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Department of Infrastructure

Manitoba East Side Road Authority

September 2016

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September 2016

The Honourable Myrna Driedger
Speaker of the House
Room 244, Legislative Building
450 Broadway
Winnipeg, Manitoba R3C 0V8

Honourable Ms. Driedger:

It is an honour to present my report titled: *Manitoba East Side Road Authority* to be laid before the Members of the Legislative Assembly in accordance with the provisions of Sections 14(4) and 28 of *The Auditor General Act*.

Respectfully submitted,

Norm Ricard, CPA, CA
Auditor General

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Auditor General's Comments

The East Side Road Project is not an ordinary infrastructure project. It involves complex community agreements aimed at ensuring benefits, over and above the road, accrue to the east side communities. These benefits include training and mentoring for community corporation staff and the awarding of untendered pre-construction contracts to these community corporations, coupled with capacity building allowances, to help them develop into viable local businesses. Effectively managing the community benefit agreements is a challenging task, but essential if the anticipated benefits are to be achieved.

Our audit revealed many gaps in how the community benefit agreements, and the related untendered pre-construction contracts, were being managed. In addition, the lack of performance measures and targets makes it difficult to objectively assess the progress made to date in achieving the anticipated benefits.

The Manitoba East Side Road Authority is an organization in transition. On May 27, 2016 the Manitoba Government announced the dissolution of the Authority and the transfer of its operations to Manitoba Infrastructure. This announcement was made as we were finalizing our report. While the recommendations included in the report continue to be directed to the Manitoba East Side Road Authority, we believe that they will be invaluable to Manitoba Infrastructure when integrating the Authority's operations into the Department.

I would like to thank the many employees of the Authority for their cooperation and assistance throughout the audit process.

Norm Ricard, CPA, CA
Auditor General

Main Points

The Manitoba East Side Road Authority (ESRA) is mandated to construct and maintain the east side road project (the project) and ensure that the construction is carried out in a matter that provides increased benefits for east side communities.

The project will replace the region's winter road network with over 1,000 km of gravel surfaced roads and water crossings connecting 13 communities. It is projected to cost $3 billion over 30 years.

To act on its mandate of ensuring the project provides increased benefits, ESRA developed an Aboriginal Engagement Strategy (AES). This strategy includes the signing of Community Benefits Agreements (CBAs) with First Nation Communities. Benefits provided by CBAs include training and mentoring by ESRA, as well as access to untendered pre-construction work contracts. Untendered contracts for pre-construction work are awarded to newly established community owned construction corporations (community corporations) which are created as a requirement of the CBA.

Benefits to the east side communities are also provided through ESRA's tendered construction contracts. Tendered contracts make up a majority of the construction costs of the project and include benefits to communities in the form of local procurement, employment and training opportunities.

The benefits provided under the Aboriginal Engagement Strategy represent approximately 35% of the overall road construction cost.

We examined whether ESRA adequately managed the Aboriginal Engagement Strategy, and whether it had effective processes for ensuring compliance with the requirements of the Community Benefits and related agreements.

Why it matters

To ensure the anticipated benefits are achieved, it is important that all those involved with the AES and the related CBAs meet their obligations.

What we found

Implementation of the Aboriginal Engagement Strategy should be strengthened

Measurable objectives for the Aboriginal Engagement Strategy not in place - ESRA has not set measurable objectives for its AES and as a result is not able to measure progress against targets. Measuring progress against targets should be done on a continuous basis as it helps management identify when corrective actions are needed.

Some risks identified but more comprehensive risk assessments needed - Senior ESRA officials advised that risk management is a significant aspect of their management philosophy and a key determinant of their management actions. A variety of internal documents discuss risks and mitigating actions related to the AES, but ESRA does not have a defined risk management process.

ESRA has considered general risks associated with CBAs, but documented risk assessments have not been developed for each First Nation Community with a CBA. As each community varies in its experience in relation to the types of activities it will be undertaking in its contracts with ESRA, it is important that ESRA document its understanding of these risks and its mitigating actions. Such risk assessments would need to be periodically updated to reflect new information.

Capacity building allowance not accounted for separately - Untendered construction contracts with community corporations include a capacity building allowance to help them increase their future capacity to operate as independent businesses. It is intended to diminish over time as the community corporations become more proficient in their work. Such an allowance is not part of a normal road construction project and is essentially a grant over and above the estimated market value of the contract services. ESRA was not tracking the amount of capacity building allowances paid out. For 9 of 10 contracts in our sample, ESRA did not split out the capacity building allowance. For the one contract where it was shown separately, it was effectively an allowance of 22.7 %. ESRA did not have a policy on how to calculate the amount of the capacity building allowance or how the allowance was to be reduced over time. In addition ESRA did not track how community corporations actually benefited from the allowance.

Reasonableness of capacity building allowance amounts paid to private contractors not assessed - Many community corporations have subcontracted out significant work, or entered into joint venture arrangements with private sector contractors in order to fulfill their contractual obligations with ESRA. Our sample of 10 contracts contained 6 joint venture arrangements. ESRA requires that joint venture agreements provide community corporations with at least 51% of the profits, leaving the remainder to the private sector contractor. An additional requirement is that the contractors provide ESRA with a management plan indicating how they will mentor community corporation staff. ESRA officials advise that contractors are compensated for this mentoring by their 49% share of the capacity building allowance; however ESRA did not obtain such plans from any of the contractors in our sample. They also did not prepare an analysis on the extent and nature of mentoring provided and whether the resulting compensation was reasonable.

Local employment requirement monitored, but not local procurement - We tested 10 tendered contracts and found that ESRA ensured employment equity requirements were being met. On any particular month when contract percentage requirements were assessed as not being met, an ESRA staff member followed up with contractors to ensure they were aware of the gap in their employment equity percentages and offered them access to employees from the East Side Road resident job referral database. All 10 contracts tested met the local hiring percentage requirements by the end of the contract. We noted, however, that the process could be strengthened by conducting spot checks on the information provided by contractors. ESRA was not monitoring local procurement on any of the tendered construction contracts.

Other findings discussed in our detailed report under this section are:

- Monitoring of community corporation viability should be strengthened.
- Limited public information on progress against the AES.

Insufficient practices for ensuring ESRA met its CBA obligations

Effectiveness of mentoring and training activities not measured - The CBA creates a contractual obligation for ESRA to provide mentoring to members of First Nations and employees of community corporations. ESRA has 4 divisions with mentoring responsibilities and while staff in each of these areas had a general idea of what their mentoring obligations were, there were no formal mentoring plans in place for any of these divisions. Few performance measures existed for the mentoring of each First Nation. Mentoring plans and performance information are needed to help ESRA assess whether its mentoring outcomes are being effectively met.

The CBA also creates a contractual obligation for ESRA to deliver training programs to community members. For the 5 communities we examined, ESRA provided 180 training opportunities. This accounted for approximately 72% of the total training provided to all communities under CBAs. ESRA trainers held certifications and/or had equivalent experience in related fields.

While ESRA was recording the number of individuals that they trained, they were not monitoring this output against the CBA obligations. In addition, ESRA was not tracking whether the individuals trained eventually worked on the project. As such, ESRA had limited ability to assess whether the training programs resulted in participants finding employment.

Many administrative obligations not met - CBAs and related agreements include a number of important administrative obligations for ESRA. Most of these obligations require that ESRA approve certain community corporation activities before they occur. We found that in many cases ESRA was not consistently meeting these obligations. This likely occurred because a process was not in place to monitor its compliance with the administrative requirements under the CBAs and related agreements.

Other findings discussed in our detailed report under this section are:

- Equipment maintenance program assistance obligation not met.
- Some pre-construction work payments did not include proper support for work completed.

Practices for ensuring compliance should be strengthened

Gaps in monitoring compliance with CBAs - We selected 5 CBAs and assessed whether ESRA ensured select provisions of the CBA were being complied with. The results of our testing indicate that more diligent monitoring and follow-up is required to ensure better compliance with the requirements of the CBAs.

Gaps in monitoring compliance with pre-construction contracts - For each of the 5 CBAs examined, we selected 2 pre-construction contracts between ESRA and the respective community corporation and found that ESRA was not properly monitoring whether community corporations were complying with the provisions of their pre-construction contracts.

We believe the following factors contributed to ESRA's inability to ensure compliance by First Nation communities and community corporations with the contractual provisions included in the CBAs and related agreements:

- overall responsibility for contract administration not clearly assigned.
- no contract administration policies and procedures.
- no contract administration training.
- no central filing system.

Our report includes 24 recommendations.

Subsequent Event

On May 30, 2016, the government committed to dissolving ESRA and transferring the responsibility for constructing and maintaining roads on the east side of Lake Winnipeg to the Department of Infrastructure.

Response of Officials

Department of Infrastructure:

The department agrees with the recommendations and will consider how best to implement them given the government's recent decision to dissolve the Manitoba East Side Road Authority and transfer responsibility for constructing and maintaining roads on the east side of Lake Winnipeg to the Department of Infrastructure.

Department of Finance:

The OAG's report outlined areas that should be strengthened encompassing greater accountability, monitoring, compliance, risk and performance management with a particular focus on the Community Benefits Agreements and the Capacity Building Allowance. It is critical that where public funds are committed to achieve specific outcomes that safeguards and accountability mechanisms be put in place and carried out consistently. It is critically important that we monitor and measure performance to ensure value for money is being received.

The Department has also developed the following responses to the main points and the related recommendations within the report:

Measurable objectives for Aboriginal Engagement Strategy not in place

The engagement represents 35% of the overall construction cost of the project. The recommendation that ESRA set measurable objectives, including short and long term targets is a critical to the success of the strategy. We agree that performance management is a key to ensuring that program results are being achieved and value for money is being obtained. Performance management promotes the effective use of public funds through planning, measuring and reporting activities that integrate financial and non-financial information.

Some risks identified but more comprehensive risk assessments needed

The report noted that ESRA has considered general risks associated with Community Benefit Agreements (CBAs) but documented risk assessments have not been developed for each First Nation community. Enterprise risk management (ERM) is an effective tool for executive management to use for decision making and resource allocation. Regular risk assessments, reports and analysis should be provided to management and the audit committee.

Capacity building allowance not accounted for separately

The tracking of costs represents the input or investments that are a critical component of performance measurement as noted in Recommendation 1.

Reasonableness of capacity building allowance amounts paid to the private sector not assessed

The Department has noted that the recommendations under this section are also linked with the need to measure costs and outcomes through performance management of the program. The OAG found that ESRA is not measuring the reasonability of the costs that are being allocated and spent by private sector firms on the mentoring aspect of the agreement. Monitoring the reasonability of the costs allocated, planned and spent by private sector firms are a fundamental component of performance management framework.

Local employment requirement monitored, but not local procurement

The recommendations aimed at strengthening the existing process of monitoring contractor's compliance with contracts that support local employment and procurement. Monitoring outcomes is a fundamental component of performance management framework.

Insufficient processes for ensuring ESRA met its CBA obligations

The overall effectiveness of the training component and success of the strategy would be largely dependent upon participants finding employment and eventually working on the project. Monitoring outcomes is a fundamental component of performance management framework.

Many administrative obligations not met

Sound comptrollership includes ensuring compliance; review and approval processes must be in place and must be carried out prior to execution of activities.

Background

The East Side Road project (the project) was announced in 2008 with the aim to develop an all-season road for the remote and isolated communities on the east side of Lake Winnipeg that only have access to winter roads for a few weeks a year.

The Manitoba Floodway and East Side Road Authority was established on December 1, 2009 when The Floodway Authority Act was amended to The Manitoba Floodway and East Side Road Authority Act (the Act).

Under the Act, the Manitoba Floodway and East Side Road Authority was mandated to:

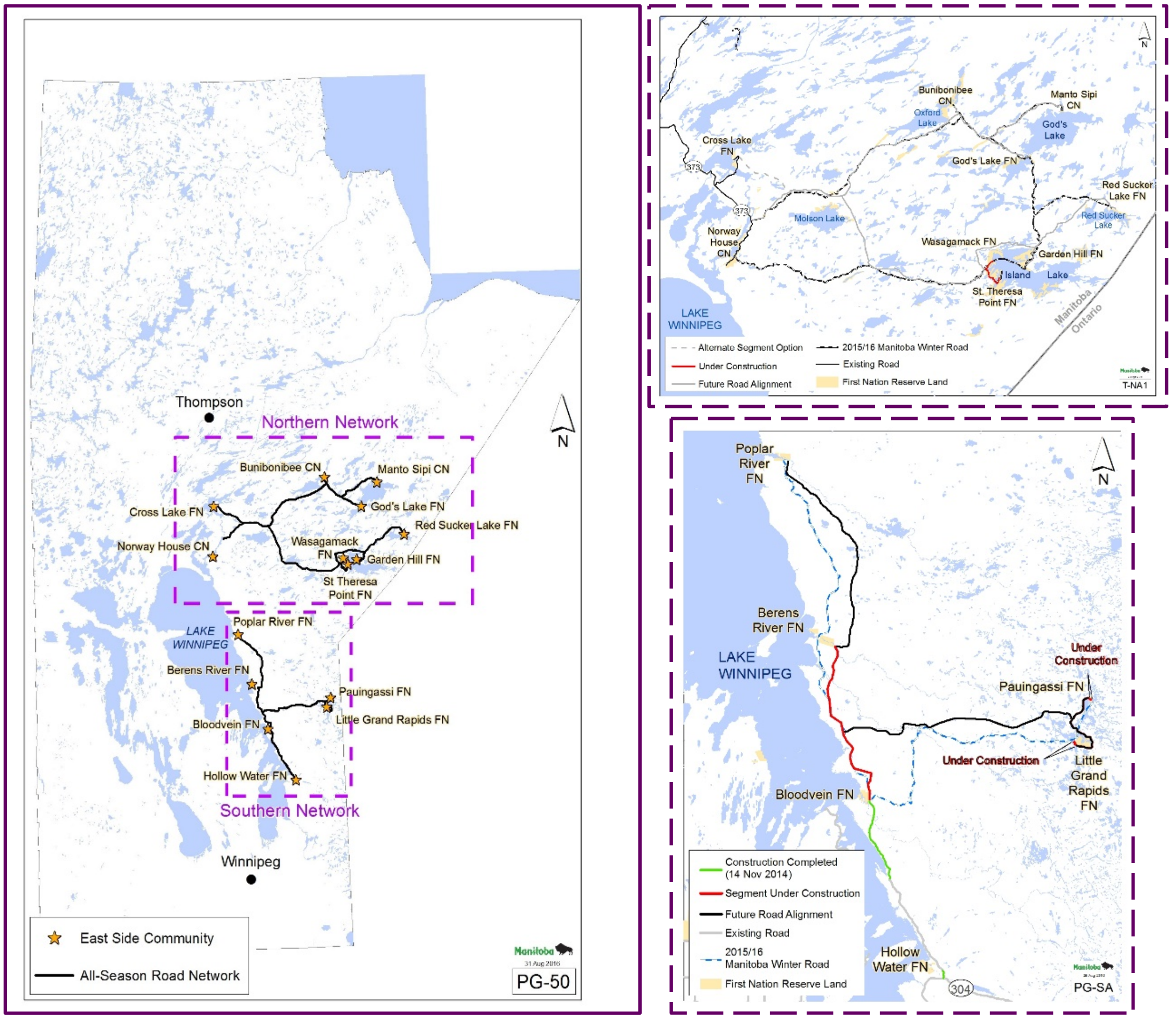
- expand the capacity of the floodway and maintain the land and structures that make up the floodway.
- construct and maintain the east side road.
- ensure that the expansion of the floodway and the construction of the east side road are carried out in manner that provides increased benefits.
- maximize the benefits the floodway and east side road will provide.

On March 18, 2014, the floodway expansion project was announced as officially complete, allowing the Authority to focus its activities on the project. On June 30, 2015, the Act was amended to The Manitoba East Side Road Authority Act with the corporation continuing as the Manitoba East Side Road Authority (ESRA).

The project will eventually replace the region's winter road network with over 1,000 km of gravel surfaced roads and water crossings (bridges and culverts) that will connect 13 communities (**Figure 1**) to the current all season road transportation network. The project is estimated to cost $3 billion over approximately 30 years.

At September 30, 2014, the all-season road transportation network in Manitoba included approximately 19,000 kilometres of structural pavement, asphalt surface semi-pavement and gravel surfaced roadways.

Figure 1: Map of Manitoba showing proposed East Side Road



The East Side Road is not a typical public infrastructure project. In constructing and maintaining the road, ESRA is mandated to maximize the benefits for east side communities impacted by the project and as a result developed a 6 point Aboriginal Engagement Strategy (AES) (**Figure 2**). The benefits identified in the AES include: local procurement, employment, and training opportunities. These benefits represent approximately 35% of the overall road construction cost. In order to generate these benefits, ESRA includes local employment and procurement requirements in tendered contracts to build specific sections of the road. In addition, ESRA has entered into Community Benefits Agreements (CBAs) with 13 east side communities. (**Figure 3**)

Figure 2: Aboriginal Engagement Strategy

Component	Strategy
1. Community Engagement	• Each east side community to be visited to transparently explain the transportation study and seek guidance regarding the consultation process and identify issues community members want addressed.
2. Procurement	• Provide local enterprises with contracts for procurement where possible. Areas of consideration include aggregate crushing and bush clearing road right of way.
3. Training	• Establish heavy equipment operator & labourer training programs for the local communities with an emphasis on quarry operations and road building. • Explore partnership opportunities for providing training in the industries associated with the project (engineering, forestry, etc.).
4. Local Hiring	• Hire staff from local communities and where necessary provide mentoring. • ESRA will establish a job referral process for residents of the east side communities. Local preference hiring requirements will be included in construction contracts.
5. Communication	• Publish and distribute a regular newsletter within the local communities. • Communicate with communities through additional appropriate media (local radio, posters, etc.) as required. • Establish a website. • Host community meetings on an ongoing basis to engage local residents and update them on the project. (Added in 2014/2015).
6. Networking Opportunities	• Coordinate a series of networking sessions with the intention of introducing local community contractors (and workers) to some of the outside aboriginal and non-aboriginal contractors and other suppliers of goods and services. • Maintain relationships with Assembly of Manitoba Chiefs and Manitoba Metis Federation.

In 2009, ESRA entered into the first CBA. Benefits provided in a CBA include training and mentoring by ESRA. As a requirement of each CBA, the east side communities must establish a separate corporate entity (community corporation) to carry out untendered contracts established under CBAs. ESRA issues untendered contracts for gravel crushing, brush clearing, road exploratory clearing, road improvement work and Acrow bridge installation projects. The goal in issuing untendered contracts to the community corporations is to create a functioning construction company with a skilled workforce in each First Nation. A key aspect of each contract issued to a community corporation is the capacity building allowance. This is a premium, above estimated market value, that is paid on these untendered contracts to help community corporations develop their future capacity to operate as an independent business.

As of September 30, 2014 there were $178.9 million in CBAs authorized by the government.

Figure 3: Value of CBAs authorized at September 30, 2014

East Side Community	Value $ (millions)
Berens River First Nation	53.025
Bloodvein First Nation	48.466
Bunibonibee Cree Nation	2.250
Garden Hill First Nation	2.250
God's Lake First Nation	2.250
Hollow Water First Nation	16.401
Little Grand Rapids First Nation	12.250
Manto Sipi Cree Nation	2.250
Pauingassi First Nation	12.250
Poplar River First Nation	2.250
Red Sucker Lake First Nation	8.250
St. Theresa Point First Nation	2.250
Wasagamack First Nation	14.750
Total	**$178.892**

The majority of the project is being constructed through tendered contracts. At September 30, 2014, capital assets worth $245 million had been constructed, with $86 million related to Community Corporation contracts.

The capital costs incurred on the project are transferred to the Province of Manitoba's Department of Infrastructure and Transportation and are included as part of the province's capital assets. ESRA capitalizes approximately 92% of its overhead as a cost of the project. At March 31, 2015, $325 million was the total capitalized cost of the project with $86 million bridges, $146 million road surfaces and $93 million in assets under construction included on the Province's financial statements.

Figure 4: Mandate Driven by Act and Aboriginal Engagement Strategy	
East Side Road Act – Goal to build the east side road and to maximize benefits	
Aboriginal Engagement Strategy: • Community Engagement. • Local Procurement. • Training. • Local Hiring. • Communication. • Networking Opportunities.	
How the construction work is done	**How Aboriginal communities benefit**
• Tendered contracts with construction companies.	Contract requirements include: • Local procurement. • Employment of specified percentage of local east side residents.
• Untendered contracts awarded to community corporations owned by the 13 East Side First Nations.	Community Benefits Agreements: • Employment of local residents. • A capacity building allowance or premium above estimated market value. • Training opportunities provided by ESRA. • Mentoring provided by ESRA and/or joint venture partners and sub-contractors.

Audit Approach

Our objectives were to determine whether ESRA:

- Adequately managed the Aboriginal Engagement Strategy, including Community Benefits, in order to achieve stated outcomes.
- Had an effective process in place to ensure ESRA meets its obligations under the Community Benefits and related agreements.
- Ensured that the accountability requirements under the Community Benefits and related agreements were being met.

We examined ESRA's management of the Community Benefits Agreements of 5 First Nation communities. We selected 2 pre-construction contracts from each of the 5 communities.

We did not assess environmental, construction and engineering efforts related to the East Side Road Project or any aspect of the Floodway Expansion Project.

The audit examined the processes in place from the inception of the East Side Road Project up to September 30, 2014. Our work was substantially complete by February 27, 2015. The details of any pertinent events that occurred after September 30, 2014 have been considered in the preparation of this report.

Our examination was performed in accordance with the standards for assurance engagements established by the Chartered Professional Accountants of Canada, and accordingly included such tests and other procedures as we considered necessary in the circumstances.

Findings and Recommendations

1. Implementation of Aboriginal Engagement Strategy should be strengthened

ESRA's legislated mandate is to:

- construct and maintain the east side road.
- ensure that the construction of the east side road is carried out in a manner that provides increased benefits.
- maximize the benefits the east side road will provide.

In response to its mandate to maximize benefits for east side communities impacted by the project, ESRA developed a 6-point AES (**Figure 2**).

1.1. Measurable objectives for Aboriginal Engagement Strategy not in place

Measuring progress against targets allows management to determine whether stated objectives are being achieved and whether any corrective action is needed. This process should take place on a continuous basis so that management can respond to changing conditions.

The strategies related to the AES are planned general action statements specific to each component of the AES and are missing measurable objectives. Measurable objectives would enable ESRA to assess how well it is progressing and if any corrective action is required.

> **Recommendation 1:** We recommend that ESRA set measurable objectives for the AES including short and long term targets.

1.2. Some risks identified but more comprehensive risk assessments needed

Entities practice risk management by identifying and managing situations that impact their ability to achieve goals and objectives. Risks can be internal or external. A risk management process is beneficial in that it allows management to focus resources where they are most needed so that as a result there are fewer operational surprises that affect the entity's ability to achieve its objectives.

Senior ESRA officials advise that risk management is a significant aspect of their management philosophy and a key determinant of their management actions. A variety of internal documents discuss risks and mitigating actions related to the AES, but ESRA does not have a defined risk management process to help ensure that ESRA:

- identifies and documents the business processes that are necessary to achieve their mandate.
- identifies and documents significant risks.
- develops a risk tolerance level.
- assesses the likelihood and impact of identified risks.

- documents and implements strategies to mitigate and manage risks.
- ensures that residual risks are well understood by management and communicated to the Board.
- updates, monitors and reports the risk assessments and action plans on a regular basis to the Board.

ESRA has considered general risks associated with CBAs, but documented risk assessments have not been developed for each First Nation Community with a CBA. As each community varies in its experience in relation to the types of activities it will be undertaking in its contracts with ESRA, it is important that ESRA document its understanding of these risks and its mitigating actions. Such risk assessments would need to be periodically updated to reflect new information.

ESRA hired a public accounting firm to perform specified procedures in response to a disputed settlement with a community. The accounting firm produced a report including recommendations to mitigate certain risks related to the CBAs. Many of the recommendations in the November 2012 report had not been implemented. Key outstanding recommendations deal with:

- ensuring that all 3rd party documentation is included as backup for payments.
- tendering of sub-contract agreements by community corporations.
- ESRA providing formal procedures for community corporations to follow to verify invoices before they are forwarded to ESRA for payment.

ESRA staff told us that they conduct a ‘lessons learned’ exercise for tendered construction projects as a way to reduce risks on future contracts; however, they do not do this for CBA contracts. Lessons learned could include how concerns or challenges that arose during a contract were resolved. Documenting lessons learned on CBA contracts, accumulating them in a centralized data base, and formally reviewing these lessons would help ensure that insights gained on CBAs could be applied to contribute to the success of future contracts and mitigate risks.

A documented comprehensive risk assessment process that addresses all aspects of the project would assist ESRA in fulfilling its mandate and better communicate how well it is managing these risks. It is important that these risk assessments be reviewed for changing conditions and new information on a regular basis.

Recommendation 2: We recommend that ESRA conduct comprehensive risk assessments for all aspects of their operations including but not limited to:

- The Aboriginal Engagement Strategy.
- Community Benefits Agreements in general, and specific to each First Nation.

1.3. Capacity building allowance not accounted for separately

ESRA has a mandate to maximize benefits that the project will provide. One of the ways that ESRA is choosing to maximize benefits is to help First Nation communities create viable corporations. It is hoped, that in time, these corporations will create sustainable economic development in the community through future construction and maintenance contracts. ESRA is supporting these community corporations through training, mentoring, and by providing capacity building allowance amounts on its construction contracts with community corporations.

The capacity building allowance is the difference between the estimated market value of a contract's services, and the amount paid by ESRA. It is meant to provide the community corporation with funds to help them increase their future capacity to operate as independent businesses. It is essentially a grant that is being provided to bring benefits to the community that will outlast the road construction contract. These benefits are not part of a normal road construction project. It is important to note that there is already a profit element included in the estimated market value of the contract services and that the allowance should not be considered "profit".

The capacity building allowance is paid on all contracts included under the CBAs, but for 9 of 10 contracts in our sample ESRA did not split out the capacity building allowance from the remaining contract items. We asked ESRA for the capacity building allowance amount embedded in these 9 contracts, but it was not provided to us. The capacity building allowance for the one contract in our sample where it was shown separately, totaled $796,000 on quarry operations of $4.3 million (effectively an allowance of 22.7%). In examining community corporation business plans we found a second contract that disclosed a capacity allowance of $1.5 million on an $8.5 million contract (effectively an allowance of 21.4%).

The gravel crushing contracts to September 30, 2014 totalled at least $50.1 million. We could not determine whether there was a consistent method of calculating the amount of capacity building allowance for each of the gravel crushing contracts but using the above percentages the amount of capacity building allowance paid on these contracts may range from $8.8 to $9.3 million. A capacity building allowance is also paid on all other CBA contracts, but support for the amount of these allowances was not available. The amount of these other contracts to September 30, 2014 totalled at least $51.3 million. We were unable to calculate the capacity building allowance amounts on these contracts.

The capacity building allowance is intended to diminish over time as the community corporations become more proficient in their work. We were told that the following factors are considered when deciding whether to reduce the allowance:

- thresholds of experience of the community corporations.
- profit margins being earned.
- efficiency of the corporations.

ESRA does not have a policy on how to calculate the capacity building allowance, or on how this amount is to be reduced over time.

Except as noted above, we found no documentation on the actual amounts paid as capacity building allowances to the communities in our sample. Without adequate documentation, it is also not possible to know if allowances paid to community corporations are being reduced.

ESRA does not track how the community corporations benefited from the allowances they were provided.

The capacity building allowance is one of the costs of the AES. Without adequate information on the costs associated with the key components of the AES (i.e. capacity building allowances, mentoring (see **section 2.1**) and training (see **section 2.2**)), as well as the related outcomes, stakeholders are not able to understand the relationship between the cost of the AES and the related achievements.

Recommendation 3: We recommend that ESRA develop a policy and related practices for calculating capacity building allowances. The policy should include guidance for reducing the capacity building allowance as the community corporations mature.

Recommendation 4: We recommend that ESRA track the total amount of capacity building allowances paid overall and to each Community corporation.

Recommendation 5: We recommend that ESRA track how community corporations benefited from the capacity building allowances they received.

Reasonableness of capacity building allowance amounts paid to private sector not assessed

Many community corporations have subcontracted out significant work, or entered into joint venture arrangements with private sector contractors in order to fulfill their contractual obligations with ESRA. In our sample of 10 contracts, 6 contracts between a community corporation and ESRA involved a joint venture arrangement with a private sector contractor. These joint venture arrangements required that 51% of the profits be distributed to the community corporation and 49% be distributed to the private sector contractor. Because the capacity building allowance is not disclosed separately and is considered a “profit” element (see below), 49% of the capacity building allowance paid by ESRA is going to the private sector contractor and not the community corporation.

A condition of these joint ventures is that the private sector contractor must provide a management plan to ESRA indicating how they will mentor community corporation staff in fulfilling their management and oversight roles (see **section 2.1**). ESRA officials advise that the joint venture contractors are compensated for this with their 49% share of the capacity building allowance. But ESRA had not obtained a mentoring management plan from any of the joint venture contractors in our sample. Implementing the recommendations included in **section 3.3** would resolve this issue.

Significant subcontractors that have entered into agreements with community corporations are also required to provide management mentoring plans. No plans were obtained for the contracts in our sample. It is not clear whether agreed to fees with each subcontractor included a portion of the capacity building allowance.

ESRA did not prepare or obtain an analysis of the extent and nature of mentoring that was being provided by either joint ventures or subcontractors and whether the compensation provided through the capacity building allowance was reasonable.

> **Recommendation 6**: We recommend that ESRA determine the extent and nature of mentoring provided by joint venture partners and other subcontractors, and whether any compensation provided through the capacity building allowance is reasonable.

1.4. Local employment requirement monitored, but not local procurement

As part of the AES, successful bidders on tendered construction contracts for the project are required to:

- Hire 30% local residents on road construction contracts.
- Hire 20% local residents on bridge contracts.
- Purchase goods and services from local providers where possible.

ESRA monitors successful bidders on tendered contracts to ensure that local employment requirements are being met. Local labour is tracked on an hourly basis and the percentages are required to be met by the end of the contract. ESRA has a process in place to follow up with contractors where interim percentages are not being met.

We tested 10 tendered contracts for compliance with the local resident requirements. ESRA was tracking the percentage requirements on a monthly basis by obtaining timesheets from contractors. However, ESRA was not periodically verifying the accuracy of the number of hours provided on the time sheets or the residency status of employees. Spot checks on information provided by contractors help ensure that the numbers reported to ESRA are accurate.

For these 10 contracts, we also found that on any particular month when contract percentage requirements were assessed as not being met, an ESRA staff member followed up with contractors to ensure that they were aware of the gap in their employment equity percentages and offered them access to employees from the East Side Road resident job referral data base. All 10 contracts tested met the local hiring percentage requirements by the end of the contract.

ESRA was not monitoring local procurement on any of the tendered construction contracts. As local procurement has been identified as one of the 6 points in the AES, it is important for ESRA to monitor and enforce these requirements to ensure that the goals they have identified are met.

> **Recommendation 7:** We recommend that ESRA, on a test basis, verify the employment information received from contractors.

> **Recommendation 8:** We recommend that ESRA monitor whether contractors are complying with the requirement to purchase goods from local suppliers.

1.5. Monitoring of community corporation viability should be strengthened

To support the intent of the AES, ESRA has stated that their goal is for the community corporations to become viable for at least the term of the CBAs and hopefully thereafter. To assess progress towards this objective, ESRA needs information on the operations of the community corporations. As such, the CBA requires community corporations to submit information to ESRA. It is important that ESRA receive and review this information on a timely basis in order to be able to respond to issues which may raise concerns regarding the long term viability of these corporations.

ESRA did not prepare monitoring plans for each community corporation. Such plans would identify the financial and operational risks faced by each corporation and base the frequency and type of monitoring performed by ESRA on the noted risks. In addition, ESRA did not specify the format and content of the information that community corporations are required to provide.

We reviewed the financial analyses that were completed for the 5 community corporations selected for audit and found the following:

Deficiency	Implication
Required reports not always obtained -ESRA was only obtaining some of the reports required under the CBA and often did not follow-up with the community corporation until the information was obtained.	Reports are required for accountability purposes. Not ensuring required reports are received does not allow ESRA to monitor community corporations as intended and sends the message that compliance with the contract is not important.
Lack of timely review - Financial analyses were not being performed on a timely basis.	Timely review is necessary for timely corrective action.
Checklists not used - Checklists were not used to guide reviews of financial information and as a result analyses were inconsistently prepared.	Without a checklist of procedures to perform, aspects of an analysis may be missed.
No budget comparison - Actual to budget comparisons were not performed, and for many projects budgets were not received.	Comparison of actual results to expected results helps to identify the reasons for the variances which can be monitored and corrected if necessary.
Ratios and trend analysis ineffective – Ratios used were not understood by ARED division staff.	Without the selection of appropriate ratios and developing acceptable ratio result ranges, users are not getting the benefits of financial ratio analysis.
Ratios were only compared to the previous year, rather than analyzing trends over multiple years.	Results compared over a number of years allow users to observe trends not apparent in a 2 year time frame.
There was no comparison of results between communities.	When monitoring entities with similar operations, it is good practice to look for commonalities and outlying results.
Appropriateness of untendered subcontracts not assessed-CBAs require subcontracts to be tendered whenever possible.	Community corporations may overpay for subcontract work.
No quality assurance –There was no documented management review of the financial analysis process.	Management review of financial analysis helps to ensure accuracy and completeness.
Issues noted not followed up – Solvency issues were identified during financial analysis, but there was no indication of any follow-up action taken.	Documenting follow-up action demonstrates appropriate oversight and accountability in ESRA’s efforts to fulfill its obligations under the CBAs. If solvency concerns are not addressed the viability of a corporation is at risk.

Recommendation 9: We recommend that ESRA develop a comprehensive process for assessing the ongoing financial viability of each community corporation during the term of their CBA.

1.6. Limited public information on progress against AES

Public performance information should help recipients:

- understand how an entity uses the resources they are given.
- know what was achieved in comparison to what was planned.
- understand why significant variances occurred.

There was no performance information related to the AES in ESRA's annual report. In addition, ESRA only reported high level information, on the signing of CBA contracts with each First Nation, to its Board.

Recommendation 10: Once measurable performance objectives, measures and targets and timelines are set, we recommend that ESRA report appropriately detailed performance information in its annual report in relation to each of its AES objectives.

2. Insufficient practices for ensuring ESRA met its CBA obligations

ESRA has a number of obligations under the community benefits and related agreements. We identified the following concerns with respect to how well these obligations were being managed:

- effectiveness of mentoring activities not measured (**section 2.1**).
- effectiveness of training activities not measured (**section 2.2**).
- equipment maintenance assistance obligation not met (**section 2.3**).
- many administrative obligations were not met (**section 2.4**).
- some pre-construction work payments not properly supported (**section 2.5**).

2.1. Effectiveness of mentoring activities not measured

Mentorship obligations are included in each CBA. They state that mentoring will be provided by ESRA to members of the First Nation and employees of the community corporation with the goal that they will take over the following roles in the future:

- financial management.
- safety management.
- environmental management.
- construction contract management.

Mentoring plans not in place

We were told that mentoring is everyone's responsibility but we found that ESRA did not have an overall plan in place for the design, delivery, and implementation of its mentoring obligations.

Four ESRA divisions are responsible for directly mentoring the community members and/or the employees of the community corporation. These divisions are:

- Aboriginal Relations & Economic Development (ARED).
- Safety.
- Environment.
- Construction & Engineering.

While staff in each of these divisions had a general understanding of what their mentoring obligations were, formal mentoring plans were not developed by any of the divisions. As a result, there was a lack of direction provided to employees related to their specific mentoring duties. We were told by front line staff that they were not always clear what exactly their mentoring duties were.

> **Recommendation 11:** We recommend that ESRA develop mentoring plans, including measurable objectives, for each of its divisions that detail how they will fulfill the mentoring obligations outlined in the CBAs.

Limited documentation of mentoring activities

Staff and management at ESRA told us that mentoring is an important part of their involvement with the First Nations participating in the project and that mentoring occurs on an ongoing basis on the job sites. But there was limited documentation of the mentoring activities that took place to benefit community members, and/or community corporation staff.

None of the divisions were tracking the amount of staff time spent carrying out mentoring activities during the period under audit.

> **Recommendation 12:** We recommend that each ESRA division document the performance of key mentoring activities noted in their mentoring plans. (See Recommendation 11).

No skills assessment of staff and training provided was ad hoc

ESRA had not performed an assessment of their employees' skills or training requirements related to their mentorship responsibilities. Employee training was done on an ad hoc basis. Several staff members we interviewed indicated that more practical training related to mentoring would be beneficial.

We noted that the ARED division staff did not have sufficient financial expertise to effectively carry out their mentorship responsibilities. ARED job descriptions indicate that staff are required to perform the following:

- Participate in the establishment of community corporation financial management systems.

- Assist with community corporation monthly financial statement preparation and reports, (balance sheet, income statement, cash flow statement, commitments, bank reconciliations, etc.).
- Participate in preparation of community corporation budgets.

Recommendation 13: We recommend that ESRA ensure all staff responsible for mentoring have the required skills to carry out mentoring obligations outlined in the CBA.

Performance measurement and reporting on mentoring activities not occurring

Few performance measures exist related to the mentoring of each First Nation involved in the project. Performance information is needed by the Board to help it assess whether ESRA's mentoring obligations are being effectively met. We found that:

- For the environmental management role, the Environment division at ESRA set 4 metrics to assess the success of their mentoring activities, but they were not tracking performance against these metrics.
- For the safety role, the Safety division's overriding role, as outlined in the CBAs, was to assist the community corporations to achieve COR certification. Safety was tracking their progress against this target.
- No measures were in place for the financial and construction management roles.

ESRA was not providing its Board with the results of its mentoring performance relative to each First Nation involved in the project.

Recommendation 14: We recommend that ESRA develop performance measures to assess how well each division is meeting their mentoring objectives.

Recommendation 15: We recommend that ESRA periodically provide government with information on the progress made in achieving mentoring objectives.

Mentoring plans not obtained from 3rd party contractors

A significant gap in mentoring was found where community corporations use a 3rd party to perform a substantial portion of the work under the CBA. In these situations, ESRA has delegated some of their responsibility to the 3rd party. A provision in the 3rd party's agreement with the community corporation obligates the 3rd party to provide the community corporation with a management mentoring plan outlining how the 3rd party plans to mentor the community members and/or community corporation employees. Of note is that for the majority of contracts under the CBAs, the community corporations have either created joint ventures, or subcontracted out significant portions of the work. There was limited evidence of the 3rd parties providing mentoring to the community members and/or community corporation employees. To the end of our field work, ESRA had not obtained a management mentoring plan from any of the 3rd parties involved in our sample.

Another issue came to our attention involving the mentoring of financial management; 2 of the 5 community corporations in our sample used a 3rd party for financial services, including the preparation of financial statements. These 3rd parties did not have mentoring obligations. We are concerned that in these cases, the community corporation will not be developing financial management skills as outlined in the CBA. Implementing Recommendation 12 would address this concern.

2.2. Effectiveness of training activities not measured

ESRA has a contractual obligation under the CBAs to deliver training programs to community members. The obligation was outlined in 2 ways:

- maximum dollar value to be spent by ESRA on training for a community.
- a targeted range of training positions ESRA is obligated to provide for each training program.

The training programs offered by ESRA include:

- Introduction to Construction.
- Skilled Labourer.
- Heavy Equipment Operator.

For the 5 communities we examined, ESRA provided approximately 180 training opportunities. This accounted for approximately 72% of the total training provided to all communities under CBAs. ESRA trainers held certifications and/or had equivalent experience in related fields.

As of September 30, 2014 ESRA has provided 251 training opportunities in the following programs:

- 199 Introduction to Construction.
- 7 Skilled Labourer.
- 45 Heavy Equipment Operator.

Training provided not compared to CBA target

We tested ESRA's system for tracking the number of trained community members and found it to be reasonably accurate. While ESRA was recording the number of individuals that they trained, they were not monitoring this output against the CBA targets. Accordingly, they were not aware of what progress they were making against this obligation. Our review of community members trained revealed that for 1 of the 5 communities we examined, ESRA had exceeded the minimum number of training opportunities required and therefore had satisfied its training obligation under the CBA.

Recommendation 16: We recommend that ESRA monitor training provided against the CBA training targets.

Ability of participants to secure employment not tracked

ESRA was not tracking whether the individuals trained eventually worked on the project. As such, ESRA had limited ability to assess whether the training programs resulted in participants finding employment.

Recommendation 17: We recommend that ESRA track whether training participants are able to secure related employment within a set time after being trained.

2.3. Equipment Maintenance Program assistance obligation not met

The CBAs state "ESRA will provide the expertise required to assist the community corporation to establish an equipment maintenance program". We asked about the status of these programs and, for the 5 community corporations in our sample, were provided with 41 equipment assessments. Twenty-one of these assessments indicated that equipment was either inoperable or unsafe, that parts needed to be replaced, that minor maintenance was recommended, or that fluid leaks were found. Despite these negative assessments, ESRA concluded that "no maintenance plan help was needed". As such, the obligation to assist in the establishment of an equipment maintenance program remains unfulfilled. No plan exists on how this obligation is to be satisfied.

Recommendation 18: We recommend that ESRA establish a plan for meeting their equipment maintenance program obligation.

2.4. Many administrative obligations not met

CBAs and related agreements include a number of important 'administrative obligations' for ESRA. Most of these obligations require that ESRA approve certain community corporation activities before they occur. As detailed below we found that in many cases ESRA was not consistently meeting these obligations. This likely occurred because a process was not in place to monitor its compliance with the administrative requirements under the CBAs and related agreements.

Implementing the recommendations included in **section 3.3** would resolve the issues noted below.

Obligation	Finding
A designated representative of ESRA shall approve all financial transactions undertaken on the separate community corporation account and all cheques written on the account will be co-signed by that ESRA representative.	ESRA had designated a representative to approve all transactions undertaken on the community corporations' separate bank account, and to co-sign all cheques. For 7 of 55 payments, ESRA did not have evidence of proper approval on file.
Restrictions on community corporation – no distributions shall be made to the community or any of its members or representatives, unless: • Surplus funds, representing 90 days of working capital, are retained. • Liabilities are not in default. • Not in breach of any applicable laws or covenants. • ESRA has provided prior approval in writing to such distribution.	This requirement was included in the CBA in order to ensure that the community corporations maintain adequate cash balances to pay expenses. While ESRA did have a process in place to ensure that distributions met these requirements, they were not consistently applying this process. Only 2 of the 7 profit distributions provided to us met all of the requirements. We found that the profit distribution report provided to us was not complete and that documentation for the largest distribution to date ($2M) was not included.
The community corporation shall not allow any debt (directly or contingently) to exist other than debt to ESRA or the community or unsecured current liabilities incurred and payable in the ordinary course of business without the prior written consent of ESRA.	We found 3 instances of a community corporation incurring debt. There was no evidence of ESRA's prior written approval.

Obligation	Finding
The community corporation shall not change the corporate structure or ownership without the prior written consent of ESRA.	ESRA was checking this information from time to time, but there was not a consistent process to monitor this. We were not told of any instances of the community corporations changing corporate structure or ownership, and did not note any during the course of our work.
The community corporations will not enter into any non-tendered arrangements or sub-contracts, joint ventures or partnership related to their work under the CBA, without ESRA's prior written permission. Further, any such contract will contain a covenant from the contractor, joint venturer or partner, that they will provide a management plan to train community corporation members to assume management roles in the future.	We were provided 21 untendered contracts, or agreements, entered into by the community corporations: • Only 4 had evidence of ESRA's prior written approval. We noted that ESRA implemented a joint venture/subcontract approval process in early 2014. The 4 contracts with written approval were entered into after this process was in place. • 15 of 21 agreements included wording in the agreement requiring the contractor, joint venturer or partner to provide a management/mentoring plan satisfactory to ESRA.
ESRA shall have received approval of the Government of Manitoba to the execution and delivery of the CBA.	ESRA received approval from the Gov't of MB (Treasury Board) for all of the CBAs entered into during the scope of our audit.
ESRA will endeavor to pay the community corporation any fees due within 30 days after the receipt and approval of the progress estimates.	Based on our testing of 30 payments, all payments were made within 30 days after the receipt and approval of progress payments.
ESRA will obtain and maintain the following insurance: wrap-up liability insurance with a minimum $250 M coverage per occurrence for a completed operations extension period of 24 months.	ESRA had obtained appropriate wrap-up liability and, where applicable, builder's risk insurance for the project.

2.5. Some pre-construction work payments did not include proper support for work completed

We selected a sample of 30 payments made under the CBAs and related pre-construction work contracts. We found that the payments were for eligible costs of the project and were approved and authorized; however more than half of the payments (16 of 30) did not include proper support in the payment request documentation maintained by ESRA's Finance division. (In 7 of these cases we obtained the proper support from the Construction and Engineering division.) By not requiring that proper evidence be included with payment requests and reviewed prior to payment, ESRA accepts the elevated risk of paying for services not provided.

> **Recommendation 19:** We recommend that ESRA Finance obtain proper support for goods or services received, and ensure this support is attached to the payment request.

Some holdback releases not properly supported

The Builders' Liens Act requires the payor of construction contract progress payments to holdback a percentage of the payment from the contractor until certain conditions are met. Although exempt from the Builders' Liens Act under section 3(2), all 10 CBA construction contracts reviewed were written in a way that required compliance with this Act. We tested 10 holdback payments and found 1 did not have any backup and only 3 had support to satisfy the holdback release conditions.

The Builders' Liens Act requires holdback amounts to be retained for at least 40 days after a certificate of substantial performance is given; we found one holdback for approximately $413K that had been released 8 days early. This early holdback release was included in ESRA's profit distribution analysis for a community corporation (see **section 2.4**). We determined that had the holdback not been included in the analysis, cash levels as required by ESRA's policy would not have been sufficient to allow for approval of the profit distribution.

> **Recommendation 20:** We recommend that ESRA revise their holdback release process to ensure that payments are compliant with the terms of the contract.

3. Insufficient practices for ensuring compliance with agreements

Monitoring compliance with key provisions of the CBAs and pre-construction agreements is important because it:

- ensures that ESRA gets what they contracted for.
- sets the tone that compliance is expected.
- supports better internal decision making and performance measurement.
- ensures that ESRA is progressing towards achievement of its mandate in terms of local employment and procurement requirements of the CBA.
- ensures that tendered construction activities are not delayed, as they are dependent on pre-construction contracts progressing as planned.
- mitigates contract risks and is essential in the event of a dispute with a contractor or sub-contractor.

When non-compliance occurs, we would expect that ESRA have an action plan, including escalating procedures, to ensure that compliance is ultimately achieved.

3.1. Gaps in monitoring compliance with CBAs

We selected 5 CBAs and assessed whether ESRA ensured select provisions of the CBA were being complied with. The results of our testing, as detailed below, indicate that more diligent monitoring and follow-up is required to ensure better compliance with the CBA's requirements.

CBA Requirement	Finding
• Employees and contractors of the community corporations shall be paid industry standard wages.	• ESRA was not actively monitoring this prior to July 2014, and monitoring since that time has been informal, with significant gaps in reporting by the community corporations. • Based on the limited information available, we found 10 instances where employees of the community corporations were paid less than the minimum standard (as established by the *Construction Industry Wages Act*).

CBA Requirement	Finding
• All accounts and records of the community corporations related to the CBAs shall be kept separate and apart.	• 2 of the 5 community corporations tested had used their CBA related bank accounts for non-CBA related activity. • The financial statements for both of these community corporations did not include any segregation between CBA and non-CBA activity. • ESRA was electronically transferring payments related to work outside of the CBA to the bank account of 1 of the community corporations.
• The community corporation shall maintain a separate bank account at the First Nations Bank of Canada. All monies received from ESRA, in relation to the project, and only those expenses related to the project contract shall be paid from such account.	• All 5 community corporations had opened and maintained separate bank accounts for the CBA related work. • 2 of the 5 community corporations tested had both revenues and expenses in their bank account which were non-CBA related. • For 3 of the 5 community corporations, we could not reconcile the total amounts paid by ESRA to the total deposits in the community corporation bank accounts.
• The community corporation shall provide audited financial statements to ESRA not more than 90 days after their year-end.	• Audited financial statements were received by ESRA, but none were received within 90 days after year-end. • While there was evidence of emails following up late submissions, there was not a consistent process. Given that compliance was not met for any of the communities we looked at, ESRA needs to revisit the requirement, and/or their process on enforcing compliance.
• The community corporation shall provide unaudited quarterly financial statements to ESRA not more than 30 days after the end of each fiscal quarter.	• Quarterly financial statements were not being provided to ESRA by any of the 5 community corporations we selected for testing.
• The First Nation shall, until the community corporation has performed all obligations under any related contracts, preserve and maintain the corporate existence of that corporation.	• While all 5 corporations continued to exist as of December 2014, all 5 had been in default with annual filings on more than one occasion since their inception.
• 3rd party contracts will be transparent, public, tendered whenever possible and written in a manner that provides for first preference in employment to persons residing on the east side.	• 3rd party contracts were not made public. • None of the 3rd party contracts entered into by the community corporations were tendered. • 19 of 21 3rd party contracts reviewed were 'written in a manner that provided for first preference in employment to persons residing on the east side'.

As community corporations mature, they can bid on tendered construction work. As noted above, CBAs require that all accounts and records of the community corporation related to CBAs be kept separate. One of the 5 community corporations in our sample had signed a tendered contract with ESRA, but was not separating banking transactions and financial records related to this work from their CBA contract transactions. While contrary to the requirements of the CBA, this also makes it difficult for ESRA to monitor the financial performance of the community corporation's CBA work. As a mentor to the community corporation, ESRA needed to better guide the community corporation on the transition from a corporation only receiving untendered contracts, to one that could bid on and win tendered contracts.

Implementing the recommendations included in **section 3.3** would resolve the issues noted above.

3.2. Gaps in monitoring compliance with pre-construction contracts

For each of the 5 CBAs examined, we selected 2 pre-construction contracts between ESRA and the respective community corporation and assessed whether ESRA ensured select provisions of the pre-construction contracts were being complied with. As detailed below, we found that ESRA was not properly monitoring whether community corporations were complying with the provisions of their pre-construction contracts.

Implementing the recommendations included in **section 3.3** would resolve the issues noted below.

Pre-Construction Contract Requirement	Finding
• The contractor shall obtain and maintain property and auto insurances. (supplemental conditions require professional liability insurance).	• There were no copies of insurance policies on file at ESRA for any of the 10 contracts selected for audit. • There was evidence in the site meeting minutes for 4 of the 10 selected contracts that insurance was verified at the start of the contract.
• The contractor must be registered with WCB, and must provide and maintain workers compensation coverage throughout the term of the contract.	• There was not a consistent process for checking WCB status. Several different divisions were doing checks at different times for different reasons, but there was not a check done at the beginning of each contract. • All 5 community corporations were found to not be in good standing on at least 1 check during our audit period.
• The contractor must provide ESRA with certificates of insurance of their required coverage prior to starting any work. The certificates must provide for a minimum of 30 days prior written notice to ESRA in case of policy cancellation.	• There were no certificates of insurance in the contract files for any of the 10 contracts selected for our audit.
• The contractor is responsible for developing and implementing an environment protection plan. This plan must be submitted to ESRA 7 days prior to commencement of work.	• For 1 of the 10 contracts selected, documentation on file at ESRA supported compliance with this article. • For 7 of the 10 contracts there was some documentation on file at ESRA, but not adequate to support compliance with this article. • For 2 of the 10 contracts the environment file could not be located.
• The contractor shall submit (11 environment related documents specified) for review and acceptance by the Contract Administrator 10 business days in advance of the start of work.	• For 2 of the 10 contracts selected, contract files had all required documentation. • For 6 of the 10 contracts, there was some applicable information missing. • For 2 of the 10 contracts, the environment file could not be located.

Pre-Construction Contract Requirement	Finding
• The contractor must submit annually a letter of good standing from the association with whom the contractor is COR certified within 60 days of the original COR certification date, and annually thereafter.	• 4 of the 5 communities selected had COR certified corporations. • ESRA had copies of COR certificates for all 4 communities, and subsequent letters of good standing for 3 of the 4 communities. • There was no evidence to indicate whether ESRA had obtained these documents on a timely basis.
• The contractor shall submit a current copy of the contractor's safety and health program.	• ESRA did not have copies of the community corporations' safety and health programs.
• The contractor shall submit a safe work plan for activities specified in the contract a minimum of 7 days prior to the commencement of any work on site.	• Safe work plans were on file at ESRA for all 10 contracts. • Only 1 safe work plan had all required elements. • There was no evidence to support that any of these plans were submitted to ESRA on a timely basis.
• The contractor shall appoint a person responsible for safety and health on the worksite.	• The community corporation had appointed a person responsible for safety and health for all of the 10 contracts selected for our audit.
• The contractor shall submit a monthly project site safety summary to the contract administrator by the 15th of the following month. • The contractor shall ensure that all persons on the site attend a project specific safety orientation facilitated by the contractor. • The contractor shall report all incidences including personal injury, property damage, and near misses.	• Monthly summaries were submitted for 9 of the 10 contract files. For 4 of these 9 contracts one or more monthly summaries were missing. For 8 of these 9 contracts at least one of the summaries was submitted after the deadline. • For 7 of 10 contracts, there were copies of signed orientation forms. • For 8 of the 10 contracts we noted completed incident reports.
• The contractor must provide the contract administrator with a detailed work plan at least 5 business days prior to the commencement of any work on site.	• None of the 10 contracts selected for our audit were in complete compliance with this section. • 7 of the 10 contracts had at least a schedule of planned work. • Of the remaining 3 contracts, for 2 there was no work plan or schedule in the file, and for the other there was only a memo outlining the planned work.
• The contractor will monitor the number of local people employed by it on the contract, and will provide monthly employment numbers to ESRA. (This requirement was included in 5 of the 10 contracts we examined).	• For 2 of 5 contracts no reports were obtained. • For 3 of 5 contracts there were gaps in the reporting/monitoring of local employment.

3.3. Contributing factors for gaps in ensuring compliance

We believe that the following factors contributed to ESRA's inability to ensure compliance by First Nation communities and community corporations with the contractual provisions included in CBAs and related agreements:

- responsibility for contract administration not clearly assigned.
- no contract administration policies and procedures.
- no contract administration training.
- no central filing system.

Responsibility for contract administration not clearly assigned

Responsibility for the administration of CBAs and related agreements was not explicitly assigned to one senior official. Responsibility for monitoring compliance was fragmented and there was no overall review to ensure that compliance with CBAs and related agreements was occurring. As shown in **sections 2.4, 3.1 and 3.2**, we found many instances of non-compliance. We highlight 2 below:

- It is a CBA requirement for community corporations to pay wages that meet the minimum standard set out by *The Construction Industry Wages Act.* When we asked staff in the divisions if they were monitoring compliance, we found that while several areas were aware of the requirement, no one was monitoring for compliance until we brought this to their attention. Monitoring of this requirement began in summer 2014.
- Community corporations must be registered with WCB and must maintain coverage throughout the term of the contract. We found various divisions were checking the status at different stages of the contracts. Legal division performed searches at various times, finance performed searches in relation to holdback releases, and in some of the site meeting minutes the project managers indicated that they had verbally confirmed WCB coverage. These checks were uncoordinated and none of the checks were being performed consistently at the beginning of the contracts.

Recommendation 21: We recommend that ESRA assign a senior official overall responsibility for the administration of CBAs and related contracts.

No contract administration policies and procedures

For those parts of the project that are being tendered, ESRA engages an outside engineering firm to perform the duties of contract administrator. In the scope of work section of the request for proposal documents that ESRA used to hire the contract administrator, they required that the contract administrator prepare, in coordination with the design consultant, a project management manual describing the processes to be followed with respect to:

- documentation.
- filing.
- correspondence.
- reporting.
- cost control procedures.

For the pre-construction work contracts awarded to the community corporations, ESRA did not engage outside engineering firms to perform the duties of contract administrator, instead ESRA carried out these duties. Performing the contract administration role was new to ESRA, however, ESRA did not prepare a project management manual describing the processes to be followed when administering CBAs and related contracts.

It is important to have contract administration policies and procedures to ensure that contractors are properly monitored over the term of the agreements. In addition, a well-documented and complete contract administration process and file will help to ensure minimal interruption in the event of staff turnover.

Specific guidance was not in place for:

- Roles and responsibilities – defining who is responsible for various monitoring activities and who has authority to take specific actions.
- Accountability reports and information that should be acquired and the process for ensuring these are obtained.
- Documentation of contract administration decisions.
- Documentation of interaction with contractors (emails, phone calls, meetings etc.).
- Subcontract administration – defining the role of ESRA when work is subcontracted by the community corporation.
- Monitoring of contractor performance – guidance on assessing risk of poor performance and the methods that should be used to monitor performance including (field inspections, project progress vs planned progress, budgetary information, etc.).

We became aware of many instances where ESRA staff members were not clear on their responsibilities. Documented policies would have avoided confusion between divisions at ESRA and made it clear to staff what their responsibilities were.

Recommendation 22: We recommend that ESRA develop and implement contract administration policies and procedures.

No contract administration training

Several ESRA staff members told us that there was no specific training for employees in contract administration. While technical skills related to performing various functions (engineering, safety monitoring, environmental protection, etc.) are important, it is also necessary that ESRA staff have the skills required to effectively monitor contractors.

Recommendation 23: Once contract administration policies and procedures are in place, we recommend that related training workshops be developed and delivered to all pertinent staff.

No central filing system

Managing information is critical to the success of an organization. A well-organized and complete records management system is key to:

- ensuring documentation of business activities is maintained.
- locating documentation quickly.
- improving business processes.
- sharing information throughout the organization.
- fulfilling reporting requirements of stakeholders.
- assessing the performance of an organization.
- mitigating certain contract risks.

ESRA does not maintain a central contract administration file. The filing that does exist is kept in each division. Due to the fragmented nature of the filing system, when performing our audit procedures we often had to go to several different sources to obtain documentation. Many times information was not filed as expected, for example: at times information could not be obtained unless key staff members responsible for the information were available, often there were emails on individuals' personal computers that did not make it to the contract files, and in some cases entire files were missing.

In addition, as noted above, a contract documentation policy is not in place. Individual staff members had to determine which documents they retained. This can lead to significant inconsistencies in the amount and quality of documentation retained.

As discussed in Sections 2.4, 3.1 and 3.2 there were a significant number of contract compliance issues. Proper and complete documentation as well as the ability to easily locate information is especially important in the event of a dispute with a contractor. A well-documented and complete contract file will help to ensure service continuity in the event of staff turnover. As the time line for the project spans 30 years it is important that a central filing system and a documentation retention policy (including paper and electronic information) be created so that history of the project's business activities is preserved.

> **Recommendation 24:** We recommend that ESRA develop and implement a centralized contract administration filing system as well as documentation standards that identify key records that should be created and retained in either electronic or paper format.

Subsequent Event

On May 30, 2016, the government committed to dissolving ESRA and transferring the responsibility for constructing and maintaining roads on the east side of Lake Winnipeg to the Department of Infrastructure.

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