

# Construction & Procurement in Indigenous Communities

BOOK 2



**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

## **Acknowledgements**

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## **Disclaimer**

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# 1. Construction and Procurement: Basic Understanding

Typical construction projects involve three key participants, the council/owner, designer and general contractor. Each play an important function – the council approves and pays for the project, the designer is responsible for professional and technical accuracy of the project drawing and specifications and the contractor is responsible for the construction means, methods and techniques to “build” the project.

Primarily construction projects in First Nations are the responsibilities of chief and council. First Nations have fairly broad discretion to regulate the design of structures. First Nations operating under the **Indian Act** have the authority to regulate the construction, repair and use of buildings, whether owned by the council or by individual members of the community establish their own building code under section 81(1) (h).

***Although national and provincial building codes may be similar, it is important for developers and those working on First Nations construction projects to know the exact building code that applies in order to ensure compliance with the correct building code.***

Generally, under this section, the council would generally identify whether the community will follow the National Building Code or provincial building code where they are applicable. In most cases, First Nations pass bylaws to ensure the construction of buildings conform to the National Building Code. First Nations can also pass bylaws that refer to their respective provincial building code.

It is also assumed that the building is meeting any environmental assessment regulations and is being built according to the community’s comprehensive plans.

## 1.1 Responsibilities and Authority Having Jurisdiction

It is important to understand the term “authority having jurisdiction” (AHJ).

In land development, the AHJ is shared among all levels of government. The local government has control over local planning issues, the province protects their interest through provincial regulations, and federal government regulates housing standards through the National Building Code.

During the planning of a building, zoning and planning boards of the AHJ will review the overall proposal for compliance with the development standards outlined in the municipal comprehensive plan and zoning regulations.

As part of the building process, the AHJ can require conditions of any permits that are issued. For example, the AHJ can require that all drawings, specifications and plot plans be prepared and signed by the architect, and that construction be carried out under the supervision of an architect or professional engineer.

***Before a council can introduce a building permit system it is important that they pass appropriate bylaws.***

Once the proposed building has been approved for compliance with local requirements, detailed civil, architectural, and structural plans must be submitted to the municipal building department. They will circulate the proposal to departments and agencies of interest to determine compliance with the building code and the availability of infrastructure. Similarly, the municipal fire department should review the plans for compliance with fire-safety ordinances and regulations.

If there are no issues, two separate permits are issued: a development permit indicating compliance with all local requirements, and a building permit indicating compliance with the National Building Code.

During the construction stages, the building inspection officer will conduct several inspections. At the end of the construction process, the AHJ will issue a final occupancy permit to allow individuals to move into the building.

Finally, while reference to AHJ is the municipalities (building department or fire department) with respect to the building official enforcing the building codes, the term AHJ encompasses more than just building code compliance.

## **2. First Nations Communities, Chief and Councillors, and AHJ**

In First Nation communities, the chief and councillors are the AHJ with respect to building homes in their communities. Equally as important, the chief and council carry out as the AHJ by passing essential bylaws.

The bylaws are passed by a chief and council to help control certain activities within the community, including implementation of building permit processes, complete with the authority to apply and enforce building codes, standards and construction practices. These plans must also be reviewed by the building inspector, health department, department responsible for infrastructure and the fire safety services/department.

The federal government maintains that First Nations are the AHJ for housing, meaning that they are the level of government with the authority to enact bylaws in relation to building codes on reserves.

However, in many communities, chief and councillors have not properly exercised their AHJ. They have not passed any bylaws under section 81 (1) (h) to ensure homes are constructed according to a building code.

There may not be any inspection requirements, except for the minimum inspections indicated in federally funded projects. Without bylaws, there is no process to approve the site where the home is to be built or the plans. Without bylaws, homes may not be inspected to make sure they are constructed according to a building code.

Without bylaws, inspections are not based on code compliance, but rather on a housing policy. Without bylaws, the inspectors may not be qualified or have the power to stop the construction if the home is not being built to code or to force the contractor to fix the problem.

Without bylaws, the home may be unsafely occupied without a final inspection, or the issuance of an occupancy permit, or a letter to state it is safe to move in. Without bylaws, the chief and council will ultimately be responsible to pay for repairs to homes. The chief and council may also be legally responsible to fix private homes that are not built in accordance with their bylaws. Finally, if the chief and councils have not adopted the national or provincial building codes by passing a bylaw, the codes have no legal status but may held legally responsible.

### 3. Building framework

The key elements that should be in place prior to tendering any projects are:

- Bylaws (zoning, buildings, land survey)
- Building permits
- Inspection requirements

### 4. Bylaws

A band bylaw is a local law that is passed by a chief and council to help control certain activities within the community, including the implementation of building permit processes, and the authority to apply and enforce building codes, standards, and construction practices.

Chief and councillors have legal authority to make their own local laws through sections 81, 83, and 85.1 of the *Indian Act*. These bylaws are passed by councils. All councils, whether they have been elected pursuant to the provisions of the *Indian Act*, or chosen under band custom, may enact bylaws in accordance with these sections. Band bylaws have absolutely no effect outside reserve boundaries. A bylaw is strictly a local law.

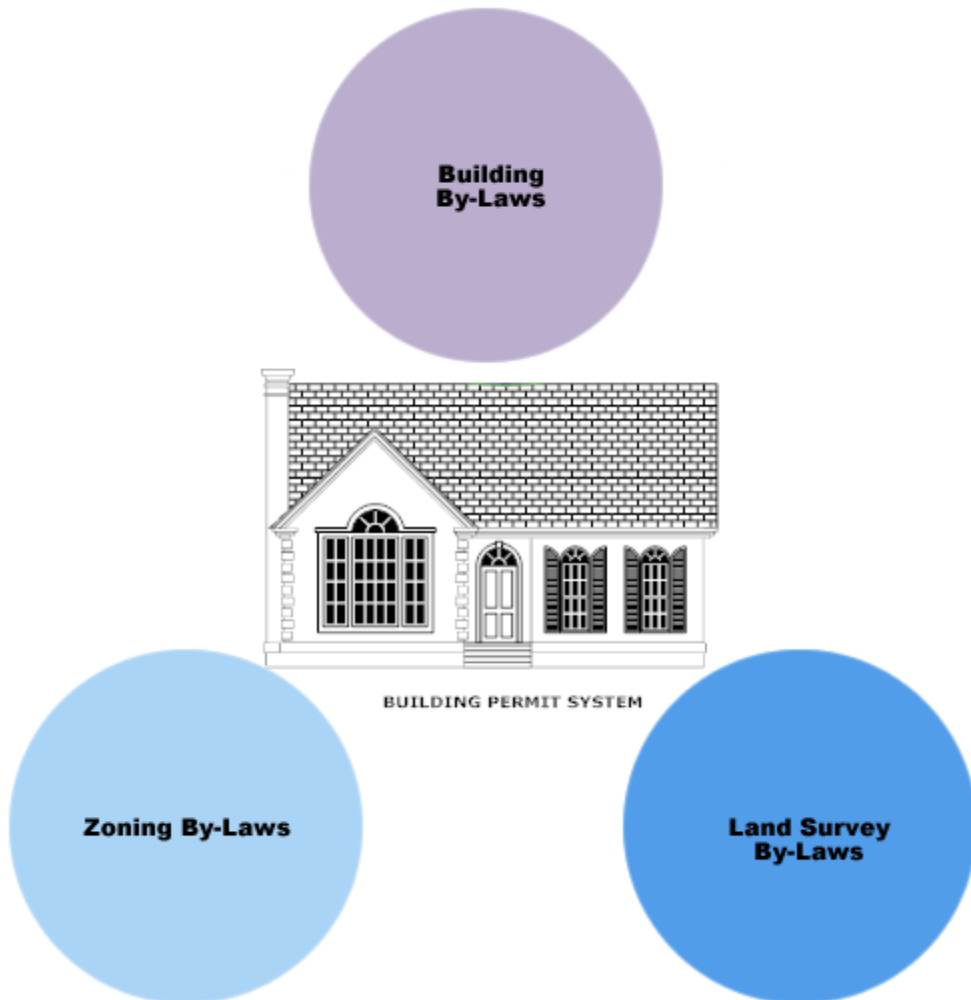
Sample of bylaws can be found at:

<http://www.ramafirstnation.ca/bylaws/Bylaw%20No.%2006-01%20Land%20Use%20and%20Development,%20Replaces%20bylaw%20Nos.%2079-10,%2095-21%20and%2095-22.pdf>

To implement a permit system to build or renovate homes, three basic categories of bylaws are essential to a building permit system in developing land in First Nations communities. Section 81 of the *Indian Act* mandates the council to make bylaws for the following activities:

- **Zoning** - Section 81(g) the dividing of the reserve or a portion thereof into zones and the prohibition of the construction or maintenance of any class of buildings or the carrying on of any class of business, trade or calling in any zone.

- **Buildings** - Section 81(h) the regulation of the construction, repair and use of buildings, whether owned by the council or by individual members.
- **Land Survey** - Section 81(i) the survey and allotment of reserve lands among the members of the council and the establishment of a register of Certificates of Possession and Certificates of Occupation relating to allotments and the setting apart of reserve lands for common use, if authority therefore has been granted under section 60.



Without these three types of bylaws, it may be a challenge for a community to introduce a building permit system.

#### **4.1 Zoning bylaws**

Under zoning, the council can control the following areas:

- Land use
- Location and boundaries of commercial, residential, industrial, institutional and conservation zones
- Cottage sites
- Protection of forests and other natural resources

- Campsites, including setting fees
- Requirement of building permits for building in specific zones
- Community plan

Zoning bylaws are important as they control the use of land and establish standards according to which the land can be developed. All lands within a First Nations community can be placed into a specific zone that is presented in a zoning map.

Zoning is particularly important before homes are constructed. The council must first divide the communities into zones before the construction of any buildings or the carrying on of any type of activity or business. The zoning bylaw is important as councils can require building permits.

## **4.2 Building bylaws**

Under building bylaws, the council can control the following areas:

- Property maintenance standards and the obligation to keep houses in good repair
- Occupancy standards
- Pest prevention (e.g., cockroaches, ants, termites)
- Fire safety and protection including fire-resistance ratings - must comply with the National Building Code and the National Fire Code
- Thermal insulation - must comply with the National Building Code and National Energy Code
- Building standards - must comply with the National Building Code and National Fire Code
- Building standards for cottages
- Requirements for smoke and CO (carbon monoxide) detectors

Bylaws can state that homes be built to the National Building Code or in accordance with provincial building codes. They can require stricter standards or construction practices if necessary. A building bylaw must be established in conjunction with an existing zoning bylaw so that the permit can state where the home can be built (e.g., specific location, lot, etc.)

## **4.3 Land survey bylaws**

Under land survey bylaws, the council can control the following:

- Allotment of lands for a community centre, churches, schools, stores (subsection 18(2) of the Act)
- Allotment of lands to members
- Land registry for Certificates of Possession and Certificates of Occupation

These bylaws are important to a building-permit system as they clearly identify the home- and landowner. A “lands” officer may need to be consulted and involved in this process.



## 5. Permits

A building permit gives builders and homeowners legal permission to start construction of a project in accordance with approved drawings and specifications. Building permit systems are beneficial to First Nations communities. The building permit system will:

- Ensure the construction, renovation and other projects requiring permits are built right
- Control where homes are built
- Provide for inspection to make sure the home will be safe for the occupant
- Protect housing stock
- Make the builder and homeowner accountable



Other types of permits may be required, depending on the AHJ and the bylaws. These may include:

1. A plumbing permit to install any plumbing, gas or drainage piping work or any fixture or water heating, or to install any treatment equipment or alter, repair or replace, unless specifically exempted by the plumbing codes.
2. Electrical permits to install any electrical system or alter, repair, replace or remodel, unless specifically exempted by electrical codes.
3. A permit to install a private sewage disposal or septic system.

In some cases, the building permit includes plumbing and electrical permits, but may require licenced plumbers or electricians to conduct the inspection and provide a certificate of approval. The sewage disposal or septic system may need to be approved by either health or environment agencies, while hydro/electrical power suppliers may conduct electrical inspections. These issues need to be addressed and incorporated into bylaws.

## 6. Required building inspections

For the most part, inspections on reserve relate to CMHC's Native Inspection Services Initiative (NISI). NISI was developed in 1995 to provide greater First Nations involvement in inspections for new construction and renovations funded through CMHC housing programs, such as the non-profit rental-housing program and the Residential Rehabilitation Assistance Program (RRAP).

Under NISI, First Nations technical-service providers undertake technical reviews (plans examination and inspections) under contract to CMHC.

While these technical reviews are not specifically for code compliance, they confirm to CMHC that the construction reasonably meets codes, standards and specifications, and provide an indication of percentage of completion for loan-advancing purposes. NISI is also seen as a capacity-development initiative and an important step to improving the quality of construction in First Nations communities.

Typically, up to six inspections are carried out under NISI. Communities implementing a building permit process may want to adopt this process.

1. Site inspection
2. Ready for backfill
3. Framing
4. Ready for drywall
5. Final
6. Progress advance inspection (any time during construction period)

In addition, other agencies and authorities are relied upon to ensure equipment and systems are safe and acceptable, such as electrical authority or master electricians for electrical installations, and Health Canada environmental-health officers for private sewage-disposal systems. Certificates from these authorities must be produced before final advance of funds.

Off reserve, provincial building codes require several mandatory inspections during construction to ensure all work is done according to the approved permit drawings and the provincial building code.

The following is a list of items that must be inspected for a typical residential unit. It is important to point out that several items may be inspected during one inspection visit/stage. The number of inspection stages can vary:

1. Prior to backfill of storm and sanitary sewers or water services
2. Prior to pouring concrete for footings (forms in place)
3. Prior to backfill of foundations
4. Prior to covering plumbing rough-in (including water systems)
5. Prior to covering duct work for heating, ventilation, air-conditioning and air-contaminant removal systems (HVAC systems)
6. Completion of structural framing
7. Prior to covering in insulation and vapour barriers for all walls and ceilings of finished areas
8. Completion of interior finishes and HVAC equipment installation and all fire-protection systems
9. After all plumbing fixtures are in place (final air test)
10. Final inspection - completion of project

In some jurisdictions, eight inspections are required. For example, in Ontario the following inspections must take place:

1. Excavation/footings, before footings are poured
2. Foundation, prior to backfilling
3. Framing
4. Mechanical
  - a. Duct work and pipes for heating and air-conditioning system
  - b. Underground plumbing (test on)
  - c. Rough-in plumbing (test on)
5. Insulation/vapour barriers/fire protection
6. Fireplace/wood stove
7. Occupancy inspection, including plumbing smoke test
8. Final exterior

For sewage systems, the following inspections are conducted:

- Readiness to construct sewage system (base cut)
- Final inspection of sewage system prior to backfill

In Alberta, the City of Calgary requires the following types of inspections<sup>1</sup>:

### **Pre-Backfill Phase**

This phase of construction includes the following inspection types:

- Building footing and foundation
- Electrical underground
- Plumbing, sanitary and storm

### **Pre-Board Phase**

(You must pass all inspections in the previous phase to continue to this phase.)

This phase of construction includes the following inspection types:

- Framing
- Basement developments (as required)
- Wood-burning stove or fireplace (as required)
- Gas rough-in
- Gas fireplace (as required)
- Plumbing rough-in
- Electrical rough-in
- HVAC rough-in

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<sup>1</sup> For more information see: The City of Calgary Development and Building Approvals, Building Regulation Division SCO Handbook, New Home Inspection Process. BR2005-71-4.2 August 30, 2007. [http://www.calgary.ca/DocGallery/BU/dba/building/new\\_home\\_inspection\\_process.pdf](http://www.calgary.ca/DocGallery/BU/dba/building/new_home_inspection_process.pdf)

## Pre-Possession Phase

(You must have passed all inspections in the previous phase to continue to this phase.) This phase of construction includes the following inspection types:

- Building final
- Plumbing final
- Gas final
- Electrical final
- HVAC final

For example, off reserve, some municipalities may require other types of inspections such as:

- Life safety
- Renovations
- Partial occupancy of an unfinished building
- Sewer and water service
- Property standards
- Curbs and driveways
- Etc.

While inspection processes may vary, they incorporate all the essential components of an inspection under the building codes.

***Band bylaws should clearly state the types of inspections required.***



## Conducting Inspections

To carry out an inspection, the contractor or homeowner must contact the building department to request an inspector at least 24 hours before work proceeds from one inspection stage to the next.

For rural and remote communities where access is difficult or by air or water, this lead time may be one week or more. When the building permit is issued, a list of required inspections

should be provided. If inspections are not performed, the contractor may have to uncover and expose the work for inspections.

Band bylaws need to clearly state how the community plans to enforce the bylaws where code infractions are found. In this case, it is important to consult with the Bylaw Advisory Group of the Band Governance and Indian Estates Directorate of the Department of Indian and Northern Affairs.

As part of the development of bylaws, the community may want to provide the inspector with the power to issue certain types of orders, such as stop-work orders and an order to comply.

A qualified inspector who has been certified to carry out such inspections should complete all inspections. For example, the inspector may be a member of FNNBOA and certified to carry out specific inspections.

Upon completion of the final inspections, and where no outstanding concerns remain, the building department will typically issue an occupancy permit or certificate.

Where the construction is semi-detached or row housing, additional inspections are required relating to fire separations between dwelling units.

FNNBOA can provide further advice regarding mandatory inspections.



### **Occupancy Certificate or Permit for Occupancy**

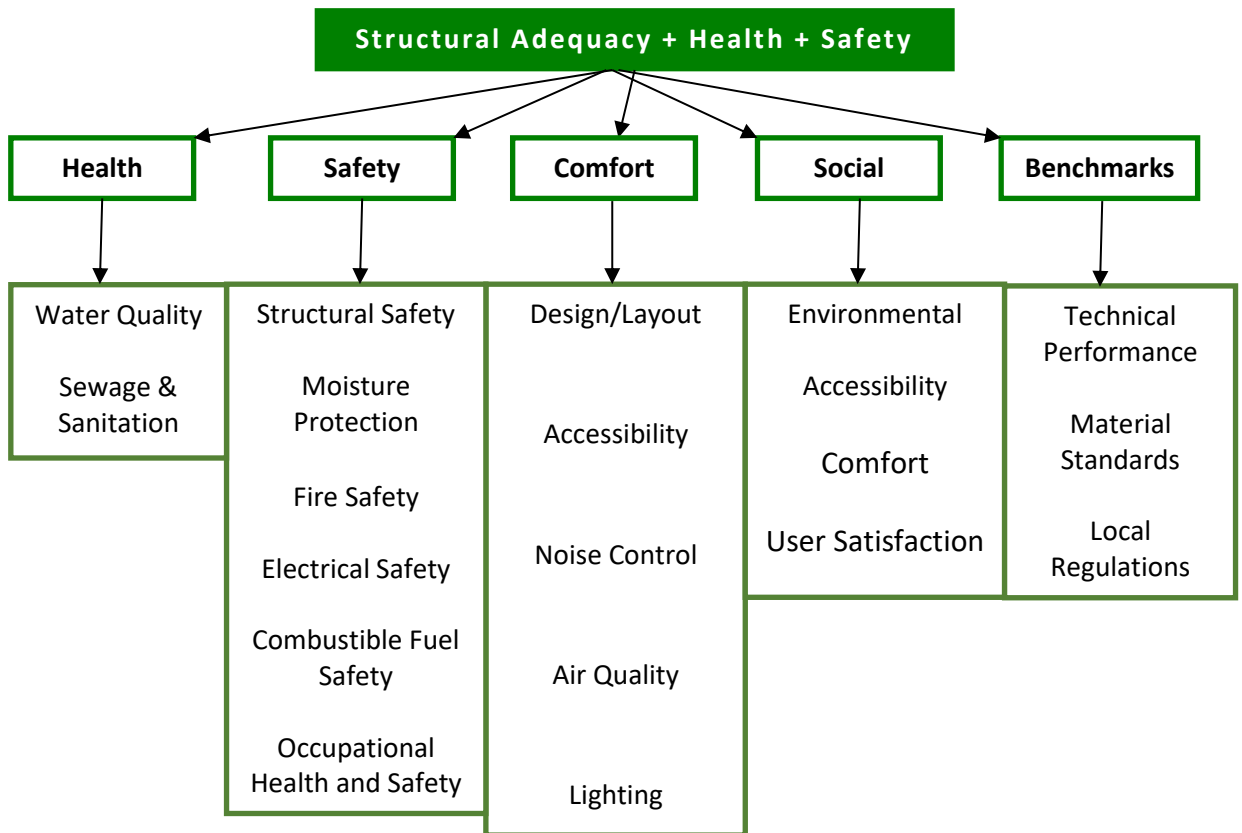
An occupancy certificate or permit will be issued upon completion of all requirements of the approved plans and specifications, building-permit conditions, approval of related ancillary permits and approvals from other applicable agencies.

All outstanding fees due to the council must be paid prior to issuance of an occupancy certificate or permit. In many cases, the building-inspection record card or final-inspection report must be submitted before a certificate is issued.

In some cases, the department or building inspector may issue a temporary occupancy permit where minor corrections are noted at the final inspection.

Temporary occupancy will not be approved for a building or portions of a building if outstanding life-safety requirements have not been mitigated in an approved manner. Temporary occupancy also will not be approved if outstanding site issues create an environmental hazard, a drainage or erosion hazard and/or a traffic hazard. The occupant must make an application for the certificate of permit to occupy the home. The following is an example of an occupancy permit.

## 7. Building Code Goals



***Most building codes and regulations were established to protect the public, thus to prevent and alleviate hazards such as structural collapse, fire, accidents and health related concerns.***