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DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DEPARTMENT OF THE INTERIOR  
TRIBAL CONSULTATION ON CONTRACT SUPPORT COSTS

June 8, 2014

Anchorage, Alaska

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KRON ASSOCIATES  
1113 W. Fireweed Lane, Suite 200  
Anchorage, Alaska 99503  
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1 matter of policy or any kind of change in the way contract  
2 support is calculated or, you know, different approaches that  
3 people may be thinking this is important for you going into FY  
4 '15 and beyond. Maybe a word, you know, that as we get in '15,  
5 '16 and beyond that we may easily shift back into underfunding  
6 again and end up with more shortfalls. So as of today the  
7 shortfall reports are -- just are meaningless. That's not  
8 really reports that are necessary anymore and now it's more  
9 about calculating what the expectation is of contracting and  
10 self-governance compacting to make sure that their budgets are  
11 calculating their correct numbers.

12 So what we're going to do is we're going to divide up this  
13 evening's session and spend about, you know, 40, 45 minutes, you  
14 know, with IHS and about 40, 45 minutes with the Department of  
15 Interior and BIA. Both will get up and make opening remarks  
16 with regard to where they feel we are in the current discussions  
17 and dialogue and then we're going to open it up for IHS issues  
18 and perspectives and recommendations. Then after about half the  
19 time, you know, about 8:00 o'clock or so, or even before if  
20 there's no more comments then we'll shift into Department of  
21 Interior and BIA. Now this is not about the settlement  
22 discussion. The settlement discussions are on separate tracks  
23 and so the intent is really to talk about the CSC as a matter of  
24 policy.

25 So that's kind of the overview. This is a -- is being

1 recorded, so we -- so anybody who wants to be able to get a copy  
2 of the report of the record, of people's testimonies and  
3 recommendations, that's going to be a matter of public record.  
4 This is not open for the public. This is a consultation  
5 session, so if there is any press here we'd ask you to leave.  
6 We respectfully appreciate the press being part of what's going  
7 on, but if anybody here is with the press we'd ask you to step  
8 out if you would. This is strictly a govern to govern between  
9 the tribes and the federal government.

10 Okay. So with those opening remarks I'm going to turn it  
11 over to -- Yvette, you're going to be the opening remarks.

12 DR. ROUBIDEAUX: Thank you. Is this on?

13 UNIDENTIFIED MALE: Yeah. (Indiscernible).

14 DR. ROUBIDEAUX: Both should be good? All right. Well,  
15 good evening everybody.

16 SIMULTANEOUS SPEAKERS: Good evening.

17 DR. ROUBIDEAUX: It's wonderful to be here on this  
18 beautiful day with a beautiful sunset starting over the water  
19 and this is really a great opportunity to be here with you here  
20 in Anchorage. This consultation that we've been working on for  
21 the last couple of months has been really helpful and it's been  
22 helpful because we know we have a lot of work to do to try to  
23 find a long-term solution and we've been getting some really  
24 great input.

25 From the perspective of the Indian Health Service, we're

1 very happy about the full funding for 2014 for contract support  
2 costs and we're happy about the full funding proposed for fiscal  
3 year 2015. I think many of you knew that -- there's a few  
4 things that help frame the discussion today. One is of the  
5 handouts there's the my tribal leader letter from May 12th. It  
6 sort of summarizes the contract support cost issues for the  
7 Indian Health Service, both appropriations and the past claims.  
8 And I think that for the Indian Health Service the language from  
9 congress, which you also have a copy of, sort of predicted that  
10 if we funded the three priorities in 2014 fully, purchased the  
11 referred care and the new staffing, the new facilities, and full  
12 funding for contract support costs, there was a possibility we  
13 would have to reduce the rest of the budget. And it turns out  
14 we did have to reduce part of the budget by \$10 million. We  
15 consulted with tribes and did what we could to avoid tribal  
16 shares (indiscernible) type funds and so we did make some  
17 reductions. And the language from congress said, well, because  
18 contract support costs being a part of the discretionary part of  
19 the budget could on occasion have this happen where if the costs  
20 are greater than the funds available there might need to be a  
21 decrease in the funding in the rest of the budget felt that we  
22 needed to look for a more long-term solution. And certainly I  
23 think we've all been able to learn this year or this past couple  
24 of years about how -- more about contract support costs and to  
25 realize that it's actually a number that varies over time and is

1 based on a lot of different things in the calculation that can  
2 change over time. And so trying to make sure we predict the  
3 amount for appropriations and predict the amount that we pay in  
4 the end, it's a complicated thing and so congress wanted us to  
5 make those estimates more precise for the purpose of  
6 appropriations and to have a more long-term solution and that's  
7 really sort of framed in the congressional language that you  
8 have.

9 A lot has happened. We have had some consultation  
10 sessions at the NCAI executive winter session, at the self-  
11 governance conference. The IHS CSC workgroup has met a couple  
12 times, has been working on how to better refine the estimates of  
13 contract support costs in the negotiations phase and if we can  
14 get it more precise from the beginning then it'll be more  
15 precise throughout the entire process.

16 And so there's kind of a lot of great work there and in a  
17 few minutes when we start the IHS session I'm going to have  
18 Rosalyn Sew (ph) talk about some of the more specific things  
19 that the IHS contract support costs workgroup has worked on.

20 So I think we're well on our way to looking for a long-  
21 term solution, but it is a challenge because it's an obligation  
22 that is there and will always be there that we want to fully  
23 fund yet is in a budget that is discretionary and it doesn't --  
24 it isn't as flexible. At some point in time our appropriations  
25 is a fixed number and if the contract support cost numbers vary

1 over time, like your rates change or other factors change, if  
2 you have that, you know, static amount of funding and the need  
3 is greater than that creates a lot of challenges. And so we're  
4 really hoping that everybody can help us think through what  
5 would be some of the long-term solutions to that. And we've had  
6 some great discussions in the past sessions and looking forward  
7 to hearing your input today.

8 I also want to call your attention to -- we're not  
9 talking, again, about the litigation today, but I have included  
10 a graph of the comparison of the settlement of CSC claims  
11 compared to November to now for the Indian Health Service.  
12 We've been working in partnership with the lawyers and tribes  
13 and the self-governance workgroup, direct service tribes  
14 workgroup and fortunately we're starting to make progress there.  
15 But again, we're really talking more about the appropriations  
16 and, you know, we're all hoping that we can continue this goal  
17 of fully funding contract support costs, but congress really  
18 does want us to come up with a long-term solution. They want us  
19 to better estimate the numbers and want to make sure that we're  
20 able to better predict that number so it doesn't impact the rest  
21 of the budget.

22 So again, on behalf of the Indian Health Service we're  
23 very interested in this conversation, interested in your input  
24 today and I really do think we've come a long way, especially  
25 over the last couple of months with the contract support costs

1 workgroup considering the input from these sessions already. So  
2 thank you and I'll turn it back over to Assistant Secretary  
3 Kevin Washburn.

4 MR. WASHBURN: Thank you, doctor, and thank you all for  
5 being here. We are happy to kick off another consultation on  
6 the important subject of contract support costs. I've said this  
7 before, but it's a historic time. For decades we haven't fully  
8 funded contract support costs and that was a real problem and we  
9 are now at a point where we are fully funded. For 2014 we have  
10 fully funded contract support costs and we will -- we plan to do  
11 so again for 2015 and that I believe takes away a very serious  
12 obstacle to self-determination and self-governance to tribes.  
13 It's the right thing to do. We I think are very successful when  
14 we contract with tribes to meet the federal trust  
15 responsibility. I think that we provide our services better  
16 when we provide them through tribes, but we have to fully fund  
17 tribes to be able to provide those services and so that's what  
18 this is about.

19 We have been given a fairly specific charge by congress.  
20 Congress in our last appropriation basically said that the  
21 question of contract support costs, amounts to be paid from  
22 within fiscal year 2014 appropriation is remanded to the  
23 agencies to resolve. Now we resolved to pay full contract  
24 support costs. That's how we treated that when congress  
25 remanded it back to us. But they gave us the authority to pay

1 all the -- the full contract support cost, but they gave us a  
2 homework assignment in essence. They said that we are directed  
3 to consult -- both IHS and the Interior are directed to consult  
4 with OMB, with the committee on appropriations, with tribes and  
5 with the authorizing committees which, you know, means the --  
6 basically the senate committee on Indian affairs and appropriate  
7 house committee to figure out how to go forward and they  
8 described it as to formulating a long-term accounting budget and  
9 legislative strategies to address the situation. And it also  
10 said that in the committee's view, the appropriations  
11 committee's view, we should consider a standardized approach  
12 that streamlines the contract negotiation process, provides  
13 consistent and clear cut cost strategies and ensures efficient  
14 and timely cost documentation for the departments and the  
15 tribes. So they gave us some very specific items that they  
16 would like us to look at and we've heard from some of you before  
17 about some of these things and we will I'm sure hear more today.  
18 I don't think we're limited to those suggestions, but those are  
19 things that the committee definitely wants us to address and so  
20 we need to hear from you.

21 We have had a couple of different consultations now on  
22 this subject and we've got transcripts of those consultations.  
23 So for those of you who have spoken during those consultations  
24 you don't need to speak again in this, it's on the record, or if  
25 you submitted paper comments to us you don't need to speak here

1 unless you've got something new to say about the subject and we  
2 are looking forward to hearing from you. The way we're going to  
3 handle this is Dr. Roubideaux is going to do a little while on  
4 IHS CSC issues and hear from you on those and then we will hear  
5 from you, Hankie and I, Hankie Ortiz who's to my left will hear  
6 from you on the Interior contract support costs.

7 Let me just mention too, we have a lot -- from Interior  
8 we've got a lot of folks here who are involved in this issue.  
9 My Deputy Director for Indian Services is here, Hankie Ortiz,  
10 and she's basically running this issue for us at the Department,  
11 but we also have Sharee Freeman here with the Office of Self-  
12 Governance, George Bearpaw from -- Deputy Assistant to Secretary  
13 for Management is here. Liz Appel and Deputy Assistant  
14 Secretary Larry Roberts are both here and Sunshine Jordan who's  
15 from one of the Regions but is helping us from the Pacific  
16 Region helping us run down these issues. Actually Jody Cummings  
17 is here too. We might outnumber you guys. And Mike Black is  
18 here. I can't see Mike, but I -- yeah, there he is. Great.  
19 Director of the BIA. So yeah, you're surrounded. I have to  
20 tell you, you're surrounded. Good.

21 Well, I just wanted to make sure you knew who was here and  
22 I think what I will do is turn it back over now to Dr.  
23 Roubideaux to start sort of the IHS portion. Thank you.

24 MR. ALLEN: You want to bring Ros up?

25 DR. ROUBIDEAUX: Yeah. I should also do the same thing

1 and introduce the other half of the audience which is the Indian  
2 Health Service. So.....

3 MR. ALLEN: We should warn you first, we know that CSC is  
4 a contact sport, so.....

5 DR. ROUBIDEAUX: We have strength in numbers I guess. But  
6 first we have with me my Deputy Director of Intergovernmental  
7 Affairs, Rear Admiral Sandra Pattea. Make sure everybody saw  
8 you. And then she's the one in the uniform, so you can't miss  
9 (indiscernible). With a gold star on it, that's what the  
10 Admiral thing is, but anyway. We also have Mr. Jeffery Roth  
11 (ph) who is our agency CSC expert. No, actually he's the senior  
12 advisor to the Director and Affordable Care Act is what his big  
13 focus is, but I should have you branch out into CSC. What do  
14 you think?

15 MR. ROTH: (Indiscernible).

16 DR. ROUBIDEAUX: And then we have Vince Smith (ph), the  
17 Director of the Office of Tribal Self-Governance and Jennifer  
18 Cooper, the Deputy Director of the Office of Tribal Self-  
19 Governance. And Chris Mandraken (ph) is the Area Director for  
20 the Alaska area and his staff are various staff around. And  
21 last, but not least, is Rose Bunso (ph) who is our lead for the  
22 Indian Health Service on contract support costs and I think what  
23 she'll do is give you an update on the great work that our  
24 contract support costs workgroup has done and been meeting since  
25 January and have made a lot of progress in several areas, so.

1 MS. BUNSO (ph): Thank you, Dr. Roubideaux. Good  
2 afternoon everyone. Just very briefly to give you an update on  
3 what we have been working on. As Dr. Roubideaux just stated,  
4 she did reinstate the CSC workgroup in early January. Since  
5 then we've had two meetings and we've also established a  
6 technical workgroup that's also met several times by phone and  
7 so forth. As we've know, this is a very technical topic that  
8 we're trying to work on.

9 One of the things that we did from the beginning or that  
10 the Director worked with the CSC workgroup is really looking at  
11 a forward focus improvement effort, try to figure out how do we  
12 stabilize, how do we better improve our contract support costs  
13 across the Indian Health Service. And so looking at that we  
14 looked at consistency. We need to have consistency throughout  
15 the Agency on how we apply contract support costs, whether it be  
16 at the local level or throughout the Agency. And there's  
17 different Regions and so forth, so we want to make sure that how  
18 we're handling contract support costs in Oklahoma is the same in  
19 Alaska and so on and so forth. Fairness, we want to make sure  
20 that there's fairness throughout the whole process, that each  
21 tribe is being impacted if we don't comply or apply fairness  
22 throughout our whole business processes. Another change that  
23 was made and -- after the first meeting or during the first  
24 meeting was the inclusion of a federal team. So that's been I  
25 think really helpful to have a federal to tribal workgroup work

1 side by side and understanding the different not only  
2 complexities of the issue, but the different perspectives which  
3 we, the federal staff, and the tribal workgroup members.

4 As a result of that one of the accomplishments I think was  
5 to be able to make full payment of the initial CSC for 2014.  
6 The IHS was able to pay -- make those payments by April 30th, so  
7 all tribes should have their funds by now for the first time.  
8 And then one of the things that we're going to work on now, what  
9 we're focusing now is a reconciliation. So we recognize that  
10 while the Agency's obligated to pay 100 percent, we want to make  
11 sure that we don't overpay or underpay any tribes. And so as a  
12 result of that between now and the end of the fiscal year the  
13 Agency's going to really focus on reconciliations and so forth.  
14 So that part of it has really become our focus for the  
15 workgroups is how do we develop business processes where, you  
16 know, for example, pass through and exclusions. I know you've  
17 probably heard about that and have been talking about that  
18 within your tribal government organizations. But that's a  
19 complicated and difficult set of sort of factors to consider and  
20 so in doing that we're talking about how do we do that. You  
21 know, one of the suggestions is that maybe we look at three to  
22 five year of your -- of the rate agreements and see -- sort of  
23 get an average of looking at pass through and exclusions for a  
24 tribe.

25 And so we've got -- those are the types of issues that the

1 workgroup is working with now, trying to figure out how do we,  
2 again, stabilize so we can better estimate contract support  
3 costs in the future and make sure that we are making those  
4 proper requests from the Agency to make sure every tribe is paid  
5 100 percent.

6         Deadlines. We also fully recognize that one of the things  
7 that we sort of as a workgroup tried to jump to was the policy,  
8 the IHS policy, and we recognize now though that there's some  
9 work that -- and with all of the changes that we're looking at  
10 now with contract support costs we're probably going to delay  
11 that just a little bit to make sure that we work through these  
12 changes that we're working through now and make sure that we  
13 include them in those changes that will need to be made to the  
14 contract support costs policy. So that includes, you know,  
15 deadlines, those kinds of things, how do we deal with new and  
16 improved or new and expanded programs, making sure that we're  
17 accounting for all of those items that are specifically outlined  
18 in the policy. Thank you.

19         DR. ROUBIDEAUX: And Rosalyn (ph), do you have the list  
20 from Melanie about the -- some of the other long-term solution  
21 ideas?

22         MS. BUNSO (PH): I do. There was a couple other things  
23 that I failed to mention. One is the contract support cost  
24 appropriations, looking at how the Agency might look at that in  
25 terms of a multiyear or (indiscernible) year funding options

1 that we might consider. And what that would do is maybe allow  
2 us to be able to build in a little more flexibility whereas  
3 right now it's a one year appropriation, so whatever happens to  
4 the end of the fiscal year it sort of stops there and we're not  
5 able to make other adjustments throughout the -- you know, as  
6 the funds may still be there in terms of, for example, the tribe  
7 is -- needs to owe back the Agency some money. If it's after  
8 September 30th those funds are no longer able to be utilized.  
9 Again, the -- looking at other focuses for funding, trying to  
10 make sure that, again, we properly account for or make those  
11 requests for funds to congress so we account for 100 percent for  
12 all tribes.

13 DR. ROUBIDEAUX: Thank you. I think that some of you in  
14 the audience are really familiar with contract support costs and  
15 you know the details, you've been working on it for a long time.  
16 There may also be others in the audience who -- for whom it's a  
17 new topic. And I have to say as the Director of Indian Health  
18 Service I never thought -- as a doctor I never thought I'd be  
19 learning so much about contract support costs. But just briefly  
20 I think what we've learned over the last couple of years was  
21 that, you know, contract support costs are complicated, but the  
22 important thing to understand for this conversation is that  
23 there's a process for it. It starts when the tribe first does  
24 the negotiations with the federal government on their compact or  
25 contract or annual funding agreement. At that point there's an

1 estimation of what the contract support cost would be associated  
2 with those activities or programs they're taking over. And  
3 interestingly enough, the work of the CSC workgroup found out  
4 that it was being calculated sort of differently in different  
5 places. And so the neat thing that the IHS contract support  
6 costs workgroup came up with recently was a template to try to  
7 help standardize the negotiation from the start to make sure  
8 we're all talking about the same kinds of numbers. Then after  
9 you negotiate -- that negotiation is a year in advance of the  
10 actual appropriation and when you get your funding sometimes  
11 that generates additional contract support costs, so then the  
12 amounts would change. Also the rate, the indirect rate or other  
13 information might be different from the time you negotiated it  
14 to the year when the appropriation occurs and so there's a need  
15 to constantly be updating these numbers. And then once the  
16 appropriation year is over you might have updated rate  
17 information, you might have updated information on tribes  
18 assuming more programs or activities or functions. The actual  
19 appropriation, again, may have generated more contract support  
20 costs. So by the end of the appropriation year there might be a  
21 different CSC estimate as well. So the numbers for CSC actually  
22 can change for some tribes over time and so the work of the CSC  
23 workgroup for IHS has been through making sure we all agree on  
24 the calculation of it and agree on the way it's calculated and  
25 agree how the process will be to make sure that it's calculated

1 right and we're getting the right information from tribes and  
2 that there's opportunity to go back and forth. And so the next  
3 thing is in the generation of the reports for CSC, now we're  
4 going back to every single tribe and saying here's your numbers,  
5 do you agree with this and do you want to update it, those sorts  
6 of things. It's -- and I think it's a better process now.  
7 We're talking about it more and working more in partnership on  
8 it.

9         So -- and then when you get to the -- several years down  
10 the road when maybe there's litigation there's a whole other  
11 conversation about updating those numbers, but we're not really  
12 talking about that today. We're really talking more about, you  
13 know, how do you go from the negotiation phase through the  
14 appropriation to make sure that you pay 100 percent of CSC and,  
15 again, you don't overpay or underpay. Sometimes overpayments  
16 happen. It just happens because maybe a provisional rate was  
17 there and a final rate comes later in the year and then you  
18 realize maybe there's been an overpayment. But the better we  
19 get at making this estimate the better we can predict the  
20 appropriation and the contract support cost associated with and  
21 the less chance we have of getting the estimates wrong. And if  
22 the estimates are wrong and it -- there's more need than the  
23 appropriation then of course we've got a shortfall situation.  
24 No, wait a minute. If there's -- yeah, there's more need than  
25 appropriation we've got the shortfall situation.

1           There's also a new thing that's come up with the federal  
2 employees is if we don't hit the mark we could have what's  
3 called an Antideficiency Act violation which is that we have not  
4 appropriated enough for the obligation and that's a serious  
5 issue for our staff and that's why we're also interested in  
6 this. We didn't have to deal with this before, but now that  
7 we're in the full funding phase there's a possibility that we  
8 could get into that as well.

9           So we're all very anxious to have a solution to the  
10 contract support costs appropriations to make sure we can get  
11 the numbers right and make sure we all feel good about them.  
12 And I think we're on our path and I think we're on the way and,  
13 again, I'm looking forward to hearing your comments tonight, so.

14           MR. ALLEN: Ready for comments?

15           DR. ROUBIDEAUX: Uh-huh (affirmative).

16           MR. ALLEN: Okay. So for anybody who wants to line up on  
17 the mic and we'd like to ask you to just announce your name and  
18 the tribe or organization you represent. For IHS.

19           MR. SCHUERCH: May I sit?

20           MR. ALLEN: (Indiscernible).

21           MR. SHIRK (ph): Can I sit here?

22           UNIDENTIFIED FEMALE: Yeah.

23           MR. SCHUERCH: I have my notes on my computer, so it's a  
24 little more convenient.

25           MR. ALLEN: Okay. That's fine.

1 MR. SCHUERCH: Good evening. I'm Tim Schuerch. I'm  
2 President and CEO of Manil.....

3 MR. ALLEN: So what's with -- you might want to pause.  
4 What's with these mics here? Are they here just.....

5 MR. SCHUERCH: Should I use both?

6 MR. ALLEN: .....to be used or are they.....

7 UNIDENTIFIED MALE: (Indiscernible) recording.  
8 (Indiscernible) people can hear.

9 MR. SCHUERCH: So all three.

10 MR. ALLEN: Oh, I see. Okay. Yeah, so let's use that  
11 one.

12 MR. SCHUERCH: Thank you, Ron. I'm Tim Schuerch. I'm  
13 President and CEO of Maniilaq Association. We're a tribal  
14 organization. We're constituted of 12 federally recognized  
15 tribes in northwest Alaska. I'd like to thank the  
16 administration for following our appropriations committee's  
17 recommendations to work with the tribes and fully fund contract  
18 support costs under the ISDEAA and we're happy to report we've  
19 received notice in our particular case from the Department of  
20 Justice that it's been approved at their level. And so we've  
21 been told the check's in the mail. So -- but we thank you  
22 for.....

23 UNIDENTIFIED FEMALE: (Indiscernible) settlement.

24 MR. SCHUERCH: Yes, on the settlement side. Now the CSC  
25 funding problem is not yet fully resolved unfortunately. Full

1 funding for CSC must not come with a penalty of a reduction in  
2 program funding, which is in effect equivalent of permanent  
3 sequestration of Indian program funds. That result would have  
4 the same devastating effect on our services as would failure to  
5 fully fund CSC in the first place.

6 I am concerned that without any permanent measure to  
7 ensure full funding payment of CSC remains subject to Agency  
8 discretion from year to year, even though the tribes are legally  
9 entitled to full payment under the ISDEAA. Noting these ongoing  
10 conflicts of law congress directed the agencies to consult with  
11 the tribes, as I did mention. Now in the view of many tribes  
12 and tribal organizations throughout the country, as reflected in  
13 ANHB and NIHB resolutions, there is a logical permanent solution  
14 which congress is empowered to implement. CSC should be  
15 appropriated as a mandatory entitlement. Under the ISDEAA the  
16 full payment of CSC is not discretionary. It is a legal  
17 obligation affirmed by the Supreme Court that the budget  
18 authority for CSC is currently provided and controlled through  
19 an Appropriations Act as if it were a discretionary program.  
20 This is a very disturbing disparity for us. We feel mandatory  
21 obligations should be addressed through mandatory spending. CSC  
22 is a mandatory entitlement. It is not a discretionary program.  
23 We therefore strongly urge you to take a position with the  
24 pertinent committees of congress to appropriate funding for CSC  
25 on a mandatory basis. We would like the Agency to take that

1 position.

2 And that concludes my remarks. Thank you.

3 MR. ALLEN: Thanks, Tim. Next.

4 DR. ROUBIDEAUX: While he's coming up, I couldn't help but  
5 have a big smile on my face. In the first consultation session  
6 with OMB sitting in the front row Ron Allen raised that exact  
7 point. I was like man, go for it, go for it Ron, OMB's in the  
8 room. Silly.

9 RICK: Good evening. Thanks for coming here to hear us  
10 today. All of you have heard my first comment here before, but  
11 I'm going to repeat it again and one -- that is education. The  
12 federal employees, federal leaders, need to educate all federal  
13 staff and the American public on the responsibility and the  
14 trust responsibility and obligation to tribal people. That will  
15 help get the support you need to get the funding that you need.

16 Second, I concur with what he just said. We need to have  
17 this in a mandatory funding versus discretionary. We all know  
18 the money's there. We've seen the budgets. It's what the  
19 federal government, congress and the senate, the President  
20 choose to spend that money on and this is an obligation.

21 Three is that we all have to go through the process with  
22 the National Business Center to develop and direct rates. And  
23 you guys are now fully funding us, but we're having problems  
24 with other departments, other agencies not adhering to what's  
25 been negotiated and that's a problem with tribes. When they

1 don't -- when they have caps and stuff and you're fully funding  
2 then there's inequity there and then that creates a problem down  
3 the road. Two years later you're under recovered or over  
4 recovered because of it and that's a problem. Our tribe has 11  
5 clean audits and this can jeopardize that.

6 And lastly, and recently up here our Region negotiates as  
7 a Region the IHS and one of the sticking points in the contract  
8 support language was having an attachment for those  
9 calculations. And one the reason -- or two of the reasons why  
10 we wanted those was for transparency so both sides know what  
11 we're using to come up with these figures and the other one is  
12 turnover on both sides. Particularly on the tribal side and  
13 small rural villages it's -- you have a lot of high turnover  
14 and, you know, like you were saying, those final negotiated  
15 rates are one, two, three years down the road and you could have  
16 went through several different accounting staff between then --  
17 now and then and not know what those calculations are. And so  
18 we tried to get that put in the language and it was pretty  
19 adamantly refused during the negotiation process. I would  
20 strongly suggest that's reconsidered. Thanks.

21 MR. ALLEN: Thanks, Rick. Next. If you guys don't step  
22 up I'm going to go into my speeches. Oh, oh.

23 UNIDENTIFIED FEMALE: (Indiscernible).

24 MR. ALLEN: Anybody else? I think that a lot -- I see a  
25 lot of familiar faces. Oh, we got somebody here. You know, who

1 have already testified, so your point is well taken that for  
2 those of you who have either written or provide oral testimony  
3 that is on the record, so -- yes, name and tribe you represent.

4 MS. BOERNER: Thank you. My name is Verne Boerner. I'm  
5 President and CEO of the Alaska Native Health Board. I just  
6 want to stand and just reiterate and support the words that have  
7 been shared by Tim Schuerch that we also support making CSC  
8 mandatory. Thank you.

9 MR. ALLEN: Thank you, Verne. Any other comments,  
10 recommendations with regard to IHS? And just as a reminder, I  
11 think that the plan is for both agencies that once the  
12 consultation sessions are all done then you guys are going to  
13 collate these recommendations and communicate back to the tribes  
14 with regard to what the end results hopefully will be for long-  
15 term solutions. Is there going to be a report from your two  
16 agencies to congress? Is that the intent here?

17 DR. ROUBIDEAUX: I think our plan for us was to go back --  
18 the plan for the -- for Indian Affairs was for us to go back  
19 with the contract support costs workgroup and have them help us  
20 review the documents they don't recognize and put together  
21 something like that.

22 MR. ALLEN: Okay. That makes sense. Okay. Okay. Any  
23 other comments or recommendations on the IHS side?

24 DR. ROUBIDEAUX: While you're thinking about it or coming  
25 to the mic, we -- both agencies submitted work plans to congress

1 about how the consultation will occur and IHS's work plan had  
2 coming to national meetings like this to get input and also  
3 working with four of our advisory groups, the Tribal Self-  
4 Governance Advisory Committee, the Direct Service Tribes  
5 Advisory Committee, the budget formulation workgroup and the  
6 contract support costs workgroup and that we were trying to get  
7 as broad of input as we could. The CSC workgroup is well on  
8 their way to very specific recommendations, but we want to make  
9 sure we get a broad range of tribes to get input on that. And I  
10 guess congress didn't tell us exactly what format we had to  
11 submit the recommendations, but we do know there's a timeline.  
12 If we wanted to impact the final decision of congress for fiscal  
13 year 2015 both congress and OMB have told us we have to have an  
14 answer by August, September, latest October. So that's if we  
15 wanted to influence the decision of congress on '15 and if we  
16 wanted to influence the decision of what goes in the President's  
17 budget for '16. So this fall is when we need to have our  
18 recommendations in for the long-term solution for both of those  
19 purposes, so we'll do further clarification.

20 One thing I do want to mention just so people know is that  
21 I did hear from the appropriations committees that they've heard  
22 loud and clear that tribes want the more permanent solution of a  
23 mandatory and definite appropriation, but they also talked about  
24 how the appropriations committees aren't the place that that  
25 would happen. It would actually happen in the authorizing

1 committees. And so I think that's just another -- you know,  
2 that was feedback that we had gotten from congress on that. And  
3 the appropriations committees did want in addition to that  
4 recommendation the recommendation for the long-term solution, if  
5 it still was on the discretionary side. And so I think we have  
6 to look at all of the input that we're receiving, but, you know,  
7 good job to all of you. It sounds like congress has heard that  
8 that is your preference, but they still encouraged us to look at  
9 other solutions in case that did not come to pass or was a  
10 harder lift than some of the shorter term solutions.

11 MR. ALLEN: At this juncture is there a plan to be able to  
12 provide the tribes any kind of updates on the array of  
13 recommendations or the numbers of tribes who are testifying on  
14 your websites? How would we find out what are the list of  
15 recommendations or suggestions that are coming from the tribes  
16 and how many tribes are actually testifying?

17 DR. ROUBIDEAUX: Well, we certainly I think will have the  
18 attendance at the meetings and then we'll have the recordings of  
19 who has spoken. I know that the CSC workgroup on the IHS side  
20 is keeping a running list of the different kinds of  
21 recommendations, whether they're timeline issues or policy  
22 issues or calculation issues. And, you know, I think it's  
23 important -- and Ron, you've made this comment, that as we move  
24 along we want the conversation each time to be advanced, you  
25 know, taking the can down the road. So, you know, at this

1 consultation it's nice that we've been able to talk a little bit  
2 about the work that the CSC workgroups have done already and I  
3 know Terry will talk about that in a minute. And then each  
4 session can build on those recommendations and on those.

5 So it's kind of -- it's fluid right now as we move  
6 forward, but I think there'll be a point in time where, you  
7 know, we're going to -- I think the appropriate venue for both  
8 agencies is probably the CSC workgroups to come up with a final  
9 list of recommendations. And then once recommendations are put  
10 forward we probably have to consult with all tribes again on the  
11 final recommendations, but we've got a short timeline because we  
12 have to have recommendations done by this fall. So we'll try to  
13 be more concrete about it.

14 MR. ALLEN: Yeah. I was just thinking, some tribes are  
15 being very specific, like Tim's, and then others will get up and  
16 their testimony really is we concur. So rather than repeat it  
17 they're concurring. So the record needs to be very clear that  
18 there's a fair number of tribes who are actually testifying, but  
19 they're not just repeating it because somebody has already said  
20 it very articulately. Okay. Did you have test -- a comment,  
21 recommendation?

22 MS. HARRISON: I have to find (indiscernible). If no one  
23 else is going to say something I'll ask a question. My name is  
24 Jennifer Harrison with Eastern Aleutian Tribes. I'm the  
25 Executive Director. I really -- just I really have a hard time

1 every time you say that you're worried about overpayment,  
2 particularly from a small, small, small tribe point of view.  
3 I'm really worried about this concern that we're -- that the  
4 overpayment will happen and then you'll be requesting the money  
5 back. I think that there should be some discussion of if we  
6 overpaid by X amount then we need, you know, the money back.  
7 Because small tribes if you overpay them and then you ask for  
8 the money back it could, you know, really be detrimental to the  
9 programs and their cash flow. And so I just think that when  
10 you're talking about overpayment and being worried about  
11 collecting that money back that you should consider the cash  
12 flow impacts that will happen to small tribes. And I concur  
13 with Tim.

14 DR. ROUBIDEAUX: Thank you. That's good input. I think  
15 our IHS CSC policy has a process for overpayments and I think if  
16 we get it right on the front end with the estimating at  
17 negotiations and better estimating the payout at the time of  
18 appropriations we'll be less likely to do the whole overpayment  
19 thing. But your concern is definitely heard because I can see  
20 how that would be very challenging if you're a small tribe, so  
21 thank you.

22 MR. ALLEN: Okay. Any other comments? Lloyd.

23 MR. MILLER: Good evening. Name is Lloyd Miller for the  
24 record with the Sonosky, Chambers, Sachse, Miller and Munson law  
25 firm. I have spoken before at some of your consultation

1 sessions, so I will not repeat myself. I've been thinking about  
2 this topic a lot and I wanted to offer some additional  
3 suggestions to those I shared with you. I think we were all  
4 together in Washington, D.C.

5 One issue I mentioned there that is really important for  
6 the appropriators is the sharing of information regarding  
7 contract support cost requirements. For both agencies there  
8 used to be much more sharing of information, sharing of draft  
9 data, sharing of reports in draft form, work with the contract  
10 support cost workgroups to refine the data, to refine the  
11 reports. I remember in particular working very well in the  
12 2008, '09 to try to get a report done by the BIA where there  
13 were some very substantial problems, but we met those challenges  
14 and it was because of the wealth of knowledge by tribal people  
15 on your contract support costs workgroup, Mr. Secretary. Both  
16 workgroups need to do that.

17 Now I recognize, since I was deeply involved in the  
18 litigation after all, that there was a time when we were all  
19 litigating, we were all fighting and there was a sense that, you  
20 know, information needs to be held back a little bit and let's  
21 see what the Supreme Court says and everyone was a little  
22 fearful of what would come, but it's over. That game is all  
23 over and I think we really need to embrace full transparency in  
24 the numbers. The time for holding back shortfall reports and  
25 draft shortfall reports I think is behind us. The best way to

1 get your data accurate, which is what the appropriators want, is  
2 peer review. And I think peer review your peers are the tribal  
3 leaders and if we share that data out there while the report is  
4 being prepared and you vet it with the tribal leaders and the  
5 tribal accountants and the tribal experts your product will be  
6 better. The Agency will look better. The appropriators will be  
7 happier. There's just nothing negative about that process. I  
8 encourage you to embrace I think somewhat of a new philosophy of  
9 peer consultation with tribal leadership and tribal financial  
10 experts in the development of these contract support cost  
11 predictions that you need to give congress for the upcoming  
12 budget cycle.

13 With regard to the budget projections, I think the Indian  
14 Health Service historically did a pretty good job. I apologize  
15 if my testimony's a little bit on both topics. The Indian  
16 Health Service developed a model where it determined that X  
17 percent of the budget was under contract or compact to the  
18 tribe, let's say 60 percent. I don't remember the precise  
19 number. And then on average 25 percent is needed for contract  
20 support cost. On average for the whole nation, not this tribe  
21 or that tribe or that tribe, but all bulked together. Well,  
22 with those numbers which had been refined and studied and pure  
23 tested the Indian Health Service was able to project pretty well  
24 what would happen if the appropriation increased by \$100 million  
25 or dropped by \$100 million. Had a pretty good idea. Hankie was

1 there at the time, I'm sure was working intimately with it.  
2 I've never seen that process done on the BIA side. I have seen  
3 the BIA explain what's happened in the past, how much we funded  
4 last year, but not go the next step and try to understand  
5 exactly how much of our budget is under contract, can we  
6 project, like the IHS does, what our requirements will be next  
7 year based on what the President is asking for next year. And  
8 it can be done. It's actually easier than I am probably  
9 explaining. It's in the first couple of pages of the IHS report  
10 and I encourage the BIA to try to use that model of predicting.  
11 We proposed it one year a couple years ago to the TIBC body and  
12 there was some interest there.

13 The third thing I'd like to suggest to both agencies is  
14 contract consolidation. Now this is more of a problem with the  
15 BIA, but it is still somewhat of a problem with IHS where some  
16 areas award multiple contracts. There'll be a public health  
17 nursing contract. There'll be a substance abuse contract.  
18 You'll have a law enforcement contract. You'll have a realty  
19 contract. Separate contracts. And it is -- it shows you how  
20 much stove piping exists still within your agencies. Perhaps  
21 it's also true within the tribes. But it produces enormous  
22 inefficiencies. It makes predicting contract support cost  
23 requirements much harder. I remember Kevin -- I don't remember  
24 the -- Mr. Secretary, how many contracts you said had to be  
25 reviewed to come up with the contract support cost caps when the

1 administration was pursuing that, but it was far larger.....

2 UNIDENTIFIED MALE: Thousands.

3 MR. MILLER: .....than the number of tribes. I mean there  
4 are only 340 tribes contracting with IHS or tribal  
5 organizations, but they had many more contracts. And there were  
6 only maybe as many, 340, 400 tribes and tribal organizations,  
7 contracting with your Department and yet I think you had over  
8 1,000 contracts. It doesn't make sense. And the manpower,  
9 womanpower, that goes into administering all those contracts  
10 could instead go into making the contract support cost  
11 projections much more accurate. If the consolidation initiative  
12 could occur I think this is something that in the next two years  
13 this administration could really launch into deeply.

14 Also during the next two years -- what you -- your two  
15 agencies have done over the last four months is really  
16 wonderful, but we fought wars and we have had to battle against  
17 one another and last year was no fun but Indian country won  
18 fortunately and we now have full funding. Over the last four  
19 months your two departments have worked wonderfully together and  
20 I'm sure it hasn't been easy. Why don't the two secretaries  
21 issue an order together so that this becomes institutionalized  
22 so that when you're gone and there's another administration, a  
23 different assistant secretary, a different director for IHS, you  
24 have cemented a procedure for the two workgroups to work  
25 together. They haven't had joint meetings yet, but that should

1 come next and if the two workgroups met annually or biannually  
2 together your two departments I think would find much higher  
3 degree of accuracy in the reports and greater consistency  
4 between the two departments. After all, you're implementing the  
5 same statute.

6 Another area that is clearly lacking and this has come to  
7 us from a few different quarters and you'll appreciate where  
8 that is without me saying more, is a lack of communication  
9 between your agencies and the HHS Division of Cost Allocation,  
10 DCA, and the Interior -- the National Business -- well, the  
11 Interior Business Council (sic), the IBC. This isn't necessary.  
12 It doesn't have to be. And I've been on the receiving end of a  
13 communication from a tribal leader who says I've got my area --  
14 the area director's asked me to confirm in the next 48 hours  
15 that these numbers are correct. This happens routinely, sadly  
16 it happens routinely. Because, you know, you've probably issued  
17 something that took time that finally got down to the  
18 contracting officer, more likely the contracting officer  
19 requesting some confirmation. Why not just go to the National  
20 Business Center, the Interior Business Center? Why not just go  
21 to DCA and get the data that's available? I'm not going to talk  
22 about litigation other than to say that those communications are  
23 occurring over there. If they're occurring for the past it  
24 would be easy for that to occur now and you would have the goal  
25 standard for getting information, what's the most recent rate,

1 what are the pass throughs and exclusions. Of course there are  
2 going to be follow-up questions, but I think this would reduce a  
3 lot of the concerns you have over the accuracies of the report  
4 and the concern that Ms. Harrison just mentioned about possible  
5 overpayments and the request for reimbursement.

6 Other than that -- and I -- and this -- at the risk of  
7 repeating one thing I did say in D.C., the idea of standardizing  
8 contract support costs needs to -- people need to be disavowed  
9 of that idea. This is not something that's desirable. What's  
10 appropriate for the Eastern Aleutian Tribe is not what's  
11 appropriate for Maniilaq and it's not what's appropriate for  
12 USIP (ph) and was not what's appropriate for the standing Rocksu  
13 (ph) tribe. These are four totally different tribes and tribal  
14 organizations. We cannot standardize a rate. We already  
15 experimented with that in the early 1980s. Or what the pass  
16 throughs and exclusions are going to be except perhaps as a  
17 default rule at the margins. So I think the call is to  
18 standardize. That somehow different rate agreements, different  
19 kinds of rates, fixed would carry forward, multiple rates, past  
20 due rates, that that -- there something wrong with that? I  
21 think there's something very right with that because it's a  
22 reflection of sovereignty. Each government is different. Each  
23 government runs differently. Each government needs to be  
24 respected differently. New York doesn't do its business the  
25 same way Anchorage does when they're dealing with the United

1 States of America. Very different ways. And the tribes should  
2 be respected in their ability to deal with the United States in  
3 their different ways as appropriate to their accountings  
4 systems.

5 So I know the committee asked you to look at  
6 standardization. I'm not sure what they meant by it, but -- and  
7 I haven't heard either of your agencies or workgroups starting  
8 to drive something toward a rate or a series of rates or a  
9 standardized way of doing it and I applaud you for not going in  
10 that direction. I think it would be a mistake. Thank you.

11 MR. ALLEN: Thanks, Lloyd. Any other comments?

12 DR. ROUBIDEAUX: I do want to make a comment on this  
13 issue, this last issue about standardization versus not. I  
14 think we could have a challenge because congress thinks that's  
15 the solution. They absolutely are expecting us to come up with  
16 a way so we will know the exact number and there will be no  
17 other number. And I think that's a huge challenge that we face  
18 here in this discussion because there is variability in, you  
19 know, the calculation because of lots of things. But I can tell  
20 you I have heard directly from congress saying they want the  
21 solution to be something -- just tell me what the number is,  
22 just say what the number is, what's the number. And if we're  
23 not able to do that then we have to have a good next thing and  
24 we have to come up with something. And I also want to comment  
25 -- and I think we can because we are coming up with some good

1 ideas in the workgroup on the IHS side that preserve the  
2 individuality of the tribe, but still make it more consistent  
3 and fair so that we're calculating CSC the same in all the IHS  
4 areas and that the definitions of how we calculate it are the  
5 same. But it still allows for the differences in the tribes and  
6 the programs and their funding and their rates and those sorts  
7 of things.

8         So I think that's -- and it's kind of like we came full  
9 circle. I know that one of the complaints two years ago was,  
10 well, CSC is simple, why can't you just pay it. And it's --  
11 then we've had this period of time where we've learned that it  
12 is complicated, but not so complicated that I think we can  
13 figure out a way to better standardize it. But now we have  
14 people in congress saying just tell us the number and that's a  
15 huge challenge that we have right now. And again, these  
16 sessions will help us make sure that we can get there.

17         And the only other thing I'll mention about the other  
18 comments was the issue of institutionalizing. This  
19 administration did make the decision in fiscal year 2014 on the  
20 work plans to fully fund and this administration has proposed in  
21 2015 to fully fund contract support costs. But what happens  
22 four or five years from now if it's a different administration  
23 and a different congress and that's why your help with this  
24 long-term solution is so important to make sure that there is a  
25 way to institutionalize what people want with regard to how

1 we're going to fully fund contract support costs and how we're  
2 going to make sure that we do that in a fair and consistent  
3 manner and have that long-term solution. So, so important and  
4 I'm really grateful you've come out on a Sunday night to talk to  
5 us about it.

6 MR. KEEL: Thank you. Yes, I will.

7 MR. ALLEN: Who are you again?

8 MR. KEEL: My name is Jefferson Keel. I'm Lieutenant  
9 Governor of the Chickasaw Nation. I just have a couple of  
10 comments. One -- and I concur with everything that's been said.  
11 Tim, Lloyd, all the other folks.

12 My concern is Lloyd just talked about something that --  
13 you know, we talk about standardization. Part of the problem  
14 that we've had over the past several years is the fact that a  
15 federal contract is a federal contract regardless of who enters  
16 it or which agency with which tribe. It's still a contract and  
17 it should be negotiated the same way. So the policy's been  
18 flawed for years and we've recognized both from the tribal  
19 standpoint and the federal government standpoint that we had a  
20 -- not a flawed system, but a flawed policy and we've just  
21 recently come to grips with the fact that we can in fact make it  
22 better. We can improve this, but there has to be a willingness  
23 on both sides. So what we have to say is, you know, we're in  
24 this together and we've said this, but we really haven't acted  
25 that way until recently, until congress came forward and said

1 okay, we're going to fully fund this. Even this administration  
2 wanted to put caps on contract support costs recently.

3 So it's not been a real friendly environment. Having said  
4 that, we're at a point now where we can make it better. We can  
5 get to where we need to be, but we've got to recognize that the  
6 policy was out of date. Even the shortfalls that tribes have  
7 continued to endure over the years just get further and further  
8 behind because they don't have the revenue, they don't have the  
9 support to continue those programs. So we talk about a template  
10 that was mentioned earlier. That template, you know, could  
11 cover all contracts regardless of where they are, but they have  
12 to come together. It has to be a joint effort both from the BIA  
13 -- or from the Interior and IHS, they have to agree on that. So  
14 we work together sharing the information. IT is IT and we've  
15 come a long way in terms of information and data retrieval over  
16 the past several years. So we can get the information very  
17 quickly and up to date. We have to be willing to do that.

18 I think though what concerns many tribes right now, and I  
19 want to mention settlements just briefly. In your comments  
20 before, Dr. Roubideaux, in the past several weeks you've said --  
21 and I don't disagree with this, but I'm just saying it. There  
22 are -- your intent is to have offers on all the outstanding  
23 claims within the end of the -- by the end of the year. And  
24 tribal leaders in fact this past week in Washington, D.C, asked  
25 me, well, what does that mean, does that mean they're going to

1 offer 10 cents on the dollar or 20 cents on the dollar just to  
2 get an offer on the table. I said, well, I don't know, I -- you  
3 know, I have no idea what that means. But tribal leaders should  
4 be coming and asking you that. And same with the Interior, when  
5 an offer is made it should be in good faith and I believe that  
6 it will be. You know, we have to believe that. But we -- one  
7 thing we have to recognize, that we are in fact in this together  
8 now and we can get there. I'm confident now, a lot more  
9 confident than I have been in the past, because I see an effort,  
10 a real effort to get to where we need to be to settle the past,  
11 but more than that to make sure that in the future, next year  
12 when -- two years from now when a new administration comes in  
13 that we don't just drop this. That congress doesn't come in  
14 with a new congress and say okay, you know, we did this, we're  
15 happy, everybody's happy now, it goes away. We need to continue  
16 this. We need to look long-term down the road so that 10 years  
17 from now we're not back fighting this same battle again. Thank  
18 you.

19 DR. ROUBIDEAUX: Appreciate your comments. We too think  
20 we're all in a better place now and are all happy to be there.  
21 And I do want you to know that the efforts on behalf of the --  
22 all -- I think I can speak for both agencies and we're all  
23 trying to find the solutions in good faith here. And the -- you  
24 know, I'm checking. We've settled \$300 million in contract  
25 support cost claims over the past couple of months and when I

1 see -- I get -- you know, I get the information when we settle,  
2 so I'll go up to the tribal leaders and ask them was it fair,  
3 did you feel okay about it. And lately I'm feeling like I'm  
4 hearing that people thought it was fair. And so the tribal  
5 lawyers and the federal lawyers worked together and found a way  
6 to get this done.

7 And I think our CSC workgroup, I really have to give a  
8 hand to Ron Allen, Lynn Malerba, Jefferson Keel and the tribal  
9 self-governance advisory committee for IHS recommended that our  
10 CSC workgroup be both federal and tribal members. Not just  
11 tribal members with the feds on the side, but tribal members and  
12 federal members, all voting members, all equal sitting at the  
13 table owning the solution. And I think that that really helped  
14 break the logjam. It really helped us realize that we could get  
15 this done together. And I know it's -- you know, we have had a  
16 lot -- a difficult couple of years, but I think that we're in a  
17 lot better place now. We are trying to tackle this together.  
18 And you're right, we did -- you're right, Jefferson, we do, do  
19 work better when we work better together. I've always felt like  
20 we are so much better when we're working as partners, not across  
21 the table but on the same side of the table. And I can tell you  
22 on this issue we are by and large on the same side of the table.  
23 It's just a matter of getting to the solutions and I think we're  
24 getting there. So -- and it's really helped to hear your input  
25 on that.

1           MR. ALLEN: Okay. Well, I think we're a little behind  
2 schedule here, so why don't we shift over to the BIA side.  
3 Hankie, you're going to summarize the workgroup? Yes?

4           MS. ORTIZ: Sure. I was just going to provide some  
5 information, not necessarily summarize the workgroup points  
6 because we did receive a summary of the workgroup's activities  
7 and their main focus and their issues at the self-governance  
8 conference. We had a representative there that presented all of  
9 those ideas on the record.

10           So really what I wanted to share with you was just a  
11 little bit of information because we're very happy to be paying  
12 100 percent of contract support costs. Just I wanted to provide  
13 a little bit of background. As recently as going back five  
14 years to 2009 we were paying 72.6 percent and the highest we got  
15 and the closest we've gotten to 100 percent since -- in recent  
16 history or (indiscernible) history was 97.46 percent in 2011.  
17 And so to be making that final jump to 100 percent, we're all  
18 very happy and excited about that. And we're looking -- we too  
19 are looking at solutions and we're looking for any kind of  
20 comments or guidance or contributions that could help us make  
21 improvements to identifying the amount of contract support costs  
22 need and making the process for paying those contract support  
23 costs or getting them out there as effective and efficient as  
24 possible. We have our policy -- we brought copies of our  
25 contract support costs policy. It's available on the website,

1 but people don't always look at it and they're not really sure  
2 maybe how our policy works. And so there's a clear explanation  
3 of how it's working with the three pools for -- one for -- pool  
4 one for startup and pre-award, pool two for the base  
5 distribution, pool three for the increases that we receive and  
6 understanding that is fundamental to helping us understand how  
7 we can improve that. So that's how we're doing it, that's how  
8 we have been paying contract support costs. We have been able  
9 to pay many tribes 100 percent using that policy, but we're  
10 always open to change and during this time when we're looking at  
11 how we're doing things and reevaluating very open to change and  
12 how we can make that better.

13 We have been working with our contract support costs  
14 workgroup which is made up of representatives from all the 12  
15 Regions with alternates. We met with -- most recently in August  
16 of 2013 and we -- in February of 2014 and we are -- like I just  
17 mentioned earlier, we're planning after we finish the remaining  
18 consultations that we have to meet with the contract support  
19 costs workgroup again and to try and work through some of these  
20 comments and suggestions that we have. We also have recognized  
21 that there is a self-governance subcommittee of the contract  
22 support costs workgroup, so representatives from the contract  
23 support costs workgroup who are self-governance tribes have  
24 gotten together to kind of identify the self-governance issue  
25 specifically and identify where there are differences between

1 perhaps Title 1 contracting and Title 4 self-governance issues.  
2 So we're looking at the broad picture and we're picking that  
3 picture apart and we're looking at all the pieces and trying to  
4 find ways to put them back together in a better way. And our  
5 contract support costs workgroup has been very helpful. They've  
6 come up with a number of recommendations, but I think once we  
7 get the comments from all of our consultation sessions I'm  
8 hoping that they can look at things a little differently too and  
9 they might even change the perspectives of the recommendations.  
10 And so I think at this point everything's kind of fluid and open  
11 and we're taking in data and collecting all of this information  
12 and it's all going to be helpful in some -- finding some  
13 proposed solutions.

14 This is the third consultation that we've had on contract  
15 support costs and it's the third joint consultation we've had  
16 with the Indian Health Service. The first one was in March in  
17 NCAI, the second one was in May at the self-governance  
18 conference and after this we're going to take a little bit of a  
19 different approach and Indian Affairs has identified five  
20 locations where we're going to have consultation. So we're not  
21 tying it to any major meetings or anything else. It's going to  
22 just be a specific meeting on contract support costs and we're  
23 going to set aside some time to listen to comments on the BIA  
24 policy, on the issues related to contracting, compacting  
25 contract support costs with Indian Affairs.

1           And I just wanted to share with you guys the locations  
2 because they haven't been publicly announced. They will be on  
3 our website at [bia.gov](http://bia.gov). And we are working on a Dear Tribal  
4 Leader letter and because scheduling has been very difficult to  
5 get them all scheduled we scheduled the first two sessions and  
6 we're going to put a Dear Tribal Leader letter out on those two  
7 with a Federal Register notice and then the final three  
8 consultations we're going to put a Dear Tribal Leader letter out  
9 for those and a Federal Register notice. So the next upcoming  
10 consultation for Indian Affairs will be in Rapid City July 15th  
11 and then we'll be moving to Minneapolis, Minnesota on July 17th,  
12 Window Rock (ph), Arizona, July 29th; Phoenix, Arizona, July  
13 17th; Oklahoma City, Oklahoma, July 31st. And all of that  
14 information -- I believe the first notice is out on our website  
15 because I think that's all been finalized, but the information  
16 on the final three sessions will be available. So we encourage  
17 you all to let everyone know and if you want to attend any of  
18 those sessions also.

19           We appreciate you being here and taking time out on a  
20 Sunday evening to come and talk about contract support costs  
21 because that's not everyone's first choice of things to do on a  
22 Sunday night. But we appreciate you coming and realizing you  
23 know this is as important as we know it is. If you were not  
24 able to -- or you know people that want to make comments I just  
25 wanted to let you know too that they can submit comments at

1 [consultation@bia.gov](mailto:consultation@bia.gov) on our website and -- or you can submit  
2 them in writing and there's an address for the Department of  
3 Interior, Bureau of Indian Affairs and making them to attention  
4 of Terry Parks is the Division Chief for self-determination in  
5 my office and he's going to be helping me gather all of this  
6 information. So with that I don't want to take up too much more  
7 time, so I just open up the floor to your comments and look  
8 forward to hearing from you.

9 UNIDENTIFIED MALE: And Ron said that we were a little bit  
10 behind schedule. Well, Ron said also we could stay at least  
11 till dark if need be.

12 UNIDENTIFIED FEMALE: All night.

13 MR. ALLEN: We are in Alaska. The chances of it getting  
14 dark is not going to happen soon. I'm thinking.....

15 UNIDENTIFIED MALE: July, in July it'll.....

16 MR. ALLEN: Yeah. Okay. So yeah, consultation -- so I'm  
17 thinking of Rapid City, 95. Let's see, Minneapolis, 96, Window  
18 Rock (ph), 100. Oklahoma it's got to be at least 110. It's  
19 going to be some warm meetings, so just make sure the AC's  
20 working wherever you are. Like I said, (indiscernible)  
21 gymnasium. Okay. I think that with that backdrop we'll open up  
22 for any kind of comments that anyone has with regard to I think  
23 the Interior policy and contract support matters. Justin. And  
24 announce your name and organization please.

25 MR. PARKER: Justin Parker, Northwest Indian Fisheries

1 Commission. And I know we scheduled this at 7:00 is because of  
2 the San Antonio, Miami game, so thank you, Ron.

3 MR. ALLEN: You got to see the whole game, didn't you?

4 MR. PARKER: Yeah. The fourth quarter anyway. So there  
5 was a comment earlier about -- I think when the Secretary gave  
6 his opening remarks and that was the commitment that it's going  
7 to be fully funded for contract support in '14. And I guess my  
8 concern is making that bold of a statement, even though congress  
9 has, you know, appropriated the amount that they did. Do we  
10 know that for sure that it's not going to be coming at the  
11 expense of the program dollars because we're still -- you know,  
12 direct obligations have -- still not have gone the door. And so  
13 I'd be curious to know is that going to all come out of the  
14 contract support cost account or is it going to come at the  
15 expense of some of the direct program dollars? And I had a  
16 second comment too, but.....

17 UNIDENTIFIED MALE: Well, we're making both kind of  
18 commitments, to fully fund contract support costs. You know,  
19 the congress -- and I should -- you know, congress did not make  
20 the mandatory funding. They didn't give us another source of  
21 money, so it's coming out of our budget. But we will fully fund  
22 contract support costs. It's a -- you know, it's a requirement.  
23 It's -- we should have been fully funding contract support costs  
24 all along. When we contract with a tribe we undertake an  
25 obligation and that obligation I believe includes funding

1 contract support costs. And so we will do what it takes. If  
2 there -- you know, we -- you know, we -- I -- we're going to do  
3 it. It's not if -- you know, whatever it takes. It's not going  
4 to have much of an impact on other programs. It could have a  
5 marginal impact perhaps, but it doesn't necessarily come from  
6 direct services. It may come from elsewhere too. So we have a  
7 little bit of flexibility in our budget.

8 MR. PARKER: So my second comment was in regards to the  
9 Dear Tribal Leader letter. A lot of times we as a 638  
10 contracting in a tribal organization we don't get notification  
11 and we hear it second, even third hand, and it just so happens  
12 that I'm involved in TIBC and attend a lot more of those  
13 meetings on a national level so, you know, we're engaged and  
14 hear of things that are popping versus in '07 or '06 when the  
15 policy came out we didn't find out until nine months after it  
16 had already rolled out. So how are the -- how can we ensure  
17 that we're part of that mix and any other intertribal 638  
18 contracting organization? Because that's usually important as  
19 this, you know, momentum keeps moving forward as you develop the  
20 -- you know, the new policy.

21 MS. ORTIZ: We definitely recognize the importance of  
22 notification and in fact we had planned to have some other  
23 consultations in June, but we couldn't get the notice out within  
24 30 days so we had to push them all back to the end of July. So  
25 we're trying very hard to make sure that there is at least 30

1 days notice and we're trying for as much as we can give and  
2 providing the Federal Register notices and the Dear Tribal  
3 Leader letter. So, you know, you can do that, check the Federal  
4 Register. Dear Tribal Leader letters are available on the  
5 website also and, you know, you can call our office at any time  
6 if you have questions about self-determination. I can give you  
7 my card and you can ask me.

8 MR. ALLEN: I think the main issue is that when you send a  
9 Tribal Leader out it goes automatically to all the chairs,  
10 presidents, governors, et cetera, but we need to make sure that  
11 the tribal organizations are also informed in that roster of  
12 notification. So I'm assuming that's one of the areas we need  
13 to make sure is being addressed.

14 UNIDENTIFIED MALE: Every time I've met with Northwest  
15 Indian Fisheries Commission there's been tribal leaders in the  
16 room I believe. Is that right?

17 MR. PARKER: In some cases. Yeah, not always. A lot of  
18 times our Chair, you know, is with us, Blake. Billy Frank is --  
19 he's an elected, you know, he was an elected Chair of the 20  
20 western Washington treatise tribes.

21 MR. ALLEN: Of the organization.

22 MR. PARKER: Of the organization.

23 MR. ALLEN: Not (indiscernible) tribe.

24 MR. PARKER: But we didn't necessarily have a tribal  
25 chairman from one of the tribes. It isn't always the case. It

1 just depends on the issue and who's in town and whatnot, so.

2 MS. ORTIZ: Is there a -- do you have a specific  
3 recommendation on how to improve these notification processes?

4 MR. PARKER: I don't know because I don't know what you're  
5 -- like Ron's explained, if your tribal leader's just your  
6 elected chairman, presidents, governors, et cetera, they're  
7 getting it, but we wouldn't necessarily get that because we're  
8 -- you know, we're in a tribal organization. Yeah, we're still  
9 a 638 contracting organization with a lot of pass through monies  
10 to our tribes too, as well, so.

11 MR. ALLEN: Yeah, there's intertribal chamber councils,  
12 the crick trick (ph), the.....

13 MR. PARKER: (Indiscernible).

14 MR. ALLEN: .....Great Lakes.....

15 MR. PARKER: (Indiscernible) 54. (Indiscernible) I would  
16 imagine.

17 MR. ALLEN: .....organization. So I'm not sure how many,  
18 but there's a.....

19 MR. PARKER: Yeah.

20 MR. ALLEN: .....there's a number of them.

21 UNIDENTIFIED MALE: Yeah. And so I -- we need to think  
22 about that because for that exact reason, you know. We know  
23 that -- we know how to reach all dear tribe -- dear all tribal  
24 leaders because we've got a list and we keep it updated and it's  
25 quite complicated to keep it updated because tribal governments

1 change, you know, frequently. And so, you know, trying to come  
2 up with a list of those. We need -- but we need to be notifying  
3 you, so we need -- this is a problem we need to work through.  
4 So.....

5 MR. PARKER: Okay.

6 UNIDENTIFIED MALE: .....we will get our heads together  
7 and if you have any suggestions about how to do it we would be  
8 grateful. You know, we have -- you know, an (indiscernible)  
9 largely spends, you know, much of her time just doing this, just  
10 trying to keep up with who's the tribal leader at each tribe.  
11 And since there's 566 of them it's no small task and so trying  
12 to figure out how to do that with all tribal organizations or  
13 even all tribal organizations with whom we have 638 contracts,  
14 it would be a daunting task, but it's -- you know, there's good  
15 reason that you'd want to know.

16 MR. PARKER: Okay. I don't have any suggestions. You  
17 just got my attention when you said that and I just remembered  
18 historically how we've always struggled to -- and even to a  
19 certain extent in our Region, you know, trying to get  
20 information from the budget office over in the Northwest Region  
21 it's a -- we tend to get left off, then it's, you know, six  
22 months down the road we have to include you on this type of a  
23 situation, so.

24 I had a third comment too and I'm going to plead a little  
25 ignorant on this one. On this whole concept of -- you know, I

1 know we're projecting, you know, usually two years ahead of time  
2 what the need may be and you don't know until two years from now  
3 what that true contract support cost need is. But, you know, at  
4 the same time, you know, we hit the 97 percent, 97.5 that you  
5 mentioned, but in large part that -- you know, that's due to  
6 lawsuits, it's due to congress. But going forward I don't quite  
7 understand this concept of why we can't overestimate, why that's  
8 such a big deal. I mean over on the Indian Health side I forget  
9 what you -- you said some sort of Act that you're concerned if  
10 you overshoot the number.

11 UNIDENTIFIED MALE: She said people would go to jail.....

12 MR. PARKER: And.....

13 UNIDENTIFIED MALE: .....(indiscernible) officials would  
14 go to jail.

15 MR. PARKER: Okay. I'll come in and go to jail when we  
16 under -- you know, undershot that number. I mean.....

17 UNIDENTIFIED MALE: (Indiscernible). So that's.....

18 MR. PARKER: And so you're saying this Act that you're  
19 abiding by now trumps ISDEAA? That's -- you know, so that's  
20 what I'm not quite following your comment on that situation  
21 because the Indian Self-Determination Act, you know, tells you  
22 otherwise.

23 MS. ORTIZ: No, I definitely don't want you to think we  
24 think it trumps as to -- at all, no. It's just that the -- it's  
25 just a byproduct of in the past we've always had a shortfall, so

1 we've never risked having -- I guess the way it works is if the  
2 obligation is greater than the appropriations, so if you don't  
3 have enough appropriations to get the obligation -- wait a  
4 minute. I'm getting confused. The Antideficiency Act is  
5 obligating in -- wait a minute. Someone help me out. I'm --  
6 I've been up since.....

7 UNIDENTIFIED MALE: Do you want a lawyer?

8 MS. ORTIZ: Yeah, so like a lawyer. I've been up since  
9 4:00 a.m. eastern and I'm getting confused.

10 UNIDENTIFIED MALE: You know, the -- there are no easy  
11 answers. One of the easy answers is there's criminal violations  
12 possible for violation of the Antideficiency Act and when the  
13 folks drafted the Indian Self-Determination Act they didn't  
14 provide criminal penalties and so that -- the statutes are just  
15 different. It's not right to underpay contract support costs.  
16 You just heard me say that, but it's not something that's  
17 criminally punished. Overpayment arguably, at least that's what  
18 our lawyers tell us, is potentially subject to criminal  
19 punishment. And so that's just the way the statutes read. It's  
20 not necessarily -- it's not just necessarily, but that's just  
21 the way the statutes read. And so it makes our awarding  
22 officials nervous if they agree to a contract -- you know, and  
23 -- you know, for fiscal reasons it's good for federal officials  
24 not to be able to spend more than the federal government has. I  
25 mean, you know, there's reasons that people would want that to

1 be the case. So -- but it makes our awarding officials nervous  
2 whenever we ask them to do something that might constitute a  
3 criminal violation. So it's something that we need to work  
4 through. It seems wrong. Right? We've -- for years we've  
5 underpaid and then, you know, the first time we risk overpaying,  
6 oh my goodness, it's -- you know, we don't want to let that  
7 happen and that doesn't seem fair or just, but it's just kind of  
8 the way the statutes written and it's the law that we -- you  
9 know, we follow.

10 MR. PARKER: Okay. All right. Well, thanks and I just  
11 ask that you -- you know, you go forward, you know, take these  
12 comments to heart, you know, not just mark off that consultation  
13 checkbox. And, you know, you got some of the sharpest minds  
14 around in any country and, you know, listen to the tribal  
15 leadership in helping you develop this as we move forward.  
16 Thanks.

17 MR. ALLEN: Thanks, Justin. Other comments? Okay. So  
18 I'm assuming -- you know, there's additional consultation  
19 sessions, so whether or not you can make it or not you guys are  
20 accepting written comments that the tribes can send in to you.

21 UNIDENTIFIED FEMALE: Yes.

22 MR. ALLEN: And the notices are identifying who to send it  
23 to, et cetera.

24 UNIDENTIFIED FEMALE: Yes.

25 MR. ALLEN: Correct?

1 UNIDENTIFIED FEMALE: Uh-huh (affirmative).

2 MR. ALLEN: Okay. Any closing remarks? Kevin.

3 MR. WASHBURN: Just I would like to thank everybody who's  
4 here and who spoke up and who will speak up and I really  
5 encourage you to give us written comments. We really want to --  
6 you know, we want you -- you know, as Jefferson said, we want  
7 you to -- we want to be working together on this. We need to be  
8 working through these solutions together. You know, I applaud  
9 IHS. You know, you can hear that IHS is fully supportive of  
10 funding contract support costs. At Indian Affairs and the  
11 Interior we are fully supportive of funding contract support  
12 costs and we have to -- as Acting Director Roubideaux said, we  
13 need to make sure this goes forward and the more rational  
14 sensible system we can come up with the more likely it's going  
15 to continue going forward. So thank you everybody for  
16 contributing to this discussion and we will continue to move  
17 forward and try to come up with sensible solutions with you.  
18 Thank you so much. And thank you, Ron, for moderating.

19 MR. ALLEN: You're welcome. Do you have any remarks?

20 UNIDENTIFIED FEMALE: Thanks everybody, really appreciate  
21 your being here.

22 MR. ALLEN: Okay.

23 UNIDENTIFIED FEMALE: [Consultation@ihs.gov](mailto:Consultation@ihs.gov) for your  
24 written comments.

25 MR. ALLEN: Okay. All right. Thank you everybody.

1 Please pass the night. We're -- we need to start tomorrow at  
2 8:30 sharp.

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I, Nicolette Hernandez, hereby certify that the foregoing pages numbered 2 through 54 are a true, accurate and complete transcript of proceedings of the Tribal Consultation on Contract Support Costs held June 8, 2014, in Anchorage, Alaska, transcribed by me from a copy of the electronic sound recording to the best of my knowledge and ability.

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Date

Nicolette Hernandez