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**C101**

**Contract Administration Training Publication**

# **PARTICIPANT'S MANUAL**

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B35  
no. C101  
c. 1

**CONTRACT ADMINISTRATION AND MANAGEMENT  
FOR FIRST NATIONS AND ABORIGINAL COMMUNITIES**

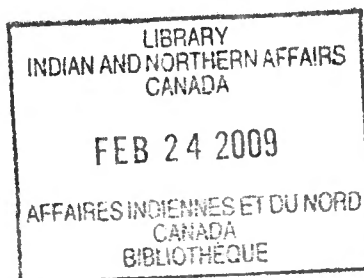
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**Participant's Manual**  
**Contract Administration and Management**

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**Prepared by DIAND Technical Services  
(PWGSC) for Indian and Northern Affairs**

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

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**CONTRACT ADMINISTRATION AND MANAGEMENT**

**FIRST NATIONS COURSE - C101**

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## **CONTRACT ADMINISTRATION AND MANAGEMENT**

### **- WELCOME -** **INTRODUCTION**

This participant's manual is intended to save you valuable time during the course by providing you with the course's notes on all topics which will be discussed by your instructor during the next 2 ½ days.

This manual can also be used in the future as an easy and quick reference guide to the most important components and elements of the contracting process. Also at the end of each subject treated in this manual, you will find a reference to the pertaining section(s) in one of your three (3) band contract publications.

### **PURPOSE AND SCOPE**

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

When a band does not have the in-house resources to prepare documents, invite proposals or tenders, award a contract and carry out the administration and management duties the contract requires, the band should normally retain specialists such as a consultant or an engineer to do this for them. In some cases, specialist assistance may only be required for some aspects of the overall contracting process such as project supervision or to obtain plans and specifications or project cost estimates.

**CONTRACT ADMINISTRATION AND MANAGEMENT****BAND COURSE****- TIMETABLE -**

	DAY 1	DAY 2	DAY 3
08:30	<ul style="list-style-type: none"><li>- INTRODUCTION</li><li>- DEFINITIONS</li><li>- OBJECTIVES IN CONTRACTING</li></ul>	<ul style="list-style-type: none"><li>- EVALUATION OF PROPOSALS</li><li>- METHODS OF PAYMENT</li><li>- INSURANCE</li></ul>	<ul style="list-style-type: none"><li>- CLAIMS AND DISPUTES</li><li>- CASE STUDIES ANALYSIS</li></ul>
10:00	BREAK	BREAK	BREAK
10:15	<ul style="list-style-type: none"><li>- PRE-TENDER CONSIDERATIONS</li><li>- PRE-TENDER REQUIREMENTS - METHODS OF CALLING TENDERS AND PROPOSALS</li><li>- TENDER DOCUMENTS - CONSTRUCTION</li><li>- TENDER ADVERTISEMENT</li><li>- TENDER DOCUMENTS - DEPOSIT</li></ul>	<ul style="list-style-type: none"><li>- CONTRACT SECURITY</li><li>- STANDING OFFER AGREEMENT</li><li>- CONTRACT AWARD</li><li>- GENERAL CONDITIONS</li></ul>	<ul style="list-style-type: none"><li>- CASE STUDIES DEBRIEFING</li><li>- COURSE EVALUATION</li><li>- COURSE CERTIFICATE AWARD</li><li>- END OF COURSE</li></ul>
12:00	LUNCH	LUNCH	LUNCH
13:00	<ul style="list-style-type: none"><li>- TENDER SECURITY</li><li>- LOCAL CONTENT CLAUSES</li><li>- REQUEST FOR PROPOSALS</li><li>- RECEIPTS OF TENDERS/ PROPOSALS</li><li>- OPENING OF TENDERS/ PROPOSALS</li><li>- EVALUATION OF TENDERS</li></ul>	<ul style="list-style-type: none"><li>- GENERAL CONDITIONS (CONTINUED)</li></ul>	
14:30	BREAK	BREAK	BREAK
14:45	- CASE STUDIES ANALYSIS	CASE STUDIES ANALYSIS	
15:30	- CASE STUDIES DEBRIEFING	CASE STUDIES DEBRIEFING	
16:30	END OF DAY 1	END OF DAY 2	

### **COURSE OBJECTIVES**

Upon completion of this course, the participant will be able to:

- Identify and apply the tendering and contract award procedures for construction and services contract in a manner which is generally accepted practice by the construction industry and the professional sector.
- Understand the requirements of proper contract administration and management to obtain best value for the money spent.
- Be familiar with the role and responsibilities of the contract administrator and those of the band representative.

## **DEFINITIONS**

### **CONSTRUCTION CONTRACT:**

A contract for the construction of buildings and structures, and the major repair, renovation or restoration of any work. It includes demolition projects, dredging, the building of roads, water and sewer systems, bridges, jetties/piers, pump houses etc, etc...

### **PROFESSIONAL SERVICES CONTRACT:**

A contract for services which are provided by firms/individuals with a high level of ability and knowledge in a professional, scientific, technical or managerial field. This could include services from an engineering consulting firm to provide plans and specifications and cost estimates for a construction project, a consulting firm to conduct a feasibility study for the band and an engineer to supervise a construction project.

### **NON-PROFESSIONAL SERVICES CONTRACT:**

A contract for services normally provided by skilled labour or tradespeople. This would include busing, snow clearing, equipment rental, maintenance work, minor repairs and renovation work, hiring of a carpenter, plumber, electrician; tree cutting, hauling, hay making, janitorial services, etc. Etc...

### **BAND REPRESENTATIVE:**

Also called the manager or engineer; the person who has been designated by the chief and band council as responsible for the day to day management of the contract and the supervision of the project. This is normally an engineer for construction contracts.

### **BAND CONTRACT ADMINISTRATOR:**

The person responsible for contract administration.

**NOTE:** The band representative and the contract administrator may be band members or outside specialists hired specifically to carry out the duties of these positions on behalf of the band. For small contracts one person may hold both positions.



**COMPETITION:**

A method used to acquire services from the private sector and by which a particular firm or individual is selected from among those who submitted tenders/proposals/bid to carry out work.

**CONTRACTOR:**

The firm or individual who proposes to provide services to the band.

**CONTRACT ADMINISTRATION:**

Includes all duties relating to the preparation of source lists of potential contractors, proposal/tender documents, calling of tenders, preparation of contract documents, awarding contract, change orders, and the maintenance of administrative records.

**CONTRACT MANAGEMENT:**

Dealing with the contractor to ensure compliance with all contract terms and conditions, verifying work quality and certifying progress payments as appropriate, maintaining proper records, and reporting as required on the progress of the work to the chief & council.

**COST ESTIMATE:**

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

**CLOSING DATE AND TIME FOR RECEIPT OF TENDERS/PROPOSALS:**

The specified date and exact time by which tenders/proposals are to be received by the band council from firms or individuals in order to be considered valid.

**EVALUATION CRITERIA:**

Elements or factors to be applied in the assessment of proposals for professional and consulting services in order to determine the best proposal for the required services.

**BID/TENDER/PROPOSAL:**

An offer to provide services submitted by firms or individuals in response to a request from the band council.

**CONTRACT:**

A voluntary and deliberate agreement between two or more competent persons to create a legal obligation which can be enforced in a court of law.

**AGREEMENT:**

A mutual understanding between two or more persons to do or not to do something based on integrity and mutual trust.

## **OBJECTIVES IN CONTRACTING**

### **BEST VALUE:**

The optimal combination of experience, knowledge, expertise, geographic location, performance, quality, quantity, time, initial costs, operation and maintenance costs, life-cycle costs, service, performance characteristics, spare parts availability, warranties and guarantees etc, etc.

### **FAIRNESS:**

- Give qualified firms or individuals an opportunity to compete for the contract work; and
- Evaluate tenders and proposals in accordance with accepted practices.

### **PRE-TENDER CONSIDERATIONS**

- Identify the need and cost
- Design and supervision of the work
- Cost estimate of the work:
  - planning
  - design
  - administration
  - tender documents
  - advertising
  - construction
  - hydro, water, sewer
  - supervision
  - annual operation & maintenance
- Sources of funding

### **PRE-TENDER REQUIREMENTS**

- Project approval
- Design plans & specifications
- Budget approval
- Methods of calling tenders:
  - public: area of advertisements and selection of newspaper(s)
  - invitation: how many and who to invite
- Fixed price (lump sum) or unit price contract?
- Area of advertisements
- Selection of newspaper
- Display location(s) of tender documents and deposit requirements
- Date and time of tender closing
- Bid security & contract security requirements
- Insurance requirements
- Completion date of the work



## **METHODS FOR CALLING TENDERS AND PROPOSALS**

- Advertise in one or more newspapers
- Invite contractors from a source list of qualified firms or individuals
- Negotiate with one or more firms or individuals in order to award a contract on a sole source basis.

**Notes:**

1. Tenders/proposals should be invited or advertised in newspaper for all types of contracts with an estimated value exceeding \$30,000.;
2. Tenders/proposals do not have to be invited or advertised in newspapers and the contract can be awarded on a sole source basis if:
  - estimated value is less than \$30,000
  - in a case of extreme emergency
  - only one contractor/one firm is capable of doing the work
  - it is not in the interest of the band council to call tenders.

## **TENDER DOCUMENTS - CONSTRUCTION**

### **CONSTRUCTION PROJECTS ESTIMATED UP TO \$30,000:**

Band council may wish to use the "work order" form to solicit tenders. For the work order contract, the tender package includes the following documents:

- instructions to bidders
- the work order form (not signed by the band representative)

**Note:** After the quotation/tender is received, the price, name, etc. of the successful bidder is transferred to the work order and signed by the band representative

Reference: Band Contract Publications - Construction - Appendix 2-7

### **CONSTRUCTION PROJECTS ESTIMATED BETWEEN \$30,000 AND \$100,000:**

The following documents are included in the tender package for the construction and repairs minor works tender and contract document:

- instructions to bidders
- tender and acceptance form
- general conditions
- labour conditions
- insurance schedule (if specified)
- plans and specifications
- contractor's qualification statement

Reference: Band Contract Publications - Construction - Appendix 2-8

### **CONSTRUCTION PROJECTS ESTIMATED AT MORE THAN \$100,000:**

The following documents are included in the tender package for the major work construction contract.

- Instructions to bidders
- Tender form
- Articles of agreement
- Terms of payment
- General conditions
- Labour conditions (provincial)
- Contract security conditions
- Insurance schedule
- Plans and specifications
- Contractors qualification statement
- Local content conditions

Reference: Band Contract Publications - Construction - Appendix 2-9.

### **TENDER DOCUMENTS - NON-PROFESSIONAL SERVICES - UP TO \$30,000**

- Invitation to tender
- The Work Order form (not signed by Band Representative)

Reference: Band Contract Publications - Non-Professional Services - Appendix 2-6.

### **TENDER DOCUMENTS - NON-PROFESSIONAL SERVICES - MORE THAN \$30,000**

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

Reference: Band Contract Publications - Non-Professional Services - Appendix 2-7.

### **TENDER ADVERTISING IN NEWSPAPERS**

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.

- Works estimated at \$50,000.00 or less should be advertised locally;
- Works estimated between \$50,000.00 and \$1,000,000.00 should be advertised within the province; and
- Works estimated at more than \$1,000,000.00 are advertised on a regional or national basis.

Reference:    *Band Contract Publications - Construction - Section 2.5.*

### **DEPOSIT FOR TENDER DOCUMENTS**

- Refundable or non-refundable deposits for tender documents should be as follows:

<b><u>ESTIMATED CONTRACT VALUE OF</u></b>	<b><u>DEPOSIT</u></b>
\$25,000 or less	NONE
\$25,000 to \$100,000	\$ 25.00
\$100,000 to \$500,000	\$ 50.00
\$500,000 to \$1,000,000	\$100.00
\$1,000,000 to \$5,000,000	\$250.00
OVER \$5,000,000	\$500.00

- Deposit should be in the form of cheques or bank drafts made payable to the band council. Cash is also acceptable.

Reference: Band Contract Publications - Construction - Section 2.6.8



## **BID SECURITY**

The band council should request bid security when tenders are advertised or invited for construction projects or non-professional services estimated at \$30,000.00 or more;

Bid security is not requested for professional services contract;

The value of the bid security should be 10% of the tendered price submitted by the contractor for tenders valued up to \$250,000. For tenders valued in excess of \$250,000 the bid security shall be \$25,000 plus 5% of the value of the tender in excess of \$250,000. The maximum amount of any bid security shall be \$250,000.

### **APPLICATION:**

- The recognized, accepted and expected rules of practice in tendering and contract award for construction and non-professional services is for the band council to award the contract to the lowest valid bid submitted by a competent contractor.
- Should the low valid bidder refuse to enter into the contract after his/her offer is accepted by the band council, then the band council is within its legal right to use a portion or all of the bid security provided by the low valid bidder to recover its monetary losses when it awards the contract to the second low valid bidder.

### **ACCEPTABLE TYPES OF BID SECURITY:**

- A bid bond from a surety company or
- A bid security deposit in the form of:
  - government guaranteed bond such as a Canada Savings Bond
  - certified cheque
  - bank draft
  - bank money order
  - postal money order
  - letter of credit

Reference: Band Contract Publications - Construction - Section 2.11

## **LOCAL CONTENT**

### **INTRODUCTION**

In order to encourage local content in construction contracts on Indian reserves, and in the Territories, an appropriate clause should be added to the tender package. This clause would require the contractor to employ local labour, from the specific work location, to the fullest extent possible. The contractor is required to list the applicable trades and total person months for the employment of local labour.

The tender package, where applicable, should also require bidders to stipulate the extent to which they will utilize local materials, local equipment, and provide a formal training program for the local labour employed by the contractor.

### **PRE-TENDER CONSIDERATIONS (LOCAL CONTENT)**

Prior to developing the tender documents the band representative should establish:

1. Extent of labour/trades available locally;
2. Quantities, and firm prices, of locally available materials;
3. Local equipment available and firm rental rates; and
4. Training requirements/trade apprenticeships.

### **LOCAL CONTENT (SPECIAL CLAUSES TO INCLUDE IN THE TENDER DOCUMENTS)**

1. **In the Instructions to Bidders** an instruction should be included such as:  
"bidders are to note that special requirements are included in the tender forms and specifications with respect to"

(LABOUR)

(EQUIPMENT)

(MATERIAL)

(TRAINING)

2. **In the Tender Form**

Special clauses similar to those shown in the following samples, could be incorporated in the tender package, in the appropriate locations.

**I     SAMPLE CLAUSE**

**EMPLOYMENT OF LOCAL LABOUR**

- A.     It is understood and agreed that the following clause is added to the general conditions:

The contractor will employ local labour to the fullest extent possible and will indicate in his/her tender the number of local persons to be employed under this contract. Pursuant to the foregoing, a list of tradespeople available at the site is attached to the tender. It is the responsibility of the contractor to establish their qualifications.

- B.     In order to comply with the foregoing clause, the contractor will complete the following:

"I/we will employ \_\_\_\_\_ local people indicated hereunder for the period specified".

TRADE	NO. OF PERSONS	TOTAL PERSON MONTHS
_____	_____	_____
_____	_____	_____
_____	_____	_____

- C.     Should employment of any person identified be terminated prior to completion of the term indicated in the tender, the contractor shall provide the manager with justification for termination. The contractor further agrees to replace such person with a local person to the extent that they are available and qualified prior to attempting to recruit elsewhere.

## **II     SAMPLE CLAUSE**

### **LOCAL MATERIAL**

Some construction material is available locally. I/we agree that I/we will purchase the following local supplies, if available, when required for the project:

- |             |             |
|-------------|-------------|
| 1.    _____ | 6.    _____ |
| 2.    _____ | 7.    _____ |
| 3.    _____ | 8.    _____ |
| 4.    _____ | 9.    _____ |
| 5.    _____ | 10.   _____ |

Attach additional sheet if required and check ( ) \_\_\_\_\_.

Contractors will make their own arrangements for purchase of such materials. Contractors are also advised that they are responsible for ensuring that material used complies with standards set out in the specifications.

I/we understand that I/we may substitute such material with other material of my/our choice subject, however, to the prior approval of the manager. All materials shall meet the requirements of the contract documents.

## **III    SAMPLE CLAUSE**

### **LOCAL EQUIPMENT**

- A.    Some construction equipment is available locally. The contractor shall establish his/her requirements for construction equipment and should the need for supplementary construction equipment be identified, the contractor may make his/her own arrangements for local rentals. Examination and rental of this equipment is the responsibility of the contractor.

A list of equipment is attached for reference purposes.

- B. I/we agree that I/we shall use the following local pieces of construction equipment if available when required for the project:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

Attach additional sheet if required and check ( ) \_\_\_\_\_.

I/we understand that I/we may substitute such equipment with other equipment of my/our choice subject, however, to the prior approval of the manager.

#### IV SAMPLE CLAUSE

##### TRAINING PROGRAM

- A. I/we agree to implement a formal training program in accordance with clause   \*   of the **General Requirements, Section   \*   of the Specifications.**
- B. In order to comply with the foregoing clause, I/we agree to engage under a training program \_\_\_\_\_ local people indicated hereunder for the period specified:

<u>TRADES</u>	<u>NUMBER OF TRAINEE POSITIONS</u>	<u>PROPOSED DURATION OF TRAINING BY HOURS/PERSON</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Attach additional sheet if required and check ( ) \_\_\_\_\_.

- \* Contract Administrator to fill in these blanks when drafting contract general requirements.



## **LOCAL CONTENT (EVALUATIONS PROCEDURES)**

**All tenders will be evaluated for:**

- price as tendered
- proposed use of local labour
- proposed use of local equipment
- proposed use of local material
- proposed training program

If the lowest bidder proposes to use a lesser number of local labour, equipment and material than the numbers identified on average in all the other tenders received, band council should encourage the lowest bidder to increase his/her numbers for local content at least to the average of the other bidders.

## **PROPOSAL PACKAGE - PROFESSIONAL SERVICES**

### **APPLICATION**

To invite qualified firms or individuals to submit proposals to the band council for works or projects of a professional nature.

The proposal package forwarded to each of the invited contractors should include the following documents:

- a letter of invitation
- a statement of work/description of services
- articles of agreement
- general conditions
- payment conditions/methods
- evaluation criteria

It is recommended that at least 4 to 5 firms or individuals be invited to submit proposals.

A minimum of 10 working days should be given to the invited contractors to prepare and submit their proposals.

The band council must indicate in the invitation letter to the invited firms or individuals the method of payment it wants the invited contractors to bid on i.e. fixed price, fixed per diem rate, fixed unit price, fixed fee plus administration and /or travelling expenses, etc.

Reference: *Band Contract Publications - Professional Services - Section 2.2 and Appendix 1.*

**STATEMENT OF WORK/TERMS OF REFERENCE/DEFINITION OF REQUIREMENTS**  
**PROFESSIONAL SERVICES CONTRACTS**

The following elements should be included:

**BACKGROUND**

A statement outlining the situation leading to the requirements.

**OBJECTIVE**

A statement describing that which is to be achieved.

**SCOPE OF WORK**

A description of the range and extent of the services to be provided.

**CONSTRAINTS**

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

**BAND COUNCIL SUPPORT**

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

**TIME SCHEDULE**

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

**PROGRESS REPORTING/OUTPUT**

Progress report requirements and other control procedures to be applied by the band council during the work.

## **APPROVAL AND ACCEPTANCE**

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

Reference: *Band Contract Publications - Professional Services Appendix 1, Attachment B.*

## **RECEIPT OF TENDERS AND PROPOSALS**

### **PROCEDURES**

- All tenders/proposals should be received by one office;
- All tender/proposal envelopes and amendments are to be stamped with the date and time upon receipt;
- Tenders/proposals and amendments must be received prior to the time designated for reception of tenders/proposals.
- All tender/proposal envelopes received are retained unopened in a locked cabinet until the time and date set for their opening;
- Names of bidders or number of bids received is not told to anyone before the tenders/proposals are opened;
- Tenders/proposals or amendments received after the exact time designated for the closing of tenders/proposals are not considered and are returned unopened to the bidder with an explanatory letter;
- A bidder will be permitted to withdraw his/her tender or proposal prior to the closing time and date, provided that a request is received in writing, prior to this time, and is signed by a responsible officer of the firm;
- Only tenders submitted on the form supplied by the band council and delivered to the designated office should be considered.

Reference:    *Band Contract Publications - Construction - Section 2.10.*



### **OPENING OF TENDERS AND PROPOSALS**

- Tenders and proposals should be opened immediately or as soon as practicable after the closing time;
- Tenders advertised in newspapers (known as public tenders) are opened in public;
- Tenders or proposals which have been invited directly from a list of contractors are opened in the presence of only those contractors who have submitted bids, if they so request;
- Tenders/proposals are opened by a committee of at least three persons comprised of a chairperson - normally the band representative - and a third responsible person acting as witness;
- The chairperson announces the following to those present for the opening:
  - the official name of the project;
  - that all tenders/proposals received are subject to technical and administrative review prior to the contract being awarded;
  - that no questions concerning tenders/proposals will be answered at the opening.
- As tenders/proposals are opened one at the time, the chairperson announces only the following:
  - name and address of each bidder;
  - the amount of each bid, including total amount of any amendments and revised total tender/proposal amount.
- No tenders or proposals are disqualified at the opening;
- Enquiries for tender/proposals results after opening and before contract award are answered with only the names and addresses of bidders, and the total amount of the bids.

Reference:    *Band Contract Publications - Construction - Section 2.10.*

**EVALUATION & SELECTION OF CONTRACTORS  
FOR CONSTRUCTION AND NON-PROFESSIONAL SERVICES**

**1. THE TENDERS WILL BE EVALUATED FOR THE FOLLOWING:**

- Comparison with the band council's estimate;
- Accuracy of tender computations;
- Completeness of the tender in all respects;
- Availability of adequate equipment to carry out the work;
- Previous record with the band council; and
- Capability to undertake the full scope of the work.

**2. TENDER DISQUALIFICATION:**

A tender will normally be disqualified for the following reasons:

- Failure to bid on the band's tender form or to complete the tender form in all respects;
- Failure to bid in accordance with the requirements of the tender documents; and
- Failure to supply proper bid security (if required).
- Inability to provide necessary equipment;
- Inability to carry out the full scope of the work; and
- A previous unsatisfactory record of performance.

**The contract is awarded to the low valid bid**

Reference: Band Contract Publications - Construction - Section 2.12.

**EVALUATION OF PROPOSALS**  
**PROFESSIONAL SERVICE CONTRACTS**

- The band representative establishes a proposal evaluation committee of at least three knowledgeable persons;
- Each committee member carries out an independent evaluation using the criteria and assigned weights;
- If a proposal does not seem to meet the mandatory requirements identified in the request for proposal then the proposal is considered not acceptable and the rated requirements are not evaluated;
- The band representative prepares a summary of the evaluation which is signed by all committee members and recommends contract award to the chief and band council;
- The band contract administrator ensures that the evaluations and subsequent recommendations are consistent, logical and that the rating supports the recommended award; and
- After contract award, unsuccessful bidders, who request it, may be debriefed as to their own proposal only. This debriefing must not include a discussion of other proposals or the scores given to others.

Reference:    *Band Contract Publications - Professional Services - Section 3.1 and Appendix 1, Attachment C.*

**EVALUATION OF PROPOSALS**  
**HIGHEST RATED PROPOSAL METHOD**

- Each criterion is given a "weight" adding to 100% in total.
- Cost criterion is included and weighted at 10% to 30% depending on project requirements (see sample rating table for examples of weights given to each criterion).
- All criteria will be rated from 1 to 10.
- Each rating is multiplied by the corresponding weight.
- No passmark is required.
- **APPLICATION**
  - Expertise and experience are of prime importance;
  - I.E.: Research and development project, feasibility studies, preparation of plans and specifications supervision services for a construction project; and
  - Technical merit of the proposals are more important than cost.

**Note:** To control contract costs, the band's budget may be disclosed in the request for proposals (RFP).

### HIGHEST RATED PROPOSAL METHOD (Sample)

CRITERIA	WEIGHTS	RATING	A	RATING	B	RATING	C	RATING	D
CONTRACTOR	15	6	90	6	90	9	135	10	150
PROJECT TEAM	15	7	105	6	90	9	135	10	150
PROPOSAL	25	8	200	7	175	9	225	10	250
SCHEDULE	15	7	105	7	105	9	135	10	150
CONTROL	10	7	70	5	50	10	100	9	90
METHODS	10	6	60	5	50	7	70	8	80
COSTS	10	7	70	9	90	5	50	3	30
<b>TOTAL POINTS</b>	<b>100</b>		<b>700</b>		<b>650</b>		<b>850</b>		<b>900</b>
<b>\$ PRICE</b>			<b>\$70,000</b>		<b>\$60,000</b>		<b>\$80,750</b>		<b>\$88,200</b>

**POINT SYSTEM:**

1-3	POOR
4-6	FAIR
7-8	GOOD
9-10	EXCELLENT

CONTRACT AWARDED TO "D"

The Best Value Proposal is the one that achieves the highest score on the Rated Requirements.

## **METHODS OF PAYMENT**

### **CONSTRUCTION & NON-PROFESSIONAL SERVICES**

#### **ESTABLISHMENT OF PRICE**

The proper method of pricing a requirement is dependent upon the degree to which it is possible to define the requirement and to estimate cost. To demand an unduly firm basis of price, in a situation where costs cannot be closely known in advance, is to invite either excess profit or loss to the contractor. Correspondingly, the adoption of an unduly flexible basis of price, for a requirement that is susceptible to more accurate definition and estimating, will remove some of the advantages of competition and will encourage inefficiency by contractors at the expense of the band. It is thus of equal importance of good contract pricing

- that the requirement definition be made specific to the highest possible degree; and
- that the chosen pricing method be compatible with the requirements definitions.

The following five methods of pricing are appropriate to requirements defined in descending order of certainty. Each, however, is equally susceptible to there being competition for the award and objective selection of the contractor on the basis of the most favourable offer. Variations and combinations of these may be used to adapt to particular circumstances:

- (1) fixed lump sums;
- (2) fixed unit prices;
- (3) target price, ceiling price and incentive fee formula;
- (4) target price and incentive fee formula without ceiling price; and
- (5) fixed time rates

#### **REQUEST FOR PROGRESS PAYMENT**

For "lump sum" contracts, the contractor should be requested at the construction briefing meeting to submit a detailed breakdown of his contract price for review by the band representative. This breakdown should be reviewed carefully in terms of completeness and accuracy. If the contractor has inflated the cost of items which will be performed at the beginning of the project, he should be requested to revise them. This must be done to ensure that we do not overpay the contractor at any point during the construction stage and particularly at the beginning. Once a proper cost breakdown has been established, it should appear on a "cost breakdown" form which must accompany each "request for progress payment".

For unit price contracts, a cost breakdown may be obtained from the "unit price table" in the construction tender form or from the articles of agreement.

### **PROGRESS PAYMENTS AND HOLDBACKS**

Progress payments, sometimes referred to as payment on account or progress claims, are provided for in the contract, and the contractor may submit progress claims monthly in the course of the work.

The contractor must sign these applications for payment. The engineer must also sign the applications and issue a certificate attesting to their correctness.

Progress payments must be paid promptly in order for the contractor to meet her/his financial obligations to sub-contractors and suppliers. The times for certification and subsequent payment are specified in the terms of payment. Delays in making payments result in the payment of interest to the contractor on the overdue amounts.

All progress payments are subject to deduction of a holdback, the amount of which is dependent upon the type of contract security provided. When a labour and material payment bond is part of the contract security, the holdback retained from each progress payment is 5%. When negotiable contract security such as a certified cheque is provided, the holdback is 10%.

Holdbacks are mandatory, and the amounts specified herein should not be increased nor decreased.

No certificate for payment nor any progress payments made thereunder nor any partial or entire use or occupancy of the work by the band council authority shall constitute an acceptance of any work or products not in accordance with the contract documents.



### **STATUTORY DECLARATIONS**

All interim applications from the contractor for progress payment must be accompanied by a Statutory Declaration (see Appendix 4-3) Band Contract Publication "Construction" attesting that no accounts remains unpaid for which money was received on the progress payment immediately preceding the progress payment now being submitted.

Applications for final payment from the contractor must be accompanied by a final Statutory Declaration (Appendix 4-4) attesting to the full payment of all accounts and wages and lawful deductions.

Reference:     *Band Contract Publications - Construction - Section 4.16.*

## **METHODS OF PAYMENT** **PROFESSIONAL SERVICES**

The method of payment is usually either:

**(A) Total Fixed Price**

Fixed price contracts (inclusive of all travel and other expenses) are paid either on a lump sum basis upon completion of the contract or on a lump sum basis upon completion of various stages of the work.

**OR**

**(B) Total Maximum Authorized**

This arrangement can consist of either:

- (1) Fixed fee plus a maximum amount for expenses; or
- (2) A maximum fee based on per diem rates or unit prices. An additional amount may be included for expenses. When disbursements are made for administrative or travel expenses the claim must be supported by receipts. These expenses should be itemized in the proposal and placed in the terms of payment in the same way. A markup on disbursements is not standard practice.

### **ADVANCE PAYMENTS ON CONTRACTS**

Advance payments to contractors are only provided in unusual circumstances, such as contracts for services of specialists with very limited capital or for contracts with native contractors on small projects also with limited capital and credit or possibly where there is a large initial capital outlay to get the work underway.

Reference:     *Band Contract Publications - Professional Services - Section 2.3.*

## **INSURANCE - CONSTRUCTION CONTRACTS**

The contractor shall maintain insurances, as the contract may require, to protect the interests of both parties to the contract. The specific requirements for insurance will have been decided prior to the tender call;

All contractors having a contract for construction or repairs of buildings and structures in excess of \$50,000.00 must provide property damage (to the value of the contract) and liability insurance for an amount of \$2,000,000;

The contractor must submit to the engineer the Certificate of Insurance as specified in the insurance conditions duly signed within 30 days of acceptance of his/her tender;

The contractor must provide the original of the property damage insurance policy and a certified copy of the liability insurance policy if requested to do so by the engineer;

The band representative must review the insurance certificate or policies insofar as description of payee, amounts and endorsements are concerned;

Proceeds of all property damage insurance policies must be payable to the band council; and

For liability insurance, the policies shall be issued in the joint names of the band council and the contractor. The proceeds of these policies must be paid to the claimant.

**Note:** 30 day cancellation notice stipulation should be required.

Reference:     *Band Contract Publications - Construction - Appendix 2-8;  
Section 3.7; and Section 4.7.*

## **CONTRACT SECURITY - CONSTRUCTION CONTRACT**

Contract security is required for construction and non-professional service contracts of \$30,000 and over. The contractor must provide contract security, in an approved form, within 14 days of receipt of award notice as follows:

- Performance bond (50% of the value of the contract) and labour and material payment bond (50% of the value of the contract) issued by an insurance company;  
or
- Labour and material payment bond (50% of the value of the contract) and the security deposit submitted with the tender; or
- The security deposit submitted with the tender plus an additional security deposit in an amount of 10% of the value of the contract. Security deposits can be in the form of a certified cheque, bank draft, money order, government guaranteed bonds, letters of credit or any bill of exchange payable to the band council and certified by an approved financial institution.
- Contractor should not be permitted to commence work, or be paid, until contract security is received by the band representative.
- Failure to provide contract security is a default by the contractor and band council can take action against the bid bond or the bid security deposit.
- Bid security is returned to the contractor upon receipt of acceptable contract security. If a security deposit was submitted with the bid, then the bid security is retained and an additional 10% must be provided by the contractor within 14 days of receipt of award notice.

Reference:     *Band Contract Publications - Construction - Section 3.6 and Section 4.6.*

## **STANDING OFFER AGREEMENT**

### **DEFINITION**

An arrangement whereby a supplier agrees to supply on demand, goods and services described in the offer at the price agreed and subject to all stipulated terms and conditions.

### **APPLICATION**

Some examples of the type of services which can be done by using a standing offer agreement can be: general maintenance (electrical, mechanical), snow removal, grass cutting, minor housing repair and renovation work, landscaping, road maintenance, janitorial services, safety and operational inspections, typewriting, word processing services, catering services etc, etc.

### **CRITERIA FOR ENTERING INTO A STANDING OFFER**

- Repetitive requisitioning;
- Service can be clearly specified;
- Service is commercially available;
- Prices can be established for the term of the standing offer;

**Note:** The tendering process for creation of a standing offer agreement is the same as for a contract.

### **CHARACTERISTICS OF STANDING OFFER**

- The need is clearly defined; however, precise quantities cannot be determined in advance;
- Prices are usually established as the result of competitive bid solicitation;
- Delivery of the service is on an "as and when required" basis during a set time period (often one year);
- All terms and conditions are pre-negotiated except for quantity of work;
- Limit on total expenditure is stipulated; and

- Payments based on actual quantities of work satisfactorily performed. The band council is not obligated to order the total estimated quantity of the items specified on the standing offer agreement.

#### **CALL-UPS AGAINST A STANDING OFFER AGREEMENT**

The band representative designated in a standing offer agreement, which has been approved by the band council, is authorized to approve call-ups against the standing offer provided the cumulative amount of all call-ups does not exceed the total amount of the standing offer agreement.

The band representative should ensure that the call-up document includes the following:

- description of work;
- the method of payment;
- estimated cost;
- commencement and completion dates; and
- appropriate reporting milestones as required.

The band representative should maintain a record of all call-ups for each standing offer agreement.

Reference:     *Band Contract Publications - Contracting for Non-Professional Services, Appendix 2-8.*

## **CONTRACT AWARD**

Contract awards are approved within the limits delegated by the band council;

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

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.

Reference:    *Band Contract Publications - Construction - Section 3.*

### **Notification of Award to Contractor**

The contractor is notified of the award and all conditions and changes thereto by:

- telegram, telex, dex or fax (in urgent situations);
- letter; and
- sending a copy of the signed contract.

Notification by telegraphic means or letter should be followed up with the contract document as soon as possible.

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

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

Reference:    *Band Contract Publications - Construction - Section 3.4.*



## **GENERAL CONDITIONS**

Anyone having a part in managing the contract must be aware that, in the event of a conflict or discrepancy between the Plans, Specifications and the General Conditions, the General Conditions govern. Obviously, band representatives must be thoroughly familiar with these conditions since they take precedence in the contract. These notes and comments refer to the Standard Construction Contract Document used for works valued at more than \$100,000.

### **GC1. INTERPRETATION**

Where there is a discrepancy between plans and specs, the specs govern.

Where there is a discrepancy between sets of plans, plans drawn to the largest scale govern.

Where there is a discrepancy between figured dimensions and scaled dimensions, the figured dimensions govern.

### **GC2. CONTRACT BINDING ON SUCCESSORS AND ASSIGNS**

Both parties to the contract bind not only themselves but their heirs, successors, executors, administrators and assigns. Simply, if the band representative who signed the contract vacates the position, the successor need not sign a new contract. Similarly, if a contractor sells their business, the new owner is bound by the contract as though having signed it.

### **GC3. ASSIGNMENT OF CONTRACT**

The contractor cannot assign his/her responsibilities under the contract unless the band council agrees.

### **GC4. SUBCONTRACTING BY CONTRACTOR**

- Consent of engineer/manager required;
- Formal notification mandatory; and
- Subcontractors cannot be changed without consent of engineer/manager.

### **GC5. AMENDMENTS**

Amendments or changes made to the contract must be in writing.

**GC6. NO IMPLIED OBLICATIONS**

Bands commitment and obligations under the contract are contained in:

- contract documents;
- change orders;
- correspondence

The contract supersedes all communications, negotiations and agreements either verbal or in writing made before the date of contract award.

**GC7. TIME OF ESSENCE**

This seemingly insignificant statement is one of the most important conditions of the contract. In effect, it serves to accord the completion date a status as vital as the consideration payable under the agreement. If the completion date is not met the contractor is in breach of contract and the band may be in a position to take action against the contractor.

**GC8. INDEMNIFICATION BY CONTRACTOR**

The contractor shall protect the band council against all claims, actions or suits occasioned by the activities of the contractor and his/her subcontractors and he/she is responsible for all costs incurred in claims/actions for the use of an invention/patent or for an improper or illegal act or for the omission of an act.

**GC9. INDEMNIFICATION BY THE BAND COUNCIL**

The band council is responsible for all costs incurred in claims/action for lack of title to the work site, for supplying the contractor with fraudulent model, plans and specifications, designs or patent of invention.

**GC10. MEMBERS OF BAND COUNCIL NOT TO BENEFIT**

Band council members should not benefit personally from the contract.

**GC11. NOTICES TO CONTRACTOR AND TO BAND COUNCIL**

Any communication with the contractor having a bearing on the contract (ie. a notice, consent, order, direction or decision) must be given in writing. If hand delivered to the contractor or an authorized representative in person it is deemed to have been received on the day that it was delivered. If mailed, it is deemed delivered on the day received or six days after it was mailed whichever is sooner.

Note that while all other communications may be given to the contractor's superintendent, a notice of termination, or taking work out of the contractor's hands must be delivered to the contractor or a senior administrative or executive officer of the company.

In the event of a postal strike, a telegram notice may be used.

#### **GC12. MATERIALS, PLANT AND REAL PROPERTY BECOME BAND'S PROPERTY**

Anything supplied by the contractor for use in the contract becomes the property of the band until either it is incorporated into the work or the engineer returns it to the contractor. This clause ensures that the band will not suffer any losses or slippage in the work schedule by reason of removal or seizure of materials, plant etc. Nevertheless, the contractor is responsible for any loss or damage to items supplied by him/her even though they have become band property.

#### **GC13. MATERIALS, PLANT AND REAL PROPERTY SUPPLIED BY THE BAND**

Band supplied materials, plant and real property are the contractor's responsibility. They are for use in performing the contract only and the cost of repairs or replacement is the contractor's responsibility. The engineer is the authority in decisions relating to loss, damage or quantities.

#### **GC14. LAWS, NOTICES AND FEES**

- The contractor is responsible to obtain permits, licences, and certificates required to perform the work.
- The contractor must comply with all laws, ordinances, rules, bands by-laws, regulations, codes and orders and with the preservation of public health and construction safety.

#### **GC15. WORK UNDER DIRECTION OF ENGINEER**

This provides perhaps the most comprehensive statement of the engineer's responsibility namely; (it is the engineer's) duty to see that the work is performed in accordance with the contract. Obviously, the engineer must be thoroughly conversant with the documents and with the powers conferred on him/her under the agreement.

#### **GC16. COOPERATION WITH OTHER CONTRACTORS**

The engineer may order contractors or workers onto the site other than those originally envisioned under the contract. The contractor must allow access and cooperate. The contractor may be entitled to additional compensation if additional expense is incurred.

#### **GC18.CLEARING THE SITE**

The contractor must maintain the site in a tidy state. He/she isn't responsible for any debris left by other contractors ordered onto the site by the engineer. An appropriately clear site is required prior to issuing an Interim or a Final Certificate of Completion.

#### **GC19.CONTRACTOR'S SUPERINTENDENT**

- Full-time superintendent to be named immediately;
- Engineer can order removal of superintendent; and
- Contractor cannot replace superintendent without engineer's approval.

#### **GC21.UNSUITABLE WORKERS**

The engineer can remove from the work any incompetent person or anyone behaving improperly.

#### **GC22.INCREASED OR DECREASED COSTS**

The agreed price cannot be increased or decreased as the result of a change in labour, plant or material costs. Only changes in taxes imposed under certain statutes should be allowed and only if they occur after the date of submission of the tender.

#### **GC23.CANADIAN LABOUR AND MATERIAL/LOCAL CONTENT**

The contractor will use Canadian labour and material as long as they are available at a reasonable market price.

The band may add here the local content clauses to encourage the contractor to use available band personnel, equipment and material and provide training.

#### **GC26.PRECAUTIONS AGAINST DAMAGE, INFRINGEMENT, FIRE ETC.**

The contractor is legally and financially responsible for ensuring adequate pedestrian and passenger traffic, fire, health, and safety protection, sanitation services; protection of property rights and easements; and for securing the work site.

- Engineer may order additional precautions to be taken.

### **GC27.INSURANCE**

- The contractor must provide insurance as per the Insurance Schedule Conditions.
- Property damage insurance is payable to the band council.
- Submit to the band council the original of the property damage insurance when requested to do so.

### **GC28.INSURANCE PROCEEDS**

- Money paid with respect to loss or damage of band property to the band will be held by the band council for the purpose of the contract.
- The contractor is liable to the band council for any amount not covered by insurance monies for loss or damage to band property including costs to clear and clean the work site.

### **GC30.ADDITIONS OR AMENDMENTS TO THE WORK**

- Engineer may increase or decrease scope of work;
- Requirements previously discussed should be followed;
- Changes must be confirmed in writing in accordance with GC11 (Notices);
- The contractor must perform the work as directed by the engineer; and
- The bonding company must be notified if change is major.

### **GC31.INTERPRETATION OF CONTRACT BY ENGINEER**

At any time before a Final Certificate of Completion is issued the engineer is the final authority on:

- plans and specs (including errors, omissions, discrepancies, obscurity);
- whether quantity or quality of materials meets contractual requirements;
- adequacy of labour plant and materials.

The engineer must therefore be thoroughly conversant with all the contract documents, particularly -- in this case -- the plans and specs since his/her perception of the final product will be imposed on the contractor in the event of discrepancies.

### **GC32.WARRANTY AND RECTIFICATION OF DEFECTS**

The contractor's warranty is not to be confused with a supplier's guarantee. The contractor must warrant the work for 12 months after the Interim Certificate of Completion is issued.

- Engineer must notify contractor in writing within warranty period.
- Contractor must make repairs.

### **GC33.NON-COMPLIANCE BY CONTRACTOR**

The contractor must clear the site, protect the work, take suitable precautions against damage and fire, accept the engineer's interpretation of the contract and rectify any defects when so directed by the engineer.

If he/she fails to do so, the engineer may employ alternate means and the contractor is liable for the cost. Once again, the interdependency of the conditions is demonstrated here.

### **GC34.PROTESTING THE ENGINEER'S DECISION**

While the engineer may direct the contractor, the contractor is entitled to protest any such direction. Clearly, the contractor must comply with it; however, the contractor may make a written protest within ten days of receiving the direction or decision.

Then, within three months of the issuance of the Final Certificate of Completion, the contractor must take whatever lawful action the contractor considers appropriate, usually in the form of a claim. In the case of a protest resulting from an order to rectify defects during the warranty period, the action must be taken within three months after the expiry of the warranty.

In the case of a protest in which the band accepts the contractor's protest as justified, the contractor will be paid an amount which is calculated in accordance with the applicable clauses of the General Conditions.

### **GC35.CHANGES IN SOIL CONDITIONS, NEGLIGENCE OR DELAY**

The band is not liable for any expense, loss or damage suffered by the contractor unless:

- the band supplied inaccurate information on soil conditions, either in the form of a soils report or in the plans and specs;
- the contractor encountered a situation different from what might reasonably have been assumed.



In the latter case, a legal interpretation of "reasonable assumption" may be required.

**Note:** "Soil conditions" is presently taken to refer to the make-up of the soil rather than its state (e.g., sandy rather than frozen).

The band is also liable whenever it neglects to provide information or perform any action required under the contract or which would normally be required. Neglect or delay are key words here.

Note, however, that the contractor must give the engineer written notice of the event **within 10 days** and a written claim **within 30 days** of the Final Certificate of Completion.

The onus is on the contractor to provide sufficient information for the engineer to determine whether the contractor has saved or lost money and how much.

### **GC36. EXTENSION OF TIME**

Extension of completion date may be granted when the reason for delay was demonstrably beyond the contractor's control.

It is important to note that -- only under exceptional circumstances -- should an extension to completion date be granted. This is because, once an extension is granted, there is no "period of delay" and therefore no damages - which might otherwise be owing to the band.

"Period of delay" begins on the day fixed for completion in the Articles of Agreement and ends on the day before an interim period in which an extension was granted or any time during which the delay was demonstrably beyond the control of the contractor.

If an extension of time is not granted the contractor is in default and action can be taken against the contractor under the contract.

### **GC37. ASSESSMENT AND DAMAGES FOR LATE COMPLETION**

When a period of delay is identified, damages chargeable to the contractor include:

- All consultant's salaries, wages and travel for inspection;
- The cost to the band of being unable to use the facility;
- All other identifiable and reasonable expenses.

While the contract gives the band wide latitude for charging damages, they are usually negotiated with the contractor.

### **GC38. TAKING WORK OUT OF THE CONTRACTOR'S HANDS**

This action may be taken when the contractor has:

- Become insolvent;
- Committed an act of bankruptcy;
- Abandoned the work;
- Assigned the contract without band consent;
- Failed to observe any condition of contract; and
- Failed to remedy any delay or default in diligent execution of the work within six days of notice by the engineer to do so. The whole or any part of the work may be taken out of the contractor's hands.

Legal assistance should be sought when this action is contemplated.

If such action is taken, the contractor's right to any payment due or accruing is extinguished (lost) and the contractor is liable to pay the band for all losses and/or damages resulting from failure to complete the work. If the band finds that there is money due the contractor that was not required to complete the work and to meet the other obligations of the contractor under the contract, the band may return it.

### **GC39. EFFECT OF TAKING WORK OUT OF THE CONTRACTOR'S HANDS**

This condition distinguishes between termination and taking work from the contractor. Taking work from the contractor means that he is relieved only of the contractual obligation to perform all or part of the work -- the contractor is still bound by all the other conditions of the contract.

Therefore, all the contractor's plant and material continue to be band property as stipulated by GC12 without compensation to the contractor until the engineer certifies otherwise.

### **GC41. TERMINATION OF CONTRACT**

The band may terminate the contract at any time. The contractor must cease all work on receipt of such a notice. The band then owes the contractor for all labour, plant and material supplied up to the date of termination (for unit price contract) less any amount already paid prior to termination.



In a fixed price arrangement, an amount is negotiated with the contractor to determine what is owed to him/her. The amount so negotiated must not exceed the value of the total original contract less any payment already paid to the contractor prior to termination.

Termination should be undertaken only under very special circumstances and band council should seek legal advice before deciding.

*Reference: Band Contract Publications - Construction - Section 4.27.*

#### **GC42.CLAIMS AGAINST AND OBLIGATIONS OF THE CONTRACTOR OR SUBCONTRACTOR**

The contract requires that the contractor:

- pay his subcontractors and suppliers as often as he/she is paid by the band council;
- supply statutory declarations noting any or no claims and obligations.

In addition, the band may (note that "may" does not mean "must") using monies owed to the contractor by band council pay lawful claims against the contractor or subcontractor in connection with the contract when:

The claim is in writing, in accordance with the terms of payment and is received by the engineer within 120 days after the claimant should have been paid under an agreement with the contractor or subcontractor (for holdback) or performed the last of the work or supplied the last of the material, under an agreement with the contractor or subcontractor.

#### **GC43.SECURITY DEPOSIT: FORFEITURE OR RETURN**

The security deposit is forfeited, (that is, converted to the band's use) whenever the work is taken out of the contractor's hands or the contractor is in breach or default under the contract. Any amount not required by the band to pay for losses, damages, or claims reverts to the contractor with the engineer's concurrence.

#### **GC44.ENGINEER'S CERTIFICATES**

An Interim Certificate of Completion must be issued by the engineer whenever the engineer is satisfied that the work is sufficiently complete to be acceptable.

At this time the engineer will list uncompleted work, as well as work which must be corrected. It is important to note that "as-built" drawings, when not supplied, must be listed as a deficiency.

At the time an Interim Certificate is issued, holdback and security deposits are released except for the amount considered necessary by the engineer to correct deficiencies, finish the incomplete work and cover the unpaid accounts of creditors under GC42.

The Final Certificate of Completion is issued when the work has been completed and all directions pursuant to the contract have been fulfilled. 60 days after issuance of this Certificate, all outstanding monies owing to the contractor become payable to the contractor.

Where the contract or any portion thereof is unit price, a Final Certificate of Measurement binding on both parties is issued by the engineer. Obviously, it is wise to discuss this matter with the contractor before producing the Certificate to avoid, or promptly identify, any differences of opinion.

#### **GC45.RETURN OF SECURITY DEPOSIT**

As well as holdback, that portion of the security deposit which is not required to complete the work and pay the unpaid accounts of creditors under GC42 is released with the Interim Certificate, the balance to be returned after the Final Certificate is issued unless the contract stipulates otherwise.

If cash security was presented in the form of a cheque which was cashed, interest must be paid to the contractor.

#### **GC46.DETERMINATION OF COST - CLARIFICATION OF TERMS**

In General Conditions 47 to 50 dealing with the determination of cost the word "plant" does not include tools normally used by tradespersons.

#### **GC47.ADDITIONS AND AMENDMENTS TO UNIT PRICE TABLE**

This clause provides for the addition of new unit prices if items of work are encountered and this type of work was not included in the unit price table. The new unit price must be negotiated or determined in accordance with GC50 if the engineer and the contractor cannot agree on a price.

The clause also provides for the renegotiation of a unit price listed in the unit price table if the actual work performed for that item of work varies by more than about 15% from the original estimated quantity.

#### **GC48.DETERMINATION OF COST-UNIT PRICE TABLE**

When it is necessary to determine the cost of labour, plant or material in relation to changes in soil conditions, a decision by the engineer for additional work or changes or related to another contractor sent onto the site, the unit price table is used.

#### **GC49.DETERMINATION OF COST - NEGOTIATION**

Whenever a class of labour, plant or material is not set out in the unit price table, the engineer and the contractor may negotiate the price. To facilitate the negotiation the engineer can require the contractor to supply a statement of costs for these items.

#### **GC50.DETERMINATION OF COST - FAILING NEGOTIATION**

If negotiation fails, the cost is established by adding a 10% mark up to the actual price of the items.

This mark up covers profit, overhead, administration costs, finance and interest charges and applies to:

- payments to subcontractors;
- wages, salaries, travelling expenses of the contractor's employees engaged in the work on site;
- materials;
- rent or depreciation allowance for plant;
- other justifiable costs.

#### **GC51.RECORDS TO BE KEPT BY THE CONTRACTOR**

- The contractor must maintain full contract records including his/her estimates and actual costs of the work for a period of 2 years following the issue of the Final Certificate of Completion.
- Also the contractor is responsible to ensure that all subcontractors maintain their records related to the contract for a period of 2 years also.

**COMPLETION CERTIFICATES**  
**(CONSTRUCTION CONTRACTS ONLY)**  
**COMPLETION CERTIFICATE - INTERIM**

Within 10 days of receipt of an application from the contractor for an Interim Certificate of Completion based on substantial performance, the engineer shall inspect and assess the work to verify the application's validity. If the engineer finds the work to be substantially completed or the building ready for beneficial occupancy, she/he must issue an Interim Certificate of Completion. The date of this certificate shall be the date of substantial performance of the contract as certified by the engineer. Immediately following the issuance of the Interim Certificate of Completion, the engineer, in consultation with the contractor, shall establish a reasonable date for the completion of the contract.

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

When all documentation required by the contract has been received, the engineer may issue a Certificate for Payment of the holdback monies. These holdback monies, less the amount retained to cover deficiencies and unfinished work, shall become due and payable within 30 days after the date of the Interim Certificate of Completion.

The issuance of the Interim Certificate of Completion establishes the date for the commencement of the warranty period.

Upon issuance of the Interim Certificate, the contracting authority has agreed that the contract is basically complete and therefore waives all rights to any claims relating to late completion from the date of the certificate.

*Reference: Band Contract Publications - Construction - Section 4.18.*

### **COMPLETION CERTIFICATE - FINAL**

Within 10 days of receipt of the contractor's Application for Payment upon completion of the contract, the engineer shall inspect and assess the work to verify the application's validity. Within 7 days of this inspection, the engineer shall notify the contractor of his/her approval or disapproval of the application. When the engineer finds the work satisfactory, he/she shall issue a Final Certificate of Completion and certify for payment the remaining monies due to the contractor under the contract, including any holdback monies which were retained under the Interim Certificate. The date of this certificate shall be the date of the final inspection of the work by the engineer.

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

Issuance of the Final Certificate of Completion constitutes a waiver of all claims by the band against the contractor, except those previously made in writing and still unsettled i.e. unpaid accounts of creditors of the contractor or of his/her subcontractors, and those arising from the provisions of the warranty.

The contractor must give to the engineer all keys, operating manuals, as built drawings, etc. which the band council will need to operate and maintain the work.

When the Final Certificate of Completion or the payment due thereunder is accepted, all claims by the contractor against the band shall be waived, except those made in writing prior to this Application for Payment upon completion of the contract and still unsettled.

Reference:     *Band Contract Publications - Construction - Section 4.29.*

## **CONTRACT CLAIMS AND DISPUTES**

### **CLAIM**

- A request for compensation in addition to the amount agreed to in the contract. A claim, if not resolved, becomes a dispute.
- The claim must be submitted in accordance with the procedures set out in the General Conditions, and meet the criteria and deadlines.

### **BASIS FOR CLAIMS BY CONTRACTORS**

- Ground conditions (subsoil or water table) differ substantially from those described in the tendering documents.
- Additional work.
- Change in the work.
- Estimated quantities of work specified in the contract documents are more than 115% or less than 85% (specified in the unit price table).
- Default by band such as limiting access to the site, supply of materials, drawings, delay of project etc.
- Changes in schedule.

### **BASIS FOR CLAIMS BY BAND COUNCIL (ASSESSMENTS)**

- Damage to materials, plant and real property supplied by the band council.
- Late completion of the project.
- Failure to meet specified requirements such as quality of material or equipment.
- Soil conditions encountered result in savings.

## **PROCEDURES**

- Contract disputes should be reviewed and resolved in an expeditious and equitable manner.
- Legal counsel should be obtained to assist in the resolution of claims and in the interpretation or application of various sections of the contract documents to ensure that the actions and decisions of the band council on a contractor's claim are defensible in a court of law.
- On all projects, the project manager should maintain the following job records because they are essential in the resolution and quantification of claims:
  - contract documents and change order;
  - minutes of meetings;
  - clerk of work reports;
  - job diaries;
  - progress photographs;
  - job schedule;
  - consultant's reports and correspondences related to the claim; and
  - notices issued and received.
- As soon as the contractor submits a claim or states intention to claim, information should be assembled from the job records identified above in order to review and analyze the claim.

## **WAYS TO RESOLVE CLAIMS**

**Negotiation:** Written and verbal communication process between the band council, the contractor and appointed lawyers to resolve a claim quickly, fairly, reasonably and honestly.

**Mediation:** Band council and contractor must both agree to entry into mediation, selection of mediator and should be ready to accept the mediator's recommendations.



The powers of a mediator should be those of persuasion instead of adjudication.

The mediator should not be restricted in the contracts and in the information he/she needs to mediate the claim.

The cost of the mediator is shared equally by the band council and the contractor, regardless of the outcome of the negotiation.

**Arbitration:**

Method for settlement of disputes between parties by one or more persons chosen by the parties themselves.

Arbitration may be used if both parties agree to it.

The arbitrator's decision(s) is legally binding on both parties and will normally be confirmed by the courts.

**Litigation:**

Going to court is a very formal means of resolving the difference in respect of a claim. It can be lengthy and expensive.

The presence of a lawyer knowledgeable with the construction industry and contract law is extremely desirable as this lawyer sets up the strategy for the court action.

Reference:     *Band Contract Publications - Construction - Section 5.*