ISDEAA - P.L. 93-638
SECTION 105(*l*)
LEASE PROPOSALS

105(*l*) LEASES

- IHS is required to enter into 105(*l*) leases with Tribes for tribally owned or leased buildings delivering services under the Act.
- Lease costs must be reasonable and not duplicative (paid by the FA or some other federal source).
- Funding for 105(*l*) leases comes from IHS Services funds.

105(*l*) LEASES

- Lack of IHS Services funding is not a reason to decline/reject a 105(*l*) lease proposal.
- 105(*l*) leases are not really leases. They are facility cost agreements that compensate the owner for facility operational expenses.
- All 105(*l*) lease proposals from Tribes/TOs should be sent to the respective IHS Area Director or Agency/Area Lead Negotiator (ALN).

105(*l*) LEASES

- The Director of the Division of Engineering Services (DES) has the IHS delegated authority to sign all 105(*l*) leases for IHS and is the IHS Lead Negotiator.
- The respective Area forwards all 105(l) lease proposals to the DES Director, who issues the lease proposal acknowledgement letters and facilitates the negotiation process for each Area.

105(*l*) LEASES

- 105(*l*) lease proposals must be:
  a. Based on fair market rental;
  b. Based on combination of 900.70 (a) – (h) and fair market rental; or
  c. Based on 900.70 (a) – (h) only.
- Contract support costs (CSC) are not eligible for 105(l) lease costs and apply only to the health care services provided under the FA.

105(*l*) LEASES

- Indirect costs are typically not eligible as they are also provided under the health care services under the FA.
- Management fees must be for personnel who manage/maintain the facility, such as S&B of a Facility Manager or a janitor.
- As 105(l) leases are full service leases, M&I and equipment funds are not eligible (usually FSA also).

105(*l*) LEASES

- The 105(*l*) lease term is the entire FY or CY, regardless of when the initial proposal is received.
- Depreciation is calculated on a straight line 39 year period, unless a Tribe can document use of a different depreciation period.
- Reserve costs are only eligible for major fixed equipment and building services equipment (boilers, pumps, air handlers, etc.)

105(*l*) LEASES

- Principal and interest costs are only for major equipment and building systems loans – not construction loans.
- The IHS negotiation team normally consists of the IHS LN, OGC attorneys, Area Director, ALN, the Area OEHE Director, and the Area RMO and Facility Director.

105(*l*) LEASES

- Area personnel are responsible for reviewing the proposed lease costs for reasonableness and duplication (usually a FA review).
- Typically these personnel are the Realty Management Officer (RMO) and the Agency/Area Lead Negotiator (ALN).

105(*l*) LEASES

- Once IHS agrees with the Tribe to the 105(*l*) lease cost, the Area will request funding from Headquarters
- Upon receipt of funding by the Area the Finance Officer will provide a fund cert to the IHS LN.
- The IHS LN will then sign the lease.
- The Area will process the FA amendment and lease payment.

105(*l*) LEASES

- Lease payments are normally lump sum for the whole FY/CY and paid at the execution of the lease.
- Leases can be renewed per the provisions provided for in each lease.
- Normally IHS needs at least one month notice of the intent to renew.
- Any cost update info can follow the renewal request.

105(*l*) LEASES

- T-I proposals must be reviewed, negotiated, and approved or declined by IHS within 90 days of receipt, or the proposal is deemed approved.
- The 90 day time period can only be extended with written Tribal approval (email qualifies).

105(*l*) LEASES

- A T-I proposal can only be declined for 1 of these 5 reasons:
    1. Service to be provided is not satisfactory;
    2. Adequate protection of trust resources not assured;
    3. Proposed project cannot be properly completed or maintained;
    4. Proposed funding exceeds 106(a) determined funding; and
    5. Proposed PSFAs includes unlawful activities.

105(*l*) LEASES

- T-V 105(*l*) lease proposals are under no time requirement to review, negotiate, approve or reject.
- IHS is expected to negotiate in good faith.
- T-V 105(*l*) lease proposals only have a time clock if a final offer is submitted.

105(*l*) LEASES

- T-V 105(*l*) lease final offers are required to be reviewed, accepted or rejected within 45 days of receipt, unless the Tribe provides a written approval for a time extension.
- If IHS fails to meet the 45 day rejection or time extension requirement, the final offer is deemed approved.

105(*l*) LEASES

- T-V final offers can only be rejected for 4 reasons:
  1. The funding proposed is greater than authorized by the Act;
  2. The PSFA in the final offer is an inherently federal function;
  3. The proposed PSFA would cause significant danger or risk to the public health; or
  4. The Tribe is not eligible for T-V under the Act.

105(*l*) LEASES

- IHS must offer technical assistance (TA) to avoid rejection of a T-V final offer or declination of a T-I proposal.

- T-I proposal declination letters and T-V final offer rejection letters are reviewed by the Final Offer Review Group (FORG) and the Headquarters Leadership Team and are signed by the IHS Director or the respective Area Director or ALN

105(*l*) LEASES

- As of mid-March 2019, IHS has received 100 FY 19 105(*l*) lease renewals and proposals, with an estimated total cost of nearly $42M.
- The IHS FY 19 appropriation provided $36M for tribal clinics operated under a 638 compact, or a contract where health care is delivered in space acquired through a full service lease.
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105(*l*) LEASES

- This amount includes Alaska Area's Village Built Clinic recurring funding of $6M, so funding available for FY 19 - 105(l) leases is $30M.
- A DTLL was sent out by the IHS Director dated March 12, 2019, requesting tribal input on how to make up the 105(l) lease appropriation shortfall.

105(*l*) LEASES

- In FY 18 the IHS Inflation funds were used to make up the funding shortfall.

105(*l*) LEASES

Questions?