

NWX-DEPT OF INTERIOR-NBC

**July 1, 2020
12:00 p.m. CT**

Coordinator: Welcome and thank you for standing by. At this time all participants are on listen-only mode until our question and answer session. At that time if you would like to ask a question, please press star then 1. Please be advised that today's conference is being recorded. If you have any objections you may disconnect at this time. And now I would like to turn the meeting over to Mark Cruz. You may begin.

Mark Cruz: Great. Thank you, Operator. And good afternoon or good morning depending on where you're at, everybody on the line. I want to welcome you all to the second listening session on the department's development of the Indian Affairs Office 105(l) lease program framework. Before we begin today I want to point out that this is a listening session and not intended for the press or media use. And we respectfully ask that if you are a member of the press or media that you reach out to the department's office of public affairs and disconnect now.

To begin, my name is Mark Cruz and I have the privilege of serving as the Deputy Assistant Secretary for Policy and Economic Development for Indian Affairs here at the US Department of Interior. As an enrolled member of the

Klamath Tribe it's a pleasure to be here on behalf of Secretary Bernhardt and Assistant Secretary Sweeney. Our Administration in Indian Affairs recognizes the importance of 105(l) leases as the mechanism for infrastructure development in Indian Country.

As an example of this recognition, the FY 2021 President's Budget Request includes an in-depth Indian appropriation request for 105(l) leases. Similar to contract support costs, 105(l) lease costs can be difficult projected the out years. Chicago has been cleared of the indefinite appropriation authority requested in the FY 2021 bill. It would greatly help us all, tribes, this department and others, in managing these uncertain costs. Roughly a year ago, Indian Affairs signed our first 105(l) lease for the Gila Crossing elementary school in Arizona.

Since then we have also entered into leases with the (unintelligible) nation band of Chippewa for a public safety and justice facility as well as fire (hauls). And our team is currently working with other tribes on new incoming requests. What we are presenting today represents what we have learned from our successful lease negotiations and builds off of our primary presentation at NCAI (unintelligible) and on Monday's presentation.

A couple of notes that I've taken down through this area's presentation, I'd like to share now, having been involved in the first two successful lease negotiations. First, is specificity in the tribal request, your request for listeners, will help our team better understand and be able to act on the tribe's request. Second, is operating with the spirit of cooperation during the negotiation. A big reason we're here today is that the statute and the accompanying regulations don't account for how, who or what, should be included to process the tribe's request.

And what we've learned in practice, we believe our framework is grounded in experience and favorable to both parties. (Unintelligible) is remaining flexible, our team works as quickly as possible to pour over incoming information and respond to tribes' questions. Given the last of an existing framework, multiple requests coming in and several different staff offices contributing at any given point to work, it really requires flexibility from both parties.

So with that said, I'd like to now turn over today's presentation to my friend and colleague, Deputy Assistant Secretary for Management here at Indian Affairs, Jason Freihage.

Jason Freihage: Great. Thanks, Mark. Mark mentioned this is a new program for Indian Affairs and we also have a relatively new team working on 105(1)s. So given this, the goal today is to provide the information you've been asking for and need to understand regarding the technical requirements and to connect you with the individuals who will work with you on lease proposals. But they just need the basics to start planning there are a few close to requesting a 105(1) lease, we'll try to address those (unintelligible) of needs.

To be able to do this especially to start off with interesting Judith Wilson, our Director of the Office of Facilities, Property, Safety Management, otherwise known as OFPSM. Her office manages the 105(1) program. Some of you may have also worked with that office on our education consortium program or other areas. Also part of our team member of our team for working on 105(1) leases is Brian Shade. He's an attorney for the Office of the Solicitor Division of Indian Affairs. And he's been supporting us in the implementation of our build out of the 105(1) program. And there will be - there are two primary contacts for working through issues.

For today's purposes, Judith is going - is your primary contact and she will be walking through a presentation on where we are in the program and building it out. So at this point I'll turn it over to Judy to give you an overview of our program. Thanks.

Judith Wilson: Thank you very much, Jason. Before I begin, I wanted to make sure that everybody had been able to find - have access to our listening session information today. If you go to www.BIA.gov on the right hand side of the page, at the top of the page you'll see the section called Latest News. And directly below that you will see quick links. And the very first quick link is a hotlink Section 105(l) leases consultation. It will take you to the announcement for this listening session and at the bottom of the paragraph a copy of the draft framework is available here.

And if you click on the here button that is where you will find this PowerPoint presentation that I am going to read to you today. So if you don't have a chance to get to it now that's fine. We'll go over it. It's there for you to access later as well. So today's presentation on the framework for a 105(l) lease under Public Law 93638. We're going to focus on two general areas. One, what is a Section 105(l) lease and the second link, the Indian Affairs Framework Approach.

As Mark noted in his opening remarks, this - we are developing this and it's developing; it's still in process, a framework to help us move through as efficiently and effectively through upcoming lease requests based on our past experience. So what's a 105(l) lease? Leases under Section 105(l) of Public Law 93638 are not traditional leases. They are facility cost agreements that compensate the tribe or the tribal organizational owner for facility operational expenses associated with using the facility to administer or to deliver Public Law 93638 is via the Indian Self-Determination Education and Assistance Act

contracted or compacted services.

So what are the 105(l) lease requirements? Well there are regulatory requirements for 105(l) leases, are at 25 CFR 900 Sub Part H, that's lease of tribally owned buildings by the Secretary which consists of Sections 900.69 to 900.74. Now the tribe or the tribal organization must have one of the following. One, title to the facility; two, a leasehold interest in the facility; or three, a trust interest in the facility.

The facility must be used to carry out an ISDEAA compact or contract. Further, 105(l) lease proposals must request that compensation be based on one of the following requirements - fair market rental, or a combination of cost elements listed in the 25 CFR Section 900.70 and fair market rental, or the cost elements listed in Section 900.70 only. So fair market rental 900.70 or a combination thereof.

The cost elements at 900.70 A-H include rent, depreciation, reserve, principal and interest, operations and maintenance, unscheduled and scheduled maintenance, security services, management fees and other reasonable costs. Costs included in compensation must be reasonable and not duplicative. What is the status of our implementation? Well, as Mark noted, Interior has signed 105(l) agreements with Gila River for the Gila Crossing Community School and the Red Lake Band of Chippewa Indians for a criminal justice center.

These two successful negotiations provided opportunity to focus on two different facility types and apply the statutory and regulatory requirements to those different facility types. The review of materials in both cases were quite similar. These agreements and the processes of implementing them, afforded us an opportunity to develop a framework while anticipating future 105(l) requests.

So now let's talk about the framework. Indian Affairs is defining an internal framework for accepting and reviewing leasing requirements to be mindful of the 90-day agreement requirement and to address items such as the funding agreement vehicle on which the lease is based; the method for lease calculation of lease compensation; a facility description; the scope and purpose of the lease; review of materials; negotiation; legal sufficiency review; and lease execution.

All right, now let's move to the funding agreement vehicle. The Indian Affairs office program staff work with the Office of Self-Governance, the Office of Self-Determination, the Bureau of Indian Affairs or the Bureau of Indian Education as applicable, to serve the regional office to identify the funding agreement vehicle by determining whether one, 105(1) lease request is for a facility that serves the carryout program, services, or functions and activities, PSFAs, included in an approved is via agreement or 297 grant. And two, any funding requested for the 105(1) lease is duplicative.

So lease compensation calculations - the method for calculation of 105(1) lease compensation requires that Indian Affairs will rely on Sections 900.69 to 900.70 in assessing and reviewing proposed compensation components. Excel spreadsheets with built-in formulas for compensation for the calculation have been developed to address rent or sublease, depreciation and use allowance based on the useful life of the facility, which is based on acquisition costs not financed as federal funds because we avoid duplicative funding.

Contributions to a reserve for a replacement of facilities; principal and interest paid or accrued; operation and maintenance expenses; repairs to buildings and equipment; alterations needed to meet contract requirements; and other reasonable expenses. So we have these built-in formulas in an Excel

spreadsheet, multiple Excel spreadsheets, and then a summary table at the beginning, which takes all of the information from those spreadsheets and puts it into one place.

When looking at the facility description, it's helpful to have the location and address of the facility, an architectural floor plan showing the square footage for all the floors, the in-service date of the facility such as the certificate of occupancy. And we realize we may not have that in every case because the buildings may have pre-dated the requirement for certificates of occupancy.

Identification of all the programs or departments on the floor. And if more than one tenant occupies the facility, an identification of the square footage that's used in the performance of the ISDEAA agreement or 297 grant. Also, a certified copy of a loan agreement and principal and interest payments scheduled for the duration of the loan, if the tribe or tribal organization is requesting depreciation and/or principal and interest.

Recent photos of the facility interior and exterior, recent inspection report of the condition of the facility, tribal information regarding contract support cost considerations for the building identified in the lease to ensure no duplicative costs or claims. And proof of ownership which could be a proof of mortgage, a title, or a loan, a quitclaim, warranty deed, or lease agreement if subleasing to Indian Affairs.

Now we're going to move onto talk about scope and purpose. Indian Affairs will work with the office or the program being contracted or compacted and the appropriate awarding official, to ensure the lease facility meets the necessary program requirements, dimensions, square footage and the purpose indicated in the tribal request for the space.

With respect to the review of materials, Indian Affairs Office of Facilities, Property and Safety Management, that's my organization, Real Property and Leasing, will oversee the review of the 105(l) lease proposals from the tribe or tribal organization, to serve as the primary point of contact for questions about 105(l) lease compensation. And we coordinate with Bureau of Indian Affairs Office of Self-Determination, Office of Self-Governance, or Bureau of Indian Education, on finalizing 105(l) lease proposals and ensuring reasonable and non-duplicative lease compensation.

The Office of the Solicitor Division of Indian Affairs headquarters office, conducts a legal sufficiency review prior to lease execution. So lease execution - the lease agreement will be executed by the designated approving official, a real property and leasing representative, that's my organization, the Indian Affairs Program Office and the tribe or tribal organization.

The awarding official will incorporate the 105(l) lease agreement into the ISDEAA Agreement or 297 Grant, by amending the ISDEAA Agreement or 297 Grant and attaching the 105(l) lease to the ISDEAA Agreement or 297 Grant. So that outlines the framework we're developing based on our experience with our successful 105(l) lease negotiations and to help us move forward with all efficiency and effectiveness.

And as Mark noted earlier, what we've learned is that specificity helps us, cooperation on both parties is important, and to maintain flexibility because we're finding that every request is just a little bit different and we will keep learning as we go. In terms of contacts, you'll note at the end of the PowerPoint presentation, myself, Judith Wilson, Director of Office of Facilities Property and Safety Management, is available to you with a copy to Brian Shade who is our (Parks) Solicitors Office in DOI.

And that concludes the overview of our framework for implementing Section 105(l) lease requests. And I think now we'll open the lines; we'll turn it over to the operator I guess at this point.

Mark Cruz: Yes. Thank you, Director Wilson. And operator, if you can give the listeners instructions on how to ask questions, we'll be here to answer any questions you may have.

Coordinator: Thank you. We will now begin our question and answer session. If you would like to ask a question over the phone, please press star then 1 and record your name clearly when prompted. If you need to withdraw your question you may do so by pressing star then 2. One moment as we wait for the first question. And our first - and one moment for our first question.

Mark Cruz: Operator, while we're waiting for the questions to come in, can you please announce the name and affiliation of those who are speaking, so our team has a chance to know who that is?

Coordinator: Absolutely. One moment, please. Thank you. And our first question comes from (Dylan Johnson). And his - I'm sorry, one moment. And your line is now open.

Dillon Dobson: Hi. Thank you for putting this all together. I just wanted to ask quickly again if you could repeat how to access the PowerPoint where all of this information is contained. It was - just like the Web page and URL.

Judith Wilson: Certainly. It's www.BIA.gov. And on that page you will - you'll - under News you'll see consultations. And if you will click on section 105(l) leases, the top one, it will take you directly to the information for these sessions. And at the bottom of the paragraph, a copy of the framework is available here. You just

click that hotlink and it will take you to that. So BIA.gov, the link is really long, AS-IA which is ASIA/RACA, R-A-C-A slash regulations-development-and/or-under-review/section-105(1)-leases.

Dillon Dobson: Thank you.

Coordinator: Thank you. As a reminder, if you would like to ask a question, please press star and 1. One moment while we wait for the next question. Work approach that we can use for 105(1) leases here in Indian Affairs. One moment. We do have another question on the line. Okay. And our next question comes from (John E. Robinson), (unintelligible). Your line is now open.

John E. Robbins: Hi. This is John Robbins, (unintelligible) that we are pretty unique and who would I be reaching out to, to work directly with me in getting (unintelligible)?

Man: So that would - yes, that would be Judy Wilson and she can provide her contact info.

John E. Robbins: Okay. So we have a top management department and a property department, so I was thinking (unintelligible) that I would get together with them and together I guess with Judy and she - we can start with our facilities?

Judith Wilson: Yes. My email address is Judith, J-U-D-I-T-H dot Wilson, W-I-L-S-O-N at BIA.gov.

John E. Robbins: Okay. Thank you, Judy. I have the PowerPoint and I'll send out all of the information that you guys have for this. So I will update this with (Danny) and let him know that I spoke to you guys (unintelligible) contract.

Judith Wilson: Thank you.

Coordinator: Thank you. And our next question comes from Pilar Thomas from Pyramid Lake Paiute Tribe. Your line is open.

Pilar Thomas: Hi. Thank you very much, for taking my question. I actually have kind of a three-part question. The first part you just answered. I assume when the question was raised of who to submit a lease proposal to and go straight to Judy Wilson. Is that correct? And not into the regional office?

Judith Wilson: It would be faster if you would send it directly to me.

Pilar Thomas: Okay. So if we're negotiating a 638 contract and this becomes part of the negotiation, the lease negotiation goes to you in DC and the rest of it stays with the agency office that we're renegotiating 638 contracts with?

Judith Wilson: Yes.

Pilar Thomas: Okay.

Mark Cruz: Yes. We coordinate across Indian Affairs as necessary whether it's the programmatic or regional input.

Pilar Thomas: Okay. And then you mentioned that you guys will support the regional staff. So is there - is the - will there be any role for the regional staff in the negotiation of the lease or is it solely with headquarters in DC?

Mark Cruz: Yes. At this time, we had it centralized just because it is so new. And it's required, the national program office's input. But we - in both prior cases we have worked very closely with the region offices because they are able to

provide the facility folks, which Judith's and Jason's shop oversees some of the information that we may not have handy here in Washington. So it is a collaborative effort.

And as we, you know, implement this framework and add more lessons learned, that would be the next phase is how do we actually formalize this and, you know, there may be a point in the future where this becomes more routine than it is now.

Pilar Thomas: Okay. And then speaking of routine or relatively new, I do know that the Gila River lease took several years to negotiate and complete. What do you estimate would be the timeline now for negotiating a lease or if you have some sense of is this a six month effort, is this a two year effort? What would you estimate to be the timeline now?

Jason Freihage: I don't have an answer to the six month effort. And probably less than six months depending on the flow of information. I think the Gila was the first one. Now that we have a better sense of what's sent, for various reasons it took longer. I think a lot of folks are just trying to understand the best way to implement it. So I would say six months or less generally. Probably somewhere between all parking three to six month-ish.

And again, I think at some point it depends on where the tribe is and the amount of information you have ready. And that's where even if you're just at the initial stages we've had some tribes reach out to us just for that like hey, you know, what'll help you think through those first few stages? So - but I would say it's - a lot of the components are there. It's - the three to six month-ish is kind of reasonable. And that gives us all time to make sure we can work through the proper details and be able to plan for this.

Pilar Thomas: Okay. Thank you, very much. That's all I had. Thank you.

Mark Cruz: Thank you.

Coordinator: Thank you. As a reminder, if you would like to ask a question, please press star then 1. And our next question comes from (unintelligible) from (Sulu) tribe of Chippewa Indians. Your line is now open.

Woman: Thank you. My question comes with the requirement for the square footage and for the purpose indicated. If our space isn't large enough, like we're overcrowded, how does that work?

Judith Wilson: I think what we're trying to understand is the space which you actually use to conduct the program or the service or the activities, the functions, the PFSAs. We're trying to understand what is that space. I think what you're asking is if you are overcrowded are those - where are those people or where are they housed if you will?

We would have to know what square foot or we're looking for is what's reasonable and what's needed for the operation of the programs.

Woman: Well, for instance, we have our tribal court and our law enforcement and our prosecutors, all in the same building. And they are overcrowded. I'm just wondering if you give an idea of - based on the number of employees, how much square footage we should have?

Mark Cruz: I think that's one of the things we would work through again, in terms of whether a tribe is looking for the cost of the footprint as it is. That would be one of the details we can kind of work through with you all, as you come through, about what you're - how you're using the facility and what your plans

are.

Woman: Okay. And then I have one other question. How would we know and - because we've compacted many years before I came along, whether or not like our lease stuff was in our compact agreements, maybe under contract support costs?

Mark Cruz: I think that's something we could look into with you, is whether - for I guess the compact, we could review the agreement. So if that's something you'd like to follow up with us on, we can talk with our Office of Self-Governance and review that.

Woman: Okay.

Jason Freihage: If it's not in there we could amend the agreement.

Woman: Yes. And like I said, we compacted before I came on. So I have no idea what was originally put into the compact and what we actually asked for in the contract support costs. It might have been space costs.

Jason Freihage: Okay.

Woman: And I see all this bit about duplicative, so I don't want to be asking for something that we may already have gotten.

Jason Freihage: Yes. Usually through contract support or if you're repeating on them, that's the type of thing we can look at the kind of data in the system and usually it's not too hard to figure out whether or not you're receiving it that way. And then the choice is when we answer the - when we're developing a lease, whether or not you want that included as part of the lease, or not. So that's something we can

work with this thing is for.

Woman: Okay. Thank you.

Jason Freihage: ...nature that it's not - you're not getting the funding in two places so it's duplicative, but we can work with you on where is the best place to get the funding.

Woman: Okay. Thank you.

Mark Cruz: Thank you. Operator?

Coordinator: As a reminder, if you would like to ask a question, please press star 1. One moment as we wait for any additional questions. At this time, there are no questions on the phone.

Mark Cruz: Okay. While we wait for any additional questions that you may be thinking of and want to ask, I'll go ahead and pick our next set of tribal consultations and this was sent out by the regions. And this is for those of you who may have interest in this matter, can take back to your tribal leadership. But next week, Indian Affairs will be hosting two more tribal consultations on the Bureau of Indian Education's School Reopening Guidance.

And if you're taking notes, our first consultation will be next Thursday, July 9th from 3:00 to 5:00 pm Eastern. And our second tribal consultation will be Friday, July 10th from 3:00 to 5:00 pm Eastern. And if you have any questions you can contact Juanita Mendoza at the Bureau of Indian Education. And her email is Juanita, J-U-A-N-I-T-A dot Mendoza, M-E-N-D-O-Z-A at BIE.edu. So those will be our next two tribal consultations on the BIE school reopening guidance.

Operator, do we have any further questions for this 105(l) session?

Coordinator: No questions on the phone at this time.

Mark Cruz: Judith or Jason, do you have any closing comments?

Jason Freihage: No. I think just feel free to contact us. You have Judith's contact information on the presentation if you do have any other questions. And again, wherever you are in the process, we're happy to work with you and help you think this through. So, thank you for your time.

Mark Cruz: Judith?

Judith Wilson: No. I would just reiterate what Jason said. And we appreciate you taking the time to be with us today. And we're just interested in any and all feedback. And if you have additional questions that you don't think of right now, but you might in the next day or two or week, please contact me and we'll be as responsive, as timely as we can be.

Mark Cruz: Great. Thank you. And thank you, everybody, for joining. If you have any further questions or comments please email us at Consultation@BIA.gov. And a transcript from Monday's session is now online and a transcript of today's session will be on the same URL shared earlier, in the coming days. So we appreciate everybody's time.

From the main interior department, I want to wish you all safe and healthy and happy 4th of July holiday weekend. And we look forward to working with each and every single one of you and we'll talk to you soon. So Operator, thank you very much. That is the end of this listening session.

[End of segment]