Attachment 1 - 5/28/03

REVISED EXHIBIT "A" TO STIPULATED ORDER REGARDING EQUITABLE RELIEF TO IMPLEMENT BENCHMARKING METHODOLOGY

This Exhibit sets out the "benchmarking methodology" approved by the Court in the "Stipulated Order Regarding Equitable Relief to Implement Benchmarking Methodology," to which this Exhibit is attached. That methodology requires defendant OIG to calculate a benchmarking adjustment to the Class members' Indirect cost ("IDC") rates as established under OMB Cir. A-87, and for BIA and OIG to implement and apply that adjusted rate as to BIA programs in the IDC base in calculating BIA indirect cost obligations for the periods covered by said Order, as set forth in said Order and pursuant to the methodology set out on the Excel template appended hereto as Exhibit B.

All numbers on the template are hypothetical. The methodology is set out in the column headings and in fns.1, 2, 3, and 4 to the template.

STEP 1: (Columns A-L)

Column A=identifies examples of the benchmarking calculation.

Columns B-F of the template simply identify the data and factors needed to carry out the calculations called for on the template, as follows:

Column B= The Contractor's actual indirect cost pool expenditures reconcilable to audited financial statements.

Column C= The amount of BIA expenditures in the Contractor's IDC base reconcilable to audited financial statements.

Column D= The non-federal expenditures in the Contractor's IDC base, including tribal, state and private monies, reconcilable to audited financial statements.

Column E= Other federal expenditures in the Contractor's IDC base, reconcilable to audited financial statements. This does not include IHS funds.

Column F= The IHS expenditures in the Contractor's base, reconcilable to audited financial statements.

Column G = The IDC rate for a given period computed under OMB Circular A-87 using expenditures reconciliable to audited financial data. Rate is rounded up to two (2) decimal places. For provisional final rate contractors, Column G shows the final standard indirect cost rate before addition of the benchmarking adjustment shown in Column S. For contractors using fixed with carry-forward rates, Column G shows a recalculated rate used to compute the Column S benchmarking adjustment.

Column H= An IDC rate that excludes all federal funds, except BIA and IHS funds, from the IDC base to reflect the 10th Circuit's decision in *Ramah*. Rate is rounded up to 2 decimal places.

Column I = The difference between the adjusted IDC Rate under the *Ramah* ruling (Col. **H**) and the actual/recalculated IDC Rate determined per OMB Circular A-87 (Col. **G**). Rate is rounded up to 2 decimal places.

Column J = The maximum theoretical IDC dilution caused by the inclusion of other federal agencies in the IDC Base assuming no IDC funds were collected from them.

Column J1= Column J1 is the amount of indirect costs allocated to other federal agencies under the actual/recalculated OMB A-87 IDC rate as shown in Col. G. Col. J1 is calculated by multiplying each of the other federal agencies funds included in the IDC base (Col. E) times the contractor's approved IDC rate (Col. G).

Column K= The actual audited amount of IDC collections (recoveries) from other federal agencies (other than BIA and IHS).

Column K1= Amount of other agencies shortfall in paying IDC amount shown in Col. J1. This shortfall is calculated by deducting the actual IDC amount collected from the other federal agencies from the amount of IDC due from those other federal agencies (Col. J1 minus Col. K). If the audit shows that the contractor actually recovered more from other federal agencies than was needed to cover their share of IDC under the A-87 methodology, the amount actually recovered will be entered in Col. K. (Any negative carry forward adjustment which would result from such an actual over-recovery under the A-87 methodology will be handled through the normal A-87 process for addressing such over-recovery, but will not result in a negative benchmarking adjustment).

Column L= The net additional indirect costs that are attributable to BIA programs to offset the effect of the IDC rate dilution caused by the application of the OMB Circular A-87 methodology under the *Ramah* decision, without taking account of section 113 of Pub. L. 106-113, Department of the Interior Appropriations Act for fiscal year 2000. When the amount entered in Col. **K1** reflects an actual over-recovery from another federal agency, a $-0- will be entered in Col. **L**. If the IDC shortfall attributable to other federal agencies shown in Col. **K1** is greater than the maximum theoretical IDC dilution caused by inclusion of other federal funds in the contractors IDC base (as shown in Col. **J**.) the amount shown in Col. **J** will be entered under Col. **L**.

STEP 2: Calculate the benchmarking percentage:

(1) This adjustment is a necessary step in the benchmarking methodology mandated since the enactment of § 114 of the Interior Appropriations Acts of 1999, subsequently reenacted and made applicable to all future years by § 113 of Pub. L. 106-113. That statutory provision narrowed the law of this case as established by the 10th Circuit. This step is thus required to ensure that the BIA does not pay for any contract support costs associated with any contract, grant, cooperative agreement or compact between a tribe and any other entity other than the Department of the Interior. The benchmarking percentage is determined by identifying within which of 21 benchmarks the following ratio falls:

Col. C/(Col. C + Col. E + Col. F) = Col. M

Where Columns **C, E** and **F** have the same definitions as shown in **Step 1** and the percentage shown in Column **M** is defined as the "benchmarking ratio." Column **M** shows the ratio of BIA funds to total federal funds in a given Class member's IDC base. The ratio shown in Column **M** is stated in percentage terms, rounded to the nearest whole percentage point.

(2) The 21 benchmarks to be used in this **Step 2** are set out on fn. 1 of the template where Column **M** constitutes the benchmarking ratio and Column **N** shows the "benchmarking percentage" which will be applied in **Step 3** to calculate the "benchmarking adjustment."

If $M = O$ then $N = 0$
If $1 < M \leq 5$ then $N = 5\%$
If $5 < M \leq 10$ then $N = 10\%$
If $10 < M \leq 15$ then $N = 15\%$
If $15 < M \leq 20$ then $N = 20\%$
If $20 < M \leq 25$ then $N = 25\%$
If $25 < M \leq 30$ then $N = 30\%$
If $30 < M \leq 35$ then $N = 35\%$
If $35 < M \leq 40$ then $N = 40\%$
If $40 < M \leq 45$ then $N = 45\%$
If $45 < M \leq 50$ then $N = 50\%$
If $50 < M \leq 55$ then $N = 55\%$
If $55 < M \leq 60$ then $N = 60\%$
If $60 < M \leq 65$ then $N = 65\%$
If $65 < M \leq 70$ then $N = 70\%$

If $70 < M \leq 75$ then $N = 75\%$
If $75 < M \leq 80$ then $N = 80\%$
If $80 < M \leq 85$ then $N = 85\%$
If $85 < M \leq 90$ then $N = 90\%$
If $90 < M \leq 95$ then $N = 95\%$
If $95 < M \leq 100$ then $N = 100\%$

STEP 3: **Calculate the benchmarking adjustment.** Multiply the benchmarking percentage determined in **Step 2** and shown in Column **N** times the result of **Step 1 (Col. L x Col. N = Col. P)** where

Column N= The percentage of inelasticity of indirect costs attributable to operating BIA programs.

Column O= The amount of the BIA's IDC per the OMB A-87 methodology.

Column P= Benchmarking adjustment: net additional BIA IDC required to offset rate dilution caused by other Fed Agencies in base.

Column Q = Column Q is a step in the calculation producing the Column S benchmarking adjustment.

STEP 4: Calculate the IDC rate to be used by BIA to implement the benchmarking adjustment for a given contract year.

Column R Column R shows the benchmarked final rate for provisional/final contractors obtained by adding the Column S percentage to the Column G percentage.

Column R is a step in the calculation producing the Column S benchmarking adjustment to be used for contractors which have fixed with carry forward rates.

Column S The benchmarked percentage increase to be added to the standard IDC rate to be used for BIA programs

(1) for contractors using fixed with carry-forward rates per Paragraph 6 of the Third Stipulated Order; and

(2) for contractors using provisional final rates per Paragraph 2 of the Second Stipulated Order (August 5, 2002).