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HOBBSSTRAUS.COM

MEMORANDUM

June 21, 2013

TO: Contract Support Cost Clients

FROM:  HOBBS, STRAUS, DEAN & WALKER, LLP

RE: ***IHS and DOI Provide Contractor Cap Tables to Appropriations Committees; Tribes Must Contact Senate Appropriations Committee***

On June 19, we received a copy of the attached tables showing the caps the IHS contemplated in its proposal to limit Contract Support Costs (CSC) on a contractor-by-contractor basis. Health and Human Services (HHS) Secretary Kathleen Sebelius transmitted these to the Chairmen and Ranking Members of the Interior Appropriations Subcommittees in both the House and Senate. The tables provide \$476,705,000 for ongoing agreements, and \$500,000 for new and expanded programs. We encourage you to review these tables (attached) and crosscheck them with your CSC numbers to ensure that they are accurate.

Interior Secretary Sally Jewell forwarded similar tables to Congress on June 14. The DOI tables are not yet final, but have “not-to-exceed” estimates for most contractors. The tables provide \$230,000,000 for DOI contract supports, but there is no set aside for new and expanded programs. You can access the tables at the BIA website: <http://www.bia.gov/cs/groups/public/documents/text/idc1-022087.pdf>. We encourage you to review these tables as well, as there is no guarantee the Department’s methodology or calculations are correct.

Like the budget proposal itself, these tables were constructed without consultation with any tribe or tribal contractor. In their transmittal letters, Secretaries Sebelius and Jewell assert the tables are prepared with an “estimate of contract support costs under each contract or compact, relying on information available to the agencies as of April 30, 2013.” We are unclear what information the Administration is using to construct these proposals. HHS, DOI, and the Office of Management and Budget continue to reject tribal demands to withdraw the proposal.

Not mentioned in these letters—but perhaps the most troubling aspect of the contractor-by-contractor caps—is the likelihood that the individual caps will preclude contractors from recovering underpaid CSCs via contract claims starting in FY 2014. For this reason, we have been steadfast in our opposition to this misguided proposal.

We will continue to work with the Administration and Congress on your behalf to make sure this proposal is withdrawn or rejected.

Department of Interior CSC Consultation

DOI will hold a consultation on its FY 2014 CSC proposal on Tuesday, June 25, from 1:30 to 4 p.m. in the Reno Convention Center (next to NCAI's midyear meeting). We will attend the consultation, and urge you to do the same. It is imperative that you relay opposition to these proposals and the fact they will cut off future contract claims. Further, the agency plans to use these consultations as a starting point for their FY 2015 budget. We have not seen an agenda for this meeting—or who will attend from DOI—but will update you on that as soon as possible following the meeting. A similar consultation from the IHS will probably occur this summer, but there are no details yet.

Status of the FY2014 Proposal in Congress

The budget proposal is before the Appropriations subcommittees in the House and Senate. We understand that both the Republicans and Democrats on the House Interior Subcommittee are expected to reject the CSC proposal, but it is unclear what they will offer in its place. The story is less clear in the Senate, where Interior Appropriations subcommittee Chairman Reed (D-RI) has not indicated where he stands. It would be helpful for you to contact Interior subcommittee members—especially Chairman Reed, to relay complete opposition to the proposal. If you decide to contact the subcommittee please do so over the next two weeks, or before markup occurs. In contacting Chairman Reed, tribes should make clear that they expect there to be both amendments and calls for votes in the subcommittee's markup if the proposal is not scrapped. Tribes should also contact Chairwoman Cantwell of the Senate Committee on Indian Affairs to ensure she relays the same message to Senator Reed. Please let us know if we can assist you with these contacts.

IHS Settlement Process

Dr. Roubideaux has pledged to continue working on settlement of CSC claims, and has proposed an “accelerated process” where the IHS will review its accounts and make a one-time, non-negotiable settlement offer. If a tribe rejects this offer, it can use the “traditional process” of a negotiated settlement. As we expected, the IHS is not moving very quickly with its “accelerated process.” We know of one tribe who has asked for the offer and was told it would be ready sometime in January.

If you have any questions about this memorandum, please do not hesitate to contact Joe Webster (jwebster@hobbsstrauss.com or 202-822-8282), Geoff Strommer, (gstrommer@hobbsstrauss.com or 503-242-1745), Steve Osborne (sosborne@hobbsstrauss.com or 503-242-1745) or Adam Bailey (abailey@hobbsstrauss.com or 916-442-9444).



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

June 14, 2013

The Honorable Mike Simpson
Chairman
Subcommittee on Interior,
Environment, and Related Agencies
Committee on Appropriations
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am writing to transmit the "Indian Health Service Contract Support Costs" table consistent with the fiscal year (FY) 2014 President's Budget request for the Indian Health Service (IHS).

As enacted in 1975, the Indian Self-Determination and Education Assistance Act (ISDEAA), P.L. 93-638, gave Indian tribes the authority to contract with the federal government to operate programs serving their tribal members and other eligible persons and to receive not less than the amount of program funding that the Secretary would have otherwise provided for the direct operation of the program. The Act was amended in 1988 to identify Contract Support Costs (CSC) and provide that CSC be added to the program amount. CSC are defined as reasonable costs for activities that tribes and tribal organizations must carry out but that the Secretary either did not carry out in her direct operation of the program or provided from resources other than those under contract.

The demand for CSC funding has increased because of the new and expanded programs, services, functions, or activities assumed by tribes and tribal organizations under both Titles I and V of the ISDEAA. Tribes and tribal organizations use this funding to manage their ISDEAA agreements and the corresponding services in their communities.

In its June 18, 2012, ruling in *Salazar v. Ramah Navajo Chapter*, the United States Supreme Court held that "not to exceed" language in past appropriations was not sufficient to limit CSC. The Supreme Court identified legislative remedies, ranging from amending the authorizing statute, to changing payments for CSC, to enacting line-item appropriations for each contract, to appropriating full funding for CSC. To balance the priorities of all tribes with the available appropriations, and in accordance with the Supreme Court's decision, the Administration proposes new appropriations language for both IHS and the Bureau of Indian Affairs in FY 2014 to provide a "not to exceed" amount for CSC funding for each ISDEAA contract. The enclosed "Indian Health Service Contract Support Costs" table reflects the FY 2014 request for CSC and is required by the proposed new appropriations language included in the FY 2014 President's

The Honorable Mike Simpson

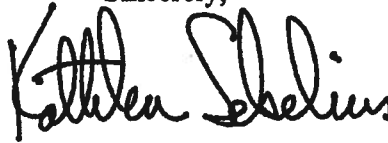
June 14, 2013

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Budget. The table was prepared based on the FY 2014 budget request for new contracts and an estimate of contract support costs under each contract and compact, relying on information available to IHS as of April 30, 2013. As the Appropriations Committees move through the FY 2014 appropriations process, the Department can provide technical assistance on the IHS CSC table.

The Administration looks forward to working with tribes and Congress to develop a balanced, long-term solution. I appreciate the Committee's continued interest in and support of the activities of HHS.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Sebelius". The signature is fluid and cursive, with the first name "Kathleen" and last name "Sebelius" clearly distinguishable.

Kathleen Sebelius

Enclosure



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

June 14, 2013

The Honorable Lisa Murkowski
Ranking Member
Subcommittee on Interior,
Environment, and Related Agencies
Committee on Appropriations
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Senator Murkowski:

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The Honorable Lisa Murkowski

June 14, 2013

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Enclosure



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

June 14, 2013

The Honorable Jack Reed
Chairman
Subcommittee on Interior,
Environment, and Related Agencies
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

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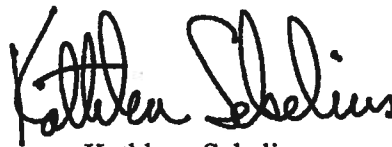
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The Honorable Jack Reed
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THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

June 14, 2013

The Honorable Jim Moran
Ranking Member
Subcommittee on Interior,
Environment, and Related Agencies
Committee on Appropriations
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

Dear Representative Moran:

I am writing to transmit the "Indian Health Service Contract Support Costs" table consistent with the fiscal year (FY) 2014 President's Budget request for the Indian Health Service (IHS).

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June 14, 2013

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Kathleen Sebelius

Enclosure

INDIAN HEALTH SERVICE CONTRACT SUPPORT COSTS
Table for FY 2014 President's Budget
April 30, 2013

IHS Area	Title I or V	Awardee	Not to Exceed
Aberdeen	I	Cheyenne River Sioux Tribe	\$911,216
Aberdeen	I	Cheyenne River Sioux Tribe - Security	\$25,408
Aberdeen	I	Flandreau Santee Sioux Tribe	\$875,680
Aberdeen	I	Lower Brule Sioux Tribe	\$258,998
Aberdeen	I	Oglala Sioux Tribe	\$2,318,084
Aberdeen	I	Oglala Sioux Tribe - Rapid City PFSAs	\$544,433
Aberdeen	I	Oglala Sioux Tribe Department of Public Safety	\$285,901
Aberdeen	I	Omaha Tribe of Nebraska	\$1,734,115
Aberdeen	I	Pierre Indian Learning Center	\$8,497
Aberdeen	I	Ponca Tribe of Nebraska	\$1,116,992
Aberdeen	I	Rosebud Sioux Tribe	\$838,819
Aberdeen	I	Rosebud Sioux Tribe - Solid Waste	\$35,074
Aberdeen	I	Sac & Fox Tribe of the Mississippi in Iowa	\$804,353
Aberdeen	I	Santee Sioux Nation	\$1,463,450
Aberdeen	I	Sisseton-Wahpeton Oyate of Lake Traverse Reservation	\$563,455
Aberdeen	I	Spirit Lake Tribe	\$729,284
Aberdeen	I	Standing Rock Sioux Tribe	\$328,034
Aberdeen	I	Standing Rock Sioux Tribe - Ambulance/OEHE	\$156,953
Aberdeen	I	Standing Rock Sioux Tribe - Wellness	\$18,462
Aberdeen	I	Three Affiliated Tribes	\$1,569,250
Aberdeen	I	Three Affiliated Tribes - Ft. Berthold Service Unit	\$934,425
Aberdeen	I	Trenton Indian Service Area	\$794,946
Aberdeen	I	Turtle Mountain Band of Chippewa Indians	\$510,377
Aberdeen	I	United Tribes Technical College	\$204,380
Aberdeen	I	Winnebago Tribe of Nebraska	\$484,656
Aberdeen	I	Yankton Sioux Tribe	\$196,852
Albuquerque	I	Alamo Navajo School Board, Inc	\$1,540,866
Albuquerque	I	Albuquerque Area Indian Health Board	\$394,888
Albuquerque	I	Eight Northern Indian Pueblo Council	\$187,052
Albuquerque	I	Five Sandoval Indian Pueblos, Inc. - ASA	\$70,985
Albuquerque	I	Five Sandoval Indian Pueblos, Inc. - CHR Program	\$60,514
Albuquerque	I	Jicarilla Apache Nation - Behavioral Health Program	\$214,427
Albuquerque	I	Jicarilla Apache Nation - EMS	\$40,047
Albuquerque	I	Jicarilla Apache Nation - Health and Fitness	\$96,082
Albuquerque	I	Jicarilla Apache Nation - Health Department	\$56,097
Albuquerque	I	Jicarilla Apache Nation - Public Health Nursing	\$17,612
Albuquerque	I	Mescalero Apache Tribe - CHR Program	\$108,651
Albuquerque	I	Mescalero Apache Tribe - Health Education	\$23,422
Albuquerque	I	Mescalero Apache Tribe - Patient Benefits Coordination	\$27,923
Albuquerque	I	Mescalero Apache Tribe - ASA	\$201,765
Albuquerque	I	Ohkay Owingeh - CHR Program	\$61,462
Albuquerque	I	Pueblo of Acoma - CHR Program	\$81,970
Albuquerque	I	Pueblo of Acoma - Mental Health/ASA	\$130,185
Albuquerque	I	Pueblo of Canoncito	\$365,367

INDIAN HEALTH SERVICE CONTRACT SUPPORT COSTS

Table for FY 2014 President's Budget

April 30, 2013

IHS Area	Title I or V	Awardee	Not to Exceed
Albuquerque	I	Pueblo of Cochiti	\$128,281
Albuquerque	I	Pueblo of Isleta	\$1,340,471
Albuquerque	I	Pueblo of Laguna - Community Health	\$478,581
Albuquerque	I	Pueblo of Laguna - EMS	\$11,523
Albuquerque	I	Pueblo of Nambe - CHR Program	\$48,515
Albuquerque	I	Pueblo of Nambe - ASA	\$62,596
Albuquerque	I	Pueblo of Picuris - CHR Program	\$41,378
Albuquerque	I	Pueblo of Pojoaque - ASA	\$45,719
Albuquerque	I	Pueblo of San Felipe - Community Programs	\$414,365
Albuquerque	I	Pueblo of San Ildefonso - CHR Program	\$59,921
Albuquerque	I	Pueblo of Santa Clara - CHR Program	\$46,381
Albuquerque	I	Pueblo of Santa Clara - ASA	\$74,352
Albuquerque	I	Pueblo of Santo Domingo (Kewa Corporation) - CHR/EMS/HE/ASA	\$174,831
Albuquerque	I	Kewa - KPHC	\$355,856
Albuquerque	I	Pueblo of Tesuque	\$34,297
Albuquerque	I	Pueblo of Zuni - EMS	\$47,277
Albuquerque	I	Pueblo of Zuni - ASA	\$509,925
Albuquerque	I	Ramah Navajo School Board, Inc.	\$1,069,736
Albuquerque	I	Santa Fe Indian School	\$24,582
Albuquerque	I	Southern Ute Community Action Prog	\$173,287
Albuquerque	I	Southern Ute Indian Tribe - EMS	\$4,244
Albuquerque	I	Southern Ute Indian Tribe - CHR Program	\$94,883
Albuquerque	I	Southern Ute Indian Tribe - Health Center	\$1,248,888
Albuquerque	I	Ute Mountain Ute Tribe - CHR Program	\$96,001
Albuquerque	I	Ute Mountain Ute Tribe - EMS	\$126,986
Albuquerque	I	Ute Mountain Ute Tribe - Health Ed/PHN	\$102,785
Albuquerque	I	Ute Mountain Ute Tribe - ASA	\$220,225
Albuquerque	I	Ysleta Del Sur Pueblo	\$448,160
Albuquerque	V	Pueblo of Jemez	\$2,049,237
Albuquerque	V	Pueblo of Sandia	\$270,450
Albuquerque	V	Taos Pueblo	\$321,723
Alaska	I	Akiachak Native Community	\$104,284
Alaska	I	Chitina Traditional Village Council	\$83,046
Alaska	I	Cook Inlet Tribal Council, Inc.	\$432,330
Alaska	I	Fairbanks Native Association	\$248,254
Alaska	I	Karluk IRA Tribal Council	\$79,331
Alaska	I	Native Village of Diomedea	\$86,374
Alaska	I	Native Village of Kwinhagak	\$154,003
Alaska	I	Native Village of Tyonek	\$101,964
Alaska	I	Ninilchik Traditional Council	\$351,601
Alaska	I	St. George Traditional Council	\$40,012
Alaska	I	Tanana Chiefs Conference Title I	\$134,182
Alaska	I	Tanana Tribal Council	\$321,179
Alaska	I	Ukpeagvik Inupiat Corporation	\$615,168

INDIAN HEALTH SERVICE CONTRACT SUPPORT COSTS

Table for FY 2014 President's Budget

April 30, 2013

IHS Area	Title I or V	Awardee	Not to Exceed
Alaska	I	Valdez Native Tribe	\$111,027
Alaska	V	Alaska Native Tribal Health Con.	\$22,594,885
Alaska	V	Aleutian Pribilof Islands Assoc.	\$1,638,674
Alaska	V	Arctic Slope Native Association	\$4,156,661
Alaska	V	Bristol Bay Area Health Corp.	\$9,931,098
Alaska	V	Chickaloon Village Council	\$17,541
Alaska	V	Chugachmult	\$1,767,813
Alaska	V	Copper River Native Association	\$786,813
Alaska	V	Council of Athabascan Tribal Gov	\$1,057,133
Alaska	V	Eastern Aleutian Tribes, Inc.	\$1,465,283
Alaska	V	Kenaitze Indian Tribe, I.R.A.	\$587,335
Alaska	V	Ketchikan Indian Community	\$3,714,792
Alaska	V	Knik Tribal Council	\$20,248
Alaska	V	Kodiak Area Native Association	\$2,062,728
Alaska	V	Maniilaq Association	\$14,426,136
Alaska	V	Metlakatla Indian Community	\$1,314,816
Alaska	V	Mount Sanford Tribal Consortium	\$270,614
Alaska	V	Native Village of Eklutna	\$24,947
Alaska	V	Native Village of Eyak	\$240,577
Alaska	V	Norton Sound Health Corporation	\$6,732,027
Alaska	V	Seldovia Village Tribe	\$559,052
Alaska	V	Southcentral Foundation	\$25,993,966
Alaska	V	SouthEast AK Regional Hlth Con.	\$11,983,916
Alaska	V	Tanana Chiefs Conference	\$9,391,998
Alaska	V	Yakutat Tlingit Tribe	\$108,308
Alaska	V	Yukon-Kuskokwim Health Corp.	\$23,010,502
Bemidji	I	Bad River Band of the Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin	\$546,729
Bemidji	I	Bay Mills Indian Community, Michigan	\$279,954
Bemidji	I	Grand Portage Band	\$197,547
Bemidji	I	Hannahville Indian Community, Michigan	\$391,152
Bemidji	I	Ho-Chunk Nation of Wisconsin	\$907,769
Bemidji	I	Wisconsin	\$746,124
Bemidji	I	Lac Du Flambeau Band of Lake Superior Chippewa Indians of Lac du Flambeau Reservation of Wisconsin	\$1,988,136
Bemidji	I	Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan	\$469,157
Bemidji	I	Leech Lake Band	\$941,821
Bemidji	I	Little Traverse Bay Band of Odawa Indians, Michigan	\$725,310
Bemidji	I	Lower Sioux Indian Community in the State of Michigan	\$334,956
Bemidji	I	Match-e-be-nash-she-wish Band of Pottawatomis Indians of Michigan	\$129,540
Bemidji	I	Menominee Indian Tribe of Wisconsin - Comp	\$2,618,681
Bemidji	I	Menominee Indian Tribe of Wisconsin - Alcohol	\$169,625
Bemidji	I	Nottawaseppi Huron Band of the Potawatomi, Michigan	\$355,130
Bemidji	I	Pokagon Band of Potawatomi Indians, Michigan and Indiana	\$1,551,466

INDIAN HEALTH SERVICE CONTRACT SUPPORT COSTS
Table for FY 2014 President's Budget
April 30, 2013

IHS Area	Title I or V	Awardee	Not to Exceed
Bemidji	I	Prairie Island Indian Community in the State of Minnesota	\$274,009
Bemidji	I	Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin	\$707,830
Bemidji	I	Red Lake Band of Chippewa Indians, Minnesota - Comp	\$2,123,887
Bemidji	I	Red Lake Band of Chippewa Indians, Minnesota - Alcohol	\$226,867
Bemidji	I	Saginaw Chippewa Indian Tribe of Michigan	\$725,244
Bemidji	I	Sokaogon Chippewa Community, Wisconsin	\$135,607
Bemidji	I	St. Croix Chippewa Indians of Wisconsin	\$427,617
Bemidji	I	Upper Sioux Community, Minnesota	\$101,539
Bemidji	I	White Earth Band	\$808,845
Bemidji	V	Bois Forte Band (Nett Lake)	\$901,502
Bemidji	V	Fond Du Lac Band	\$1,798,113
Bemidji	V	Forest County Potawatomi Community, Wisconsin	\$957,189
Bemidji	V	Grand Traverse Band of Ottawa and Chippewa Indians, Michigan	\$647,522
Bemidji	V	Keweenaw Bay Indian Community, Michigan	\$1,096,324
Bemidji	V	Little River Band of Ottawa Indians, Michigan	\$549,151
Bemidji	V	Mille Lacs Band	\$1,307,814
Bemidji	V	Oneida Tribe of Indians of Wisconsin	\$1,058,789
Bemidji	V	Sault Ste. Marie Tribe of Chippewa Indians of Michigan	\$1,762,451
Bemidji	V	Shakopee Mdewakanton Sioux Community of Minnesota	\$296,025
Bemidji	V	Stockbridge-Munsee Community, Wisconsin	\$868,858
Billings	I	Blackfeet Tribe	\$645,313
Billings	I	Crow Tribe	\$599,022
Billings	I	Eastern Shoshone Business Council	\$427,879
Billings	I	Fort Belknap Community Council	\$899,135
Billings	I	Fort Peck Tribes Tribal Health Project	\$530,258
Billings	I	Northern Arapaho Business Council	\$399,008
Billings	I	Northern Arapaho Environmental Health	\$40,917
Billings	I	Northern Cheyenne Board of Health	\$1,943,231
Billings	V	Chippewa Cree Tribe of Rocky Boy's	\$3,134,296
Billings	V	Confederated Salish & Kootenai Tribes	\$2,756,677
California	I	Cabazon	\$48,385
California	I	Central Valley	\$2,897,448
California	I	Chapa De	\$1,664,851
California	I	Chapa De - Cortina	\$11,621
California	I	Cold Springs	\$57,990
California	I	Colusa	\$21,700
California	I	Coyote Valley	\$82,123
California	I	CRIHB Consolidated	\$10,191,173
California	I	Greenville	\$280,864
California	I	Guidiville	\$167,898
California	I	Hopland	\$37,959
California	I	Lake County Tribal Health	\$2,109,468
California	I	Paskenta	\$542
California	I	Pinoleville	\$15,046

INDIAN HEALTH SERVICE CONTRACT SUPPORT COSTS
Table for FY 2014 President's Budget
April 30, 2013

IHS Area	Title I or V	Awardee	Not to Exceed
California	I	Pit Rver Health Services	\$602,338
California	I	Quartz Valley	\$103,850
California	I	Round Valley	\$497,460
California	I	Santa Ynez	\$421,879
California	I	Scotts Valley	\$63,351
California	I	Sherwood Valley	\$53,442
California	I	Shingle Springs	\$329,281
California	I	Sierra Tribal Consortium	\$400,994
California	I	Southern Indian Health	\$2,239,275
California	I	Strong Family Health Center	\$398,740
California	I	Sycuan	\$68,944
California	I	Table Mountain	\$14,533
California	I	Toiyabe	\$1,046,656
California	I	Tule River Indain Health	\$1,236,990
California	I	TuleRiver Tribal Council	\$105,503
California	I	Tuolumne Band of Me Wuk	\$208,755
California	V	Consolidated Tribal Health	\$1,804,906
California	V	Feather River	\$1,117,654
California	V	Hoopa	\$1,589,510
California	V	Indian Health Council	\$3,354,999
California	V	Karuk	\$1,173,295
California	V	Northern Valley	\$991,223
California	V	Redding	\$3,327,092
California	V	Riverside- San Bernardino County	\$7,481,744
California	V	Susanville Indian Rancheria	\$753,957
Nashville	I	Alabama-Coushatta	\$490,682
Nashville	I	Coushatta LA	\$108,037
Nashville	I	Houton Band of Maliseet	\$385,800
Nashville	I	Jena Band of Choctaw	\$95,462
Nashville	I	Miccosukee	\$530,884
Nashville	I	Narragansett	\$508,521
Nashville	I	Oneida	\$421,348
Nashville	I	Passamaquoddy Indian Township	\$657,254
Nashville	I	Passamaquoddy Pleasant Point	\$765,736
Nashville	I	Peqout	\$617,405
Nashville	I	Seneca	\$1,593,165
Nashville	I	Tunica-Biloxi	\$92,975
Nashville	I	USET	\$176,591
Nashville	V	Cherokee	\$5,195,229
Nashville	V	Chitimacha	\$224,487
Nashville	V	Choctaw	\$2,946,488
Nashville	V	Mohegan	\$473,171
Nashville	V	Penobscot	\$826,755
Nashville	V	Poarch Creek	\$714,262

INDIAN HEALTH SERVICE CONTRACT SUPPORT COSTS

Table for FY 2014 President's Budget

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IHS Area	Title I or V	Awardee	Not to Exceed
Nashville	V	Seminole	\$1,490,301
Nashville	V	St. Regis	\$786,938
Nashville	V	Wampanoag	\$400,744
Navajo	I	Fort Defiance Indian Hospital Board Inc.	\$9,918,301
Navajo	I	Navajo Nation - Health Management Services	\$6,481,317
Navajo	I	Navajo Nation - Emergency Medical Services	\$1,531,398
Navajo	I	Navajo Nation - Navajo Treatment Center	\$156,711
Navajo	I	Sage Memorial Hospital Inc.	\$6,600,265
Navajo	V	Tuba City Regional Health Care Corp.	\$11,967,286
Navajo	V	Utah Navajo Health System Inc.	\$3,129,110
Navajo	V	Winslow Indian Health Care Center Inc.	\$5,781,867
Oklahoma City	I	Apache Tribe - CHR/EMS	\$40,104
Oklahoma City	I	Caddo Tribe - CHR/EMS	\$25,086
Oklahoma City	I	Caddo Tribe - ASA	\$10,706
Oklahoma City	I	Cheyenne & Arapaho - Health Ed	\$34,235
Oklahoma City	I	Cheyenne & Arapaho - CHR	\$198,591
Oklahoma City	I	Cheyenne & Arapaho - EMS	\$102,259
Oklahoma City	I	Cheyenne & Arapaho - ASA	\$149,065
Oklahoma City	I	Comanche Indian Tribe - CHR/EMS	\$70,593
Oklahoma City	I	Comanche Indian Tribe - ASA	\$78,853
Oklahoma City	I	Consortium Against Substance Abuse CASA	\$41,190
Oklahoma City	I	Delaware Nation (Western OK) - CHR/EMS	\$12,207
Oklahoma City	I	Eastern Shawnee	\$24,131
Oklahoma City	I	Fort Sill Apache - CHR/EMS	\$13,317
Oklahoma City	I	Inter-Tribal Council, Inc. - ASA	\$34,376
Oklahoma City	I	Iowa Tribe of Kansas and Nebraska - CHR/EMS	\$9,480
Oklahoma City	I	Iowa Tribe of Oklahoma - Primary Care (Clinic)	\$193,869
Oklahoma City	I	Iowa Tribe of Oklahoma - CHR/EMS/ASA	\$27,736
Oklahoma City	I	Kickapoo Traditional Tribe of Texas - ASA	\$5,855
Oklahoma City	I	Kickapoo Traditional Tribe of Texas - CHR/EMS	\$5,278
Oklahoma City	I	Kickapoo Traditional Tribe of Texas - Health Service (Clinic)	\$283,268
Oklahoma City	I	Kickapoo Tribe of Kansas - ASA	\$3,133
Oklahoma City	I	Kickapoo Tribe of Kansas - Health Services (Clinic)	\$239,746
Oklahoma City	I	Kiowa Tribe - CHR/EMS	\$33,514
Oklahoma City	I	Kiowa Tribe - ASA	\$38,617
Oklahoma City	I	Lawton Intertribal Health Advisory Board - CHR	\$15,723
Oklahoma City	I	Miami Tribe - ASA	\$7,495
Oklahoma City	I	Miami Tribe - EMS/CHR	\$7,423
Oklahoma City	I	Osage Nation - ASA	\$110,116
Oklahoma City	I	Osage Nation - PHN/SA	\$37,925
Oklahoma City	I	Osage Nation - CHR/EMS	\$58,278
Oklahoma City	I	Otoe-Missouri	\$162,045
Oklahoma City	I	Ottawa	\$11,808
Oklahoma City	I	Pawnee Tribe - CHR/EMS	\$46,942

INDIAN HEALTH SERVICE CONTRACT SUPPORT COSTS
Table for FY 2014 President's Budget
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IHS Area	Title I or V	Awardee	Not to Exceed
Oklahoma City	I	Pawnee Tribe - Health Ed	\$6,668
Oklahoma City	I	Pawnee Tribe - H&C (Housekeeping)	\$71,221
Oklahoma City	I	Pawnee Tribe - ASA	\$50,108
Oklahoma City	I	Peoria Tribe - CHR/EMS	\$17,437
Oklahoma City	I	Ponca Tribe - ASA	\$70,916
Oklahoma City	I	Quapaw Tribe - ASA	\$77,747
Oklahoma City	I	Quapaw Tribe - CHR/EMS	\$28,227
Oklahoma City	I	Sac & Fox of Missouri - CHR/EMS/SA	\$20,255
Oklahoma City	I	Seminole Nation - CHR	\$73,436
Oklahoma City	I	Seminole Nation - ASA	\$72,982
Oklahoma City	I	Seneca Cayuga - CHR/EMS/SA	\$59,769
Oklahoma City	I	Tonkawa - CHR/EMS	\$16,950
Oklahoma City	I	Tonkawa - ASA	\$20,187
Oklahoma City	I	Unlted Keetowah	\$5,503
Oklahoma City	I	Wichita & Affiliated Tribes	\$95,106
Oklahoma City	V	Absentee Shawnee Tribe	\$3,977,241
Oklahoma City	V	Cherokee Nation of Oklahoma	\$16,939,129
Oklahoma City	V	Chickasaw Nation	\$20,696,766
Oklahoma City	V	Choctaw Nation	\$15,855,903
Oklahoma City	V	Citizen Potawatomi Nation	\$4,900,617
Oklahoma City	V	Kaw Nation	\$484,269
Oklahoma City	V	Kickapoo Tribe of Oklahoma	\$1,309,596
Oklahoma City	V	Modoc Tribe	\$18,700
Oklahoma City	V	Muscogee "Creek" Nation	\$4,595,403
Oklahoma City	V	Northeastern Tribal Health System	\$970,271
Oklahoma City	V	Ponca Tribe	\$537,744
Oklahoma City	V	Prairie Band of Potawatomi Indians	\$250,086
Oklahoma City	V	Sac & Fox Nation of Oklahoma	\$643,548
Oklahoma City	V	Wyandotte Tribe	\$386,379
Phoenix	I	Ak-Chin	\$12,495
Phoenix	I	Battle Mountain	\$165,107
Phoenix	I	Chemehuevi	\$20,900
Phoenix	I	Cocopah	\$120,393
Phoenix	I	Colorado River Indian Tribe 02G	\$114,847
Phoenix	I	Colorado River Indian Tribe 07G	\$97,427
Phoenix	I	Colorado River Indian Tribe 08G	\$67,718
Phoenix	I	Elko Band Council	\$36,011
Phoenix	I	Fallon Paiute Shoshone Tribe	\$327,082
Phoenix	I	Ft. McDowell Yavapai Nation	\$260,118
Phoenix	I	Ft. Mojave Tribal Council 02G	\$700,104
Phoenix	I	Goshute Business Council	\$68,285
Phoenix	I	Havasupai Tribal Council	\$28,832
Phoenix	I	The Hopi Tribe 38G	\$182,130
Phoenix	I	The Hopi Tribe 39G	\$327,903

INDIAN HEALTH SERVICE CONTRACT SUPPORT COSTS
Table for FY 2014 President's Budget
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IHS Area	Title I or V	Awardee	Not to Exceed
Phoenix	I	Hualapai Tribal Council 01G	\$125,449
Phoenix	I	Hualapai Tribal Council 42G	\$123,262
Phoenix	I	Kaibab-Paiute Indian Tribe	\$109,089
Phoenix	I	Lovelock	\$51,528
Phoenix	I	Paiute Indian Tribe of Utah	\$494,141
Phoenix	I	Pascua Yaqui	\$396,519
Phoenix	I	Pyramid Lake Paiute Tribe	\$736,962
Phoenix	I	Quechan Tribal Council 06G	\$95,606
Phoenix	I	Quechan Tribal Council 12G	\$126,579
Phoenix	I	Reno-Sparks Indian Colony	\$796,512
Phoenix	I	Salt River Maricopa Indian Community	\$360,555
Phoenix	I	San Carlos Apache Tribe	\$566,547
Phoenix	I	San Lucy	\$100,334
Phoenix	I	South Fork (New in 2006)	\$36,116
Phoenix	I	Tonto Apache Indian Tribe	\$2,153
Phoenix	I	Ute Indian Tribe 01G	\$79,315
Phoenix	I	Ute Indian Tribe 02G	\$99,560
Phoenix	I	Ute Indian Tribe 03G	\$23,158
Phoenix	I	Walker River Paiute Tribe	\$342,262
Phoenix	I	Wells Band Council of Western Shoshone	\$81,506
Phoenix	I	White Mountain Apache Tribe 55G	\$154,968
Phoenix	I	White Mountain Apache Tribe 56G	\$136,163
Phoenix	I	White Mountain Apache Tribe 58G	\$131,647
Phoenix	I	White Mountain Apache Tribe 59G	\$77,021
Phoenix	I	White Mountain Apache Tribe 09G	\$22,237
Phoenix	I	White Mountain Apache Tribe-Behavioral Hlth Svs Inc.	\$184,065
Phoenix	I	Yavapai Apache Tribe	\$135,746
Phoenix	I	Yavapai Prescott Indian Tribe	\$96,651
Phoenix	I	Yomba Shoshone Tribe	\$64,667
Phoenix	V	Duck Valley Shoshone Paiute Tribe	\$2,601,726
Phoenix	V	Duck Water Shoshone Tribe	\$823,227
Phoenix	V	Ely	\$355,753
Phoenix	V	Gila River Healthcare Corp.	\$7,362,801
Phoenix	V	Gila River Indian Community	\$1,021,083
Phoenix	V	Las Vegas Paiute Tribe	\$494,657
Phoenix	V	Washoe Tribe of Nevada & California	\$789,516
Phoenix	V	Yerington Paiute Tribe	\$417,222
Portland	I	Burns-Paiute	\$296,771
Portland	I	Chehalis	\$431,384
Portland	I	Colville	\$1,012,921
Portland	I	Cow Creek	\$660,527
Portland	I	Healing Lodge of the Seven Nations	\$723,294
Portland	I	Hoh	\$88,916
Portland	I	Klamath Tribes	\$2,464,983

INDIAN HEALTH SERVICE CONTRACT SUPPORT COSTS

Table for FY 2014 President's Budget

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IHS Area	Title I or V	Awardee	Not to Exceed
Portland	I	Klamath Tribes Regional Youth Drug & Alcohol Residential Program	\$297,911
Portland	I	Nooksack	\$789,259
Portland	I	NW Band of the Shoshone Nation	\$152,329
Portland	I	NW Portland Area Indian Health Board	\$312,487
Portland	I	NW Washington SUIHB	\$62,132
Portland	I	Puyallup	\$2,215,433
Portland	I	Quileute	\$350,221
Portland	I	Samish	\$358,706
Portland	I	Sauk-Suiattle	\$140,930
Portland	I	Shoshone-Bannock	\$814,530
Portland	I	Snoqualmie	\$275,062
Portland	I	Spokane	\$144,174
Portland	I	Stillaguamish	\$93,559
Portland	I	Upper Skagit	\$436,430
Portland	I	Warm Springs	\$2,273,737
Portland	I	Yakama	\$1,930,371
Portland	V	Coeur d'Alene	\$3,990,572
Portland	V	Coos	\$801,628
Portland	V	Coquille	\$1,132,995
Portland	V	Cowlitz	\$505,120
Portland	V	Grand Ronde	\$3,120,427
Portland	V	Jamestown S'Klallam	\$382,531
Portland	V	Kalispel	\$102,171
Portland	V	Kootenai	\$151,626
Portland	V	Lower Elwha Klallam	\$424,281
Portland	V	Lummi	\$2,245,082
Portland	V	Makah	\$1,109,149
Portland	V	Muckleshoot	\$177,040
Portland	V	Nez Perce	\$1,737,313
Portland	V	Nisqually	\$720,294
Portland	V	Port Gamble S'Klallam	\$823,602
Portland	V	Quinault	\$1,902,390
Portland	V	Shoalwater Bay	\$1,035,501
Portland	V	Siletz	\$2,603,995
Portland	V	Skokomish	\$638,877
Portland	V	Squaxin Island	\$1,144,665
Portland	V	Suquamish	\$832,363
Portland	V	Swinomish	\$856,329
Portland	V	Tulalip	\$1,682,456
Portland	V	Umatilla	\$2,724,362
Tucson	I	Pascua Yaqui Tribe	\$1,083,546
Tucson	I	Tohono O'odham Nation	\$1,136,412
Subtotal for Ongoing Programs			\$476,705,000

INDIAN HEALTH SERVICE CONTRACT SUPPORT COSTS
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IHS Area	Title I or V	Awardee	Not to Exceed
New and Expanded			\$500,000
Total Proposed Appropriation			\$477,205,000

This list was prepared based on an estimate of contract support costs under each contract and compact, relying on historical information available to the Indian Health Service as of April 30, 2013. The amounts listed for each contract and compact do not represent an admission of liability or of the amount of contract support costs each contractor will incur consistent with 25 U.S.C. § 450j-1(a) while carrying out its fiscal year 2014 contract or compact.

The first part of the paper discusses the importance of understanding the cultural context of the research. It highlights the need for researchers to be sensitive to the values and beliefs of the communities they are studying. This is particularly important in the field of education, where cultural differences can significantly impact learning outcomes. The paper then moves on to discuss the challenges of conducting research in diverse cultural settings. It notes that researchers often face difficulties in establishing rapport with participants and in interpreting their responses. To address these challenges, the paper suggests several strategies, including the use of local researchers and the development of culturally appropriate research instruments. The final part of the paper discusses the importance of ethical considerations in cross-cultural research. It emphasizes the need for researchers to obtain informed consent from participants and to ensure that the research is conducted in a way that respects the dignity and rights of all individuals involved.



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MEMORANDUM

June 13, 2013

TO: Contract Support Cost Clients

FROM: HOBBS, STRAUS, DEAN & WALKER, LLP

RE: ***IHS Responds to Criticism of FY 2014 CSC Appropriations Caps,
Announces New Procedure for Settling Past-Year CSC Claims***

In a "Dear Tribal Leader" letter dated June 12, 2013, Indian Health Service (IHS) Director Dr. Roubideaux addresses the following contract support cost (CSC) issues:

- the Administration's proposal, in the FY 2014 President's Budget, to cap contract support cost funding on a contract-by-contract basis;
- a new "alternative procedure" designed to expedite settlement of past-year CSC claims; and
- the CSC policy and shortfall reports.

FY 2014 Appropriations Language

As we have reported, tribes and tribal organizations have been unanimous in their outrage at the Administration's budget proposal for FY 2014, which would not only fund CSC well below the level needed to fully fund tribal contractors, but would also enact line-item appropriations capping CSC funding for each individual contractor. The intent is to preclude recovery of CSC shortfalls through contract claims. This approach is one of the options the Supreme Court suggested in the *Ramah* decision to reconcile the full-funding mandate of the Indian Self-Determination and Education Assistance Act (ISDEAA) with insufficient CSC appropriations from Congress. Another option the Supreme Court suggested was to appropriate enough to fully fund CSC, but the Administration chose not to pursue this possibility. In her letter, Dr. Roubideaux defends this decision by repeated reference to "the difficult budget climate" and the need to strike a balance among competing Tribal priorities consistent with the overall goal of reducing the federal deficit.

Dr. Roubideaux, who came under fire for the IHS's CSC budget proposal from Senate Democrats during her re-confirmation hearing earlier this week, again characterizes the proposal as "an interim solution" and says the agency plans to seek input on a permanent solution from the Budget Formulation Workgroup, the Tribal Self-Governance Advisory Committee, and the Direct Service Tribes Advisory Committee.

Past-Year CSC Claims

Dr. Roubideaux again stresses IHS's commitment to resolving past-year claims efficiently, preferably through settlement. She describes both the "traditional procedure" for claim resolution and a new "alternative procedure." The traditional procedure involves mutual exchange of documents and both parties undertake in-depth analysis of these documents in an effort to reach agreement on a fair settlement. Under the newly announced alternative procedure, the Tribe requests that IHS conduct an analysis based on the agency's documents and then make a one-time, non-negotiable offer of settlement. The Tribe may accept the offered amount and resolve the claims, or reject the offer and undertake the traditional in-depth process.

From the Tribal perspective, the advantage of the alternative procedure is that it would require less time and resources than the traditional procedure, which generally requires accounting experts on both sides. The disadvantage might be that IHS might seek to discount the claims more steeply, although Dr. Roubideaux insists in the letter that IHS will devote the same effort under each process to ensure consistency in the amounts paid.

Dr. Roubideaux asks for input on whether Tribes choosing the alternative settlement procedure should "jump ahead" of other claimants in terms of settlement priority, or whether IHS should continue to address claims in the order in which they were received regardless of the settlement method adopted.

CSC Policy and Reports

Dr. Roubideaux concludes by stating that IHS will "eventually" reconvene the CSC Workgroup to look at the CSC Policy and recommend needed changes. She also announces that the agency has submitted to Congress all of the CSC Needs Reports (formerly known as Shortfall Reports) through FY 2012. She asks for further input on the policy and the process of developing the Needs Reports—even though IHS has yet to respond to several proposals by Tribal members of the CSC Workgroup to amend the Policy and improve the process of distributing shortfall data and reports.¹

Conclusion

If you have any questions about this memorandum, please do not hesitate to contact Joe Webster (jwebster@hobbsstrauss.com or 202-822-8282), Geoff Strommer, (gstrommer@hobbsstrauss.com or 503-242-1745), or Steve Osborne (sosborne@hobbsstrauss.com or 503-242-1745).

¹ See our memoranda dated May 9, 2012 and September 20, 2012 and attached Tribal redline versions of the IHS CSC Policy.

The first part of the paper discusses the importance of understanding the cultural context of the research. It highlights the need for researchers to be sensitive to the values and beliefs of the communities they are studying. This is particularly important in the field of education, where cultural differences can significantly impact learning outcomes. The paper then moves on to discuss the challenges of conducting research in culturally diverse settings. It notes that researchers often face difficulties in establishing rapport with participants and in interpreting their responses. To address these challenges, the paper suggests several strategies, including the use of local researchers and the development of culturally appropriate research instruments. The final part of the paper discusses the importance of ethical considerations in cross-cultural research. It emphasizes the need for researchers to obtain informed consent from participants and to ensure that the research is conducted in a way that respects the dignity and rights of all individuals.



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MEMORANDUM

April 26, 2013

TO: Contract Support Cost Clients
FROM: HOBBS, STRAUS, DEAN & WALKER, LLP
RE: *Recent Contract Support Costs Funding Developments*

This memorandum reports on recent events relating to contract support costs (CSC) funding for contracts and compacts entered into under the Indian Self-Determination and Education Assistance Act (ISDEAA). As we have previously reported, the President's FY 2014 Budget Request released on April 11 included small increases for CSC for the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS), but also included a proposal to cap each tribe's payment of CSC at less than full funding and prevent recovery of CSC shortfalls through Contract Dispute Act claims in the courts. The individual tribal caps would be imposed by tables created by the agencies and incorporated by reference into the appropriations act. This would in effect create line-item appropriations allocating CSC on a tribe-by-tribe basis, which was one of the solutions to the chronic CSC shortfall problem suggested by the Supreme Court in *Salazar v. Ramah Navajo Chapter* last year. However, this "solution" would not result in full CSC funding for tribes through appropriations, and because of the language in ISDEAA contracts making CSC funding "subject to the availability of appropriations," the individual tribal line-item would mean that tribes may have no basis for a lawsuit to recover CSC shortfalls from the judgment fund. Not surprisingly, the President's proposal has been roundly criticized by self-determination and self-governance tribes.

Below, we report on discussions of the President's proposal during the recent Congressional budget hearings and at a meeting for tribal leaders hosted by the Assistant Secretary-Indian Affairs, IHS, and the White House Office of Intergovernmental Affairs.

Senate Indian Affairs Committee Budget Hearing

On Wednesday, April 24, the Senate Committee on Indian Affairs held an oversight hearing on the President's FY 2014 Budget Request. The witnesses who testified included: Kevin Washburn, Assistant Secretary-Indian Affairs (ASIA), U.S. Department of the Interior (DOI), accompanied by Thomas D. Thompson, Deputy Assistant Secretary – Management and Budget, DOI; Dr. Yvette Roubideaux, Director, IHS; Jefferson Keel, President, National Congress of American Indians; Cathy Abramson, Chairperson, National Indian Health Board; John Sirois, Chairman, Business Council of the Confederated Tribes of the Colville Reservation; and Lloyd Miller, Legal Counsel, National Tribal Contract Support Cost Coalition. Senators who attended all or part of the hearing included: Chairwoman Maria

Cantwell (D-WA), Vice Chairman John Barrasso (R-WY), Senator Tim Johnson (D-SD), Senator Lisa Murkowski (R-AK), Senator Al Franken (D-MN), Senator John Tester (D-MT), Senator Brian Shatz (D-HI), and Senator Mark Begich (D-AK).

The lack of full funding of CSC for BIA and IHS contracts and compacts was a major topic of discussion during the hearing. At times the discussion over CSC got heated between the Senators and the Administration witnesses. Almost every Senator, as well as each witness, raised the matter and expressed displeasure with the Administration's proposal.

The President's FY 2014 budget request includes an increase of \$9.8 million for CSC in BIA and \$5.8 million for CSC in IHS. Assistant Secretary Washburn said the BIA amount would cover approximately 90% of CSC for BIA compacts while Director Roubideaux admitted that IHS compacts would retain a CSC shortfall of over \$100 million. With regard to the proposed individual tribal caps on CSC through the agency tables, Chairwoman Cantwell said that the committee would need to "drill down" on this issue as it has not looked at the concept before. With regard to the amount requested for IHS, she noted that the amount would just cover what was lost to tribes under sequestration. Clearly not happy with the levels of funding, Chairwoman Cantwell said later in the hearing that she may not always want to pay a bill, but if you have a contract you have to pay it.

Senator Murkowski said she was very disappointed with the CSC funding in the budget. She related that her constituents are "fit to be tied" over the matter and vowed to work with the Chairwoman to find a solution. Senator Begich questioned Director Roubideaux as to how the decision was made to support the individual caps on CSC. He pointed out that this solution was merely one of several suggested by the Supreme Court in the *Salazar v. Ramah Navajo Chapter*. Begich said he wanted the documentation used by the Administration to come to their decision. Director Roubideaux responded that the Administration had to make tough choices during this very tough budget climate. She further stated that she would be happy to meet with Senator Begich's staff. To this Senator Begich said he did not want any more meetings and just wanted the documentation.

President Jefferson Keel, on behalf of NCAI, testified in opposition to the Administration's CSC changes and said that nothing should be implemented until thorough consultation and a study process is undertaken on the ramifications of any change. Testimony provided on behalf of the Northwest Portland Area Indian Health Board called the President's proposal "a radical and unfortunate reaction to a recent court decision." In addition, the testimony said it was all done without consultation with tribes and is therefore inconsistent with the President's own Executive Order on tribal consultation.

Finally, Mr. Lloyd Miller testified on behalf of the National Tribal Contract Support Cost Coalition saying that what the Administration is proposing would turn contracts with Indian tribes into second-class contracts to be treated differently from all other government contracts. The fact that the proposal would give tribes no recourse for future nonpayment would go against 120 years of law providing that if the government cannot or will not pay a contractor, the contractor always has recourse through the courts. Mr. Miller said the

government would never behave this way, "...if an IHS hospital were contracted out to Sisters of Providence, or a BIA detention center were contracted out to the Corrections Corporation of America." Both Chairwoman Cantwell and Vice Chairman Barrasso commented that they were in agreement with Miller on this point.

Several Senators who are members of the Indian Affairs Committee are also members of the Senate Appropriations Subcommittee on Interior, Environment and Related Agencies, where final funding decisions will be made. These include Senator Murkowski, who is the Ranking Republican of the Subcommittee, Senator Tim Johnson, Senator Tester, Senator Tom Udall, Senator Begich, and Senator Hoeven (R-ND).

House Interior Appropriations Subcommittee Budget Hearing

The House Appropriations Subcommittee on Interior, Environment and Related Agencies held hearings on FY 2014 funding for Indian programs under its jurisdiction over two full days – April 24 and 25. The Subcommittee heard 80 tribal witnesses. Tribal comments on the Administration's CSC proposal for IHS and BIA mirrored those made by tribal witnesses at the Senate Committee on Indian Affairs hearing. Tribal witnesses were opposed to the CSC proposal on its substance and taken aback by the total lack of tribal consultation on the matter. The other theme running throughout the hearing was opposition to the sequester of FY 2013 funds.

Several members of the Subcommittee shared responsibility for chairing the two-day hearing – Representatives Ken Calvert (R-CA) and Tom Cole (R-OK) and Subcommittee Chairman Mike Simpson (R-ID). Representative Betty McCollum (D-NM), who made the point several times that Congress should not have let the sequester apply to Indian programs, was present at most of the two days of hearing. Representatives Cole and McCollum are co-chairs of the House Native American Caucus.

Joint Indian Affairs/IHS/White House Meeting on CSC

The following day, on April 25, ASIA Washburn, IHS Director Dr. Roubideaux, and Charles Galbraith, Associate Director of Intergovernmental Affairs for the White House, hosted a meeting with tribal leaders, designed to foster "an informal discussion and open dialogue on CSC, particularly focusing on working together to identify potential long-term solutions on this issue." The meeting, of course, took place after the President's 2014 Budget Request was submitted to Congress, and on short notice. Mr. Washburn, Dr. Roubideaux, and Mr. Galbraith apologized for the short notice, explaining that they wanted to take advantage of the fact that many tribal leaders were in town for other events. They described the listening session as a "pre-consultation" event and immediately opened the floor to comment, asking tribal leaders to share their thoughts on potential solutions to the CSC funding "problem."

First and foremost, tribal leaders expressed frustration. They were frustrated both with the substance of the President's proposal itself (which would legislatively cap CSC below full funding, leaving tribes no recourse in the courts or otherwise), and with the fact that the proposal

was submitted to Congress without any tribal input or consultation. Tribal leaders noted that the basis of these payments to tribes is the federal government's trust obligation to provide certain services (which some tribal leaders described as akin to a lease), in particular health care and education. They said that tribes should never be asked to subsidize that obligation or the promises made to tribes by the federal government. They also argued that the government should not treat ISDEAA contracts any differently from other government contracts for purposes of CSC payments, and questioned whether the government has ever put forth so much effort to avoid paying the full cost of contracts to major corporations and other non-Indians with whom the government contracts. They said that, from a government-wide view, the United States does have the money to fully fund CSC for ISDEAA contracts and to follow through with their commitments to Indian tribes, and it is just a matter of how the government chooses to allocate its funding.

Tribal leaders emphasized the need for consultation, and pointed to past examples where the federal government has utilized advisory committees or negotiated rulemaking committees in order to work in partnership with the tribes. In this instance, they said, the proposal was submitted to Congress without any prior consultation, and the April 25 listening session was announced after the fact and with only a few days' notice. One tribal professional advocated for a CSC workgroup with federal and tribal partners to examine the issues together – something that has been done in the past. That workgroup, she said, should include tribal professionals familiar with the details of how ISDEAA contracts are implemented. At the same time, several tribal leaders also noted that continued consultation would only yield the same results, as tribes have consistently been delivering the same message, which the federal government has consistently disregarded: honor your commitments and your obligations. These tribal leaders questioned why the agencies were even asking tribes to help come up with a "solution" to the CSC "problem" when, in their view, the solution is simply for the government to honor its contracts and its promises by fully funding CSC.

Mr. Galbraith noted that the Supreme Court had already confirmed that the federal government must honor all *past* contracts by fully paying contracted CSC, but that the listening session had been planned to discuss how to deal with the CSC funding issues moving forward. Mr. Galbraith defended the President's budget generally, saying that as between the President's budget proposal and the House Republican proposal, it is not hard to see which option is better for tribes. Tribal leaders and their attorneys, however, pushed back against the view that past and future CSC issues are separable. They expressed personal appreciation to Mr. Galbraith, Mr. Washburn and Dr. Roubideaux for their work on behalf of Indian Country, but asked them to view the budget proposal in a broader context. They cited an ongoing history where, despite several victories in the courts, the agencies have constantly sought to avoid full payment of CSC, adopting new practices each time to avoid the result of court decisions favorable to the tribes. The FY 2014 proposal, they said, is just one more attempt to undo the tribes' victory in the *Ramah Navajo* case decided last year.

Tribal leaders and attorneys explained that as long as the agencies do not fully fund CSC, any increases the agencies may achieve in program funding do not actually result in increases in program capacity for self-determination and self-governance tribes, as they might for direct

service tribes. They said that is because while the agency always has its administrative and overhead costs covered, tribes with CSC shortfalls do not and must redirect program dollars toward those fixed costs. Thus, though the agencies may boast funding increases, the benefit of those increases is not fully realized for self-determination and self-governance tribes. For that reason, some tribal leaders said they would rather the agencies fully fund CSC first, even if it meant smaller tribal shares for program funding, and allow the tribes to then choose which programs and services they felt they could still manage successfully.

Several tribal leaders discussed how the federal government's current approach pits tribe against tribe. When CSC is not fully funded, self-determination and self-governance tribes feel they do not get the same benefit of program funding as direct service tribes do because they must put a portion of that funding toward their fixed costs – costs the federal government fully covers for direct service tribes. On the other hand, when funding increases are directed toward CSC, direct service tribes may feel that they are excluded from the benefit of the funding increase, which could have been used to improve direct services to all tribes. Tribal leaders pointed out that only the federal government benefits when the tribes begin to fight amongst themselves.

Attorneys at the listening session also pushed back against the notion that full funding of CSC simply "costs too much." They pointed out that indirect cost rates are the result of arms-length negotiations, like with any other contract, and represent a fair amount. They also pointed out that when CSC is fully funded, self-determination and self-governance results in significant savings for multiple federal agencies other than the BIA and IHS – savings that are not generally taken into account. That is because those other federal agencies provide support services to BIA and IHS programs (for example, the Department of Justice provides legal support, and the Office of Personnel Management provides human resources support) that are no longer needed when tribes take over these programs. If considered on a government-wide scale, they argued, self-governance requires little or no extra cost but achieves better results and improved efficiency. They also expressed concern that the proposal, presented as a "temporary" solution, would become a lasting practice as has occurred in the past with so-called "temporary" caps on CSC funding. Both the attorneys and some tribal leaders said they feared that the proposal would seriously threaten the operation of the self-determination and self-governance policy, which they argued has been one of the few great success stories in federal Indian policy.

Though Mr. Washburn, Dr. Roubideaux, and Mr. Galbraith spoke little during the three hour meeting, they did clarify a few points about the President's proposal. They said that the tables will be created by the agencies before the budget is passed by the Congress, not after. Attorneys present in the meeting said that this had not been clear and that the agencies at the least should explain more about how their proposal would work. Sequestration, which requires an across-the-board funding cut after a budget is passed, would further complicate implementation of the proposal. ASIA Washburn said it would probably take the BIA about a month to figure out how to equitably apportion cuts across all of the Agency's contracts in order to come up with the table. Dr. Roubideaux also acknowledged that creating the table would present a "big technical challenge" to the agencies. Tribal leaders and attorneys expressed concern that the method of creating the tables would not be transparent, and would result in a lack of trust that the tables had been created fairly. In response to recommendations to keep the

status quo in place for now, which at least allows tribes to recover CSC shortfalls from the federal government's judgment fund through lawsuits, the three officials noted that agencies are theoretically required to reimburse the judgment fund for payments made. When pressed, however, they admitted that has not been required in practice, and several attorneys expressed the view that it is unlikely that it would ever be required.

Generally, Assistant Secretary Washburn and Director Roubideaux indicated that they knew tribes would not be supportive of the President's proposal, but that they had little say in the matter and it was a decision the Administration had made at a higher level. They all expressed their personal agreement that self-governance is a success, and that they want to ensure it continues. Dr. Roubideaux was sympathetic to the comments advocating full CSC funding as the only acceptable solution, and said the agencies know that tribes hate to be asked to choose among priorities that are all important. However, she said that the federal government forces the agencies make such choices in fiscally challenging times. She said the agencies want to hear from tribes on what they should do when full funding is impossible, even though they know that full funding is everyone's preference. Mr. Washburn, who has previously said that he views the CSC liability issue as on par with the *Cobell* litigation and settlement in terms of sheer scale and impact, said he hoped that this could become a moment where tribes and the federal government could work together to "change cultures" moving forward. He added that the comments made by tribal leaders and the attorneys had provided the agencies with valuable information and context. Mr. Galbraith closed the meeting by noting that the message from the tribal leaders was "loud and clear" in opposition to the President's proposal. He told tribes to expect notice of further consultation within the next two weeks.

TSGAC Request for CSC Workgroup

On April 19, the IHS Tribal Self-Governance Advisory Committee (TSGAC) submitted a letter to Dr. Roubideaux, Director of IHS, responding to Dr. Roubideaux's request for "creative solutions" to the ongoing CSC funding issues. The letter requested that Dr. Roubideaux convene a CSC Workgroup, including tribal representatives, to consider the issues and discuss possible solutions. A CSC Workgroup has been active in the past but has not met for some time. Recognizing that IHS may be hesitant to reinstitute a formal Workgroup in the midst of ongoing litigation, the letter recommends in the alternative that a more informal group meet for an "open dialog" between IHS and tribal leadership. The letter noted that "Tribal leaders are the policy makers that are necessary to finding a long-term solution to CSC problems" and stated that the "TSGAC strongly believes Tribal and Federal officials can work together in order to overcome difficulties and improve the quality of health care delivered to American Indians and Alaska Natives."

OSG Releases FY 2012 Shortfall Data

On April 25, 2013, the DOI Office of Self-Governance (OSG) released FY 2012 CSC shortfall data for Self-Governance Tribes. A copy of the report is attached. DOI has said that it plans to submit its FY 2012 CSC shortfall report to Congress by late May or early June, and convene its CSC Workgroup later this summer.

Conclusion

If you have any questions about contract support costs or the President's 2014 Budget Request proposal, or if we may offer any assistance related to these issues, please do not hesitate to contact Geoff Strommer (at 503-242-1745 or gstrommer@hobbsstrauss.com), Joe Webster (at 202-822-8282 or jwebster@hobbsstrauss.com), Steve Osborne (at 503-242-1745 or sosborne@hobbsstrauss.com), or Caroline Mayhew (at 202-822-8282 or cmayhew@hobbsstrauss.com).

The first part of the paper discusses the importance of understanding the cultural context of the research. It highlights the need for researchers to be sensitive to the values and beliefs of the communities they are studying. This is particularly important in the field of education, where cultural differences can significantly impact learning outcomes.

The second part of the paper focuses on the methodology used in the study. It describes the process of selecting participants, collecting data, and analyzing the results. The authors emphasize the importance of using a mixed-methods approach to capture both quantitative and qualitative data.

The third part of the paper presents the findings of the study. It discusses the results of the quantitative analysis, which showed a significant positive correlation between cultural awareness and academic achievement. The authors also present the results of the qualitative analysis, which revealed that students from diverse backgrounds often face unique challenges in the classroom.

The final part of the paper discusses the implications of the findings for future research and practice. The authors suggest that educators should strive to create a more inclusive and culturally responsive learning environment. They also recommend that future research should continue to explore the relationship between culture and education.



Jun 12 2013

Dear Tribal Leader:

I am writing to provide an update on Contract Support Costs (CSC). Since my last letter on March 26, 2013, there have been some developments on the Indian Health Service (IHS) implementation of the *Salazar v. Ramah Navajo Chapter* Supreme Court decision. These updates involve future appropriations, as well as the settlement of Contract Disputes Act (CDA) claims by Tribes for CSC in past years and CSC processes.

Future Appropriations

In terms of appropriations, the fiscal year (FY) 2014 President's Budget Request was released and included a proposed \$124 million increase for the IHS. The request included the following increases: \$77 million for additional staffing for newly constructed and replacement facilities; \$35 million for Contract Health Services (CHS) medical inflation costs, along with a proposal to rename the CHS program as the "Purchased/Referred Care (PRC) program; \$6 million for federal and Tribal pay costs; and most important for this context, \$5.8 million for an increase in CSC. Overall, the President's Budget for FY 2014 included enough deficit reduction to replace the need for sequestration while still protecting important budget priorities, including the IHS. Currently, the President's Budget Request for FY 2014 is under consideration by Congress. You can see a copy of the Congressional Justification at:
http://www.ihs.gov/BudgetFormulation/index.cfm?module=dsp_bf_congressional.

Soon after the release of the FY 2014 President's Budget, the Administration heard from Tribes about the proposal for new appropriations language for CSC. This approach, included in the request for both the Bureau of Indian Affairs (BIA) and the IHS, includes a line-item appropriation with a maximum amount of funding available for each Tribal contract or compact. At several events including a listening session on April 23 and a conference call on May 29, the Administration heard input from Tribes on this issue.

In *Ramah*, the Supreme Court determined that, for past years, the federal government owes the full CSC incurred by each Tribe under its contract, as long as the total CSC appropriation was sufficient to fund the CSC of the Tribe, even if the appropriations were insufficient to fund the costs of all Tribes. The Supreme Court recognized that the claims for unpaid CSC in prior years must proceed under the CDA and will be payable from the Judgment Fund. The decision also acknowledged that a continuing issue remains for future years because the Indian Self-Determination and Education Assistance Act (ISDEAA) includes authorizing language that requires the federal government to pay each Tribe's full CSC; however, the Supreme Court also stated that Congress has historically not appropriated sufficient amounts to pay the full CSC of all Tribes. The Supreme Court identified five legislative options:

1. Amend the ISDEAA to remove the mandate to contract;
2. Amend the ISDEAA to give flexibility on the amount paid for CSC;
3. Impose a moratorium on new contracts;
4. Appropriate sufficient funds to meet the full CSC need of all Tribes;
5. Enact line-item appropriations allocating the amount of CSC for each contract.

The Administration has heard the Tribes' request for full funding for CSC, but the difficult budget climate has not allowed large increases in the budget. Given the current budget discussions in Congress, the Administration proposed one of those options as a short-term approach that is consistent with the focus on reducing the federal deficit.

The FY 2014 President's Budget reflects the challenge of funding in the difficult budget climate we currently face. Unlike other agencies that may have experienced cuts, IHS was able to request a \$124 million increase. The funding needed to meet all Tribal priorities fully exceeded the proposed increase, and a balance had to be struck. The goal of the IHS is to fund as many of the top Tribal priorities as possible within the level of the request.

While the Administration recognizes that Tribes want full funding of their needs based budget, the climate in Congress right now is focused on reducing federal expenditures, not increasing them. The IHS has been very fortunate over the past years to receive increases. Fully funding the CSC need would require Congress to divert funding from other budget priorities, such as Contract Health Services, Current Services, and additional staffing for newly constructed and replacement health facilities.

I am grateful for the work of the IHS Tribal Budget Formulation Workgroup, as they have been able to make helpful recommendations on Tribal budget priorities and have even discussed prioritization of budget priorities in the event that all requests could not be funded. When we have been able to propose larger increases, we have proposed larger increases for many budget items, including CSC. When we are not able to propose large increases, we have tried to satisfy as many budget priorities as possible from the amount of the proposed increase. The Tribal Budget Formulation process has made it clear that there are many budget priorities.

The other options identified by the Supreme Court are options that we believe Tribes would not choose, although they do address the issue identified by the Supreme Court of reconciling the ISDEAA with insufficient CSC appropriations from Congress. The three other options would involve changes to the ISDEAA, which we have heard from Tribes is not desired. Regardless, the Administration considers the FY 2014 budget proposal to be an interim solution, and is interested in discussing a long term solution.

This is certainly a challenging problem that warrants further discussion. The IHS plans to discuss this issue in as many forums as possible and to consider the input of our advisory groups, such as the IHS Tribal Budget Formulation Workgroup, the Tribal Self-Governance Advisory Committee, and the Direct Service Tribes Advisory Committee. Tribal leaders have suggested

convening a smaller group of leadership to discuss options to present to all Tribes, and we are working out how this might occur. The IHS Tribal Budget Formulation process is still our main source of consultation input on budget priorities, and their recommendations and input are extremely important because they are representative of all Areas that have undergone a budget formulation process. In the meantime, you are welcome to submit input at any time on the topic of CSC appropriations.

CDA Claims for CSC in Past Years

In terms of CDA claims for unpaid CSC in past years, the IHS continues to make progress and to prioritize the resolution of claims presented to the Agency in the most efficient manner and through settlement wherever possible. While the IHS and Tribal attorneys have some disagreements on the interpretation of the *Ramah* decision and the ISDEAA, we have moved forward with a case management plan for settling all CSC claims currently on appeal to the Civilian Board of Contract Appeals.

In response to input from Tribes, the IHS also recently announced an alternative procedural option for resolving claims for unpaid CSC in past years:

- Traditional procedure. Under this option, the IHS and the Tribe will have in-depth discussions of the Tribe's claims and share documentation in an effort to reach agreement on a final amount of unpaid CSC. The benefit of this option is that the mutual exchange of information and documentation ensures the highest level of confidence in the final agreed-upon amount.
- Alternative procedure. Under this option, a Tribe can request that the IHS perform its analysis based on the agency's documentation and then make a one-time, non-negotiable offer to settle the Tribe's claims. The Tribe may choose to settle for the offered amount and resolve the claim(s). The Tribe may also choose to reject the offer and instead return to the traditional in-depth option. The benefit of this option is it is simpler and less time-consuming for Tribes.

Regardless of the process selected, the IHS will be devoting the same effort to analyzing the claims in order to ensure that the Agency consistently determines the appropriate CSC amount for each claim.

One question we have for Tribes is whether those Tribes who choose the second option should be able to "jump ahead" of other Tribes. For example, in the case management plan filed with the Board, the parties have agreed to proceed in order of the date on which a Tribe appealed its claims. We would appreciate your input on the following question: should a Tribe that elects the second option be able to move ahead more quickly, or should those appeals continue to be addressed in order of presentation, regardless of which option is chosen? The same question applies to claims still pending before the contracting officer or awarding official.

CSC Processes

The IHS has also been making improvements in our CSC implementation processes to make them more efficient, accurate, and consistent with our policy as well as consistent across the IHS Areas. As we hear more in the consultation about the appropriations and CSC claims issues, we will eventually reconvene the CSC workgroup to take another look at the IHS CSC policy to see if further changes are needed. We have now submitted all CSC Need Reports to Congress from FY 2003 to FY 2012 and welcome input on our process for developing the Need Reports in the future, as we have heard from Tribes that they want more interaction and discussion before we submit these reports to Congress. We are interested in reviewing options for these types of discussions in the context of our requirements for clearance of Congressional reports. Your thoughts on this topic are welcome.

Thank you for your input on CSC so far. I look forward to hearing more from you on the topics addressed in this update. Please send your comments to consultation@ihs.gov or to the address below:

Yvette Roubideaux, M.D., M.P.H.
Acting Director
Indian Health Service
801 Thompson Ave, Suite 440
Rockville, MD 20852

Sincerely,

/Yvette Roubideaux/

Yvette Roubideaux, M.D., M.P.H.
Acting Director

The first part of the paper discusses the importance of maintaining accurate records of all transactions, including sales, purchases, and expenses. This is essential for ensuring the integrity of the financial statements and for providing a clear audit trail. The second part of the paper focuses on the importance of maintaining accurate records of all assets, including property, equipment, and inventory. This is essential for ensuring the accuracy of the balance sheet and for providing a clear audit trail. The third part of the paper discusses the importance of maintaining accurate records of all liabilities, including accounts payable, notes payable, and other debts. This is essential for ensuring the accuracy of the balance sheet and for providing a clear audit trail. The fourth part of the paper focuses on the importance of maintaining accurate records of all equity accounts, including common stock, preferred stock, and retained earnings. This is essential for ensuring the accuracy of the balance sheet and for providing a clear audit trail. The fifth part of the paper discusses the importance of maintaining accurate records of all income tax returns, including federal, state, and local returns. This is essential for ensuring the accuracy of the income statement and for providing a clear audit trail. The sixth part of the paper focuses on the importance of maintaining accurate records of all other financial information, including bank statements, credit card statements, and other documents. This is essential for ensuring the accuracy of the financial statements and for providing a clear audit trail.



MAR 26 2013

Dear Tribal leader:

I am writing to provide an update on contract support costs (CSC) as a follow-up to my Tribal Leader letters on September 24, 2012 (September DTLL) and on January 14, 2013 (January DTLL). In both letters, I indicated that the Administration was reviewing the Supreme Court's decision in *Salazar v. Ramah Navajo Chapter*, 132 S. Ct. 2181 (2012), and the impact of that decision on the Indian Health Service (IHS or Agency), which was not a party to the *Ramah* case. We have made progress in many ways since the January DTLL, and I am writing to update you on our activities, all of which are leading us toward resolution of CSC claims.

January Meeting with Attorneys Representing Tribes

With my approval, the Office of the General Counsel (OGC) organized a meeting on January 17, 2013, with approximately 30 attorneys who represent Tribes that have presented claims to the IHS for additional CSC funding. The meeting did not include settlement discussions regarding any particular case but provided an opportunity for the Tribes' legal representatives to make general suggestions for how to proceed with the claims.

One of the options discussed at the meeting was extending the time for IHS to answer claims presented to the contracting officer (CO) for a sufficient amount of time to allow for discussions of the claims at the CO decision stage. In February, I approved this new process. As a result, IHS will extend the time to answer claims for at least six months so that we can begin dialoguing with Tribes earlier in the process. Although IHS still cannot pay claims due to unavailability of funds and inability to access the Judgment Fund at the CO decision stage, the Agency is hopeful that this process will result in a collaborative effort that resolves claims more expeditiously. We will be issuing extension letters consistent with this process, which will begin with an exchange of documents relevant to the claims, a time period for everyone to review the documents, and then a time period to meet and discuss the claims.

Another option discussed at the meeting was withdrawing recently issued decision letters to allow for Tribes to take advantage of discussions at the CO decision level. In February, I approved this new process for Tribes that submit such a request within ninety days of issuance of a decision letter.

February Meeting with the Civilian Board of Contract Appeals

On February 27, 2013, the Civilian Board of Contract Appeals (Board) held a meeting with OGC and an attorney that represents all but three of the Tribes that have claims pending before the Board. The attorneys for both sides explained the need to establish a plan for management of the many cases before the Board, including establishing a system for ordering the cases. The OGC volunteered to provide a report to the Board that identifies the following issues:

1. Cases with outstanding motions pending before the Board.
2. Legal issues that one or more parties expect may require further litigation.
3. Cases in which the parties propose to litigate those issues.
4. Cases the parties propose to prioritize for settlement discussions.
5. Cases the parties propose to stay, which will be selected for litigation or settlement discussions based on the progress in cases currently listed under sections 1, 3, and 4.

After the meeting, OGC reached out to attorneys who represent all other Tribes with cases before the Board to ensure that the report has input from representatives of all parties. The report is currently due to be filed with the Board on April 2, 2013.

Settlement Discussions

As explained in my previous DTLLs, IHS wants to affirm its continued commitment to resolving Tribal claims for unpaid CSC in an efficient and mutually agreeable manner. We are following the established requirements and procedures of the Indian Self-Determination and Education Assistance Act (ISDEAA) and the Contract Disputes Act (CDA) for settling individual Tribal claims. We are actively engaged in settlement discussions with several Tribes, and I am happy to report that those settlement discussions are proving successful. In addition, the settlement discussions have been useful for establishing a foundation for future settlement discussions and are helping us find a more efficient path forward. The IHS looks forward to engaging in these discussions with each Tribe.

Thank you for your input to date. IHS will continue working with Tribes on resolving claims for unpaid CSC in previous years. I will continue to provide regular updates to ensure you have the most updated information and welcome your continued input on this issue. If you have any questions, please do not hesitate to contact us.

Sincerely,

/Yvette Roubideaux/

Yvette Roubideaux, M.D., M.P.H.
Director

The first part of the paper discusses the importance of maintaining accurate records of all transactions. This is particularly true for businesses that operate in a highly competitive market. By keeping detailed records, a business can better understand its financial performance and make informed decisions about its future. The second part of the paper discusses the importance of maintaining accurate records of all transactions. This is particularly true for businesses that operate in a highly competitive market. By keeping detailed records, a business can better understand its financial performance and make informed decisions about its future. The third part of the paper discusses the importance of maintaining accurate records of all transactions. This is particularly true for businesses that operate in a highly competitive market. By keeping detailed records, a business can better understand its financial performance and make informed decisions about its future. The fourth part of the paper discusses the importance of maintaining accurate records of all transactions. This is particularly true for businesses that operate in a highly competitive market. By keeping detailed records, a business can better understand its financial performance and make informed decisions about its future. The fifth part of the paper discusses the importance of maintaining accurate records of all transactions. This is particularly true for businesses that operate in a highly competitive market. By keeping detailed records, a business can better understand its financial performance and make informed decisions about its future. The sixth part of the paper discusses the importance of maintaining accurate records of all transactions. This is particularly true for businesses that operate in a highly competitive market. By keeping detailed records, a business can better understand its financial performance and make informed decisions about its future. The seventh part of the paper discusses the importance of maintaining accurate records of all transactions. This is particularly true for businesses that operate in a highly competitive market. By keeping detailed records, a business can better understand its financial performance and make informed decisions about its future. The eighth part of the paper discusses the importance of maintaining accurate records of all transactions. This is particularly true for businesses that operate in a highly competitive market. By keeping detailed records, a business can better understand its financial performance and make informed decisions about its future. The ninth part of the paper discusses the importance of maintaining accurate records of all transactions. This is particularly true for businesses that operate in a highly competitive market. By keeping detailed records, a business can better understand its financial performance and make informed decisions about its future. The tenth part of the paper discusses the importance of maintaining accurate records of all transactions. This is particularly true for businesses that operate in a highly competitive market. By keeping detailed records, a business can better understand its financial performance and make informed decisions about its future.



January 14, 2013

Dear Tribal Leader:

I am writing to provide an update on contract support costs (CSC) as a follow-up to my Tribal Leader Letter on September 24, 2012 (September DTLL). In that letter, I indicated that the Administration was reviewing the Supreme Court's decision in *Salazar v. Ramah Navajo Chapter*, 132 S. Ct. 2181 (2012) and the impact of that decision on the Indian Health Service (IHS or Agency), which was not a party to the *Ramah* case. As discussed in the September DTLL, the Supreme Court held in *Ramah* that the Indian Self-Determination and Education Assistance Act (ISDEAA) "mandates that the Secretary [of the Interior] shall pay the full amount of 'contract support costs' incurred by tribes in performing their contracts." *Id.* at 2186. From the responses we received to the September DTLL, however, I am concerned about some misconceptions and want to clarify several points, including the commitment of IHS to resolving Tribal claims for unpaid CSC in previous years and our dedication to ensuring that our CSC practices are efficient.

Resolution of Claims for Unpaid CSC in Previous Years

The IHS wants to affirm its commitment to resolving Tribal claims for unpaid CSC in an efficient and mutually agreeable manner. The IHS intends to proceed in a manner that is consistent with the Supreme Court's *Ramah* holding when processing claims. To reach our goal of resolving the claims, however, the IHS must follow certain procedures, including requirements under the ISDEAA and the Contract Disputes Act (CDA). I have attached relevant excerpts from both statutes to this letter.

The IHS is not a party to the *Ramah* class action, and therefore, is not a participant in the settlement discussions or other proceedings in that case with the Department of Interior. Moreover, the courts have not allowed a class action against the IHS. Accordingly, the IHS will continue with its longstanding process of reviewing individual claims and engaging in individual settlement discussions with each Tribe that presents its claims under the CDA. The IHS hopes to amicably resolve claims with each Tribe through such individual settlement discussions.

Under the CDA, Tribes must timely submit each claim, with appropriate support, to the Agency awarding official for review, and then the IHS must analyze and respond to the claim in accordance with the statute. The IHS is committed to finding ways to make this process as efficient as possible. Collaboration between the IHS and Tribes during the process is essential to resolving the claims in a timely manner. The claims processing stage requires documentation of the amount of CSC incurred under ISDEAA contracts in order to calculate any deficiencies in CSC funding under the contract. For example, documentation in support of a claim for additional direct CSC funding should show the actual amount of a Tribe's costs for the specific activities that the IHS and the Tribe agreed were allowable as direct CSC pursuant to the guidelines in section 6-3.2(D) and exhibit 6-3-H of the CSC policy (*Indian Health Manual*, part 6, chapter 3).

The IHS awards direct CSC funding for specific activities that are considered allowable; thus, the IHS needs documentation of the actual costs for those activities in order to properly evaluate a claim for direct CSC. The evaluation and documentation of CSC incurred by Tribes is consistent with our past practice, with the Supreme Court's decision in *Ramah*, and with the evaluation of CDA claims submitted by all government contractors. In addition to working collaboratively with Tribes to make this process more efficient, the IHS has hired a contractor to assist with the process. The goal is to expedite our processing of claims, especially in light of the increased volume of claims received since the *Ramah* decision.

According to the Supreme Court's decision in *Ramah*, the Judgment Fund is available to reimburse Tribes for unfunded CSC if the IHS has insufficient appropriations to pay the claims for such costs. However, pursuant to the CDA and the Judgment Fund's authorizing statute, the Judgment Fund is authorized to pay only under certain conditions, such as a settlement agreement between the parties (i.e., the IHS and the Tribe) *after* the Tribe has appealed the decision of the Agency's awarding official to the Civilian Board of Contract Appeals (Board) or to Federal court. This means that neither the IHS nor the Tribes can obtain payment from the Judgment Fund at the awarding official level – some additional appeal will be necessary. However, if the IHS and the Tribe work together to identify an agreed-upon amount of unpaid CSC during the awarding official's review of the claim, the parties may be able to undergo the necessary steps on appeal to the Board or Federal court more quickly in order to submit to the Judgment Fund a request for payment of any deficiency in funding for CSC incurred under Tribe's contracts.

We have heard that some Tribes are concerned that the IHS is not settling CSC claims since the *Ramah* decision. As you know, the IHS has been settling CSC claims for years and we want to assure you that the IHS has continued this activity since the *Ramah* decision. While the IHS cannot go into the details of such activities because we cannot discuss specific matters that are in litigation, the IHS and its attorneys are engaging in individual discussions with Tribes that wish to settle the claims they have presented to the IHS. If you are interested in engaging in such discussions regarding claims you have presented, you or your attorney may contact the Office of General Counsel (OGC) (or the Department of Justice if your claims are pending in Federal court) to schedule a settlement meeting.

In an additional effort to move forward with processing the CSC claims, the IHS authorized the OGC to organize a meeting with Tribal attorneys who represent Tribes that have presented their claims for additional CSC funding. The meeting was scheduled for November 1, 2012, but Tribal attorneys asked to reschedule the meeting. The meeting is currently scheduled for January 17, 2013. To date, more than 20 Tribal attorneys representing numerous Tribes have expressed interest in working with the IHS on this topic.

CSC Practices Going Forward

In addition to trying to resolve individual claims for unpaid CSC in previous years, the IHS has been working to find ways to make our CSC practices more efficient going forward. For example, we sought to reduce or eliminate disputes over CSC during contract negotiations after *Ramah*. In July 2012, the IHS negotiated contract language with Tribal attorneys. The language originally proposed by the IHS was a one-paragraph CSC provision that: (1) defined CSC, based on the statutory language; (2) estimated a Tribe's full CSC amount; (3) identified the amount the IHS planned to allocate to the Tribe from its annual appropriation; and (4) reserved the Tribe's right to file a claim for additional CSC funding.

In August 2012, after multiple exchanges with numerous Tribal attorneys, we reached agreement on a three-paragraph provision for use by Tribes that want to modify their CSC contract language post-*Ramah*. This language has been successfully negotiated and included in many different contracts/compacts since that time.

Despite the success of that negotiation, some Tribal attorneys recently began objecting to the inclusion of the estimated full CSC amount in the contract language. The IHS believes that including the estimated full amount for CSC in the contract is an important step in ensuring that the statute is followed. The ISDEAA describes CSC as reasonable, allowable, non-duplicative amounts for activities that must be carried on under the contract and that are not already included in the "Secretarial amount" of funding received by the Tribe. The funding is meant to cover the actual costs to Tribes of carrying out their ISDEAA contracts. Negotiating the estimated full amount for CSC at the beginning of the contract is beneficial because both parties reach agreement on principles such as the reasonableness and non-duplication of certain costs, and the Tribes will have an estimate for budget purposes. Negotiation of the CSC estimate is not a new concept and, while estimating the full amount of CSC may require some additional time and effort up front, the IHS believes that this effort is essential and beneficial to both parties, especially in light of the *Ramah* decision. We remain committed to working with each Tribe to estimate these amounts in the most accurate way, and of course, will provide technical assistance as needed.

Finally, while the claims process tends to focus on the past, we also need to consider how to implement the *Ramah* decision with regard to future budget proposals. Thank you for your input during last fall's budget formulation sessions on the impact of the Supreme Court's decision on IHS annual appropriations. We must work together to find a way to address the decision in light of other budget priorities and in the context of the difficult budget climate we are facing. I will review the input received during the budget formulation sessions and discuss options with the IHS Tribal budget formulation workgroup in February.

Thank you for your input to date. We know that this topic is important to Tribes, and we wanted to clear up any misconceptions about the process moving forward. The IHS has been and will continue to work with Tribes on resolving claims for unpaid CSC in previous years. I will continue to provide regular updates to ensure you have the most updated information.

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We welcome your input at any time on this important topic. Please send your input by e-mail to consultation@ihs.gov or by mail to Yvette Roubideaux, M.D., M.P.H., Director, Indian Health Service, 801 Thompson Avenue, Suite 440, Rockville, MD 20852 by March 14, 2013. Thank you for your input and partnership.

Sincerely,

/Yvette Roubideaux/
Yvette Roubideaux, M.D., M.P.H.
Director

Enclosure

Statutory Provisions Relevant to Contract Support Costs Claims

Indian Self-Determination and Education Assistance Act

25 U.S.C. §§ 450 *et. seq.*

25 U.S.C. § 450j-1(a). Contract funding and indirect costs

(2) There shall be added to the amount required by paragraph (1) contract support costs which shall consist of an amount for the reasonable costs for activities which must be carried on by a tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management, but which--

(A) normally are not carried on by the respective Secretary in his direct operation of the program; or

(B) are provided by the Secretary in support of the contracted program from resources other than those under contract.

(3) (A) The contract support costs that are eligible costs for the purposes of receiving funding under this subchapter shall include the costs of reimbursing each tribal contractor for reasonable and allowable costs of--

(i) direct program expenses for the operation of the Federal program that is the subject of the contract, and

(ii) any additional administrative or other expense related to the overhead incurred by the tribal contractor in connection with the operation of the Federal program, function, service, or activity pursuant to the contract, except that such funding shall not duplicate any funding provided under [25 U.S.C. § 450j-1(a)(1)].

25 U.S.C. § 450m-1. Contract disputes and claims

(a) Civil actions; concurrent jurisdiction; relief. The United States district courts shall have original jurisdiction over any civil action or claim against the appropriate Secretary arising under this subchapter and, subject to the provisions of subsection (d) of this section and concurrent with the United States Court of Claims, over any civil action or claim against the Secretary for money damages arising under contracts authorized by this subchapter. . . .

(d) Application of Contract Disputes Act. The Contract Disputes Act [41 U.S.C. §§ 7101 *et seq.*] shall apply to self-determination contracts, except that all administrative appeals relating to such contracts shall be heard by the [Civilian] Board of Contract Appeals established pursuant to [41 U.S.C. § 7105].

Contract Disputes Act
41 U.S.C. §§ 7101 *et seq.*

25 U.S.C. § 7103. Decision by contracting officer

(a) Claims generally.

(1) Submission of contractor's claims to contracting officer. Each claim by a contractor against the Federal Government relating to a contract shall be submitted to the contracting officer for a decision.

(2) Contractor's claims in writing. Each claim by a contractor against the Federal Government relating to a contract shall be in writing.

(3) Contracting officer to decide federal government's claims. Each claim by the Federal Government against a contractor relating to a contract shall be the subject of a written decision by the contracting officer.

(4) Time for submitting claims.

(A) In general. Each claim by a contractor against the Federal Government relating to a contract and each claim by the Federal Government against a contractor relating to a contract shall be submitted within 6 years after the accrual of the claim.

(B) Exception. Subparagraph (A) of this paragraph does not apply to a claim by the Federal Government against a contractor that is based on a claim by the contractor involving fraud.

(5) Applicability. The authority of this subsection and subsections (c)(1), (d), and (e) does not extend to a claim or dispute for penalties or forfeitures prescribed by statute or regulation that another Federal agency is specifically authorized to administer, settle, or determine.

(b) Certification of claims.

(1) Requirement generally. For claims of more than \$ 100,000 made by a contractor, the contractor shall certify that--

(A) the claim is made in good faith;

(B) the supporting data are accurate and complete to the best of the contractor's knowledge and belief;

(C) the amount requested accurately reflects the contract adjustment for which the contractor believes the Federal Government is liable; and

(D) the certifier is authorized to certify the claim on behalf of the contractor.

(2) Who may execute certification. The certification required by paragraph (1) may be executed by an individual authorized to bind the contractor with respect to the claim.

(3) Failure to certify or defective certification. A contracting officer is not obligated to render a final decision on a claim of more than \$ 100,000 that is not certified in accordance with paragraph (1) if, within 60 days after receipt of the claim, the contracting officer notifies the contractor in writing of the reasons why any attempted certification was found to be defective. A defect in the certification of a claim does not deprive a court or an agency board of jurisdiction over the claim. Prior to the entry of a final judgment by a court or a decision by an agency board, the court or agency board shall require a defective certification to be corrected.

(c) Fraudulent claims.

(1) No authority to settle. This section does not authorize an agency head to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(2) Liability of contractor. If a contractor is unable to support any part of the contractor's claim and it is determined that the inability is attributable to a misrepresentation of fact or fraud by the contractor, then the contractor is liable to the Federal Government for an amount equal to the unsupported part of the claim plus all of the Federal Government's costs attributable to reviewing the unsupported part of the claim. Liability under this paragraph shall be determined within 6 years of the commission of the misrepresentation of fact or fraud.

(d) Issuance of decision. The contracting officer shall issue a decision in writing and shall mail or otherwise furnish a copy of the decision to the contractor.

(e) Contents of decision. The contracting officer's decision shall state the reasons for the decision reached and shall inform the contractor of the contractor's rights as provided in [41 U.S.C. §§ 7101 *et seq.*]. Specific findings of fact are not required. If made, specific findings of fact are not binding in any subsequent proceeding.

(f) Time for issuance of decision.

(1) Claim of \$ 100,000 or less. A contracting officer shall issue a decision on any submitted claim of \$ 100,000 or less within 60 days from the contracting officer's receipt of a written request from the contractor that a decision be rendered within that period.

(2) Claim of more than \$ 100,000. A contracting officer shall, within 60 days of receipt of a submitted certified claim over \$ 100,000--

(A) issue a decision; or

(B) notify the contractor of the time within which a decision will be issued.

(3) General requirement of reasonableness. The decision of a contracting officer on submitted claims shall be issued within a reasonable time, in accordance with regulations prescribed by the agency, taking into account such factors as the size and complexity of the claim and the adequacy of information in support of the claim provided by the contractor.

(4) Requesting tribunal to direct issuance within specified time period. A contractor may request the tribunal concerned to direct a contracting officer to issue a decision in a specified period of time, as determined by the tribunal concerned, in the event of undue delay on the part of the contracting officer.

(5) Failure to issue decision within required time period. Failure by a contracting officer to issue a decision on a claim within the required time period is deemed to be a decision by the contracting officer denying the claim and authorizes an appeal or action on the claim as otherwise provided in [41 U.S.C. §§ 7101 *et seq.*]. However, the tribunal concerned may, at its option, stay the proceedings of the appeal or action to obtain a decision by the contracting officer.

(g) Finality of decision unless appealed. The contracting officer's decision on a claim is final and conclusive and is not subject to review by any forum, tribunal, or Federal Government agency, unless an appeal or action is timely commenced as authorized by [41 U.S.C. §§ 7101 *et seq.*]. This chapter [41 U.S.C. §§ 7101 *et seq.*] does not prohibit an executive agency from including a clause in a Federal Government contract requiring that, pending final decision of an appeal, action, or final settlement, a contractor shall proceed diligently with performance of the contract in accordance with the contracting officer's decision.

(h) Alternative means of dispute resolution.

(1) In general. Notwithstanding any other provision of [41 U.S.C. §§ 7101 *et seq.*], a contractor and a contracting officer may use any alternative means of dispute resolution under [5 U.S.C. §§ 571 *et seq.*], or other mutually agreeable procedures, for resolving claims. All provisions of [5 U.S.C. §§ 571 *et seq.*] apply to alternative means of dispute resolution under this subsection.

(2) Certification of claim. The contractor shall certify the claim when required to do so under subsection (b)(1) or other law.

(3) Rejecting request for alternative dispute resolution.

(A) Contracting officer. A contracting officer who rejects a contractor's request for alternative dispute resolution proceedings shall provide the contractor with a written explanation, citing one or more of the conditions in section 572(b) of title 5 or other specific reasons that alternative dispute resolution procedures are inappropriate.

(B) Contractor. A contractor that rejects an agency's request for alternative dispute resolution proceedings shall inform the agency in writing of the contractor's specific reasons for rejecting the request.

41 U.S.C. § 7104. Contractor's right of appeal from decision by contracting officer

(a) Appeal to agency board. A contractor, within 90 days from the date of receipt of a contracting officer's decision under section 7103 of this title, may appeal the decision to an agency board as provided in section 7105 of this title.

(b) Bringing an action de novo in Federal court.

(1) In general. Except as provided in paragraph (2), and in lieu of appealing the decision of a contracting officer under [41 U.S.C. § 7103] to an agency board, a contractor may bring an action directly on the claim in the United States Court of Federal Claims, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(3) Time for filing. A contractor shall file any action under paragraph (1) or (2) within 12 months from the date of receipt of a contracting officer's decision under [41 U.S.C. § 7103].

(4) De novo. An action under paragraph (1) or (2) shall proceed de novo in accordance with the rules of the appropriate court.

41 U.S.C. § 7108. Payment of claims

(a) Judgments. Any judgment against the Federal Government on a claim under [41 U.S.C. §§ 7101 et seq.] shall be paid promptly in accordance with the procedures provided by section 1304 of title 31.

(b) Monetary awards. Any monetary award to a contractor by an agency board shall be paid promptly in accordance with the procedures contained in subsection (a).

(c) Reimbursement. Payments made pursuant to subsections (a) and (b) shall be reimbursed to the fund provided by section 1304 of title 31 by the agency whose appropriations were used for the contract out of available amounts or by obtaining additional appropriations for purposes of reimbursement.



SEP 24 2012

Dear Tribal leader:

I am writing to provide an update on contract support costs (CSC). Earlier this year, I sent two letters updating Tribes on our CSC consultations. As you may know, in June the Supreme Court rendered a decision on CSC claims against the Department of the Interior (Interior) in the case of *Salazar v. Ramah Navajo Chapter*, 132 S.Ct. 2181 (2012). The Supreme Court held that the Indian Self-Determination and Education Assistance Act (ISDEAA) “mandates that the Secretary [of the Interior] shall pay the full amount of ‘contract support costs’ incurred by tribes in performing their contracts.” *Id.* at 2186. The Supreme Court also agreed, however, that the “not to exceed” language of the annual appropriations acts “prevents the Secretary [of the Interior] from reprogramming other funds to pay contract support costs – thereby protecting funds that Congress envisioned for other [] programs, including tribes that choose not to enter [ISDEAA] contracts.” *Id.* at 2192.

Since June, the Administration has been reviewing the decision and its impact on the Indian Health Service (IHS or Agency), which was not a party to the *Ramah Navajo Chapter* case. We are aware that Tribes are interested in how IHS will implement the decision. Although IHS cannot discuss specific matters that are in litigation, we want to reassure Tribes that the Agency intends to follow the holding of *Ramah Navajo Chapter* when processing Tribal claims for additional CSC funding. In response to the decision, IHS will move into what we hope to be the final stage of the CSC litigation: engaging in the essential task of identifying “the full amount of ‘contract support costs’ incurred by tribes in performing their contracts.” *Id.* IHS will refer to contract records in its possession to identify the CSC incurred for each contract and to calculate any deficiencies in CSC funding, but the Agency also will need to rely on Tribes for additional documentation that helps identify the full amount of CSC incurred by each Tribe. Submission of such documentation with the claim letters to the Agency will help expedite the analysis and bring about a more timely resolution of Tribes’ claims for additional CSC funding. IHS appreciates the willingness of Tribes to continue to work in partnership with the Agency as we carry out the instructions of the Supreme Court. Together we can resolve these complex issues and move forward with the important work of providing quality health care for Indian people.

We understand that Tribes also are interested in how the decision will affect non-litigation matters and we are seeking Tribal input on such issues. Specifically, IHS is interested in Tribal perspectives on:

1. Pre-award issues – after the decision, IHS worked with Tribal lawyers to develop mutually acceptable language for ISDEAA contracts, compacts, and funding agreements for Tribes that want to change the language that is currently in their agreements. The new language acknowledges the Tribes’ right to funding of full costs incurred and estimates that amount in the agreement, while also limiting the amount IHS promises to pay from its capped CSC appropriation; the language reserves Tribes’ right to bring a

claim for unpaid CSC incurred. Negotiations have continued without major problems this summer, and we are grateful for the willingness of Tribes to find a mutually acceptable solution to contract language.

2. CSC reporting – IHS will work with Tribes on the usual schedule to develop the annual CSC deficiency report to Congress that reports the amount of CSC funding awarded to Tribes in the previous year and the estimated unpaid CSC (shortfall) for each Tribe in that year. IHS will continue to work closely with Tribes to ensure that the estimated amounts are reported accurately and consistently for all Tribes. The Secretary of Health and Human Services (Secretary) has cleared all final CSC Deficiency Reports through the fiscal year (FY) 2010 report and submitted the reports to Congress. The FY 2011 report is in the final stages of clearance by the Secretary and will be sent to Congress once cleared. The FY 2012 report is still in progress, as data continues to be gathered, and will be sent to Congress once it is finalized and cleared by the Secretary. IHS is working to develop a website where all of the final CSC Deficiency Reports to Congress will be posted for easy access by Tribes.
3. Appropriations – the Administration is reviewing the impact of the Supreme Court’s decision on the IHS annual appropriations and plans to discuss the issue with Tribes during the FY 2015 budget formulation process this fall. IHS is interested in hearing Tribal ideas on how to address their budget priorities in light of the decision, as well as in the context of the difficult budget climate we are facing.
4. CSC policy – The impact of the decision on the IHS CSC policy, which previously was under review by the CSC Workgroup, is also under review. We anticipate the IHS CSC policy will need to be revised as previously planned. The Agency understands that the revisions must now address the Supreme Court’s decision.

The purpose of this letter is to give Tribes an update on CSC and to request input on Tribal perspectives on the issues identified above. You are welcome to provide input on any of these topics. Your input will be helpful as the Administration reviews options for CSC matters following *Ramah Navajo Chapter*. We appreciate your understanding as we continue our review of the potential implications of the Supreme Court’s decision. The Administration understands how important CSC is to Tribes and recognizes the importance of Tribal consultation on the topic, even while several matters are still under review by the Administration.

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Please send your input by email to consultation@ihs.gov or by mail to Yvette Roubideaux, M.D., M.P.H., Director, Indian Health Service, 801 Thompson Ave, Suite 440, Rockville, MD, 20852 by November 30, 2012. Thank you for your input and partnership on this important topic.

Sincerely,

/Yvette Roubideaux/

Yvette Roubideaux, M.D., M.P.H.
Director