



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

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Dear Tribal Leader:

The Bureau of Indian Affairs (BIA) is pleased to announce its revised Contract Support Cost policy for use in Fiscal Year 2017. The revised policy is adopted after extensive tribal consultation. Before adopting the policy, BIA conferred with the BIA Tribal-Federal Contract Support Cost Workgroup (Workgroup) about all comments received during tribal consultation. The Workgroup unanimously approved the policy that BIA announces today.

After the Workgroup approved the policy, the Tribal Co-Chair of the BIA CSC Workgroup (Co-Chair) wrote to me, in a letter dated September 8, 2016, to express “lingering tribal concerns” about the policy. I would like to address those concerns in this letter, in order to explain the reasoning behind the policy that BIA announces today.

- 1. The BIA Central Office will make final determinations on pre-award and startup funding after receiving recommendations from Awarding Officials and after collaborating with Tribes.*

The Co-Chair noted that many tribal comments urged that Awarding Officials, not the BIA Central Office, determine pre-award and startup funding for Indian Self-Determination and Education Assistance Act (ISDEAA) agreements.

From BIA’s perspective, it is critical that the BIA Central Office be able to review an Awarding Official’s recommendation for pre-award and startup funding and make the final determination of what constitutes eligible pre-award and startup costs.

The BIA Awarding Officials are not accustomed to making decisions on pre-award and startup funding. The BIA’s current policy calls for those decisions to be made at the BIA Central Office level. Furthermore, the 90-day period for making decisions on pre-award and startup funding is new in this policy. Therefore, BIA Central Office review is prudent to ensure that the ISDEAA and this policy are applied appropriately to startup and pre-award funding requests.

The BIA agrees that it is important for BIA Central Office to have the perspective of Awarding Officials who have knowledge of local conditions and unique program requirements. The policy provides for this by calling for Awarding Officials to recommend pre-award and startup funding in writing to Central Office. The BIA Central Office will review the recommendations for conformity to law, before approving or disapproving funding requests. The policy further provides for Tribes to collaborate with both the Awarding Official and Central Office on pre-award and startup funding. The BIA considers that these two provisions in the policy safeguard tribal interests.

2. *The policy uses the word “collaborate” to describe interactions between Tribes and Federal officials concerning pre-award and startup funding.*

The BIA is creating a handbook to assist Tribes and Awarding Officials in applying the Contract Support Cost policy. The Co-Chair recommended that the handbook instruct Federal officials to “negotiate” pre-award and startup funding with Tribes. The ISDEAA does not use the term “negotiate” with respect to pre-award and startup funding. The Workgroup unanimously voted to use the word “collaborate” in the policy to describe the interaction between tribal and Federal officials on pre-award and startup funding. The BIA opts to use “collaborate” in the policy because “collaborate” signals active cooperation between Tribes and Federal officials.

3. *The policy retains the formula that BIA has been using since 2006 to calculate direct contract support cost funding.*

The Co-Chair noted that some tribes had asked for the option to negotiate their direct-contract-support cost funding rather than using the following formula:

Direct Contract Support Costs = (Salaries for the Indian Affairs section 106(a) program, not including fringe benefits) x 15 percent.

The Co-Chair also wrote separately to me in a letter dated August 17, 2016, requesting that the multiplier in the above formula be changed from 15 percent to 18 percent.

The BIA has chosen to retain the above formula following discussions with the BIA CSC Workgroup. When the BIA CSC Workgroup conducted an informal study to see whether 15 percent or 18 percent was the more appropriate multiplier in the above formula, the results of the study did not support a change to 18 percent. Since 2006, when BIA adopted the 15 percent multiplier, no Tribe has submitted evidence to BIA that the above formula results in an underpayment for direct contract support costs. Absent any evidence, BIA opts to continue to use the 15percent multiplier. The BIA also opts to continue to calculate direct contract support cost funding using a formula, rather than requiring Tribes to negotiate direct contract support cost funding, because the formula simplifies the process for Tribes to receive direct contract support cost funding. Congress requested the Secretary to use a simple and efficient process for awarding contract support cost funding.

4. *The policy has four ways to calculate indirect contract support cost funding, but does not establish a “default” indirect cost rate for indirect contract support cost funding.*

The Co-Chair noted that some Tribes urged BIA to adopt a 10 percent *de minimis* rate for indirect contract support cost funding, under which Tribes would receive at least 10 percent of the Secretarial amount awarded to the Tribes, minus exclusions and pass-throughs, as indirect contract support cost funding.

The policy provides four ways for calculating Tribes’ indirect contract support cost funding:

- o Indirect Contract Support Costs = Current approved indirect cost rate(s) x (the Secretarial amount awarded to the Tribe, minus exclusions and pass-through) - for

- Tribes with current approved indirect cost rates
- Indirect Contract Support Costs = Most current approved indirect cost rate(s) that is/are four or fewer years old x (the Secretarial amount awarded to the Tribe, minus exclusions and pass-throughs – for Tribes that do not have current approved indirect cost rates but that do have an approved indirect cost rate that is four or fewer years old
  - Negotiation of a lump-sum amount for indirect-type costs – for Tribes that met the Single Audit Act threshold in the prior fiscal year and that do not have an approved indirect cost rate that is four or fewer years old
  - Indirect Contract Support Costs = 30 percent of the Secretarial Amount awarded to the Tribe, minus exclusions and pass-throughs – for Tribes that did not meet the Single Audit Act threshold in the prior fiscal year and that do not have an approved indirect cost rate that is four or fewer years old

The BIA opts not to add a 10 percent *de minimis* rate as a fifth way to calculate indirect contract support cost funding. The BIA's goals are to simplify the process for determining contract support cost funding and to encourage Tribes that meet the Single Audit Act threshold to negotiate indirect cost rates with their cognizant Federal agency.

Tribes that do not have an approved indirect cost rate that is four or fewer years old can either obtain indirect contract support cost funding under the Simplified Method (if they are eligible) or they can negotiate a lump-sum amount for indirect-type costs. That negotiation can take place during or after the year in which indirect contract support costs were incurred. The BIA considers that negotiating a lump-sum amount for indirect contract support costs sufficiently protects Tribes' right to receive indirect contract support cost funding.

5. *The BIA will continue to resolve with Tribes, as quickly and efficiently as possible, overpayments of contract support cost funds.*

The BIA Tribal Co-Chair noted comments from some Tribes that, instead of issuing bills of collection to Tribes for overpayments of contract support cost funding, BIA could pay Tribes less than their calculated contract support cost funding in a subsequent year. The Department has studied the options that are available under Federal law for resolving overpayment issues with Tribes. Current appropriations language does not allow the Secretary to apply contract support cost funds for a given fiscal year to another fiscal year. Therefore, it is not possible to implement the solution suggested by some Tribes. The BIA and the Office of Self-Governance (OSG) attempt to resolve overpayment issues informally with Tribes. They will continue to do so.

6. *The policy calls for overpayments and underpayments of indirect contract support cost funding to be determined based on the indirect cost rate in effect at the end of the Tribe's fiscal year.*

The policy provides that the indirect cost rate in effect at the end of the Tribe's fiscal year will be used for purpose of calculating overpayments or underpayments of contract support cost funding. The Co-Chair noted that some Tribes proposed that Tribes be able to provide updated information on their indirect cost rates up to three months after the end of the fiscal year.

Using the indirect cost rate in effect at the end of the Tribes' fiscal year aligns with Congress's request for a simplified process for awarding contract support cost funding, since Tribes are accustomed to doing financial accounting within the context of their fiscal year. The Department's Indirect Cost Directorate has "staffed up" to ensure that tribal indirect cost rates are negotiated quickly. Currently there are minimal delays in the negotiations. Thus, BIA does not anticipate that it will take Tribes long to secure indirect cost rates, once Tribes present the necessary documentation to the Indirect Cost Directorate. Therefore, BIA does not anticipate a need to consider newly acquired indirect cost rates after the close of the Tribe's fiscal year. The BIA CSC Workgroup unanimously recommended that the end of the fiscal year is a natural cut-off date. BIA opts to retain the end of the Tribe's fiscal year as the date for determining the Tribe's applicable indirect cost rate for purposes of determining overpayments and underpayments of contract support cost funding.

- 7. The Secretary's annual report to Congress on the implementation of the ISDEAA will be available to Tribes as soon as it is provided to Congress.*

The Co-Chair noted that some Tribes asked BIA to share the draft of the report on the implementation of the ISDEAA that the Secretary submits annually to Congress, so that Tribes may review the data on contract support cost funding before the report is submitted to Congress. The policy provides that each Tribe receive a copy of its data by January 15 and have at least 30 days to identify any errors or omissions in the data. The policy provides that the draft report to Congress, including the Tribes' corrected data, be forwarded to the Assistant Secretary – Indian Affairs by April 15, so that the report can be submitted to Congress by May 15. The ISDEAA requires the report to be submitted to Congress by May 15. The policy provides that, after the report is submitted to Congress, copies of the report be provided to each Tribe included in the report.

The BIA CSC Workgroup discussed this timeline and agreed that Tribes would not have time between April 15 and May 15 to suggest changes to data on contract support cost funding in the draft report that could successfully be incorporated into the Department's internal review process. The BIA considers that the ability of each Tribe to correct its own data, before the draft report is assembled, ensures the validity of the data. The BIA considers that the ability of the Tribes to see the report as soon as it has been submitted to Congress gives Tribes the opportunity to offer their recommendations on contract support cost funding in time for the next fiscal year. Moreover, BIA has concerns about the release of Tribes' financial data to third parties before the data becomes publicly available as a result of its submission to Congress. Therefore, the policy does not call for BIA to share Tribes' financial data with third parties before the data becomes publicly available through its submission to Congress.

- 8. The BIA Handbook on Contract Support Costs will include examples of pre-award, startup, direct and indirect contract support costs.*

The BIA is preparing a Handbook on Contract Support Costs that will be placed on its website for the use of Awarding Officials and Tribes. The Handbook will help Awarding Officials to apply the revised Contract Support Cost policy and will inform Tribes of how the policy will be applied.

The draft policy that BIA offered for tribal consultation contained a final page with examples of pre-award, startup, direct, and indirect contract support costs. The BIA Tribal Co-Chair requested that BIA include this page in the Handbook on contract support costs that BIA is preparing. The BIA intends to have examples of the four types of contract support costs in the Handbook. The Workgroup will have an opportunity to review and comment on the examples before the Handbook is published on BIA's website.

9. *The BIA CSC Workgroup will have an opportunity to review the BIA Handbook on Contract Support Costs before the Handbook is placed on BIA's website for Tribes and Awarding Officials to use.*

At its last meeting held August 16-18, 2016, the Workgroup spent a full day considering tribal comments received during consultation that would apply to the BIA Handbook on Contract Support Costs. The Workgroup reviewed every section of the draft Handbook. Not all sections of the draft Handbook were complete, however, at the time of the Workgroup meeting. The Workgroup will have the opportunity to review and comment on the Handbook before it is published on BIA's website. The BIA does not consider it necessary for the Handbook to go out for an additional round of tribal consultation, since the Workgroup has already considered tribal comments from the last consultation, and since the Handbook will address procedures rather than policy.

10. *The BIA is committed to using ISDEAA agreements to disburse funding to Tribes, on request, whenever ISDEAA agreements are lawful.*

The Co-Chair noted that one tribal comment and several tribal members of the Workgroup urged BIA to transfer funding through ISDEAA agreements rather than standard grants. The BIA is committed to using ISDEAA agreements to disburse funding to Tribes, on request, whenever ISDEAA agreements are lawful. The BIA encourages the Workgroup to identify types of funding that are now disbursed to Tribes through grants, but that are eligible to be disbursed to Tribes through ISDEAA agreements.

Any unresolved disputes between a Tribe and BIA for any section of the policy will be handled in accordance with the regulations at 25 CFR parts 900 and 1000. The BIA considers that this safeguard is sufficient to protect Tribal interests.

The BIA looks forward to working with you under the revised Contract Support Cost policy. I encourage you to give us your feedback about how the policy is working.

Sincerely,



Lawrence S. Roberts  
Principal Deputy Assistant Secretary –  
Indian Affairs