



MAR 26 2013

Dear Tribal leader:

I am writing to provide an update on contract support costs (CSC) as a follow-up to my Tribal Leader letters on September 24, 2012 (September DTLL) and on January 14, 2013 (January DTLL). In both letters, I indicated that the Administration was reviewing the Supreme Court's decision in *Salazar v. Ramah Navajo Chapter*, 132 S. Ct. 2181 (2012), and the impact of that decision on the Indian Health Service (IHS or Agency), which was not a party to the *Ramah* case. We have made progress in many ways since the January DTLL, and I am writing to update you on our activities, all of which are leading us toward resolution of CSC claims.

### **January Meeting with Attorneys Representing Tribes**

With my approval, the Office of the General Counsel (OGC) organized a meeting on January 17, 2013, with approximately 30 attorneys who represent Tribes that have presented claims to the IHS for additional CSC funding. The meeting did not include settlement discussions regarding any particular case but provided an opportunity for the Tribes' legal representatives to make general suggestions for how to proceed with the claims.

One of the options discussed at the meeting was extending the time for IHS to answer claims presented to the contracting officer (CO) for a sufficient amount of time to allow for discussions of the claims at the CO decision stage. In February, I approved this new process. As a result, IHS will extend the time to answer claims for at least six months so that we can begin dialoguing with Tribes earlier in the process. Although IHS still cannot pay claims due to unavailability of funds and inability to access the Judgment Fund at the CO decision stage, the Agency is hopeful that this process will result in a collaborative effort that resolves claims more expeditiously. We will be issuing extension letters consistent with this process, which will begin with an exchange of documents relevant to the claims, a time period for everyone to review the documents, and then a time period to meet and discuss the claims.

Another option discussed at the meeting was withdrawing recently issued decision letters to allow for Tribes to take advantage of discussions at the CO decision level. In February, I approved this new process for Tribes that submit such a request within ninety days of issuance of a decision letter.

### **February Meeting with the Civilian Board of Contract Appeals**

On February 27, 2013, the Civilian Board of Contract Appeals (Board) held a meeting with OGC and an attorney that represents all but three of the Tribes that have claims pending before the Board. The attorneys for both sides explained the need to establish a plan for management of the many cases before the Board, including establishing a system for ordering the cases. The OGC volunteered to provide a report to the Board that identifies the following issues:

1. Cases with outstanding motions pending before the Board.
2. Legal issues that one or more parties expect may require further litigation.
3. Cases in which the parties propose to litigate those issues.
4. Cases the parties propose to prioritize for settlement discussions.
5. Cases the parties propose to stay, which will be selected for litigation or settlement discussions based on the progress in cases currently listed under sections 1, 3, and 4.

After the meeting, OGC reached out to attorneys who represent all other Tribes with cases before the Board to ensure that the report has input from representatives of all parties. The report is currently due to be filed with the Board on April 2, 2013.

### **Settlement Discussions**

As explained in my previous DTLLs, IHS wants to affirm its continued commitment to resolving Tribal claims for unpaid CSC in an efficient and mutually agreeable manner. We are following the established requirements and procedures of the Indian Self-Determination and Education Assistance Act (ISDEAA) and the Contract Disputes Act (CDA) for settling individual Tribal claims. We are actively engaged in settlement discussions with several Tribes, and I am happy to report that those settlement discussions are proving successful. In addition, the settlement discussions have been useful for establishing a foundation for future settlement discussions and are helping us find a more efficient path forward. The IHS looks forward to engaging in these discussions with each Tribe.

Thank you for your input to date. IHS will continue working with Tribes on resolving claims for unpaid CSC in previous years. I will continue to provide regular updates to ensure you have the most updated information and welcome your continued input on this issue. If you have any questions, please do not hesitate to contact us.

Sincerely,

/Yvette Roubideaux/

Yvette Roubideaux, M.D., M.P.H.  
Director