

RSM Richter Chamberland

Aboriginal Entrepreneurs

Conference Tradeshow



RSM Richter Chamberland S.E.N.C.R.L./LLP
Ottawa, Ontario, October 24-25, 2011

**Session 4:
Strategies for Impact Benefit Agreements (IBA) Success**

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INTRODUCTION - WHAT IS AN IBA?

Impact and benefits agreements (IBAs) are increasingly recognized as part of the standard package of regulatory and benefits requirements associated with major natural resource development projects in Canada and result from a desire by a Proponent to operationalize a project (e.g. the massive nickel mine to be developed by Inco at Voisey's Bay, Labrador; the development of pipelines through aboriginal territories and numerous forestry projects).

Particularly when projects are located within traditional aboriginal territories and in proximity to aboriginal communities, IBAs are emerging as the primary means of establishing a formal relationship between the project developer and local people. IBAs, benefits plans and related regulatory requirements are being relied upon increasingly by governments as instruments of regional economic development.

IBAs have 2 principal purposes from the perspective of government and aboriginal parties:

- To address the concerns of aboriginal people and other local residents regarding the adverse effects that large-scale mineral development may have on their communities, culture, way of life, natural environment and land-based economic activities;
- To ensure that local people and communities have the opportunity to obtain both short-term and long-term benefits from mineral development occurring in their region.

Both purposes reflect the underlying premise that it is no longer acceptable to develop natural resources in a manner that imposes significant costs at the local level while the benefits are enjoyed elsewhere. From the Resource industry perspective, IBAs are coming to be viewed as one element of the complex set of regulatory, community relations, technical, and economic considerations that must be addressed if a major resource or infrastructure project development is to progress smoothly from the initial planning stages to final approval and operational status. Even when the negotiation of IBAs is not required by law or directed by government policy, these agreements may be used by resource development proponents to address local concerns that, if ignored, could crystallize into organized and effective opposition to natural resource and infrastructure Development Projects ("Projects").

THE DUTY TO CONSULT

The advent of Impacts and Benefits Agreements ("IBAs") coincides to a large extent with the evolution of Canadian judicial consideration of justifiable interference or infringement with aboriginal and treaty rights by federal and provincial governments in Canada. Briefly, legislative infringement of aboriginal and treaty rights will be upheld if such infringement can be justified on grounds such as public safety, conservation (parks IBAs) or as an adjunct of critical resource development.

As Canadian jurisprudence has evolved, evidence of appropriate consultation between government and an affected Aboriginal group is critical to establishing a proper justification for infringement of aboriginal or treaty rights. While at present, the "duty to consult" lies upon government, rather than industry, the integration of industry in the consultation process is acknowledged and respected. In this regard, industry may enter into agreements directly with Aboriginal groups, or together with government, to address appropriate measures for accommodation of the interests of Aboriginal groups in project development and to provide the certainty of co-operation from Aboriginal groups going forward.

DO CORPORATIONS HAVE A DUTY TO CONSULT AND ACCOMMODATE ABORIGINAL PEOPLE?

The Supreme Court addressed, in the Haida and Taku River Tlingit cases, whether corporations also have a legal duty to consult Aboriginal peoples where Aboriginal rights or title are affected.

The British Columbia Court of Appeal, in the Haida case, found that the Weyerhaeuser (a large forestry company with timber licenses to log parts of the lands where the Haida had an Aboriginal title claim) had a duty to consult when the Haida's Aboriginal title could be affected.

The Supreme Court did not agree. The Court found that, because the duty to consult in the case of unproved Aboriginal title flows from the legal doctrine of the "honour of the Crown," there was not a legal duty on third parties (such as corporations) to consult where Aboriginal rights or title could be affected.

The Supreme Court also said, however, that the Crown could delegate some of the procedural aspects of the consultation duty to corporations. When that occurs, the corporations would in fact have the duty to consult and, as discussed earlier, to accommodate. (This happens, for example, where an environmental assessment or other process mandated by statute requires industry to consult First Nations).

In addition, the Supreme Court said corporations could still be liable where the duty to consult was not met. (This could happen, for example, where a land tenure, permit or license is overturned because there has been a failure to adequately consult an Aboriginal community whose claim to Aboriginal rights or title is affected).

IMPACT AND BENEFIT AGREEMENT (IBA)

In recent years, there has been a proliferation of commercial arrangements, generally negotiated among developers (also referred to herein as Developers/Project Proponents), Aboriginal group representatives, and, sometimes, federal, provincial or territorial Government respecting measures and undertakings on behalf of the respective parties pertaining to the exploitation of commercial opportunities (Development Projects) on or adjacent to the lands on or in respect of which Aboriginal groups claim an interest.

LAND-CLAIMS AGREEMENTS

The land claims have given beneficiaries title to some subsoil parcels and to greater amounts of surface lands. Where Aboriginal people own both the subsoil and the surface rights involved in a proposed mineral development, they may, within limits specified in the claim and generally applicable law, set the terms and conditions for the development, including the extent to which local communities benefit from it. An exception would be where mineral rights were granted by government before the signing of the claim. In this case, special provisions of the land claim will guide the actions of the rights holder. The Inuvialuit Final Agreement, and that of the Labrador FN/A, for example, provides for such circumstances in the section on Participation Agreements.

The Nunavut claim requires the negotiation of FN/A impact and benefits agreements in conjunction with what are called "major development projects." The Inuvialuit and Nunavut agreements detail provisions on the content of participation and FN/A impact and benefits agreements, respectively.

CONCLUSION

As hybrid instruments - often having characteristics of both private contracts and regulatory requirements - IBAs reflect trends that are shaping the goals and operations of aboriginal organizations and the government agencies responsible for mineral development in Canada.

IBAs will likely play an increasingly important role in mineral development throughout Canada. This role will be especially significant in northern regions where the impacts of this type of development on aboriginal people and local communities are most direct.

SUMMARY

Impact and Benefits Agreements (IBAs) are generally negotiated in the context of resource development in Canada. They may be developed between a company, the provincial or territorial government and affected Aboriginal organizations. They may be precondition to federal approval for resource development operations. The agreements establish the terms under which affected Aboriginal people will benefit from development projects. IBAs are different from other aspects of the regulatory and benefits package (set out in socio-economic and environmental agreements) in that they are private contracts between non-governmental parties and are subject to confidentiality provisions. In the context of unsettled land claims, IBAs permit benefits to flow to Aboriginal groups whose traditional lands include the area where mining or development is located.

ALTERNATIVE NAMES: PARTICIPATION AGREEMENT

IBAs deal with a range of issues including employment and training of Aboriginal people, profit-sharing, compensation and environmental regulation. Specific provisions requiring the negotiation of IBAs are found in certain land claims agreements, and some legislation regulating gas and oil development. They have also been used in the context of diamond mining operations where no legislative or claims-based requirements exist. The use of IBAs reflects the principle that Aboriginal people should share the benefits of resource development, and permits the shaping of those benefits to the requirements of individual communities and Aboriginal groups.

IMPACTS AND BENEFITS AGREEMENTS IN CONTEXT

The emergence of IBAs as a key component of the regulatory and benefits packages that are required for many major natural resource projects is a product of socio-economic, legal, policy and project-specific factors.

The Socio-Economic Context

The Impacts of Natural Resource and Infrastructure Development on Aboriginal People

The negative economic, social, cultural and environmental impacts of Projects can be significant.

- The destruction of economic resources used by aboriginal people through damage to land, wildlife and fisheries;
- The disruption of hunting, trapping and gathering activities;
- In some instances, the dispossession of aboriginal people themselves;
- Social and cultural disruption resulting from the loss of land – including the plants and animals that it supports – or damage to sites of cultural or spiritual significance;

- Threats to cultural identity, social integrity and individual self-esteem that can result from an influx of outsiders who have different economic, social and cultural values and circumstances and whose presence may create or exacerbate problems such as alcohol abuse, prostitution and the emulation of unsustainable consumption patterns; and
- Disruptions to social structures and cohesion, family structures and individual lifestyles that may result from the difficulties in adjusting to industrial employment, the substantial increase of cash income available to some individuals, and the issues associated with the use and distribution of the money paid to aboriginal communities.

The impacts of development projects on aboriginal communities need not, of course, be uniformly negative. Many of the potential negative impacts can be controlled or even eliminated by appropriate environmental protection measures and by designing the physical infrastructure and operating procedures of the Development Project so as to limit disruption of the traditional ways of life, economic activities and social structures of aboriginal communities.

On the other side of the equation, Development Projects have the potential to bring significant benefits to aboriginal communities, many of which suffer from high unemployment, low incomes, inadequate infrastructure, and weak or non-existent private sector economic activity. In particular, the potential benefits of a Development Project include:

- Increased direct employment opportunities, in terms of the number of jobs available to aboriginal people and the level of income that can be earned from these jobs;
- Increased opportunities for aboriginal people to gain work experience and to develop and apply specialized skills, thereby improving their overall ability to generate income through the wage economy;
- Indirect economic effects resulting from the infusion of employment income into aboriginal communities (e.g., increased purchases of local goods and services, increased traditional economic activities such as hunting and trapping due to the ability of wage-earners to purchase improved equipment, and the use of employment income to invest in income-generating assets);
 - Improvements in community infrastructure and the implementation of economic development and social programs through the use of cash payments (e.g., royalty payments) received from Project developers;
- Business development opportunities whereby aboriginal businesses can act as suppliers to the Project, as contractors or subcontractors, or as joint venture partners or in related businesses; and
- Opportunities for aboriginal people to make use of the Project facilities and related social and physical infrastructure (e.g., airstrips, roads, ports, medical facilities, etc.).

Many of these impacts, although primarily economic, can also produce positive social and cultural effects. One example, noted above, is the use of cash income to support traditional economic activities such as hunting and trapping. Improved infrastructure may also increase opportunities to sell aboriginal products to a wider market, thereby encouraging traditional activities and strengthening the economic underpinnings of aboriginal communities.

THE LEGAL AND POLICY CONTEXT

The legal and policy contexts for IBAs can be described using a five element typology. IBAs may emerge as a result of:

- Aboriginal ownership of land and resources;
- Specific requirements in land claims agreements;
- Statutory requirements and formal government policy; and

- Ad hoc government policy; or
- Project-specific factors independent of any legal or policy requirements.

THE PROJECT-SPECIFIC CONTEXT

Even in the absence of a clear legal or policy framework for IBAs, these agreements may nonetheless be negotiated between project developers, aboriginal organizations and, in some cases, governments.

THE LEGAL NATURE OF IBAS

IBAs are generally drafted in contractual language and follow standard contractual format. They thus have the appearance of legally binding agreements between the parties, analogous in many respects to private commercial contracts.

THE GOVERNMENT ROLE IN IBAS

IBAs are essentially private matters between Project Developers/Proponents and aboriginal organizations. The government role in relation to IBAs should not be dismissed too quickly.

There are at least **six** reasons why government may not easily be able to avoid significant involvement in the IBA process.

1. Government may explicitly establish a legal or policy requirement that IBAs be negotiated prior to project approval;
2. Even where the negotiation of IBAs is not a firm requirement, government is often a key determinant of the incentive structure for IBA negotiations and the bargaining power that each party brings to the table. Government may exert a profound influence over the respective bargaining power of the parties. First, the legal and policy framework governing aboriginal rights to land and resources – including subsurface rights – will be a major determinant of the aboriginal position in negotiations. Where aboriginal surface or subsurface rights have been recognized in law, aboriginal organizations are in a position of relative strength when negotiating with Project Proponents.
3. Government may have a role to play in relation to the IBAs bargaining process itself. Government involvement in that process may begin in the early stages of project development when, for example, a mining company approaches government for guidance regarding the nature of aboriginal rights in the area of the proposed mine and the aboriginal organizations that should be consulted by the company. Aboriginal organizations may also seek financial or other assistance from government to support IBA negotiations. Finally, government may be able to provide information to the parties, play a facilitating role, or take other steps to reduce bargaining costs and promote timely and successful negotiations.
4. Government may be directly involved in the design and implementation of programs and institutional arrangements that are needed to meet IBA objectives. For example, there may be some value in coordinating government training and apprenticeship programs with training initiatives established under IBAs. IBA provisions for individual counseling and community support may also be complementary with social services delivered by government. Finally, government funding may be available to assist with a variety of employment, economic development and social support programs included in IBAs.

5. Government may be involved in related initiatives that complement or materially affect the IBA process. The public environmental assessment process for a Resource Development Project may yield important information regarding environmental and socio-economic impacts that is directly relevant to IBA negotiations.
6. IBAs touch on important issues of public policy. These issues relate to the social, economic, environmental and fiscal implications of the development of Resource projects within aboriginal territories. Government may be unable or unwilling to sit on the sidelines, or allow itself to be excluded, while private corporations and aboriginal organizations engage in a process that has important implications for the development of public resources and that may have spillover distributional and other effects on the broader community.

THE CONTENT OF IMPACT AND BENEFITS AGREEMENTS

The following provides a summary of commonplace IBA contents:

- Introductory provisions;
- Employment and training;
- Economic development and business opportunities;
- Social, cultural and community support;
- Financial provisions and equity participation;
- Environmental protection and cultural resources; and
- Other substantive and procedural provisions.

INTRODUCTORY PROVISIONS

IBAs generally begin with a series of introductory provisions that describe the context for the agreement and set out the basis for the on-going relationship between the parties. The topics addressed may include the factual circumstances relevant to the IBA, the assumptions and objectives of the parties, and some of the key issues relating to the drafting, interpretation and implementation of the agreement.

PURPOSE

Many IBAs contain introductory clauses setting out the purpose or purposes of the agreement and the intent or objectives of the parties. These provisions generally reflect:

- The interest of the Developer/Project Proponent in the efficient operation of the project;
- The interest of the aboriginal or government parties in achieving maximum economic and other benefits from the project and in minimizing social, environmental and other negative impacts; and
- The mutual interest of the parties in developing a positive working relationship. For example, purpose sections in IBAs may state that the agreement is intended to:
 - Facilitate the development and operation of the project in an efficient and environmentally sound manner;
 - Ensure that the project results in the economic and social benefits sought by the aboriginal and government parties, including employment, business opportunities and training;

- Minimize any negative social and environmental effects of the project and protect the aboriginal way of life, including traditional land-based activities such as hunting, fishing and trapping;
- Provide for ongoing monitoring of the economic, social and environmental impacts of the project;
- Define the working relationship between the parties and provide a framework for communication, consultation and cooperation; and
- Secure the support of the aboriginal party for the project.

DEFINITIONS

Most IBAs contain a definitions section, some of which are quite extensive.

IDENTIFICATION OF PARTIES AND SPECIFICATION OF BENEFICIARIES

The parties to an IBA may be identified and described at the beginning of the agreement using a recital of the parties which includes formal legal descriptions of their status and capacity.

Several IBAs have also included a clause dealing explicitly with the legal capacity of the aboriginal parties. Some IBAs distinguish between categories of aboriginal beneficiaries. For example, residents of specified communities in close proximity to the proposed development may be accorded preferential status under the agreement, when compared with aboriginal people living in other communities.

COMING INTO EFFECT OF THE AGREEMENT

IBAs may specify that they come into force upon execution by the parties or upon a specified event, such as the Developer obtaining financing or regulatory approvals or making a final decision to proceed with the project. Time limits may be specified for these triggering events, beyond which the agreement lapses. These provisions are particularly important when IBAs are negotiated at a relatively early stage in project development.

OVERALL DESCRIPTION OF THE PROJECT

IBAs may contain technical descriptions of the Projects or company activities in question. These clauses may include a description of the location, relevant mineral Claims, estimated size of the mineral deposit, proposed operations and facilities (including supporting infrastructure such as roads and power lines), projected work-force, and estimated life span of the project.

PROJECT PHASES

In addition to providing overall project descriptions, IBAs may also specify a number of distinct phases of the Development Project. Identification of these phases in the agreement may be useful because the impacts and benefits from a project can differ significantly depending on the phase of operations. For example, a mining company's need for employees and the opportunities for aboriginal people to fill available positions may vary at different phases in the life of the project. The construction phase may generate many short-term positions, while the job opportunities during the operation of a mine may be fewer but of longer duration. Equally, the types of business opportunities associated with a project may change significantly over its lifespan. The project phases identified in IBAs may include:

- Exploration phase;

- Advanced exploration phase;
- Project development or project definition phase;
- Project construction phase;
- Commercial production or operation phase; and
- Project decommissioning, abandonment and reclamation phase.

EMPLOYMENT AND TRAINING

Achieving local benefits in the form of employment and training is usually a key objective of aboriginal and government parties to IBAs. The importance of this objective reflects the high levels of unemployment and underemployment in many of the regions of Canada where resource development is occurring.

GENERAL EMPLOYMENT PROVISIONS

IBAs usually affirm the interest of the parties in encouraging a high level of aboriginal participation in the Project. In some cases, employment targets may be set. These targets may be explicitly applicable to contractors and subcontractors, as well as to the Development Project company. An alternative to establishing fixed targets in the IBA itself is to require that targets be developed on a regular basis and incorporated into annual labour force development plans.

Identification of Employment Opportunities and Labour Supply

IBAs may provide for the collection and dissemination of information regarding both the demand for and supply of labour in relation to the projects in question. The mining company may undertake to develop an analysis of each job required for the project, including such factors as a description of job responsibilities, a listing of the qualifications and skills required for the job and an indication of the indicators to be used in measuring employee performance.

TRANSPORTATION

Transportation from aboriginal communities to the work site is often an important issue in IBAs. Agreements may specify one or more points of hire, usually in aboriginal communities, from which the Developer will provide regular transportation to and from the work site.

WORK SITE CONDITIONS - ACCOMMODATION, FOOD AND RECREATION

IBAs may contain provisions designed to facilitate the adjustment of aboriginal employees to the work environment. For example, country food may be made available to aboriginal employees at the project. Employees may also be provided with access to a freezer and to cooking facilities at the work site so that they can store and prepare country food. IBAs may also provide for recreation facilities and other amenities to enhance working conditions for aboriginal and other employees.

Counselling and Employee Support

Specific programs for counselling employees on career, personal and family problems may be provided for in IBAs. Information programs on topics such as money management may be required by IBAs.

Language of Work

IBAs may specify the principal language(s) of work on the project and may include measures to accommodate aboriginal employees who lack a good knowledge of the working language(s).

GENERAL PROVISIONS REGARDING CONTRACTING AND BUSINESS OPPORTUNITIES

IBAs may contain provisions affirming that the company will seek to promote local and aboriginal economic development throughout the life of the project.

Identification of Businesses and Business Opportunities

A principal objective of many IBAs is to ensure that both the Developer and aboriginal businesses are aware of opportunities for mutually beneficial commercial arrangements. One means to achieve this objective is to establish a registry of aboriginal businesses.

The demand side of the equation may also be addressed in IBAs. In particular, IBAs may contain a detailed enumeration of the categories of goods and services that are expected to be required over the life of the Project. This list can be used to determine what opportunities exist for the creation or expansion of aboriginal businesses.

GENERAL PREFERENCES FOR ABORIGINAL BUSINESSES

IBAs may specify that the Developer/Proponent has a number of options when seeking to secure goods and services. These options may include issuing a request for proposals or an invitation to tender, or negotiating directly with aboriginal businesses that have the ability to deliver the goods or services of the required quality in a timely, efficient and competitive manner.

MONITORING OF CONTRACTING

IBAs may contain explicit provisions regarding monitoring and reporting on the involvement of aboriginal businesses in the Project. Provision may be made for the submission of regular (e.g., quarterly) compliance reports to the implementation committee established under the IBA.

Assistance for Local Business Development

Although the potential for local economic spin-offs from Development projects is often considerable, the capacity to take advantage of these opportunities may be lacking. IBAs can address this issue by providing for direct assistance for local business development. This assistance may take a number of forms. For example, the Developer may agree to:

- Fund, organize and conduct tendering workshops in order to ensure that local businesses are aware of opportunities related to the Project and to provide information on the company's tendering process.
- The Developer may also undertake to provide technical or other assistance to facilitate the establishment of specified aboriginal businesses.
- In addition, IBAs may link company initiatives with access by aboriginal people and businesses to government programs available to assist business and economic development.

COMMITTEE ON ECONOMIC AND BUSINESS DEVELOPMENT

A committee of the parties may be established to facilitate economic and business development associated with the Project. Its mandate may extend broadly to all matters relating to the involvement of aboriginal businesses in the project.

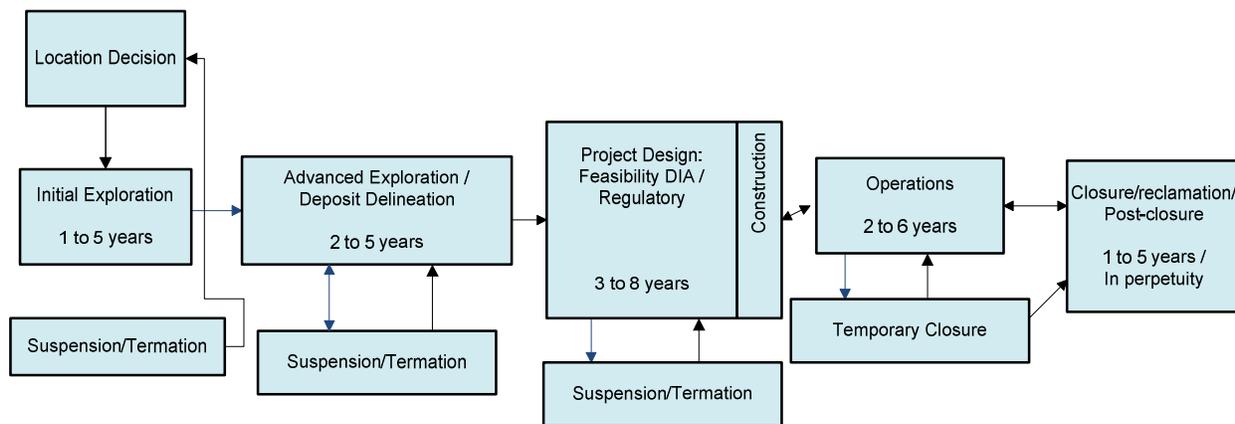
THE MINE CYCLE

The mine life cycle typically breaks down into a series of phases. Figure 2.1 indicates a linear process from a location decision to full-scale operations. However, for each phase in the mine life cycle, the decision may be made to suspend or terminate the project. Most exploration projects – some 99.9 per cent of them – never become full scale mines.¹

LOCATION AND INVESTMENT DECISION

A company's decision to invest in a location is made based on a variety of factors, only some of which are related to the chance that there is a viable mineral resource in the ground. The decision on where to focus investment dollars relies on a consideration of the risks and rewards associated with investing in, say, western Argentina compared to northern British Columbia. Companies typically consider the geological and political climates, among other factors, before making these initial decisions. Companies first consider the geology and mineral prospects. If these prospects are not promising, they will go no further.

However, even if there are good prospects, companies may still not invest because of other risk factors, such as political or social risk. The initial location decision often involves no direct relations between the developer and communities.



EARLY EXPLORATION

Early exploration occurs in one of two ways: looking for mineral deposits in an area that has had little or no previous exploration or mining (grassroots or greenfield exploration); or looking for new deposits, or extensions of existing deposits, in areas where mining is occurring or has previously occurred (brownfield exploration). It is very rare to find a mineable deposit through greenfield exploration, but the upside is that if a find is made, it may be extremely large. The chances of finding a mineral resource in a brownfield area are much higher, but the risk is that the best deposits have already been mined. Brownfield exploration may continue alongside more advanced exploration and/or mining by the same company.

Prospectors are the first people involved in exploration. They choose where to look for minerals by understanding the geology of a region, walking and observing an area, and relying on samples they collect. Prospectors often work with a company, but many operate on their own. They start by looking at the regional and large-scale geology and glacial history of a region to identify where they want to start looking. For example, the Canadian Shield is rich in minerals, such as nickel, copper, zinc, silver and gold, as it is part of an ancient volcanic belt that had conditions favourable to economic mineral development. Following this, a prospector will work out on the land, mapping rock types and collecting samples. Sometimes they use satellite imagery, global positioning systems, or surveys from planes or helicopters to identify geological variances.

When something promising is found by a prospector, an early exploration program will be developed. This usually involves small groups of workers, typically about 10 people in temporary camps, who are engaged in helicopter mapping or river sampling. It is during this time that clues indicating the existence of minerals might be found. If they are found, this usually leads to more permanent camps, more people and more intensive work. Geologists will begin to sample larger amounts of material from more localized areas. This can also involve all-season work using airplanes to fly over an area to create maps that allow people to visualize the geological structure of the rocks below the surface. They can also use physical methods (which might include seismic, gravitational, magnetic, electrical and electromagnetic methods) to measure the physical properties of rocks, and in particular, to detect the measurable physical differences between rocks that contain ore deposits and those that do not. The point of this activity is to identify targets for drilling.

A typical early exploration program costs between \$500,000 and \$3 million.

ADVANCED EXPLORATION

Advanced exploration includes drilling designed to confirm that ore is in fact present and, when it is, mapping out the size of the ore body and the minerals it contains. At this point, more sampling, geophysics, and drilling may continue elsewhere as the company continues to look for more ore, while further investigation of what it has found takes place. The decision to drill on a claim is not a small one – the expenses to the company far exceed that of all previous work. However, there is no other way to delineate the mineral trend. The size of the drill bit will vary: larger diameter drills will be used in areas where the geology is well known and promising, whereas smaller drills will be used where there is little information on the host rock. Companies do not usually drill deeper than 300 metres, because doing so is very expensive. Depending on the ease of getting to the location (i.e., the presence of roads), drilling can be done either by wheeled drills or heli-portable drills. These diesel run machines drill one hole at a time into the ground to determine whether, and the extent to which, there is a viable mineral deposit. Anywhere from one to 100 or more holes may be drilled, with core samples initially examined on-site and shipped off for further examination (assaying) at a laboratory.

An early phase of drilling will include small diamond drills and small drill cores. The company will increase work as warranted by increasing sample sizes, drill sizes, and core sizes. Eventually, the company may collect bulk samples to determine the grade and whether minerals can be easily extracted. However the phases of drilling are not linear.

Small-scale drilling to cut a core of rock (called diamond drilling) will likely continue in other potential areas throughout the mine life. For example, many operating mines continue sampling while they are running an operating mine.

For those projects with strong drilling showings, larger drills will be used in order to map the extent of the deposit (called deposit delineation). Information from the drill logs will be used to map the nature of the deposit underground. The company will map the ore body using software programs and drill log data. At this point, the potential for an actual mine is becoming apparent. Activities on the ground may include: more drilling to determine the depth, length, geometry and grade of the mineral deposit; bulk sampling of 2,000 to 20,000 tonnes of the ore body to determine its qualities and what metallurgical or other processes can be used to extract the metals from the ore; setting up of a permanent camp with more people; and environmental baseline work in preparation for the environmental impact assessment and regulatory stages.

Financial investment accelerates quickly at this point. Bulk sampling and other advanced exploration activities may increase the annual budget into the \$20 million to \$50 million range. Some estimates place the total costs of deposit appraisal anywhere between \$5 million and \$100 million.

People in communities will notice drilling programs more than previous activities because they are more invasive. They are noisier, and involve more ground and air transport, setting up of mobile or set camps outside of communities, visible clearings, new spur roads, and the physical presence of the drills themselves on the landscape. It is during drilling that word often starts going around the community that a mine is or may be developed on the land (although even the tents at exploration camps raise suspicions with hunters). Despite this common idea, a large majority of drill programs end in project suspension or termination because the mineral discovery cannot be shown to hold an economically viable mineral deposit.

Where there are promising results from advanced exploration, mine engineers come to rival the geologists as the driving forces behind what is now a fledgling mine site. Pilot plants may be developed to determine the proper mine process system, environmental work escalates, and everything from wildlife management to water processing needs to be assessed on a cost and environmental impact basis.

At some point, the geologists, engineers and accountants get together and determine project economics. This typically requires estimating the size of the extractable mineral resource, calculating the cost of infrastructure, employment, and transport associated with the required mine plan, making assumptions about production levels and mineral prices, and determining whether the return on investment is adequate to take the risk associated with sinking between \$200 million and over \$1 billion into the capital costs of building a mine. The results are typically reported in a feasibility study. These studies are often one of the most valuable tools a community can use to determine exactly what is proposed at the mine – for example its size, life time, infrastructure and employment requirements.

During deposit delineation and project design, there may be very little happening on the ground. Further, the project may be bought out by another company. This may result in a lull in activity as the new owner assesses a range of projects and decides where to focus its attention.

The “Free Entry” Mining System

Some provinces and territories have a “free entry” system, meaning that anyone can purchase a prospector’s license and prospect on Crown Land as long as no one else already holds a claim over it. This includes land traditionally owned by Aboriginal people.²

However, systems of free entry are currently being challenged in Ontario and BC, so that new systems may apply in the future. For example, pressure to change may result in new legislation that establishes a permit regime that promotes government discretion before rights are granted, and this could apply through the whole mining cycle, from prospecting to development. With a new permit-based tenure system, permit holders would acquire permission to carry out activities instead of acquiring rights to minerals as they do under a free entry system.

CONSTRUCTION

Construction is one of the most intensive – and expensive – phases of mine life.

During a two to five year period, hundreds of millions of dollars are invested in building the mine, including the processing plant, accommodations, transportation and other infrastructure. Anywhere from 200 to upwards of 2,000 full-time construction jobs may be available, although most people on-site will work for independent specialized contractors rather than for the mining company itself.

Construction is a critical time for Aboriginal people to gain skills that will be needed when the mine is operating, including building certifications and developing critical problem-solving skills.

This is a time of great economic boom potential and excitement in communities, but it also brings worries about impacts and rights infringements. This will involve immediate concerns about construction noise, dust and emissions, an increased project footprint, and more outside influences in the community, as well as concerns about long-term impacts – what will happen to people, land, water and wildlife once extraction starts.

Part of the mining construction process may include the removal of large amounts of waste material above the economic ore body. This removal of overburden or other waste rock will often make the development look like a full-scale mining operation even before ore extraction starts.

OPERATIONS

Operations typically consist of three phases, excluding temporary closures if they occur (when a mine is on a “care and maintenance” status), or changes in the mine plan that might occur due to fluctuations in the prices for the mineral in question. The phases are:

- **RAMP UP** – At the outset of mining, where the “kinks” are worked out of the mining and processing systems. This typically takes from six months to a year.

- FULL PRODUCTION – Which will constitute the bulk of mine life, when the ore and concentrate throughput will be at 90 per cent or more of planned maximum tonnage.
- DECLINE – When ore reserves are in decline toward the end of the mine life and costs per tonne are increasing as deeper or lower grade ore is mined. Mill throughput can decline as well, and the number of jobs at the site may fall. However, given that the majority of costs went in at the front end during construction, it is often in the interest of the mining company to stretch out the extraction period as long as possible.

The operations phase will see a big reduction in the number of jobs on-site compared to the hectic construction period, but the jobs that remain (anywhere from 150 to well over 2,000, depending on the size and type of mine and milling operations) will be longer-term and high paying. It is generally cheaper for the mining company to employ people who live near the mine, rather than use long-distance commuters or import and house workers from outside the region. Where issues typically occur is in making sure that potentially-affected communities have the capacity and opportunity to take full advantage of employment and business opportunities during both construction and operations (see Section 4 for a detailed discussion of these issues).

During operations the mining company is likely to have continuing exploration programs on-site and in nearby claims. Almost all mines add to their ore reserves over the course of their mine life, in part to take advantage of new technologies, or to optimize the amount of ore processed using highly expensive machinery. Therefore, barring changes in mineral prices or other issues that make the mine less competitive, mine life will likely extend beyond what was originally envisaged.

CLOSURE AND RECLAMATION

This last phase of the mine life cycle may be the longest, as it often entails ongoing environmental management over substantial periods of time (particularly of surface stockpiles and water bodies). Closure plans must be put forward during permitting and money must be given to the government and retained by it as a guarantee that the operator will restore land to an agreed-upon state once the mine is closed. These security deposits are meant to avoid the legacy issues (environmental problems left behind by mining companies) that have often plagued large-scale mines across the world. Reclamation typically requires removal of all on-site infrastructure, rehabilitation of soils and vegetation, and long-term water monitoring and management systems. The goal is to return the site as close as possible to its original state, or to some other state agreed with regulators. An example of an alternate arrangement is the former Kimberley lead/zinc mine in BC, which is now a tourist destination with mine-train tours.

A different type of closure planning may be required for communities that have come to rely on employment and business opportunities from the mines. There, a major shift in employment focus may be required in order to avoid the “boom-bust” cycles that have so often occurred in the Canadian natural resources sector.

Mining agreements can contribute to community economic development by creating opportunities for Aboriginal businesses to provide goods or services to the project. Just as with employment, there can be significant barriers to business development, such as high transaction costs involved in tendering and contracting arrangements, scarcity of capital, lack of relevant skills, and difficulty in competing with large, well established non-Aboriginal businesses.⁷⁵

While every IBA contains some provisions for support of Aboriginal business, they vary widely. Analysis of business capacity in the region, possibly emerging from the baseline study, combined with an understanding of what opportunities will be available, can help to craft appropriate business development clauses. A profile of business capacities and opportunities can be used by the community to target areas where there are already strengths, and areas where there is a need to partner with neighbouring communities to set up joint ventures.

Provisions can be included to address each barrier to Aboriginal business, as follows.

PROVISIONS TO ADDRESS BARRIERS TO ABORIGINAL BUSINESSES

High Transaction Cost

Right of first refusal of contracts can be offered to companies controlled by the communities. Sometimes companies are required to pre-qualify for this condition. For example, the Inuvialuit Final Agreement provides that business opportunities are to flow to the IBA beneficiaries in the first instance, “which effectively provides the beneficiaries with first opportunity status.”⁷⁶ The Inuvialuit Regional Corporation has created a business list, so that the developer must source first with Aboriginal businesses. It is only when local companies cannot provide the services that the company can go to outside companies.⁷⁷

- Contracts below a certain size can be offered first to Aboriginal businesses, and if they meet the criteria, contracts can go to these businesses without going to tender.
- Contracts can be broken up (unbundled) so that they are accessible to smaller businesses.
- Evergreen contracts (which automatically renew unless either party provides advance written notice) are sometimes negotiated.
- Information on upcoming contracts is provided to the community well in advance, so that potential bidders have time to put tender packages together.
- Performance bonds and tender deposits can be waived.

SCARCITY OF CAPITAL

- Some agreements provide Aboriginal businesses with assistance to raise finance, for example by providing documentation regarding the contract award or purchase order to financial institutions.
- A loan fund can be established, as in the Voisey’s Bay IBAs for Innu and FN/A businesses to meet start-up costs.
- Joint ventures can be established between project operators and Aboriginal businesses during the start-up phases.

LACK OF RELEVANT SKILLS AND EXPERIENCE

- Proponents can hold workshops on bidding procedures and safety management, and host annual business opportunity seminars.
- Access to technical and financial expertise can be provided by company staff and through management training programs, or other “in kind” support can be provided, such as reduced rate equipment leases and technical support.
- Joint ventures between project operators and Aboriginal businesses can be established.

- Parties can appoint an Aboriginal business development coordinator or establish a business opportunity implementation committee⁷⁸ to forecast contract needs of the project and the capacities of local businesses.⁷⁹ This individual or group can assist communities in identifying business opportunities, help to improve methods of bidding, support efforts of mining companies to obtain government funds for management training, and make recommendations to the company regarding specific contracts.⁸⁰

COMPETITIVE DISADVANTAGE

- Evaluation of contract proposals can include a defined weighting for Aboriginal content (as in the Voisey's Bay IBAs), as well as other standard criteria such as quality, cost competitiveness, ability to supply and deliver the goods and services, timely delivery, and safety and environmental record.⁸¹
- Preference clauses can be agreed on for competitive Aboriginal businesses. The definition of "Aboriginal business" and "content" needs to be clear. DIAND has defined Aboriginal business as having greater than 51 per cent Aboriginal ownership and control, and if there are more than six employees, at least 33 per cent Aboriginal employment.⁸²
- A registry of Aboriginal businesses can be established so that companies unfamiliar with a region can work with local businesses. Often this registry is paid for and is the responsibility of a business promotion branch of government.
- Failing the identification of an appropriate Aboriginal business, an IBA can require the successful contractor to comply with employment commitments made by the project operator and require contractors and sub-contractors to include an Aboriginal content plan as part of their proposal.
- A margin in favour of Aboriginal businesses can be assigned when assessing tenders (e.g., price tolerance of 10 per cent in favour of Aboriginal tenderers).
- When Aboriginal tenders are not successful, the project operator can be required to inform the Aboriginal business in writing about reasons for failure and what can be done to do improve their bids.

OTHER BUSINESS DEVELOPMENT STRATEGIES

Joint Ventures

- As discussed above, joint ventures can be used to provide Aboriginal partners with access to capital, skills and business experience. In some cases, joint ventures may provide for non-Aboriginal partners to supply the bulk of startup capital and take the major role in contract management, and then, as Aboriginal participants gain experience, they can increase their stake.

Research and Development

- Market niches might be developed⁸³ and this can be fostered through research and development projects relating to technologies and practices relevant to the project. For example, the Tâichô in the NWT have specialized in remediation of contaminated sites and now use this business skill in remediation and closure of abandoned sites. When closure is a reality in the NWT diamond industry, these companies will be able to assist in this effort and gain substantial economic opportunities from doing so.

CONTRACTING OPPORTUNITIES

OBJECTIVES/PRINCIPLES

In accordance with the principle cited in Section 1.1.2 of this IBA that any and/or all of economic activity associated with the Project will be available to FN/A, the Company will maximize contracting and subcontracting opportunities for qualified FN/A firms throughout the Construction, Operations, and Decommissioning phases of the Project.

FN/A recognizes that the Company is only obligated to contract with businesses that have the ability to deliver products and/or services in a timely, efficient and competitive manner. FN/A further recognizes that the Company has the final decision on all contract awards.

FN/A and the Company agree to cooperate in efforts to build capacity to enable as many FN/A firms as possible to achieve Designated status as described in Sections 6.4 and 6.5 below.

LIST OF CONTRACTING OPPORTUNITIES

The Company and FN/A have reviewed the types of contracts to be performed for the Project during the Construction, Operations, and Decommissioning phases to identify opportunities to which FN/A firms will be given preference.

FN/A firms will be eligible for consideration for contracting opportunities in the following general areas:

- Recruitment
- Training
- Road and airstrip construction
- Accommodation complex construction
- Communications systems
- Power plant
- Water supply
- Open pit and underground equipment
- Site preparation at mine
- Railway construction
- Port construction and operation
- Ongoing remediation
- Mine decommissioning
- Sea freight shipping
- Air transportation fixed wing, helicopter
- Catering, housekeeping, janitorial services
- Security Services
- Health and medical services
- Road maintenance
- Diamond drilling
- Transportation of ore
- Fuel storage, handling & distribution
- Environmental research, monitoring, baseline studies
- Explosives

A comprehensive list of contracts for which FN/A are eligible is provided in Schedule 6.1.

BUSINESS START-UPS AND CAPACITY BUILDING

FN/A and the Company recognize that many FN/A Firms, and in particular smaller FN/A Firms from communities in the Region, lack capital, experience and capacity to bid on or carry out contracts for the Project.

In order to address the shortfalls referred to in paragraph 6.3.1 the Company will:

- a) Assist FN/A Firms to develop capacity in the bidding process.
- b) Identify opportunities to break down large contracts into smaller components to improve the capacity of FN/A to bid on and carry out contracts.
- c) Encourage Contractors to break down large Subcontracts into smaller components to improve the capacity of FN/A firms to bid and the ability of FN/A firms to bid on and carry out contracts.
- d) Help FN/A or a FN/A subsidiary organization establish a Business Capacity and Start-Up Fund to assist Designated Territory FN/A Firms to assist with business start-ups and development of capacity in the following areas:
 - i) Locating start-up capital and financing
 - ii) Management development
 - iii) On-going business management
 - iv) Financial management
 - v) Contracts and procurement
 - vi) Human resources management

FN/A and its subsidiary organizations will administer the Business Capacity and Start-Up Fund and provide start-up and capacity building assistance to FN/A Firms in communities in the Region, as per Subsection 6.3.2(c)

Beginning the date this agreement comes into effect, and up to the start of commercial production the Company will contribute \$250,000 annually to support the Business Capacity and Start-Up Fund. Subsequent contributions will be established by the Executive Committee as part of the annual budget process.

The Company will fund up to 50% of a position at FN/A or one of its subsidiary organizations to administer the Business Capacity and Start-Up Fund. The Executive Committee will establish funding requirements for this position as part of its annual budget process.

The FN/A Employment and Training Officer will submit an annual report to the IBA Executive Committee documenting the activities and spending of the Business Capacity and Start-Up Fund.

The FN/A Employment and Training Officer will develop an annual program and budget for the Business Capacity and Start-Up Fund, to be submitted for approval to the IBA Executive Committee at least three months prior to the start of the calendar year.

FN/A and the Company, through the Executive Committee, will review the use and utility of the Fund annually, and may mutually agree to continue the Fund; amend the Fund's terms and/or objectives; temporarily discontinue the Fund; or terminate the Fund.

DESIGNATED FN/A FIRMS

An "FN/A firm" means an entity that complies with the legal requirements to carry on business in the Nunavut Settlement Area, and which:

- a) Complies with the definition of an "FN/A firm" in Article 24 of the Nunavut Land Claims Agreement, meaning it is
 - i) A limited company with at least 51% of the companies' voting shares beneficially owned by FN/A, or
 - ii) A cooperative controlled by FN/A, or
 - iii) An Inuk sole proprietorship or partnership.
- b) Is enrolled on the NTI FN/A Firms Registry;
- c) Carries out the majority of its business in the Nunavut Settlement Area.

Based on information in the NTI FN/A Firms Registry the Company and FN/A, through the Executive Committee, will maintain an up to-date list of all Nunavut FN/A firms that appear to be capable of providing goods and/or services to the Project. Such firms will be referred to as "Designated FN/A Firms".

In the contracting process the Company will request FN/A firms that wish to enter into contracts with the Company to furnish sufficient information to enable the Company to assess the qualifications of such firms. The Company may also communicate directly with FN/A firms regarding their experience and qualifications.

For services that normally require bonding, an FN/A firm from the Region must be bondable in order to be considered as a Designated Territory FN/A Firm.

The Executive Committee will review the list of Designated FN/A Firms on an annual basis.

The Executive Committee will establish a process by which firms not currently included on the Designated FN/A Firms list may apply for consideration as a Designated FN/A Firm.

The list of Designated FN/A Firms will be a public document.

DESIGNATED TERRITORY FN/A FIRMS

Based on information from the NTI FN/A Firms Registry the Company and FN/A, through the Executive Committee, will maintain an up to-date list of FN/A firms from the Region that appear to be qualified for contracts or subcontracts. Such companies will be referred to as "Designated Territory FN/A Firms".

During the contracting process the Company may request FN/A firms from communities in the Region to furnish either directly to the Company or indirectly through FN/A to the Company, sufficient information to enable the Company to assess the qualifications of such firms. In the contracting process the Company may also communicate directly with FN/A firms from the Region regarding their experience and qualifications.

For services that normally require bonding, an FN/A firm from the Region must be bondable in order to be considered as a Designated Territory FN/A Firm.

The Executive Committee will review the list of Designated Territory FN/A Firms on an annual basis.

The Executive Committee will establish a process by which firms not currently included on the Designated Territory FN/A Firms list may apply for consideration as Designated Territory FN/A Firms.

The list of Designated Territory FN/A Firms will be a public document.

CONTRACT AWARD PROCEDURES - GENERAL

The Company agrees to make best efforts to maximize FN/A participation in contracting for the goods or services on the “List Of Contract Opportunities” cited in Paragraph 6.2.2 and Schedule 6.1, as well as in subcontracts for these same contracts, required during the Construction, Operations, and Decommissioning phases of the Project.

Pursuant to Section 6.6.1, the Executive Committee will review annually the list of contracts awarded by the Company in the previous calendar year to assess FN/A content in contracting. Further, at the beginning of each calendar year the Executive Committee will review the list of contracts the Company anticipates awarding in the coming year, to identify contracts for which Designated Territory FN/A Firms or Designated FN/A Firms may be eligible.

The three main types of contracts the Company will utilize on the Project will be negotiated contracts, requests for proposal, and invitational tenders.

EXISTING CONTRACTS

FN/A recognizes that the Company entered into a limited number of contracts for activities taking place after the Bulk Sample Project is completed before FN/A and the Company had reached agreement on contracting provisions within the IBA. Major contracts awarded in this time period include:

- a) Engineering, Procurement, and Construction Management

The Company commits to make best efforts to maximize FN/A subcontracting in all the above-noted contracts, and has notified each company awarded such contracts that it will be required to abide by the FN/A content provisions of the IBA, including evaluation processes described in Section 6.10 below.

Upon reaching agreement on the contracting provisions of the IBA the Company agrees to follow the contracting provisions as set out below.

NEGOTIATED CONTRACTS

The Company may negotiate a contract directly with a Contractor when:

- a) A Designated Territory FN/A Firm is eligible for and interested in the contract, and the Company is satisfied that it is able to get fair value from the contract through a direct negotiation; or

- b) No Designated Territory FN/A Firm is eligible or interested to participate in a given contract, or if negotiations with a Designated Territory FN/A Firm are not successful, and a Designated FN/A Firm is available, and the Company is satisfied that it is able to get fair value from the contract through a direct negotiation;
- c) A specific contract calls for a contractor or supplier to be selected on the basis of specialized experience, or specialized technical or commercial capabilities;
- d) The Company encounters an out-of-the-ordinary situation, and does not have sufficient time to contract through a request for proposals or an invitational tender;
- e) The Company encounters an emergency.

Except in instances arising from Sections 6.8.1 d) or 6.8.1 e), the Company will notify FN/A and the Executive Committee at least forty-five (45) days in advance of entering into direct negotiations for contracts.

In situations that may arise from emergency or time-limiting situations as per Sections 6.8.1 d) or 6.8.1 e), the Company will notify FN/A and the Executive Committee immediately on identifying the need to negotiate a contract pursuant to Sections 6.8.1 d) or 6.8.1 e).

Notwithstanding exceptions that may arise from emergency or time-limiting situations, the Company will allow a period of up to ninety (90) days for negotiations to be completed, from the commencement of such direct negotiations with a Designated Territory FN/A Firm or Designated FN/A Firm, as the case may be.

The Company will make all reasonable efforts to ensure that contract negotiations with a Designated Territory FN/A Firm or Designated FN/A Firm proceed in a timely and fair manner and that the Designated Territory FN/A Firm or Designated FN/A Firm is given ample opportunity to present and justify its proposal.

The Management Committee, with the approval of the Executive Committee, will establish a Minimum FN/A Employment Goal (MIEG) for each negotiated contract, and any other FN/A content such as inputs/purchases from FN/A firms that the Management Committee deems appropriate to the contract.

Taking into account levels of FN/A content established pursuant to Paragraph 6.8.6, Contractors submitting proposals for negotiated contracts will be required to submit a Contractor's FN/A Content Plan, as described in Section 6.12 below.

REQUESTS FOR PROPOSAL AND INVITATIONAL TENDERS

FN/A recognizes that the Company may frequently tender contracts through a competitive process. Reasons the Company may choose a competitive contracting process include, but are not limited to, the following:

- a) No Designated Territory FN/A Firm or Designated FN/A Firm is eligible for and interested in directly negotiating the contract;
- b) The Company and a Designated Territory FN/A Firm or Designated FN/A Firm are not able to resolve a contract negotiation pursuant to good faith negotiations within the allotted time;
- c) The Company is not satisfied that it is able to get fair value from the contract through a direct negotiation;

In cases that direct negotiations with an FN/A firm have been unsuccessful, the Designated Territory FN/A Firm or Designated FN/A Firm with which the Company has been negotiating will be invited to submit a tender or proposal.

In the event that the Company chooses a competitive contracting process, the Company will whenever possible, and within a reasonable period prior to the need for any such goods and/or services, follow the process as defined below:

- a) Where two or more Designated Territory FN/A Firms are eligible for and interested in a given contract, and the Company is satisfied that it is able to get fair value from the contract through a request for proposal or invitational tender limited to Designated Territory FN/A Firms, Designated Territory FN/A Firms will be given the first right of proposal or will be the only companies invited to tender on said contract;
- b) Where two or more Designated FN/A Firms are eligible for and interested in a given contract, including the case where there is only one Designated Territory FN/A Firm and one or more Designated FN/A Firms, and the Company is satisfied that it is able to get fair value from the contract through a request for proposal or invitational tender limited in some way to FN/A firms, such FN/A Firms will be given the first right of proposal or will be the only companies invited to tender on said contract;
- c) In circumstances in which the Company is not satisfied that it is able to get fair value from the contract through a request for proposal or invitational tender limited in some way to FN/A Firms, the company will request proposals or invite tenders from any interested firm.

In circumstances in which the Company chooses to contract by invitational tenders or requests for proposal, preference will be given to companies that maximize FN/A content. As applicable the Company will use the evaluation grid shown in Paragraph 6.11.7 below, which outlines preference for Territory FN/A content in contracting, or the evaluation grid shown in Paragraph 6.11.8 below, which outlines preference for FN/A content in contracting.

The Management Committee, with the approval of the Executive Committee, will establish a Minimum FN/A Employment Goal (MIEG) for each contract. The Company will use the evaluation grid in Paragraph 6.11.7 below to adjust bids for FN/A content

Contractors submitting proposals for contracts will also be required to submit a Contractor's FN/A Content Plan, as described in Section 6.12 below.

The Company will notify FN/A and the Executive Committee at least forty-five (45) days in advance of requesting proposals or inviting bids for contracts.

REPORTING

The Company will provide, and will require all Contractors and Subcontractors to provide the Management Committee with quarterly reports that demonstrate the extent of compliance with FN/A content for work done by the Company, or for Contracts and related Subcontracts. The first such report will be due within 30 days of signing the contract.

BID EVALUATION CRITERIA

The Company, in requesting bids for supply of goods and/or services for the Project, will include in the tender forms provisions requiring bidders to adhere to FN/A content requirements, which will be evaluated in contract proposals for invitational tenders.

FN/A content in contract proposals will be evaluated and bids adjusted based on factors such as

- a) Degree of Territory FN/A ownership;
- b) FN/A employment relative to Article 7 "Employment" and specifically Section 7.14 "Target levels of FN/A employment" ;

- c) Proportion of wages to be paid to FN/A;
- d) Total purchases from Territory FN/A firms;
- e) Participation of Territory FN/A and/or Territory FN/A Firms, that such bidder would engage directly or as subcontractors;
- f) The training of such FN/A and/or FN/A firms in the supply of goods or the performance of services;
- g) Location of head office in Region.

Proposals and tenders for contracts must attain the threshold Minimum FN/A Employment Goal (MIEG) established in Section 7.14 “Target levels of FN/A employment”.

Any proposal that does not achieve the MIEG established for a given contract will be deemed non-compliant.

Proposals that do not include an assessment of potential FN/A and Territory FN/A content will be deemed non-compliant.

FN/A content in all proposals represents the cumulative FN/A content of the Contractor and all Subcontractors named in a given proposal, and must correspond with factors a) to g) in Paragraph 6.10.2

The FN/A content portion of the evaluation grid for competitive tenders will take the following format for contracts on which Designated Territory FN/A Firms only are bidding:

FN/A Content Components	Point Value	FN/A Content Factor
Degree of Territory FN/A Ownership	Minimum 40	.4
Degree of Territory FN/A Employment (including subcontractors)	Minimum 40	.4
Proportion of Wages Accruing to Territory FN/A	Flexible	
Total Purchases/Inputs from Territory FN/A firms	Flexible	
Head Office in Region	Flexible	
Total Point Value and Total FN/A Content Factor	100	1.0

The FN/A content portion of the evaluation grid for competitive tenders will take the following format for contracts on which Designated FN/A Firms only are bidding, and for contracts open to non-FN/A firms:

FN/A Content Components	Maximum Point Value	FN/A Content Factor
Degree of total FN/A Ownership	Minimum 25	.25
Degree of FN/A Employment (including subcontractors)	Minimum 40	.40
Proportion of Wages Accruing to FN/A	Flexible	
Total Purchases/Inputs from FN/A firms	Flexible	
Head Office in Nunavut	Flexible	
Total Point Value and Total FN/A Content Factor	100	1.0

FN/A content will count for not less than 25% (Bid Adjustment Factor of .25) of the over-all cost evaluation. All tenders received would be evaluated for their FN/A Content Component and points would be assigned according to the above rating schedule resulting in a Total Point Value and Total FN/A Content Factor. The base bid submitted by participating firms will be reduced by an amount calculated as follows:

FN/A Content discount (eg. of 25 percent) multiplied by the FN/A Content Factor multiplied by the base bid (i.e. $.25 \times \text{Factor} \times \text{Base Bid}$) equals the amount that would be subtracted from the base bid to achieve the adjusted bid price.

A sample contract with bid adjustment calculations is appended as Schedule 6.2.

Contract proposals may include commercial terms, cost competitiveness, continuity of supply, quality of work, and timeliness. Point weighting of criteria will be established at the sole discretion of the Company. The contractor with the highest number of points will be awarded the contract.

FN/A content specified in any contract awarded through this process must be attained. If not, contractors will be subject to enforcement provisions cited in Article 12.

CONTRACTOR'S FN/A CONTENT PLAN

As part of the contracting process, for all contract tenders or proposals over \$500,000 Contractors must submit a Contractor's FN/A Content Plan (CICP) containing details on FN/A Content Components and a description of how the Contractor intends to achieve, maintain and optimize FN/A Content.

EXPLANATION FOR NON-AWARD

If a Designated Territory FN/A Firm or a Designated FN/A Firm is not awarded a contract the Company will provide an explanation in writing to any firm that submitted a contract proposal.

ANNUAL REVIEW

The Executive Committee will review all contracts listed in Schedule 4.1, as well as the lists of Designated FN/A Firms and Designated Territory FN/A Firms annually, in consultation with FN/A and the Company.

ENFORCEMENT

Enforcement provisions related to FN/A content within all contracts are in Article 12.0 ("Enforcement of FN/A Content Requirements").

MEDIATION AND ARBITRATION

If a dispute cannot be resolved through good faith negotiations between the parties within a reasonable time, the parties agree that such dispute shall be submitted to a mediator appointed by the parties for mediation pursuant to procedures described in Article 13 ("Mediation and Arbitration")

Pursuant to Article 12, if FN/A and the Company disagree on any question of fact or mixed question of law and fact related to the interpretation, implementation or operation of this Agreement, either Party may by written demand refer the dispute to arbitration in accordance with the provisions specified in Article 13 (“Mediation and Arbitration”).

The Parties acknowledge that mediation is the preferred initial avenue for settling disputes and that mediation will be attempted in good faith prior to demand for an arbitration process under Article 13.

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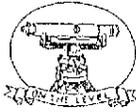
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CANADA POST:
Return undeliverable
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Toronto, ON M1C 4R2

Publication Mail Agreement
#9069240
PAP Registration #9292
We acknowledge the financial support
of the Government
of Canada, through the
Canada Periodical
Fund (CPF), for our
publishing activities

Canada
The Northern Miner
USPS 5001-152
is published weekly by
BIG Magazines, L.P.
a division of Globe Inc.
Hollister Company Ltd.
Head Office: 17 Concorde Place, Suite 800
Toronto, ON M1C 4R2
U.S. Office of Publication:
2474 Niagara Falls Blvd.
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U.S. POSTMASTER:
Send address corrections to:
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14304-2718

EDITORIAL: TOP STORIES OF WEEK 28

Chileans tire of Piñera

Chile's mining sector was rocked by a 24-hour walkout in mid-July by unionized workers at state-owned Codelco, the world's largest copper miner. It's the first countrywide strike at Codelco in 18 years.

Workers are seeking to play a larger role in any reorganization of Codelco. Billionaire businessman and Chilean president Sebastian Piñera has said Codelco needs to be "modern, efficient and fully capable of realizing its potential," but has denied there is any plan afoot to privatize the company, which plays a central role in the country as an export-earnings generator.

Codelco CEO Diego Hernandez took a harder tone, saying he's unwavering in his drive to cut hundreds of jobs at the huge Chuquibambuta copper mine and overhaul the workers' healthcare system.

Piñera used the heated situation to shuffle his cabinet for the second time since taking power, promoting popular Mining and Energy Minister Laurence Golborne — who won Chileans' hearts during the 33 miners' rescue in Copiapo last October, and is widely viewed as a potential successor to Piñera — over to Public Works, which has grown in importance since the 2009 earthquake. Piñera also broke the Mining and Energy Ministry in two once again, appointing Public Works Minister Hernan de Solminihac as the new mining minister, and regional governor Fernando Echeverría as the energy minister, as part of eight changes to cabinet.

Golborne had added the energy portfolio in January after violent protests flared up in the southern region of Magallanes against a 17% rise in natural gas prices. He succeeded in brokering a deal that ended the protests, but it cost the government abandoning a plan to introduce a new pricing policy that reflected market prices.

Golborne was again in the hot seat with the rise of public protests by environmentalists, farmers and tourism operators against the government's recent environmental approval of a controversial project named HidroAysen to build an array of hydroelectric power stations in southern Chile's Aysen region. A court ruling has suspended the project, giving its promoters, which include Chilean utility companies Endesa and Colbun, time to regroup and ponder recent polling data showing that 62% of Chileans oppose the dams.

The \$3.2-billion megaproject involves the construction of five dams across Chile's two major rivers, the Pascua and the Baker, and the building of the biggest high-voltage power line in the world, which would stretch an astounding 2,000 km to the capital Santiago and power-starved copper mines in the country's north.

As the first relatively right-wing president elected to office in Chile in 20 years, Piñera started his term in March 2010 with high level of approval, especially in response to his government's role in the miner rescue. But in the wake of large student protests calling for more affordable education, a customer credit scandal at retailer La Polar and the labour unrest at Codelco, Piñera's popularity has since waned, with approval levels recently in the low 30s, sapping his ability to make any real changes in Chile's mining policies, which haven't changed much in 25 years.

• Perhaps a little deal to the growing outcry in North America over "fracking"-derived natural gas. BHP Billiton has stepped up with a US\$1.1-billion friendly cash offer to buy U.S. gas producer Petrohawk Energy for US\$38.75 per share, or a 65% premium.

It's BHP Billiton's biggest-ever move into the booming shale-gas industry, bringing into the BHP fold Petrohawk's 1 million acres of shale gas ground in Texas and Louisiana, with its estimated net production in 2011 of around 950 million cubic feet equivalent per day, or 158,000 barrels of oil equivalent per day.

Meanwhile, the residents of the Northwest Territories get caught in the squeeze, as BHP Billiton and others' diamond mines, which are so critical to the territorial economy, enter their sunset years but cheap natural gas in the U.S. South — such as the Petrohawk assets — makes the development of Arctic natural gas megaprojects and their associated pipelines uneconomic.

• And, as we all know, gold spot prices cracked US\$1,600 per oz. for the first time ever on July 18, on continuing worries over European sovereign debt and political battles in the U.S. over raising the already sky-high federal debt ceiling. Silver prices have also regained strength, trading once again above US\$40 per oz., and platinum and palladium prices have been pulled higher in tandem with gold, breaking their recent correlation with the euro.

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COMMENTARY

Goldcorp-Cree agreement sets a precedent

BY JEAN M. GAGNE
SPECIAL TO THE NORTHERN MINER

For the first time since the Agreement Respecting a New Relationship Between the Cree Nation and the Government of Quebec (the Peace of the Braves) was signed in 2002, a major collaboration agreement was concluded in February 2011 between a Cree First Nation and a mining corporation.

This agreement, entitled the Opinagow Collaboration Agreement (OCA), was the result of four and a half years of continuous negotiations between Goldcorp and the Cree Nation (the Grand Council of the Crees [Eeyou Istchee], the Cree Regional Authority and the Cree Nation of Wemundji). Issues were both substantial and delicate. The objective was the Éléonore project's development in northern Quebec which involves the construction of an underground gold mine situated within category III lands in the Cree traditional territory of Eeyou Istchee. The agreement clearly sets a precedent regarding the respect of aboriginal rights, while also constituting a business agreement with a First Nation.

The negotiation of preliminary agreements, while establishing the foundation of a definitive agreement, also created an excellent opportunity to develop a relationship of trust among stakeholders in the Éléonore project.

Several previous agreements — including the James Bay and Northern Quebec Agreement (JBNQA), and the Peace of the Braves — encourage and promote involvement of First Nations in the development of natural resources and the conclusion of agreements with promoters in connection therewith. Signed in 1975, the JBNQA sets out an environmental and social protection regime for aboriginals living in the territorial regions of James Bay and Nunavik. Furthermore, the Peace of the Braves contains various measures designed to promote the development of mineral resources, forestry and hydroelectric installations located on the territory covered, and establishes a number of cultural, social and governmental institutions for aboriginal communities. The OCA was subject to the rights, conditions and restrictions set forth in these agreements, and was developed in the same spirit of mutual trust and respect.

The purpose of the OCA is to establish a collaborative relationship regarding the construction and operations phases of the Éléonore project, while respecting Cree traditional activities and ensuring the promotion of Cree economic and social development in a manner beneficial to all parties. Specifically, the OCA contains eight chapters: general provisions, training and employment, business opportunities, education awards and scholarships, social and cultural, environmental matters and closure, financial matters and final provisions. Also, it confirms the alignment of the parties' interests in the economic success of the Éléonore project. On this issue, the agreement includes financial benefits through various payment mechanisms and participation in the future profitability of the mine. In addition, it evidences Goldcorp's long-term commitment regarding sustainable development, the protection of the environment and the respect of Cree social and cultural practices.

The implementation of the OCA will be done through committees with equal Cree

and Goldcorp representation. These committees will deal with three major areas: training and employment, business opportunities and environmental matters.

Before reaching a final agreement, some preliminary steps were completed. A letter of undertaking was established with the tallyman of the trapline concerned by the project. The purpose of this letter of undertaking was to recognize the area that requires consultation and coordination with the tallyman to allow for the balanced development of the Éléonore project, and the continuation of the Cree traditional activities.

Concurrently with the negotiation process, the Cree Nation developed its own mining policy, which is based on three pillars: promotion and support of mining activities; mining and sustainable practices; and transparency and collaboration. The guiding principle of the Cree Nation Mining Policy reads as follows: "The Cree Government will support and promote the development of mineral resources within the territory of Eeyou Istchee that provide long-term social and economic benefits for

the Cree, and that address sustainable development within the larger context of natural resources management and the environment and social protection regime in the territory."

A pre-development agreement was signed by the parties in order to support the exploration phase of the project and establish collaborative mechanisms. The negotiation of preliminary agreements, while establishing the foundation of a definitive agreement, also created an excellent opportunity to develop and establish a relationship of trust among stakeholders in the project.

Throughout the exploration phase of the Éléonore project, Opinagow and the Cree parties worked together with constant support and cooperation, in order to obtain the required authorizations for the construction of a winter road, a temporary airstrip, an exploration shaft, an exploration ramp and a power line, to ensure full compliance with the social and environmental regime provided for under section 22 of the JBNQA. Promoting a common goal for Goldcorp and the Cree parties has been present since the exploration phase, and has continued throughout the development of the Éléonore project.

Building a relationship with the Cree was a long-term concept in the negotiators' minds. At the early stages, a team memorandum was established between members of the discussion team, which described the values upon which they would build a relationship, and the rules related to the process. They prioritized the development of friendly and collaborative relationships. Every meeting started with an exchange about personal news and updates. The members took time to get to know each other in formal and informal ways. Frequent meetings were scheduled to ensure efficiency, and a climate of team spirit developed and allowed for open and frank discussions. Financial matters were discussed towards the end of the process.

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