



MEMORANDUM

January 26, 2015

TO: Contract Support Cost Clients
FROM: HOBBS, STRAUS, DEAN & WALKER, LLP *Geoff Strommer (by TAE)*
RE: ***IHS Updates Tribes on Past-Year CSC Claims, FY 2014 Reconciliation, CSC Appropriations, and New Voluntary Timelines***

In the attached “Dear Tribal Leader” letter dated January 22, 2015, Indian Health Service (IHS) Acting Director Dr. Yvette Roubideaux provided updates on the following contract support cost (CSC) issues:

- Settlement of past-year claims for unpaid CSC;
- The FY 2014 CSC reconciliation process;
- FY 2014 and 2015 CSC appropriations; and
- A new voluntary deadline of March 31 for submitting proposals to renegotiate direct CSC or indirect-type CSC and proposals for CSC associated with new and expanded programs.

As the IHS CSC Workgroup prepares to meet later this week in Washington, D.C., the letter provides a helpful summary of the status of these CSC issues.

Settlement of Past-Year Claims

IHS continues to make progress in settling past-year CSC claims. Dr. Roubideaux reports that, as of January 16, 2015, IHS has tendered settlement offers on 1,211 claims and settled 861 claims for \$679 million. The letter points out that between June 2012, when the Supreme Court decided *Salazar v. Ramah Navajo Chapter*, and November 2013, IHS settled just three claims, so the agency’s commitment to rectifying its history of underpayments came quite slowly. In the past 14 months, however, IHS has dedicated significant resources to the settlement process. Although many more claims remain to be settled, the process has become fairly efficient over this time.

The FY 2014 CSC Reconciliation Process

“Reconciliation” refers to IHS’s process for tracking changes in the variables that generate each contractor’s CSC need—direct cost base, indirect cost rate, etc.—so that IHS pays 100% of CSC need but no more. Following Congress’s enactment of the consolidated appropriations act in January 2014, IHS paid each contractor its full

estimated need by the end of April, then completed additional reconciliations in September and December. The reconciliation process resulted in many tribes receiving additional CSC payments, and many others having to refund overpaid amounts or take an offset in FY 2015 CSC funding. Dr. Roubideaux states that in FY 2015, IHS will use the same process, but move to monthly data reconciliation. The hope is that earlier payment adjustments will result in full payment with fewer overpayments.

FY 2014 and FY 2015 CSC Appropriations

Dr. Roubideaux describes the implementation of the full-payment policy in FY 2014, which required reprogramming funds from other activities to cover CSC needs. She notes that in FY 2015, IHS received \$663 million for CSC, an increase of \$76 million, which should be sufficient to both fully fund CSC and restore budget line items that were reduced by reprogramming in FY 2014.¹

Voluntary Timeline for Submission of CSC Proposals

A year ago, Congress called on IHS and the Bureau of Indian Affairs (BIA) to work with tribes on recommendations for long-term solutions to CSC issues. One of the principle challenges, as seen in the FY 2014 reprogramming process, is developing accurate estimates of CSC need early in the year so that the agency does not find itself with too little, or too much, CSC funding at the end of the year. Two major variables are proposals for CSC on new and expanded programs and requests to renegotiate direct CSC and/or indirect-type costs. The current IHS CSC Policy allows tribes to submit proposals for CSC for new and expanded programs as late as July 3 for Title I contracts or August 17 for Title V agreements—dates that reflect statutory review periods in the Indian Self-Determination Act. There is no such statutory limitation on requests to renegotiate DCSC or indirect-type costs; consequently the IHS CSC Policy is silent on these issues and tribes can renegotiate right up to the end of the fiscal year on September 30.

Moving the target dates for both types of proposals earlier in the fiscal year would provide IHS more notice of potential changes in need and more time to respond accordingly and possibly avoid the necessity of reprogramming. Recognizing this, the CSC Workgroup and many tribes recommended implementing voluntary timelines. Accordingly, Dr. Roubideaux announces in her letter that IHS requests proposals for CSC on new and expanded programs and for renegotiations of direct and indirect-type CSC in FY 2015 to be submitted by March 31, 2015. While IHS has no authority to enforce this deadline, tribal representatives believe voluntary compliance would serve everyone's interests.

¹ In the conference report on the appropriations act, Congress designated \$662,970,000 for CSC for IHS, but the act itself does not limit the agency to spending this amount, and IHS can reprogram additional funds if needed, as it did in FY 2014.

As for the many other long-term solutions tribes proposed—including mandatory appropriations, multi-year spending authority, streamlining the indirect cost rate negotiation process, and many others—Dr. Roubideaux says only that “IHS and BIA have discussed these recommendations with the Administration.”

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).