

DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

CONTRACT SUPPORT COSTS
CONSULTATION SESSION

July 30, 2014
1:00 p.m.
Chandler, Arizona

PREPARED BY:

AZ Litigation Support
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1 TRANSCRIPT OF PROCEEDINGS of Contract Support Costs
2 Consultation Session held on July 30, 2014, at 1:00 p.m. at
3 Wild Horse Pass Hotel, 5040 Wild Horse Pass Boulevard,
4 Chandler, Arizona 85048, reported by Susan A. Grenz,
5 Certified Court Reporter.

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7 **APPEARANCES:**

8 HANKIE ORTIZ
9 Deputy Bureau Director
10 Indian Services, BIA
11 Washington, D.C.

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11 SABRINA McCARTHY
12 Attorney Adviser
13 Office of Solicitor
14 Washington, D.C.

13 SUNSHINE JORDAN
14 Awarding Official
15 Indian Services, BIA
16 Washington, D.C.

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16 BRYAN BOWKER
17 Regional Director
18 Western Region

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1 MR. BOWKER: Good afternoon. Thanks for coming
2 today.

3 My name is Bryan Bowker. I'm the regional
4 director of the western region.

5 A couple little housekeeping items before we get
6 started. We're going to go around and ask everybody to
7 introduce themselves.

8 Since this is a consultation session, we're going
9 to have a stenographer recording everything, so if you have
10 a question or a comment, please precede that with your name
11 and please spell your name for them so they can get it on
12 the record correctly.

13 We're going to be talking about contract support
14 costs today, and I'd like to introduce you to Hankie Ortiz,
15 who is our director of Trust Services in our central office
16 -- Indian Services. Sorry. Trust Services is vacant, and
17 she's probably doing both right now.

18 So with that, we'll let Hankie get it started.

19 Oh, actually, I've got the mike, and if you can
20 go around and introduce yourselves.

21 MS. RENFROW: Nancy Renfrow. I'm with
22 Confederate Tribes of Grand Ronde in Oregon, and I just came
23 down to listen.

24 MR. MACKAY: James Mackay, M-a-c-k-a-y,
25 Susanville Indian Rancheria, and I'm also the co-chair of

1 the CSC work group.

2 MS. SAKEVA: Marilyn Sakeva. I'm with the Hopi
3 Tribe mine operation.

4 MR. HONANIE: Norman Honanie with the Hopi Tribe.
5 I'm also a representative of the West. Last name is
6 H-o-n-a-n-i-e.

7 MS. POLIVEMA: Marilyn Polivema with the Hopi
8 Tribe operations. Last name is P-o-l-i-v-e-m-a.

9 MS. PABATEA: Good afternoon. Priscilla Pabatea
10 with the Hopi Tribe land operations. Last name is
11 P-a-b-a-t-e-a.

12 MR. RAMEY: My name is Andrew Ramey. I'm with
13 the Ione Band of Miwok Indians, and I'm on tribal council.
14 Last name is R-a-m-e-y.

15 MS. McDADE: Good afternoon. My name is Sharol
16 McDade spelled M-c-D-a-d-e. And I'm the administrator for
17 the Ione Band of Miwok Indians.

18 MS. GARCIA: Jolene Garcia, G-a-r-c-i-a, and I'm
19 here (inaudible).

20 MR. SCABBY: Robert Lee Scabby, S-c-a-b-b-y,
21 South Governance Coordinator at Salt River Pima Maricopa
22 Indian Community.

23 MR. TAPICERIA: My name is Benito Tapiceria with
24 Salt River Pima Maricopa Indian community. Last name,
25 T-a-p-i-c-e-r-i-a. Benito, B-e-n-i-t-o.

1 MS. TITHOF: Alice Tithof, Salt River
2 Pima-Maricopa Indian Community. T-i-t-h-o-f.

3 MR. HOURIGAN: Joe Hourigan, H-o-u-r-i-g-a-n,
4 general counsel for Alabama (inaudible).

5 MR. ROTHERMEL: My name is Wesley Rothermel,
6 R-o-t-h-e-r-m-e-l. I'm the controller for the (inaudible)
7 Nation.

8 MS. KEWENVOIOUMA: My name is Alice Kewenvoiouma,
9 K-e-w-e-n-v-o-i-o-u-m-a. I work with the Hopi Tribal
10 operations office.

11 MR. CALNIMPTewa: Joe CalnimpTewa. This is a
12 good one. C-a-l-n-i-m-p-t-e-w-a.

13 MS. ORTIZ: Good afternoon, everyone. Thank you
14 very much for joining us today to talk about contract
15 support costs. I'm always glad to see people interested in
16 it and look forward to hearing your comments.

17 My name is Hankie Ortiz. I'm (inaudible). I'm
18 from Oklahoma. But I am working as the deputy bureau
19 director for the Office of Indian Services, and that
20 includes four divisions.

21 One of them is the division of
22 self-determination, which means that we are responsible for
23 distributing contract support costs from the national level.
24 We also co-chair the contract support cost work group that
25 Mr. Mackay mentioned.

1 I want to say thank you, first, to Bryan Bowker,
2 the regional director, and to Calvin Richards and Sonya and
3 all the staff at the western region who helped us organize
4 this consultation. They did a great job. And I know we
5 kept changing the PowerPoint on them, and they kept up with
6 us.

7 So you should all have a copy of the PowerPoint.
8 They were really kind to print it out for you. There's four
9 slides on each page. And we're going to go through that
10 really quickly.

11 What I wanted to present in the PowerPoint is
12 some information on contract support costs generally and
13 then give you some background information and then talk a
14 little bit about the questions and comments that we've
15 already been discussing, either we've gotten comments at
16 other consultation sessions.

17 We had three national sessions. Two of them were
18 held in Washington, D.C., and one of them was held in
19 Anchorage, Alaska. Those were conducted by the assistant
20 secretary in partnership with the Indian Health Service
21 director.

22 And then we just had one yesterday at the Navajo
23 Nation where I'm traveling with Sabrina McCarthy, who is --
24 works in the solicitor's office -- she's our legal
25 adviser -- and Sunshine Jordan, who's walking out right now.

1 She's an awarding official from the Pacific Region and has a
2 lot of expertise in awarding funding from the regional
3 level.

4 And so we thought between all of us and the staff
5 here at the western region that we should be able to answer
6 any questions you might have.

7 But what we're really looking forward to is
8 hearing your comments and suggestions because there's a lot
9 happening with contract support costs. We've had a lot of
10 discussions.

11 From some of those other sessions and from
12 discussions we've had at the work group, we've pulled out
13 some questions that are kind of hot-issue questions, and if
14 we're talking about making changes, that these are kind of
15 some of the questions to get the conversation started.

16 I don't want those to limit your comments at the
17 end. So I'm just going to run through them to give you some
18 idea, hopefully spark some thoughts, and then after I finish
19 with the presentation, then we're going to open the mike up
20 for you to have an opportunity to make comments, ask
21 questions, whatever you want to do.

22 So we'll go ahead and get started.

23 The first slide talks about the reason we're here
24 and the appropriation language. This is what the
25 appropriation language actually said: "Congress directed

1 the BIA and the Indian Health Service to formulate long-term
2 accounting budget and legislative strategies to address the
3 situation. In the committee's view, each department's
4 solution should consider a standardized approach that
5 streamlines the contract negotiation process, provides
6 consistent and clear cost categories, and ensures efficient
7 and timely cost documentation for the department and the
8 tribes."

9 So that's really what we're looking to do. We're
10 looking to make changes, either in our contract support cost
11 policy or in the process in the way the funding is
12 distributed, or even if we need to make legislative changes.
13 Perhaps we can make those kinds of recommendations after
14 we've reviewed everything.

15 So we're trying to streamline the process to make
16 it easier, maybe cut out some steps, maybe use different
17 methodologies, different formulas, change the processes in a
18 way that will make things flow more smoothly. So those are
19 the kinds of changes that we're really hoping to make.

20 The slide talks about all the funding. This is
21 just some general information on the kinds of funding that
22 go into the Indian Self-Determination and Education
23 Assistance Act title and contract or for Title IV, compact
24 funding increment -- I think you have to push the next --
25 certain direct program funds, indirect contract support

1 costs, start-up funds, indirect contract support costs.

2 So start-up funds are -- we'll go through that in
3 just a minute.

4 So those are all the types of funds that go into
5 funding a contract, the program funds and then the contract
6 support costs that are associated with them.

7 With regard to contract support costs, in FY
8 2009, the BIA paid out at 72.6 percent. That increased
9 slightly in FY '10 to 75.16, but that was still well below
10 100 percent.

11 In FY '11, the BIA paid at its highest rate yet
12 at 97.46 percent and then in FY '12 at 94.86 percent.

13 The FY '13 report to Congress is currently still
14 going through the surname process.

15 Once the shortfall of the contract reports cost
16 are completed, we put them on the website. So you can see
17 FY 1012 or earlier on the BIA website. And then as soon as
18 FY '13 is sent to Congress, we will publish that on the
19 website also and so you can look at those.

20 The FY -- for FY '14, the contract support cost
21 appropriation was \$241.9 million. That's how much we got
22 this year. And in 2014, we have committed that the BIA will
23 fund the total current contract support cost requirements at
24 100 percent for both self-determination and self-governance
25 agreements.

1 The contract support cost work group that we
2 mentioned earlier was formed in 2007. It's comprised of
3 both federal and tribal representatives from across the
4 country. We tried to get one primary tribal representative
5 and one alternative representative from each region.

6 We just recently added two TIBC board group
7 members also so we have a tie to the Tribal Interior Budget
8 Council, and I think that's going to be very helpful.

9 The work group convenes at least annually, and
10 we've been meeting a little more frequently because of the
11 focus on contract support costs.

12 In fact, what we're planning to do is after we
13 finish all of the consultation sessions we have set up,
14 we're going to meet with the group work and we're going to
15 try to get them to help us sort through the comments and
16 categorize them, prioritize them, and decide how we want to
17 move forward with recommendations we want to put forward.

18 So the next couple of slides identify who the
19 primary work group members are from each region, their
20 telephone number, their e-mail address. Their alternates
21 are on the next slide. And then the federal representatives
22 that are on the work group has all of us identified.

23 Terry Parker is a federal co-chair who is
24 co-chair with Mr. Mackay. And Sabrina is a legal adviser to
25 the work group. Sunshine is on the work group. I work on

1 the work group. So we all work together.

2 Now I'm going to run through some of the
3 questions that we pulled out of the consultation transcripts
4 that we had and what we've been discussing, and when we --
5 after we finish and we start taking comments, Sabrina and
6 Sunshine are going to have hand-held microphones and they're
7 going to walk around. If you have a question or comments,
8 then they'll give you the microphone.

9 We wanted to make sure that we give priority to
10 tribal leaders so if the tribal leaders that are present --
11 if you could, please respectfully let them respond first,
12 and then after the tribal leaders have all made their
13 comments, then we can open it up to other people. So we'll
14 do it like that.

15 The first question is, currently the contract
16 support fund is identified in three pools. If BIA is paying
17 full contract support costs, is a three-pool approach still
18 effective?

19 So this is the way we currently pay contract
20 support costs. Pool 1 is for start-up costs paid from the
21 Indian Self-Determination Fund for tribes to start a new
22 activity or to expand on an existing activity.

23 Pool 2 is the funding base, what the tribe had
24 received last year as their base funding if it does not
25 exceed 100 percent.

1 Pool 3 are the contract support cost increases
2 that are distributed using the bottoms-up methodology. In
3 the past we've used that pool 3 to bring tribes up to the
4 next -- to a certain level, and then once everybody was at
5 that level, to bring tribes up to another level.

6 So what we're asking here is if we're paying 100
7 percent contract support costs, is that still the best way
8 to do it, or is there another way that we can do it? So
9 that's the question.

10 Question number 2: How can BIA clarify the
11 indirect cost rate portion of the CSC policy? The CSC
12 policy currently says that we will use -- well, I guess it's
13 identified here as option A. Currently the indirect costs
14 -- contract support costs for a tribe are calculated using
15 the tribe's most recent indirect cost rate agreement. Then
16 adjustments to the contract support cost payments are made
17 when the tribe obtains a current indirect cost rate
18 agreement within the funding period.

19 And then option B is: Use the most current
20 negotiated indirect cost rate in existence at the native
21 congressional appropriation or the first continuing
22 resolution. This same rate will be reported to the contract
23 support cost report. This does not apply to a newly
24 negotiated indirect cost rate that is negotiated for the
25 following year.

1 So these two options, to clarify what they are,
2 the first one, option A, is the policy says that BIA is
3 going to pay using the most indirect cost rate. So the
4 issue here is how do you define that, can we define that
5 more clearly in the policy.

6 Under option A, which I think most regions do, is
7 they look at the most current rate available. So if you get
8 a continuing resolution at the beginning of the year,
9 whatever the tribe's indirect cost rate is at that time,
10 it's paid at that amount. So maybe it's 11 percent, and you
11 would pay out the contract support costs on that first
12 continuing resolution at 11 percent.

13 But then, say, at the end of the year -- well,
14 during the year sometime they negotiate a new rate. Maybe
15 the new rate is 15 percent. So for the distributions after
16 that new rate for that year, they would be paid at the 15
17 percent rate.

18 But under option B, even if they had negotiated a
19 new rate during the year, they would still be using the
20 first rate, which was the 11 percent.

21 So those are the options that have been
22 discussed, how would it be better to do it and then
23 reconcile it all at the end.

24 Question 2: How should BIA determine indirect
25 costs for tribes without a formal indirect cost rate

1 agreement? Currently the BIA negotiates a lump-sum amount
2 for indirect-type costs. Should the BIA continue to do
3 this?

4 And usually tribes that don't have an indirect
5 cost rate agreement are very small tribes that may not
6 qualify or be required to do an annual audit so they may not
7 have the audit documents to get an indirect cost rate. And
8 so that's what the BIA currently does, is negotiate
9 indirect-type costs. And so the question is just should we
10 keep doing that, or if we're going to streamline the
11 process, should we do something differently.

12 Question number 4: Should small and needy tribes
13 that have not negotiated a formal indirect cost rate
14 agreement receive a flat rate of 30 percent for indirect
15 costs? And then the bottom part defines what we mean by
16 small and needy tribes.

17 What we're talking about in the lower 48 is
18 tribes that have less than \$160,000 in annual funding and
19 have 1,700 or fewer members enrolled, and the Alaskan Native
20 tribes must have less than \$200,000 to qualify as small and
21 needy.

22 The small and needy tribes primarily are in the
23 Alaska Region, but there are quite a few also in the
24 California or the Pacific Region.

25 Okay. Question 5: Currently the BIA uses 15

1 percent of program salaries to determine direct contract
2 support costs. Should this be included in the contract
3 support costs policy?

4 So right now we do that, and it was because of a
5 memo written by a former assistant secretary, and it was
6 kind of a placeholder until we decided how we wanted to
7 proceed.

8 So the option -- the alternative option would be
9 to negotiate a direct contract support cost amount, which
10 would require us to probably hire more staff and train staff
11 to do that because currently nobody is doing that, and that
12 would be an extra requirement on the BIA, or we could look
13 at proposing a different percentage.

14 The contract support cost workers proposed doing
15 a pilot project to try to see what would be a good rate,
16 taking some voluntary tribes that are both self-governance
17 and Title I tribes and maybe small and large, kind of
18 different -- located in different places and just see what
19 would be a good average percentage that we could use and put
20 in the policy.

21 So those are some of the things that haven't been
22 discussed.

23 But that's the question, should we just take a
24 percentage, 15 percent or another percent, and write that
25 into the policy, is that how we're going to calculate direct

1 support costs, because if we negotiate it, it's just going
2 to be a percentage of salary. There would be other factors
3 that go into that. So that's something to think about.

4 How should overpayments be recovered to be fair
5 to all tribes? That's a big issue that we're dealing with,
6 and, you know, issuing bills of collection have not gone
7 very well, and tribes have an opportunity to appeal if
8 they're issued a bill of collection.

9 The alternative method has been offsetting in the
10 next year if we could get -- if that's a good option and
11 we'd get tribes to agree to that fund, or how do we -- how
12 do we do that? Because that's -- I mean, we want to be fair
13 to all tribes, and it's really not fair if all tribes are
14 getting 100 percent of contract support costs and then some
15 tribes are getting 125 percent or 140 percent. You know,
16 it's really not fair to everyone. If everyone is getting
17 100 percent, then that's more fair.

18 So how do we deal with overpayment? That's a big
19 issue for the BIA, something that we'd like some feedback
20 on.

21 Question number 7: Should the BIA propose a
22 change to Section 106(c) of the Indian Self-Determination
23 and Education Assistance Act, 25 USC 450j-1(c), so that the
24 annual contract support cost report is submitted to Congress
25 later than the current due date of May 15th?

1 The reason we're asking that question is because
2 it's been very difficult for the tribes and for the BIA
3 staff to get all the information gathered up and submitted
4 to Congress by May 15th.

5 We have -- if everyone -- if every tribe was a
6 fiscal-year tribe, it might be easier, but we have a lot of
7 calendar-year tribes. And the information has to go back
8 and forth between the regional office and the tribe until
9 the information is as accurate as they think it can be.

10 And then they send it up to central office, and
11 we put all the information from every region, by region, by
12 tribe onto an Excel spreadsheet, and then we have to work
13 out all the numbers and submit a report, and it has to go
14 through the (inaudible). So it goes from self-determination
15 to my office, and then it goes to the solicitor's office,
16 the BIA director, the assistant secretary. His counselors
17 review it, and then he looks at it, signs off on it, and
18 then it has to go to the secretary's office, and then it
19 goes to OMB, and then it finally goes to Congress. So
20 that's why it takes so long to get through the (inaudible)
21 process. It's a long process.

22 We want to make sure that the information we're
23 sharing is accurate and -- because that really helps us to
24 project -- we use those numbers to project future funding
25 for contract support costs so we need accurate numbers, and

1 that's why that question is being asked.

2 And some people have proposed August 15th, but,
3 you know, I don't know. That's just a number. Everybody
4 thinks that we can complete it and start the review process
5 at least six weeks before that and then it wouldn't overlap
6 with the end-of-year financial business and things like
7 that.

8 Question number 8: What types of
9 self-determination or contract support cost training do
10 tribes need that is not currently offered?

11 So I don't know if any of you know or all of you
12 know, but on the BIA website, on the very first page, you
13 can click on a button that says "Self-determination
14 Training" and it identifies all the training that we offer.

15 Since 2013, the beginning of the last fiscal
16 year, we've offered 52 different self-determination
17 trainings, and many of them are in contract support costs.

18 And so if you've had an opportunity to look,
19 that's great; I'm glad you know about that. If you don't, I
20 encourage you to take a look at it. And maybe if you can't
21 comment today but you want to submit some comments later on
22 some kinds of training that we could offer that would be
23 helpful that we're not offering.

24 We try to do some in-person training and offer
25 primarily webinars so that people don't have to travel and

1 they can still participate.

2 We also go out to regions and provide trainings
3 for regions as needed. So depending on what your issues
4 are, if there are a lot of tribes in the region with the
5 same issues, we're willing to do that.

6 So those are all the questions that I've
7 prepared. And then I'd like to open it up to the floor
8 right now.

9 And, Sunshine and Sabrina, do you have the
10 microphones?

11 So if you have comments on any of the questions
12 that I've presented or comments on anything else regarding
13 contract support costs, we'd love to hear your comments.

14 MS. McDADE: Sharol McDade, Ione Band of Miwok
15 Indians.

16 At the very start of your presentation, you
17 talked about the possibility of formula funding. You
18 mentioned it in the beginning of your presentation.

19 And so my question would be, if you're going to
20 utilize formula funding for tribes, how could you calculate
21 based on population? Would you utilize the census? Would
22 you utilize tribal enrollment? What numbers would you
23 utilize for tribes, and would it have to do with their land
24 base or service area? Because I know you had mentioned the
25 formula funding allocation or possibility of formula

1 funding.

2 MS. ORTIZ: I don't think -- I didn't talk about
3 formula funding. I just said that there were different --
4 that we could do things differently.

5 If you have a suggestion of how to do it, then
6 I'd love to hear it.

7 MS. McDADE: Okay. Because you had --

8 MS. ORTIZ: Because we're not proposing any
9 changes like that right now.

10 I was just explaining how the pools -- situation
11 and methodology that we currently use in our current policy
12 is how the pools are identified, and that's just from base
13 funding.

14 Contract support costs is first distributed based
15 on what the tribe received the previous year, and then any
16 increases are added to that. So that's the way that it's
17 currently done.

18 MS. McDADE: So any of the suggestions with
19 regard to formula funding could be possibly analyzed, like,
20 through the way (inaudible) does it or the housing
21 allocations?

22 MS. ORTIZ: I don't think we could -- well, the
23 statute, the Indian Self-Determination Act, said that we
24 cannot provide less funding than we provided last year. So
25 we have to start with the base. You can't just go to a

1 strict formula that's going to totally shift the numbers
2 around. So we have to keep that in mind, what the law says.
3 So that's why we started with the base funding.

4 So it's not going to be -- it's not -- so when
5 you contract funding, you're getting funding for the
6 programs, functions, services, and activities, and then you
7 get the indirect and direct, which is the whole package of
8 contract support costs that goes with it. So you're not
9 going to be able to do it in the same way that you'd do it
10 with other formulas.

11 MS. McDADE: So if that was just a possibility,
12 is it something that the Bureau has even explored?

13 MS. ORTIZ: No.

14 MS. McDADE: Okay. So maybe it would be a
15 suggestion.

16 MS. ORTIZ: Do you have a specific proposal for,
17 like, what you think might be a possibility?

18 MS. McDADE: I could probably work one up.

19 MS. ORTIZ: Okay. Well, you know, we have until
20 August 31st we're accepting comments on contract support
21 costs so if you want to give it some thought and give us
22 something in writing, that would be great.

23 MS. McDADE: Thank you.

24 MS. ORTIZ: Thank you.

25 MR. HONANIE: I have two comments.

1 Honanie, H-o-n-a-n-i-e.

2 First it says how should the BIA determine
3 indirect costs for tribes without formal indirect cost rates
4 agreement. And the two scenarios you said, lump sum, who
5 made that determination, the BIA or the policy -- the new
6 policy committees?

7 MS. ORTIZ: That was suggested by the contract
8 support cost work group.

9 MR. HONANIE: The policy committee you referred
10 to?

11 MS. ORTIZ: The work group. It's made up of
12 tribal and federal representatives.

13 BY MR. HONANIE: Okay. So where did they start
14 their stake at? Say, okay, we're just going to say the
15 tribe without a formal indirect cost agreement, this is what
16 you get or -- well, how did they come and arrive at that?

17 MS. ORTIZ: Do you know, Carolyn? This is before
18 I was here so --

19 MS. RICHARDS: Carolyn Richards.

20 I think what happened is they took your latest --
21 your last rate that you had, your indirect cost rate that
22 you negotiated with -- at that time it was the ORD's office
23 at Sacramento. Now it's IDC.

24 They took that latest rate and decided, you know,
25 you had a 15 percent, so now they give you a lump sum amount

1 of 15 percent until you get a new rate. So if someone else
2 got, like, 23 percent, that's where we would start.

3 MR. HONANIE: So really nobody made that
4 determination; it was already set by the previous year.

5 MS. RICHARDS: It was set by the work group.

6 MR. HONANIE: But it was set by the previous
7 year.

8 MS. RICHARDS: Right.

9 MR. HONANIE: So I think that needs to be set not
10 by the work group, because when you read that, you're, like,
11 okay, well, the policy group set that.

12 I'm just making that point very clear that that's
13 what your rate was based on at the time you made it, and I
14 think that needs to be really clear.

15 The second one is the small and needy tribes,
16 what's the difference between a small and a needy tribe?

17 MS. ORTIZ: That's just a term. They're not
18 small and needy that they kind of got ground together as,
19 like, small and needy; it's one term. That's just how
20 they're defined in the funding distribution.

21 So we have a specific line item in the BIA for
22 small and needy tribes. So if a tribe -- the funding that
23 they get or what they've contracted is less than 160,000 for
24 tribes in the lower 48 or less than 200,000 in Alaska, then
25 we would bring their funding up to that level.

1 So we're just talking about after we've brought
2 them up to that level, \$160,000, then applying an indirect
3 cost rate of -- a flat rate of 30 percent to them instead of
4 an indirect cost rate that has been negotiated with NBC.

5 So that's the definition of how -- if they have
6 less than that, we bring them up to that, and that's kind of
7 the category of the small and needy tribes.

8 MR. HONANIE: Okay. The last one is the
9 overpayments. You kind of made one scenario that you're
10 going to pick up from the following year or the upcoming
11 year and post that and say, well, we're going to cut you by
12 a percentage, or are you taking the full lump sum?

13 MS. ORTIZ: Well, when we get funding in the next
14 current year, it -- okay. So like say a tribe was overpaid
15 a certain amount, like \$50,000, and then the following year,
16 we don't get all the money up front. Usually we get a
17 continuing resolution. So when we pay out the contract
18 support costs at that rate, we pay them only that
19 percentage.

20 So if your CR is for 33 percent, then that's what
21 we would pay out, and that's what we would hold back from --
22 the 50,000 that you owed, we'd hold back 33 percent, and the
23 next time there's an appropriation we'd hold back the rest
24 of it. When the full appropriation was made, then it would
25 be balanced out.

1 So that's kind of how we discussed it because, I
2 mean, it might not be possible to get amounts -- it might
3 not be possible to get the whole sum during the first
4 distribution because -- I don't know how many we had last
5 year. We have four or five distributions. So it wouldn't
6 all come out of the first one.

7 MR. HONANIE: The thing I bring up is that
8 because some small, needy tribes, that's solely how they're
9 going to be impacted, and you're already impacting them
10 again. I just bring that point up because when the small,
11 needy tribe has to do something, they sacrifice a lot, and
12 those services are so valuable, what little they get, it's
13 hard for them to function, and it's even harder when that
14 service is, say, for schools or something that's really --
15 you know, they just can't get away with it. If they had
16 other funding, it would be helpful, but it's solely based on
17 that funding. That's why I'm bringing that point up. I just
18 wanted to know how it's being handled.

19 Thank you.

20 MS. ORTIZ: Thank you for your comments.

21 Anyone else have comments?

22 MR. SCABBY: Robert Scabby from Salt River
23 Pima-Maricopa Indian Community.

24 MS. ORTIZ: Sorry. Could you spell your last
25 name?

1 MR. SCABBY: S-c-a-b-b-y.

2 Well, I have four subject areas, and Salt River
3 is part of the Self-Governance Advisory Committee.

4 The subject area of program base that is CSC
5 eligible and an issue of program funding allocated after
6 calculations made for contract support costs, the cause --
7 probable cause is late distribution of funds by various
8 programs, for example, grants.

9 And the recommendation that we would give is that
10 the BIA identifies where funding for contract support cost
11 derives and OSG has the staff or budget authorization
12 required to transfer payments to self-governance tribes.

13 Another issue to add to that program base is
14 delay in initial payments of CSC. The probable cause is not
15 all allocations are performed on a preestablished basis,
16 which delays funding distribution, sometimes no formula.

17 Recommendation is letter to BIA requesting
18 consultation as to what programs will be cut to fund full
19 CSC. If BIA runs out of money to comply with the 100
20 percent CSC funding requirement, if tribes don't agree,
21 recommend where 2014 and '15 CSC funds after calculations
22 will derive, for example, central office for grants.

23 There is a tribal self-governance advisory
24 committee letter to IHS. You might be familiar with that.

25 Thank you.

1 MS. ORTIZ: Is this a letter that was just
2 recently sent?

3 MR. SCABBY: Yeah, it is.

4 MS. ORTIZ: Okay. I haven't seen that yet.

5 MR. SCABBY: We can get you a copy of that.

6 MS. ORTIZ: OKAY. Thank you.

7 MR. SCABBY: Also, a cause for the delay in
8 initial payments of CSC, there's a funding table based upon
9 president's budget, not actual congressional action.

10 Recommendation is establish deadlines for program
11 funding distributions for all programs.

12 Another recommendation is funding table database
13 amounts should be based upon last congressional action.

14 Another recommendation is that long-term
15 solution, once 100 percent contract support funding is
16 provided, use prior year's information, previous year's
17 info.

18 Under another subject area, the second one is
19 under indirect cost rate. The issue is the rate is not the
20 same in same fiscal year. For example, as mentioned
21 earlier, 2014 rate is based on 2013 or prior. The rate is
22 lower.

23 If the rate is lower, the tribe has been
24 overpaid. If the rate is higher, the tribe has been
25 underpaid.

1 The cause, the tribe has not negotiated indirect
2 cost rate.

3 Recommendations are work with the NBC to expedite
4 rate negotiations and approvals.

5 Another recommendation is establish mechanisms
6 for adjustments of over and underpayments. Example, current
7 welfare assessment offsets.

8 Another recommendation is it's the option of the
9 tribe to repay in current fiscal year or will offset CSC
10 next fiscal year, statement of letter of indebtedness and
11 deadline.

12 Another recommendation is provide training and
13 technical assistance to tribes with audit or financial
14 issues.

15 Another recommendation is establish incentives
16 for tribes to negotiate indirect costs. 70 percent tribes
17 not using recent rates causing issues with estimation of
18 contract support payments.

19 Another recommendation is establish a matrix or
20 listing of standard pass-throughs and exclusions.

21 Another recommendation is multiple rate
22 allocation references of policy requiring contractor to be
23 transparent with all members of consortia that they're
24 associated with.

25 On another subject area, inconsistency in

1 application.

2 The issue is, of course, inconsistency of
3 application.

4 The cause is regional differences.

5 Recommendation is establish self-governance
6 instructions for pass-through and exclusions.

7 I know we're speaking from the self-governance,
8 you know, viewpoint so you have to take that into
9 consideration.

10 MS. ORTIZ: Sure. And I think, you know, part of
11 what we wanted to look at, too -- I don't know if you all
12 have talked about that, but how we can -- there are a lot of
13 differences already between the Title I and the
14 self-governance tribes. Are there ways that we can do
15 things consistently doing the same thing.

16 So to the extent that those recommendations would
17 be for Title I contracts also, that would be helpful to
18 know.

19 MR. HONANIE: Yeah. There are -- you know, the
20 tribes -- it's just the way we do our business with the
21 federal government, you know. We're a direct service
22 through Title I or we do 638 contracting, or as we are --
23 you know, we do Title IV compacting. And so we're coming at
24 it from that viewpoint.

25 MS. ORTIZ: Right.

1 MR. HONANIE: And I don't mean to offend anybody
2 who's a direct service or 638 tribe. We're just giving our
3 recommendations.

4 MS. ORTIZ: Right. Thank you.

5 MR. SCABBY: The last area is direct contract
6 support costs, and under that area the issue we have is data
7 is not available to the office of self-governance.

8 Self-governance tribes must submit to regional offices for
9 pay costs.

10 The cause is self-governance tribes do not submit
11 budgets as 638 tribes, you know, and that's a big
12 difference, you know. You know that, Carolyn, as we -- you
13 know, they go do a lot of our budget, our reprogram
14 requests. We work with the northwest field office and the
15 central office as opposed to the --

16 MS. ORTIZ: Right. That's an issue that we've
17 discussed a lot with Sherry Friedman and her office and
18 self-governance in trying to find -- because that is a big
19 difference and that's how the regions get accurate
20 information from the tribes with their budgets, and if
21 they're not submitted by self-governance tribes, getting
22 that same information is very difficult.

23 MR. SCABBY: One of our recommendations is
24 establish a self-governance tribe submission form, technical
25 assistance to be submitted to OSG, seek OMB approval on

1 future years, and maybe make it mandatory on a, you know,
2 CSC form.

3 The last issue under the direct contract support
4 cost is tribes cannot negotiate direct contract support
5 costs.

6 Probable cause is self-governance tribes submit
7 budgeted salaries to regional for pay costs. However, that
8 does not get sent to OSG. There's not a mechanism in place
9 to negotiate direct contract support costs.

10 Recommendation is that data submitted to regions
11 should be forwarded to OSG.

12 Also recommendation is establish a pilot project
13 to begin to develop a mechanism to negotiate direct contract
14 support costs should a tribe choose to do so.

15 And the last recommendation I have for Salt River
16 is transition or phase in direct contract support
17 negotiations. Consistently apply to tribes. Work group
18 determines the parameters of pilot project similar to IHS
19 negotiation process.

20 MS. ORTIZ: Thank you for submitting those
21 comments.

22 Do you have those in writing that we can have a
23 copy?

24 MR. SCABBY: I do. I do have it right here, but
25 I don't have a formal -- I have them -- you can have this

1 one, but I don't have a formal tribal leader signature on
2 it.

3 MS. ORTIZ: Were you going to run that by them?
4 Because you can still submit comments by August 31st. I
5 just think it would be helpful to us to have it in writing
6 so we could look at them.

7 MR. SCABBY: Yeah. What I can do is have a, you
8 know, cover letter submitted by our president.

9 MS. ORTIZ: Okay.

10 MR. SCABBY: We'll submit it to you by the
11 deadline.

12 MS. ORTIZ: Okay. We put the information up
13 here. If you wanted to make comments in writing, you can
14 still do so until August 31st for anybody, anybody here or
15 anybody who's not here.

16 And this is in the Federal Register notice, but
17 it's consultation@bia.gov, or you can mail it hard copy to
18 attention Terry Parks at the Bureau of Indian Affairs, and
19 that's our address. And that's with the PowerPoint
20 presentation so you can look at that and give thoughts to
21 recommendations you want to make sure.

22 Or if you want the tribal leaders to sign off on
23 it and submit it from your tribe, that would be very
24 helpful. The more we get in writing, the better. It's
25 really helpful to us to be able to read clearly what you're

1 intending -- what your comment is.

2 So thank you very much for submitting those. I
3 appreciate them. There's a lot of good ideas in there, and
4 I look forward to going through them.

5 MR. SCABBY: Thank you.

6 MR. MACKAY: Jim Mackay, Susanville Rancheria,
7 M-a-c-k-a-y.

8 I've got a few comments on behalf of the tribe.

9 Contract support costs are currently coming out
10 of discretionary funding. Senator Begich introduced a bill
11 to the Senate Committee of Indian Affairs to have it come
12 out of mandatory funding.

13 We feel that it should be. It's a legal
14 obligation of the United States; it's a trust
15 responsibility. And with it being mandatory, it's not
16 subject to sequestration, like the discretionary funds are.
17 So we strongly support the BIA -- or we recommend that the
18 BIA support that.

19 We should not have to utilize TPA, tribal party
20 allocation funds, to cover the shortfall or tribal funds to
21 cover the shortfall.

22 So let me go ahead into your questions a little
23 bit.

24 On question 1, which is the three pools, the
25 Susanville Indian Rancheria recommends that we stay with the

1 three pools because just because we have 100 percent funding
2 for 2014 and 2015, there's no guarantee that 2016 and beyond
3 will be 100 percent funding, and we need to assure that the
4 annual funding agreement language stays to where tribes that
5 have shortfalls can sue the government to recover that
6 shortfall, just like the class action lawsuit that's going
7 on right now.

8 On question number 2, on the indirect cost rate,
9 we strongly support option A. The reason for that, as we
10 mentioned earlier, the Interior Business Center takes a long
11 time to negotiate your indirect cost rate, so if you don't
12 have a calendar year tribe or fiscal year tribe, either way,
13 and you don't have it at the beginning of the year fiscal
14 year, why should be you be penalized by having to be tied to
15 the rate that you had in effect when Congress appropriated
16 it or the money is first distributed. It should be
17 available to you to have adjustments made so you're fully
18 funded.

19 On question number 3, we feel that the BIA should
20 continue to negotiate in accordance with the contract
21 support costs policy a lump sum amount or have the option to
22 negotiate a lump sum amount for those tribes that do not
23 have a current indirect rate.

24 Some tribes may not because they're small and
25 needy and they don't meet the threshold to negotiate

1 indirect cost rate proposal. So they should be able to have
2 some type of funding source and be able to negotiate that
3 amount.

4 On question number 4, we -- well, because I've
5 been involved with it, we agree with question number 4,
6 again, because they don't have to meet the threshold to
7 negotiate a rate.

8 Also, the current OMB -- or the new OMB circular
9 says you can keep your rate for four years if you elect to
10 do that. So we should keep that in mind as we go through
11 the indirect cost stuff.

12 Question number 5, the Susanville Indian
13 Rancheria agrees with the 15 percent of program salaries for
14 the BIA to determine your direct contract support cost, but
15 we strongly feel, too, the tribes should be able to
16 negotiate a direct contract support cost rate if they so
17 wish.

18 Our opinion is that the BIA is currently not set
19 up for that, and we need to get the Bureau of Indian Affairs
20 to get that figured out, how to do that, because tribes
21 should have the option to either have a negotiated rate or
22 the 15 percent.

23 Question number 6, we will bow to later on on
24 that one for overpayments.

25 On question number 7, we disagree any change to

1 that because there's already been a bill introduced that the
2 shortfall reports are presumed to be correct, and they have
3 cutoff dates for them to be there, which fits in correlation
4 with the May 15th date.

5 So thank you very much for the opportunity to
6 provide a response.

7 MS. ORTIZ: Thank you very much for comments,
8 Jim.

9 Any other comments?

10 It doesn't have to be on the questions. You can
11 raise any issue related to contract support costs that you
12 think would help us to streamline this. But, again, you
13 have an opportunity to submit them in writing if you would
14 rather do that.

15 MR. SCABBY: Robert Scabby, Salt River.

16 I just want to, you know, say that the -- what
17 we've seen is a little disturbing, you know. In 2013 we had
18 a sequestration hit, and in 2014 Congress hasn't passed a
19 sequestration, but, you know, the Bureau seems to trickle
20 down some sequestration to tribes. And 2015, what's in
21 store there, you know. If Congress doesn't impose a
22 sequestration, why should the department pass it on to the
23 tribes.

24 MS. ORTIZ: I'm really not sure what you're
25 talking about.

1 MR. SCABBY: It's really coming at it from a
2 different self-governance viewpoint, but some of it seems to
3 be indirectly caused by the -- covering the 100 percent cost
4 that was imposed by Congress for contract support funding.
5 So I'm just -- we'll put it in writing.

6 MS. ORTIZ: Okay. That might be helpful.

7 MR. SCABBY: We'll note it, you know, as we put
8 our comments in, but, you know, it's just something that
9 we've been -- you know, it's indirect right now, but it
10 looks like it might be happening but anyway --

11 MS. ORTIZ: Okay. Thank you.

12 MR. MACKAY: Jim Mackay again, Susanville Indian
13 Rancheria, M-a-c-k-a-y.

14 I'm sorry. There was one that I missed, and this
15 is, I think, very important, is the Bureau central office
16 somehow needs to come up with some oversight to ensure the
17 distribution of not only the TPA dollars but the contract
18 support cost dollars are done in a more timely fashion. It
19 is taking too long, at least for the 638 contract tribes to
20 receive our contract support costs.

21 We need support of some type of oversight to
22 ensure that the regional and agency offices are given to the
23 tribes instead of towards the last end of the year when it's
24 hard to do different things because we have no idea what's
25 going on.

1 It should be distributed within 90 days of
2 appropriation, and I know from my conversations, the central
3 office has been pretty good pushing it out to the regional
4 offices, but we need the central office to help us get the
5 funding to the tribes and not get tied up somewhere.

6 MS. ORTIZ: We appreciate that comment.

7 And just to let everyone know that we are looking
8 at the financial system, and through the deputy assistant
9 secretary for management services office, we're going to be
10 taking a very close look at the funding from the time we get
11 it in central office and every step of the process and where
12 the funding has to go from the program offices, through
13 finance, to the regions, in the regional offices, what are
14 their processes, because there are differences among regions
15 on how funds are transferred.

16 We did get a new financial system a while back,
17 and how that's being utilized is important to our view and
18 also how that has impacted self-determination funding
19 because it's kind of like trying to put a square peg in a
20 round hole sometimes in trying to utilize the system that
21 we're required to.

22 But we want to make improvements. And we know
23 that's a problem. But I just want to tell you, you know,
24 that not only are we consulting on contract support costs,
25 but we are looking at the funding stream aspect of it and

1 how everything is working and -- for getting contract
2 support costs done also, you have to get a lot of
3 documentation together, including budget information and
4 other components that you have to look at, and people have
5 to enter data into a computer, and so you have to have
6 people to gather it, to enter it, to review it, to approve
7 it, and to award it. So that's a long process.

8 And that's why we are looking to streamline
9 wherever we can to reduce the number of steps or to make
10 sure that we have backups for all of the systems in every
11 step that we have to do.

12 And, you know, I have to say that we suffered a
13 large shortage, too, of awarding officials because we
14 recently had the buyout and we lost a lot of people. So
15 we're looking at how can we get more awarding officials
16 certified but making sure that they're still qualified,
17 because they have to know a lot and they have a lot of
18 responsibility transferring millions of dollars for the
19 federal government.

20 It's not a small task, it's not an easy one, and
21 not everybody can do it. So how can we get more people on
22 board that can do that.

23 So we have a number of things we're working on. I
24 really appreciate your comments, Jim. And, you know, being
25 pushed by the tribes is always helpful because that helps us

1 move things along, you know, kick the can down the road and
2 make some positive progress. I think we all want to do
3 that.

4 And we've had a lot of awarding officials going
5 out to other regions and trying to help them out, help them
6 with the money that we have where the money is not moving as
7 quickly.

8 So I know that they've been -- the awarding
9 officials have really been great, and I want to brag on them
10 for helping each of us out because we've had to do that a
11 lot.

12 So I understand the frustration and tribes want
13 the money, and we need to find ways to make it better, and
14 we're going to do that.

15 Any other comments?

16 Okay. Can we go back one slide, Sonya? I wanted
17 to go over the -- these are the consultation sessions that
18 we have had and that we are going to have. So we have one
19 more this week. We have one tomorrow in Oklahoma City. And
20 then next week we have one in Minneapolis, and then on
21 August 19th we have one in Rapid City, and that will round
22 out the remaining consultation sessions.

23 If you know of anybody who would like to attend
24 those -- you're all welcome to attend all of them if you
25 want to or any of them, and let other people know that you

1 might know who are knowledgeable about contract support
2 costs or have some kind of interest in it to please try to
3 encourage them to attend one of our sessions. And, again,
4 we invite and welcome your written comments because we
5 really do want to make improvements. I mean, we're not just
6 out here talking. This is extremely important to all of us.
7 We work on these issues. We work under these policies,
8 under this statute, at all times, all year long. This is a
9 big part of what we do. It's extremely important to all of
10 us.

11 And we want to do better, and, you know, we are
12 about tribes and making sure they get their money on time,
13 and it's our job to get that done. But if we can find ways
14 that you can help us, then we definitely want to use your
15 help.

16 One more comment?

17 MR. HONANIE: Honanie.

18 In the end result, when are you guys going to
19 come back and say here's the finished project or product or
20 whatever that you're toward? And on that, is this going to
21 be reported to the tribes through the region directors,
22 through TIBC, through -- how are you guys getting this?

23 Because the point I'm going to raise is even
24 though you said you've done all this from March to August,
25 there may be a time or a setting that somebody just couldn't

1 make it and their comment didn't make it, and what happens
2 to that?

3 MS. ORTIZ: So what our plan is right now is
4 we're going to finish the consultation sessions on August
5 19th. And what we've already started doing is, with the
6 transcripts we already have from the sessions -- we've
7 already done this -- we've pulled comments out and we are
8 trying to chart all the comments, and then we're going to
9 meet -- we're planning to meet with the contract support
10 cost workers the second week in September so bringing
11 representatives in to go through the comments with us to
12 help us categorize them, sort them out, identify what would
13 work best, and make some kind of recommendations to move
14 forward. That's our plan. And then we want to present
15 those to the assistant secretary and then determine the next
16 steps from there.

17 So if you want to make -- for example, if we
18 wanted to make budget legislative changes today to the
19 Indian self-determination statute, then we would have to
20 propose some kind of legislative change.

21 If we want to change the contract support cost
22 policy, then we would have to identify those specific
23 recommended changes that we would want to make, and then we
24 might go back out and consult on those specific issues. It
25 depends on what they are. Some changes that we want to make

1 might require additional contract -- consultation on those
2 specific issues.

3 Right now we're kind of in a really broad area
4 and we're kind of just asking for comments in general, and
5 then later we're going to try to focus the comments into
6 constructive positive changes across the board. And if
7 that's going to be in policy, if it's going to be in
8 processes, it just depends on what the changes that we're
9 going to get -- the changes that are going to come out of
10 the comments that we get.

11 Did you want to add anything to that, Jim, or any
12 thoughts --

13 MR. MACKAY: I don't have anything to add other
14 than do you know how long you anticipate the work group
15 meeting? I don't think we can do it in one day.

16 MS. ORTIZ: I was thinking at least two days,
17 but, you know, I don't know. We should probably talk about
18 that. We might want to meet three days.

19 MR. MACKAY: Because this is going to take quite
20 a bit to digest what has been submitted, both at the
21 consultation sessions and what's submitted in writing, and
22 we're definitely going to have to discuss it, digest it, and
23 then, in my opinion, once recommendations come out of the
24 work group to go to the assistant secretary, then the
25 process will probably be another Federal Register notice for

1 a final comment on those recommendations. So I anticipate
2 it being through a Federal Register notice of that going
3 out.

4 MS. ORTIZ: And we're really hoping that we can
5 get something by the end of the calendar year, at least. We
6 want to try to do it as quickly as possible if we can do it.

7 You know, we're kind of hoping to get it done by
8 the end of the fiscal year, but that might be rather
9 ambitious, given the time we're spending and the number of
10 comments we're getting. And I think you're right, it's
11 going to take us a lot to digest on the federal and the
12 tribal side.

13 So I would say, you know, as soon as possible, or
14 we're shooting for the end of the calendar year.

15 Do you have a comment, Sabrina?

16 MS. McCARTHY: One comment, which is that as you
17 hear, the work group is going to be looking at the whole
18 consultation -- excuse me -- the contract support cost
19 policy. So comments from tribes about any revisions to the
20 policy would be welcome.

21 MS. ORTIZ: Right, right.

22 And you can take a look at our policy. It's
23 online. It's on the BIA website. It's about 15 pages long
24 without the appendix or anything. So it's a pretty long
25 policy and that's why we didn't print copies of it, but you

1 can look it up online and if you have any proposed
2 recommended changes to that policy, you can send those to
3 us.

4 Any other comments?

5 With that, I'd like to just say thank you all for
6 spending this afternoon with us. We appreciate your time
7 and commitment to these issues and appreciate hearing from
8 you.

9 Thank you.

10 (Consultation proceedings concluded at 2:10 p.m.)

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1 STATE OF ARIZONA)
) SS
2 COUNTY OF MARICOPA)

3 BE IT KNOWN that the foregoing consultation
4 proceeding was taken before me, Susan A. Grenz, a Certified
5 Court Reporter, CCR No. 50720, State of Arizona; that the
6 foregoing pages constitute a true and accurate transcript of
7 all proceedings had, all done to the best of my skill and
8 ability.

9 I FURTHER CERTIFY that I am in no way related to
10 any of the parties hereto, nor am I in any way interested in
11 the outcome hereof.

12 DATED at Phoenix, Arizona, this 8th day of
13 August, 2014.

14 _____
15 SUSAN A. GRENZ
16 Certified Court Reporter
17 Certificate No. 50720
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