

SELF-GOVERNANCE ADVISORY COMMITTEE

c/o Self-Governance Communication and Education

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Submitted to: consultation@bia.gov

June 14, 2016

Lawrence Roberts, Acting Assistant Secretary – Indian Affairs
Bureau of Indian Affairs
U.S. Department of the Interior
1849 C Street, NW
MS-3071-MIB
Washington, DC 20420

Re: Support and Proposed Recommendations – BIA Contract Support Costs (CSC) Proposed Policy

Dear Acting Assistant Secretary Roberts:

On behalf of the Self-Governance Advisory Committee (SGAC), we applaud your commitment to pay 100% of the Contract Support Costs (CSC) need; and, we extend our support for the proposed amendments to the Department of the Interior – Bureau of Indian Affairs (BIA) Contract Support Costs policy. The proposed policy changes were deliberated through the BIA Contract Support Cost workgroup, allowing for meaningful input and the active engagement of Tribal leadership and representatives in the process. We commend our Federal partners, Tribal leadership and others who worked together on the development of these important amendments.

We agree with the statement you made in your March 22, 2016 Dear Tribal Leader Letter regarding the policy's simplified and streamlined approach to calculating CSC:

"This proposed CSC policy follows the direction provided in the FY2014 Appropriations Language: "...to formulate long-term accounting, budget, and legislative strategies to address the situation...each Department's solution should consider a standardized approach that streamlines the contract negotiation process, provides consistent and clear cost categories, and ensures efficient and timely cost documentation for the Departments and the Tribes."

The draft policy is easy to read and understand and, once approved, it will be a useful tool for BIA and Tribal staff to use as a guide to ensure full payment of CSC. However, the policy does not diminish or extinguish any existing rights Tribes have under the Indian Self-Determination and Education Assistance Act (ISDEAA). In light of this, we would recommend that the introductory sections of the Manual should clearly state that the Act, and every compact, contract and funding agreement shall be construed liberally in favor of the Tribes.

Some of the policy's strengths include:

- The policy accurately reflects authorization and requirements to fully fund CSC as provided by the ISDEAA;
- Provides simplified and consistent calculation methods for four types of CSC (pre-award, start-up, direct, and indirect), including an indirect CSC calculation based on a current approved indirect cost rate agreement between a Tribe and its cognizant agency; and,

- Offers alternative calculation methods for indirect CSC when a Tribe does not have a formal indirect cost rate agreement or has an expired indirect cost rate agreement over four years old.

We urge you to consider the following recommendations as suggested amendments:

- Revise the language that reads “current budgeted salary costs of Indian Affairs 106(a)(1) programs” to “Current Tribally budgeted salary costs for IA programs transferred in the 106(a)(1) amount” and delete the terms “excluding fringe” because salaries by definition do not include fringe;
- Raise the Direct Contract Support Cost rate from 15% to 18% of salaries. The rising costs of health insurance premiums and other associated costs have drastically impacted Tribes and now that CSC is to be fully funded from an indefinite appropriation, an increase of 18% does not seem like an unreasonable request;
- Include in the Manual examples of direct CSC that can be negotiated;
- Acknowledge the Tribe’s option to negotiate a lump sum for full direct CSC in a given year. The agency is already negotiating a lump sum for indirect type costs so surely there is no reason why the same cannot be extended to direct CSC;
- The Bureau needs to ensure that it has sufficient staff that are trained and available to negotiate rates with Tribes who choose not to rely on the default of 15% of salaries rule;
- In the absence of a viable rate or lump sum negotiation, the Bureau should pay indirect costs based upon the prior year’s amount or based on the de Minimis rate of 10% adopted in the Office of Management and Budget Super circular;
- Tribes should not be forced to accept CSC based on older rates because the Interior Business Center (IBC) is often slow to issue current rate agreements. Therefore, it should be left up to the Tribe whether to close out with the FY2015 rate in place on September 30, 2016 or wait for the FY2016 rate to be approved;
- Tribes should be given the option to have any overpaid amounts applied as an offset in the following year;
- The policy should set out that increases in CSC need are paid when identified. For example, should additional program funding be distributed during the year, the associated CSC should also be paid at that time. Another example is due to adjustments for increased IDC rates that may be received during the year. Tribes should not be required to wait to year-end to be paid CSC that is due and owing, potentially disrupting their cash flow. Finally, Tribes, whether contracting under Title I or Self-Governance, should be treated at least as favorably as the other with regard to prompt CSC payments.
- The Bureau should employ the same collaborative process in the editing and drafting of the Handbook that it did with the CSC Policy and the workgroup should be engaged in

the process. The Bureau should also consult with Tribes regarding proposed amendments to the Handbook;

- Manual should state clearly the process for negotiating pre-award and associated start-up costs and the Manual should delegate the negotiation of these costs to regional and field personnel;
- Examples of allowable pre-award and startup costs should be included in the Manual for reference purposes. Tribes should be given the opportunity to provide input on this list;
- Once finalized, the CSC Policy and Handbook should be posted on the Indian Affairs website and otherwise made easily accessible Tribes and their staff; and,
- Develop a CSC Report for Tribes that can be released to Tribes even if the formal report to Congress is delayed.

Thank you for this opportunity to comment on the draft CSC policy. We urge you to reconvene the CSC workgroup once the consultation period closes to finalize this policy as quickly as possible. In addition, we suggest that the same simplified and streamlined approach is applied when you finalize the handbook that will accompany the policy, and Tribal representatives look forward to working with your staff to develop the handbook.

If you have any questions please do not hesitate to contact me at (360) 681-4621 or email rallen@jamestowntribe.org.

Sincerely,



W. Ron Allen, Tribal Chairman/CEO, Jamestown S'Klallam Tribe
Chairman, DOI Self-Governance Advisory Committee
Chairman-of-the-Board, Self-Governance Communication & Education (SGCE)

CC: Hankie Ortiz, Deputy Bureau Director, Office of Indian Services, Indian Affairs
Sharee Freeman, Director, Office of Self-Governance
Jim Mackay, Tribal Co-Chair, DOI CSC Workgroup
SGAC Members and Technical Workgroup