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MEMORANDUM

September 22, 2014

TO: Contract Support Cost Clients

FROM: HOBBS, STRAUS, DEAN & WALKER, LLP *Jeff Strommer* (by TAE)

RE: ***IHS Will Need to Reprogram \$25.1 Million to Cover Remaining FY 2014 CSC Needs, Not \$48 Million as Announced Earlier***

IHS announced last Friday, September 19, 2014 that it will need to reprogram \$25.1 million from elsewhere in its budget to cover the remaining FY 2014 contract support cost (CSC) needs, far less than the \$48 million IHS said it would need just two weeks ago.¹

In a teleconference held on Friday, Acting Director Dr. Yvette Roubideaux first reviewed the events that resulted in IHS presenting a \$48 million reprogramming request to Congress. As we have previously reported, this request surprised tribes, due to its magnitude and the need to reduce funding for already-starved health programs. While full funding of CSC has been a longstanding tribal priority, no one wished to see programs cut as a result.

Dr. Roubideaux's announcement that IHS would need to reprogram "only" \$25.1 million represented good news—although it raised further questions about IHS's ability to project and monitor CSC needs, even in the short term. Dr. Roubideaux explained the revised estimate as follows. As a result of ongoing reconciliation and the resolution of several pending negotiations of direct CSC and indirect-type costs, the projected additional need of \$44 million (plus \$4 million held in reserve for last-minute adjustments) was revised downward to \$32 million. In addition, IHS identified \$6.9 million in additional funds available for CSC (it was not clear from where), leaving a reprogramming need of \$25.1 million.

Most of this amount will come from Headquarters funding—not just administrative funding, however, but retained tribal shares of programs such as hospitals and clinics. Areas and federal service units will also feel the cuts. To evaluate the impact of the reprogramming, IHS staff is compiling a list of what they would have spent the \$25.1 million on had the funds not needed to be reprogrammed. Dr. Roubideaux mentioned Information Technology—for example, upgrades to RPMS—as one area likely to be hard hit. Tribes with contracts and compacts under the Indian Self-Determination and Education Assistance Act (ISDEAA) will not have funding reduced,

¹ See our reports of September 3, 2014 and September 5, 2014.

due to the ISDEAA's provision preventing reductions except in very limited circumstances.

IHS will not change its congressional reprogramming request, which specified a *maximum* of \$48 million, but expects that just over half that amount will cover remaining FY 2014 CSC needs. The reconciliation process will continue to the end of the fiscal year and beyond, however, so additional (or reduced) needs could still be identified.

Dr. Roubideaux stressed the need for a "long-term solution" to the "dilemma" posed by a lump-sum services appropriation that does not cap CSC spending and thus protect program funding levels. She raised the specter of unpredictable, unstable budget situations recurring in the future: "We don't want this scenario to replay every single year." The Administration is currently reviewing input from the recent consultations on long-term solutions.

In response to an audience question, Dr. Roubideaux said that tribes still in need of additional CSC to raise them to 100% could expect to receive those payments sometime next week. Meanwhile, IHS continues to work on recovering overpayments identified during the reconciliation process. Dr. Roubideaux promised to provide updated information on final CSC needs as it becomes available.

Dr. Roubideaux also addressed this issue with the Secretary's Tribal Advisory Committee last week. At that meeting, she stated the view that it was unproductive for people to say that IHS has not properly managed this issue, and proposed instead to work with tribes to solve the issue. One solution she mentioned is to make contract support cost funding mandatory, which tribes have proposed.

If you have any questions about this memorandum, please do not hesitate to contact Joe Webster (jwebster@hobbsstrauss.com or 202-822-8282), Geoff Strommer, (gstrommer@hobbsstrauss.com or 503-242-1745), or Steve Osborne (sosborne@hobbsstrauss.com or 503-242-1745).