

COPY

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

JUN 11 2003

Robert M. Marshall
CLERK

**RAMAH NAVAJO CHAPTER,
OGLALA SIOUX TRIBE, and
PUEBLO OF ZUNI, for themselves
and on behalf of a class of persons
similarly situated,**

Plaintiffs,

vs.

No. CIV 90-0957 LH/WWD ACE

**GALE NORTON, Secretary of the
Interior, in her official capacity,
UNITED STATES DEPARTMENT OF
INTERIOR, NEIL McCALEB, Assistant
Secretary of Interior for Indian Affairs,
in his official capacity, EARL DEVANEY,
Inspector General, in his official capacity,
and UNITED STATES OF AMERICA,**

Defendants

**THIRD STIPULATED ORDER
TO IMPLEMENT BENCHMARKING METHODOLOGY**

The parties, by and through counsel, in a further attempt to clarify the Order of August 5, 2002, and the Order of June 1, 2001 (Docket Numbers 666 and 557), hereby agree as follows:

As of December 30, 2002, the National Business Center ("NBC") an entity within the Department of the Interior took over the responsibilities and duties of the Office of Inspector General of the Department of the Interior (hereinafter "DOI") in regard to negotiating and setting indirect cost rates.

2. All provisions of the Orders of June 1, 2001, and August 5, 2002, which are not expressly altered by this Order shall remain in full force and effect and in particular nothing in this Order is intended to replace or alter Paragraph 6 of the June 1, 2001, Order, which shall

remain in effect.

3. After the issuance of this Order, plaintiffs shall seek no further changes, adjustments, or clarifications to the benchmarking methodology as set forth in this Order and the Orders of June 1, 2001 and August 5, 2002 until after the two-year benchmarking trial period has expired at the end of fiscal year 2004 when the parties will have the opportunity to brief the Court on the effects of the benchmarking methodology. There shall be no further amendments to any of the benchmarking Orders prior to the expiration of the two-year benchmarking trial period unless the parties reach a final settlement, approved by this court, that fully resolves the plaintiffs' claim for equitable relief relating to the method by which defendants calculate indirect contract support

4. The Benchmarking procedure, which was ordered by the June 1, 2001, and August 5, 2002, Orders, and which is being clarified in this Order, is intended to produce two indirect cost rates - one for the Bureau of Indian Affairs ("BIA") (the Benchmarked rate) and one for all other federal agencies (the "standard indirect cost rate").

5. Exhibit A to the June 1, 2001 Order is revised to reflect the change from "contractor's negotiated amounts" to "contractor's actual amounts" that are reconcilable to audited financial statements. This Order amends and clarifies that, for the remaining period of the benchmarking study, defendants shall use actual audited financial data in computing the Benchmarked increase for each contractor's BIA rate. A revised Exhibit A attached hereto as Attachment 1 reflects this change and incorporates and supercedes Exhibit A to the June 1, 2001

6. This Order also amends the previous orders by requiring defendants to exclude the

BIA benchmarked increase from the carryforward adjustment for the finalizing years 2001 and 2002. This shall be done by first calculating the indirect cost rates for 2003 and 2004 by applying the normal carryforward adjustment for the finalizing years 2001 and 2002 respectively, and only then adding the BIA benchmarked increase from Column S of the new Benchmarking Template to the standard indirect cost rate to arrive at a tribe's BIA Benchmarked rate. See new Benchmarking Template set forth hereto as Attachment 2 which incorporates and supercedes the provisions and terms of Exhibit "B" to the Order of June 1, 2001, and provides additional explanation to the tribes on how benchmarking will be implemented.

7. DOI shall cease using the OIG/NBC carryforward template put in place in October 2002 in calculating the benchmarked increase, and shall instead use the template set forth hereto as Attachment 2 in calculating the benchmarked increase for the remainder of the benchmarking study period. NBC is authorized to continue using the carryforward template attached hereto as Attachment 3 and set forth on their website, www.nbc.gov/icshome.cfm for purposes of applying the carryforward computation in its calculation of the tribes' standard indirect cost rates to which the benchmarked increase will then be added, subject to the provisions of Paragraph 6 of the June 1, 2001 Order.

8. The fifty-five tribes or tribal organizations who have already received a 2003 BIA benchmarked rate prior to the issuance of this Order have the option of keeping the 2003 rate already negotiated with NBC or re-negotiating their BIA 2003 rate based upon the provisions set forth in paragraph 6 of this Order. See Attachment 4 setting forth the list of the fifty-five tribes and the change in percentage (if any) for each such Tribe based on the revised benchmarking methodology as set forth in Paragraph 6. Plaintiffs' Counsel shall notify each of the fifty-five

tribes and organizations to alert them to their opportunity to accept a recalculated BIA Benchmarked rate reflecting the percentage increases (if any) shown on Attachment 4. The Plaintiff Class is authorized by this Order to use Reserve Funds from the First Partial Settlement Agreement (PSA-1) in reasonable amounts to notify each of the fifty-five tribes or tribal organizations and to provide any assistance to the fifty-five tribes or organizations as may be needed.

9. The benchmarking adjustment for tribal contractors who use provisional/final indirect cost rates (as opposed to the fixed with carryforward rates discussed in paragraph 6 above) will continue to be applied in the manner previously set forth in paragraph 2 of the August 5, 2002 Order, except that actual costs instead of negotiated costs will be used to calculate the incremental benchmarked increase as discussed in Paragraph 5 of this Order.

10. When calculating a tribe's carryforward during the benchmarking two-year trial period, defendants shall not adjust a tribe's indirect cost rate downward on the basis of funding that was reprogrammed from the tribe's direct program base for payment of contract support costs if (1) the tribe has provided to DOI audited financial statements that clearly demonstrate that such reprogramming of funds actually occurred and (2) the audited financial statements reflect that the reprogrammed funds were ultimately not expended for contract support costs during the relevant fiscal year.

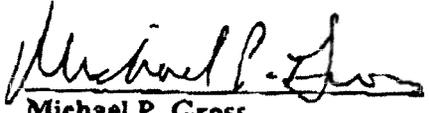
1. Nothing contained in this Stipulated Order shall be deemed to be an approval or adoption by any party of any party's proposed methodologies at the end of the two-year benchmarking study period. Nor do defendants, by stipulating to this Order, waive the right to challenge the benchmarking methodology set forth in this and previous Orders after the two-year

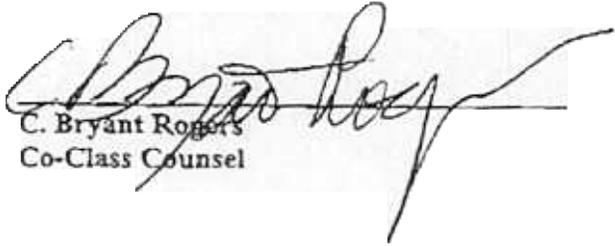
trial period has expired.

C. LeROY HANSEN

UNITED STATES DISTRICT JUDGE

Approved:

 5/30/03
Michael P. Gross
Class Counsel

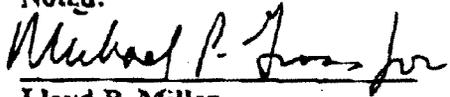

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