

LEGISLATIVE SUMMARY SHEET

Tracking No. 0347-15

DATE: September 28, 2015

TITLE OF RESOLUTION: PROPOSED NAVAJO NATION COUNCIL RESOLUTION;
AN ACTION RELATING TO LAW AND ORDER, BUDGET AND FINANCE, AND
NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL; AMENDING
NAVAJO NATION CODE, TITLE 2 AT 2 N.N.C. § 701 AS RELATES TO INDIRECT
COST RATE WAIVERS

PURPOSE: This resolution, if approved, will amend Title 2 of the Navajo Nation Code at 2 N.N.C. § 701 by making it unnecessary for the Naabik'iyáti' Committee to approve waivers of indirect and administrative cost rates for grants under one-hundred and fifty thousand (\$150,000) dollars.

This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed resolution in detail.

5-DAY BILL HOLD PERIOD: None
Website Posting Time/Date: 5:15pm 9/28/15
Posting End Date: 10/3/2015
Eligible for Action: 10/4/2015

Law & Order Committee

THENCE

Budget & Finance Committee

THENCE

Naa'bik'iyáti' Committee

THENCE

Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
23rd NAVAJO NATION COUNCIL -- First Year, 2015

INTRODUCED BY



(Prime Sponsor)

TRACKING NO. 0347-15

AN ACTION

RELATING TO LAW AND ORDER, BUDGET AND FINANCE, AND
NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL;
AMENDING NAVAJO NATION CODE, TITLE 2 AT 2 N.N.C. § 701 AS
RELATES TO INDIRECT COST RATE WAIVERS

BE IT ENACTED:

Section One. Findings

- A. The Navajo Nation empowered the Navajo Nation Law and Order Committee to review and recommend proposed Navajo Nation Code enactments and amendments. 2 N.N.C. § 601(B)(14); *see also* CJA-03-13.
- B. The Budget and Finance Committee has oversight over the Office of Management and Budget, which implements the Indirect Cost Negotiation Agreement on Indirect Cost Rates. 2 N.N.C. § 301(B)(13); *see also* CJA-03-13.
- C. The Naabik'iyáti' Committee has the authority to review and approve the negotiation and setting of the Navajo Nation's indirect cost or administrative cost rate agreements and may waive the indirect cost or administrative cost rate under certain circumstances. 2 N.N.C. § 701(A)(10); *see also* CJA-03-13.
- D. This resolution proposes a positive law amendment and requires the Navajo Nation Council's approval. 2 N.N.C. § 164(A)(9) (2012) and 2 N.N.C. § 164(A); *see also* CJA-03-13.

- 1 E. Indirect Cost Recovery (“IDC”) is funds reimbursed to the Navajo Nation by a
2 Grantor to defray the cost of central support services provided on grants awarded to
3 the Navajo Nation.
- 4 F. An Indirect Cost Rate is a rate used to budget for recovery of IDC funds in the grant
5 application and grant award.
- 6 G. The Navajo Nation’s last negotiated IDC Rate is 16.95%. *See* NABIO-47-13
7 attached as Exhibit A.
- 8 H. As currently written in Title 2 of the Navajo Nation Code, the Naabik’iyáti’
9 Committee must waive the indirect cost or administrative cost rate when: (a) The
10 division, department or program requesting the waiver demonstrates a statutory
11 and/or regulatory requirement that limits the indirect cost or administrative cost rate
12 available for a particular grant or contract, or (b) There is a showing of necessity and
13 a commitment of available general funds by the division, department or program
14 requesting the waiver which is available to offset the loss in indirect costs or
15 administrative costs.
- 16 I. The Naabik’iyáti’ Committee waives indirect cost or administrative cost through
17 legislation.
- 18 J. The time it costs to go through the waiver process for small grant awards is high
19 compared to the amount of money at stake, and it would benefit the Navajo Nation
20 to amend Title 2 of the Navajo Nation Code so that Naabik’iyáti’ Committee
21 approval is not required for indirect costs or administrative costs for grant awards at
22 or under one-hundred and fifty thousand dollars (\$150,000) per fiscal year.

23
24 **Section Two. Amendments to Title 2 of the Navajo Nation Code**

25
26 The Navajo Nation hereby amends the Navajo Nation Code, Title 2, § 701 as
27 follows:

28 **TITLE 2. NAVAJO NATION GOVERNMENT**
29 **CHAPTER 3. LEGISLATIVE BRANCH**
30 **SUBCHAPTER 9. STANDING COMMITTEES**

1 Article 5. Naabik'iyáti'

2 ***

3 § 701. Powers

4 A. The Committee shall have the following enumerated powers:

5 ***

6 10. To review and approve the negotiation and setting of the Navajo Nation's indirect
7 cost or administrative cost rate agreements with the cognizant federal agent.

8 When in the best interest of the Nation, the committee may waive the indirect
9 cost or administrative cost rate when:

- 10 a. The division, department or program requesting the waiver
11 demonstrates a
12 statutory and/or regulatory requirement that limits the indirect cost or
13 administrative cost rate available for a particular grant or contract, or
14 b. There is a showing of necessity and a commitment of available
15 general funds by the division, department or program requesting the
16 waiver which is available to offset the loss in indirect costs or
17 administrative costs.
18 c. Chapters meeting these requirements will not be subject to any
19 administrative costs assessed by the central government.
20 d. For grants, awards and agreements at or under one-hundred and fifty
21 thousand dollars (\$150,000) per fiscal year, no Committee approval
22 of waiver of indirect cost rate or administrative cost rate is required.
23 However, all Indirect Cost Waivers – regardless of the amount of the
24 award - shall be submitted for Executive Branch review as a § 164
25 (B) Grant/Funding Agreement.

26 ***

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28 **Section Three. Effective Date**

29 The Navajo Nation Code amendment enacted herein shall be effective pursuant to 2
30 N.N.C. § 221(B).

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2
3 **Section Four. Codification**

4 The provisions of this Act which amend or adopt new sections of the Navajo
5 Nation Code shall be codified by the Office of Legislative Counsel. The Office of
6 Legislative Counsel shall incorporate such amended provisions in the next codification
7 of the Navajo Nation Code.

8
9 **Section Five. Savings Clause**

10 Should any provisions of this ordinance be determined invalid by the Navajo
11 Nation Supreme Court, or the District Courts of the Navajo Nation, without appeal to
12 the Navajo Nation Supreme Court, those portions of this ordinance which are not
13 determined invalid shall remain the law of the Navajo Nation.
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NABIO-47-13

**RESOLUTION OF THE
NAABIK'ÍYÁTI' COMMITTEE OF THE
NAVAJO NATION COUNCIL**

22ND NAVAJO NATION COUNCIL - Third Year, 2013

AN ACTION

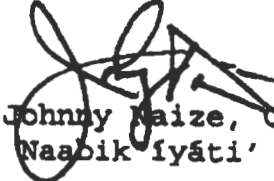
RELATING TO, BUDGET AND FINANCE COMMITTEE AND NAABIK'ÍYÁTI' COMMITTEE; APPROVING, ACCEPTING AND IMPLEMENTING INDIRECT COST (IDC) NEGOTIATION AGREEMENT WITH THE NATIONAL BUSINESS CENTER FOR INDIRECT COST (IDC) RATES FOR FISCAL YEAR 2009 THROUGH 2013

BE IT ENACTED:

1. The Navajo Nation approves, accepts, and implements the Indirect Cost (IDC) Negotiation Agreement with the National Business Center for Indirect Cost Rates for Fiscal Years 2009 through 2013, as found within Exhibit A attached hereto.
2. The President of the Navajo Nation, or his designee, is hereby authorized to execute the Indirect Cost (IDC) Negotiation Agreement with the National Business Center for Indirect Cost Rates for Fiscal Years 2009 through 2013.
3. Pursuant to 2 N.N.C. §701(A)(10), the Naabik'íyáti' Committee strongly discourages the approval of any future waivers of Indirect Cost.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Naabik'íyáti' Committee at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 13 in favor and 0 opposed, this 17th day of October 2013.


Johnny Naize, Chairperson
Naabik'íyáti' Committee

Motion: Honorable Mel R. Begay
Second: Honorable George Apachito

ATTACHMENT A

**Indian Organizations
Indirect Cost Negotiation Agreement**

EIN: 86-0092335

Organization:

Date: October 22, 2013

The Navajo Nation
P.O. Box 646
Window Rock, AZ 86515

Report No(s): 14-A-0061(09)
14-A-0062(10) 14-A-0064(12)
14-A-0063(11) 14-A-0065(13)
Filing Ref.:
Last Negotiation Agreement
dated May 18, 2012

The indirect cost rate contained herein is for use on grants, contracts, and other agreements with the Federal Government to which Public Law 93-638 and 2 CFR 225 (OMB Circular A-87) apply, subject to the limitations contained in 25 CFR 900 and in Section II.A. of this agreement. The rate was negotiated by the U.S. Department of the Interior, Interior Business Center, and the subject organization in accordance with the authority contained in 2 CFR 225.

Section I: Rate

Type	Effective Period		Rate*	Locations	Applicable To
	From	To			
Fixed Carryforward	10/01/08	09/30/09	19.64%	All	All Programs
Fixed Carryforward	10/01/09	09/30/10	20.02%	All	All Programs
Fixed Carryforward	10/01/10	09/30/11	16.83%	All	All Programs
Fixed Carryforward	10/01/11	09/30/12	16.95%	All	All Programs
Fixed Carryforward	10/01/12	09/30/13	16.95%	All	All Programs

*Base: Total direct costs, less capital expenditures and passthrough funds. Passthrough funds are normally defined as major subcontracts, payments to participants, stipends to eligible recipients, and subgrants, all of which normally require minimal administrative effort.

Treatment of fringe benefits: Fringe benefits applicable to direct salaries and wages are treated as direct costs; fringe benefits applicable to indirect salaries and wages are treated as indirect costs.

Section II: General

Page 1 of 3

A. Limitations: Use of the rate contained in this agreement is subject to any applicable statutory limitations. Acceptance of the rate agreed to herein is predicated upon these conditions: (1) no costs other than those incurred by the subject organization were included in its indirect cost rate proposal, (2) all such costs are the legal obligations of the grantee/contractor, (3) similar types of costs have been accorded consistent treatment, and (4) the same costs that have been treated as indirect costs have not been claimed as direct costs (for example, supplies can be charged directly to a program or activity as long as these costs are not part of the supply costs included in the indirect cost pool for central administration).

B. Audit: All costs (direct and indirect, federal and non-federal) are subject to audit. Adjustments to amounts resulting from audit of the cost allocation plan or indirect cost rate proposal upon which the negotiation of

EXHIBIT "A"

this agreement was based will be compensated for in a subsequent negotiation agreement.

C. **Changes:** The rate contained in this agreement is based on the organizational structure and the accounting system in effect at the time the proposal was submitted. Changes in organizational structure, or changes in the method of accounting for costs that affect the amount of reimbursement resulting from use of the rate in this agreement, require the prior approval of the responsible negotiation agency. Failure to obtain such approval may result in subsequent audit disallowance.

D.

1. **Fixed Carryforward Rate:** The fixed carryforward rate is based on an estimate of costs that will be incurred during the period for which the rate applies. When the actual costs for such period have been determined, an adjustment will be made to the rate for a future period, if necessary, to compensate for the difference between the costs used to establish the fixed rate and the actual costs.

2. **Provisional/Final Rate:** Within 6 months after year end, the final rate must be submitted based on actual costs. Billings and charges to contracts and grants must be adjusted if the final rate varies from the provisional rate. If the final rate is greater than the provisional rate and there are no funds available to cover the additional indirect costs, the organization may not recover all indirect costs. Conversely, if the final rate is less than the provisional rate, the organization will be required to pay back the difference to the funding agency.

E. **Agency Notification:** Copies of this document may be provided to other federal offices as a means of notifying them of the agreement contained herein.

F. **Record Keeping:** Organizations must maintain accounting records that demonstrate that each type of cost has been treated consistently either as a direct cost or an indirect cost. Records pertaining to the costs of program administration, such as salaries, travel, and related costs, should be kept on an annual basis.

G. **Reimbursement Ceilings:** Grantee/contractor program agreements providing for ceilings on indirect cost rates or reimbursement amounts are subject to the ceilings stipulated in the contract or grant agreements. If the ceiling rate is higher than the negotiated rate in Section I of this agreement, the negotiated rate will be used to determine the maximum allowable indirect cost.

H. **Use of Other Rates:** If any federal programs are reimbursing indirect costs to this grantee/contractor by a measure other than the approved rate in this agreement, the grantee/contractor should credit such costs to the affected programs, and the approved rate should be used to identify the maximum amount of indirect cost allocable to these programs.

I. **Central Service Costs:** Where central service costs are estimated for the calculation of indirect cost rates, adjustments will be made to reflect the difference between provisional and final amounts.

J. **Other:**

1. The purpose of an indirect cost rate is to facilitate the allocation and billing of indirect costs. Approval of the indirect cost rate does not mean that an organization can recover more than the actual costs of a particular program or activity.

2. Programs received or initiated by the organization subsequent to the negotiation of this agreement are subject to the approved indirect cost rate if the programs receive administrative support from the indirect cost pool. It should be noted that this could result in an adjustment to a future rate.

3. New indirect cost proposals are necessary to obtain approved indirect cost rates for future fiscal or calendar years. The proposals are due in our office 6 months prior to the beginning of the year to which the proposed rates will apply.

Section III: Acceptance

Listed below are the signatures of acceptance for this agreement:

By the Indian Organization:

The Navajo Nation
Tribal Government



Signature

Ben Shelly

Name (Type or Print)

President

Title

OCT 21 2013

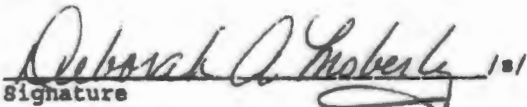
Date

By the Cognizant Federal Government
Agency:

U.S. Department of the Interior

Interior Business Center

Agency



Signature

Deborah A. Moberly

Name

Assistant Director

Indirect Cost Services Directorate

Title

OCT 22 2013

Date

Negotiated by Sujoy Mukhopadhyay

Telephone (916) 566-7009

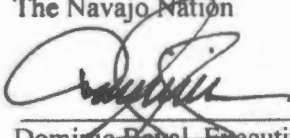
THE NAVAJO NATION



BEN SHELLY PRESIDENT
REX LEE JIM VICE PRESIDENT

MEMORANDUM

TO : Program Managers and Division Directors
The Navajo Nation

FROM : 
Dominic Beyer, Executive Director
Office of Management and Budget (OMB)

DATE : October 23, 2013

SUBJECT : Indirect Cost (IDC) Negotiation Agreement on IDC Rates for FY 2009 through 2013

Pursuant to the FY 2014 Navajo Nation Budget Instructions and Policies Manual (BIPM), Appendix R., Section IV. E. 1., we hereby provide the following attached documents regarding the subject matter for implementation effective immediately. The documents are also posted on the OMB website at www.omb.navajo-nsn.gov.

1. Attachment A : Resolution NABIO-47-13 by which the Naabik'iyati' Committee accepted the subject IDC rates. Be advised of the policy statement the Committee made in paragraph 3 of the resolution on not waiving IDC amounts in grant awards.
2. Exhibit A (to Attachment A) : IDC Negotiation Agreement on the subject rates the Nation entered into with the Interior Business Center (formerly National Business Center).

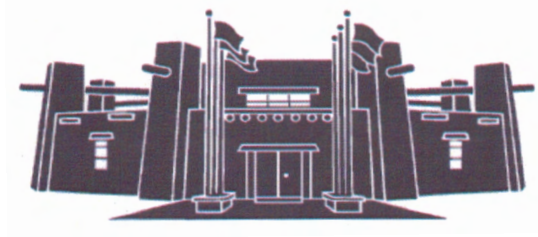
Please use the FY 2013 IDC rate of 16.95% in budgeting for recovery of IDC as follows:

- A. In grant applications and grant awards hereafter.
- B. On existing grant awards where the term ending date has not expired. In coordination with Contracts and Grants Section/OMB, programs should submit a request by no later than October 31, 2013 to the funding agency for authorization to use the FY 2013 IDC rate.

Your compliance with the BIPM and Committee mandate on use of the IDC rate is emphasized. Contact CGS/OMB at 810-8535 if you have any questions.

Distribution
ATTACHMENTS

Cc: File
Ben Shelly, President – Navajo Nation
Johnny Naize, Speaker – Navajo Nation Council
Herb Yazzie, Chief Justice – Judicial Branch



MEMORANDUM

TO: Honorable Amber Crotty
Navajo Nation Council

FROM: 
Erika Friedlander, Staff Attorney
Office of Legislative Counsel

DATE: September 28, 2015

SUBJECT: AN ACTION RELATING TO LAW AND ORDER, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL; AMENDING NAVAJO NATION CODE, TITLE 2 AT 2 N.N.C. § 701 AS RELATES TO INDIRECT COST RATE WAIVERS

Pursuant to your request, attached is the above-referenced proposed resolution and associated legislative summary sheet. Based on existing law and review of the documents submitted, the resolution as drafted is legally sufficient. However, as with all legislation, it is subject to review by the courts in the event of a challenge.

Please review the proposed resolution to ensure it is drafted to your satisfaction. If this proposed resolution is acceptable to you, please sign it where it indicates "Prime Sponsor", and submit it to the Office of Legislative Services for the assignment of a tracking number and referral to the Speaker.

If the proposed resolution is unacceptable to you, or if you have further questions, please contact me at the Office of Legislative Counsel and advise me of changes you would like made to the proposed resolution. You may contact me at (928) 871-7166. Thank you.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0347-15_____ SPONSOR: Amber Crotty

TITLE: An Action Relating To Law And Order, Budget And Finance, And Naabik'ivati' Committees And The Navajo Nation Council; Amending Navajo Nation Code, Title 2 At 2 N.N.C. § 701 As Relates To Indirect Cost Rate Waivers

Date posted: September 28, 2015 at 5:15pm

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7590

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Nav, ajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY

LEGISLATION NO.: 0347-15

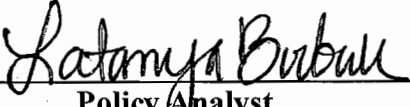
SPONSOR: Honorable Amber Crotty

TITLE An Action Relating To Law And Order, Budget And Finance, And Naabik'iyati' Committees And The Navajo Nation Council; Amending Navajo Nation Code, Title 2 At 2 N.N.C. § 701 As Relates To Indirect Cost Rate Waivers.

Posted: September 28, 2015 at 5:15PM

5 DAY Comment Period Ended: October 3, 2015

Digital Comments received: *No comments received.*


Policy Analyst
Office of Legislative Services

10/5/15 9:34am
Date/Time