



STRUCTURING YOUR CONTRACTING BUSINESS

Part Three—Working with First Nations

As the modern-day treaty process unfolds in BC, more and more contractors are beginning to form business relationships with First Nations in the forest industry. Engaging Indigenous peoples in business helps to build stronger communities and allows individuals to pursue careers previously not offered. When doing business, the unique history and traditions of the First Nations must be respected along with the relationship with the land, social priorities and internal governance.

“First Nations are ready now, more than ever, to get into business and have spent significant time and money to develop business and governance structures to provide more certainty to their business partners,” says Jameel Sayani, regional leader of Aboriginal Services for MNP LLP. “What they now need is genu-

ine and willing partners to work with them for the long-term mutual benefit of both parties.” There are several different ways that contractors can set up agreements with First Nations, including service provider agreements, joint ventures, and partnerships.

Service Provider Agreements

A service provider agreement is a contract between a contractor and a First Nation to provide a specific service for a set fee.

As a contractor working under a service provider arrangement with a First Nation you have an obligation to provide that service under the terms of the contract. The relationship between contractor and First Nation is a pure business arrangement with little room to grow outside the contract terms.

The typical structure you would use in this case is to have an incorporated company perform the service for the First Nation. This may be your existing company or a newly formed company depending on the risk profile of the work you will be performing for the First Nation.

The risks associated with this type of arrangement are no different than the general business risk you have doing business with a non-First Nations customer.

Joint Ventures

One way to structure doing business with a First Nation is using a joint venture. These are very common structures and can have benefits or drawbacks depending on how they are administered.

A joint venture agreement is a formal document that outlines a business



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arrangement between two parties. Details included are the purpose of the venture, who brings what to the table, how the business will be conducted and

agreements is for the joint venture to attain its own independent legal and accounting advice outside of the partners involved. This helps when it comes to

those looking to share their expertise with a First Nation as well as learn about the traditions, teachings, culture and land from the First Nation.

The opportunity to work with a First Nation could be a very beneficial business venture; however, it can be just as harmful if not approached in the correct manner.

what the profit entitlement is for each party.

In many cases, one of the parties will manage the joint venture and bill back expenses to the joint venture. This runs the risk of a perceived lack of transparency between partners, which can result in disputes between parties.

Joint ventures can sometimes be lost in translation with changes in the elected chief and councils, which becomes problematic for contractors trying to maintain ongoing business relationships. The added cost of time, to invest in a new relationship on a periodic basis, due to changes in elected officials can be taxing on contractors.

One method to avoid potential dis-

transparency because an objective third party is involved.

The typical structure you would use in this case is an incorporated company that is a venture or partner with the First Nation or one of its entities. This may be your existing company or a newly formed company.

Limited Partnerships

Limited partnerships are another way to work with First Nations and can be very beneficial in driving the push for a First Nation to learn, evolve and grow into a business. Partnerships that are well set up from the outset can be beneficial for contractors looking to grow with a First Nation. This is especially true for

Partnerships help contractors to work with First Nations and allow the partnering First Nation to make decisions as a stakeholder of the partnership. Stakeholders can work together to bid on jobs and shape the future of the business together. A partnership also allows the contractor to do business with a board of directors on the First Nation side that is usually not elected and thus subject to the election cycle, which provides more certainty.

This structure would require a contractor and the First Nation to consult their advisors on how this would fit within their existing structures. The unit ownership details would need to be worked out so that all parties agree with the ownership structure. Depending on the end goals of the partnership, ownership may not be set up as a 50/50 split.

This type of structure has its own set of unique risks. Although this structure

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