



MEMORANDUM

January 12, 2015

TO: Contract Support Cost Clients

FROM: HOBBS, STRAUS, DEAN & WALKER, LLP /s/

RE: ***BIA Releases Revised Draft of New CSC Policy; IHS Initiates Consultation on CSC Policy; Ramah Class Moves for Final Approval of Settlement***

In this memorandum, we report on the continuing efforts of the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) to develop new contract support cost (CSC) policy documents before the end of the current Administration. We also report on recent filings in the *Ramah* CSC class action against BIA.

BIA Releases Revised Draft of New CSC Policy

BIA has issued a slightly revised version of the draft CSC policy developed by the agency's tribal-federal CSC Workgroup last summer.¹ The new draft, a copy of which is attached, is not substantially different from the initial draft. In the new draft, BIA deleted a superfluous description of the Indian Self-Determination and Education Assistance Act in the Purpose section; clarified that the declination process applies to requests for pre-award and start-up costs (see sections 6 and 7); condensed a lengthy "Disputes" section into a single reference to the relevant regulations in section 13; and added numbers to previously unnumbered paragraphs for ease of reference.

BIA heeded Congress's call for a simplified, streamlined approach to CSC, as the entire policy runs only four-and-a-half pages. (There will be 13 exhibits or attachments, which are listed on the last pages.) More importantly, the policy contains several tribal-friendly features that contrast with IHS's approach. BIA rejects the costs-incurred approach that has caused so much grief on the IHS side. As a result, the year-end reconciliation would be quick and easy, using the indirect rate in place at the end of the tribe's fiscal year (see section 11). And the draft contains no complex and punitive duplication analysis of the kind IHS has been insisting on.² While not perfect, the policy would be easy to understand and apply. The BIA CSC Workgroup is currently working on scheduling a call to discuss the new draft and next steps in the consultation and approval process.

¹ For a detailed description of the initial draft policy, please see our report of June 22, 2015.

² See, e.g., our report of December 11, 2015 at 3-4 (describing discussion of duplication at recent IHS CSC Workgroup meeting).

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IHS Initiates Consultation on CSC Policy

Like BIA, IHS has been developing a new CSC policy through its Workgroup—though with far more drama. As we reported, the last Workgroup meeting in Denver nearly imploded, and the meeting later this week in Washington, DC may be a tense one as well. Agency policymakers remain committed, however, to completing a new policy this year. In the attached "Dear Tribal Leader" letter dated January 7, 2016, Principal Deputy Director Robert McSwain formally initiates tribal consultation on the policy. Mr. McSwain summarizes recent CSC history, including the Ramah decision in 2012, Congress's call for "long-term solutions," and the recent submission of the tribal redline version of the policy. To complete the task, Mr. McSwain writes, "the IHS CSC Workgroup will meet several times over the next two months," and the resulting draft will be circulated for tribal review and comment in the first quarter of 2016. IHS will provide periodic updates at national and regional conferences and meetings.

Ramah Class Moves for Final Approval of Settlement

On January 8, 2016, class counsel in the *Ramah* case asked the U.S. District Court for the District of New Mexico to grant final approval of the proposed settlement agreement to resolve CSC claims against Interior for the years 1994 through 2013 for \$940 million. As we reported, only one objection to the proposed settlement was filed, and it was quickly resolved.³ The motion, which the U.S. did not oppose, is expected to be granted following the fairness hearing scheduled in Albuquerque on January 20, 2016.

Class counsel also asked the court to approve their request for attorney fees of \$79.9 million (8.5% of the \$940 million settlement). This is the maximum allowable under the proposed settlement agreement. No class members objected to the fee provision in the agreement, and the U.S. does not oppose the current motion.

Conclusion

We will continue to follow CSC developments in both IHS and BIA on your behalf. If you have any questions about this memorandum, please do not hesitate to contact Joe Webster (jwebster@hobbsstrauss.com or 202-822-8282), Geoff Strommer (gstrommer@hobbsstrauss.com or 503-242-1745), or Steve Osborne (sosborne@hobbsstrauss.com or 503-242-1745).

³ See our memoranda of November 25, 2015 and December 18, 2015.