

DEPARTMENT OF HEALTH AND HUMAN SERVICES

INDIAN HEALTH SERVICE
ROCKVILLE, MARYLAND 20852
INDIAN HEALTH SERVICE CIRCULAR NO. 2004-03 Refer to: OTP

CONTRACT SUPPORT COSTS

Sec.

1. Purpose
2. Policy
3. Authorizing Legislation
4. Definitions
5. Process
6. Roles and Responsibilities
7. Contract Support Costs Shortfall Report
8. Supersedure
9. Effective Date

Circular Exhibit 2004-03-A, Indian Self-Determination and Education Assistance Act, Public Law 93-638, as Amended, Section 106, "Contract Funding," 25 United States Code, Section 450j-1

Circular Exhibit 2004-03-B, Contract Support Cost Calculation Based on a Detailed Analysis

Circular Exhibit 2004-03-C, Contract Support Cost Calculated Using the 80/20 Method

Circular Exhibit 2004-03-D, Allocation of Indian Self-Determination Funds Against Contract Support Costs Requirements for New and Expanded Awards (Bottom-Up Approach)

Circular Exhibit 2004-03-E, Allocation of Pool No. 3 Funds Against Overall Contract Support Costs Shortfall for Ongoing Contracts (Bottom-up Plus Proportionate Distribution)

Circular Exhibit 2004-03-F, Fiscal Year 2003 Contract Support Costs Shortfall Report

Circular Exhibit 2004-03-G, Indian Self-Determination Funding Request Form

Circular Exhibit 2004-03-H, Standards for Review and Approval of Contract Support Costs in the Indian Health Service

1. **PURPOSE.** This circular provides guidance to both Tribal and Agency personnel in the preparation and negotiation of requests for contract funding in support of new and continuing Indian Self-Determination and Education Assistance Act (ISDEAA), Public Law (P.L.) 93-638, as amended, contracts and compacts. The circular provides instructional guidance on the following:

Distribution: IHS-wide

Date: September 01, 2004

- A. Determining amounts of startup, direct, and indirect contract support costs (CSC).
- B. Allocating pools of Indian Health Service (IHS) funding available for CSC.
- C. Prioritizing Tribal requests for funding of CSC.
- D. Reporting by the IHS to all Tribes and to the Congress.

These instructions are not regulations establishing program requirements and are issued in accordance with 25 Code of Federal Regulations (CFR) Section 900.5, which states:

“Except as specifically provided in the Act, or as specified in subpart J, an Indian Tribe or Tribal organization is not required to abide by any unpublished requirements such as program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Indian Tribe or Tribal organization and the Secretary, or otherwise required by law.”

The development of this circular has involved the active participation of representatives from Indian Tribes. The procedures discussed here will be applied to contracts awarded pursuant to Title I of the ISDEAA and to compacts awarded to Tribes that have been selected to participate in the Tribal Self-Governance Program pursuant to Title V of P.L. 93-638, as amended.

2. POLICY. The IHS will provide for a uniform and equitable system of distributing CSC funds to new and existing P.L. 93-638 compacts and contracts, and preserve and support each awardee's right to contract under P.L. 93-638.
3. AUTHORIZING LEGISLATION.
 - A. Transfer Act, Title 42 United States Code (U.S.C.) §2001.
 - B. Title 42 CFR §36.3.
 - C. Section 106 of P.L. 93-638, as amended.
 - D. Title V of P.L. 93-638, as amended.
4. DEFINITIONS.
 - A. Award. An agreement authorized under Title I (contract), Title V (compact) of P.L. 93-638, as amended, including the associated annual funding agreement (AFA) or funding agreement (FA).

-
- B. Awardee. A Tribe or Tribal organization that is the recipient of an award as defined above.
- C. Contract Proposal. A proposal for programs, functions, services, or activities (PFSA) that the Secretary is authorized to perform but which the Indian Tribe or Tribal organization is not now carrying out (see definition at 25 CFR Section 900.6). The requirements of a self-determination contract proposal can be found in 25 CFR Section 900.8.
- D. Contract Support Costs Available. Total CSC funding allocated to an awardee (including any portion of Tribal shares that are available for CSC requirements pursuant to paragraph 5A(3) on page 11 of this circular).
- E. Contract Support Costs Requirement. The full amount of CSC need (Indian Self-Determination (ISD) Fund, plus ongoing contracted or compacted programs) as determined under this circular pursuant to Section 106 of P.L. 93-638, as amended. (Circular Exhibit 2004-03-A)
- F. Indian Self-Determination Fund. Funds specifically appropriated by Congress to pay CSC requirements associated with new or expanded programs under the ISDEAA. In a fiscal year (FY) where the Congress does not specifically appropriate funds for an "ISD Fund," the ISD Fund will consist of those CSC funds that are identified by the Director, IHS, for providing CSC for new or expanded awards, to the extent not prohibited by law.
- G. Indian Self-Determination Programs. The PFSAs associated with an ISD Fund request that are eligible for ISD funding in accordance with paragraph 5(B)1 on page 13 of this circular.
- H. Non-Indian Self-Determination Programs. All PFSAs operated by an awardee, exclusive of PFSAs associated with an ISD Fund request that are operated by an awardee in accordance with paragraph 5(B)1 on page 13 of this circular.
- I. Non-Recurring Funds. Funds that require a rejustification annually and are awarded based on an annual resource allocation methodology that considers or is dependent on other factors (e.g., an indirect cost rate applied to a direct program base that may change the amount to be reimbursed from a single agency as the programs under contract continue to increase).
- J. Ongoing CSC Shortfall. This is the portion of the "total CSC shortfall" less the CSC shortfall associated with the awardees' ISD programs.

- K. Programs, Functions, Services, and Activities. The PFSA are those programs, functions, services, and activities that are contractible under the ISDEAA, including those administrative activities supportive of, but not included as part of, service delivery programs that are otherwise contractible, without regard to the organizational level within the Department of Health and Human Services that carries out such functions (as authorized under P.L. 93-638, as amended).
- L. Recurring Funds. Contract or compact funds that do not require rejustification each year to the Secretary are considered recurring funds. Annual increases may be provided through Congressional increases or other resource allocation methodologies applicable to the respective funding category of the award.
- M. Self-Governance Request. A self-governance request is defined as any one of the following requests from a Tribe or Tribal organization:
- (1) to enter into the Self-Governance Program for the first time, including Title V; or
 - (2) to join an existing self-governance compact; or
 - (3) to negotiate for new or expanded programs in a subsequent year's compact or FA.
- N. Total CSC Shortfall. The difference between the total CSC requirement and the total CSC allocated to the awardee.
- O. Tribal Shares. Refers only to an awardee's equitable share of PFSAs associated with Area Office or Headquarters resources (including Tribal shares of discretionary IHS grants). This definition was originally adopted and used in negotiating and awarding AFA, under Title III, P.L. 93-638, as amended, and is being consistently applied to Title I contracts and Title V compacts as authorized under P.L. 93-638, as amended. This term does not refer to an awardee's equitable share of a service unit or program base, which may also be included in a negotiated FA.

NOTE: The term "Tribal shares" is used in this circular to refer only to Area Office and Headquarters PFSAs, notwithstanding the definition of Tribal shares set forth in Title V, Section 501(a)(8) of the ISDEAA.

5. PROCESS.

A. Determining Amounts of Startup, Direct, and Indirect CSC.

- (1) Overview. Sections 106 (a)(1), (a)(2), and (a)(3) of the ISDEAA provide for funding of ISD awards for program costs and CSC respectively. Section 106(a)(1) provides that:

“The amount of funds provided under the terms of self-determination contracts entered into pursuant to this Act shall not be less than the appropriate Secretary would have otherwise provided for the operation of the programs or portions thereof for the period covered by the contract, without regard to any organizational level within the Department of the Interior or the Department of Health and Human Services, as appropriate, at which the program, function, service, or activity or portion thereof, including supportive administrative functions that are otherwise contractible, is operated.”

In addition, Section 106(a)(2) provides that:

“There shall be added to the amount required by paragraph (1) contract support costs which shall consist of an amount for the reasonable costs for activities which must be carried on by a Tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management, but which:

- (A) normally are not carried on by the respective Secretary in his [her] direct operation of the program; or
- (B) are provided by the Secretary in support of the contracted program from resources other than those under contract.”

And finally, Section 106(a)(3) provides that:

“(A) The CSC that are eligible costs for the purposes of receiving funding under this Act shall include the costs of reimbursing each Tribal contractor for reasonable and allowable costs of:

- (i) direct program expenses for the operation of the Federal program that is the subject of the contract, and

- (ii) any additional administrative or other expense related to the overhead incurred by the Tribal contractor in connection with the operation of the Federal program, function, service, or activity pursuant to the contract, except that such funding shall not duplicate any funding provided under Section 106(a)(1).
- (B) On an annual basis, during such period as a Tribe or Tribal organization operates a Federal program, function, service, or activity pursuant to a contract entered into under this Act, the Tribe or Tribal organization shall have the option to negotiate with the Secretary the amount of funds that the Tribe or Tribal organization is entitled to receive under such contract pursuant to this paragraph.”
- (2) Determining CSC Requirements. Throughout the operation of the program by the awardee, total contract costs (including CSC) are eligible to be paid as either direct or indirect costs. Since Tribes often operate more than one program, many of the costs incurred by the awardee are paid through an indirect cost allocation process, usually negotiated by the "cognizant Federal Agency" as identified under the applicable Office of Management and Budget (OMB) Circular. The procedures below are intended to ensure that CSC requirements are accurately identified while avoiding any duplication of funding between CSC and PFSA funding amounts.

When awardees choose to use sub-awards with Tribes or Tribal organizations (that meet in all respects the requirements to contract directly with the IHS but choose, through Tribal resolution, to subcontract to carry out IHS PFSA), to carry out all or part of the PFSA transferred, the eligible CSC costs of the Tribal sub-awardee may also be included in the CSC requirement of the awardee.

Section 106(a)(3) authorizes awardees to be paid CSC costs, whether they are "indirect" in nature (benefiting multiple programs) or additional costs associated with operating a single program, except that such funding shall not duplicate any funding provided under section 106(a)(1).

To ensure there is no duplication of costs in the CSC amounts, the IHS will review the CSC request to identify any costs that are duplicative of the amounts that have been incurred by the IHS in the operation of the program and included in the 106(a)(1) program funding to be transferred or that may have been duplicated within the CSC amount. When the

PFSAs to be contracted have not previously been operated by the IHS, the identification of the duplicative costs will be negotiated based on the program budget submitted by the awardee and a budget from the IHS reflecting the expenditure patterns of how the Secretary would have otherwise operated the PFSAs. On rare occasions, the IHS has determined to provide general health services to Indian beneficiaries by purchasing care as opposed to providing services directly in an IHS facility. When Tribes contract to assume control of these types of programs, the IHS must develop a profile to show indirect types of costs that are funded within (emphasis added) the program amount. This profile is used as a basis to show the historical costs and amounts transferred with the program and for the purposes of determining whether duplication exists between amounts requested as CSC and amounts provided as a part of the program.

For awardees with IDC rates, the IDC agreement and proposal will be analyzed, and costs will be considered duplicative if the amounts historically used for specific categorical purposes under 106(a)(1) are duplicated in the IDC pool.

For CSC on sub-awards, the costs and amounts requested for the sub-awardee will be analyzed, and amounts may be considered duplicative to the extent that CSC funding for these costs has already been included in the CSC requirement of the awardee.

When duplicative costs are determined and agreed to between the awardee and the Agency, these amounts will be deducted from the negotiated CSC requirement. This adjusted CSC requirement is the 106(a)(2) amount that the awardee is eligible to receive, subject to available appropriations.

(a) Startup and Pre-Award Costs. Sections 106(a)(5) of the ISDEAA states:

“(a)(5) Subject to paragraph (6), during the initial year that a self-determination contract is in effect, the amount required to be paid under paragraph (2) shall include startup costs consisting of the reasonable costs that have been incurred or will be incurred on a one-time basis pursuant to the contract necessary

(A) to plan, prepare for, and assume operation of the PFSAs that are the subject of the contract; and

(B) to ensure compliance with the terms of the contract and prudent management.”

(a)(6) “Costs incurred before the initial year that a self-determination contract is in effect may not be included in the amount required to be paid under paragraph (2) if the Secretary does not receive a written notification of the nature and extent of the costs prior to the date on which the costs are incurred.”

NOTE: Examples of startup and pre-award costs are described in the standards for the review and approval of CSC in Circular Exhibit 2004-03-H.

Startup costs for PFSAs will only be provided to an awardee one time in the initial year of transfer, and no additional startup costs will be justified if the PFSA is subsequently transferred to a sub-awardee.

Pursuant to Section 106(a)(6) of the ISDEAA, notification from awardees for pre-award costs must clearly indicate the nature and extent of the costs to be incurred and such notification must be provided, in writing, before any of the costs are actually incurred. Tribes should provide their pre-award notice to the appropriate Area Director as soon as they anticipate contracting or compacting a PFSA and before they incur any of the costs. If such a notice is received by any other office, it should be immediately forwarded to the appropriate Area Director. The review of pre-award and startup costs by Area Office staff should ensure that there is no duplication with any costs funded under a Tribal Management Grant, when appropriate.

(b) Direct CSC. Direct contract support costs (DCSC) pay for activities that are not contained in either the IDC pool (or indirect-type cost budget) or the amount computed pursuant to Section 106(a)(1). Direct contract support costs may be incurred directly by the awardee or by an eligible sub-awardee. Direct contract support costs amounts are awarded on a recurring basis.

Examples of DCSC are described in the standards for the review and approval of CSC in Circular Exhibit 2004-03-H. These may include, but are not limited to:

(i) unemployment taxes on direct program salaries,

- (ii) workers compensation insurance on direct program salaries,
- (iii) cost of retirement for converted civil service and commission corps salaries,
- (iv) insurance,
- (v) facilities support costs to the extent not already made available,
- (vi) training required to maintain certification of direct program personnel, and
- (vii) any other item of cost that meets the definition of CSC at Section 106(a)(2) but is not included in the awardee's IDC pool or the 106(a)(1) amount.

Funds for direct contract support costs are provided to the awardee on a recurring basis and need not be rejustified each year. Notwithstanding this provision, if a cost that has previously been funded as DCSC is moved to the indirect cost pool (ICP), the DCSC requirement shall be reduced. Each year, the amount of each awardee's DCSC need shall be adjusted by the OMB non-medical inflation rate in order to account for the normal increased DCSC need. In accordance with Section 106(a)(3)(b) of the ISDEAA, however, the amount of funds needed for DCSC may be renegotiated on an annual basis at the option of the awardee. To the extent that a greater amount of DCSC need is agreed to, that additional requirement will be recognized as CSC shortfall and will be considered for funding under Pool No. 3 (see Section 5B(3) on page 18. To the extent that the DCSC requirement is reduced, excess DCSC funds may first be used to fully fund the awardee's IDC requirements before the IHS reduces any excess funds.

- (c) Indirect Costs: Guidelines for the Principles Involved in Negotiating Indirect and Indirect Type Costs. A plan for the allocation of IDC will be required to support the distribution of any IDC related to the awardee's program. All IDC included in the plan will need to be supported by accounting records that substantiate the propriety of the indirect costs. The allocation plan should cover all IDC of the awardee, and contain, but not necessarily be limited to, the nature and extent of services provided

and their relevance to the awardee's program, the item of expense to be included in the IDC pool, and the methods to be used in distributing costs.

Various OMB circulars establish principles and standards for determining IDC applicable to the awardee. Section 106(k), P.L. 93-638, as amended, has made modifications to the OMB cost principles otherwise applicable to awardees. See also the standards for the review and approval of CSC in Circular Exhibit 2004-03-H.

In determining the amount of CSC required, Areas should review the awardee's cost allocation plan and its associated IDC proposal and approved IDC negotiation agreement. The allowable indirect costs of an eligible sub-awardee may also be included in the CSC requirement of the awardee when the sub-awards are excluded from the IDC base of the awardee or are subject to a pass-through IDC rate. The awardee shall be responsible for providing documentation of these costs to the IHS.

- (i) Awardees with Negotiated IDC Rates. The amount of IDC expected to be incurred by awardees using rates negotiated with the cognizant Federal agency will be determined by applying the negotiated rate(s) to the appropriate direct cost base amount subject to special provisions relating to any Tribal shares included in the direct cost base, as explained in paragraph 5A(3) on page 11.

The amount determined as the awardee's CSC requirement will be consistent with the individual awardee's rate agreement, reflecting any exclusion required by the IDC agreement.

If an awardee's IDC rate is applicable to a FY that is more than 3 years old, the IHS will not provide IDC associated with the application of that IDC rate. In these cases, the Area Office will negotiate "indirect type costs" with the awardee (see paragraph 5A(2)(c)(ii) below). The rate applicable to the current FY is considered current, and the rate applicable to the previous FY shall be considered 1 year old.

- (ii) Awardees Without Negotiated IDC Rates (Guidelines for Agency Negotiators). A lump sum amount for "indirect types of costs" may be computed for awardees that do not have formally negotiated agreements with their cognizant Federal Agency for reimbursement under an IDC rate. This annual lump sum amount may be calculated by negotiating a fixed amount for "indirect types of costs." Categories of costs often considered "overhead" or "indirect type" are generally in the categories of: "Management and Administration," "Facilities and Equipment," and "General Services and Expenses." Indirect type costs must be renegotiated not less than once every 4 years, but they can be renegotiated more frequently at the option of the Tribe. Examples of indirect or indirect type costs are:

Management and Administration	Facilities and Equipment & Equipment&	General Services and Expenses
Governing Body	Building Rent/Lease/Cost Recovery	Insurance and Bonding
Management and Planning	Utilities	Legal Services
Financial Management	Housekeeping/Janitorial	Audit
Personnel Management	Building and Grounds	General Support Services
Property Management	Repairs and Maintenance	Interest
Records Management	Equipment	Depreciation/Use Fees
Data Processing		
Office Services		

- (3) Alternative Methods for Calculating CSC Associated With "Tribal Shares." If an awardee's contract includes Tribal shares, the awardee shall elect the method for determining the CSC associated with the Tribal shares in one of two ways.

- (a) Alternative A. The awardee and the Area Office shall conduct a case-by-case detailed analysis (Circular Exhibit 2004-03-B) of the "purpose for which the (Tribal share) funds were utilized by the Secretary." Tribal shares will be reviewed to identify types of costs that are duplicative of costs that are already included in the awardee's IDC pool or are proposed to be funded as DCSC. The costs already in the awardee's IDC pool or DCSC budget will be considered as duplicative of the Tribal shares for purposes of funding IDC for administrative or "overhead" purposes (Section 106(a)(3)(A)(ii)). In determining whether such costs are duplicative, the review will consider both the cost category labels (travel, supplies, etc.) and how the funds were spent by the IHS.

- (b) Alternative B. The awardee and the Area Office will apply the following "split" of total Tribal shares, the 80/20 method (Circular Exhibit 2004-03-C):
- (i) Eighty percent of the Tribal shares amounts will be considered as part of the awardee's direct program base (Section 106(a)(3)(A)(i))
 - (ii) Twenty percent of the Tribal shares amounts will be retained by the awardee to be considered as available funding for administrative or "overhead" purposes (Section 106(a)(3)(A)(ii)).
- (c) If the amount set aside for CSC requirements (20 percent) exceeds the awardee's negotiated CSC requirements, the awardee shall retain the excess funds for program purposes.

Note: In FYs 2000 and 2001, the IHS and Tribes conducted a cost study of Area and Headquarters Tribal shares and found that the 80/20 split between program-type costs and CSC-type costs is still an appropriate allocation method. The IHS CSC Workgroup concluded that there was not sufficient data to warrant modifying the allocation methodology in FY 2002, but it did recommend periodically reviewing this issue to determine if subsequent changes to the allocation methodology might be warranted. It was agreed that should the split be modified in the future, it would not be retroactively applied, since the 80/20 split was determined to be accurate for Tribal shares being transferred under this circular and previous IHS CSC policies.

Once these 80/20 amounts are computed, they will be used in accordance with the terms of the rate agreement (or alternative method provided herein) for calculating the amount required for CSC. The balance of the Tribal shares not considered as part of the direct program base will be considered as available for CSC. Any excess CSC requirements not funded by the portion of the Tribal shares considered available for CSC will be eligible for payment as provided herein, and the processes specified in this circular for the allocation of funding in this pool will apply.

Circular Exhibit 2004-03-B illustrates how Alternative A (a detailed analysis) would be calculated, and Circular Exhibit 2004-03-C illustrates how Alternative B (the "80/20 method") would be calculated.

B. Allocating Funding Available for CSC. In theory, CSC funding is composed of three "pools." The first pool is composed of any funding increase appropriated for CSC associated with new and expanded awards. The second pool is composed of the total amounts awarded by the IHS in the prior year for direct and indirect CSC (the prior year's "base"). The third pool is composed of amounts, if any, appropriated for increases on the prior year "base," such as mandatory increases or shortfall funds. Each pool has separate funding priorities and eligibility requirements.

(1) Pool No. 1 - ISD Fund.

(a) Eligibility. The ISD Fund will cover CSC requirements associated with the following awards:

- (i) An initial transfer of a PFSA previously operated by the IHS to an awardee, including the initial transfer of each Intergovernmental Personnel Act agreement/memorandum of agreement (IPA agreement/MOA) position to direct-hire, whether or not such transfer of the IPA agreement/MOA position to direct-hire occurs in the initial year of the associated program transfer.
- (ii) Expansion of a PFSA through the assumption of additional shares of PFSAs previously operated by the IHS, regardless of the organizational level at which the expanded PFSA was operated.
- (iii) Assumption of programs previously operated under awards to other awardees.
- (iv) New or expanded PFSAs available due to new appropriations, excluding general program increases and increases for inflation, pay costs, population growth, and the Indian health care improvement fund.

(b) Withdrawal. When an awardee withdraws a PFSA from an existing award between the IHS and another awardee that has been operating that PFSA on behalf of the first awardee, the existing CSC is subject to reallocation between the two awardees. In the absence of an agreement between the awardees, the existing CSC will be divided as follows:

-
- (i) The DCSC is directly associated with the direct program funds and, therefore, should be reallocated proportionately between the awardees on the same basis as the direct program funds are being reallocated.
 - (ii) Conversely, IDC funding should be applied first to the existing awardee up to the full amount that can be justified by that awardee. Excess IDC funds should then be transferred to the new awardee. The new awardee is then eligible for ISD funds to recover whatever additional IDC requirements it has in accordance with the Pool No. 1 allocation process. If IDC funds were not sufficient even for the first awardee, its additional IDC need shall be treated as shortfall and eligible for funding under Pool No. 3. The full IDC requirement of the new awardee should be considered for funding under its ISD request.
- (c) Initial Funding Period - New and Expanded Contracts. Contract support costs funds for new and expanded programs will be allocated by IHS Headquarters as expeditiously as possible. To the extent available, funding is provided to each CSC request on the ISD list based on the total amount associated with the PFSAs awarded from the date of assumption through the end of the FA's performance period, not to exceed 12 months. All CSC funding requests on the ISD list (known as "ISD Requests") will be determined as follows:
- (i) First, subject to paragraph 5B(1)(c)(vii) on page 16, the initial distribution of the ISD Fund will be made subsequent to July 3 of each FY, based on contract proposals being received by July 3 of that FY. If the IHS and the Tribe have failed to reach an agreement on the amount of the ISD request by the time of the initial distribution of the ISD Fund, an appropriate amount will be identified and reserved for a subsequent distribution. All ISD requests received prior to July 3 of the FY, (or Final Offers received by August 17 of the FY in the case of a Title V compactor), must be finalized for distribution in that FY.
 - (ii) For proposals submitted between April 1 and July 3 of each FY, or PFSAs awarded between July 3 and September 30 of each FY, an ISD request must have been submitted on or before July 3, (or on or before August 17 in the case of a

Final Offer from a Title V compactor), to receive a portion of the ISD Fund distribution for that FY.

If no request is submitted in the current FY, the awardee may submit an ISD request against the following year's ISD Fund if submitted before July 3 of that year, (or before August 17 in the case of a Final Offer from a Title V compactor).

If the awardee fails to submit an ISD request before July 3 of the subsequent FY, (or before August 17 in the case of a Final Offer from a Title V compactor), the program amount will be included in the awardee's ongoing shortfall calculation, and CSC will only be funded through the next FY's Pool No. 3 shortfall distribution.

- (iii) For proposals submitted before April 1 and starting in the current FY, failure to submit an ISD request before July 3 of that FY (or August 17 in the case of a Final Offer from a Title V compactor) will preclude the contractor from submitting an ISD request in the subsequent year. Instead, the program amount will be included in the contractor's ongoing shortfall calculation, and CSC will be funded only through the next FY's Pool 3 shortfall distribution.

NOTE: If an awardee does not submit an ISD request in time for the initial distribution of the ISD Fund, there is a risk that an award will not be made within the current FY or that ISD funds will have been fully allocated, and no ISD funds will be available for a subsequent distribution.

- (iv) All ISD requests submitted independently of a contract proposal shall be required to be reviewed within an independent 90-day proposal review period associated only with the ISD request, (or a 45-day review period in the case of a Title V compactor's Final Offer) (see also Section 6A below).
- (v) All ISD requests will be funded by paying first the full startup and pre-award cost requirement negotiated under each ISD request. If the ISD Fund is not sufficient to fully fund the total startup/pre-award costs of all ISD requests

-
- negotiated, then the amount available will be proportionately divided against the total negotiated startup and pre-award costs of all negotiated requests.
- (vi) The overall CSC requirement, excluding startup or pre-award costs, will be computed for each awardee that has an ISD request pending. The IHS will then allocate greater ISD funding to awardees currently funded at the lowest percentage of overall CSC need currently being funded. This process will raise the minimum level of CSC being funded to the maximum percentage possible. See Circular Exhibit 2004-03-D for a description and an example of this funding methodology. The ISD payment will not exceed the total amount of the computed ISD request.
 - (vii) An allocation will be made as expeditiously as practical based on all ISD requests received and negotiated. An interim payment in advance of the initial distribution described in paragraph 5B(1)(c)(i) on page 14 may be made to awardees earlier in the FY if the IHS determines that sufficient funds will be available to fund all expected new and expanded contracts or compacts to at least that same level during the balance of the FY.
 - (viii) If there are no ISD funds to be distributed in the current FY to pay ISD requests, all unfunded requests will be considered a part of the overall CSC shortfall for funding under Pool No. 3 in the current year and will not be considered for ISD funds in the subsequent FY.
 - (ix) If an awardee proposes to start a new or expanded activity for less than a full year, an annual amount for the ISD requirement will need to be computed consistent with the methodologies included in this circular. Startup and pre-award costs should be identified at their full amount, and all other costs should be prorated to reflect the reduced award period in the first year of the award. Funding of the pro-rated amount in the initial award period will be based on the CSC need attributable to that FY only.

-
- (x) When computing the requirement for the subsequent year, the IHS shall ensure, to the greatest extent possible, that funds are available to cover the same proportionate share of the annual ISD request paid on the partial year amount.
 - (xi) If ISD appropriations are not available to pay all awardees 100 percent of their ISD requests, the remaining unpaid DCSC and IDC will be recorded as part of the overall CSC shortfall used in the allocation of Pool No. 3.
 - (xii) If excess ISD funds remain after paying all ISD requests, the remaining ISD funding will be added to Pool No. 3 (to the extent not prohibited by law) and be distributed according to the methodology described in paragraph 5B(3) on page 18.
- (2) Pool No. 2. Prior Year CSC Funding That Remains Justified in the Subsequent FY (Ongoing Awards).
- (a) The amount of CSC funds (excluding pre-award and startup costs) paid to an Area in any year will be paid to that Area as a recurring amount. Adjustments will be made in subsequent years only as new funds are made available or as Areas return CSC funds that they no longer require.
 - (b) As stated in paragraph 5A(2)(b) on page 8, DCSC funding is provided on a recurring basis. Pool No. 2 shall be increased from appropriated CSC increases by the amount needed to increase prior year DCSC funding by the national OMB non-medical inflation rate before adding funds to Pool No. 3.
 - (c) All indirect CSC funds will be paid to the awardee as non-recurring funds. Each awardee's requirement for indirect CSC shall be determined by calculating changes, if any, in IDC rates, bases, and pools. Prior year funding for an awardee's indirect CSC will not be reduced in subsequent years as long as the CSC funding for indirect CSC does not exceed 100 percent of the awardee's total CSC requirement in the subsequent year. (See 6B(3) on page 22.)
 - (d) Upon receipt of its Pool No. 2 allocation, each Area shall only withhold amounts necessary to minimize the risk that an awardee will receive in excess of 100 percent of the awardee's total CSC

requirement based on currently available CSC data. Any amount so withheld shall be paid to the awardee if, prior to the end of the FY, such awardee has established that the payment of the amounts so withheld will not result in an overpayment for the current year. Any withheld amounts not so paid, shall be redistributed by the Area to Tribes with the greatest CSC needs so as to raise the minimum level of CSC being funded to the maximum percentage possible, given the available resources (bottom-up approach). Following any Area redistribution of CSC, if an awardee's CSC base is not adequate to meet all of the awardee's CSC requirements, any shortfalls shall be considered for funding under Pool No. 3 according to the methodology provided in Circular Exhibit 2004-03-E.

(3) Pool No. 3 - Contract Support Costs Increases/ Shortfall Funds.

- (a) Prior year funds provided for CSC to each awardee (excluding pre-award and startup costs), if justified in subsequent years, shall not be reduced by the IHS, except as authorized in Section 106(b) of the ISDEAA. Awardees should expect to receive these funds continuously, if they continue to justify at least the same or greater annual need. If an awardee's current CSC base is not adequate to meet all of the awardee's CSC requirements, then any shortfalls shall be considered for funding under Pool No. 3 according to the methodology provided in Circular Exhibit 2004-03-E.
- (b) Several sources of funding may be available to fund these ongoing shortfalls in CSC. These include the following:
 - (i) Funds returned from non-recurring startup funding from the prior year, to the extent that they are available. (Such funds may not be available under Pool No. 3 if the IHS Director has used the funds to address existing CSC obligations or significant inequities in CSC funding.)
 - (ii) Funds remaining (if any) from ISD appropriations after funding the total negotiated ISD requests for the FY, to the extent not prohibited by law.
 - (iii) Funds appropriated by Congress for general increases on IDC.

-
- (iv) Funds appropriated by Congress for CSC shortfalls.
- (c) Funds received from any of the sources above shall be allocated to contractors in the ongoing Pool No. 3 to reduce their CSC shortfalls according to the methodology provided in Circular Exhibit 2004-03-E. The intent of this allocation is to provide greater equity in Pool No. 3 funding and to allocate a portion of available CSC shortfall funds to each awardee in proportion to the awardee's CSC shortfall.
- (d) In order to achieve a greater degree of equity in CSC funding among awardees and to continue to move all awardees toward full funding of their CSC needs, the IHS will do the following: allocate 50 percent of the funds available under Pool No. 3 to Tribes with the greatest CSC shortfalls using a bottom-up allocation methodology, and allocate the remaining 50 percent of the funds available under Pool No. 3 proportionately to all Tribes with a CSC shortfall.
- (e) The distribution of funds from Pool No. 3 shall be made as expeditiously as possible, but no later than March 30 of any FY.

Note: The distribution of excess ISD funding (if any) in Pool No. 3 will be made subsequent to July 3 of each FY.

- (f) Areas are expected to update the shortfall information used for the distribution of the Pool No. 3 fund (use the most current IDC rate and changes to the direct program base in the current year) before they provide any CSC shortfall distributions in order to ensure that no awardee is funded in excess of 100 percent of its total CSC requirement. It is not, however, intended that the shortfall report be re-calculated and the Pool No. 3 distribution altered, except to prevent such excess funding from occurring.
- (g) All CSC funds to be redistributed by an Area are to be made in such a way as to raise the minimum level of CSC being funded to the maximum percentage possible, given the available resources (the bottom-up approach described in Circular Exhibit 2004-03-D).

6. ROLES AND RESPONSIBILITIES. Awardees as well as IHS staff have distinct roles and responsibilities in facilitating the determination of Tribal CSC requirements and in the allocation of CSC resources. This subsection will describe the activities associated with the determination of initial Tribal CSC (ISD Fund) requirements, the activities associated with ongoing management of CSC requirements, and some of the ancillary CSC activities carried out by the IHS.
- A. Initial ISD Request Responsibilities.
- (1) Overview. Awardees will provide a detailed ISD request to the Area Director or his/her designee. Awardees should be encouraged to complete their ISD requests on forms developed by the IHS for that purpose (see sample ISD request form in Circular Exhibit 2004-03-G). The request must include a clear description of the requested CSC amounts to be negotiated (as specified at 25 CFR Sec. 900.8) along with supporting justification, the date that the PFSAs are to be assumed, and an identification of the amount of program funding to be transferred. Additionally, the awardee is encouraged to provide a detailed line item Tribal budget for the Section 106(a)(1) amount to facilitate CSC negotiations. The Area Director or designee will provide a copy of the negotiated ISD request to the IHS Headquarters Office of Finance and Accounting (OFA), and in the case of a Title V compactor, a copy to the Office of Tribal Self-Governance (OTSG).
 - (2) Indian Self-Determination Request Negotiation. The Area Office has primary responsibility for negotiating the ISD request with the awardee and forwarding the approved request to the Headquarters OFA for allocation from the ISD fund (see the IHS Delegation of Authority (DOA), Program #19, "DOA to Review and Approve Tribal Requests for Indian Self-Determination Funds"). If the Area and the awardee cannot agree on an item(s) of cost, the Area shall issue a (partial) declination of the awardee's contract proposal in accordance with 25 CFR Sections 900.20 through 900.33. The declination must be issued within 90 days of receipt of the awardee's proposal (or in the case of a Title V awardee, within 45 days of the submission of a Final Offer, if any) unless the awardee has provided a written request for an extension in accordance with 25 CFR Section 900.17.
 - (3) Indian Self-Determination Request List. The list of pending ISD requests for each FY for the ISD Fund will be maintained by the Headquarters Office of Tribal Programs (OTP) and distributed quarterly to the Area Offices and to awardees on the list for the current FY. The list will include the following: the name of the awardee; the proposed start date;

the date of request or proposal; an estimated amount of the program costs to be awarded, i.e., the Section 106(a)(1) amounts; the estimated amount of CSC approved; the estimated percentage of the approved CSC requirement to be awarded; and an estimate of any remaining ISD funds anticipated after subtracting all existing ISD requests. The Headquarters OTP will update the list of estimated amounts of CSC as additional data becomes available through negotiations. As soon as possible after the appropriation is signed, but not later than the 15th day of the month following the end of each quarter, the IHS will notify all of the awardees with pending ISD requests of the total amount of negotiated ISD requests that are eligible for payment in the initial distribution of ISD funding, and the awardee's calculated proportion of the ISD request, if any, that can be expected to be paid by the IHS based on the ISD requests received to date.

- (4) Changes in Start Date. Prior to actual startup, any awardee has the right to delay its start date, if in its sole discretion and absent a declination issued by the IHS, the expected amount of CSC funding to be received by the awardee is insufficient to properly carry out the program. If an awardee makes such an election, the Area Office will contact the awardee to acknowledge the change and to determine a new proposed start date. Delay of the start date to a subsequent FY shall not require an awardee to submit a new or revised CSC proposal, although it may require a revision or renegotiation of the CSC amounts, depending on the circumstances.

In the alternative, if an awardee believes it cannot operate the PFSA's that it is contracting for due to the delay in CSC funding under the initial ISD allocation made after July 3, the awardee may delay its start date until the initial allocation can be made. At that time, the awardee will receive a prorated share of its CSC allocation in accordance with paragraph 5B(1)c(vi) on page 16. In the subsequent year, the IHS will be required to provide this same proportionate share of the initial payment, to the greatest extent possible, annualized for the entire FY.

B. Subsequent Funding Periods.

- (1) Beginning in year 2, DCSC requirements will first be funded up to the total amount of the original ISD request for DCSC. The DCSC, along with other Section 106(a)(1) funds, will be considered part of the recurring base of the award. Funding increases will be paid based on congressional appropriations. The amount of the DCSC is provided to the awardee on a recurring basis and will not be reduced, but the amount may be renegotiated annually at the option of the awardee.

- (2) All IDC funding paid in connection with an ISD request will be transferred to Pool No. 2, the "Ongoing Pool" in year 2. Thereafter, it will be paid on a non-recurring basis to the awardee and will recur in subsequent years to the extent it does not exceed 100 percent of the awardee's calculated IDC requirement.
- (3) In situations where an awardee's IDC rate is reduced, either because a Provisional rate is made final or because a lower subsequent Fixed with Carry Forward rate is approved, the Area is required to determine if the reduction has resulted in the awardee receiving more IDC funds than is otherwise permissible under the new rate. If available IDC funding exceeds this new IDC requirement, excess IDC funds may first be used by the awardee to fully fund existing DCSC shortfall requirements before the IHS reduces any excess funds. Areas are required to collect excess CSC funds back from awardees for redistribution to other Tribal contractors/compactors with identified shortfalls within that Area (see paragraphs 5B(2)(c) on page 17 and 5B(3)(g) on page 19). If the awardee refuses to execute a bilateral modification to return these funds, then the Area Office is expected to file a claim against the awardee in the amount of the overpayment in accordance with the Contract Disputes Act (CDA), P.L. 95-563, as amended, and 25 CFR Section 900.216.
- (4) Each Area Director or his/her designee will report to Headquarters OFA any shortfalls in funding of direct or indirect contract support, such shortfalls should be included in the required Reports to the Congress and be reported to Tribes (see Section 7 on page 24).
- (5) Startup funding does not recur to the awardee in year 2. Instead, to the extent available, such funds shall be added to Pool No. 3 in the subsequent year. Startup costs that are not funded in the initial year of the award will neither be carried forward nor included in subsequent CSC shortfall reports. A graphic illustration of CSC is provided as follows:

-- Startup (non-recurring to Area and awardee in year 2)

<p>DCSC** (recurring to awardee and Area in Year 2)</p>
<p>IDC* (non-recurring to awardee, recurring to Area)</p>
<p>Program Base** (Section 106(a)(1) amount) (recurring to awardee and Area)</p>

**The IDC base amount in subsequent years is described above in Pool No. 2. Any increases/decreases to the IDC base amount are governed by Pool No. 3. This is also described above.*

*** This is treated as recurring, i.e., not adjusted except pursuant to P.L. 93-638 in subsequent years.*

C. Other CSC Responsibilities.

- (1) Disputes. Disputes over CSC should be handled as either a formal declination appeal or as a CDA claim. An informal conference (25 CFR Section 900.153) or other alternative disputes mechanism (25 CFR Section 900.217) may also be useful in resolving disagreements over CSC issues. When it is unclear whether a dispute should be handled as a declination or a CDA claim, the Director of Self-Determination Services, IHS Headquarters OTP, should be contacted for possible referral to the IHS Headquarters Leadership Team.
 - (a) Pre-Award Declination Appeals. Declination appeals might arise out of a pre-award decision to decline a proposal, in whole or in part; a pre-award decision to decline a proposed amendment to an award; or any of the other reasons cited at 25 CFR Subpart L, Section 900.150. Declination appeals are most likely to occur as a result of disagreements over an awardee's ISD request (paragraph 6A(2) on page 20). Declination appeals must be processed pursuant to 25 CFR Subpart L, Sections 900.150 through 177.
 - (b) Appeals of Rejections of Final Offers. Final Offer appeals may arise out of a pre-award decision by the IHS to reject, in whole or in part, a Final Offer submitted by a compactor when it is unable to reach agreement with the IHS on the terms of a compact or FA, including funding levels. Final Offer appeals must be processed pursuant to Section 507(C)(1) of the ISDEAA and any regulations promulgated there under.
 - (c) Post-Award Contract Disputes Act Claims. All CDA claims arise out of a post-award dispute regarding an awarding official's decision relating to a self-determination award. Post-award contract disputes are likely to occur as a result of the parties failing to agree concerning the renegotiation of DCSC (paragraph 5A(2)(b) on page 8), the renegotiation of indirect-type costs (paragraph 5A(2)(c) on page 9), or the allocation of CSC (paragraph 5B(2) on page 17 or 5B(3) on page 18). Post-award contract disputes must be handled pursuant to 25 CFR Subpart N, Sections 900.215 through 230.

- (2) Contract Support Costs Pilot Projects and Base Budgets. There are currently several ongoing CSC pilot projects (including CSC base budgets) that are intended to incorporate innovative approaches to CSC funding issues. Upon the completion and evaluation of these projects, this circular may be amended to incorporate new provisions.
- (3) Contract Support Costs Budget Projections. Each Area Director or his/her designee shall survey Tribes and Tribal organizations within that Area to develop accurate CSC projections of need on an annual basis. This will include identification of the amounts required for the ISD Fund and projections for the total ongoing CSC requirement for the following FY as well as estimates for the next two fiscal years. This information will be consolidated by the Headquarters OFA and provided to Tribes and Tribal organizations. This information will also be generated in a report on or before September 30 of each FY and will be used by the IHS in conjunction with the Agency's budget formulation process.
- (4) Common Language. The IHS may from time to time propose common language for FAs regarding CSC. This common language may be considered as an option for negotiations by the Tribes and IHS negotiators. Tribes and IHS negotiators should be made aware that specific CSC language in contracts, compacts, and FAs is negotiable.
- (5) Contract Support Costs Workgroup. From time to time the IHS will convene a workgroup of Federal and Tribal individuals who possess an extensive knowledge of CSC issues. This workgroup may provide advice and guidance to the IHS in developing Agency CSC policy, developing proposed common language (if any), and in the ongoing management of CSC. The workgroup is not a substitute for Tribal consultation but will continue to be used in an advisory capacity for the benefit of both Tribes and the IHS.

7. CONTRACT SUPPORT COSTS SHORTFALL REPORT.

A. Requirements for Reporting and Documenting Amounts of CSC Available, Needed, and Requested. Areas shall maintain a historical record of funds negotiated and awarded in each of the categories listed below. Circular Exhibit 2004-03-F contains a detailed sample of the database.


- (1) Direct program funds
- (2) Startup costs

-
- (3) Direct contract support funds
 - (4) Indirect cost funding
 - (5) Indirect-type cost funding
 - (6) Indirect cost rates
 - (7) Types of bases
 - (8) Pass through/exclusions
 - (9) Total IDC base (direct cost base)
 - (10) Direct CSC requirements (including the unduplicated DCSC requirement associated with sub-awards)
 - (11) Indirect CSC requirements (including the unduplicated IDC requirement associated with sub-awards)

B. Annual Report. Areas shall provide a report to the Director, OFA, by November 15 of each FY that includes those data elements identified above for the previous FY ended September 30. Before the report is submitted, the amounts included in the report shall be certified as accurate by the Area Finance Management Officer (FMO) and the Area Director or his/her designee.

- (1) A copy of the Area's data shall be provided by the Area Director or his/her designee to the awardees within that Area by November 15 as well. Any corrections or changes to the data resulting from an awardee review must be certified by the Area FMO and submitted to the Headquarters OFA through the Area Director or his/her designee by December 15 of each FY.
- (2) The Headquarters Director, OFA, shall consolidate all Area reports into the "IHS CSC Shortfall Report." In doing so, the Headquarters Director, OFA, shall, in consultation with the Director, OTP, and the Director, OTSG, provide a projection of the CSC shortfall for the current and subsequent FY.
- (3) The Headquarters Director, OFA, shall finalize the "IHS CSC Shortfall Report," obtain concurrence from the Director, OTP, and the Director, OTSG; and transmit the report to the Director, IHS, for approval by February 1 of each FY.

- (4) After the report is approved by the Director, IHS, the Headquarters Director, OFA, will provide copies to each Area Director or his/her designee, who shall then be responsible for providing a copy of the report to all awardees compacting or contracting within that Area.
8. SUPERSEDURE. Indian Health Service Circular No. 2001-05, "Contract Support Costs," dated July 6, 2001, and any policies or instructions previously issued regarding the allocation of CSC funds, are hereby superseded.
9. EFFECTIVE DATE. The policy and procedures contained in this circular are effective and applicable to awards made for FY 2005 and subsequent fiscal years upon signature of the Director, IHS.


Charles W. Grim, D.D.S., M.H.S.A.
Assistant Surgeon General
Director, Indian Health Service

**Indian Self-Determination and
Education Assistance Act**

**Public Law 93-638,
as amended**

Section 106: Contract Funding

[25 U.S.C. Sec. 450j-1]

Indian Health Service
Office of Tribal Programs

Indian Self-Determination and Education and Assistance Act
Public Law 93-638, As Amended
Section 106: [Contract Funding] [25 USC Sec. 450j-1]

SEC. 106 [25 USC 450j-1]. (a) Amount Of Funds Provided

(1) The amount of funds provided under the terms of self-determination contracts entered into pursuant to this Act shall not be less than the appropriate Secretary would have otherwise provided for the operation of the programs or portions thereof for the period covered by the contract, without regard to any organizational level within the Department of the Interior or the Department of Health and Human Services, as appropriate, at which the program, function, service, or activity or portion thereof, including supportive administrative functions that are otherwise contractible, is operated.

(2) There shall be added to the amount required by paragraph (1) contract support costs which shall consist of an amount for the reasonable costs for activities which must be carried on by a tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management, but which –

(A) normally are not carried on by the respective Secretary in his direct operation of the program; or

(B) are provided by the Secretary in support of the contracted program from resources other than those under contract.

(3)(A) The contract support costs that are eligible costs for the purposes of receiving funding under this Act shall include the costs of reimbursing each tribal contractor for reasonable and allowable costs of—

(i) direct program expenses for the operation of the Federal program that is the subject of the contract, and

(ii) any additional administrative or other expense related to the overhead incurred by the tribal contractor in connection with the operation of the Federal program, function, service, or activity pursuant to the contract, except that such funding shall not duplicate any funding provided under subsection 106(a)(1) of this section.

(B) On an annual basis, during such period as a tribe or tribal organization operates a Federal program, function, service, or activity pursuant to a contract entered into under this Act, the tribe or tribal organization shall have the option to negotiate with the Secretary the amount of funds that the tribe or tribal organization is entitled to receive under such contract pursuant to this paragraph.

(4) For each fiscal year during which a self-determination contract is in effect, any savings attributable to the operation of a Federal program, function, service, or activity under a self-determination contract by a tribe or tribal organization (including a cost reimbursement construction contract) shall—

(A) be used to provide additional services or benefits under the contract; or

(B) be expended by the tribe or tribal organization in the succeeding fiscal year, as provided in section 8.

(5) Subject to paragraph (6), during the initial year that a self-determination contract is in effect, the amount required to be paid under paragraph (2) shall include startup costs consisting of the reasonable costs that have been incurred or will be incurred on a one-time basis pursuant to the contract necessary—

(A) to plan, prepare for, and assume operation of the program, function, service, or activity that is the subject of the contract; and

(B) to ensure compliance with the terms of the contract and prudent management.

(6) Costs incurred before the initial year that a self-determination contract is in effect may not be included in the amount required to be paid under paragraph (2) if the Secretary does not receive a written notification of the nature and extent of the costs prior to the date on which such costs are incurred.

(b) Reductions And Increases In Amount Of Funds Provided.

The amount of funds required by subsection (a)—

(1) shall not be reduced to make funding available for contract monitoring or administration by the Secretary;

(2) shall not be reduced by the Secretary in subsequent years except pursuant to—

- (A) a reduction in appropriations from the previous fiscal year for the program or function to be contracted;
 - (B) a directive in the statement of the managers accompanying a conference report on an appropriation bill or continuing resolution;
 - (C) a tribal authorization;
 - (D) a change in the amount of pass-through funds needed under a contract; or
 - (E) completion of a contracted project, activity, or program;
- (3) shall not be reduced by the Secretary to pay for Federal functions, including, but not limited to, Federal pay costs, Federal employee retirement benefits, automated data processing, contract technical assistance or contract monitoring;
 - (4) shall not be reduced by the Secretary to pay for the costs of Federal personnel displaced by a self-determination contract; and
 - (5) may, at the request of the tribal organization, be increased by the Secretary if necessary to carry out this Act or as provided in section 105(c)[450j(c)].

Notwithstanding any other provision in this Act, the provision of funds under this Act is subject to the availability of appropriations and the Secretary is not required to reduce funding for programs, projects, or activities serving a tribe to make funds available to another tribe or tribal organization under this Act.

(C) Annual Reports. Not later than May 15 of each year, the secretary shall prepare and submit to congress an annual report on the implementation of this act. Such report shall include--

- (1) an accounting of the total amounts of funds provided for each program and the budget activity for direct program costs and contract support costs of tribal organizations under self-determination;
- (2) an accounting of any deficiency in funds needed to provide required contract support costs to all contractors for the fiscal year for which the report is being submitted;
- (3) the indirect cost rate and type of rate for each tribal organization that has been negotiated with the appropriate secretary;
- (4) the direct cost base and type of base from which the indirect cost rate is determined for each tribal organization;

(5) the indirect cost pool amounts and the types of costs included in the indirect cost pool; and

(6) an accounting of any deficiency in funds needed to maintain the preexisting level of services to any Indian tribes affected by contracting activities under this act, and a statement of the amount of funds needed for transitional purposes to enable contractors to convert from a Federal fiscal year accounting cycle, as authorized by section 105(d) [25 USCS @ 450j(d)].

(d) Treatment Of Shortfalls In Indirect And Cost Recoveries.

(1) Where a tribal organization's allowable indirect cost recoveries are below the level of indirect costs that the tribal organizations should have received for any given year pursuant to its approved indirect cost rate, and such shortfall is the result of lack of full indirect cost funding by any Federal, State, or other agency, such shortfall in recoveries shall not form the basis for any theoretical over-recovery or other adverse adjustment to any future years' indirect cost rate or amount for such tribal organization, nor shall any agency seek to collect such shortfall from the tribal organization.

(2) Nothing in this subsection shall be construed to authorize the Secretary to fund less than the full amount of need for indirect costs associated with a self-determination contract.

(e) Liability For Indebtedness Incurred Before Fiscal Year 1992.

Indian tribes and tribal organizations shall not be held liable for amounts of indebtedness attributable to theoretical or actual under-recoveries or theoretical over-recoveries of indirect costs, as defined in Office of Management and Budget Circular A-87, incurred for fiscal years prior to fiscal year 1992.

(f) Limitation On Remedies Relating To Costs Disallowances.

Any right of action or other remedy (other than those relating to a criminal offense) relating to any disallowance of costs shall be barred unless the Secretary has given notice of any such disallowance within three hundred and sixty-five days of receiving any required annual single agency audit report or, for any period covered by law or regulation in force prior to enactment of Chapter 75 of title 31, United States Code, any other required final audit report. Such notice shall set forth the right of appeal and hearing to the board of contract appeals pursuant to section 110 [450m-1]. For the purpose of determining the 365-day period specified in this paragraph, an audit report shall be deemed to have been received on the date of actual receipt by the Secretary, if, within 60 days after receiving the report, the Secretary does not give notice of a determination by the Secretary to reject the single-agency report as insufficient due to noncompliance with chapter 75 of title 31, United States Code, or noncompliance with any other applicable law.

Nothing in this subsection shall be deemed to enlarge the rights of the Secretary with respect to section 16 of the Indian Reorganization Act of June 18, 1934 (25 USC 476, 48 Stat. 984).

(g) Addition Of Funds Under Subsection (a) Subject To Adjustments.

Upon the approval of a self-determination contract, the Secretary shall add to the contract the full amount of funds to which the contractor is entitled under section 106(a), subject to adjustments for each subsequent year that such tribe or tribal organization administers a Federal program, function, service, or activity under such contract.

(h) Indirect Costs For Contracts For Construction Programs.

In calculating the indirect costs associated with a self-determination contract for a construction program, the Secretary shall take into consideration only those costs associated with the administration of the contract and shall not take into consideration those moneys actually passed on by the tribal organization to construction contractors and subcontractors.

(i) Annual Participation Of Indian Tribes And Tribal Organizations In The Development Of The Budget For The Indian Health Service And The Bureau Of Indian Affairs.

On an annual basis, the Secretary shall consult with, and solicit the participation of, Indian tribes and tribal organizations in the development of the budget for the Indian Health Service and the Bureau of Indian Affairs (including participation of Indian tribes and tribal organizations in formulating annual budget requests that the Secretary submits to the President for submission to Congress pursuant to section 1105 of title 31, United States Code).

(j) Use Of Funds For Matching Or Cost Participation Requirements Under Other Federal And Non-Federal Programs.

Use of funds for matching or cost participation requirements under other Federal and non-Federal programs. Notwithstanding any other provision of law, a tribal organization may use funds provided under a self-determination contract to meet matching or cost participation requirements under other Federal and non-Federal programs.

(k) Use Of Funds Without The Approval Of The Secretary.

Without intending any limitation, a tribal organization may, without the approval of the Secretary, expend funds provided under a self-determination contract for the following purposes, to the extent that the expenditure of the funds is supportive of a contracted program:

- (1) Depreciation and use allowances not otherwise specifically prohibited by law, including the depreciation of facilities owned by the tribe or tribal organization.
- (2) Publication and printing costs.
- (3) Building, realty, and facilities costs, including rental costs or mortgage expenses.

- (4) Automated data processing and similar equipment or services.
- (5) Costs for capital assets and repairs.
- (6) Management studies.
- (7) Professional services, other than services provided in connection with judicial proceedings by or against the United States.
- (8) Insurance and indemnification, including insurance covering the risk of loss of or damage to property used in connection with the contract without regard to the ownership of such property.
- (9) Costs incurred to raise funds or contributions from non-Federal sources for the purpose of furthering the goals and objectives of the self-determination contract.
- (10) Interest expenses paid on capital expenditures such as buildings, building renovation, or acquisition or fabrication of capital equipment, and interest expenses on loans necessitated due to delays by the Secretary in providing funds under a contract.
- (11) Expenses of a governing body of a tribal organization that are attributable to the management or operation of programs under this Act.
- (12) Costs associated with the management of pension funds, self-insurance funds, and other funds of the tribal organization that provide for participation by the Federal Government.

(l) Suspension Or Delay The Payment Of Funds; Limitations; Written Notice; Technical Assistance; Hearings; Burden Of Proof.

(1) The Secretary may only suspend, withhold, or delay the payment of funds for a period of 30 days beginning on the date the Secretary makes a determination under this paragraph to a tribal organization under a self-determination contract, if the Secretary determines that the tribal organization has failed to substantially carry out the contract without good cause. In any such case, the Secretary shall provide the tribal organization with reasonable advance written notice, technical assistance (subject to available resources) to assist the tribal organization, a hearing on the record not later than 10 days after the date of such determination or such later date as the tribal organization shall approve, and promptly release any funds withheld upon subsequent compliance.

(2) With respect to any hearing or appeal conducted pursuant to this subsection, the Secretary shall have the burden of proof to establish by clearly demonstrating the validity of the grounds for suspending, withholding, or delaying payment of funds.

(m) Distribution Of Program Income Earned By A Tribal Organization.

The program income earned by a tribal organization in the course of carrying out a self-determination contract—

(1) shall be used by the tribal organization to further the general purposes of the contract; and

(2) shall not be a basis for reducing the amount of funds otherwise obligated to the contract.

(n) Distribution Of Savings By Secretary To Program Beneficiaries.

To the extent that programs, functions, services, or activities carried out by tribal organizations pursuant to contracts entered into under this Act reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings that have not otherwise been included in the amount of contract funds determined under subsection (a), the Secretary shall make such savings available for the provision of additional services to program beneficiaries, either directly or through contractors, in a manner equitable to both direct and contracted programs.

(o) Rebudgeting Of Self-Determination Contract.

Notwithstanding any other provision of law (including any regulation), a tribal organization that carries out a self-determination contract may, with respect to allocations within the approved budget of the contract, rebudget to meet contract requirements, if such rebudgeting would not have an adverse effect on the performance of the contract.

§ 450j-2. Indian Health Service Funds; Permissible Uses.

That, heretofore and hereafter and notwithstanding any other provision of law, funds available to the Indian Health Service in this Act or any other act for Indian self-determination or self-governance contract or grant support costs may be expended only for costs directly attributable to contracts, grants and compacts pursuant to the Indian self-determination act and no funds appropriated by this or any other Act shall be available for any contract support costs or indirect costs associated with any contract, grant, cooperative agreement, self-governance compact, or funding agreement entered into between an Indian tribe or tribal organization and any entity other than the Indian Health Service.

Contract Support Cost Calculation

Based on a Detailed Analysis

Assumptions:

1. Tribe B has \$100,000 in Area and Headquarters Tribal shares
2. Detailed analysis indicates that \$10,000 of Tribal shares is similar in nature to costs included in Tribe B's indirect cost pool
3. Indirect cost rate = 30%
4. New budgeted Tribal wages = \$48,000
5. DCSC fringe = XX % of new wages
6. Other DCSC = \$5,000
7. No excluded items

Expanded program base \$100,000-\$10,000	\$90,000
DCSC fringe \$48,000 x XX %	\$7,200
Other DCSC	\$5,000
Sub-total direct	\$102,200
Less excluded items	\$0
Total direct base	\$102,200
X 30% indirect cost rate	\$30,660
Total direct and indirect	\$132,860

ISD Calculation

DCSC recurring	\$12,200
ICSC non-recurring	\$30,660
TOTAL CSC	\$42,860
Less Tribal shares available for CSC	\$(10,000)
TOTAL ISD request	\$32,860

Tribe B would receive \$100,000 from Tribal shares and \$32,860 would be requested from the ISD Fund.

Contract Support Cost Calculation Using the 80/20 Method

Assumptions:

1. Tribe A has \$100,000 in Area and Headquarters Tribal Shares
2. Indirect cost rate = 30%
3. New budgeted Tribal wages = \$48,000
4. DCSC fringe = XX % of new wages
5. No excluded items
6. Other DCSC = \$5,000

Expanded program base \$100,000 Tribal shares x 80%	\$80,000
DCSC fringe \$48,000 wages x XX %	\$7,200
Other DCSC	\$5,000
Sub-total direct	\$92,200
Less excluded items	\$0
Total direct	\$92,200
x 30% indirect cost rate	\$27,660
TOTAL direct and indirect	\$119,860

ISD Calculation

DCSC recurring	\$12,200
ICSC non-recurring	\$27,660
TOTAL CSC	\$39,860
Less Tribal shares available for CSC	\$(20,000)
Total ISD request	\$19,860

Tribe A would receive \$100,000 from Tribal shares and \$19,860 would be requested from the ISD Fund.

**Allocation of Indian Self-Determination Funds
Against Contract Support Costs Requirements
For New and Expanded Awards
(Bottom-Up Approach)**

The purpose of the allocation of funding needed for new and expanded Public Law (P.L.) 93-638 compacts and contracts is to provide an equitable allocation of available resources, and in doing so, to consider the overall level of Contract Support Costs (CSC) need currently being funded for each awardee eligible for Indian self-determination (ISD) funding. Allocation of ISD funding by this methodology is intended to decrease variations in overall CSC shortfall percentages among awardees by directing ISD funds to those awardees having the lowest percentage of their overall CSC need currently being funded.

ISD funds will be paid according to the following methodology:

- (1) The CSC requirement to fund a new or expanded contract will be negotiated according to the guidance provided in paragraphs 5(A)(1) – (3) of this circular. (See pages 5-13.)
- (2) The full startup and pre-award cost need negotiated with the awardee for all requests received prior to July 3 of the fiscal year (or on or before August 17 in the case of a Final Offer from a Title V compactor), will first be fully funded. If the ISD Fund is not sufficient to fully fund the total startup/pre-award costs of all ISD requests negotiated, then the amount available in the ISD Fund will be proportionately divided against the total negotiated startup and pre-award costs of all negotiated requests.
- (3) After funding startup and pre-award costs, the total amount of ongoing CSC requirements is computed from the data provided in Section 7 of this circular (**Indian Health Service (IHS) CSC Shortfall Report**), taking into account any CSC shortfall funding provided to the awardee through the allocation of Pool No. 3.
- (4) For each awardee having an ISD request for the current fiscal year that was submitted prior to July 3 (or on or before August 17 in the case of a Final Offer from a Title V compactor), the awardee's total overall CSC requirement (less startup and pre-award costs already paid) is computed including both the CSC requirements associated with the ongoing program and the ISD request.
- (5) The percentage of CSC available for each awardee is computed by dividing the amount already available to the awardee for CSC funding by the total CSC requirement computed in paragraph (4) above (that is, before the award of any direct or indirect cost funding for the ISD allocation).

- (6) A CSC percentage "floor" is computed for purposes of paying awardees with ISD requests in the current year. The CSC floor is the lowest percentage of the total CSC need to be funded for each awardee having an ISD request. The floor is set at the highest common level of CSC that can be funded given the total ISD funds available.
- (7) For all awardees with a current CSC requirement that is below the CSC floor, an ISD payment will be computed that brings the awardee to the CSC floor. This will be determined by multiplying the floor percentage by the entire CSC requirement of the awardee and subtracting the current CSC funding for the awardee.
- (8) Although the amount required by an awardee to reach the CSC floor may exceed the awardee's ISD request, the amount funded from Pool No. 1 will be limited to the awardee's ISD request.
- (9) Any shortfall remaining for an ISD awardee will be paid to the awardee pursuant to Pool No. 3, along with all other awardees having such shortfalls, to the extent funds are available for ongoing CSC shortfalls, in accordance with Circular Exhibit 2004-03-E.
- (10) If ISD funding is sufficient to fully fund all ISD requests, 100 percent of the requests will be paid, but no additional ISD funding will be provided from the ISD Fund to pay shortfalls associated with ongoing programs.

The allocation methodology for all awardees with ISD requests for new and expanded contracts can be described mathematically as:

$$ISDF_n = (ACSC_r * \%CSC_{funded}) - ACSC_a$$

Where:

$ISDF_n$ = This is the amount of *new CSC funding* to be paid to an awardee on its ISD request. This amount is limited to the total amount of the ISD request.

$ACSC_r$ = This is the awardee's total CSC *requirement* (including the total ISD requirement in the current year).

$\%CSC_{funding}$ = The highest of either:

- the existing percent of CSC *funding* (including the total ISD requirement in the current year), or

- the highest level CSC support that can be obtained for all the awardees in the ISD pool for the current year (i.e., the “floor”).

ACSC_a = The total CSC funding currently *available* in the contract or compact (inclusive of any distribution from Pool No. 3).

An example of this allocation methodology is provided below.

The following example assumes that eight Tribes have approved ISD Fund requests for the FY totaling \$7.5 million after the payment of their startup and pre-award costs, and the ISD appropriation still had a balance of \$5 million.

All but one of the awardees on the list would receive some funding for their ISD request for the fiscal year. The single Tribe receiving no funding in the group (Tribe 7) would not lose any existing funds and would remain 87 percent funded for CSC, the highest funding in the group. The remaining awardees would receive some ISD funding and after that would be funded, at 84.96 percent of their total need, which is the highest percent of need that could be reached with the appropriated dollars available, except that funding for Tribes 4 and 8 would not reach the floor since their requirements exceed the “cap” established by the amount of their ISD requests.

Computation of ISD payment for Sample Fiscal Year

Tribe	CSC Need	% need before ISD	CSC Funding	Negotiated ISD Request	Total Need After ISD Request	% need W/O ISD Payment	ISD Payment	Total CSC after ISD	ISD Payment
Tribe 1	5,000,000	98%	4,900,000	1,000,000	6,000,000	82%	85%	5,097,418	197,418
Tribe 2	0	0%	0	2,550,000	2,550,000	0%	85%	2,166,403	2,166,403
Tribe 3	300,000	96%	288,000	500,000	800,000	36%	85%	679,656	391,656
Tribe 4	4,000,000	82%	3,280,000	200,000	4,200,000	78%	83%	3,568,193	200,000
Tribe 5	11,500,000	89%	10,235,000	1,165,000	12,665,000	81%	85%	10,759,800	524,800
Tribe 6	6,000,000	86%	5,160,000	450,000	6,450,000	80%	85%	5,479,724	319,724
Tribe 7	4,000,000	97%	3,880,000	435,000	4,435,000	87%	87%	3,880,000	0
Tribe 8	5,000,000	71%	3,550,000	1,200,000	6,200,000	57%	77%	5,267,332	1,200,000
	35,800,000	n/a	31,293,000	7,500,000	43,300,000	n/a	n/a	36,898,524	5,000,000
	Break point %		84.96%						
	ISD appropriation		5,000,000						

**Allocation of Pool No. 3 Funds Against Overall
Contract Support Costs Shortfall for Ongoing Contracts
(Bottom-Up Plus Proportionate Distribution)**

The purpose of this allocation of funding needed for all Public Law (P.L.) 93-638 compacts and contracts is to provide for an equitable allocation of available appropriated resources when considering the overall level of contract support costs (CSC) need currently being funded each awardee eligible for increased CSC funding. The allocation of Pool No. 3 funding by this methodology will:

- allocate 50 percent of available CSC shortfall funds to those awardees with the greatest CSC shortfalls in order to raise the minimum level of CSC funded to the highest level possible (a bottom-up approach);
- allocate 50 percent of the available CSC shortfall funds to all P.L. 93-638 contractors and compactors that have a CSC shortfall; and
- provide relatively larger increases to those with the greatest shortfalls, thus decreasing variations in overall CSC shortfall percentages among all awardees by providing larger payments to those with the lowest percentage of their overall CSC need funded, while at the same time moving all awardees closer to 100 percent funding.

The Headquarters allocation of Pool No. 3 funds will be made according to the following methodology:

- (1) As soon as possible in the FY, but not later than March 30 the amount of the ongoing CSC requirements will be computed from the data provided in Section 7 of this Circular (**Indian Health Service CSC Shortfall Report**).
- (2) The percentage of CSC funding available for paying CSC shortfalls will be computed by dividing the total funding available for CSC shortfall by the requirement for ongoing CSC shortfall identified above.
- (3) Fifty percent of the amount available for Pool No. 3 will be allocated to those awardees with the greatest CSC percentage shortfall in such a way as to raise the minimum level of CSC funded to the maximum percentage possible (a bottom-up approach).
- (4) After making the allocation required in paragraph (3) above, the remaining 50 percent of the amount available for Pool No. 3 shall be allocated proportionately to all awardees with a CSC shortfall.

- (5) The allocation methodology for paragraph (4) above can be described mathematically as follows:

$$F_s = (ACSC_r - ACSC_a) * (\text{Pool 3} / (TCSC_r - TCSC_a))$$

Where:

F_s = New CSC shortfall funding to be received for any awardee.

$ACSC_r$ = Total ongoing CSC requirement for the awardee (after the allocation under paragraph (3) above).

$ACSC_a$ = Total CSC funding available for the awardee (after the allocation under paragraph (3) above).

$TCSC_r$ = Total ongoing CSC requirement for all awardees (after the allocation under paragraph (3) above).

$TCSC_a$ = Total CSC funding available for all awardees (after the allocation under paragraph (3) above).

An example of this allocation methodology follows. The example assumes that eight awardees have approved total CSC requirements ($TCSC_r$) for the fiscal year totaling \$41 million. The total CSC shortfall ($TCSC_s$) for the eight awardees is \$9,459,500, and the total CSC funding available ($TCSC_a$) for CSC shortfalls under Pool No. 3 is \$5 million.

Bottom-Up Distribution of First

Tribe	Total CSC Need	Available CSC Funding	Percent of CSC Need Funded	Minimum percent of CSC Fundable	Bottom-Up Distribution of First 50 percent	New Total CSC Funded	New percent of CSC Need Funded
Tribe 1	\$5,000,000	\$4,900,000	98.00%	80.14%	-	\$4,900,000	98.00%
Tribe 2	\$1,000,000	\$250,000	25.00%	80.14%	\$551,436	\$801,436	80.14%
Tribe 3	\$500,000	\$288,000	57.60%	80.14%	\$112,718	\$400,718	80.14%
Tribe 4	\$4,000,000	\$3,280,000	82.00%	80.14%	-	\$3,280,000	82.00%
Tribe 5	\$12,500,000	\$10,232,500	81.86%	80.14%	-	\$10,232,500	81.86%
Tribe 6	\$7,000,000	\$5,160,000	73.71%	80.14%	\$450,051	\$5,610,051	80.14%
Tribe 7	\$5,000,000	\$3,880,000	77.60%	80.14%	\$127,180	\$4,007,180	80.14%
Tribe 8	\$6,000,000	\$3,550,000	59.17%	80.14%	\$1,258,615	\$4,808,615	80.14%
	\$41,000,000	\$31,540,500	76.93%	80.14%	\$2,500,000	\$34,040,500	83.03%

Break Point % 80.14%
Available for Bottom-Up Allocation \$2,500,000

Proportionate Distribution of Remaining

Tribe	Total CSC Need	Available CSC Funding (After Bottom-Up)	Percent of CSC Need Funded	CSC Shortfall (Unfunded Need)	Proportionate Distribution of Remaining 50 Percent	Final Total CSC Funded	Final Percent of CSC Need Funded
Tribe 1	\$5,000,000	\$4,900,000	98.00%	\$100,000	\$35,922	\$4,935,922	98.72%
Tribe 2	\$1,000,000	\$801,436	80.14%	\$198,564	\$71,328	\$872,764	87.28%
Tribe 3	\$500,000	\$400,718	80.14%	\$99,282	\$35,664	\$436,382	87.28%
Tribe 4	\$4,000,000	\$3,280,000	82.00%	\$720,000	\$258,639	\$3,538,639	88.47%
Tribe 5	\$12,500,000	\$10,232,500	81.86%	\$2,267,500	\$814,534	\$11,047,034	88.38%
Tribe 6	\$7,000,000	\$5,610,051	80.14%	\$1,389,949	\$499,299	\$6,109,350	87.28%
Tribe 7	\$5,000,000	\$4,007,180	80.14%	\$992,821	\$356,642	\$4,363,822	87.28%
Tribe 8	\$6,000,000	\$4,808,615	80.14%	\$1,191,385	\$427,971	\$5,236,586	87.28%
	\$41,000,000	\$34,040,500	83.03%	\$6,959,500	\$2,500,000	\$36,540,500	89.12%

% of Shortfall to be funded 35.92%
Available for Proportionate Allocation \$2,500,000

All of the awardees on the list would receive some funding for their CSC shortfalls for the FY. Only those awardees with less than 80.14 percent of their CSC need funded would receive a payment from the distribution of the first 50 percent. All awardees would receive funds in proportion to the existing CSC shortfall of the remaining 50 percent of available Pool No. 3 funds. After the shortfall allocation, the range of funded shortfall for all awardees in the group narrows to between 87 percent and 99 percent.

FISCAL YEAR 2003 CONTRACT SUPPORT COSTS SHORTFALL REPORT

**PLEASE CONTACT THE OFFICE OF TRIBAL PROGRAMS ON (301)-443-1104
FOR ELECTRONIC COPIES OF THE "FISCAL YEAR 2003 CSC SHORTFALL REPORT"**

“FISCAL YEAR (FY) 2004 INDIAN SELF-DETERMINATION (ISD) FUNDING REQUEST”

**PLEASE CONTACT THE OFFICE OF TRIBAL PROGRAMS ON (301) 443-1104
FOR ELECTRONIC COPIES OF “FY 2004 ISD FUNDING REQUEST”**

Standards for the Review and Approval
of
Contract Support Costs
in the
Indian Health Service

PROPOSAL PREPARATION AND COST ANALYSIS OF INDIAN SELF-DETERMINATION FUNDING REQUESTS GUIDELINES

1. Introduction. The Indian Health Service (IHS) has developed its contract support costs (CSC) policy with the active participation of Indian Tribes and interested Tribal representatives. The IHS has always sought to maintain an openness concerning CSC issues and has consistently provided information, guidance, and technical assistance to Tribes in their development of CSC proposals. The following documents are intended to clarify CSC.

Tribes have requested that the IHS develop standards for CSC to be used in the review and approval of Indian Self-Determination (ISD) Fund requests. The Office of Management and Budget (OMB) has also supported the development of CSC standards as a means of ensuring consistency in the review of Tribal ISD requests. In order to help Tribes understand the Agency's rationale for approving or disapproving Tribal CSC requests, it has become necessary to develop a set of consistent standards. In fiscal year (FY) 2001, the IHS initiated the process of developing standards for CSC by creating a joint Tribal/Federal workgroup as part of the ongoing IHS/Tribal CSC Workgroup's charge. Consensus with Tribal representatives has been achieved on most items of cost. On issues that have not been resolved, the Federal position is incorporated into the document and referenced.

Adoption and dissemination of these standards are prerequisites for any delegation of ISD negotiation responsibilities to IHS Area Offices. Area negotiators will also require some training in the application of these standards to ensure broad acceptance and consistent application of the standards.

The Office of Tribal Programs has incorporated the development of these standards into a Government Performance and Result Act (GPRA) performance element aimed at supporting the efficient, effective, and equitable transfer of health-program management to Tribes who submit proposals or letters of intent to contract or compact IHS programs under the Indian Self-Determination and Education Assistance Act (ISDEAA). This is being provided in an effort to achieve consistency in the review, negotiation, and approval of Tribal CSC.

2. Statutory Background. Public Law (P.L.) 93-638, "Indian Self-Determination and Education Assistance Act," Sections 106(a)(1), (a)(2), (a)(3), (a)(5), and (a)(6), as amended, provide for funding of contract and compact awards for program costs and CSC.

- A. Section 106 (a)(1) states that the amount of funding available to a self-determination contract shall not be less than the Secretary would have provided for the operation of the program.
- B. Section 106 (a)(2) requires the Secretary to add CSC to the amount of the program funds the Secretary provides. Section 106 (a)(2) states that CSC is the cost of activities either not carried out by the Secretary or carried out from resources other than those available under contract.
- C. Sections 106(a)(2) and (a)(3) define CSC that are eligible for reimbursement. These costs include the following:
 - (1) Reasonable costs for activities that must be carried out by the Indian Tribe or Tribal organization as a contractor/compactor to ensure compliance with the terms of the contract and prudent management.
 - (2) Reasonable, necessary, and allowable costs of the contractor/compactor that are allocable to the contract/compact based on applicable Federal cost principles.
 - (3) Costs that are not provided for under the allocation of program funds available for the contract/compact as defined in P.L. 93-638, as amended, Section 106(a)(1).
 - (4) Costs that are treated as either direct or indirect by the contractor/compactor based on applicable cost principles and the contractor/compactor's cost-allocation policy.
- D. Direct CSC. Direct CSC (DCSC) are both non-recurring and recurring.
 - (1) Non-recurring DCSC are those costs generally required for the program to begin operations. These costs are also referred to as startup or pre-award costs. They are not intended to be an additional category. Costs for these activities are not contained in either the indirect-cost pool or the amount computed pursuant to Section 106(a)(1).
 - (2) Recurring DCSC are those costs which are associated directly with the operation of the program.

E. Indirect-Costs. Indirect-costs are not funded as direct program costs but rather are incorporated in the contractor/compactor's indirect-cost reimbursement plan as negotiated annually with the cognizant Federal agency. Indirect-costs (IDC) are:

- (1) incurred for a common or joint purpose benefiting more than one contract objective, or
- (2) not readily assignable to the contract/compact objectives specifically benefited without effort disproportionate to the results achieved.

F. Programs Without Negotiated IDC Rates. For programs without negotiated IDC rates, indirect type costs consist of those that are normally found in IDC pools of contractors with rates but are negotiated directly between the contractor/compactor and the IHS. Generally, these amounts are negotiated as a lump-sum amount. Both indirect and indirect type costs are awarded as non-recurring, as indirect amounts must be negotiated on an annual basis. Indirect-costs generally fall into one of the following three categories:

- (1) management and administration,
- (2) facilities and equipment, and
- (3) general services and expenses.

3. Office of Management and Budget Circular A-87. Office of Management and Budget (OMB) Circular A-87 contains cost principles for State, local, and Tribal governments. Most Tribes and Tribal organizations have adopted OMB Circular A-87 as their applicable cost principles. Circular A-87 is useful as it defines the allowability of costs under Federal awards by applying the following three criteria to costs: (1) allowable, (2) reasonable, and (3) allocable. These criteria are incorporated herein and should be considered in terms of the allowability of CSC under IHS contracts and compacts. The following is copied from OMB Circular A-87, Attachment A:

A. Factors affecting allowability of costs. To be allowable under Federal awards, costs must meet the following general criteria:

- (1) Be necessary and reasonable for proper and efficient performance and administration of Federal awards.
- (2) Be allocable to Federal awards under the provisions of this circular.

- (3) Be authorized or not prohibited under State or local laws or regulations.
- (4) Conform to any limitations or exclusions set forth in these principles (OMB Circular A-87), Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.
- (5) Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.
- (6) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect-cost.
- (7) Except as otherwise provided for in this circular (OMB Circular A-87), be determined in accordance with generally accepted accounting principles.
- (8) Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.
- (9) Be net of all applicable credits.
- (10) Be adequately documented.

B. Reasonable Costs. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally-funded. In determining reasonableness of a given cost, consideration shall be given to the following:

- (1) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award.

- (2) The restraints or requirements imposed by such factors as: sound business practices; arms-length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award.
- (3) Market prices for comparable goods or services.
- (4) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.
- (5) Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.

C. Allocable Costs. A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with the relative benefits received.

- (1) All activities which benefit from the governmental unit's indirect-cost, including unallowable activities and services donated to the governmental unit by third parties, will receive an appropriate allocation of indirect-costs.
- (2) Any cost allocable to a particular Federal award or cost objective under the principles provided for in this OMB Circular A-87 may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons. However, this prohibition would not preclude governmental units from shifting costs that are allowable under two or more awards in accordance with existing program agreements.
- (3) Where an accumulation of indirect-costs will ultimately result in charges to a Federal award, a cost allocation plan will be required as described in Attachments C, D, and E (of OMB Circular A-87).

4. Conclusion. In an effort to make CSC more understandable, the IHS is providing the following guidelines (standards) for CSC proposal development. These are the standards that the IHS will use in reviewing Tribal CSC requests. The guidelines are not intended to be read as regulations dictating allowable Tribal CSC. The guidelines should be interpreted in such a way as to be consistent with the ISDEAA, its implementing regulations, and IHS CSC policy.

**PROPOSAL PREPARATION AND COST ANALYSIS OF INDIAN
SELF-TERMINATION FUND REQUESTS FOR PRE-AWARD AND STARTUP
SELF-DETERMINATION/CONTRACT SUPPORT COSTS GUIDELINES**

Pre-award and Startup Contract Support Costs: Both pre-award and startup costs are one-time costs incurred to plan, prepare for, and assume the operation of a program, function, service, and activity (PFSA). Both categories are for similar types of costs, except pre-award costs are costs incurred prior to the award date of the contract, and startup costs are costs that are incurred after the award date but during the initial year of operation. Neither type of cost is considered to be a recurring contract support cost (CSC) in the ongoing operation of the program.

Startup and pre-award costs usually represent a total of between 20 percent to 40 percent of the entire negotiated Indian Self-Determination (ISD) funding requirement for Tribes and Tribal organizations in the first year of program operation. These costs are usually higher for new organizations or Tribes assuming Federal programs for the first time. Because these costs are non-recurring, however, they represent a very small portion of any one year's total CSC appropriation. In addition, startup and pre-award costs can vary significantly from program to program depending on the existing capacity of the awardee and the size and scope of the proposed award.

Pre-award and startup costs must be reasonable and necessary and pay for activities that are not provided in the amount computed pursuant to Section 106(a)(1) or in the recurring direct or indirect CSC.

Section 106(a)(5) of the ISDEAA states: "...during the initial year that a self-determination contract is in effect, the amount required to be paid under paragraph (2) [Section 106(a)(2)] shall include startup costs consisting of the reasonable costs that have been incurred or will be incurred on a one-time basis pursuant to the contract necessary (A) to plan, prepare for, and assume operation of the program, function, service, or activity that is the subject of the contract; and (B) to ensure compliance with the terms of the contract and prudent management."

Startup costs are costs that occur after the award of the contract.

Section 106(a)(6) of the ISDEAA states: "Costs incurred before the initial year that a self-determination contract is in effect may not be included in the amount required to be paid under paragraph (2) [Section 106(a)(2)] if the Secretary does not receive a written notification of the nature and extent of the costs prior to the date on which such costs are incurred."

Pre-award costs are costs that occur prior to the program start date covered by the award of the contract.

The Agency has determined that actual pre-award costs and estimated startup costs are not due until the contract is actually awarded. If funds are not available to pay these costs in the year the contract is awarded, the Agency has determined, based on appropriation language, that they are statutorily prohibited from paying them in future years (i.e., the CSC requirement for pre-award and startup costs cannot carry over from a prior fiscal year). If the awardee is not paid in the year the contract is awarded, the costs are never paid.

Pre-award costs are normally computed on the basis of actual expended costs (i.e., they are reimbursed); startup costs are awarded on the basis of a budget for costs submitted and negotiated with the Agency.

The Agency only becomes liable to reimburse the pre-award costs when the P.L. 93-638 contract or compact for the contemplated PFSA is actually awarded. There is a risk to the Tribe that costs will be incurred in preparing for the contract that may not be reimbursed as pre-award costs if any of the following apply:

- (1) The Tribe fails to notify the Agency in writing of the nature and extent of the costs before they are incurred.
- (2) Congress fails to appropriate sufficient (or any) CSC to fully pay the costs, or Congress somehow prohibits the Agency from paying the costs from the CSC appropriation.
- (3) The Tribe expends funds for activities or items that are not included in the description of the "nature" of the costs in the pre-award letter.
- (4) The Tribe cannot provide documentation of the costs.
- (5) The requested costs are found not to be reasonable and necessary by the Agency after they are incurred and submitted for reimbursement.
- (6) The P.L. 93-638 contract proposal for which the costs are incurred is not awarded.
- (7) The costs being requested have been provided to a Tribe in the assumption of a service unit or other program 106(a)(1) amount or have been paid under a Tribal management grant or other existing IHS grant or contract.

Tribes can reduce the risk associated with incurring pre-award costs by ensuring that a pre-award letter is received by the Agency before the costs are incurred, maintaining close communication with the Area Office regarding the reasonableness and nature of the costs being incurred, ensuring the estimated amount provided in the pre-award letter is sufficient to cover all the costs, and being aware of the total amount of CSC appropriated by Congress and the likely total amount of the requests expected to be received by the IHS during the year. Tribes should ensure that the description of the nature of the activities to be performed is inclusive enough to cover all potential activities needed to begin to operate the PFSA.

Two sample pre-award letters are attached. These can be used as templates to assist Tribes in preparing their own pre-award letters. A pre-award letter (see sample letter No. 1) should address the unique needs of each Tribe as it contemplates what it will require in the planning, preparation, and assumption of the contract. Tribes may provide additional letters if circumstances change or additional costs are anticipated (see sample letter No. 2).

The development of a proposal for pre-award and startup costs, and the evaluation guidelines for each type of cost are outlined on the following pages. The guidelines are for the development and evaluation of a proposal under normal circumstances. Some proposals will have unique circumstances that do not fit the criteria in these guidelines. In such cases, one must review the statutory intent and the IHS CSC circular to determine if other costs will be required. In these circumstances, however, the awardee should expect to be requested to provide thorough documentation of the amounts and justification for the amounts to reviewers at all levels of the Agency.

LINE ITEMS	GENERAL GUIDELINES Examples of Allowable Costs	DOCUMENTATION	STANDARDS FOR REVIEW AND DUPLICATION
<p>PRE-AWARD COSTS Section 106(a)(6) letter</p>	<p>Pursuant to Section 106(a)(6) of the Indian Self-Determination Education and Assistance Act (ISDEAA), costs incurred before the initial year that a self-determination contract or compact is in effect are allowable only when the Secretary has been provided written notification of the nature and extent of the costs prior to the date on which such costs are incurred.</p> <p>Tribes are encouraged to estimate their costs accurately. Costs will not be disallowed in the event these costs otherwise found to be reasonable and necessary exceed the initial estimate.</p>	<p>For all pre-award costs, the Tribe or Tribal organization must provide to the Area Office written notification of the general nature of the types of costs the Tribe expects to incur and an estimate of such costs before they are incurred. Actual costs claimed in excess of the amount provided in the pre-award letter should be allowable to the extent they are found to be reasonable and necessary for the operation of the programs, functions, services, or activities (PFSA) to be awarded.</p> <p>When claiming costs as a part of an ISD request, the Tribe or Tribal organization must provide documentation that indicates the date the liability was incurred for any goods or services up to the date of negotiations and an estimate of the costs to be incurred up to the date of the proposed award of the contract. The Tribe must show that the cost was reasonable and necessary to plan, prepare for, or assume operation of the program.</p>	<p>The Area Office, as the Agency representative, will review each pre-award letter from a Tribe or Tribal organization and will acknowledge receipt of each such request within 10 days. Costs claimed under an ISD request will only be allowable to the extent such a notification is received and the costs actually claimed meet the statutory requirements of CSC at Section 106(a)(2), (3), (5), and (6) of the Act.</p> <p>****See SAMPLE pre-award letters, copies attached.****</p>
<p>PRE-AWARD COSTS (No Award)</p>	<p>Pre-award costs are only awardable when an award of a PFSA is made.</p>	<p>Same a pre-award costs above.</p>	<p>No pre-award costs are awarded in the event the Tribe decides not to enter into a contract or compact for any of the PFSAs proposed.</p>

LINE ITEMS	GENERAL GUIDELINES / Examples of Allowable Costs	DOCUMENTATION	STANDARDS FOR REVIEW AND DUPLICATION
PRE-AWARD COSTS - (Partial Award)	Pre-award costs are only awardable when an award of a PFSA is made. Costs directly attributable to a specific PFSA are allowable only when the specific PFSA is actually awarded.	Same as pre-award costs above.	Costs directly attributable to a specific PSFA are allowable only when the specific PFSA is actually awarded. ¹
STARTUP COSTS	Startup costs are authorized pursuant to Section 106(a)(5) of the ISDEAA. They are costs that have been or will be incurred within the first year that the contract/compact is in effect and are necessary to plan, prepare for, or assume operation of the contract/compact. Startup costs must be reasonable and necessary, and pay for non-recurring activities that normally are not carried on by the Secretary in the direct operation of the program or are provided by the Secretary in the support of the contracted program from resources other than those under contract. In addition, to the extent that any of these startup costs are found to have been provided in the amount computed pursuant to 106(a)(1) or in the DCSC or indirect-cost amounts, these duplicated amounts will not be allowable. Startup costs are generally provided to support the Tribe's administrative unit, which in turn supports the program to be contracted or compacted. Startup costs cannot be used for costs that are otherwise provided for within program funding or for expanding program activities.	Varies based on the type of cost claimed.	Review to determine that the cost is allowable pursuant to Section 106(a)(5) of the ISDEAA and not duplicative of DCSC or indirect-cost amounts or of costs provided in the 106(a)(1) amount. Startup costs are not to be used for costs that are otherwise provided for within program funding or for expanding program activities. Startup costs are not to be used to provide program equipment or other items of cost that are normally funded with 106(a)(1) funds. ²

1. In cases where a partial contract is awarded, both Tribes and the Agency agree that pre-award costs are to be paid if any PFSA is contracted for, unless it can be demonstrated that certain pre-award costs benefit only the PFSA's not contracted.
2. Some Tribes believe that the ISDEAA does not preclude the purchase of program equipment or supplies under startup or pre-award costs.

<u>LINE ITEMS</u>	<u>GENERAL GUIDELINES Examples of Allowable Costs</u>	<u>DOCUMENTATION</u>	<u>STANDARDS FOR REVIEW AND DUPLICATION</u>
<p><u>PERSONNEL COSTS</u></p> <p>Pre-award costs are allowable for personnel to plan, prepare for, and assume operation of the program.</p> <p>Startup costs for personnel are allowable for Tribal employees in the first year of operations if the employee is assigned to activities necessary to begin the PFSAs under contract.</p>	<p>Generally pre-award costs are allowable for these activities whether carried out by consultants or Tribal employees, such as a Tribal administrator or planner (to the extent not already paid for with indirect-costs) who assists with the planning and negotiations for program assumption.</p> <p>These costs are allowable for an administrator, planner, or other Tribal employee who is assigned to develop or improve management systems.</p>	<p>For all pre-award costs, the Tribe must provide to the Area Office written notification of the nature and extent of the costs prior to the time the cost is incurred.</p> <p>The Tribe must also provide documentation that the costs were incurred and the date when they were incurred, or careful estimates of the costs to be incurred when they have not yet been incurred. Tribes should keep careful financial records of these costs. Types of data needed for review are: dates of service, hourly rate, estimated or actual number of hours billed, and purpose of the service.</p> <p>Tribes must provide a budget and budget justification or a description of costs that are reasonable and necessary to plan, prepare for, and assume operation of the contract.</p>	<p>All costs must be reasonable and necessary to plan for or startup the proposed contract. All pre-award costs must be incurred after notification and before the contract starts.</p> <p>Costs may be considered duplicative if the costs being requested have been provided to a Tribe in the assumption of a service unit or other program 106(a)(1) amount or paid under a Tribal Management Grant or other existing IHS grant or contract.</p> <p>Costs must be reasonable and necessary to assume operation of the PSFAs and must be incurred after the award date but during the initial year of the contract (i.e., all startup costs must be planned to be incurred in the first 12 months of operation).</p>

<u>LINE ITEMS</u>	<u>GENERAL GUIDELINES</u> <u>Examples of Allowable</u> <u>Costs</u>	<u>DOCUMENTATION</u>	<u>STANDARDS FOR</u> <u>REVIEW AND</u> <u>DUPLICATION</u>
<p><u>SUPPLIES</u></p> <p>Pre-award supply costs are allowable.</p>	<p>This means supplies needed to support the activities necessary to plan, prepare for, and assume operation of the program.</p> <p>Cost of supplies necessary to develop inventories of medical supplies, drugs, and other program supplies have not generally been allowed.³</p>	<p>For all pre-award costs, the Tribe must provide to the Area Office written notification of the nature and extent of the costs prior to the time the cost is incurred.</p> <p>The Tribe must also provide documentation that the costs were incurred and the date when they were incurred, or careful estimates of the costs to be incurred when they have not yet been incurred. Tribes should keep careful financial records of these costs. Types of data needed for review are: dates of service, hourly rate, estimated or actual number of hours billed, and purpose of consultation.</p>	<p>All costs must be reasonable and necessary to plan, prepare for, or assume the proposed contract. All pre-award cost must be incurred after notification and before the contract starts. All startup costs must be planned to be incurred in the first 12 months of operation.</p> <p>Costs may be considered duplicative if the costs being requested have been provided to the Tribe in the assumption of a service unit or other program 106(a)(1) amount or paid under a Tribal Management Grant or other existing IHS grant or contract.</p>
<p>Startup costs for supplies are allowable to support the startup activities only</p>	<p>The costs of software or supplies necessary to support the implementation of the systems developed with startup resources are allowable.</p> <p>Cost of supplies necessary to develop inventories of medical supplies, drugs and other program supplies have generally not been allowed.³</p>	<p>Tribes must provide a budget and budget justification or a description of costs that are reasonable and necessary to plan, prepare for, and assume operation of the contract.</p>	<p>The IHS has considered all startup requests for program supplies to be a duplication of the 106(a)(1) amount.⁴</p>

3. Some Tribal representatives feel that the cost of medical program supplies should be allowed if the contract divides a program, the inventory is not transferred with the program, and the Tribe must build up an inventory of program supplies (or drugs) to operate the program.

<u>LINE ITEMS</u>	<u>GENERAL GUIDELINES</u> <u>Examples of Allowable Costs</u>	<u>DOCUMENTATION</u>	<u>STANDARDS FOR REVIEW AND DUPLICATION</u>
<p><u>TRAVEL</u></p> <p>Pre-award travel costs are allowable for Tribal board members, Tribal personnel, and consultants to plan, prepare for, and assume operation of the program.</p> <p>Startup travel costs for personnel are allowable.</p>	<p>This includes travel costs for staff, board members, and consultants to attend meetings and negotiations in preparation for program assumption. Travel costs for education and orientation of new or existing Tribal staff may be allowable.</p> <p>Startup travel costs may be allowable for education, training, and developmental activities for either board members or Tribal employees.</p>	<p>For all pre-award and startup costs, the Tribe must provide documentation of the expenditures including the name or position of the traveler, the purpose of the travel, and the costs and duration of the trip.</p> <p>Tribes must provide a budget and budget justification or a description of costs that are reasonable and necessary to plan, prepare for, and assume operation of the contract.</p>	<p>All costs must be reasonable and necessary to plan for or to startup the proposed contract. All pre-award cost must be incurred after notification and before the contract starts.</p> <p>All startup costs must be planned to be incurred in the initial 12 months of operation.</p> <p>Costs may be considered duplicative if the costs being requested have been provided to the Tribe in the assumption of a service unit or other program 106(a)(1) amount or paid under a Tribal Management Grant or other existing IHS grant or contract.</p>

<u>LINE ITEMS</u>	<u>GENERAL GUIDELINES</u> <u>Examples of Allowable Costs</u>	<u>DOCUMENTATION</u>	<u>STANDARDS FOR REVIEW AND DUPLICATION</u>
<p><u>EQUIPMENT</u></p> <p>Pre-award - Costs of equipment to support the administrative unit of the Tribe are allowable as pre-award costs.</p> <p>Startup - Costs of equipment to support the administrative unit of the Tribe are allowable as startup costs.</p>	<p>Costs of equipment to support the administrative unit of the Tribe are allowable as a pre-award costs. The costs of administrative equipment to allow the Tribe to plan, prepare for, and assume operation of the program are allowable.</p> <p>The cost of program equipment needed to carry out the contract/compact have generally not been allowed.⁴</p> <p>Costs must meet the CSC definition and are for use by the Tribe's administrative unit.</p> <p>Costs of equipment to support the administrative unit of the Tribe are allowable as startup costs. The costs of administrative equipment necessary to support the implementation of the systems developed with startup resources are allowable.</p> <p>Cost of program equipment needed to carry out the contract/compact have generally not been allowed.⁴ Costs must meet the CSC definition and be for the use of the administrative unit of the Tribe.</p>	<p>Costs incurred prior to the award of the contract/compact must be covered by the nature and extent references in the Tribe's pre-award letter.</p> <p>Tribe should provide documentation showing what was purchased, when it was purchased, the total cost, the end user of the equipment, and how it was needed to plan, prepare for, and assume operation of the program.</p> <p>Startup costs are a onetime non-recurring cost necessary to begin operation of the program. Startup costs are to be incurred during the initial 12 months of operation of the program.</p> <p>Tribes must provide a budget and budget justification or a description of costs that are reasonable and necessary to plan, prepare for, and assume operation of the contract. This should include an identification of the equipment's end user.</p>	<p>All costs must be reasonable and necessary to plan for or startup the proposed contract. All pre-award costs must be incurred after notification and before the contract starts.</p> <p>Program equipment is considered duplicative because costs being requested have been passed on to the Tribe in the assumption of a service unit or other program 106(a)(1) amount, or are covered in the indirect-cost pool.⁴</p> <p>All costs must be reasonable and necessary to start up the proposed contract. All startup costs must be incurred during the initial year of the program.</p> <p>Costs supporting the central administrative unit of the Tribe are allowable. Program equipment is considered duplicative because costs being requested have been passed on to a Tribe in the assumption of a service unit or other program 106(a)(1) amount.⁴</p>

4. Some Tribal representatives feel that the cost of program-related equipment should be allowed if the contract divides a program, the equipment is not transferred with the program, and the Tribe must have the equipment to operate the program. The IHS has declined requests for these costs.

<u>LINE ITEMS</u>	<u>GENERAL GUIDELINES</u> <u>Examples of Allowable Costs</u>	<u>DOCUMENTATION</u>	<u>STANDARDS FOR REVIEW AND DUPLICATION</u>
<p><u>CONSULTANTS</u></p> <p>Pre-award costs are allowable for consultants needed to plan, prepare for, and assume operation of the program.</p> <p>Startup costs are allowable when needed to ensure compliance with the terms of the contract.</p>	<p>Consultant activities are allowable for proposal planning, preparation, contract, compact and AFA development, negotiations, board training, management systems development, etc.</p> <p>Startup activities are allowable for board training, management systems development, etc.</p>	<p>Documentation of actual costs for consultants, including the service to be performed, hourly rate, number of hours, and date cost was incurred, are required for all pre-award costs.</p> <p>Budget and budget justification are required in the ISD/CSC proposal, including estimates or bids from consultants for the work to be performed. Estimates should include the rate and time involved for each task to be performed.</p>	<p>All costs must be reasonable and necessary to plan for or to start up the proposed contract. All pre-award costs must be incurred after notification and before the contract starts. All startup costs must be planned to be incurred in the first 12 months of operation.</p> <p>Costs may be considered duplicative if costs being requested have been provided to a Tribe in the assumption of a service unit or other program 106(a)(1) amount or paid under a Tribal Management Grant or other existing IHS grant or contract.</p>

<u>LINE ITEMS</u>	<u>GENERAL GUIDELINES</u> <u>Examples of Allowable Costs</u>	<u>DOCUMENTATION</u>	<u>STANDARDS FOR REVIEW AND DUPLICATION</u>
<p><u>OTHER</u></p> <p>Pre-award costs are allowable for other types of costs if those costs are necessary to support the activities needed to assume operation of the program.</p> <p>Startup costs are allowable when needed to plan for and implement activities necessary to assume the contract.</p>	<p>Tribes may incur other costs necessary to support the activities needed to plan for and to start up the contract. These costs should be documented with a detailed description of the type, quantity, and unit cost of the items and the justification for the costs.</p>	<p>For all pre-award costs, documentation is required in support of actual costs. The date the cost was incurred is required for all pre-award costs.</p> <p>Budget and budget justification is required in the ISD/CSC proposal including estimates of the reasonable and necessary costs needed to support the startup activities.</p>	<p>All costs must be reasonable and necessary to plan for or to start up the proposed contract and not duplicated in the 106(a)(1) amount or in the IDC or DCSC-funded amount.</p> <p>Costs may be considered duplicative if costs being requested have been provided to a Tribe in the assumption of a service unit or other program 106(a)(1) amount or paid under a Tribal Management Grant or other existing IHS grant or contract.</p>

PROPOSAL PREPARATION AND COST ANALYSIS OF ISD REQUESTS FOR DIRECT CONTRACT SUPPORT COST GUIDELINES

Direct contract support costs (DCSC) are one of three types of contract support costs (CSC). They pay for ongoing activities that are not contained in either the amount computed pursuant to Section 106(a)(1) or the indirect-cost (IDC) pool or an "indirect type" cost budget. DCSC amounts are awarded on a recurring basis based on the initial ISD proposal. The IHS provides inflationary increases on DCSC based on the OMB non-medical cost inflation rate, to the extent appropriations are available. Other than for inflationary costs, a change in DCSC requirements entails a renegotiation of the amounts required with the Area Office. This may be requested on an annual basis if the awardee feels circumstances warrant renegotiating these costs.

The determination of DCSC requires a proposal from the awardee. Awardees who do not submit a proposal that includes DCSC will not establish a DCSC requirement and will not be funded for these costs. A DCSC proposal requires adequate detail and documentation for the IHS to determine if the costs requested are allowable as DCSC and are not duplicated in the Section 106(a)(1) amount or in the IDC amounts requested. For a DCSC proposal, this normally includes the salary of the Federal employees transferred and the Federal fringe benefits paid on that salary by category. In addition the awardee must provide the personnel budget of the tribally operated program and the detailed fringe benefit costs of the awardee's benefit package. The awardee must also provide justification for costs in other budget categories for which DCSC is requested.

To compute the DCSC requirement, the awardee and the IHS must negotiate the total cost to the awardee of the activities to be supported with CSC (see Section 5(2)(b) of IHS Circular 2001-05). After this requirement is determined, the Agency will deduct any funds that may have been provided to the awardee in the Section 106(a)(1) amount for this activity to avoid duplication of costs. The amount provided in support of these functions included in the Section 106(a)(1) amount is determined by the past expenditures of the Agency for the activities included in the DCSC that are provided in support of the PFSA's to be transferred. In cases where the amount of the expenditure of the prior year does not represent the amount the Secretary would have expended due to one-time distortions in expenditures, a multi-year average of past expenditures may be used. In circumstances where the Agency has never operated the PFSA, such as new programs or new appropriations for expanded programs, the Agency will compute the amount the Secretary would have provided for the DCSC activities from a "profile" developed from other, similar Agency programs. To prepare the DCSC proposal, the awardee should request the amounts the Agency has provided in support of the PFSA's to be transferred. In cases where the PFSA has not been operated by the Agency, the awardee should request the cost "profile" from the Agency to determine what the Section 106(a)(1) amount would have been.

The majority of DCSC is usually composed of certain fringe costs on Federal employees that are not received in the Section 106(a)(1) amount. These costs continue to be paid by the Federal Government on IPA/MOA employees, and DCSC for these employees are not due until the employee or position transfers to direct Tribal hire. Awardees should carefully maintain historical data on IPA/MOA transfers. These positions become eligible for DCSC as they become vacant and are not expected to be replaced with another IPA/MOA. The awardee must submit an ISD/CSC request or renegotiate the DCSC to ensure these costs are included in the DCSC requirement.

The Agency has determined that to be eligible for DCSC, the Federal positions to be transferred must be supported from directly appropriated dollars in the 106(a)(1) amount. Fringe benefit costs not included in the 106(a)(1) amount for Federal employees supported with Medicaid and Medicare or other third-party resources have not been approved for DCSC when they transfer to Tribal hire.⁵

The Agency is required to determine that amounts requested in the DCSC proposal are not duplicated in either the Section 106(a)(1) amount or in the indirect contract support amount. Agency review will include a careful analysis of this potential duplication and the deduction of any duplicated amounts from the DCSC requirement approved for the awardee. In addition, the costs must be for activities that must be carried out by the Tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management, but which normally are not carried out by the Agency in the direct operation of the program.

On a national basis, the total DCSC requirement averages about 6 percent of the total Section 106(a)(1) amount under contract. DCSC represents about 21 percent of the entire negotiated CSC requirement for Tribes and Tribal organizations. DCSC can vary significantly depending on the type of service and service delivery modality selected by the Tribe. In general, DCSC is composed mostly of costs computed on the salaries of the directly hired Tribal employees. Therefore, contracts that do not have large personnel components (like contract health services) or contracts operated primarily with IPA/MOA employees normally require smaller amounts of DCSC when calculated as a percentage of the total award.

Prior to IHS Circular No. 2000-01, "Contract Support Costs," dated January 20, 2000, the IHS used an estimate of 15 percent of all salaries to compute the DCSC due on ISD requests. The recent IHS circular requires more accurate Tribal budget and cost data from the Agency to compute the ISD due on the PFSAs to be transferred. Fringe costs continue to make up the majority of the approved DCSC requirement.

5. Tribal Representatives disagree with the Agency's interpretation of the statute on this point. Fringe benefit costs on Federal employees not included in the Section 106(a)(1) amount are obviously paid with Federal dollars regardless of the source of funds for the employee's salary.

In addition to certain fringe benefit costs, the IHS has approved some other costs as DCSC. This has included mail, phone, and printing costs in some cases. These costs have been approved in the past because the IHS centrally managed the costs, and the funds were not transferred to Tribal contractors under the Section 106(a)(1) program base. These costs have recently been transferred to the Area Offices and should now be available for inclusion in the Section 106(a)(1) amount. These costs are no longer being approved by the IHS as DCSC. Reasonable costs for legal fees and general liability insurance (when not included in the IDC pool) are additional examples of costs that have been found to be allowable, as these are costs that the Agency either does not pay or are paid from resources other than those under contract.

The development of a DCSC proposal and the evaluation guidelines for each type of cost are outlined in the following pages. The guidelines are meant for the development and evaluation of a DCSC proposal under normal circumstances. Some DCSC proposals will have unique circumstances that do not fit the guidelines. In these cases, one must review the statutory intent and the IHS CSC Circular to determine if other DCSC will be required. In these circumstances, however, the awardee should expect to be requested to provide thorough documentation of the amounts and reasons for the amounts to reviewers at all levels within the Agency.

<u>LINE ITEMS</u>	<u>GENERAL GUIDELINES</u> <u>Examples of Allowable Costs</u>	<u>DOCUMENTATION</u>	<u>STANDARDS FOR REVIEW AND DUPLICATION</u>
<p><u>SALARIES</u></p> <p>In general, salaries⁶ and wages for personnel have been completely disallowed for DCSC.</p> <p>Budgets for direct-salary costs are required for most DCSC proposals to accurately compute the requested fringe-benefit costs.</p>	<p>Awardees with or without indirect-cost rates can be paid direct-salary costs for administrative employees as part of CSC; however, these costs should be categorized and negotiated as "indirect type costs," not DCSC, even though they are paid directly and not through the indirect-cost mechanism.</p> <p>Although costs for direct salaries are generally disallowed, costs for certain fringe benefits on direct salaries are the primary components of DCSC. The awardee must provide sufficient salary detail to determine if the fringe-benefit costs requested are reasonable and necessary.</p>	<p>Direct salary costs of employees are generally not allowed as DCSC.</p> <p>Tribal budgets are required from awardees with a detailed salary listing for each position funded from the Section 106(a)(1) amount.</p>	<p>The Agency has considered all salary requests a duplication of the Section 106(a)(1) amount or an expansion of the negotiated 106(a)(1) amount.</p>

6. Tribal representatives also feel that direct salaries can be included in DCSC in situations where it is allowable as an IDC-type cost but the awardee has an IDC cost- allocation plan that specifically excludes these costs. It has not, however, been the Agency's practice to allow salary costs as DCSC.

<u>LINE ITEMS</u>	<u>GENERAL GUIDELINES</u> <u>Examples of Allowable Costs</u>	<u>DOCUMENTATION</u>	<u>STANDARDS FOR REVIEW AND DUPLICATION</u>
<p><u>FRINGE BENEFITS</u></p> <ul style="list-style-type: none"> - Federal Insurance Contributions Act (FICA) - Life, Health, and Disability Insurance - Retirement (401k, 403b, etc.) <p>(All fringe benefits except workers compensation costs and unemployment insurance)</p> <p>Workers compensation insurance</p> <p>Unemployment insurance</p>	<p>Fringe benefits have historically constituted the majority of all DCSC. The Agency reviews the documented amounts requested by the awardee and deducts the amount provided as part of the Section 106(a)(1) amount to the awardee. The awardee should request that the Agency provide a detailed breakout of each component of the fringe amount when providing the total Section 106(a)(1) amount available for the PFSAs to be contracted.</p> <p>Funding for workers compensation costs is not transferred as part of the Section 106(a)(1) amount.</p> <p>Unemployment insurance is not provided as part of the 106(a)(1) amount.</p>	<p>Documentation of fringe benefits should include the awardee's rate for each type of fringe benefit for which DCSC is requested.</p> <p>For a new awardee, written quotes for costs should be provided to support the costs claimed.</p> <p>Awardees should provide documentation for workers compensation costs.</p> <p>Awardees should provide documentation of State Unemployment Insurance costs</p>	<p>The Agency totals the amount provided in the Section 106(a)(1) amount for FICA, health, life and disability insurance, and retirement. To the extent the budgeted Tribal costs are determined to be reasonable and necessary and these costs exceed the amounts the Agency provides for these costs in the Section 106(a)(1) amount, the difference is allowed as a DCSC requirement for the PFSAs transferred.⁶</p> <p>Costs of workers compensation insurance are allowed as a DCSC requirement.</p> <p>Costs of State Unemployment Insurance are allowed as a DCSC requirement.⁷</p>

7. The IRS has determined that Tribes and Tribal instrumentalities are not subject to Federal Unemployment Tax. Therefore, this cost will not be allowed in those instances.

Example of the fringe benefits calculation:

ITEM	TRIBAL AMOUNT	IHS AMOUNT	DIFFERENCE
FICA	1,000	900	—
Retirement	2,000	1,250	—
Insurance (Life, Health, Disability)	750	1,000	—
Sub-Totals	3,750	3,150	600
Workers Comp.	200	—	200
Unemployment	400	—	400
TOTALS	4,350	3,150	1,200

<u>LINE ITEMS</u>	<u>GENERAL GUIDELINES / Examples of Allowable Costs</u>	<u>DOCUMENTATION</u>	<u>STANDARDS FOR REVIEW AND DUPLICATION</u>
TRAVEL/ VEHICLE LEASE	These are generally not provided as allowable DCSC. Again, travel costs in support of administrative functions normally included in an IDC cost pool (such as board of directors' travel cost) can be paid directly to the Tribe when the Tribe or Tribal organization does not have an IDC rate. In this situation, however, these types of costs are categorized as "indirect type costs."	Travel costs are not generally allowed by the Agency as DCSC requirements.	The Agency has considered most requests for travel duplicative of the Section 106(a)(1) amount or as an activity that would normally be carried on by the Agency in the direct operation of the program.
SUPPLIES AND DRUGS	These are generally not provided as allowable DCSC.	Supply costs are not generally allowed by the Agency as DCSC requirements.	The Agency has considered most requests for supplies and drugs duplicative of the Section 106(a)(1) amount or as an activity that would normally be carried on by the Agency in the direct operation of the program.
INSURANCE General Insurance (property, fire, general liability)	The Office of General Counsel (OGC) has advised the Agency that the Government is self-insured. Therefore, reasonable insurance costs for activities that the Federal Torts Claim Act (FTCA) does not cover, such as property insurance on buildings and vehicles, and general liability insurance supplemental to the FTCA, can be considered reasonable.	A detailed estimate of costs of insurance for property, vehicles, and general liability is to be provided. It is important to document that the costs are not included in the IDC pool where an IDC rate is used.	The Agency reviews insurance coverage to determine that it is not included in the Tribe's indirect-cost pool or indirect-type cost agreement and that it does not cover risks covered by the FTCA. Insurance activities that are covered in the Tribe's negotiated indirect-cost rate or indirect-type cost agreement are duplicative.

LINE ITEMS	GENERAL GUIDELINES/ Examples of Allowable Costs	DOCUMENTATION	STANDARDS FOR REVIEW AND DUPLICATION
MALPRACTICE LIABILITY INSURANCE Professional Liability Insurance	Malpractice liability insurance is allowable to the extent that it does not duplicate FTCA coverage. Medical malpractice insurance covering the employees of a Tribe or Tribal organization (including those assigned under Intergovernmental Personnel Act agreement (IPA) or memorandum of agreement (MOA) status) when performing duties authorized under a contract or compact pursuant to the ISDEAA (P.L. 93-638, as amended) is not necessary due to the expansion of applicability of the FTCA to Tribes and Tribal organizations contracting and compacting under the Act. Malpractice liability insurance is allowable, however, in the case of personal service contractors carrying out the terms of a contract/compact when operating outside of an IHS facility. Malpractice liability may also be allowable to cover torts brought in Tribal courts that may not be covered in the FTCA. General liability wraparound insurance is allowable.	Because malpractice liability insurance is allowable only to the extent that it does not duplicate coverage provided by the FTCA, awardees will be required to provide a written quote or cost estimate from an insurance broker and must indicate that the insurance costs claimed do not duplicate coverage provided by the FTCA.	Malpractice liability insurance is allowable to the extent that it does not duplicate FTCA coverage.
POSTAGE	This cost is borne by IHS programs in the general course of doing business. Funds for these costs have been transferred to Area Offices, and this cost is not allowable as CSC.	These costs are not allowable based on the May 10, 2002, decision of the Director, IHS.	This is considered duplicative of the Section 106(a)(1) amount.

LINE ITEMS	GENERAL GUIDELINES/ Examples of Allowable Costs	DOCUMENTATION	STANDARDS FOR REVIEW AND DUPLICATION
PRINTING AND DUPLICATION	This is generally not included in the DCSC requirement.	This is not generally allowed by the Agency.	This is generally considered to be duplicative of the Section 106(a)(1) amount.
COMMUNICATIONS	Long-distance phone charges and/or leased data-line charges are costs that are borne by IHS programs in the general course of doing business. Funds for these costs have been transferred to Area Offices, and this cost is not allowable as CSC.	These costs are not allowable based on the May 10, 2002, decision of the Director, IHS.	This is considered duplicative of the Section 106(a)(1) amount.
TRAINING Discipline-specific Training:	This is generally included in the DCSC requirement to the extent the awardee must provide training to comply with requirements not applicable to the Government and, therefore, not transferred in the Section 106(a)(1) amount.	Awardees should provide details on the cost and purpose of the training.	This is duplicative to the extent it is provided in the Section 106(a)(1) amount.
TRAINING Long-term Training:	The IHS has made available all Federal dollars supporting long-term career training costs in the Section 106(a)(1) amount. Federal sites provide for long-term training from within their operational budgets. No additional funds are made available for this cost from CSC.	Not applicable.	This is duplicative. Funding is provided as a part of the Section 106(a)(1) amount.

LINE ITEMS	GENERAL GUIDELINES / Examples of Allowable Costs	DOCUMENTATION	STANDARDS FOR REVIEW AND DUPLICATION
EQUIPMENT PURCHASE AND MAINTENANCE	This is generally not included in the DCSC requirement. Funds for equipment purchase should be included in the Section 106(a)(1) amount or in the startup or pre-award amount for administrative equipment.	Not applicable.	This is considered duplicative because costs being requested have been passed on to a Tribe in the assumption of a service unit or other program Section 106(a)(1) amount, or are covered in the indirect-cost pool.
RENT/UTILITIES	This is generally not included in the DCSC requirement. It has been allowed in extremely rare circumstances when the awardee did not receive the funds in the Section 106(a)(1) amount because the facility in question continued to be used to operate IHS or other Tribally operated programs.	This is allowable when a program is being divided and space currently used in the delivery of the program cannot be divided and provided to the awardee due to ownership or lease restrictions.	This is considered duplicative if costs being requested have been passed on to a Tribe in the assumption of a service unit or other program Section 106(a)(1) amount, or are covered in the indirect-cost pool.
OTHER DCSC	<p>The IHS recognizes that Tribes differ in the types and extent of costs included within their indirect-cost pools. The IHS will recognize as CSC any item of cost that meets the definition of CSC at Section 106 (a)(2) but is not already included in the awardee's IDC pool (or the Section 106 (a)(1) amount). Contract Support Costs is not, however, to be considered as available to expand program activities or to address deficiencies created by the loss of economies of scale that may occur as a result of contracting or compacting.</p> <p>These costs will generally be treated as IDC-type costs for funding purposes.</p>	Awardees are to provide a detailed description and justification of costs showing they should be allowable pursuant to Section 106(a)(2). Documentation should show that the costs are neither included in the IDC pool nor generally included in the Section 106(a)(1) amount.	Each cost must meet the definition of CSC at Section 106(a)(2) of the ISDEAA, must not be included in the IDC pool or indirect type costs of the Tribe, and must not be duplicative of the costs available in the Section 106(a)(1) amount.

**GUIDELINES FOR PROPOSAL PREPARATION AND COST ANALYSIS OF ISD
REQUESTS FOR INDIRECT CONTRACT SUPPORT COSTS**

INDIRECT CONTRACT SUPPORT COSTS. This document does not currently address indirect contract support costs (IDC) or indirect-type costs. Most Tribes and Tribal organizations have indirect-cost rates that are negotiated with their cognizant Federal agency. The cognizant Federal agency for most Tribes is the Office of Inspector General at the Department of Interior. For some Tribal organizations who primarily contract or compact with the IHS only, their cognizant Federal agency for determining an IDC rate is the Division of Cost Allocation under the Department of Health and Human Services. The respective addresses and phone numbers are as follows:

U.S. Department of Interior
Office of the Secretary
National Business Center
Acquisition and Property Management
Indirect Cost Section
Attn: Inge Montich, IDC Coordinator
2180 Harvard Street, Suite 430
Sacramento, CA 95815
Phone (916) 566-7111
FAX (916) 566-7110

U.S. Department of Health and Human Services
Division of Cost Allocation
Attn: David S. Low, Director
50 United Nations Plaza, Room 347
San Francisco, CA 94102
Phone (415) 437-7820
<http://rates.psc.gov/dcamgrs.htm>

<http://www.oig.doi.gov/icps/icphome.html>

Tribes are encouraged to refer to OMB Circular A-87 for guidance with indirect-cost rates. This document is accessible on the Internet at:

<http://www.whitehouse.gov/omb/circulars/a087/a087-all.html>

For assistance with indirect-type costs, please refer to OMB Circular A-87 and contact your local Area Office.

SAMPLE PRE-AWARD LETTER# 1 - Area Director

Dear Area Director

Please accept this letter as notification that the ****Tribe**** will begin to incur pre-award costs necessary to plan, prepare for, and assume operation of the ****PSFA(s)**** program. We anticipate providing a proposal in accordance with the Indian Self-Determination and Education Assistance Act (ISDEAA) and the associated regulations at 25 CFR Part 900 in the near future; however, we must first do some preliminary work in order to ensure a successful contracting effort.

The ****Tribe**** has reviewed the "Standards for the Review and Approval of Contract Support Costs in the IHS." We understand that this document provides guidance concerning the typical costs Tribes might expect to incur in undertaking contracting or compacting under the ISDEAA, but we do not believe that this document limits the types of costs we might expect to incur. Initially, we will incur costs associated with assessing the feasibility of contracting, developing the contract proposal and contract document, and negotiating the contract with the IHS. We anticipate incurring costs for consultants, attorneys, and other professional staff to assist us. The costs may also include the costs of special training or meetings of the governing board, travel by current Tribal staff and other costs incurred in developing the proposal and negotiating the contract award. The Tribe may also assign staff to this project to assist with this contracting effort.

The Tribe estimates the amounts necessary to complete the tasks needed to plan, prepare for, and assume the above PSFAs to be **** fifty thousand (\$50,000) **** dollars. We will monitor these costs, however, and we will notify the IHS if the costs can be expected to exceed this amount. It is our understanding that this amount is an estimate and does not limit the extent to which our costs might ultimately be found to be reasonable and necessary to assume operation of the contract.

Please confirm receipt of this letter and notify us of the date of your receipt of this pre-award letter. We look forward to working with the ****Area Office**** and to the successful contracting of the above PSFA(s). Thank you.

Sincerely,

****Authorized Tribal Signature****

Cc: Headquarters, OTP
Headquarters, OTSG (**** when compacting under Title V****)

SAMPLE PRE-AWARD LETTER # 2 - Area Director

Dear Area Director

On ****date of initial notification**** the ****Tribe**** notified you that we would begin incurring costs associated with the assumption of ****PSFAs****. While planning and preparing that contracting effort, we realized we would need to improve our accounting and management systems in order to successfully administer the [additional] PSFAs proposed. Therefore, we now anticipate incurring additional costs for the acquisition of IT equipment and systems and other management systems necessary to support the contract. Professional services necessary to implement these systems will also be required. The costs may also include the costs of special training of existing Tribal staff on the new systems. This is in addition to those costs identified in our earlier letter.

The Tribe estimates the amounts necessary for these additional costs to be **** one-hundred and twenty thousand (\$120,000)**** dollars. Additionally, our earlier letter estimated other pre-award costs at **** fifty thousand (\$50,000)**** dollars; however, it appears that due to some unanticipated circumstances and the complexity of negotiations, this amount will probably be closer to **** eighty thousand (\$80,000)**** dollars. Therefore total pre-award costs are now estimated at **** two hundred thousand (\$200,000)**** dollars. As previously stated, this amount is an estimate and does not limit the extent to which our costs might ultimately be found to be reasonable and necessary to assume operation of the contract.

Please confirm receipt of this letter and notify us of the date of your receipt of this pre-award letter. We look forward to working with the ****Area Office**** and to the successful contracting of the above PSFAs.

Thank you.

****Authorized Tribal Signature****

Cc: Headquarters, OTP
Headquarters, OTSG (**** When compacting under Title V****)