



GMRP Procurement and Contracting Northern Contractors' Experiences and Perspectives

Interviews Summary Findings Report

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Gaea Consulting Ltd.

GMRP PROCUREMENT AND CONTRACTING
Northern Contractors' Experiences and Perspectives

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1.0 INTRODUCTION AND PURPOSE

The Giant Mine Oversight Board (GMOB) had previously identified and continues to monitor the socio-economic benefits and impacts of procurement and contracting at the Giant Mine Remediation Project (GMRP), particularly the impacts on and benefits for Northern contractors. The GMOB met with several Northern contractors at their request in June 2023 regarding their experiences with and perspectives on procurement and contracting at the GMRP. Based on the initial observations and concerns identified at that meeting, the GMOB retained an independent firm to conduct additional more in-depth confidential interviews with the voluntarily participating contractors.

Gaea Consulting Ltd was subsequently retained to undertake the following tasks: Review of the notes from GMOB's initial meeting with the Northern contractors; Conduct a selected review of publicly accessible documents (e.g., GMRP annual reports, PWGSC policies and strategies) and web site information regarding procurement and contracting policies and practices related to the GMRP and those of the Public Works and Government Services Canada (PWGSC); Develop an interview protocol and questions; Schedule and conduct confidential interviews; and prepare a summary report.

1.1 Interviews

The interviews consisted of seven (7) questions that provided a reference guideline for the discussion. Not every question was necessarily applicable and/or responded to by each firm's representative. The protocol and questions are contained in *Appendix A – Confidential Interview Questions* of this report. The first interviews were conducted between July 6 and 12, 2023. The final interview was completed on August 3, 2023.

1.2 Northern Contractors Participating

The participating contractors were interviewed using the interview protocol and questions as a guide for the discussion. In order to maintain confidentiality and commercial privacy considerations, the names of the participating firms and their respective representatives have been omitted in the report.

The participating firms represented a diverse range of services that were provided (or could have been made available) to the GMRP. It is acknowledged that these interviews represent a small sample of Northern contractors participating (to varying degrees) in the GMRP and as such should not be interpreted as representative of the larger Northern firms' respecting their experiences and perspectives.

1.3 Report Structure

The report uses the basic structure of the interview questions and presents the consolidated summary findings under the themes from the questions. The corresponding responses (comments, concerns, options and/or questions) are provided in summary format without any implied significance or priority. The individual firm's responses have been integrated with the other participating firms, consequently there is no direct attribution to individual responses and comments.

Where applicable, additional post-interview research and reference notes have been added by Gaea Consulting to support and provide additional context for the GMOB and other readers are shown in text boxes in *blue text*.

2.0 GMRP AND NORTHERN CONTRACTORS: SELECTED CONTEXT OBSERVATIONS

- ***GMRP is a financially large project of multi decadal duration:*** The GMRP represents an extremely large project at some \$4.3 billion that will be multi-decadal in duration. Northern contractors and suppliers need to more fully understand, position and act on the opportunities through direct contracting, joint ventures as well as sub-contracting to larger firms (regardless of whether with other Northern, Indigenous or southern companies).
- ***GMRP complexity, expertise and Northern contractors' capacity demands:*** There are aspects of the GMRP that are highly complex and require specialized expertise and technology. Examples include the design and construction of the new Water Treatment Plant; Thermosyphons production and installation; Extraction, treatment and disposal of contaminated soil.
- ***Northern specialized expertise, technology and physical plant capacity:*** Northern contractors (*some/many but is not quantified*) effectively currently do not have the specialized expertise, technology and physical plant, capacity and/or economies of scale to provide liability insurance bonding premiums to compete in tenders for complex and specialized tenders that have been and will be required by the GMRP.
- ***Financial impact on smaller Northern firms*** engaging in joint venturing and/or sub -contracting on tender bids led by larger southern firms and/or Indigenous *owned* companies: The concern expressed by some of the firms interviewed is that there is an unstated but de facto preference by the MCM to receive tender bids that are joint ventured with Indigenous *owned* companies and/or larger southern firms.

The common experience of smaller Northern firms is that the process of joint venturing often resulted in: (a) fragmented work level allocation post-contract award where Northern firms actually end up with less work that originally agreed to and bid; (b) diminished profit margins for Northern contractors due in part to excessive management fees taken by the joint venture lead; (c) indication that Indigenous '*ownership*' in joint ventures with larger southern firms and larger Northern firms may potentially be '*misrepresenting*' the distribution of actual retained contract revenue (and other benefits) given that a significant amount of the contract revenue ends up in southern firms due to the use of temporary southern workers being brought in and also through economic leakage out of the NWT due in part to purchasing of machinery and materials from southern suppliers (even when some types of material and labour can be sourced through Northern suppliers).

Post-Interview Context Notes:

- Although no quantitative information was provided by those interviewed, questions regarding the socio-economic impact and benefits of the GMRP have been raised by the GMOB as well as other organizations. Of note was the limited detailed reporting on employment and contracts that have been provided in the GMRP's annual reports to date.
- Participating contractors had the opportunity through the interviews to make observations regarding employment, contract awarding, economic leakage out of the NWT and the impacts on and benefits for Northern firms.

- **GMRP functioning in a multi-layer legislative and policy framework:** The GMRP is functioning within a *multi-layer legislative and policy framework* and a range of emerging or evolving expectations (by a range of organizations, Northern communities, governments and the Northern contractors with respect to procurement and more generally with attempting to integrate socio-economic benefits through the remediation process. These layers while attempting to advance responsible expenditure of public money (the notion of '*value for money*') in effect promote/advance 'social-economic measures' as a tender evaluation consideration/criterion.

Post-Interview Context Notes:

The multi-layer legislative and policy framework (small 'p' and large 'P' policies) are viewed as a challenge from a procurement and contracting perspective. The policy layers include but is not limited to the following:

- The GMRP goals/objectives, the Environmental Agreement, GMRP Annual Reports - minimize risks to human health and safety; Minimize impacts on the environment; and reduce Canada's liability associated with the site. An additional objective was subsequently added that stated "implement an approach that is *cost-effective* and robust over the long term".
- See also the following (*but not exhaustive*) policy layers: PWGS's *Policy on Social Procurement* (2021), *Indigenous Business and Federal Procurement, Procurement Strategy for Indigenous Business, Aboriginal Opportunities Considerations* (AOC); CIRNAC, Northern Contaminant Program - *GMRP Environment, Health, Safety and Community Policy* (2014), Government of Canada's Apology and Compensation Agreement (2021) with the Yellowknives for the Giant Mine legacy; GMOB's annual reports where maximizing socio-economic benefits has been a consistent concern since its establishment; PWGSC legislation, regulations and related policies and directives (see *Financial Administration Act*, *Government Contract Regulations*, *Public Works and Government Services Act*).
- From a procurement and contract administration/interpretation perspective there were a number of key questions raised by the contractors:
 - (a) Which policy(ies) is/are considered paramount?
 - (b) Can this be effectively interpreted and applied in a specific procurement and contracting context – such as the GMRP?
 - (c) How are bidding contractors, as well as the MCM to interpret, weigh these policy layers in a tender bid submission and then apply it in the tender bid evaluation process?

- **Emerging Indigenous-non-Indigenous economic landscape:** A few of the contractors noted that the NWT business community is not adequately prepared for the incredible and business environment altering changes under way across Canada regarding working with and partnering with Indigenous companies and communities – for mutual opportunities and economic benefits.
- **GMRP is not a level playing field for Northern non-Indigenous firms:** A number of the firms were owned by individual from multi-generational northern families (some of which date back to the 1930s and 1940s). There was a clear expression of understanding and acknowledging the history of the NWT that encompasses the relationships between Indigenous and non-Indigenous populations. The reality of disparities and challenges faced by Indigenous people is also acknowledged and how the GMRP may be influenced and as such have informed the procurement and contracting processes. However, the firms expressed an overall concern that *'there is not a level playing field for Northern non-Indigenous firms'*.

3.0 EXPERIENCE WITH GMRP PROCUREMENT AND CONTRACTING

- **Tender bids and outcomes:** There was only one contractor that continues to be actively involved in bidding (mainly as a sub-contractor) executing contracts on the GMRP. This firm had submitted nine (9) tender bids and been awarded three (3) contracts (~33% award success rate). The award record reflects, in part, the challenges related to joint venturing on tender submissions. The other contractors had participated in only a few tender bids (largely as sub-contractors) and were successful in none (0) to one (1) contract awarded. None of the firms interviewed indicated that they had launched a formal appeal of unsuccessful tender bids. It was also noted by some of the firms that they have been limited in bidding as a sub-contractor on the GMRP, given that the specialized services they provide effectively have not been singularly tendered – such as materials hauling and recycling of non-hazardous materials.

Post-Interview Context Notes:

The question of the number of tender bids and contracts awarded (also what percentage of *total* contracts awarded by the MCM) to Northern non-Indigenous firms as well as Northern Indigenous owned firms is a matter of access to data from the MCM and the GMRP annual reporting. The interviews were not intended to establish nor confirm such contracting data.

- **Northern firms that were pre-qualified but subsequently not successful in tender bids:** This issue was raised in varying degrees by a number of firms as to how the MCM considered pre-qualified firms in the actual tender bid evaluation criteria and process. This was clearly a matter of frustration and diminished trust in the evaluation and award process.
- **Northern contractors overall experiences with the MCM:** Only one firm stated that they had an overall positive procurement and contracting experience, and effective communication with the MCM (particularly at the contract execution stage and post-contract completion

assessment meeting regarding what worked and the (a) identification of implementation, coordination with other contractors/sub-contractors and (b) MCM's contract oversight/management regarding challenges and options for future consideration and contract tendering adjustments. The review meeting was a learning opportunity for the contractor as well as the MCM. The other firms expressed varying degrees of overall negative experiences regarding the procurement process, contract award decisions and subsequent communications with and by the MCM.

- **Post-Contract completion debrief with MCM:** The contractor who noted an overall positive procurement experience made three recommendations for the MCM's consideration and future process amendment following the completion of a contract. The recommendations were: (1) The absence of an MCM quality control manager at the time of the contract. The use of other independent contractors to provide granular materials to this contractor on time and in the quantities required created delays and resulting inefficiencies; (2) MCM contracting an independent firm to provide 'environmental testing' which resulted in some delays; (3) MCM pre-qualified two contractors for the delivery of granular materials on an as and when arrangement. Again, there were delays and issues with the quantity of granular materials need for the contractor's need.

The MCM accepted the three recommendations which have resulted in improvements with contract execution and MCM oversight. The issue of on-site congestion (equipment and workers) due to management of logistics by the MCM was raised by other Northern firms and its impact of delays contributing to lost productivity and reduced profit due by contractors.

- **High degree of scrutiny of the GMRP:** The Northern firms understand to varying degrees the reality facing PWGSC and the MCM extreme scrutiny via audit reports and political accountability given the scope and scale of the GMRP with respect to project progress and budget management. This includes the audit initiated by the federal Auditor General in July 2023. The auditors recently met with the GMOB. This will be particularly evident following the total completion of surface and sub-surface works. As a result, the GMRP procurement and contracting requirements are consistent (but not necessarily more demanding) with other projects managed through PWGSC.

4.0 CONCERNS WITH GMRP PROCUREMENT AND CONTRACTING

- **Contract de-bundling:** While recognizing the MCM's responsibility for tendering, awarding and have delivered value-for-money contract results (as previously noted in the *multi-layer legislative and policy framework*), key concern is with regard to not bundling contracts into too large work packages to enable smaller Northern contractors to submit bids. Ideally some tenders would include a few work packages under \$10 million and potentially in the \$1 million. This approach will enable small Northern contractors to get smaller contracts (of which there are many over the life of the GMRP). Tender de-bundling needs to be considered where possible even if the MCM experiences a small/modest cost premium on the contracts. One example provided was the new Water Treatment Plant, where the civil works were in the \$50-\$60 M range. The upcoming work for tailings covering offer potential for smaller contractors who do not have the economies of scale, infrastructure and staff to put in a competitive bid.

- **Excessive levels of GMRP management, bureaucracy and quantum of documentation required:** This issue was raised directly and indirectly by every firm interviewed. While recognizing that the GMRP is large and complex, the quantum and frequency which Northern contractors are required to prepare and submit documentation has created an excessive reporting burden. It was noted that even in cases of small change orders necessitated by site conditions are unnecessarily burdensome.
- **Status of a comprehensive 'recycling plan or protocol':** This was raised by one contractor as a concern and question. Given that the GMRP has an array of *plans and protocols* (e.g., water treatment, worker health and safety, contaminated soil handling), it was not known at the time of the interview whether there is something akin to a '*recycling plan/protocol*'. There was a previous effort made by one Northern firm to raise this with the MCM but no progress was made.

It was stated that the absence of a '*recycling plan/protocol*', or perhaps just the lack of access to such a plan by Northern contractors (recycling firms and others), has economic implications for the contractors and the GMRP overall (as well as potential health and safety risk to workers) regarding what can be salvaged and/or recycled in terms of potentially hazardous and non-hazardous materials. The historical cyclical nature of recycling (e.g., such as metal) requires recyclers to store inventory for long periods prior to being able to send to southern buyers (such as the Alberta markets). Additionally, the contractor raised a question they have been asked by his southern buyers of steel from the GMRP:

- (a) There is a need to have the GMRP determine if there is a *potential* risk of arsenic trioxide impregnation into steel structures/components on the GMRP site? If yes, then what measures can be taken to mitigate the risk? The answers will have impacts on the market value of recycled steel (and also other metals) as southern buyers have been reluctant to buy recycled steel from the GMRP to this point.
- (b) These questions need to be part of the *recycling plan* as the GMRP moves forward. The contractor stated that they are prepared and willing to be part of any such initiative as they have expertise in these matters. It was also suggested that the GMRP set out a longer term plan to commit 1% of the annual budget for recycling. This will enable planning and additional Northern based equipment/facilities investment for recycling of GMRP materials. Ultimately, there will be cost efficiencies for the GMRP.

- **Inadequate communication with and by the MCM:** A number of contractors noted that they generally had made limited effort and/or little success in attempting to communicate directly with the MCM. Additionally, in a number of instances the MCM did not even notify them that their bids were unsuccessful (despite being previously pre-qualified).
- **Southern contractors not meeting Indigenous hiring level requirements:** While recognizing the labour force challenges in the NWT, there have been examples observed by some of the Northern firms where larger southern contractors are not (or may not be) meeting (or are unable to for various reasons) the required Indigenous hiring levels set out in a given contract and some just pay the contract clause penalty (**no quantitative data was provided during the interview*). There needs to be better recognition that many Northern contractors have

Indigenous staff already and ongoing efforts are made to hire local workers beyond their core staff as required to undertake a given contract.

- **Minimal on-site training being delivered by contractors:** The MCM's contract expectation is that contractors will deliver training that they proposed in their tender bids. The reality is that most contractors are struggling with staying on schedule, dealing with often time unskilled and/or inexperienced workers, and the fact that there is little, if any, allowance for the cost differential in 'delivering' what they were nominally contracted for and at the same time providing some sort of meaningful training.
- **GMRP invoice payment delays:** A number of the participating firms noted that there have been frequent delays with invoice payment beyond the 90 day requirement. It was noted specified as to whether the delay in payment was due to the MCM, payment by the contract lead to sub-contractors – or both. Regardless of what the cause(s) of the payment delay is/are, this is problematic for the smaller Northern firms that rely on anticipated cash flow to meet operating expenses.
- **On-going challenges with Indigenous joint venture bids:** These are complicated matters which has existed on project bids beyond the GMRP. The contractor recommended a process that provides points for joint ventures between *Northern and indigenous companies/entities*, above and beyond joint ventures between southern companies and indigenous companies/entities. Basically, supporting northerners working together for shared benefits.

5.0 PRIOR EFFORTS TO ADDRESS PROCUREMENT AND CONTRACTING CONCERNS

- **Direct communication and dialogue with the MCM:** One contractor noted that while some Northern firms have raised concerns through various public media, the approach this firm follows is one of constructive direct dialogue with the contract authority (the MCM in the case of the GMRP). An example is the use of effective communication with the MCM at the contract execution stage and post-contract completion assessment meeting (as noted above in the contractor's experience with GMRP procurement and contracting process question).
- **Lack of a clear project governance structure to raise concerns:** This was raised by a number of firms interviewed and one apparent reason for not making any effort to bring concerns forward was the lack of a clear governance structure – who to actually contact?
- **Formal and informal discussions with MLAs:** Two contractors noted that their prior attempt included formal and informal communications with MLAs. The result was a perceived lack of support for any intervention to be taken.
- **Little confidence in achieving changes to project procurement:** The general perspective shared is that there is likely very little change possible regarding procurement and contracting, in part resulting from the reality that the GMRP is functioning in a multi-layer legislative and policy framework (as previously noted).

6.0 OPTIONS TO ADDRESSING GMRP PROCUREMENT AND CONTRACTING

- **Re-introduce an annual GMRP Procurement Day:** Re-introduce (from earliest days of the GMRP) an annual *GMRP Procurement Day* focusing on contracting opportunities (and more hands-on 'training' in the procurement process and tender bids process) with particular emphasis on planned/scheduled tenders in the next 1 to 3 years. This should be done at as detailed level as possible regarding what goods and services (*and at what quantities and specifications criteria*) are anticipated to align with the GMRP phases. This type of event would enable additional connections for Northern firms to assess opportunities and decide if they want to position themselves (e.g., strengthen capacity, expertise, equipment etc.). This needs to be in the context of the de-bundling of contract concern noted above.
- **Need for an increased role of the GNWT:** The GNWT has not been adequately engaged and involved regarding promoting procurement opportunities for Northern companies from the GMRP. The contractor stated that there were challenges with more directly and intentionally Northern companies who are listed under the BIP Registry but no additional company information is accessible beyond broad business category (potentially due to privacy constraints). An example of potential options to address these types of limitations is to examine the federal government's on-line **Indigenous Business Registry** (IBR) as part of its *Procurement Strategy for Indigenous Business* (PSIB). <https://www.sac-isc.gc.ca/eng/1100100033057/1610797769658>

The **GNWT's BIP Registry** web link is: (<https://www.iti.gov.nt.ca/en/services/business-incentive-program-bip/search-bip-registry?page=1>). Consideration needs to be given how the GNWT can facilitate bringing together '**buyers**' (GMRP) and '**sellers**' (Northern firms) by developing and participating in dedicated mechanisms (e.g., GMRP Procurement Day, web portal, advocacy via NWT chambers' of commerce).

- **Process for joint ventures between Indigenous and Northern enterprises:** Jointly with Indigenous companies, Northern contractors, GNWT and the GoC (and potentially the MCM) explore options for creating a process(es) that could encourage and support joint ventures between *Northern and Indigenous enterprises*, above and beyond joint ventures between southern companies and Indigenous groups.
- **GNWT needs to act on advancing the NWT restoration economy:** The GMRP should not be seen in isolation but rather in a broader context through recognition of a restoration economy (*given the number of contaminated sites in the NWT and elsewhere*) that NWT firms can/will be better positioned through the experience (expertise, capacity and equipment etc.) of completed contracts and strengthened capacity from the GMRP.
- **GMRP worker accommodation facility:** This would involve the establishment and management of an accommodation 'facility' (i.e., camp) in Yellowknife to house workers for the GMRP and potentially other Northern Indigenous workers from across the North for the GMRP, that could then be available for other different projects on other remediation sites. The City of Yellowknife would need to be involved in the process (as noted below).

Based on the currently publicly available information, the accommodation facility would be able to accommodate up to 400-500 workers (scaled up based on the projected labour demand on site on a yearly basis starting in 2025-26). There may be additional labour demand projections for the GMRP that may not have been made available at the time. Regardless, the worker accommodation facility site is large enough to accommodate the estimated maximum number of workers required in a given year. The facilities would ultimately be demobilized and the site remediated (as may be necessary) following the completion of the GMRP and potential labour demand for the remediation of other contaminated sites in the region.

Post-Interview Context Notes:

- The prospective proponent's option is to use Lot 83, 690 Deh Cho Boulevard in Kam Lake industrial area in the City of Yellowknife. This is a 10.9 acre (4.4 ha) site (owned by the proponent). The site is situated with convenient road access to the GMRP site and therefore by-passing any associated traffic through the City's core. The site had been prepared pending the application of the final layer of granular material prior to establishment of the facility. There have been some preliminary considerations by the City to potentially support the option of utilizing two (2) smaller sites (locations not identified during the interview) and thus distributing the accommodation and associated facilities. The utilization of two sites would impact the establishment and management of the accommodation facilities from an economic and logistical perspective.
- The prospective proponent's proposal is to lease Lot 83 to GRC Camp Services (based in Calgary) that would be responsible for the development and management of the facility. It was stated that GRC Camp Services has an agreement with the MCM to provide such services (no specific location(s) were identified during the interviews).
- Pursuant to the *City's Zoning By-law 5045* the land is currently zoned as '*Medium to Heavy Industrial*'. However, to allow the establishment of the worker accommodation facility, the land would need to be rezoned to '*Light Industrial*'. There have been preliminary discussions between the prospective proponent's and the City. Some initial concerns have been raised (i.e., appropriate rezoning approval, proximity of the nearby fuel storage tanks and the need to ensure safety of the accommodation facility, and transportation mode options to efficiently move workers to and from the GMRP site), that will need to be addressed as part of any formal rezoning application and review process. To date there has not been a formal proposal and/or application submitted to the City by the prospective proponent.
- It was noted during the interview with the prospective proponent that given the housing shortage in Yellowknife, a dedicated accommodation facility would reduce the pressure on utilizing other existing accommodation facilities (i.e., houses and apartments) which reportedly (although unverified) have been acquired and repurposed by contractors to provide accommodation for their workers, resulting in less availability and/or increases costs for residents of the City. There were no details or supporting data provided during the interview.

- **Establish regular post-contract review meetings:** MCM to expand the use of post-contract review meeting with contractors to assess 'lessons learned'.
- **Confirm potential risks of arsenic trioxide impregnation into steel structures/components:** The GMRP management to carry out testing (if necessary) to confirm and/or determine if there are potential risks of arsenic trioxide impregnation into steel structures/components on the GMRP site? If yes, what measures can be taken to mitigate the risk?
- **Confirm or develop a multi-year recycling plan for the GMRP site:** The GMRP to consider setting out a longer-term recycling and commit 1% of the annual budget for recycling. This will enable planning and additional Northern based equipment/facilities investment for recycling of GMRP materials.

APPENDIX A

CONFIDENTIAL INTERVIEW QUESTIONS

PURPOSE OF THE INTERVIEW

As a follow-up to your prior discussion with the GMOB, this is an opportunity for you to provide a more detailed **confidential** perspective on the experience and concerns your firm has had with the Giant Mine Remediation Project's (GMRP) procurement and contracting process and the impact on Northern contractors.

Interview Length: 45 to 60 minutes.

INTERVIEW QUESTIONS

- (1) What has been your firm's experience with the GMRP's procurement and contracting to date?**
 - (a) How many bids and/or proposals has your firm submitted on the GMRP?
 - (b) How many contracts (or percentage of bids) has your firm been awarded?
 - (c) *(If applicable)* What was your firm's experience with the bidding and contract process?
 - (d) *(If applicable)* Has your firm had direct dealings with the Main Construction Manager (Parson Inc.). What was the nature of the interaction experience like?
- (2) What concerns do you have regarding the GMRP's procurement and contracting process as it affects Northern contractors (small and larger firms)?**
- (3) What efforts (as a single firm and/or through a collective effort by the Northern contractors' community) have been previously made to address these concerns?**
 - (a) Describe what that effort involved (and with what individuals or entities)?
 - (b) What were the outcomes?
- (4) What are the (realistic) options for addressing these concerns?**
- (5) What are the (potential) barriers to addressing these concerns?**
- (6) What should be the next steps to pursuing the options for addressing these concerns?**
 - (a) Who should be involved in the next steps?
- (7) Are there any issues or comments you wish to discuss?**

Do you have any questions for me?