

Introduction to procurement in indigenous communities

Book 1



Procurement in Indigenous Communities



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About these books

The Procurement Books are a series of books to offer guidance to Indigenous communities who want to get better value for their money when they purchase goods and services. The books outline the general procurement principles, procedures and practices for those Indigenous communities interested to establish a procurement process. The books are designed to address many of the procurement challenges associated with Indigenous communities.

The goal of these books are to help Indigenous communities to purchase goods and services including the construction of homes are acquired by the Communities though a process that is fair, open, transparent (gifting), non-discriminatory, geographically neutral and accessible to qualified suppliers, subject only to established procurement policies.

The Procurement Books include:

- 1. Introduction to Procurement in Indigenous Communities
- 2. Construction & Procurement in Indigenous Communities
- 3. Roles and Responsibilities, Construction Documents & Construction Contracts
- 4. Pre- Contract Phase – Preparing the Bid
- 5. Contracting Phase
- 6. Contract Administration Phase
- 7. Post-Contract Phase
- 8. Guides & Resources
- 9. Terms & Conditions/Definitions

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Disclaimer

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1. Introduction

First Nations are responsible for building and maintaining their schools, offices, arenas, houses, roads and other capital assets. Like other governments and institutions, First Nations need to procure goods and services to carry out their responsibilities.

It is estimated that the total volume of procurement in First Nations for purchasing goods, services and work accounts for some 22 to 30 percent of general expenditures. Therefore, all First Nations must ensure that planning, managing and fully documenting the process to acquire goods and services and construction is conducted in a careful and unbiased manner.

Goods and services are generally acquired through a public procurement process. In a public procurement process, a government or First Nations entity contracts with a private sector company to furnish a good or to provide a service for a fee, subject to the legal terms and conditions contained in a contract.

The goal of public procurement is to satisfy the public interest, or to give the community value for the money spent. A good procurement process is one that obtains goods, works or services:

- in the correct quantity,
- of the appropriate quality,
- at the required time,
- from the best supplier,
- with the optimum terms, and
- under appropriate contractual obligations.

Good procurement should:

- meet community needs;
- secure value for money for the community, and
- be fair to bidders.

These objectives cannot be met unless contracts are awarded on a **truly competitive basis** under a system that has **clear guidelines** incorporating **transparency, efficiency, economy, accountability** and **fairness**.

Public procurement involves several stages between the decisions to buy and the actual purchase, including:

- the initial needs assessment
- confirming budget allocations
- market research
- preparing the tender
- evaluating applications
- awarding contracts
- contract implementation and administration (including change orders)
- auditing and evaluation

Major procurements such as water projects or large-scale construction works can involve numerous contract awards, forming a broader project cycle.

The main purpose of a procurement policy is to award a contract to the private sector. The interaction between the First Nations and the private sector may lead to unethical or illegal activities that include:

- bribery
- receiving gifts
- favouritism, special treatment and preference given to friends or colleagues

Consider the fact that accepting hospitality or other benefits that have a real, perceived or even potential influence on a person's objectivity and neutrality in performing your duties.

2. Legal and policy framework

Chief and Council are elected members of the community. Chief and Council need to be aware of their legal obligations to ensure that homes are built in accordance with NBC and other standards. There is also a need to include audits, verifications, and performance measures to ensure the construction process is legitimate and without conflicts of interest.

Source: [First Nations Housing and Building Crisis – Web link](#):

The following legal and policy frameworks govern procurement in First Nations:

2.1 Criminal Code of Canada

Paragraph 121(1)(c) of the Criminal Code makes it an offence for a public officer to receive a benefit of any kind for cooperation, assistance, exercise of influence, or an act of omission in connection with any matter of business relating to the government.

<https://laws-lois.justice.gc.ca/eng/acts/C-46/page-29.html#h-52>

2.2 Construction Contracting Guidelines for First Nations and Aboriginal Communities

This publication is intended to assist Band Councils by outlining accepted practices and principles applicable to the procurement of construction services by contract. The process from identification of the need to completion of the warranty period is given in detail.

<https://www.sac-isc.gc.ca/eng/1493132907312/1533649929381>

2.3 Protocol for ISC (INAC)-funded infrastructure

The purpose of the Protocol for INAC-Funded Infrastructure (PIFI) is to provide an up-to-date listing of applicable statutes and regulations that must be complied with (Section 1.5) as well as a listing of additional policies, codes, directives, standards, protocols, specifications, guidelines, and procedures to which a Council of a First Nation is required by INAC to adhere to as a condition of funding under the Capital Facilities and Maintenance Program (CFMP).

https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-IH/STAGING/texte-text/protocol_2016_1476993446793_eng.pdf

The legal and regulatory framework applicable to public procurement provides a basis for the First Nations to deliver on the main objectives of sound public finance management, namely transparent and efficient delivery of services. This framework is incorporated within the First Nations procurement policies and procedures.

An excellent example of these policies and procedures can be found on the First Nations Financial Management Board's website at <https://fnfmb.com/en/tools-and-templates/finance/procurement>.

These policies and procedures are also incorporated under the chief and council's requirement for the authority having jurisdiction. **See Booklet 3: Construction Contracts and Roles and Responsibilities for more information on the role of chief and council and Authority Having Jurisdiction (AHJ).**

3. Key principles for procurement

Procurement policies are governed by guiding principles. These principles aim to ensure the integrity of a First Nations procurement process through fair and open competition, while minimizing the risk of conflict of interest and exposure to fraud and collusion.

Each First Nations can identify key principles for procurement, but they generally include:

Accountability – The concept of accountability, as it applies to the First Nations council and financing institution and borrowers, combines the requirements of transparency and responsibility, and holds those involved in the procurement process accountable for their actions (or inactions).

Transparency – The principle of transparency requires that the organization (First Nation council) enable appropriate review of the procurement activities, supported by appropriate documentation and disclosure. Transparency requires:

- that relevant procurement information be made publicly available to all interested parties, consistently and in a timely manner, through readily accessible and widely available sources at reasonable or no cost;
- appropriate reporting of procurement activities; and
- the use of confidentiality provisions in contracts only where justified.

Value for Money – The principle of value for money means:

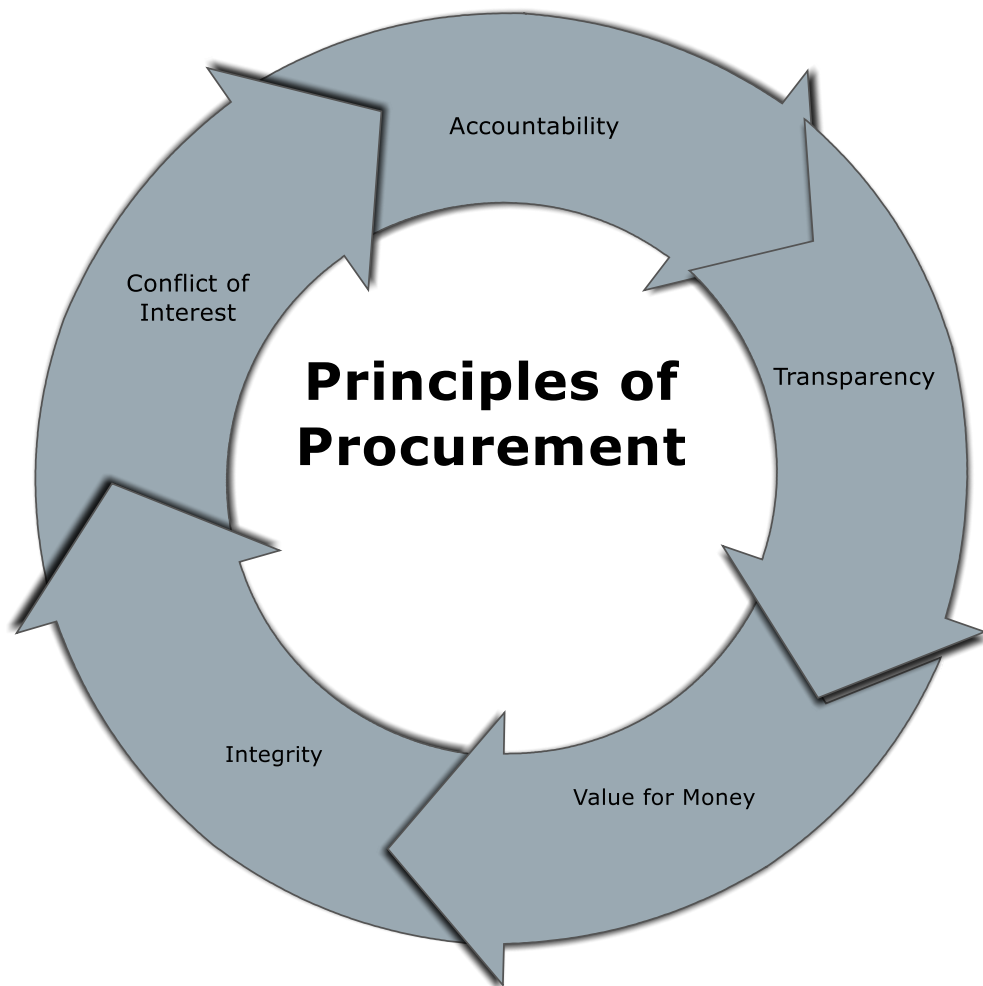
- the effective, efficient, and economic use of resources, which requires an evaluation of relevant costs and benefits,
- an assessment of risks,
- and non-price attributes and/or life cycle costs, as appropriate.

Price alone may not necessarily represent value for money.

Integrity – The principle of integrity refers to the use of funds, resources, assets, and authority according to the intended purposes and in a manner that is well informed, aligned with the public interest, and aligned with broader principles of good governance.

This principle requires that all parties involved in the procurement process, including without limitation: borrowers and sub-borrowers (and other beneficiaries); bidders, consultants, contractors, and suppliers; any subcontractors, sub-consultants, service providers or suppliers; any agents (whether declared or not); and any of their personnel, observe the highest standard of ethics during the procurement process and refrain from fraud and corruption.

Conflict of Interest – The principle of conflict of interests requires that all parties involved in the procurement process not have a conflict of interest, unless such a conflict has been resolved in a manner acceptable to the community and funding agency.



These principles of procurement should be incorporated into your First Nations management policies. The individual responsible for public procurement should also be bound by an ethical code of conduct and is accountable for what you do or fail to do when managing these projects.

If your First Nation's chief and council and staff follows good governance and finance practices, they are more likely to be able to deliver the high-quality services members want and deserve. This leads to a happier and healthier community.

Source: <https://fnfmb.com/en/benefits/benefits-council>

4. Procurement and a code of conduct

A Code of Conduct for procurement unites the legal and policy frameworks into a concise and transparent statement of the expectations that the chief and council has of its employees and its suppliers. The Code of Conducts ensures that the staff and/or employees of the council and suppliers are working from the same statement of expectations and commitment that clearly outlines what is acceptable conduct when contracting with the First Nations. The Government of Canada's ***Standard Acquisition Clauses and Conditions Manual*** provides one of the best examples of a Code of Conduct for Procurement. See: <https://www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/contexte-context-eng.html>

A Code of Conduct for procurement may include the following principles:

- **Serving the community's interest.** First Nations employees (or agents of the council) are expected to maintain and strengthen the community's trust and confidence in their organization by demonstrating the highest standards of professional competence, efficiency and effectiveness, upholding their by-laws, laws and policies, and seeking to advance the public good at all times.
- **Transparency and accountability.** First Nations employees are expected to use powers and resources for the community good, in accordance with the law and council's policy. They should be prepared to be accountable for the decisions they make and to justify their official decisions and actions to a relevant authority, or publicly, as appropriate in the circumstances.
- **Integrity.** First Nations employees are expected to make decisions and act without consideration of their private interests. Officials working on behalf of their community must have the community's trust. The improper use of their position for private advantage is regarded as a serious breach of professional integrity.
- **Legitimacy.** First Nations employees are required to administer the laws and government policy, and to exercise legitimate administrative

authority under delegation. That power and authority should be exercised impartially and without fear or favour for its proper public purpose as determined by the council, as appropriate in the circumstances.

- **Fairness.** First Nations employees should make authorized decisions and act in a fair and equitable manner, without being affected by bias or personal prejudice, taking into account only the merits of the matter, and respecting the rights of community members.
- **Responsiveness.** First Nations employees are required to serve the legitimate interests and needs of the Council and the community members in a timely manner, with appropriate care, respect and courtesy.
- **Efficiency and effectiveness.** First Nations employees are required to obtain best value in expenditure of Council's funds, and efficient use of assets deployed in or through public management, and to avoid waste and extravagance in the use of resources in public programmes and official activities¹.

5. Procurement process overview

What exactly is "procurement"? (aka: Acquisition, purchasing)

Procurement is the process that involves purchasing or acquiring products, services or the result of a project. Procurement is conducted in the process obtaining responses to an invitation to bid, making selections and by awarding a contract.

Procurement contracts typically include terms and conditions and can incorporate other items that buyer establishes as to what the seller is to perform or provide. In the example of a construction contract the documents would typically include general conditions for bids, construction drawing, specification and reference to terms and conditions such an agreement or contract that will satisfy the identified requirements for the project.

On large and more complex projects there may be needs to consider additional support, and if so what to acquire. This can include outside expertise such as architects, engineers, lawyers, project manager, etc.

Another area that requires careful consideration is the area of project risk. Risk can be mitigated based on a number of different factors including:

- Capability
- Budget constraints
- Type of contract

¹ OECD, 2009: Tool: Code of Conduct for Procurement Practitioners. See: <https://www.oecd.org/governance/procurement/toolbox/search/code-of-conduct-procurement-practitioners.pdf>

- Managing multiple suppliers
- Coordination of work
- Scheduling
- Establishing pre-qualified to perform the work
- Requirements for performance bonds

A statement of work should be developed based on the project work scope that is required within the related contract.

The complexity and level of detail for procurement should be consistent with the value and risk associated with the planned project procurement. Further criteria are listed below and explained in more detail in the procurement books.

