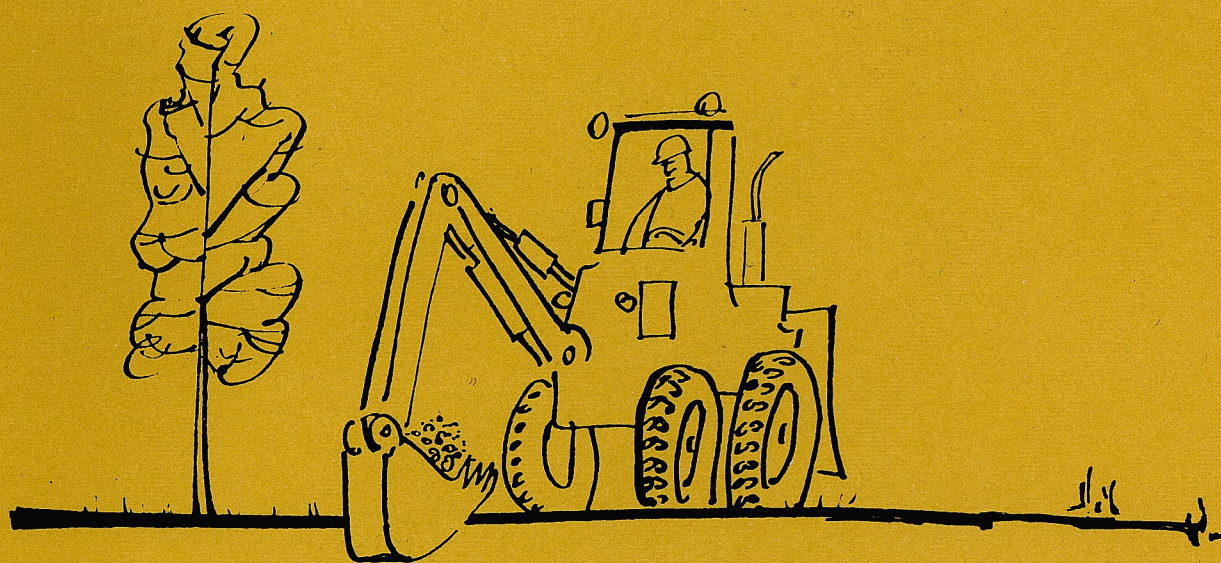




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BAND CONTRACT PUBLICATIONS



CONTRACTING FOR NON-PROFESSIONAL
SERVICES

December 1987

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Affairs Canada

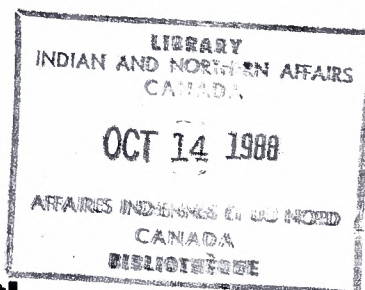
Affaires indiennes
et du Nord Canada

Prepared by
Contract Policy
and Services
Directorate

Préparé par la
Direction de la politique
et des services
des Marchés

CONTRACTING FOR NON-PROFESSIONAL
SERVICES

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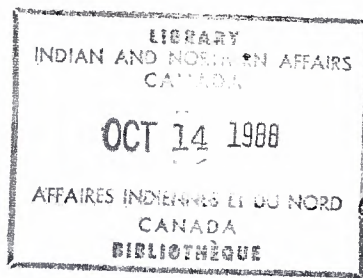
Canada

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Minister of Indian Affairs and
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en français sous le titre:

Marchés de services autres que professionnels



BCP-CN-3

CONTRACTING FOR NON-PROFESSIONAL SERVICES

Table of Contents

Section 1.	INTRODUCTION
Section 2.	TENDERS
Section 3.	CONTRACT AWARD
Section 4.	ADMINISTRATION OF THE CONTRACT

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 and general administration 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 and

administration of non-professional service contracts. Contract directives may be issued from time to time to implement immediate changes required by the band council and will be incorporated in this publication at the annual review and update.

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.

1.3 Forms

Most of the forms for this type of contract will be developed later.

Section 2 TENDERS

Table of Contents

- 2.1 General Remarks
- 2.2 Definitions
- 2.3 Policy
- 2.4 Compiling Tender Documents
- 2.5 Tender Advertising
- 2.6 Distribution of Tender Documents
- 2.7 Issue of Addenda
- 2.8 Extension of Tender Closing Date
- 2.9 Receipt and Opening of Tenders
- 2.10 Security Deposits and Surety Bonds
- 2.11 Review of Tenders
- 2.12 Cancellation of Tender Call After Receipt of Tenders

Appendices

- 2-1 Invitation Tenders for Non-professional Service Contracts
- 2-2 Acceptable Types and Amounts of Tender Security
- 2-3 Specimen Bid Bond
- 2-4 Unit Price Tenders - Errors in Computation
- 2-5 Execution of Tender and Contract Documents by Contractor
- 2-6 Tender Documents (under \$5000.) (Additional forms will be developed).

Section 2 TENDERS

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 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.

Tender security: this is given to indemnify the band council against increased costs if the tenderer does not carry out her/his undertaking to enter into a contract.

Bid bond: a bond issued by a surety company, in the amount of 10% of the tender price, which guarantees entry into a contract.

Security deposit: this can be:

- a. a certified cheque in the amount of 10% of the tender price payable to the band council and drawn on a recognized financial institution; or
- b. a government guaranteed bond.

Contract security: a form of security provided to guarantee performance of the contract work, payment of accounts and correction of defects encountered during the guarantee period.

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 Public tenders should be called through public advertising to ensure the band receives best value.

- 2.3.3 The securing of tenders by direct invitation 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 Compiling Tender Documents
- 2.4.1 The project manager is responsible for the preparation of the specifications and any special technical instructions to tenderers.
- 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 \$5,000 should consist of the following:
- Tender Instructions,
 - Tender and Contract Form,
 - General Conditions,
 - Labour Conditions (Provincial),
 - Terms of Payment,
 - Insurance Schedule, and
 - Statement of Work/Plans and Specifications.
- For projects under \$5,000 the tender package should consist of the following documents:
- Tender and Contract Form, (see Appendix 2-6),
 - Terms of Payment,
 - General Conditions,
 - 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

- 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 \$30,000 or less should be advertised locally. Contracts more than \$30,000 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 band office or offices at which tender documents may be obtained or inspected;
 - b. the tender closing time and date; and
 - c. 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 invited tenders 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. Plan deposits should not be requested when inviting tenders.

When inviting tenders 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 names of general 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.

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.

- 2.6.7 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.

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 addenda and amendments to all contractors who have received tender documents by registered mail.
- 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 Any postponement of the closing date of public tenders should be advertised in those newspapers in which the original tender was advertised.
- 2.8.4 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.
- 2.8.5 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 or by telex, 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. Telex amendments will be time and date stamped upon receipt by the telex receiving room. The band representative will check with the telex receiving room immediately before the tender closing time to determine if any telex amendments have been received.
 - 2.9.4 On a tender opening worksheet, record only the names and addresses of the tenderers 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 tenderers 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 tenderers 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 tenderer 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 a second 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 assessed 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 to be 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 tenderer 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 tenderer should be encouraged to honour a late amendment.
- 2.9.19 An exception to this is when a contractor submits an amendment stating that the amendment is only valid if received before the closing of tenders. In this case the contractor has qualified the amendment, therefore, if received late, it is no longer valid.
- 2.9.20 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 2.11.8d. dealing with withdrawal will be followed.
- 2.9.21 Enquiries received after tender opening, asking for tender details, are answered by giving only the names and addresses of tenderers and the total amount of each bid. No further details of the tenders are to be provided.
- 2.10. Security Deposits and Surety Bonds
- 2.10.1 Band council should ask for tender security for tenders of \$25,000 and over. The band council may decide to call for tender security for projects estimated at less than \$25,000. When a decision is taken to call for tender security for projects estimated at less than \$25,000, contract security may 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 tender security which may be required by the band council are described in Appendix 2-2.

- 2.10.2 Where tender security must be submitted with a tender, the tender must be disqualified during the tender review period if:
 - a. no tender security accompanies the tender; or
 - b. the tender security is not in the form required by the tender documents.
- 2.10.3 When a tender is less than \$25,000, and no tender 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 must be disqualified, except in the situation described in 2.10.6.
- 2.10.4 When the necessary tender 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 must be disqualified since the requirement to provide tender 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 looked at.
- 2.10.6 If, as a result of a tender call, only one tender is received and this does not meet the tender security requirement, it should not be disqualified if it is acceptable in all other respects. The tenderer must, however, supply the band council with the required tender security as a post-tender negotiation.

2.10.7 Tender 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 tenderers, are returned by registered mail.

If a security deposit from one or both of the two low tenderers is a certified cheque or bank draft, it is held uncashed in a secure place by the tendering office until the contract is awarded. If the security is government guaranteed bonds, 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 tenderers should be kept in a secure place until the contract is awarded.

2.10.8 The lowest tenderer is allowed 48 hours to provide security in the proper amount or form if the tender security received 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);

Failure to provide proper security do so results in rejection of the tender.

Where it is evident that the low bidder has purposely submitted a tender 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 tenderer, 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 tenderer, that is, for a sole tenderer 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 tender security, as this indicates that the bonding company is not prepared to bond the full amount.

2.11. Review of Tenders

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 execution 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.
- 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; or
 - d. failure to supply proper tender security (also see 2.10.8).
- 2.11.5 A tender may be bypassed on the following grounds:
- a. unavailability of the necessary equipment to undertake the work;
 - b. lack of capability to carry out the full scope of the work;
 - c. previous unsatisfactory record with the band council; or
 - d. unbalanced unit prices included in the tender.

2.11.6 Action for bypassing is as follows:

- a. Tenders may be bypassed 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 bypass situation does not exist where a tenderer has agreed to withdraw his/her tender. While withdrawal could occur for the reasons outlined in 2.11.5 a. and b. above, it is unlikely to arise under c. and d. (also see 2.11.8, which deals with withdrawal).

2.11.7 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;
- b. past performance of each tenderer;
- c. the nearness of each tenderer 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.

2.11.8 Action for tender withdrawal is as follows:

- a. In cases where tender 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 tender 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 tender security.
- d. In cases where a low tenderer has demonstrated, to the satisfaction of the band council, that a substantial error was made in the preparation of the tender, the low tenderer may be allowed to withdraw her/his tender and the contract may be awarded to the second low tenderer.

2.11.9 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 tenderer 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 tender security of each tenderer 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.

Appendix 2-1

INVITATION TENDERS FOR NON-PROFESSIONAL SERVICE CONTRACTS

1. Tenders for non-professional service contracts may be obtained by public tender call or by invitation from a representative list of qualified contractors.
2. Care must be taken when 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.

Appendix 2-2

ACCEPTABLE TYPES AND AMOUNTS OF TENDER SECURITY

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

- a. a bid bond in an amount of at least 10% of the tender. The bid bond must be 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 security deposit in an amount of at least 10% of the tender. The security deposit must be in the form of a certified cheque, bank draft or bonds as follows:
 - (1) Certified Cheques: Cheques, bank drafts etc., must be drawn on a recognized financial institution and made payable to the band council.
 - (2) 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 Regulation or registered in the name of the band council.

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

SPECIMEN

BID BOND

No.

\$

KNOW ALL MEN BY THESE PRESENTS, that
as Principal, hereinafter called Principal, and
as Surety, hereinafter called Surety, are held and firmly bound
unto
as Obligee, hereinafter called Obligee, in the full and just
sum 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, SEALED AND DATED this day of
19.

WHEREAS, the principal has submitted a written tender
to the Obligee, dated the day of
19 , for

NOW, THEREFORE, the condition of this obligation is
such that if the Principal shall have the said tender accepted
within sixty days from the closing date of the tender call and
shall enter into a contract with the Obligee and furnish a
Performance Bond and a Labour and Material Payment Bond each in
the amount of 50% of the contract and satisfactory to the
Obligee or other acceptable security, then this obligation
shall be void, otherwise to remain in full force and effect.

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, the day and year first above
written.

UNIT PRICE TENDERS - ERRORS IN COMPUTATION

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.

Appendix 2-5

EXECUTION OF TENDER AND CONTRACT DOCUMENTS BY THE CONTRACTOR

The band representative should ensure that tender and contract documents are executed as follows by contractors:

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

Band Council
of
The _____

TENDER AND CONTRACT
(For work or service not
exceeding \$5,000.00)

Project No. _____ Contract No. _____
(All correspondence and invoices must show these numbers)

Description of Work or Service

	<u>Unit</u> <u>Price</u>	<u>Total</u>
--	-----------------------------	--------------

I hereby offer to supply the materials and perform the work or service referred to above on the attached covenants and agreements within the time specified for the (Fixed Price/Total Sum) of \$_____.

Signature of Contractor and Date
COUNCIL

ACCEPTED BY THE BAND

Name

Chief

Address

Councillor

Telephone

Councillor

Witness

Councillor

Note: Invoices in duplicate shall be submitted to:

The parties to this contract covenant and agree as follows:

1. The Contractor will indemnify and save harmless the Band Council from and against all claims, demands, loss, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted in any manner based upon, occasioned by or attributable to the activities of the Contractor under this contract.
2. The various works or services are to be carried out and completed to the full satisfaction of the officer signing on behalf of the Band Council.
3. The Contractor may not assign or sublet this contract or any part of it without the written consent of the Band Council.
4. The Band Council reserves the right to terminate this contract at any time before completion for any reason whatsoever. In the event of such termination the Band Council will pay to the Contractor an amount that, in the opinion of the Band Council, is equal to that portion of the work or service satisfactorily completed up to the day of termination.
5. In engaging labour for the work or service contemplated by this contract the Contractor will give local labour preference as far as practicable and consistent with efficiency and economy.
6. No member of the House of Commons shall be admitted to any share or part of this contract or any benefit arising therefrom.
7. Labour Conditions attached are included in this contract.
8. The Band Council agrees to pay interest on progress payments and invoices which have not been paid within 30 days of their certification by the Band Council, at the prime lending rate established by the Band's banking institution. The Contractor must make a written request for payment of interest within 14 days of receipt of the payment.

9. Technical documents and prototypes produced by the Contractor in the performance of the work under the contract shall vest in and remain the property of the Band Council and the Contractor shall account fully to the Band Council in respect of the foregoing in such manner as the Band Council shall direct.

Technical documentation shall contain the following copyright notice.

The Band Council of the

(YEAR)

Technical information and inventions conceived or developed or first actually reduced to practice in performing the work under the contract shall be the property of the Band Council. The Contractor shall have no rights in and to the same. The Contractor shall not divulge or use such technical information and inventions, other than in performing the work under the contract and shall not sell other than to the Band Council any article or things embodying such technical information and inventions.

Section 3 CONTRACT AWARD

Table of Contents

- 3.1 General Remarks
- 3.2 Policy
- 3.3 Approval of the Contract Awards
- 3.4 Signing the Contract Documents
- 3.5 Notification of Contract Award to Contractor
- 3.6 Notification of Contract Award to Others
- 3.7 Contract Security
- 3.8 Insurance

Appendices

- 3-1 Acceptable Types and Amounts of Contract Security
- 3-2 Approved Form of Performance Bond
- 3-3 Provision of Contract Security

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 tenderer 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 considered.

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, unless the contractor has agreed to keep the offer open for a longer period.

3.3.4 When delays are encountered in the assessment 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 The normal tender acceptance period for service contracts is 30 days but may be extended by mutual agreement with the contractor provided there is no increase in cost.
- 3.3.6 The tender acceptance period begins at the exact date and time of the tender closing and expires at midnight on 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 telex communications the acceptance is effected the moment the message is transmitted to the contractor.

3.4 Signing the 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 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:
- Tender and Contract,
 - General Conditions,
 - Insurance Schedule,
 - Terms of Payment, and
 - Statement of Work.

3.5.3 Where tender 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 offered to the lowest acceptable tenderer at his/her tendered price. If the offer is declined, the band council may make an offer to the next lowest acceptable tenderer or recall public tenders. The original low tenderer's tender security cannot be retained 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 would be returned to the original tenderer.

3.6 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. The acceptable types of contract security and the amounts required by the band council are described in Appendix 3-1.

- 3.7.2 Where contract security was a requirement of the tender call, any related costs will be borne by the contractor. Where the provision of contract security was not a requirement of the tender call, but the successful tenderer is requested to provide it, the cost of the surety bond (if the security is provided in this form) will be reimbursed to the contractor.
- 3.7.3 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.
- 3.7.4 If the security is a surety bond, it is held by the tendering office.
- 3.7.5 If the 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.
- 3.7.6 If the 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.
- 3.7.7 At any time during the period of the contract, the contractor may replace the 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 executing the contract documents (see 3.5 and 3.6.3) or allowing the contractor to begin work.

Appendix 3-1

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 and/or a labour and material payment bond each in an amount of at least 50% of the amount payable under the contract -- these bonds 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 20% of the contract value -- the security deposit must be in the form of a bank draft, certified cheque or bonds as follows:
 - (1) certified cheques: these must be payable to the band council and drawn on a recognized financial institution;
 - (2) 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.

Appendix 3-2

PERFORMANCE BOND

No.

KNOW ALL MEN 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

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

SIGNED AND SEALED this _____ day of _____ 19 ____ .

WHEREAS, the Principal has entered into a Contract with the Band Council, dated the _____ day of _____ 19 ____ for

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

NOW, THEREFORE, the conditions of this obligation are such that if 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 the excess costs of completion of the Contract; and
 - (e) not be entitled to any Contract moneys earned by the Principal, up to the date of his/her default on the Contract and any holdbacks relating to such earned Contract moneys held by the Band Council, and the liability of the Surety under this Bond shall remain unchanged provided, however, and without restricting the generality of the foregoing, upon the completion of the Contract to the satisfaction of the Band Council, any Contract moneys earned by the Principal or holdbacks related thereto held by the Band Council may be paid to the Surety by the Band Council.
- (2) The Surety shall not be liable for a greater sum than the amount specified in this Bond.

- (3) No suit or action shall be instituted by the Band Council herein against the Surety pursuant to these presents after the expiration of two (2) years from the date on which final payment under the Contract is payable.

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

SIGNED, SEALED AND DELIVERED
in the presence of:

Principal

Surety

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 Tender Security Requested

Where tender security was not a requirement of the tender call, but a decision has been taken to request it, the contract may be awarded but no payments made until the appropriate security has been provided. In such cases, a letter in the format shown in Figure 1 is to be sent to the contractor requesting her/him to provide the security within 14 days of receipt of notice.

If the required security is not provided within the specified time period, the contractor is in default.

b. Tender Security Provided

1. Where the tender security provided by the tenderer 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 providing an additional 10% security deposit or a labour and material payment bond, or a performance bond and labour and material payment bond each in the amount of 50% of the contract value.
2. Where the tender security provided by the tenderer under consideration is in the form of a bid bond, the award letter should request that the performance and labour and material payment 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 take action under the bid bond, it will be necessary to inform the bonding company immediately.

Appendix 3-3 (cont'd)

Figure 1

Contract Under \$25,000.00
Contract Security Required

(to be sent out and agreed to in writing by the
contractor before an award is made)

REGISTERED

A.B.C. Cleaning Co. Ltd.,
340 Main Street,
OTTAWA, Ontario.
K1A 9H2

Dear Sir or Madam:

Re: Project Title, etc.

The tenders received for the above referenced project are currently under review and in order to permit further consideration of your tender you are asked to confirm that you will provide contract security in one of the forms described in the tender documents.

This security must be delivered to the Band Council within 14 days after award of contract.

Please confirm with the undersigned within _____ days that you will meet this requirement.

Signature

Title

Section 4 ADMINISTRATION OF THE CONTRACT

Table of Contents

- 4.1 General Remarks
- 4.2 Roles and Responsibilities
- 4.3 Contract Preparation
- 4.4 Insurance and Security Requirements
- 4.5 Change Orders
- 4.6 Assignment of Contract
- 4.7 Default by the Contractor
- 4.8 Termination of the Contract
- 4.9 Notices
- 4.10 Clearances
- 4.11 Progress Payments and Final Completion Certificate
- 4.12 Claims from Sub-contractors and Suppliers
- 4.13 Records

APPENDICES

- 4-1 Short Form Contract (Contracts not Exceeding \$5,000.00):
 - Tender and Contract (for Services or Work)*
 - General Conditions
 - Labour Conditions
 - Terms of Payment
- 4-2 Long Form Contract (contracts exceeding \$5,000.00)
 - Tender Instructions
 - Tender and Contract
 - General Conditions
 - Supplementary Conditions To be developed
 - Terms of Payment
 - Statement of Work/Plans and Specifications
 - Labour Conditions - Provincial
 - Insurance Schedule

* Included -- the others are to be developed.

Section 4 ADMINISTRATION 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 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.

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 of acceptance of the offer, the band representative ensures that a confirmation letter is sent. It will include contract security and insurance requirements 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 apart from 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 \$5,000:

(1) Tender and Contract (for Service or Work)
(Appendix 4-1), which shall contain at least:

- a Statement of Work,
- Terms of Payment,
- Supplementary Conditions, if applicable;
and

(2) General Conditions.

b. For contracts exceeding \$5,000:

- Tender and Contract,
- General Conditions,
- Supplementary Conditions,
- Terms of Payment,
- Statement of Work,
- Labour Conditions, and
- Insurance Schedule.

4.3.4 The band council or officer delegated by the band council shall sign three copies of the contract and send them to the contractor for signing.

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

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

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

- one original to the contract file;
- one original to the contractor;
- one original to the 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 "Tenders", 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 according to the general conditions of the contract.
- 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, and subcontractors and suppliers may be affected by the band council's decision.
- 4.4.4 Upon receipt of acceptable contract security, the band representative must return the tender security to the contractor within 48 hours. Failure to return a tender 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 tender security to contract security.
- 4.4.6 Surety bonds are kept for 12 months from the date appearing on the final certificate of completion. Security deposits can also be kept to cover underground works, provided contractors were informed at the tender stage.
- 4.4.7 The contractor must provide fire and liability insurance, when required, within 14 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 final certificate of completion is issued by the project manager, the contractor is entitled to the immediate return of the insurance policies. The contractor's contract security deposit should also be returned within 60 days if she/he has supplied all final documents, warranties, etc., with the final payment, and there are no outstanding claims for work performed under the contract.
- 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 offer;
 - 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 approves the quotation, the project manager shall order 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 certificates for payment.
- 4.5.6 The project manager shall 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 by common law, 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, 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 tender 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 tender security.
- b. When the contractor has provided negotiable tender 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 tender security. If the difference is not as great as the tender security, the balance is due and payable to the original contractor.

- c. When the contractor has provided a bid bond as tender 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 and insurance, 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, without losing any other right or remedy permitted under the contract, 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.
- f. If the contractor is delayed for a reason beyond his/her control, the completion date may be extended for a time mutually decided by the contractor and the band council. These delays may be caused by adverse weather conditions, labour disputes (including lock-outs ordered or recommended for its members by a recognized association to which the contractor belongs), fire or unusually slow common carriers. In no case shall the extension of time be less than the time lost as a result of the delay, unless the

contractor agrees. The contractor should not be reimbursed for any costs incurred by her/him as a result of the delay.

- g. If a delay occurs which is within the contractor's control and the contractor requests an extension in writing, the band council may agree to a new completion date, if they feel the delay is acceptable.
- h. The band council should not extend the completion date to accommodate delays without written notice from the contractor before the completion date specified in the contract. Again, the contractor shall not be reimbursed for any costs incurred by her/him as a result of the delay.
- i. Extensions to the completion date shall be issued by change order on the band council's change order form.
- j. Extension of the completion date does not generally apply to contracts when the contract is for services to be provided for a specified time such as catering, snow removal, air charter, garbage collection and bussing.

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

- 4.8.1 A clause in the general conditions provides for contract termination. If the contractor fails to perform, the band council may terminate the contract by giving the contractor written notice.

- 4.8.2 After making sure sufficient cause exists, the band representative may 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, may terminate the contract.
- 4.8.4 When the contract is terminated, 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;
 - d. the total value of materials on site; and
 - e. a list of all known 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 The band representative, when taking any action to terminate a contract, should make every effort to have the contractor confirm a., d. and e. of 4.8.4. If a bonding company is involved, its agreement on these items should also be obtained. If the appropriate parties receive confirmation of these items, disputes with, and claims from, the contractor tend to be eliminated or at least reduced.
- 4.8.6 When a contractor has provided a performance bond as contract security, the band representative must advise the bonding company in writing of all actions taken. The band council may request the bonding company's assistance in getting the contractor to remedy any default.

4.8.7 When the contract is terminated and a bonding company is involved, its written agreement should be obtained on a. b. d. and e. of 4.8.4.

4.8.8 All communications with the contractor or the bonding company regarding termination shall be by registered mail.

4.8.9 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 Final 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 and material incorporated into the work or delivered to the site 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 All progress payments are subject to deduction of a holdback, the amount of which depends on the type of contract security provided. When a labour and material payment bond is part of the contract security, the holdback retained from each progress payment is 5%. When negotiable contract security is provided, or no security was required, the holdback is 10%.
- 4.11.4 Holdbacks are mandatory, and the amounts specified shall be neither increased nor decreased.
- 4.11.5 No certificate for payment or progress 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 must be certified by the project manager within 10 working days after receipt and paid within 20 days after certification. Delays in making payments may result in the payment of interest to the contractor on the overdue amounts.

- 4.11.6 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.
- 4.11.7 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.
- 4.11.8 The contractor shall correct and/or pay for any damage to other work or services resulting from any corrections performed under the contract.
- 4.11.9 All interim applications from the contractor for progress payments, after the first one, must be accompanied by a statutory declaration that no accounts remain unpaid for which money was received in the previous progress payment.
- 4.11.10 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 shall 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 or service performed and in accordance with the terms of the contract.
- 4.11.11 If, after inspection, the project manager finds the claim excessive in relation to the actual performance, or material incorporated or delivered to the site, she/he may request the contractor to submit a revised progress payment or, in consultation with the contractor, reduce the progress payment accordingly.
- 4.11.12 When payments are reduced, the project manager shall inform the contractor in writing of the reasons.
- 4.11.13 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.

- 4.11.14 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 issue a final certificate of completion and 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 issuing such a certificate.
- 4.11.15 If the project manager identifies defects or deficiencies before issuing the final certificate of completion, she/he may issue an interim certificate identifying them. The contractor must set a time for completion or correction which is agreeable to the project manager. This should be followed up to ensure completion of the work or service within the agreed time.
- 4.11.16 All holdback monies shall become due and payable within 60 days of the issue of the final certificate of completion, provided all the final documents stipulated in the contract have been supplied.
- 4.11.17 Issuance of the final certificate of completion constitutes a waiver of all claims by the band council against the contractor, except those previously made in writing and still unsettled, and those arising from the provisions of the warranty.
- 4.11.18 When the final certificate of completion or the payment due under it is accepted, all claims by the contractor against the band council shall be waived, except those made in writing prior to this application and still unsettled.
- 4.11.19 Where a warranty applies the project manager shall inspect the completed work or service one month before its expiry date to ensure there are no defects. If contract security was retained for the guarantee

period, it must not be released until all defects revealed during this inspection are corrected to the satisfaction of the project manager.

- 4.11.20 The contractor must correct, at her/his own expense, any defects in the work or service due to faulty products and/or work appearing within the warranty period which starts on the date of issue of the final certificate of completion.
- 4.11.21 With regard to other warranties and guarantees to be provided by manufacturers, sub-contractors, suppliers, or the contractor, the band representative shall ensure that these documents are received before release of the final progress payment.

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. Where the contractor has provided a labour and material payment bond as contract security, claimants must be advised in writing to direct their claims to the contractor's bonding company. A copy of the surety bond should accompany this letter, as it outlines the time limits and procedures for submitting claims. Band staff should limit their involvement to this action only.
- 4.12.2 When the contractor has provided negotiable security as contract security, and a claim from a 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 are also 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. warranties;
- h. maintenance manuals; and
- i. 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.

Appendix 4-1

Band Council
of
The _____

TENDER AND CONTRACT
(For work or service not
exceeding \$5,000.00)

Project No. _____ Contract No. _____
(All correspondence and invoices must show these numbers)

Description of Work or Service

<u>Unit</u>	<u>Total</u>
<u>Price</u>	

I hereby offer to supply the materials and perform the work or service referred to herein on the covenants and agreements contained herein and on the reverse side hereof within the time specified for the (Fixed Price/Total Sum) of

\$ _____

Signature of Contractor and Date

ACCEPTED BY THE BAND COUNCIL

Name

Chief

Address

Councillor

Telephone

Councillor

Witness

Date

Note: Invoices in duplicate shall be submitted to:

The parties to this contract covenant and agree as follows:

1. The Contractor will indemnify and save harmless the Band Council from and against all claims, demands, loss, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted in any manner based upon, occasioned by or attributable to the activities of the Contractor under this contract.
2. The various works or services are to be carried out and completed to the full satisfaction of the officer signing on behalf of the Band Council.
3. The Contractor may not assign or sublet this contract or any part thereof without the written consent of the Band Council.
4. The Band Council reserves the right to terminate this contract at any time before completion for any reason whatsoever. In the event of such termination the Band Council will pay to the Contractor an amount that in the opinion of the Band Council is equal to that portion of the work or service satisfactorily completed up to the day of termination.
5. In engaging labour for the work or service contemplated by this contract the contractor will give local labour preference as far as practicable and consistent with efficiency and economy.
6. No member of the House of Commons shall be addmitted to any share or part of this contract or any benefit arising therefrom.
7. Labour Conditions attached are included in this contract.
8. The Band Council agrees to pay interest on progress payments/invoices which have not been paid within 30 days after their certification by the Band Council, at the prime lending rate established by the band's banking institution. The contractor must make a written request for payment of interest within 14 days of receipt of the payment.

9. Technical documentation and prototypes produced by the Contractor in the performance of the work under the contract shall vest in and remain the property of the Band Council and the Contractor shall account fully to the Band Council in respect of the foregoing in such manner as the Band Council shall direct.

Technical documentation shall contain the following copyright notice.

The Band Council of the

(YEAR)

Technical information and inventions conceived or developed or first actually reduced to practice in performing the work under the contract shall be the property of the Band Council. The Contractor shall have no rights in and to the same. The Contractor shall not divulge or use such technical information and inventions, other than in performing the work under the contract and shall not sell other than to the Band Council any articles or things embodying such technical information and inventions.

