

**Follow up questions for the Honorable Dr. Yvette Roubideaux
Acting Director - Indian Health Service,
Department of Health and Human Services
Nomination Hearing
June 12, 2013**

Questions from Senator Cantwell:

STAFFING

Q1) In response to the question "*Many Indian tribes have an acute need/or health care facilities as well as chronic staffing shortages. Though the Indian Health Care Improvement Act directs IHS to consult with Indian tribes and tribal organizations in addressing these needs, existing IHS facility construction programs, such as the Small Ambulatory or Joint Venture programs, are funded sporadically if at all. Many tribes have used their own tribal funds to finance and build new health facilities, but do not receive additional staffing packages for these facilities.*"

a) How specifically does the Indian Health Service plan to address staffing shortages in health care facilities?"

Your response states "*For new and replacements [sic] facilities, the Administration requests from Congress funding at 85% of need in the President's annual budget proposal*".

Why is the Administration only requesting 85% of need for new and replacement facilities?

Is the same 85% reduced rate applied for existing service unit vacancies?

Answer: The IHS has a longstanding practice that establishes 85 percent as a standard at which full-time equivalent (FTE) staffing levels for newly constructed facilities is requested. In the mid 1980s, the IHS wanted to establish uniformity and pursue equity in budgeting for this resource need. The IHS recognized that it was unlikely that 100 percent of the staff, as determined by the IHS Resource Requirements Methodology (RRM), could be recruited and actually brought on board during the fiscal year that the new facility was completed and that it was also necessary to adjust the FTE during the first year based on the number of months that the facility would be in operation.

An informal review of IHS staffing patterns and other personnel management related factors at the time indicated that 85 percent of the total level of staffing needs, adjusted to reflect the number of months of operations, was a reasonable estimate of the number of staff that could be recruited during the first year and that could ensure that all services for which the facility was designed and constructed could be provided. Accordingly, the IHS has been following this practice in the formulation of its budget for staffing for new and replacement facilities since the 1980s. It is also the practice of IHS to request the annualization of these resources in the subsequent year. Over the years, consultation with Tribes has not indicated a strong desire to change the 85 percent level of total level of

case of construction contracts) with performance on or near an Indian reservation are required to include the Indian Preference Program clause that provides for a quarterly report that includes the dollar amount and distribution of subcontracts to Indian and non-Indian firms.

A revision to the Acquisition Management Chapter of the Indian Health Manual is in progress and will include improvements to standard Buy Indian procedures.

Q2) How does IHS ensure that all successful contractors remain certified by the Commission on Accreditation of Medical Transport Services (CAMTS), in order to assure that air ambulance companies operate safely and competently?

Answer: IHS policy requires CAMTS certification as a standard contract requirement for this service. Routine contract administration by IHS contracting officers requires licenses and certifications to be submitted when contracts are awarded or renewed. In addition the IHS policy describes procedures for reporting unsafe conditions or passenger refusal to fly incidents.

Questions from Senator Begich:

CONTRACT SUPPORT COSTS

Q1) IHS has only settled 2 claim years since the *Ramah* June 2012 decision. How many claim years does the agency plan to settle in each of the remaining months of this year?

Answer: The Agency recently settled an additional claim year with another tribe and is actively engaged in settlement discussions with several tribes. IHS has developed a business plan to efficiently address the large number of claims; the plan includes improving internal business practices and creating a priority process in order to efficiently address the claims. The Agency plans to devote additional resources to this effort and anticipates being able to address a large portion of the approximately 1,200 claims currently pending before IHS, as well as those that have been appealed to the Civilian Board of Contract Appeals (Board) or to Federal court, within the next fourteen months. Any matters that cannot be resolved through settlement may require additional time to resolve through litigation. In all cases, the Agency will work to resolve the claims and any subsequent appeals as expeditiously as possible.

Q2) Do you agree that prior to a Senate confirmation to be Director of the IHS, you should demonstrate to Congress a commitment to settling all claim years on a prompt, fair and equitable basis?

Answer: One of the four Agency Priorities established under my administration includes: To renew and strengthen our partnership with tribes and to make all our work accountable, transparent, fair and inclusive. Our commitment to settling all claim years on a prompt, fair, and equitable basis is currently demonstrated not only through the

number of claims settled to date, but also by several other activities, including: devoting increased significant resources to actively analyzing claims; developing a system for prioritizing review of claims, with nearly 70 tribes already added to the review list; working collaboratively with tribes to gather relevant documents and discuss the importance of those documents to the claims analysis; and discussing settlement with numerous tribes regarding claims at all levels of the process, including those pending before the contracting officer and those that have been appealed.

Q3) How many claim years are currently pending against the Indian Health Service?

Answer: The claims against IHS are pending at multiple stages of the Contract Disputes Act process, including: (a) before the Agency's contracting officers; and (b) on appeal from the contracting officer to the Board or Federal court. We estimate that approximately 1,200 claims that span 20 years are pending before the Agency's contracting officers. Nearly 350 additional claims have been appealed to either the Board or a Federal court.

Q4) How much is claimed in those claims?

Answer: The claims pending before the Agency's contracting officers total approximately \$1.4 Billion. The appeals involve claims that total approximately \$600 Million.

Q5) How many claim years does the agency plan to settle in 2014? Does the agency have a plan to complete all claims within the next 12 months? If not, how long does IHS expect it to take?

Answer: The Agency plans to commit additional resources to this effort, which we anticipate will allow the agency to address a large portion of current claims, including those pending at IHS and on appeal, in 2014. IHS sent an update to Tribes on September 9 that described IHS' commitment to increase staff and resources towards settlement of CSC claims and also defined a new focus for consultation on CSC with Tribal leadership. Please see the attached copy of the letter.

Q6) Does the agency lack sufficient legal resources to settle claims at a more rapid pace?

Answer: The Agency has evaluated its staff resources, including legal staff, to determine the resources necessary to analyze and settle claims and expects to make adjustments where necessary. The pace at which we are conducting this work is increasing over time.

Q7) Does the agency lack sufficient technical resources, either in-house or on contract, to settle claims at a more rapid pace?

Answer: The Agency has evaluated its staff resources to determine the resources necessary to analyze and settle claims. IHS has devoted additional staff and hired a

contractor to assist with financial analysis of claims. The pace at which we are conducting this work is increasing over time.

Q8) In April you announced to Tribes an expedited and low-cost settlement process where no lawyers and no expert accountants would be needed, and the agency would develop a take it or leave it offer based upon existing documents. Is it true that the agency has since then stated that these offers will not be made ahead of other ongoing settlement negotiations that do involve lawyers and accountants?

Answer: In April the Agency announced an “alternate” process option under which IHS would review its records and then submit a one-time settlement offer to a Tribe that would be non-negotiable, unless the Tribe opted to return to the more traditional process in order to exchange documents and negotiate with IHS. In a June 12, 2013 Dear Tribal Leader Letter (DTLL), the Agency explained the alternate and traditional processes in more detail. For example, the DTLL explained that IHS conducts the same analysis of claims under both the alternate and the traditional processes, which is necessary to ensure that the Agency is processing all claims on a fair and equitable basis. The Agency therefore involves its technical staff, including accountants, in analyzing the claims and developing the one-time settlement offer for the alternate process. As explained in the DTLL, the primary benefit of the alternate process is that it is simpler and less time-consuming for Tribes. It is important to note that the alternate process must still be consistent with the procedural requirements of the Contract Disputes Act and is available only for claims pending before the Agency’s contracting officers. Tribes must submit a claim letter to IHS before engaging in either the alternate or traditional process; once the selected process is complete, IHS must issue a contracting officer’s decision that can be appealed since the Judgment Fund is available to pay the claims only after such an appeal is filed.

The Agency is balancing requests to proceed under the alternate process with its collaboration with Tribes that are actively working with IHS under the traditional process. In the DTLL, the Agency asked for Tribal input on how best to balance the requests for the alternate process with those Tribes whose claims and appeals are proceeding under the traditional process, specifically asking whether Tribes that request the alternate process should be permitted to “jump ahead” of other Tribes. So far, Tribes indicate a preference for devoting equal resources and time to both options. IHS will continue to incorporate Tribal input when determining how best to devote the Agency’s resources in order to reach a fair and equitable resolution of the claims of all Tribes.

Q9) How many Tribes have requested these speedy offers? How many such offers have been made?

Answer: There are currently fourteen formal requests under review.

Submitted by Senator Heidi Heitkamp

IHS efforts have focused on preparing and educating staff on this new reimbursement option for IHS direct care services to AI/AN Veterans. All North Dakota federal sites' benefits coordinators and staff have participated in the WebEx training on assisting our Veterans with the enrollment application. Training was also provided to all federal sites on how to obtain mass enrollment verification. All sites have taken advantage of this option and are populating their data base with enrollment information. If an AI/AN Veteran is not currently enrolled in the VA Medical Benefits Program, they are referred to the trained staff for assistance who will explain the purpose and importance of enrollment.

Contract support costs routinely comes up as a top priority for tribes. According to the IHS contract support cost shortfall reports, what was the shortfall in IHS contract support cost payments for each of the North Dakota tribes for fiscal years 2006 through 2012?

- **Please list totals by year and by tribe, and totals for all years and all tribes.**

Answer: The amounts reported in the annual shortfall reports for each of the North Dakota Tribes are listed below. IHS notes, however, that these amounts are estimates based on the information available at the time each report was completed and do not reflect actual costs information as reported in the Tribes' audited financial reports, as that information is not available to the Agency at the time it completes the reports. For those Tribes that have submitted contract claims for underpayment of their contract support costs, IHS is evaluating the audited financial reports to determine each Tribe's actual costs.

INDIAN HEALTH SERVICE Contract Support Costs Shortfall - North Dakota Tribes FY 2006-2012								
	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	Totals by Tribe
Spirit Lake Nation	191,055	253,379	0	4,182	24,729	443,836	92,071	\$944,140
Standing Rock Sioux Tribe	136,147	113,675	133,444	140,806	143,187	115,740	0	\$737,096
Three Affiliated Tribes	406,207	428,097	1,016,962	1,175,721	56,073	649,828	1,969,451	\$5,702,339
Trenton Indian Service Area	189,704	373,266	144,253	191,445	22,675	32,797	340,890	\$1,295,030
Turtle Mountain Band of Chippewa	136,891	278,184	118,630	158,162	24,860	43,557	0	\$752,153
United Tribes Technical College	84,139	60,020	36,370	45,104	72,066	55,892	22,312	\$375,903
Totals by Year	\$1,144,143	\$1,506,621	\$1,384,547	\$1,715,420	\$343,590	\$1,341,650	\$2,370,690	\$9,806,661

- Which of the North Dakota tribes have filed claims over contract support cost shortfalls, and how many claim years are covered by those claims? Please detail which tribes have filed claims for which years. What are the amounts of each of the claims filed by each of the North Dakota tribes? Please also list the total for all years and for all tribes.

Answer:

**INDIAN HEALTH SERVICE
Contract Support Costs - Contract Disputes Act Claims
North Dakota Tribes**

Fiscal Year	Spirit Lake Tribe	Standing Rock Sioux Tribe	Three Affiliated Tribes	Trenton Indian Service Area	United Tribes Technical College	Totals by FY
1995	273,826	5,288	15,867			\$294,981
1996	188,082		177,947			\$366,029
1997	111,878	62,622	368,770			\$543,270
1998	356,994	205,585	235,049			\$797,628
1999	121,119	21,454	159,906			\$302,479
2000	223,686		331,491			\$555,177
2001	424,911	10,859				\$435,770
2002	818,244	66,197				\$884,441
2003	1,065,167	90,772				\$1,155,939
2005	613,230	190,997				\$804,227
2006	776,197	215,974	406,207	473,964	84,139	\$1,956,481
2007	768,755	202,995				\$971,750
2008	556,100	222,474				\$778,574
2009	678,645	240,421				\$919,066
2010	698,588	163,233				\$861,821
2011	602,845	156,217				\$759,062
Totals by Tribe	\$8,278,267	\$1,855,088	\$1,695,237	\$473,964	\$84,139	\$12,386,695

- When were each of the claims identified in your answers to the above question filed? Which of these claims have been settled? Of the foregoing claims which have not been settled or resolved, how many of the claims are in active settlement discussions?

Answer: See the above tables for the requested data, which shows the amounts and years associated with the claims. The information reflects active claims received and logged by the IHS. Of the Tribes listed, the Spirit Lake Tribe has appealed some of its claims to the Civilian Board of Contract Appeals (Board), and the parties will engage in analysis and

settlement discussions regarding those claims in the order identified in the Report to the Civilian Board of Contract Appeals regarding Appeals by Indian Tribes Alleging Underpayment of Contract Support Costs by the Indian Health Service, originally filed on April 16, 2013, and recently updated on August 1, 2013. None of the claims listed have been settled or are in active settlement discussions at this time, but they are in various stages of the Agency's Contract Disputes Act review and determination process.

Fewer than 3 claim years have been settled in the 13 months that have elapsed since the Supreme Court's June 2012 decision in the *Ramah* and *Arctic* cases.

- **Is IHS limited by resources from settling more claim years more quickly? If not, why has IHS not settled more claims?**

Answer: IHS has developed a business plan to efficiently address the large number of claims; the plan includes improving internal business practices and creating a priority process in order to efficiently address the claims. The Agency plans to devote additional resources to this effort and anticipates being able to address a large portion of the approximately 1,200 claims pending before the Agency, as well as those that have been appealed to the Board or to Federal court, within the next fourteen months. Any matters that cannot be resolved through settlement may require additional time to resolve through litigation. In all cases, the Agency will work to resolve the claims and subsequent appeals as expeditiously as possible.

Furthermore, the Agency's commitment to settling all claim years on a prompt, fair, and equitable basis is demonstrated not only through the number of claims settled to date, but also by several other activities, including: devoting increased significant resources to actively analyzing claims; developing a system for prioritizing review of claims, with nearly 70 tribes already added to the review list; working collaboratively with tribes to gather relevant documents and discuss the importance of those documents to the claims analysis; and discussing settlement with numerous tribes regarding claims at all levels of the process, including those pending before the contracting officer and those that have been appealed.

IHS sent an update to Tribes on September 9 that described IHS' commitment to increase staff and resources towards settlement of CSC claims and also defined a new focus for consultation on CSC with Tribal leadership. Please see attached copy of the letter.

- **Is it true that IHS is currently only engaging in settlement negotiations over claims that are in litigation before a court or the Civilian Board of Contract Appeals? If so, why? If not, how many claims pending before contracting officers are in active settlement negotiations?**

Answer: The Indian Health Service is analyzing claims and engaging in discussions with Tribes regarding claims at all stages of the Contract Disputes Act process, including claims pending before the Agency's contracting officers and claims that Tribes have

appealed to the Board or in Federal court. Currently, the Agency has identified the claims of nearly 70 Tribes for which it is actively engaging in claims analysis and settlement discussions: 39 of those Tribes have appealed at least some of their claims to the Board or in Federal court and may also have claims pending before the Agency's contracting officers that are also being analyzed; 30 of those Tribes only have claims pending before the Agency's contracting officers and have yet to appeal any claims. As explained above, for Tribes whose claims are pending before the Agency's contracting officers, the IHS is devoting equal resources to those proceeding through the traditional and the alternate processes.