



Freeport-McMoRan Chino Mines Company  
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**March 7, 2018**

**Certified Mail #7017304000031901435**  
**Return Receipt Requested**

Mr. Holland Shepherd  
Director, Mining and Minerals Division  
New Mexico Energy, Minerals and Natural Resources Department  
1220 S. St. Francis Drive  
Santa Fe, New Mexico 87505

Dear Mr. Shepherd:

**Re: Freeport-McMoRan Chino Mines Company, Continental Mine – Scope of Work, 3<sup>rd</sup> Party Review of Financial Assurance Cost Estimate, Mining Act Permit GR002RE**

Freeport-McMoRan Chino Mines Company (Chino) received the Mining and Minerals Division (MMD) letter, dated November 9, 2017, that included a proposed scope of work for a 3<sup>rd</sup> party review of the Continental Mine financial assurance cost estimate. The MMD letter cites 19.10.12.1201.D NMAC as the authority to require a third-party review of “cost estimates and financial proposals” submitted to MMD which states: “Financial assurance proposals submitted by applicants or permittees may be required to be reviewed by a third party contractor as ordered by the director.” Chino looks forward to working collaboratively with MMD regarding the selection of a 3<sup>rd</sup> Party contractor and in the review of the cost estimate. Chino, however, has substantial concerns that the draft scope of work exceeds the cited regulatory authority in its scope and also does not properly track the appropriate sequence of events contemplated by the regulations.

As you are aware, Freeport-McMoRan and MMD previously have cooperated regarding third-party reviews under 19.10.12.1201.D NMAC. Most recently, MMD engaged a 3<sup>rd</sup> Party, Industrial Economics, to review financial information in support of the guarantees provided by Freeport. For the Tyrone Mine and the Continental Mine, MMD has required a third-party review of appraisals used to establish the market value of real estate used as collateral for a portion of the financial assurance. These reviews have generally been cooperative and successful. They also have relied upon direct communication between the third-party review and the company for the efficient transfer of information needed by the third-party reviewer. Chino believes that this approach is essential for an efficient and timely review. The only difference is that the previous third-party reviews focused on the financial assurance instruments, whereas here the focus is on the cost estimate.

**Sequence and Overall Scope**

19.10.12.1201.A NMAC states: “The permittee of an existing mining operation shall provide a financial assurance proposal in an amount adequate to complete the proposed closeout plan as soon as practicable after the permittee receives notice from the director that the closeout plan is approvable.” Chino has not yet submitted a financial assurance proposal for the Continental Mine because Chino has not been notified by MMD that the closure/closeout plan (CCP) is approvable. The November 19 letter indicates that MMD intends to finalize this scope of work and begin the contracting process to procure services for the 3<sup>rd</sup> party review prior to MMD’s determination that the Closeout Plan is approvable. According to MMD’s rules, the proper sequence of events would be for MMD to obtain NMED’s determination that the CCP meets applicable environmental regulations, followed by MMD then issuing a determination to Chino that the Continental Mine CCP is approvable. Once the agencies take these steps, then Chino will know that the scope of work for

closure/closeout activities in the CCP is set and will not change further. At that point Chino can then update the cost estimate based on that fixed scope of work that has been approved for reclamation and closure of the Continental Mine. Chino would then prepare and submit a financial assurance proposal, including an updated cost estimate. The financial assurance proposal is the document referenced above that “may be required to be reviewed by a 3<sup>rd</sup> Party contractor” according to 19.10.12.1201.D, not the CCP.

Chino agrees that engagement of a third-party review should commence as soon as we can agree on a scope of work, perhaps even before MMD issues notice that the closeout plan is approvable. Chino also recommends that Chino be involved in the contractor selection process in order to assist in the selection of a contractor with experience in estimating large reclamation projects. Chino prefers that a contractor be selected through a bid, or “request for proposal,” process, to facilitate selection of a qualified and experienced contractor who can conduct the third-party review of the cost estimate in a timely, efficient and cost-effective manner.

#### MMD Approach to 3<sup>rd</sup> Party Review

Chino encourages MMD to complete this 3<sup>rd</sup> Party Review process in collaboration with Chino to ensure that the review is conducted with a full understanding of the technical basis of the financial assurance proposal and is based upon standard industry practices. Chino views the 3<sup>rd</sup> party review described in the regulation as limited to confirming that the cost estimate follows the applicable rules and standard industry practice. Chino recommends that the primary scope of work be to compare the financial assurance cost estimate to the methods outlined in the RS Means Estimating Handbook, which is the standard approach that would be taken by a third-party contractor submitting a bid to the state, combined with requirements listed in the MMD regulations.

The scope of work should also require that the third party review contractor review the cost estimate to evaluate that it is a reasonable representation of the costs that could be expected given a competitive bid scenario with good project management applied. The reason for this is, it would be punitive to industry to bond to a low standard/expectation of fiscal responsibility – i.e., artificially high costs. In the highly unlikely event that forfeiture of financial assurance were to occur, the agency should have every incentive and be responsible to ensure that the project was well managed both technically and financially, including competitive bids.

#### Specific Comments on MMD’s Anticipated Scope of Work

Bullets 2 and 4 from the November 9, 2017 letter – Chino agrees with these scope items.

Bullets 1, 7 and 9: Chino understands that the reviewer is to be an independent 3<sup>rd</sup> party. However, these bullets only address “meetings with and direction from MMD.” As discussed above, Chino’s experience with past third-party reviews indicates that direct communication between the third-party review and the company to explain the proposal and to directly respond to the reviewer’s questions is essential for timely and efficient review and to avoid misunderstandings. Given the detailed nature of the CCP and site-specific details and knowledge essential to preparation and review of a cost estimate, Chino expects that direct communication between Chino and the third-party review will be even more important for this review. Consequently, Chino recommends that a representative of Chino be present at each and every interaction and communication between MMD and the Contractor. Chino must participate in these meetings in order to explain and answer questions about the scope of work and cost estimate under review, to ensure that the cost estimate review adheres to the closeout plan determined approvable by the Director, and to ensure that all parties understand any differences in opinion regarding standard industry practices. Chino believes that the omission of Chino at these meetings inserts inefficiencies into the process and leaves the contractor uninformed if there are questions. Chino’s presence in these meetings will also help the Contractor to answer MMD’s questions referenced at the end of Bullet 1. Chino therefore insists that the contractor be afforded

the opportunity to ask questions of Chino and its representative contractors who prepared the financial assurance proposal. Chino, of course, would expect agency participation in those meetings. In summary, Chino should be a participant in all of the activities listed in these bullets.

Chino also will need to communicate with the contractor regarding site-specific information concerning logistics, payment and project management. Chino welcomes MMD to participate in all of those interactions.

Bullet 3: Chino agrees that the Contractor should review the CCP Update, but only to understand the scope of work that the cost estimate was applied to, not to recommend changes to the CCP itself. The regulation does not authorize MMD to require Chino to hire a 3<sup>rd</sup> Party Contractor to review and identify additional scope items for cost estimating. Chino refers MMD to the cited rule and the sequence of events described above. Once MMD issues a determination that the application is approvable, Chino understands that the scope of work for closeout is fixed for the preparation of the financial assurance proposal and that proposal is what is subject to 3<sup>rd</sup> party review at the director's discretion.

Bullet 5: This bullet states that the Contractor will provide a cost estimate to perform an engineering redesign and independent cost estimate. As provided above, that is not authorized by the rule language. What the contractor is authorized to do is review the financial assurance proposal submitted by the applicant after the closeout plan is determined approvable. This would include an understanding of the level of design completed and verification that the appropriate indirect cost multiplier is used to address final design.

Bullet 6: Again, Chino reiterates that the rule states explicitly that the 3<sup>rd</sup> party review is provided to review the financial assurance proposal submitted by the applicant after the closeout plan is determined approvable. This would include verification of whether it meets standard industry practices. The rule does not state that the applicant must pay for a second independent cost estimate directed by MMD.

Bullet 8: Chino will re-issue the cost estimates and supporting documentation as part of the financial assurance proposal after the closeout plan is determined approvable since the Agency requires updated unit rates, etc. At this time, we do not envision that any part of the cost estimate in the 2014 CCP will require review.

Bullet 10: The scope of work for this contract will not include duties as an expert witness. This is clearly beyond the scope of the rule language.

#### Indirect Costs

A focus of our recent technical discussions, and the first part of your letter of November 9, relates to the issue of indirect costs. The draft scope of work included in the November 9 letter, however, does not address the issue of indirect costs in detail.

We previously have discussed MMD's "Guidance for Calculating Capital Indirect Costs for Mine Reclamation and Closure Cost Estimates," and Freeport-McMoRan has provided written comments on those Guidelines, to which MMD has not responded in detail. That said, the Guidance allows a permittee to present a detailed technical justification for indirect costs as part of a cost estimate, which need not use the indirect cost "averages" presented in the Guidance. As indicated in our written comments on that Guidance dated May 31, 2017 and during our technical discussions, the topic of indirect costs is treated in great detail in standard cost estimating resources such as RS Means Construction Cost Data, which is the industry standard for construction cost estimating. Chino will use this information and other information as a basis for a site-specific and detailed proposal for indirect costs. The scope of work may need to be expanded somewhat to provide additional guidance to the third-party review with respect to the review of indirect costs.

Conclusion

Considering the comments above, Chino believes that a comprehensive scope of work should be prepared that clearly defines the scope of work, deliverables, timelines and standards. Chino has a form for this purpose that is useful to ensure that a proper and complete scope of work is prepared. Chino has attached the format for MMD consideration. It represents the minimum standard acceptable to Chino to use for contracting purposes. Chino hereby offers to prepare a scope of work in this format that will address the significant concerns listed above. Once a contractor is selected, Chino's standard contract will be provided and executed for the desired services.

Chino appreciates this opportunity to provide comments on the scope of work.

Please contact me at (575) 912-5773 with any questions.

Sincerely,

  
Thomas L. Shelley, Manager  
Environmental/Sustainable Development

TLS  
20180307-001  
Enclosure

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Project Name: **Project Name**

Project #: **P000-000**

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# Request for Cost Estimating Services

**Reclamation Department**

Project Name  
P000-000

Request for Cost Estimating Services

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## **1.0 Introduction**

- 1.1. Cost Estimating Services Requested
- 1.2. Project Description

## **2.0 Standards and Criteria**

## **3.0 Safety Requirements**

## **4.0 Environmental Requirements and Permits**

## **5.0 Scope of Work**

- 5.1. Task 1 (for example – Review Existing Data)
- 5.2. Task 2

## **6.0 Deliverables**

## **7.0 Other Requirements**

- 7.1. Project Management Roles and Responsibilities
  - 7.1.1. FMI and MMD Project Management
  - 7.1.2. Consultant Project Management
- 7.2. Quality Control
- 7.3. Project Control
- 7.4. Project Status Meetings
- 7.5. Project Schedule
- 7.6. Reviews and Submittals
  - 7.6.1. Deliverables
  - 7.6.4. Electronic copy
- 7.7. Project Related Correspondence
- 7.8. Consultant Personnel
- 7.9. Form of Submitted Documentation
- 7.10. Invoices
- 7.11. Critical Dates

## **8.0 Proposal Requirements**

- 8.1. Project Understanding and Approach
- 8.2. Experience and Qualifications of the Project Team
- 8.3. Key Personnel
- 8.4. Anticipated Drawing List
- 8.5. Bid Form

## **9.0 Project Contacts**

- 9.1. FMI Project Manager and Technical Support Contacts
- 9.2. Document Control Contact

## **Appendices**

- A. Financial [Assurance Proposal](#)
- B. Correspondence

C. Miscellaneous Items



**1.0 Introduction**

1.1. Cost Estimating Services Requested

Insert comment here

1.2. Project Description

Insert comment here

## 2.0 Standards and Criteria

Insert comments to describe the expected standards for the contractor's work. List any standards and criteria that the Contractor must know in order to complete the scope of work.

### 3.0 Safety Requirements

All work will be performed in accordance with the FMI Safety and Health Policies. The safety policies that are most applicable for this phase of the project are as follows:

- Insert policy name
- Insert policy name
- Insert policy name

These policies can be found in Appendix X of this document. All FMI Safety and Health Policies can be made available upon request.

#### **4.0 Scope of Work**

The tasks associated with this scope of work are discussed below

4.1. Task 1 (for example – Review CCP and Cost Estimate)

Insert scope of work for task

4.2. Task 2 (meetings for Q&A, prepare report on findings and recommendations)

Insert scope of work for task

## 5.0 Deliverables

The following is a summary of the deliverables from the scope as provided in Section 5.0. See Section 7.6 for further requirements on these deliverables.

- 5.1. Draft Report on findings and recommendations
- 5.2. Final Report on findings and recommendations

## 6.0 Other Requirements

### 6.1. Project Management Roles and Responsibilities

#### 6.1.1. FMI Project Management

The FMI Project Manager shall:

- Conduct ongoing reviews of the Consultant's progress in performing the work.
- Review and evaluate the Consultant's requests related to the scope of work, schedule, or budget.
- Provide a focal-point contact for all questions, requests, and submittals.
- Coordinate reviews and responses with MMD – co-project manager

#### 6.1.2. Agency Roles and Responsibilities

The MMD co-Project Manager shall:

- Conduct ongoing reviews of the Consultant's progress in performing the work.
- Review and evaluate the Consultant's requests related to the scope of work, schedule, or budget.
- Provide a focal-point contact for all questions, requests, and submittals.

#### 6.1.3. Consultant Project Management

The Consultant shall perform overall project management of the work effort.

Project management shall include:

- Set-up and maintain project filing system
- identify information needs, and provide overall coordination of the work effort
- Prepare project invoices, schedule updates, and status reports
- Prepare and review project correspondence
- Weekly reports (via email) including resolution of key questions and information needs, schedule update, budget and invoicing status and a safety update

### 6.2. Quality Control

The Consultant is responsible for the accuracy and completeness of the report prepared under this contract and shall check all such material accordingly. The Consultant shall have a quality control program in effect during the entire time work is being performed under this contract.

The plans, design, requested calculations, reports and other documents furnished under this Scope of Work shall conform to "standards-of-the-industry" quality. Criteria for acceptance shall be a product of neat appearance, well organized,

accurate and complete, technically and grammatically correct, checked, specifications, and information will be developed in English units.

### 6.3. Project Control

The Consultant shall provide data, in the format specified by FMI, upon request to monitor costs and manpower and to report progress.

The project control system may include features to:

- Determine and highlight critical path work from initial plans as work progresses;
- Identify progress against schedule for each identified work item;
- Forecast completion dates from current progress;
- Highlight rescheduled work in any area which is out of the required sequence;
- Forecast future conflicts in any area;
- Provide estimates of time, manpower, and dollars required at the lowest work element tracked, based upon current expenditures versus schedule; and
- Provide the capability of random inquiry concerning the status of any work element in terms of schedule, manpower, and dollars.

### 6.4. Project Status Meetings

The Consultant shall facilitate FMI staff understanding, input, and decisions regarding project issues. The Consultant shall:

- Arrange, prepare for, and conduct regularly scheduled progress meetings with the FMI and MMD Project Manager and the project team members. Progress meetings shall be twice per month.
- The Consultant shall record "minutes" of the progress meetings for distribution to the team members within seven (7) calendar days of the meeting.

### 6.5. Project Schedule

This draft cost estimate review report shall be ready for review no later than (insert date). The final report shall be provided not later than \*\*\*\* days after receiving comments from MMD and FMI.

### 6.6. Reviews and Submittals

FMI and MMD will complete review of all submittals within (insert duration). For the number of copies in each submittal, FMI and MMD will require:

Deliverables (except for drawings)

- (insert #) hard copy of all deliverables for (insert deliverables). This includes reports, cost estimate, bill of materials, etc.
- (insert #) hard copies for the 100% final deliverables

6.6.1. Electronic copy

Electronic copies for all deliverables must be in both \*.pdf and original format (MS Word, etc.)

6.7. Project Related Correspondence

The Consultant shall furnish written documentation of communications between the Consultant and any party pertaining specifically to this project to FMI and MMD for their records within one week of the communication. The Consultant is responsible for recording and distributing to the participants the minutes of all meetings pertaining to this project within seven (7) calendar days of the meeting.

6.8. Consultant Personnel

The Consultant's work shall be performed and/or directed by the key personnel identified in the technical/fee proposal presentations by the Consultants. Any changes in the indicated key personnel or the Consultant's officer-in-charge of the work, as identified in the Consultant's proposal, shall be subject to review and approval by FMI and MMD.

6.9. Form of Submitted Documentation

The Consultant shall submit documents to FMI using the following:

- All spreadsheets need to be in MS Excel format
- All schedules need to be in MS Project format
- All reports and other documentation needs to be in MS Word format

6.10. Invoices

The Consultant shall prepare and submit invoices on a monthly basis with supporting information. Invoices are to be submitted to FMI Project Manager for review. Once the FMI Project Manager approves invoice, the Consultant shall submit invoice to FMI Accounts Payable.

6.11. Critical Dates

Project milestones are as follows:

- Issue of Request for Consulting/Cost Estimating Services – Insert Date
- Bid Due by – Insert Date
- Bid Award by – Insert Date
- 80% Completion Level to FMI for review – Insert Date
- 100% Completion Level (Engineering Complete) – Insert Date



## **7.0 Proposal Requirements**

The following shall be included in the technical proposals:

### **7.1. Project Understanding and Approach**

Proposals should include a discussion of the important considerations of the project and how team will address the project issues.

### **7.2. Experience and Qualifications of the Project Team**

Experience and qualifications of the project team in providing engineering services on similar projects.

### **7.3. Key Personnel**

Each bidding company shall provide a list of their key project team members. The roles of key personnel shall be specified and described.

### **7.4. Bid Form**

FMI requests bids to be prepared on a time and materials not to exceed without authorization basis. (Need more information on bid format here)

## 8.0 Project Contacts

### 8.1. FMI and MMD Project Managers and Technical Support Contacts

Name  
Title  
Address  
Tel: (575) 000-0000  
E-mail: name@FMI.com

### 8.2. Document Control Contact

Name  
Tel: (575) 000-0000  
E-mail: [name@FMI.com](mailto:name@FMI.com)

FMI Global Sourcing Contact

Name  
Tel: (575) 000-0000  
E-mail: [name@FMI.com](mailto:name@FMI.com)

**Appendices**

- A. Financial Assurance Proposal
- B. Correspondence
- C. Miscellaneous Items

A. Financial Assurance Proposal

B. Correspondence

C. Miscellaneous Items