

MOHAWK COUNCIL OF KAHNAWAKE

CONSTRUCTION TENDERING POLICY

TABLE OF CONTENTS

	<u>PAGE</u>
1.0 General Policy.	3
2.0 Definitions.	4
3.0 Responsibility and Objectives.	7
3.1 Contract Start-Up / Compliance.	8
3.2 Budget Limits / Authorities	8
4.0 Conflict of Interest.	9
5.0 Shop Kahnawake Policy.	10
6.0 Contractor Requirements.	11
6.1 Invited Tenders.	12
6.2 Joint Venture Arrangements.	12
6.3 Local Content.	13
6.4 Contractor Performance.	13
7.0 Operational Procedures.	14
Appendix A – Qualification Statement.	15
Appendix B – Tender Evaluation Rating System.	18

1.0 GENERAL POLICY

This tendering policy is intended to assist the Mohawk Council of Kahnawake (MCK) by outlining accepted practices and principles applicable to:

- a) The tendering of construction work (excluding housing) within the community of Kahnawake.
- b) The tendering of professional services related to construction within the community of Kahnawake.
- c) The tendering of non-professional services related to construction within the community of Kahnawake.

This policy shall be recommended as the standard policy for all MCK affiliated entities represented on the Executive Directors Committee.

This policy is not intended for use regarding the purchase of goods, all other services (including professional services not related to construction), and the purchase of equipment. This purchasing function is covered in the Purchasing Policy of the MCK.

The authority for tendering is delegated to the MCK Director, or the Executive Director of an affiliated entity, who shall carry out the tendering function on behalf of the MCK.

As a general policy, MCK shall tender and award construction contracts based on maximizing value for the use of community funds. The MCK shall always look for the best price possible without compromising the required quality standards for the construction work. Competitive bids will be solicited whenever practical.

The MCK shall utilize the following tendering principles:

- a) All contractors will be dealt with on a fair and open basis;
- b) The public tendering process will be based on proper and sound contracting principles which take into consideration the dollar value, complexity of work to be undertaken and the number of available contractors within the area who are able to meet the level of expertise and qualifications necessary;
- c) All tender documents will be treated confidentially;
- d) All tender documents will be opened with the appropriate safeguards relative to whether the tender is “invited” or “public”.
- e) All tenders will be assessed on the basis of clear, consistent, predefined evaluation criteria.

2.0 DEFINITIONS

The following definitions apply to this policy:

Best value: This includes the bid price, as well as direct and indirect benefits to be obtained. Best value will be determined with consideration for factors such as quality, service, cost, and availability of contractor, and can include other socio-economic considerations. The most desirable technical quality or suitability is not necessarily the most desirable procurement because it may not be the most economical. A cost benefit analysis may balance technical quality against such factors as initial and operating costs, economic life, service, maintenance and repair. It is important that various factors be assessed in quantifiable terms.

CN-1, Construction Contracting Guidelines for First Nations and Aboriginal Communities: This means the manual of guidelines prepared by DIAND Technical Services (PWGSC) for Indian and Northern Affairs Canada. It describes the day to day procedures that will be followed in the tendering process of construction contracts.

CN-2, Contracting for Professional Services for First Nations and Aboriginal Communities: This means the manual of guidelines prepared by DIAND Technical Services (PWGSC) for Indian and Northern Affairs Canada. It describes the day to day procedures that will be followed in the tendering process of professional services.

CN-3, Contracting for Non-Professional Services for First Nations and Aboriginal Communities: This means the manual of guidelines prepared by DIAND Technical Services (PWGSC) for Indian and Northern Affairs Canada. It describes the day to day procedures that will be followed in the tendering process of non-professional services.

Contract: Means any formal or deliberate written agreement for the purchase of construction related services.

Direct Benefits: This means the number of subcontracts to be awarded to Kahnawake Contractors in the areas of equipment and machinery rental, and purchase of supplies. It also means the employment opportunities provided to Mohawks of Kahnawake.

Executive Directors Committee: This means the committee comprised of the Executive Directors of the nine (9) MCK affiliated entities as described in the MCK Accountability Framework.

Indirect Benefits: This means the capacity building (or technology transfer) opportunities to Kahnawake Contractors and training opportunities provided to Mohawks of Kahnawake which can be transferred to long term skills enhancements.

Invited Tender: The tender is limited to a selected list of contractors who are invited to submit a bid on the project. This would require that at least three qualified contractors, preferably from Kahnawake, be invited to bid to ensure competition.

Joint Venture Arrangement: This means any business arrangement where:

There is any form of partnership, corporation, or sub-contracting agreement between a Kahnawake Contractor and an external contractor.

Kahnawake Contractor: This means a sole proprietorship, limited company, co-operative, partnership, or not-for-profit organization where:

- At least 51 percent of the Contractor's business is owned and controlled by a Mohawk of Kahnawake as defined by Mohawk Law on Membership.
- At least one third of the Contractor's employees, if it has six or more full-time staff, must be Mohawks of Kahnawake as defined by Mohawk Law on Membership.

Lowest-bid: Refers to the bid that meets the entire contract requirements or specifications at the lowest bid price.

MCK: Means the Mohawk Council of Kahnawake.

MCK Unit Director: The individual within the MCK operations that is responsible for a unit as written into the MCK organization chart.

MCK related entities: This means the following organizations:

- Mohawk Council of Kahnawake;
- Kahnawake Shakotiiia'takehnhas Community Services;
- Kahnawake Education Center;
- Kahnawake Fire Brigade and Ambulance Service;
- Kahnawake Youth Center;
- Kanien'kehaka Raotitiohkwa Cultural Center;
- Kateri Memorial Hospital Centre;
- Mohawk Community Daycare;
- Step-by-Step Early Learning Center.

Mohawk Law on Membership: This means the membership code in place at the time this policy is ratified.

Project Manager: The person assigned day to day responsibility for each contract. The name of this person is made public and is indicated on the covering page of each and every contract tendered by the MCK or an MCK related entity.

Public Tender: Public or open tenders are publicly advertised usually in newspapers that allow any interested contractor the opportunity to bid on the project.

Qualification Statement: This means the document that contains information regarding the background and work history of the Contractor. Each Contractor must complete a Qualification Statement, and must provide proof of eligibility through the information contained therein in order to be eligible to bid on a contract. The Qualification Statement is shown as Appendix A.

Tendering Process: The procedure by which documents or specifications outlining the requirements and qualifications necessary to complete a contract are supplied to contractors who will be interested in preparing and submitting bids to undertake the project. Under a competitive process there are two different methods used for carrying out a tendering process. The first method is an invited tender and the second a public or open tender.

Tendering Sub-Committee: This means the committee formed to carry out the administration of each contract, it shall be comprised of the following individuals:

- MCK Unit Director;
- Project Manager (for the respective contract);
- Either the MCK Executive Director or their delegated representative.

3.0 RESPONSIBILITY AND OBJECTIVES

The function of tendering for the MCK is defined as the organization and administration of tendering contracts in accordance with sound business practices. Each respective MCK Unit Director shall seek to realize for the MCK maximum value for every dollar expended.

To achieve this objective, the MCK shall establish a three (3) person sub-committee (Tendering Sub-Committee) for each contract to be tendered. The Tendering Sub-Committee shall be comprised of the following individuals:

- MCK Unit Director;
- Project Manager (for the respective contract);
- Either the MCK Executive Director or their delegated representative.

The Tendering Sub-Committee shall have the responsibility for the following:

- a) Coordinating the call to public tenders on behalf of the MCK.
- b) Securing competitive bids when possible to obtain maximum value from the expenditure of MCK funds while maximizing the use and development of available local resources to the maximum extent possible.
- c) Finalizing a Tender Evaluation Rating Sheet as per Appendix B sample.
- d) Determining that a bid is acceptable with respect to price, timetable to complete work, methodology of work, quality of materials, and prior work history of contractor.
- e) Maintaining copies of each contract awarding process.

The MCK shall work within the spending limits set in its annual budgeting process for the use of funds for construction projects.

3.1 CONTRACT START-UP / COMPLIANCE

Once a construction project begins the Project Manager is responsible for the day to day management of the project. The Project Manager shall refer to the Immediate Supervisor for any problems related to the technical or work performance aspects of the project.

The Tendering Sub-Committee shall remain in place and may be called upon in the event of a dispute with the Contractor. The Tendering Sub-Committee shall only be called upon for issues related to adjustments in the contract such as changes related to the scope of the work, and/or price related issues. The Tendering Sub-Committee shall not be called upon for any technical or work performance related issues.

3.2 BUDGET LIMITS / AUTHORITIES

For budgeted contracts the following limits shall apply:

- a) **0 - \$100,000.00:** The Tendering Sub-Committee shall delegate the responsibility to the respective MCK Unit Director. The MCK Unit Director may use the process of an invited tender. This shall be done using a minimum of three bids, with first preference being given to qualified Kahnawake contractors;
- b) **\$100,000.01 - \$500,000.00:** The Tendering Sub-Committee shall use one of the following options:
 - If there are three qualified Kahnawake contractors, use a public tender but limit the bids to the Kahnawake contractors;
 - Use a public tender through advertisement in local newspaper and a local posting.
- c) **\$500,000.01 and above:** The Tendering Sub-Committee shall use the process of a public tender through advertisement in local newspaper and a local posting.

The construction contract prices can be determined based on total price or component price value depending on the nature of the contract.

In all cases it is the responsibility of the MCK to utilize local resources to the maximum extent possible assuming they have met the requirements outlined in the Qualification Statement. External contractors should be used only for work that cannot be done by local resources.

In the event that any unforeseen and/or emergency contracts arise during the fiscal year, the same limits may be used unless otherwise indicated by the Executive Committee of the MCK. Invited tenders should only be used in exceptional cases where the work is of low cost or an emergency situation.

4.0 CONFLICT OF INTEREST

The MCK may on occasion enter into agreements with a Kahnawake contractor who is an immediate family member of, has a close relationship with, or has a relationship which is determined to be NOT at arms length with, a person involved in the tendering process.

In these cases, the person within the MCK who is involved in the tendering process shall be excused from participating in any decision regarding the awarding of a contract.

It is the policy of the MCK that all employees respect the following ethical guidelines in connection with the tendering function:

- a) Give first consideration to the tendering policies and objectives of the MCK;
- b) Strive to obtain the maximum value for the MCK for each dollar;
- c) Decline personal gifts or gratuities;
- d) Grant all competitive contractors equal consideration;
- e) Conduct business with potential and current contractors in an atmosphere of good faith, without any intentional misrepresentation;
- f) Make every reasonable effort to negotiate an equitable and mutually agreeable settlement of any dispute with a contractor;
- g) Provide a prompt and courteous reception as conditions permit to all contractors who call on the MCK for legitimate business reasons;
- h) In general, promote an environment that fosters fair, ethical and legal tendering procedures on behalf of the MCK.

5.0 SHOP KAHNAWAKE POLICY

The MCK shall support the “Shop Kahnawake” policy to ensure that qualified local Mohawk contractors are given an opportunity to compete for MCK business. Mohawk contractors must be considered a Mohawk under the Mohawk Law.

The MCK also recognizes that construction activity represents economic opportunities for Kahnawake owned businesses. The MCK shall support the concept of “Shop Kahnawake” as described in this section; while recognizing that the best value from construction projects must be balanced between getting the lowest price and maximizing the economic benefits to the community from these projects.

The MCK shall seek to maximize local benefits when tendering construction projects by utilizing the following three principles when publicly tendering construction contracts:

1. Utilizing the concept of Invited Tenders limited to Kahnawake contractors where appropriate and cost effective;
2. Promoting joint-venture arrangements; and,
3. Requiring local content provisions within a contract when external contractors are utilized

These principles are described in more detail in section 6.0 of this document.

6.0 CONTRACTOR REQUIREMENTS

All contractors must complete a qualification statement and submit it to the MCK in order to be eligible to bid on a contract.

All contractors that intend to bid on contracts tendered by the MCK must comply with the Insurance Conditions and Security Conditions as referred to in Appendix 2-9 E and F of CN-1.

Kahnawake contractors must provide proof of coverage under the Mohawk Self-Insurance (MSI). All non-Kahnawake contractors must provide proof of coverage under the Commission de la Sante et de la Sécurité du Travail (CSST). All non-Kahnawake contractors who hire Kahnawakero:non to carry out the works must provide proof of coverage under the Mohawk Self-Insurance (MSI) for the Kahnawakero:non labourers.

These conditions ensure that the contractor has adequate coverage for the liability arising out of, or resulting from, the ownership, existence, maintenance or use of premises by the contractor.

6.1 INVITED TENDERS

The MCK may limit an invited tender or give first preference to qualified Kahnawake contractors when the Tendering Sub-committee judges that there are a sufficient number of qualified Kahnawake contractors to ensure competition and an acceptable bid.

The minimum standard shall require that at least three qualified Kahnawake contractors are deemed capable to submit a bid on a given tender offer.

6.2 JOINT-VENTURE ARRANGEMENTS

In the event that a Kahnawake contractor is not capable of providing an acceptable bid on a tendered contract, the MCK may accept bids based on a joint venture arrangement with an external contractor (could be Onkwehón:we or non- Onkwehón:we).

In the case of a joint venture arrangement the MCK must be assured that both the Kahnawake contractor and the community as a whole will obtain reasonable benefits from the construction project.

This approach involves the local firm working with a partner through a joint venture agreement to access the additional resources and skills needed to enable them to participate in the public tendering process and the construction work itself.

Joint venture arrangements shall be measured in terms of the number of local individuals to be employed, the local material and equipment to be used, and the training to be provided appropriate to the project requirements.

In the event that there are competing bids submitted with joint venture arrangements with other Onkwehón:we contractor(s) these bids may be evaluated using a comparison between Onkwehón:we and non- Onkwehón:we content. The comparison will be done similar to measuring Kahnawake and external content as described in section 6.3.

Joint venture arrangements require that the external contractor also complete a qualification statement. When there is a joint venture, all of the contractors involved must respect the general conditions necessary to the performance of the contract as described in section 6.4.

6.3 LOCAL CONTENT

In the event that a Kahnawake contractor is not capable of providing an acceptable bid on a tendered contract or there is not an acceptable joint venture arrangement, the MCK may tender the contract to external contractors and specify local content standards.

Similar to the local content standards described in the previous section, these standards shall be based on the number of local individuals to be employed, the local material and equipment to be used, and the training to be provided appropriate to the project requirements.

Bids shall then be evaluated and a value established for the local content (i.e. savings in social assistance costs, skills enhancement) which when combined with the bid amount shall be used in assessing the best value for the community.

When comparing tenders the local content and external content shall be valued and each tender shall be measured using a tender evaluation rating system shown in Appendix B.

6.4 CONTRACTOR PERFORMANCE

The MCK and the contractor shall agree to general conditions in the Articles of the Contract Agreement as per the operational guidelines described in CN-1, Appendix 2-9 C. These conditions cover the operations necessary or incidental to the performance of a given project.

The MCK may also use its own monitoring system based on managing the payment schedule to the contractor. This monitoring system shall be on a case by case basis depending on the value of the contract and any other relevant details and shall be at the discretion of the Tendering Sub-Committee. Any monitoring system used shall be clearly identified and described in a section marked "Terms of Payment" in the Articles of the Contract Agreement and shall be based on the operational guidelines described in CN-1, Appendix 2-9 B.

The contractor may be required to post a security deposit (by certified check) or a letter of guarantee based on the value and nature of the contract. The amount will represent a percentage (%) of the total value of the contract and will be determined by the Tendering Sub-Committee.

Any guarantee made by the contractor (or contractors in the case of a joint venture) that is not honored will be noted in the prior work history of the contractor(s) and may be used in the evaluation for any future tenders.

7.0 OPERATIONAL PROCEDURES

For the operational procedures related to construction tenders, the MCK shall follow the guidelines set out in:

“CN-1, Construction Contracting Guidelines for First Nations and Aboriginal Communities”, prepared by DIAND Technical Services (PWGSC) for Indian and Northern Affairs Canada.

For the operational procedures related to contracting for professional services, the MCK shall follow the guidelines set out in:

“CN-2, Contracting for Professional Services by First Nations and Aboriginal Communities”, prepared by DIAND Technical Services (PWGSC) for Indian and Northern Affairs Canada.

For the operational procedures related to contracting for non-professional services, the MCK shall follow the guidelines set out in:

“CN-3, Contracting for Non-Professional Services by First Nations and Aboriginal Communities”, prepared by DIAND Technical Services (PWGSC) for Indian and Northern Affairs Canada.

Appendix A – Qualification Statement (Sample)

Mohawk Council of Kahnawake

**CONTRACTOR'S QUALIFICATION STATEMENT
For all
CONSTRUCTION (excluding housing)**

(Required in advance of invitation to tender and/or in advance of award of contract to establish whether a contractor possesses the capacity, skill and integrity necessary to the faithful performance of the work).

Submitted to the Mohawk Council of Kahnawake

By _____

A Corporation _____

Address _____

A Partnership _____

An Individual _____

If a Corporation, answer below:

If a Partnership, answer below:

Year incorporated _____

Date of organization

Federal _____

Provincial _____
(Indicate Province)

Names and addresses of all partners:

or Years registered _____

(which Province) _____

President's Name _____

Name(s) Vice President(s):

How many years has the organization been in business as a Contractor in Canada? _____

Approximate total Canada volume of construction work for the last five years?

_____ 19____, _____ 19____, _____ 19____,
_____ 19____, _____ 19____,

LIST BELOW THE RELATED CONSTRUCTION EXPERIENCE OF THE PRINCIPAL INDIVIDUALS IN THE CONTRACTOR'S ORGANIZATION:

Individual's Name and Professional Qualifications	Present Position/Office	Years of Construction Experience	In What Capacity
---	----------------------------	-------------------------------------	------------------

LIST MAJOR PROJECTS YOUR ORGANIZATION HAS COMPLETED IN CANADA IN THE PAST FIVE YEARS:

Project	Officer	Architect/ Engineer	When Completed	Contract Amount
---------	---------	------------------------	-------------------	--------------------

LIST OF THE MAJOR CONSTRUCTION PROJECTS YOUR ORGANIZATION HAS UNDER WAY ON THIS DATE:

Project	Owner	Architect/ Engineer	Value	% Complete	Scheduled Completion
---------	-------	------------------------	-------	---------------	-------------------------

DATA ON PROJECT BEING BID

Name of Project Superintendent to be Assigned to this project	Years of Construction Experience	Typical \$ Amount and Type of Work for Which Responsible	In What Capacity
--	-------------------------------------	--	------------------

Other Key Supervisors:

Additional Data:

REFERENCES:

- (a) Banking _____
- (b) Bonding _____

The answers to the foregoing questions and all statements therein contained are true and correct.

Name of Organization: _____

Authorized Signature: _____

Title: _____

This _____ day of _____ 19____.

Note: Please use a blank sheet if additional space needed for any replies.

Appendix B – Tender Evaluation Rating System (Sample)

Contractor identification: _____

Description	Component Weight	Criteria Weight	Score
1.0 Understanding of Project			
1.1 Analysis of project goals, requirements			
1.2 Definition of special issues / constraints			
2.0 Scope of Services, Work Plan, Schedule			
2.1 Completeness of offered services			
2.2 Work Plan			
2.3 Schedule, cost & control methods			
2.4 Schedule control method			
3.0 Management of the Services			
3.1 Organization and Management of team			
3.2 Schedule / cost / quality control			
4.0 Contractor History			
4.1 Prior projects for MCK			
4.2 Experience on similar projects			
4.3 Completion time of prior work			
4.4 Qualifications and overall experience			
4.5 Depth / scope of services			
5.0 Local Content			
5.1 Labor			
5.2 Training			
5.3 Sub-Contracts			
5.4 Materials to be purchased locally			
5.5 Use of local owned equipment			
6.0 Cost of Tender			
Final Score			

Name of Tendering Sub-Committee Member: _____