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MEMORANDUM

December 11, 2014

TO: Contract Support Cost Clients

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

RE: ***Omnibus Appropriations Bill Includes CSC Increases; Self-Governance Advisory Committee Endorses CSC Workgroup Recommendations on Long-Term Solutions***

Earlier this week, House and Senate appropriations released an FY 2015 consolidated appropriations bill. In this memorandum, we describe the provisions related to contract support costs (CSC), which are generally quite positive. We also report on a letter from the Self-Governance Advisory Committee on long-term solutions to CSC issues.

FY 2015 Appropriations

The appropriations bill, entitled the Consolidated and Further Continuing Appropriations Act, 2015, would fund nearly all government agencies through September 30, 2015.¹ While House approval was expected today with Senate consideration to follow over the weekend, it is now not absolutely clear that there are the votes to approve it. The House is in temporary recess this afternoon to assess the situation. Meanwhile Congress will likely approve a very short-term continuing resolution to keep the Government funded until an omnibus bill is approved. We will closely monitor and report on this situation.

The bill contains no CSC spending caps. As in FY 2014, CSC will be funded from the lump-sum appropriations for the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS).² The agencies will therefore be obligated to pay full CSC for the second straight year.

¹ For the Department of Homeland Security, the bill provides a Continuing Resolution through February 27, 2015, allowing the new Congress to respond to President Obama's actions on immigration.

² More specifically, CSC is appropriated as part of IHS's "Services" appropriation (as opposed to its smaller "Facilities" appropriation) and BIA's Operation of Indian Programs (OIP) appropriation.

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IHS CSC Funding

Although the bill itself identifies no specific amounts for CSC, the accompanying Managers' Statement says that the IHS appropriation includes \$662,970,000 for CSC. The Statement says this includes \$45,765,000 to cover the estimated FY 2015 shortfall provided to the Committees following submission of the President's budget request, which contained \$617,205,000 for CSC. The Statement also says the bill "includes funds requested to repay other budget line items that were reprogrammed in order to cover the fiscal year 2014 contract support cost shortfall." This refers to the fact that in FY 2014, IHS allocated \$587 million to CSC in its original operating plan, but ended up needing to reprogram an additional \$25 million from other budget line items, including Hospitals and Clinics. Since the bill would fund IHS's Services account at \$199 million above FY 2014 levels, the agency should be able to fully restore the affected programs and even increase funding for them or other programs.

Will the \$662,970,000 allocated to CSC be enough to avoid a second year of disruptive reprogramming? Or will the figure prove to be too high, causing funds that could have gone to direct services to be reserved for CSC needs that never materialize? In FY 2014, the first year of full funding, IHS's total CSC payout was \$612 million—its original \$587 million allocation plus \$25 million in reprogrammed funds. But this amount included \$8 million in "overpayments," according to IHS, so the real FY 2014 need was closer to \$604 million. Recent tribal estimates have projected FY 2015 need at \$644 million,³ although that estimate did not anticipate as large a program increase as IHS received, which will increase CSC needs. Even so, it would appear that a \$662.9 million CSC allocation would make a repeat of the reprogramming scenario, with its attendant headaches, unlikely in FY 2015.

BIA CSC Funding

On the BIA side, again no specific amount for CSC is identified in the bill itself. The Managers' Statement funding tables indicate that BIA's lump sum for OIP would include \$246 million for CSC, the same as the President's budget request and \$4 million more than in FY 2014. While BIA's total appropriation would be 2.8% above the FY 2014 level, the CSC allocation would go up only 1.65%. BIA did not have to reprogram funds to cover CSC in FY 2014, but the small CSC increase relative to program funding could bring this possibility into play for FY 2015.

General CSC Provisions

The bill includes some general CSC provisions. Section 405 attempts to retroactively limit the amounts of CSC "available" for Indian Self-Determination Act

³ See our memorandum of November 19, 2014, at 2 (discussing FY 2015 CSC appropriations outlook).

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agreements going all the way back to FY 1994—a provision has been included in the appropriations acts for many years. Section 406 applies to the FY 2014 appropriations act and says that the only amounts available for CSC are the sums appropriated under the IHS Services heading and, on the Interior side, the OIP heading. In other words, funds appropriated for Indian Health Facilities or non-OIP BIA funds cannot be used for CSC. Section 407 of the bill imposes the same limitation for FY 2015. Both sections also state that funds provided in each year's act are not available to pay settlements or judgments related to past-year CSC claims.

Self-Governance Advisory Committee Endorses CSC Workgroup Recommendations on Long-Term Solutions

In a letter dated December 10, 2014, the SGAC extended its support for the recommendations submitted last fall by the BIA CSC Workgroup on long-term solutions to CSC issues. The letter, a copy of which is attached, first endorses the recommendation to develop legislation establishing CSC as a permanent, indefinite appropriation like other legal entitlements. The SGAC also supports the workgroup's other recommendations and suggests that it be convened as soon as possible and engage other federal agencies such as the Office of Management and Budget, the Interior Business Center, and IHS. The letter also echoes earlier calls to streamline the indirect cost rate negotiation process. Finally, the SGAC recommends that BIA develop and provide CSC training sessions once the long-term solutions are ready to be implemented.

Conclusion

We will continue to follow the appropriations process and other CSC developments 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).