

The Yukon Environmental and Socio-economic Assessment Act (YESAA) Five-year Review Terms of Reference

Background

Chapter 12 of the Umbrella Final Agreement (UFA) provides for the creation and implementation of a legislated development assessment process. The signatories to the UFA (the Government of Canada, the Council of Yukon First Nations and Yukon Government, referred to here as ‘the Parties’) addressed this requirement when the *Yukon Environmental and Socio-economic Assessment Act* (YESAA) received Royal Assent on May 13, 2003. The purposes of the legislation include:

- Providing a comprehensive and neutrally conducted assessment process that considers environmental and socio-economic effects before projects begin;
- Protecting and maintaining environmental quality and heritage resources;
- Protecting and promoting the well-being of Yukon First Nation people, their societies and Yukon residents;
- Applying principles that foster beneficial socio-economic change without undermining ecological and social systems;
- Recognizing and, where possible, enhancing the First Nation traditional economy;
- Guaranteeing opportunities for participation of First Nation people in the assessment process;
- Providing opportunities for public participation in a timely, efficient and effective assessment process; and
- Providing certainty about the assessment process.

On the basis of nominations from each of the Parties, the Minister of Indian Affairs and Northern Development appointed the Yukon Environmental and Socio-economic Assessment Board (YESAB) in June 2004. In accordance with YESAA, YESAB established its rules and procedures as well as six local Designated Offices. YESAB and the Designated Offices began assessing projects in November 2005 immediately after the YESAA regulations received approval.

The UFA requires the completion of a comprehensive review of the development assessment process¹ within five years of the legislation’s enactment. Soon after Royal Assent of the legislation, the Parties signed a YESAA implementation plan. With respect to the five-year review, the implementation plan identifies that the Parties will appoint representatives by May 2007. These designated representatives will begin their work on the review by developing draft Terms of Reference for review by YESAA participants. Once these Terms of Reference are finalized, the representatives are responsible for completing the review and for providing opportunities for input from the Yukon public and the participation of First Nations. At the conclusion of the review the representatives will provide a report to the Parties. Copies of the report will be made available to Yukon First Nations and the public.

Purpose of the Review

The Parties have initiated the YESAA five-year review, in accordance with section 12.19.3 of the UFA and section 11.0 of the YESAA implementation plan. The purpose of this comprehensive review is to examine Yukon’s development assessment process in its entirety and in the context of the objectives of the UFA. An outcome of the review may include recommendations for improvement to the development assessment process.

¹The representatives conducting the review intend the development assessment process to mean the process described in Chapter 12 of the UFA, YESAA and any processes and process documents and body (and its obligations) related to the creation or implementation of YESAA.

Principles of the Review

The designated representatives will undertake the review based on the following principles.

- Decisions about the conduct of the review will be made by consensus.
- All proceedings and discussions are without prejudice.
- Conclusions and findings are not necessarily a reflection of any one party's position.
- The review will be as comprehensive as possible.
- The review will be conducted in a fair, balanced and transparent manner.
- The review will give equitable, full and fair consideration to input received.

Scope of the Review

This review will examine all aspects of the Yukon development assessment process including the following.

1. YESAA and its regulations.
2. The implementation, assessment and decision-making processes: the implementation plan, funding, opportunities for public participation in the process, phases and timelines, process performance expectations and process documents such as rules, guides, forms.
3. YESAB, Decision Bodies and other participants: responsibilities, duties, functions, timelines and documentation.

Review Process

The process for the review is illustrated in the process diagram (Appendix 1) and includes three main phases with the following objectives and outputs.

Phase 1 – Information gathering and issues scoping: Phase 1 of the review will be the primary opportunity for seeking and compiling views on the development assessment process and identifying issues that require further research and consideration. The output of this phase will be an Issues Scoping Report.

Phase 2 – Issues analysis: Phase 2 of the review will include additional research and analysis to address the issues identified in Phase 1. This phase will include the development of observations, conclusions and/or recommendations. The output of this phase will be an Observations and Conclusions Report.

Phase 3 – Response: During Phase 3 of the review, the representatives, First Nations and YESAB will consider the Observations and Conclusions Report. They will develop a joint response that describes the outcome of the review in a draft Review Report. The representatives will then prepare a final Review Report that will include an implementation and follow-up schedule.

The representatives will engage an independent contractor to complete Phases 1 and 2. The contractor's work will be completed in accordance with a detailed Statement of Work consistent with the Statement of Work Outline (Appendix 2). Phase 3 is to be completed by the representatives with direct and meaningful participation from First Nations as illustrated in the process diagram.

Roles and Responsibilities

Relationships of the Parties, representatives, First Nations and YESAB during the conduct of the review are described below.

The Parties are responsible for:

- Appointing representatives and maintaining, as far as possible, consistent representation throughout the review process;

- Providing feedback to their representatives after giving full and fair consideration to the independently developed Observations and Conclusions Report; and
- Within their areas of jurisdiction, implementing the agreed outcomes of the review.

The Designated Representatives

One designated representative is appointed by each Party (the Government of Canada, the Council of Yukon First Nations and Yukon Government). The representatives are responsible for:

- Developing and jointly approving
 - the Terms of Reference;
 - a Statement of Work for the contractor; and
 - criteria for selecting a capable contractor, while recognizing contracting rules and guidance from the contracting agency;
- Jointly making decisions related to the conduct of the review, including selecting and managing a contractor as required;
- Maintaining a positive working relationship with the contractor with a view to managing an effective and efficient review that yields relevant results;
- Meeting regularly during the preparation for and conduct of the review to track progress and manage review timelines;
- Working cooperatively to solve problems and develop creative solutions to issues while employing consensus decision-making on all matters;
- Seeking input from their respective Parties to support the joint development of the Review Report;
- Working directly and meaningfully with First Nations and YESAB to provide feedback on the draft Issues Scoping Report and to develop joint responses to the Observations and Conclusions Report;
- Jointly developing and providing a final Review Report to the Parties (Minister of Indian and Northern Affairs, the Grand Chief and the Premier) that includes but is not limited to descriptions of the proposed outcomes of the review and the findings and results from all phases of the review;
- Facilitating public and media communications that may be required throughout the review; and
- Seeking assistance from internal resources and engaging the services of additional expertise as necessary to support the conduct of the review.

First Nations

First Nations' roles and responsibilities include:

- Participating throughout the review;
- Providing feedback on the draft Issues Scoping Report during a workshop with the contractor;
- Working directly with the representatives to develop a joint response to the Observations and Conclusions Report; and
- Within their areas of jurisdiction, implementing the agreed outcomes of the review.

Yukon Environmental and Socio-economic Assessment Board (YESAB)

YESAB's roles and responsibilities in the review include:

- Participation in the review as a resource for the representatives by
 - commenting on the Terms of Reference;
 - reviewing communications material;

- where possible, attending public meetings in order to provide information or clarification;
- reviewing comments submitted during the review and providing feedback to the contractor and/or representatives;
- helping them create solutions to issues and problems; and
- commenting on the draft reports and other documents during the course of the review;
- Providing feedback on the draft Issues Scoping Report during a workshop with the contractor;
- Working directly with the representatives to develop a joint response to the Observations and Conclusions Report; and
- Supporting the implementation of agreed outcomes of the review and, within their area of jurisdiction, implementing agreed outcomes of the review.

Outcomes of the Review

The following reports will be developed and presented in an objective manner.

The Issues Scoping Report will include but is not limited to:

- The contract management plan;
- The research and information gathering plan – describing the sources of information and methods used to compile the information;
- The consultation plan – describing how input from governments, participants, proponents, assessment bodies, the public and interest groups was encouraged and gathered;
- The participation plan – describing the mechanisms and approaches employed to engage and encourage input from First Nations governments and citizens;
- The compilation of results and analysis of the research and information gathering; and
- An issues identification section – describing issues for further consideration in the review and information gaps related to these issues.

The Observations and Conclusions Report will include but is not limited to:

- A description of work plan development and execution;
- An information inventory and collection section detailing
 - document reviews (YESAA, regulations, Board rules, written submissions);
 - interviews;
 - identification of participants' roles and responsibilities;
 - community visits;
 - meetings;
 - questionnaires; and
 - observations;
- An information analysis section reflecting
 - a review of submissions and other information gathered;
 - best efforts to assess and characterize the impacts of YESAA implementation on communities, groups, industries, governments, First Nations, people and processes;
 - analysis of the development assessment process, including identifying strengths and weaknesses in meeting its objectives;
 - identification of areas for improvement with respect to meeting the objectives of the development assessment process and the expectations of various groups, agencies, First Nations and the public; and

- identification of any constraints on the Review such as areas unable to be reviewed at this time;
- A recommendation section that details observations, conclusions, recommendations, opportunities and challenges for improving the development assessment process¹ in a practical manner based on analysis.

The final Review Report will include but is not limited to:

- An executive summary;
- A description of the objectives and expectations for the development assessment process;
- A description of processes under the *Yukon Environmental and Socio-economic Assessment Act*;
- The purpose of the five-year review;
- A description of how the Parties conducted the review;
- A copy of the Issues Scoping Report;
- A copy of the Observations and Conclusions Report;
- A response to the Observations and Conclusions Report including a rationale for accepting, rejecting or varying a recommendation; and
- A description of the agreed outcomes of the review and how they could be implemented including a process for follow-up on implementation.

Dated this 4 day of April 2008 at Whitehorse, Yukon.



Ron Chambers, Designated Representative
Government of Canada

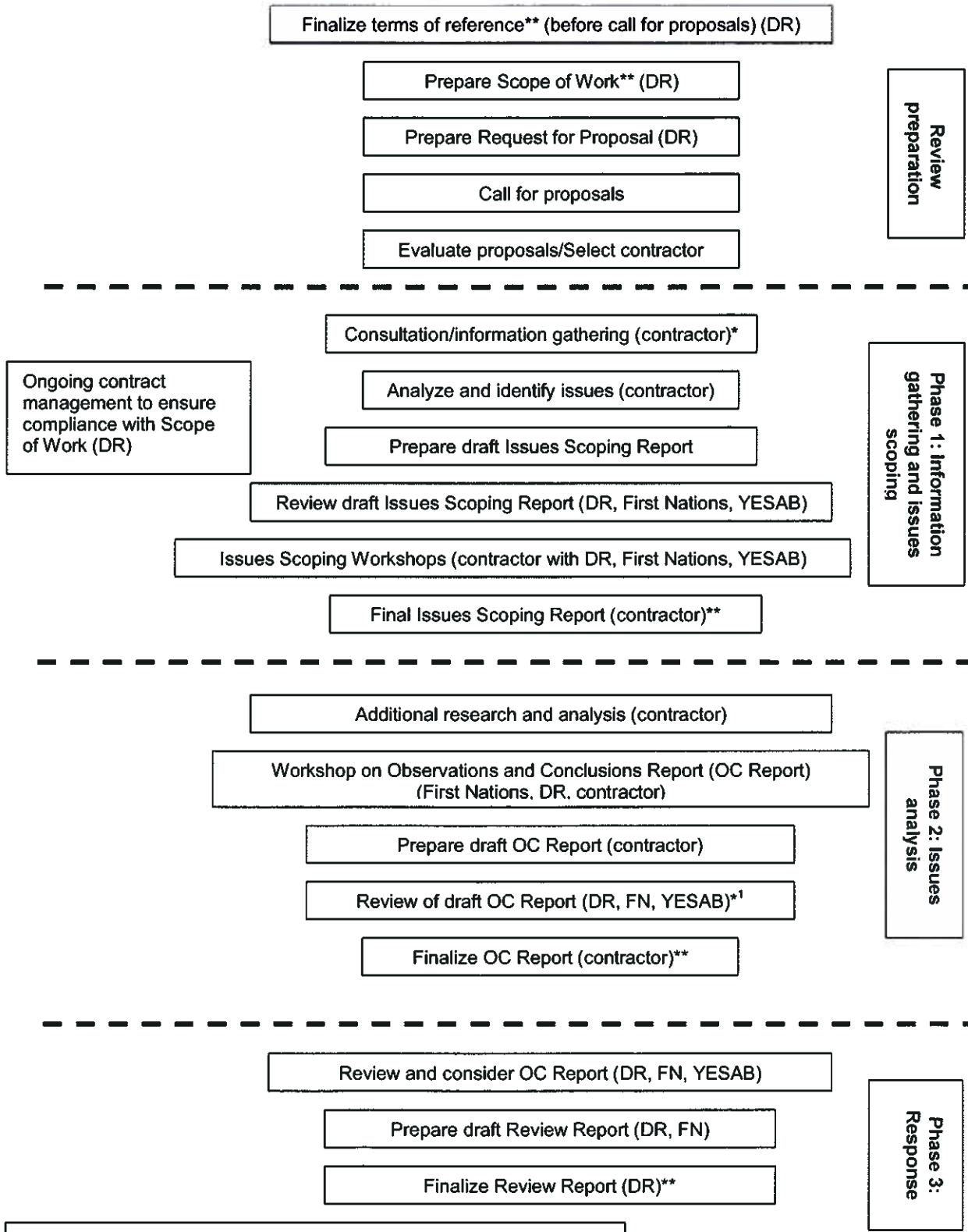


Lindsay DeHart, Designated Representative
Government of Yukon



Gail Barnaby, Designated Representative
Council of Yukon First Nations

Appendix 1: YESAA Five-year Review Process



DR = Designated representatives
 FN = First Nations
 * Opportunity for public input
 ** Document will be publicly available
¹ All comments will be considered in the process of finalizing the OC Report and in preparing the Review Report