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**DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
Indian Health Service
Rockville, Maryland 20857**

Refer to: OTA

INDIAN SELF-DETERMINATION MEMORANDUM NO. 92-2

CONTRACT SUPPORT COST POLICY

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1. BACKGROUND

The development of this policy is in response to section 106(a) of Public Law 93-638, as amended, the Indian Self-Determination Act, which states:

Section 106. (a)(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 program or portions thereof for the period covered by the contract.

(2) There shall be added to the amount required by paragraph (1) contract support costs which shall consist of 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."

2. PURPOSE

To establish the Indian Health Service (IHS) policy for 1) identifying amounts required for direct and indirect contract support funds; and 2) allocating contract support funds for all Public Law (P.L.) 93-638 contracts. All funds for contract support costs are subject to the availability of funds made available for this purpose.

This policy outlines the procedures to be used to determine the need for contract support costs, and to guide the allocation of these funds.

3. DEFINITIONS

Contract Support Costs are:

- A. Reasonable costs for activities which must be carried on by the Indian tribe or tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management but which normally are not carried on by the Secretary in his direct operation of the program, or are provided by the Secretary in support of the program from resources other than those under contract; and
- B. Costs which are reasonable, necessary and allowable costs of the contractor, which are allocable to the contract based on applicable Federal cost principles; and
- C. Costs which are not provided for under the allocation of program funds available for the contract as defined in P.L. 93-638, as amended, Section 106 (a)(1); and
- D. Treated as either direct or indirect by the contractor based on applicable cost principles and the contractor's cost allocation policy.

4. NEW AND EXPANDED CONTRACTS

- A. The Indian Self-Determination (ISD) Fund will cover certain costs of P.L. 93-638 awards when the award is:
 - (1) an initial transfer of a program previously operated by the IHS to the tribe or tribal organization, or
 - (2) to expand current tribal operations through the assumption of additional programs previously operated by IHS, or
 - (3) to provide initial contract support funding for all new and expanded 638 contracts, including the assumption of programs previously operated by other tribes, tribal organizations, Indian contractors, and for newly recognized tribes.

B. IHS will award funds for contract support costs for new and expanded contracts in the following two categories:

(1) Direct Contract Support Costs:

- a. Non-recurring direct contract support costs are costs which are of a non-recurring nature, are otherwise allowable direct contract support costs, and are required for the program to begin operations. These are also referred to as start up costs, but are not intended to be an additional cost category.
- b. Recurring direct contract support costs are costs which are of a recurring nature and associated directly with the operation of the program. These funds shall be awarded on a recurring basis.

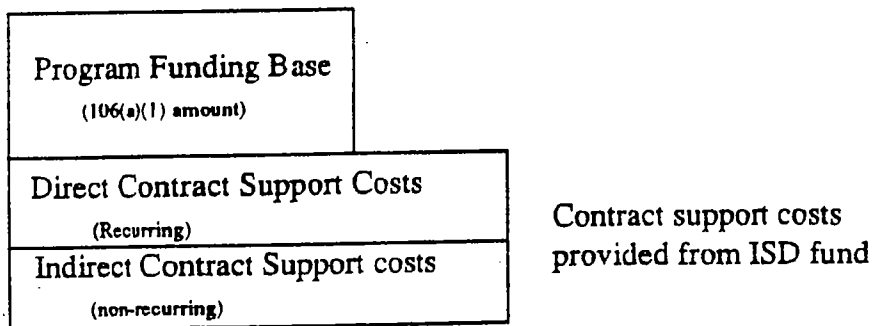
(2) Indirect or Indirect Types of Costs:

Costs incurred for a common or joint purpose benefitting more than one contract objective, or which are not readily assignable to the contract objectives specifically benefitted without effort disproportionate to the results achieved, and which are not funded by other direct costs, and are incorporated in the Indian tribe's or tribal organization's indirect costs reimbursement procedure as negotiated annually with the cognizant Federal agency.

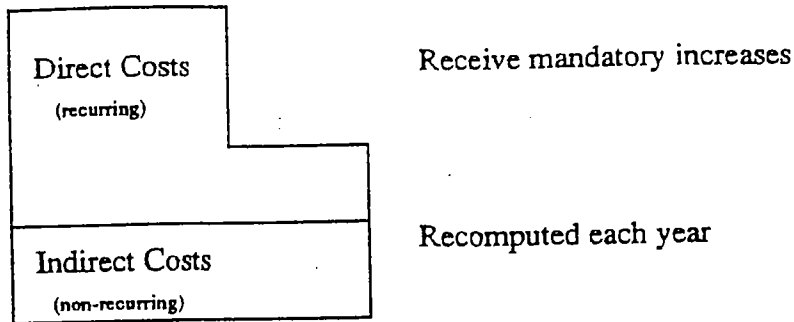
For contractors without negotiated indirect cost rates, indirect-type costs consist of costs which are normally found in indirect cost pools of contractors with rates, and which are negotiated between the contractor and the Area Office using principles of reasonableness, allowability and allocability (see attachment A).

These funds shall be awarded "non-recurring" subject to negotiation in each subsequent year. Those contractors with a surplus of indirect cost support funds will not be allocated additional funds until the need is indicated by the most current negotiated indirect cost rate. (See page 7, Section 6, for special procedures for contracts that have received indirect cost funds as recurring funds). The following illustrations show: 1) total funding for the first year of the contract, and 2) contract costs for subsequent years.

Total funding for first year of the contract



Contract Costs for Subsequent Years



(3) In subsequent years, direct contract support funds will be considered part of the recurring base of the contract, and will receive mandatory cost increases as do the direct program funds. Amount of indirect contract support funds must be justified each year based on negotiated amounts and any shortfalls are reported to IHS Headquarters for inclusion in the Annual Report to Congress on implementation of P.L. 93-638.

C. (1) Funds for new and expanded contracts will be allocated by IHS Headquarters from the ISD fund on a monthly basis until expended. If permitted by appropriations act, any funds that remain at the end of the fiscal year will be added to any ISD Funds available in the subsequent year. If funds are exhausted at any point in the fiscal year, requests received thereafter will be considered first for funding in the subsequent year from funds appropriated for this purpose.

(2) Area Offices will make requests after receiving proposals for new and expanded contracts. Areas are encouraged to begin discussions with the proposing tribe or tribal organization early to identify the amount of need for contract support costs according to procedures detailed in Section 5 of this policy.

Once the amount of need has been identified, and before the end of the 60-day proposal review period, a request for this amount will be submitted to the IHS Office of Tribal Activities, Division of Self-Determination Services to determine if funds are available for this purpose. The Office of Tribal Activities will respond immediately to advise if the funds are available.

While a CSC need may be requested which is greater than the amount determined to be available, the available amount will be the basis for consideration of approval or declination of proposals, and any subsequent award. Deficiencies for existing contracts will be included in the annual report to Congress required by Section 106(c) of the Act.

- (3) The requested amount will be the total of indirect and direct contract support costs for each project.
- (4) If funds from the ISD Fund are inadequate to fully fund all requests, then requests to be funded that month will be selected based on the earliest receipt date.

5. PROCEDURE FOR COMPUTING AMOUNT OF CONTRACT SUPPORT COSTS

A. Direct Contract Support Costs

For new and expanded contracts, Area Offices will identify the amount needed for direct contract support costs in accordance with the following:

A detailed budget will be prepared for first-time contractors (new and expanded) detailing amounts to be considered as direct program funds, indirect and indirect type contract support costs, and direct contract support costs.

The amount of recurring direct contract support costs will be determined by negotiation between the recipient and the Area Office (see definitions section for direct contract support costs). Only categories of cost, which are not contained in either the indirect cost pool or the amount computed pursuant to Section 106(a)(1) can be considered as direct contract support costs. The Area Offices and recipients must agree on the amount of direct contract support costs which will be recurring in future years.

"Recurring" direct contract support costs which may not be in a contractor's indirect cost pool are:

- Unemployment tax on direct program salaries.
- Workers compensation insurance on direct program salaries.
- Cost of retirement and other fringe benefits for direct program personnel in excess of amount funded within P.L. 93-638, as amended, Section 106 (a)(1).
- Long distance telephone charges.
- Postage allocable to direct programs.
- Discipline specific training for direct program personnel not funded in the 106 (a)(1) amount.

The Area Office will also work with the contractor to identify non-recurring direct contract support costs necessary as one time start up costs. These must be required to begin operations. They are not intended to be a program enhancement, and cannot be items of cost included in the 106(a)(1) amount. Examples may include the following:

- Purchase of computer hardware and software.
- Required training and staff development.
- Systems development.
- Equipment and furniture.

Items listed above as examples of recurring and non-recurring direct contract support costs must be justified as such and negotiated with the Area Office. Items not included as examples above, but requested and justified by contractors shall be submitted by the Area Office to IHS Headquarters, Division of Self-Determination Services, for approval. This will contribute to greater consistency from Area to Area.

A single item of cost to be funded shall not be accounted for both in the computation of direct costs, and also in the computation of indirect or indirect-type costs. However, a type of cost may be either direct or indirect depending on the level or function of the organization to which it applies. The Area Office shall ensure that costs are reasonable, necessary, and not duplicative.

To the extent that the Area Office and the contractor cannot agree on an item(s) of cost, the disputed items shall be submitted to the Director, IHS, through the IHS Office of Tribal Activities, Division of Self-Determination Services.

The following is a description of the methodology to be used in computing the amount required for indirect contract support costs.

B. Indirect or Indirect Type Costs

For all contractors, Area Offices will identify the amount required for indirect costs of awards (12 months of operation) for each contract as follows:

(1) Recipients with Established Indirect Cost Rates

The amount of indirect costs expected to be incurred under awards by recipients with rates which have been negotiated or are being negotiated with the cognizant Federal agency will be determined by applying the negotiated rate(s) to the direct cost base amount for this purpose.

(2) Recipients without Established Indirect Cost Rates

Indirect types of costs may be computed by negotiating amounts for the following examples of "indirect-types of costs" listed on the following page. These examples are those most commonly found in the indirect cost pools of recipients with rates. The total amount negotiated for these items will be considered as the recipient's indirect cost for purposes of this allocation procedure.

<u>Management and Administration</u>	<u>Facilities and Equipment</u>	<u>General Services and Expenses</u>
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
Procurement/Material Management	Repairs and Maintenance	
Human Resources Management	Equipment	
Property Management		
Records Management		
Data Processing		
Office Services		

Guidelines for the Principles Involved in Negotiating Indirect Costs

A plan for allocation of indirect costs will be required to support the distribution of any indirect costs related to the contracted program. All indirect costs included in the plan will be supported by accounting records which will substantiate the propriety of the indirect costs. The allocation plan should cover all indirect costs of the contractor, and contain, but not necessarily be limited to 1) the nature and extent of services provided and their relevance to the contracted program, 2) the items of expense to be included in the indirect cost pool, and 3) the methods to be used in distributing cost.

The Office of Management and Budget (OMB), Circular No. A-87, Cost Principles for State and Local Governments, establishes principles and standards for determining indirect costs applicable to contractors (local governments and federally recognized Indian tribal governments). Further, the circular discusses allowable and unallowable indirect costs.

6. ONGOING CONTRACTS

The amount of indirect contract support funds representing the previous year's base will be distributed to Areas "recurring" to fund each Area's indirect cost need. Each contractor's need for indirect contract support shall be determined by calculating changes, if any, in indirect cost rates, bases, and pools. If funds available in the Area's indirect cost base are not adequate to meet total requirements, then the amount available shall be distributed according to each contractor's proportion of total need. These funds will be awarded to the contractor as non-recurring funds. (See 4.A(3) for treatment of direct contract support costs.)

Each year, Areas are required to report additional needs for indirect contract support funds beyond the amount provided in their previous year's recurring base, or any surplus of funds provided in their recurring base based on current year needs.

Transition Period

Some Areas have previously allocated indirect contract support funds as recurring funds to contractors. However, the purpose of this policy is to establish a uniform allocation process for indirect contract support funds, and will result in these funds being allocated as non-recurring funds to contractors Agency wide.

It is not intended for Areas to reduce contract amounts of indirect contract support funds previously allocated as recurring funds without the approval of the contractor.

Those contractors with a surplus of indirect contract support funds will not be allocated additional indirect contract support funds until their most current negotiated indirect cost rate indicates an additional requirement for these funds. Mandatory increases for self-determination contracts should be provided only on the recurring base amount (excluding indirect contract support) since actual needs will be negotiated each year for the indirect cost amounts.

7. SUBSEQUENT YEARS CONSIDERATIONS

A. Areas shall maintain a historical record of funds awarded in each of the following categories:

- a) direct program funds
- b) direct contract support funds
- c) indirect cost funding
- d) indirect-type cost funding


B. Federal indirect cost negotiators should be requested to highlight changes, if any, in the contractor's annual cost allocation plan (treatment of items of cost) as an exhibit to the negotiated indirect cost agreement.

C. Contractors and Area Offices must re-negotiate the contractors indirect type cost budget annually if the contractor does not have a formal negotiated indirect cost rate.

D. The same cost allocation rules applying to those contractors with formally negotiated indirect cost agreements will be applicable to those contractors without formally negotiated indirect cost rates.

8. SUPERSESION

This issuance supercedes any policies or instructions previously issued regarding the allocation of Contract Support Funds.


Everett R. Rhoades, M.D.
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Director

ATTACHMENT A**PRINCIPLES OF REASONABLENESS, ALLOWABILITY AND ALLOCABILITY****REASONABLE COSTS**

A cost is reasonable if, in its nature or 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 the reasonableness of specific costs must be scrutinized with particular care in connection with contractors or separate programs thereof which receive the preponderance of their support from awards made by Federal agencies. In determining the reasonableness of a given cost, consideration shall be given to:

- a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the contractor or the performance of the contract.
- b. The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and terms and conditions of the contract.
- c. Whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the contractor, its members, employees, and clients, and the Government.
- d. Significant deviations from the established practices of the contractor which may unjustifiably increase the contract costs.

ALLOCABLE COSTS

A cost is allocable to a particular cost objective in accordance with the relative benefits received. A cost is allocable to a contractor if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

- 1) Is incurred specifically for the contract.
- 2) Benefits both the contract and other work and can be distributed in reasonable proportion to the benefits received.
- 3) Is necessary to the overall operation of the contract, although a direct relationship to any particular cost objective cannot be shown.

Any cost allocable to a particular contract or other cost objective under these principles may not be shifted to other Federal contracts to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the contract.