change Orders
- 4.5.1 The project manager may, subject to the approval of the Band Council and within reason, alter, increase or reduce the work and services, adjusting the contract price and time accordingly, without invalidating the contract.
- 4.5.2 The project manager shall request changes to the contract in writing and the contractor shall agree in writing, with a quotation specifying the cost increase or decrease in the contract price. The project manager reviews the quotation, obtains the agreement of the Band Council and authorizes the contractor to proceed, provided funds have been certified as available by the Band Council.
- 4.5.3 Changes to the contract must be made in writing and be on the Band Council's change order form, signed by both parties.
- 4.5.4 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 or service and acceptance of the contractor's lump-sum quotation;
 - b. unit prices set out in the contract;
 - c. negotiation of new unit prices; or
 - d. cost, plus 10%.

Note: Only use d. as a last resort.

- 4.5.5 When a change in price or time for the work or service is suggested or necessary, the contractor shall present her/his quotation to the project manager for approval. If the project manager and Band Council approve the quotation, the project manager then orders the contractor in writing to proceed with the change. The work or service performed in the change shall be included for payment with the regular requests for progress payment.
- 4.5.6 The project manager must advise the band representative of any proposed changes to the contract in order that the band representative may issue the necessary change orders.
- 4.5.7 If the contractor has provided contract security in the form of surety bonds, the project manager and band representative must ensure that the bonding company is informed, and its consent obtained by the contractor, before substantially increasing the contract price, or changing the work and service or completion date. Failure to obtain the agreement of the bonding company may void the bonds and relieve the bonding company of its obligations, thereby leaving the Band Council in the embarrassing position of having no contract security.

4.6 Assignment of Contract

- 4.6.1 The work to be done or service to be provided under the contract may not be assigned by the contractor to anyone else, either in whole or in part, without the written consent of the Band Council. Consent should only be given after consultation with their legal representative.
- 4.6.2 The contractor may assign the contract amount (or its balance) which may become payable to him/her under the contract. Any assignment of this type must be approved by the Band Council in consultation with their legal representative.

4.7 Default by the Contractor

4.7.1 Failure to enter into contract:

- a. When a contract is awarded within the acceptance period, the contractor must enter into contract. If the contractor refuses to do so, the band representative should immediately notify the contractor, by registered letter, of the consequences of this failure. Sometimes the threat of forfeiting the bid security deposit or calling on the bid bond prompts the contractor to enter into the contract and satisfactorily complete the work or service. Should the contractor still fail to enter into contract, the bonding company must be informed if a bid bond was provided as bid security and asked to act under its bond.
- b. When the contractor has provided negotiable bid security, it is subject to forfeit and may be used to make up the difference in cost between the contractor's tender price and the next lowest valid tender which the Band Council may 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.
- c. 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 and may arrange for the contractor to enter into the contract and complete the work or service. If the bonding company fails to respond and the contractor still fails to sign the contract, the bonding 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 may accept.

4.7.2 Failure to commence work or service:

- a. If , after signing the contract and providing contract security, the contractor fails to commence the work or service in accordance with the schedule provided, he/she is in default.
- b. The band representative should notify the contractor in writing of the remedial action the Band Council proposes to take according to the general conditions of the contract.
- c. 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 bond to remedy the default, as allowed by the conditions of the performance bond.

4.7.3 Failure to perform:

- a. If the contractor fails to correct defects or deficiencies or to fulfill any provisions of the contract, the band representative, in consultation with 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 by a specified date. The contractor shall provide a schedule for correction within six working days of receiving the notice.
- b. If the contractor advises the band representative in writing that the default cannot be corrected by the specified date and proposes another date, the band representative, in consultation with the project manager, may agree. The contractor will then be considered as having complied with the band representative's instructions.
- c. The contractor shall subsequently:
 - (1) begin to correct the default within the agreed time;
 - (2) provide the band representative with an acceptable schedule for the correction; and
 - (3) complete the correction in accordance with the schedule.
- d. If the contractor has provided negotiable contract security and fails to comply with the above provisions, the Band Council may instruct the project manager to correct the default and deduct the cost from the payment due to the contractor, either then or later.
- e. When the contractor has provided a performance bond as contract security and the contractor fails to comply with the Band Council's written notice, the bonding company shall be requested in writing to take the necessary remedial action.

4.7.4 All communications regarding default shall be by registered mail.

Note: For all types of default as listed in 4.7.1, 4.7.2 and 4.7.3, the procedures outlined are a general guide, suitable for most situations. However, before taking any of the suggested steps, the band representative, in consultation with the Band Council, should obtain legal advice. He/she should also prepare a detailed report on the circumstances leading to the current situation, together with supporting documents. This will assist the Band Council should a court case develop.

4.8 Termination of the Contract/Taking the work out of the Contractor's hands

- 4.8.1 A clause in the general conditions provides for contract termination by Band Council for reasons other than the default of the contractor in the "long form" contract. The Band Council may use the termination clause in the "short form" contract to get rid of a contractor who does not perform properly.

- 4.8.2 Under the "long form" contract, if the contractor is in default, the work is taken out of his/her hands. After making sure sufficient cause exists, the band representative must notify the contractor by registered letter that she/he is in default of her/his contractual obligations.
- 4.8.3 If the contractor fails to correct the default within the time specified or subsequently agreed to, the Band Council, upon recommendation of the project manager and with legal agreement, take the work out of the contractor's hands.
- 4.8.4 When this action is taken, the band representative, in consultation with the project manager, should immediately determine and record the following:
- a. the total value of the work or service completed to date;
 - b. the total payments made to the contractor;
 - c. the total value of the contract, including approved change orders; and
 - d. a list of all known labour, sub-contractors and suppliers for the project showing the unpaid balance due to each (any claims from sub-contractors and suppliers must be supported by affidavits).
- 4.8.5 When a contractor has provided a performance bond as contract security, the band representative must advise the bonding company in writing of all actions it proposes to take. The Band Council requests the bonding company to arrange for completion of the work.
- 4.8.6 When the work is taken out of the contractor's hands and a bonding company is involved, it is informed on a. b. c. and d. of 4.8.4.
- 4.8.7 All communications with the contractor or the bonding company regarding taking the work out of the contractor's hands shall be by registered mail.
- 4.8.8 If these procedures are followed, the interests of the Band Council should be protected, and the work or services completed with a minimum of delay, if not within the time and price stipulated in the original contract.
- 4.9 Notices
- All notices, whether issued by the band representative, project manager or the contractor, according to the general conditions, must be in writing.
- 4.10 Clearances
- 4.10.1 Depending upon the type of work or service, but before release of the final progress payment, the contractor may be required to provide certificates of approval or clearance from various federal and provincial bodies.
- 4.10.2 The most common clearances apply to the workers' compensation board.
- 4.10.3 If the provincial labour department has requested the Band Council to retain monies relating to wage claims from workers, the claims must be resolved and clearance obtained from this agency before the final payment is made to the contractor.

- 4.10.4 Should Revenue Canada request retention or payment from monies remaining under a contract, the matter must be resolved and Revenue Canada clearance received before the final payment is made to the contractor.
- 4.10.5 The band representative shall ensure that the contractor provides all clearances required by the contract documents.
- 4.11 Progress Payments and Completion Certificate
- 4.11.1 Progress payments, sometimes referred to as payment on account or progress claims, may be provided for in the contract and, if so, the contractor may apply for them in the course of the work at the stipulated times or milestones.
- 4.11.2 Before making the first application for payment the contractor shall submit a breakdown of the tender price upon which the progress payments will be based. The applications shall be for the last day of the agreed payment period or the date of completion of the milestone. The amount claimed shall be in proportion to the work or service performed by that date. When unit prices have been provided for an item, the payment shall be based on quantity x unit price. The contractor must sign each application for payment.
- 4.11.3 No payments made constitute an acceptance of any work or service not in accordance with the contract documents.

Note: Progress payments must be paid promptly in order for the contractor to meet her/his financial obligations to sub-contractors and suppliers. Progress payments should be certified by the project manager within 10 working days after receipt and paid within 20 days after certification. Delays in making payments will result in the payment of interest to the contractor on the overdue amounts.

- 4.11.4 Periodic inspections must be carried out by the project manager to ensure that the contractor is performing the work or service in accordance with the contract.
- 4.11.5 The contractor shall be notified in writing to correct defects or deficiencies immediately under the terms of the contract. Where the contractor fails to correct any defect or deficiency the project manager and band representative shall act in accordance with the procedures outlined in 4.7.
- 4.11.6 The contractor shall correct and/or pay for any damage to other work or services resulting from any corrections performed under the contract.
- 4.11.7 All applications from the contractor for progress payments, must be accompanied by a statutory declaration that no accounts remain unpaid for which money was received in the previous progress payment.
- 4.11.8 The project manager must certify all requests for progress payments before they are submitted for payment. Within 10 days of receipt of an application for progress payment, the project manager should carry out an inspection to verify performance of the specified work or service. The project manager will certify the progress payment only after satisfying himself/herself that the amount claimed is in proportion to the actual work of service performed and in accordance with the terms of the contract.

- 4.11.9 If, after inspection, the project manager finds the claim excessive in relation to the actual performance, she/he may request the contractor to submit a revised progress payment or, in consultation with the contractor, reduce the progress payment accordingly.
- 4.11.10 When payments are reduced, the project manager shall inform the contractor in writing of the reasons.
- 4.11.11 Applications for final payment from the contractor must be accompanied by a final statutory declaration as to the full payment of all accounts, wages and lawful deductions.
- 4.11.12 Within 10 days of receipt of the contractor's application for payment, after completion of the contract, the project manager shall inspect and assess the work or service to make sure the application is valid and then inform the contractor as to whether he/she approves or disapproves of the application. When the project manager finds the work or service satisfactory, he/she shall certify for payment the remaining monies due to the contractor under the contract. The date of this certificate shall be the date of the completion of the work or service, as certified by the project manager. The Band Council shall pay the contractor within 30 days of the date of issue of such certificate.
- 4.11.13 Certification of completion constitutes a waiver of all claims by the Band Council against the contractor, except those previously made in writing and still unsettled.
- 4.11.14 When certification of completion is made 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 and still unsettled.
- 4.12 Claims from Sub-contractors and Suppliers
- 4.12.1 Claims received in writing from sub-contractors and suppliers relating to non-payment of accounts must be dealt with quickly by the band representative.
- 4.12.2 When the contractor has provided negotiable security as contract security, and a claim from a labourer, sub-contractor 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. Where the claim is in dispute, and relates to work or material supplied under the terms of the contract, the claimant should provide evidence that the claim has been registered in the court. The Band Council may, after the work has been completed, pay the amount of the claim into the court for disbursement. These claims can also be subject to specific reporting periods. Delays may be injurious to the claimant. No claims will be considered unless submitted in writing. Should a contractor fail to meet his/her obligation for payment of a lawful claim arising out of the performance of the contract, the Band Council may satisfy such claims according to the general conditions of the contract, after consulting with their legal representative.
- 4.13 Records
- 4.13.1 The band representative and the project manager must maintain complete records of the contract 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. In general, the records should contain:
- a. all relevant notes, minutes and correspondence;
 - b. tender and related documents;

- c. award telegrams, letter and contract;
- d. minutes of project meetings;
- e. progress payments and certificates;
- f. change orders;
- g. photocopies of the contract security and insurance policies.

4.13.2 These records shall be made available for audit and inspection, and audit representatives shall be allowed to make copies and take extracts.

The Band Council shall keep these records intact for at least two years after completion of the work or service.