FIRST NATIONS CHILD AND FAMILY SERVICES PROGRAM
INFORMATION BULLETIN
FNCFS/SEFPN 2025-17-E

CAPITAL COST INCREASES RELATED TO CONTRACT MANAGEMENT OR CANCELLATIONS – 2021 CHRT 41

December 12, 2025

This bulletin provides guidance on capital cost increases resulting from contract management for the First Nations Child and Family Services (FNCFS) Program capital funding, including the eligibility of costs associated with contract modifications and cancellations under the Canadian Human Rights Tribunal order 2021 CHRT 41. This applies to First Nations and FNCFS agencies' capital project contracts with third-party consultants, designers, and contractors. This guidance complements the FNCFS Capital Assets Guide and existing Indigenous Services Canada (ISC) program policies, and does not replace previous guidance.

Recipient Responsibilities

ISC provides funding to recipients for capital projects. Recipients enter into and are responsible for managing contracts with consultants, designers, and contractors. ISC is not a party to these contracts. Recipients are responsible for all legal, financial, and operational consequences arising from contract disputes, cancellations, or breaches.

To optimize the effectiveness of capital contracts, recipients should ensure that contracts:

- Are awarded in accordance with ISC requirements for competitive procurement in the Tendering policy on federally funded capital projects for First Nations on reserve
- Are in writing (no oral-only agreements).
- Clearly define deliverables, timelines, and payment schedules.
- Identify and outline reasonable contingency provisions to manage foreseeable risks.

Ineligible Costs

The following expenditures are not eligible under the FNCFS Capital stream:

- Penalties or fees as a result of contract terminations or disputes.
- Delays or price escalations (penalties or fees) triggered by cancellation.
- Re-procurement or re-tendering of the same scope (i.e. costs from restarting or duplicating procurement processes for the same work, goods, or services after the original tender or contract is cancelled or not awarded).
- Legal, arbitration, or litigation expenses.
- Cost overruns caused by recipient actions, including contract cancellation, mismanagement or unapproved scope changes.
- Increased material costs. Once a contract has been awarded through a competitive tendering process, unit prices—including material costs—are considered fixed. Post-tender adjustments to material pricing are not eligible for additional funding.

Eligible Cost Overruns

2021 CHRT 41 funding may cover reasonable cost overruns that occur between the feasibility/design and construction phases when they are due to unanticipated but required changes, such as, but not limited to:

- Job-site conditions that differ from those anticipated at tender (e.g. hazardous material found during demolition, contaminated soil not listed in the environmental assessment).
- Increased costs due to ISC-approved scope changes.

Contract Cancellation

In rare cases, ISC may consider additional funding for project completion where a contract cancellation is necessary to:

- Address serious procurement integrity issues (e.g., fraud – including misrepresentation of qualifications, conflict of interest, bid manipulation, etc.).
- Respond to contractor bankruptcy or default.

Recipients must notify the relevant ISC regional office via a letter or email within five (5) business days of cancelling any contract linked to a 2021 CHRT 41 capital project. Notification must include:

- Rationale for termination
- Impact on scope, budget, and timelines
- Proposed path forward

Approval of additional funding is not guaranteed and remains at ISC's discretion, subject to funding obligations in accordance with 2021 CHRT 41.

Financial Accountability

According to the Treasury Board Policy on Transfer Payments, funding is allocated for specified purposes only. Requests to fund the same project scope twice, such as restarting work after contractor failure, are prohibited. Duplicate funding may result in audits, recovery actions, or ineligibility for future funding.

Additional References for Contract-related Costs

- Protocol for ISC-Funded Infrastructure (PIFI): Confirms that recipients hold full legal responsibility for the construction, operation, maintenance, and disposal of funded assets.
- Construction Contracting Guidelines for First Nations and Aboriginal Communities: Outlines accepted practices and principles applicable to the procurement of construction services by contract.

If you have questions about this bulletin or its implementation, please contact your regional office or chrt41-tcdp41@sac-isc.gc.ca.