



FEB 18 2004

Dear Tribal Leader:

The Indian Health Service (IHS) is committed to continued improvement in the manner in which contract support costs (CSC) are administered in the Agency. Accordingly, I am forwarding you a copy of **DRAFT IHS Contract Support Cost Circular No. 2004-xx**, which is intended to update our current IHS CSC Circular No. 2005-05. For instance, last year the Director, IHS, delegated the final negotiation and approval authority for tribal CSC requests to our Area Directors. This delegation has yet to be incorporated into our present Circular.

In addition, as a result of discussions late last year within the IHS/Tribal CSC Workgroup, additional modifications to the Circular are presented in the enclosures for your review and comment.

The majority of the IHS CSC Circular remains unchanged but is included here for your reference. The changes being considered are highlighted in the document for easy identification. The "Explanation of Changes" is intended to provide you with a reference to the applicable section of the Circular and a brief summary of the change being considered. You are encouraged to provide comments on the enclosed policy revisions by March 31, 2004. Comments on the DRAFT IHS Contract Support Cost Circular No. 2004-xx should be sent to the attention of Mr. Ronald B. Demaray, Director, Self-Determination Services, IHS Office of Tribal Programs, 801 Thompson Avenue, Suite 220, Rockville, MD 20852. Comments may also be faxed to the attention of Mr. Demaray at (301) 443-4666 or emailed to RDemaray@hqe.ihs.gov.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Douglas P. Black", is written over the typed name.

Douglas P. Black
Director
Office of Tribal Programs

Enclosures:

Explanation of Changes

DRAFT IHS CSC Circular No. 2004-xx

Standards for the Review and Approval of CSC in the IHS

EXPLANATION OF CHANGES

The IHS is considering several changes related to that it is to its current contract support cost (CSC) policy, IHS CSC Circular No. 2001-05. The more substantive changes being considered include: specific instructions related to CSC for contract health service funded programs; incorporation of an attachment containing standards for the review and approval of CSC; instructions related to delinquent IDC rates; addressing CSC on construction projects; incorporation of IHS program delegation number 19; and a couple proposals aimed at achieving a greater degree of equity in the allocation of CSC. Several minor modifications to the Circular that are intended to clarify current policy are also being proposed. One final change related to allocation of ISD funds is included for comment as well.

The attached revised IHS CSC Circular contains notations related to the proposed changes. New language in the attached DRAFT CIRCULAR is indicated in by **ALL CAPITAL LETTERS IN BOTH BOLD AND UNDERLINED FONT**. Former text that is intended to be deleted is indicated by ~~the strikethrough font~~. A brief description of each change and some of the rational for the changes being proposed are included below.

Tribal representatives and Agency staff are encouraged to provide comments on the proposed changes. **The deadline for the submission of comments is Wednesday, March 31, 2004.** Comments on the DRAFT IHS Contract Support Cost Circular No. 2004-xx should be provided as follows:

Printed comments may be mailed to:

Mr. Ronald B. Demaray
Director, Self-Determination Services
IHS Office of Tribal Programs
801 Thompson, Ave., Suite 220
Rockville, MD 20852

Telefaxed comments may be sent to:

1 (301) 443-4666
Attention: Mr. Ronald B. Demaray
Director, Self-Determination Services
"COMMENTS: IHS CONTRACT SUPPORT COST POLICY"

Electronic comments may be emailed to:

RDemaray@hqe.ihs.gov
Subject: "COMMENTS: IHS CONTRACT SUPPORT COST POLICY"

These comments will be reviewed by the IHS/Tribal CSC Workgroup at their next meeting in early April. The Workgroup will then formulate recommendations on the proposed changes which will be forwarded to the Director, IHS for his consideration. The revised Circular reflecting the changes approved by the Director will be issued in May of 2004 and will be applicable to all FY 2005 awards.

Explanation of proposed changes:

CHANGE #1) – Program profiles for CHS funded programs

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 the types of costs that are funded within the program amount. This profile is used as a basis to show the historical costs and amounts transferred with the program and for purposes of determining whether duplication exists between amounts requested as CSC and those amounts provided as a part of the program.

The change to the Circular reflects guidance to IHS Area offices concerning their need to develop the program profile.

CHANGE #2a) – Insert reference to CSC Standards as Circular Exhibit 04-xx-H
In FY 2002 and 2003 the IHS and Tribal representatives developed standards for the review and approval of CSC. These standards provide IHS Area Offices and Tribes with guidelines concerning the types of costs that are generally allowable as CSC and instruction concerning the types of documentation that would be required of the IHS in its review and approval of tribal CSC requests. The standards are intended to be a useful tool for anyone developing a CSC request. They were adopted by the IHS as an attachment to IHS Program Delegation No. 19 in FY 2003.

The proposed change to the Circular incorporates the standards into the Circular as an attachment.

CHANGE #3) – Address movement of direct CSC to Tribal IDC pools.

The IHS funds CSC as either direct or indirect. Occasionally a cost that was originally approved as a direct CSC (DCSC) could also be considered as an indirect cost (IDC) and vice-versa. When a Tribe moves a cost from DCSC to IDC or from IDC to DCSC the IHS needs to track the recurring and non-recurring nature of the costs and assure that the cost is not duplicated in both places.

The proposed change to the Circular requires that when a cost previously approved as DCSC is moved into a tribal IDC pool, the DCSC funding for that cost shall be reduced as the cost will now be provided for within the funding for the Tribe's IDC rate.

CHANGE #4) – Delete last paragraph

The last paragraph at Section 5(A)(2)(b) of the Circular should have been deleted when the current version of the Circular was adopted. The Circular addresses the process for review and approval of startup and DCSC as a part of the ISD review process in Section 5(C).

The proposed change to the Circular is to delete the entire paragraph.

CHANGE #5) – Delinquent IDC Rates

The IHS has expressed concern over the delinquency of some tribal IDC rates in recent years. Some Tribes have not renegotiated their IDC rate since 1996 and they propose that the IHS honor that rate against their current contracts or compacts. The IHS is concerned that a rate approved several years ago in contemplation of a certain IDC pool and a particular mix and level of funding in the direct program base may not generate the level of IDC funding necessary to support the current program. The IHS proposes that if a Tribe's IDC rate is four or more years old, then the IHS will not provide IDC funding based on that rate agreement. The Tribe will be expected to negotiate IDC Type costs directly with the IHS pending the establishment of a current IDC Rate.

The proposed change to the Circular requires the negotiation of IDC Type costs when a Tribe's IDC rate is four or more years old.

CHANGE #6) – Clarify “expanded” for New or Expanded Awards

The IHS has historically used the term “mandatories” to describe increases based on inflation, pay costs, population growth and general program increases. The term is not used in the appropriation process and has led to some confusion over what program increases are considered “mandatories”.

The proposed change seeks to clarify the types of program increases that are considered “mandatories”.

CHANGE #7) – CSC on Construction projects and CSC on Administrative Shares associated with a construction project

There continues to be some controversy related the payment of CSC related to construction contracts. The IHS has not historically provided CSC associated with construction contracts citing the fact that these costs are a part of the overall contract cost estimate that is the basis of the negotiation with the Tribe. CSC associated with the tribal shares assumed to support a construction award is allowable. The IHS has agreed to meet with a small group of tribal representatives and the Facility Advisory Board if possible to discuss this further.

The proposed change to the Circular would be to add language to clarify the fact that the IHS does not provide CSC in addition to the amount negotiated for a construction project.

CHANGE #8) – Clarify allocation for annualizing payments

This is a clarification of existing policy that further explains that when allocating funding for current fiscal year assumptions that span the fiscal year, funding of the pro rated amount in the initial award period will be based on the CSC need attributable to that fiscal year only.

The proposed change to the Circular clarifies current IHS policy and practice. Insert a new sentence and break paragraph (ix) into two paragraphs and then renumber paragraphs x and xi.

CHANGE #9) – Discuss funding CSC shortfalls

(50/50 Allocation & Redistribution of Excess CSC Between Areas)

In FY 2002 there were 14 Tribes funded at below 60% of their CSC need while at the same time, there were 166 Tribes funded at 90% or better. The lowest funded Tribe was funded at 31.6% of its CSC need and 53 Tribes were funded at 100% or more. The IHS/Tribal CSC Workgroup discussed two options for addressing the disparity in CSC funding being experienced by Tribes.

OPTION #1

Option number 1 would modify Section 5(B)(3) of the Circular and require that Pool number 3 funding be allocated to those awardees with the greatest CSC need using a “bottom up” allocation methodology. This process will direct additional resources toward raising the minimum level of CSC being funded to the maximum percentage possible.

Option #2

Option number 2 would leave the Pool number 3 shortfall allocation alone but would instead modify Section 5(B)(2)(d) and Section 5(C)(2)(c) of the Circular to require that funds returned by Tribes who are funded in excess of 100% of their need be redistributed *nationally* to other Tribes using a “bottom up” allocation methodology. This process would direct those funds toward raising the minimum level of CSC being funded to the maximum percentage possible.

CHANGE #10) – Excess ISD funding in Pool No. 3

This is a technical correction to clarify that any distribution of excess ISD funds under Pool no. 3 would not happen until after July 3rd of each year.

The proposed change involves inserting a new paragraph to explain this issue.

CHANGE #11) – Clarify language for updating CSC information

New language is proposed to clarify that Area Offices are expected to update CSC Shortfall information with current IDC rate information and changes to the direct cost base in order to assure that any CSC shortfall allocations provided based on the previous year’s Shortfall Report do not result in an awardee being funded in excess of 100% of its total CSC need.

The proposed change to the Circular directs Areas to update shortfall information before a shortfall distribution is made.

CHANGE #12) – Update for Program Delegation #19

In FY 2003 the Director, IHS delegated the authority for Indian Self-Determination Fund (ISD) negotiation and approval to Area Offices pursuant to IHS. The Headquarters OTP continues to review Area recommendations on ISD requests but the final approval authority for FY 2003 and FY 2004 negotiations was delegated to Area Offices.

The proposed change to the Circular extends that delegation for FY 2005 and subsequent fiscal years and incorporates a copy of that Program Delegation as an exhibit to the IHS CSC Circular. The IHS conducts an annual internal “peer review” of the ISD negotiation process. Continuation of this delegated authority will be reviewed annually.

CHANGE #13) – ALLOCATION OF ISD FUNDS

This final change has not been discussed by the IHS CSC Workgroup but it is being distributed for comment so that when the Workgroup convenes to discuss all comments, this issue can be discussed as well. This change is being offered as a means of achieving further equity among all Tribes in the allocation of scarce CSC resources.

The change being considered would revise IHS CSC Policy to allocate CSC associated with new or expanded awards at the average level of CSC funding paid to all existing ongoing 638 awards. This would result in remaining ISD funds being available for allocation to all Tribes to address ongoing CSC Shortfalls. Several options (options “A” and “B” under paragraphs 1, 2, and 3, and the alternative under paragraph 4) are hereby being presented for discussion purposes. Pros and cons are provided below as a way of helping Tribes evaluate the process.

The changes being considered relate to Section 5(B)(1) of the current CSC Circular:

- Paragraph 1.) • **OPTION A** – Startup and pre-award costs are funded at 100%. 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.
- **OPTION B** – Startup and pre-award costs are funded at **the average CSC LNF paid to all existing ongoing 638 awards**. 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 approved requests.
- 2.) • **OPTION A** – The overall CSC requirement [ongoing CSC requirements and new ISD related CSC requirements], excluding startup or pre-award costs, will be computed for each awardee that has an ISD request pending. New or expanded awards are funded up to the full amount of their ISD request in an effort to bring all awardees with new or expanded awards up to **the average CSC LNF paid to all existing ongoing 638 awards**.

- **OPTION B** – New or expanded awards are funded **at the average LNF paid to all existing ongoing 638 awards** (CSC associated with ongoing programs is not taken into consideration in this allocation).
- 3.)
- **OPTION A** – If ISD funding is insufficient to fund all new or expanded awards at the average LNF paid to all ongoing 638 awards, then the IHS will allocate greater ISD funding to awardees with 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, **up to the average CSC LNF paid to all existing ongoing awards.**
 - **OPTION B** – If ISD funding is insufficient to fund all new or expanded awards **at the average CSC LNF paid to all ongoing 638 awards**, then the IHS will allocate an equal percentage to each awardee with an approved ISD Request **up to the average LNF paid to all ongoing 638 awards** (CSC associated with ongoing programs is not taken into consideration in this allocation).
- 4.) If ISD funds remain after all new or expanded awards have been funded as described in paragraphs 1 and 2 above, then, unless prohibited by law, excess ISD funds will be allocated to existing awardees in such a way as to raise the minimum level of CSC funded to the maximum percentage possible (excess ISD funds allocated toward shortfall will no longer be allocated as a part of Headquarters distribution of Pool No. 3).
- **ALTERNATIVE** – Excess ISD funds could continue to be considered a part of Pool number 3 and be allocated as follows: Fifty percent (50%) to those awardees with the greatest CSC need using a “bottom up” allocation methodology and fifty percent (50%) will be allocated as a proportionate allocation to all tribes with a CSC shortfall.
- 5.) Pool number 3 will now be comprised of:
- 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 Director has used the funds to address existing CSC obligations or significant inequities in CSC funding.)
 - ~~Funds remaining (if any) from ISD appropriations after funding the total negotiated ISD requests for the fiscal year, to the extent not prohibited by law.~~
 - Funds appropriated by Congress for general increases on IDC.
 - Funds appropriated by Congress for CSC Shortfalls.

Pro's: Funding new or expanded awards at the average LNF of CSC funding paid to all existing ongoing 638 awards:

1. Allows the IHS to concentrate new funding on achieving a greater degree of equity amongst awardees while continuing to avoid redistributing existing CSC funding to achieve the same purpose. (Option "A" more so than option "B")
2. Allows a greater amount of new funding to be allocated toward ongoing tribal shortfalls. (Option "A" more so than option "B")
3. Allows excess ISD funding to be targeted toward raising the lowest levels of CSC need being funded as opposed to simply adding the funding to pool number 3 where it is allocated much more broadly. (Paragraph 4 as opposed to the alternative under paragraph 4)
4. Does not provide an advantage to new or expanded awards relative to ongoing awards.
5. Results in the same allocation as our existing CSC policy would when there is not sufficient ISD funding to pay all requests at at least the average LNF of ongoing existing awards.
6. Is preferable as opposed to initiating a pro-rata approach to funding all CSC.
7. Is more consistent with views expressed by Resource Committee staff ie, "equity means all Tribes receive the same level of funding".

Con's: Funding new or expanded awards at the average LNF of CSC funding paid to all existing ongoing 638 awards:

1. May be fundamentally opposed by many Tribes because it accepts the fact that CSC will be funded at less than 100% of need.
2. Would fund new or expanded awards at approximately 82% whereas previously new or expanded awards have been funded at 100%. (Note: In FY 2003 new or expanded awards were only funded at 69%)
3. Fails to provide full CSC funding to new Tribes first starting programs at a time when they may really need it most. (Current policy targeted fully funding CSC so new programs could get off on the right foot having been fully funded at least initially.)
4. Could create an incentive for tribes to push up their CSC need so that they appear to be less funded in an effort to receive any new funding.
5. Is a concept that has not been presented to or discussed by the IHS/Tribal CSC Workgroup before being presented to Tribal leadership.
6. If startup and pre-award costs are not fully funded in their initial year, then amounts not paid are never considered for funding in subsequent years. (Paragraph 1, Option "B")

DEPARTMENT OF HEALTH AND HUMAN SERVICES
INDIAN HEALTH SERVICE
ROCKVILLE, MARYLAND 20852

INDIAN HEALTH SERVICE CIRCULAR NO. 2004-xx

CONTRACT SUPPORT COSTS

Section

1. Purpose
2. Policy
3. Authorizing Legislation
4. Definitions
5. Process
6. CSC Shortfall Report to Congress
7. Supersedure
8. Effective Date

- Circular Exhibit 04-xx-A Indian Self-Determination and Education Assistance Act, Public Law 93-638, as Amended, Section 106: [Contract Funding][25 USC Sec. 450j-1]
- Circular Exhibit 04-xx-B CSC Calculation Based on a Detailed Analysis
- Circular Exhibit 04-xx-C CSC Calculated Using the 80/20 Method
- Circular Exhibit 04-xx-D Allocation of ISD Funds Against CSC Requirements for New and Expanded Awards (Bottom-Up Approach)
- Circular Exhibit 04-xx-E Allocation of Pool No. 3 Funds Against Overall CSC Shortfall for Ongoing Contracts (Weighted Need Allocation)
- Circular Exhibit 04-xx-F CSC Shortfall Report Format
- Circular Exhibit 04-xx-G ISD Request Form

CIRCULAR EXHIBIT 04-XX-H

STANDARDS FOR REVIEW AND APPROVAL OF CSC IN THE IHS

CIRCULAR EXHIBIT 04-XX-I

IHS PROGRAM DELEGATION #19 – DELEGATION OF AUTHORITY TO REVIEW AND APPROVE TRIBAL REQUESTS FOR INDIAN SELF-DETERMINATION FUNDS

Section 1. PURPOSE.

This policy is intended to provide guidance to both tribal and agency personnel in the preparation and negotiation of requests for contract support funding in support of new and continuing Public Law (P.L.) 93-638 contracts and compacts. It will provide instructional guidance on:

- Determining amounts of startup, direct, and indirect contract support costs (CSC);
- Allocating pools of Indian Health Service (IHS) funding available for CSC;
- Prioritizing tribal requests for funding of CSC; and
- 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 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.

Section 2. POLICY.

It is the policy of the IHS to provide for a uniform and equitable system of distributing CSC funds to new and existing P.L. 93-638 compacts and contracts, and to preserve and support each awardee's right to contract under P.L. 93-638.

Section 3. AUTHORIZING LEGISLATION.

This Circular is authorized pursuant to the Transfer Act, Title 42 United States Code §2001, and implementing regulations in Title 42 of the Code of Federal Regulations (C.F.R.) §36.3. The development of this Circular has involved the active participation of representatives from Indian tribes. The procedures discussed in this Circular will be applied to contracts awarded pursuant to Title I of the Indian Self-Determination and Education Assistance Act (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. Section 106 of P.L. 93-638, as amended, authorizes funding for all Indian Self-Determination and Self-Governance agreements under the Act. Section 106 is provided as Exhibit 04-xx-A to this Circular, and is cross-referenced to the pertinent sections or paragraphs where instructions or examples have been provided.

Section 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) CSC Available. Total CSC funding allocated to an awardee (including any portion of tribal shares that are available for CSC requirements pursuant to paragraph 5(A)(3) of this Circular).
- (D) CSC Requirement. The full amount of CSC need (Indian Self-Determination (ISD) Fund [ISD] plus ongoing contracted or compacted programs) as determined under this Circular pursuant to section 106 of P.L. 93-638, as amended.
- (E) Contract Proposal. A proposal for programs, functions, services, or activities that the Secretary is authorized to perform but which the Indian tribe or tribal organization is not now carrying out (see definition at 25 C.F.R. Section 900.6). The requirements of a self-determination contract proposal can be found in 25 C.F.R. Section 900.8.
- (F) Indian Self-Determination (ISD) Fund. Funds specifically appropriated by Congress to pay CSC requirements associated with new or expanded programs under the ISDEAA. In fiscal years 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) Programs, Functions, Services, and Activities (PFSA). The PFSAs 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 that carries out such functions (as authorized under P.L. 93-638, as amended).
- (H) ISD Programs. The PFSAs associated with an ISD request that are eligible for ISD funding in accordance with paragraph 5(B)(1)(a) of this Circular.
- (I) Non-ISD Programs. All PFSAs operated by an awardee, exclusive of PFSAs associated with an ISD request that are operated by an awardee in accordance with paragraph 5(B)(1)(a) of this Circular.
- (J) Non-Recurring Funds. Funds that require a rejustification annually, and are awarded based upon an annual resource allocation methodology that considers or is dependent upon 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).
- (K) Ongoing CSC Shortfall. This is the portion of the "total CSC shortfall" less CSC shortfall associated with awardees' ISD programs.
- (L) Recurring Funds. Contract or compact funds that do not require rejustification each year to the Secretary are considered recurring funds. Annual increases are provided through mandatory 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:

- (1) An application from a tribe or tribal organization to enter into the Self-Governance Program for the first time, including Title V; or
- (2) An application from a tribe or tribal organization to join an existing self-governance compact; or
- (3) An application from a tribe or tribal organization 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. A term that 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 AFAs, 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 funding agreement.

- 1/ **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.**

Section 5. PROCESS.

(A) Determining Amounts of Startup, Direct, and Indirect CSCs.

- (1) Overview. Sections 106 (a)(1) and 106(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 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 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 CSCs) 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 CSCs and PFSA funding amounts.

When awardees choose to utilize sub-awards with tribes or tribal organizations (which meet in all respects the requirements to contract directly with the IHS but which choose, through tribal resolution, to subcontract to carry out IHS PFSAs), to carry out all or part of the PFSAs 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 are additional costs associated with operating a single program, except that such funding shall not duplicate any funding provided under section 106(a)(1).

CHANGE #1) – Program profiles for CHS funded programs

To ensure that there is no duplication of ~~106(a)(1)~~ 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 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. **IN INSTANCES WHEN THE IHS HAS PROVIDED FOR GENERAL HEALTHCARE THROUGH A CAPITATED FUNDED CONTRACT A DETAILED BUDGET FROM THE IHS REFLECTING THE EXPENDITURE PATTERNS OF HOW THE SECRETARY WOULD HAVE OTHERWISE OPERATED THE PFSAS WILL BE USED AS A BASIS FOR NEGOTIATIONS.**

For awardees with indirect cost (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 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.

CHANGE #2a) – Insert reference to CSC Standards as Circular Exhibit 04-xx-H

(a) **Startup and Pre-Award Costs.** Sections 106(a)(5) and 106(a)(6) 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 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.”*
- (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.*

Examples of startup and pre-award costs **ARE DESCRIBED IN THE “STANDARDS FOR REVIEW AND APPROVAL OF CSC IN THE IHS” (SEE EXHIBIT 04-XX-H).** include, but are not limited to:

- ~~Purchase of administrative computer hardware and software;~~
- ~~Required training and staff development;~~
- ~~Systems development (establishing required administrative and other health management systems); and~~
- ~~Equipment and furniture to support the administrative unit.~~

Startup costs for PFSAs will only be provided to an awardee once 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. 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). DCSC may be incurred directly by the awardee or by an eligible sub-awardee. DCSC amounts are awarded on a recurring basis.

CHANGE #2b) – Insert reference to CSC Standards as Circular Exhibit 04-xx-H

Examples **OF DCSC ARE DESCRIBED IN THE “STANDARDS FOR REVIEW AND APPROVAL OF CSC IN THE IHS” (SEE EXHIBIT 01-04-XX-H).** **THESE** may include, but are not limited to:

- Unemployment taxes on direct program salaries;
- Workers compensation insurance on direct program salaries;
- Cost of retirement for converted Civil Service and Commission Corp salaries;
- Insurance;
- Facilities support costs to the extent not already made available;
- Training required to maintain certification of direct program personnel; and
- 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.

CHANGE #3) – Address IDC Type costs for Tribes with rates

DCSC funds 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 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 5(B)(3) below]. To the extent that the DCSC requirement is reduced, excess DCSC funds may first be used to fully fund the awardees IDC requirements before the IHS reduces any excess funds.

CHANGE #4) – Delete last paragraph

~~Startup costs and DCSCs must be justified as such and negotiated with the Area office before recommendation to the IHS Headquarters, Division of Financial Management (DFM). Items not included as examples above, but requested and justified by awardees, shall be submitted by the Area office to Headquarters, DFM, for review. This will contribute to greater consistency from Area to Area (see also Roles and Responsibilities, paragraph 5(C) below).~~

CHANGE #2c) – Insert reference to CSC Standards as Circular Exhibit 04-xx-H

- (c) Indirect Costs. Guidelines for the Principles Involved in Negotiating Indirect and Indirect Type Costs: A plan for allocation of IDCs 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 will 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) of P.L. 93-638, as amended, has made modifications to the OMB cost principles otherwise applicable to awardees. **SEE ALSO THE “STANDARDS FOR REVIEW AND APPROVAL OF CSC IN THE IHS” (SEE EXHIBIT 04-XX-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 5(A)(3) below. The amount determined as the awardee’s CSC requirement will be consistent with the individual awardee’s rate agreement, reflecting any exclusions required by the IDC agreement.

CHANGE #5) – Delinquent IDC Rates

IF AN AWARDEE’S IDC RATE IS APPLICABLE TO A FISCAL YEAR THAT IS FOUR OR MORE YEARS OLD, THEN 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 (II) BELOW).

(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.

Examples of indirect or indirect type costs are:

Management and Administration	Facilities and Facilities	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 those tribal shares in one of two ways.

- (a) Alternative A. The awardee and the Area office shall conduct a case-by-case detailed analysis 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 those costs that are already included in the awardee's IDC pool or are proposed to be funded as DCSC. Those costs that are 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: 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)] and 20 percent of the tribal share 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%) exceeds the awardee's negotiated CSC requirements, the awardee shall retain these funds for program purposes.

Note: In fiscal year 2000/2001, 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 tool. The IHS CSC Workgroup concluded that there was not sufficient data to warrant modifying the allocation process in FY 2002 but 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 two 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 allocation of funding in this pool will apply.

Exhibit 04-xx-B illustrates how Alternative A (a detailed analysis) would be calculated, and Exhibit 04-xx-C illustrates how Alternative B (the "80/20 method") would be calculated.

(B) Allocating Funding Available for CSCs.

In theory, CSC funding is composed of three “pools.” The first pool is composed of any funding increase appropriated for CSCs 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 CSCs (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.

CHANGE #13) – ALLOCATION OF ISD FUNDS

(1) Pool No. 1 - ISD Fund.

- (a) 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/Memorandum of Agreement (IPA/MOA) position to direct hire whether or not such transfer of the IPA/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; or

CHANGE #6) – Clarify “expanded” for New or Expanded Awards

- iv) New or expanded PFSAs available due to new appropriations, excluding ~~mandatory increases~~ **GENERAL PROGRAM INCREASES AND INCREASES FOR INFLATION, PAY COSTS, POPULATION GROWTH, AND THE INDIAN HEALTH CARE IMPROVEMENT FUND.**

CHANGE #7) – CSC on Construction projects and CSC on Administrative Shares associated with a construction project

~~*(b.) CSC is not provided to support the award of construction projects. Administrative and support costs associated with construction projects are included in the project cost estimate and are funded from within the total construction award.*~~

[NOTE: The OTP is arranging a meeting with IHS OEH&E staff, IHS OES staff [the Facility Advisory Board,?] and tribal representatives from the IHS/Tribal CSC Workgroup to discuss this matter]

- (b) When an awardee withdraws PFSAs from an existing award between the IHS and another awardee who 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:
- 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.
 - Conversely, IDC funding should be first applied 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. CSC 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 funding agreement's performance period, not to exceed 12 months. CSC funding requests on the ISD list (known as "ISD Requests") will be determined as follows:
- (i) First, subject to paragraph 5(c)(iv) below, the initial distribution of the ISD Fund will be made subsequent to July 3rd of each fiscal year, based on contract proposals being received by July 3rd of that fiscal year. 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. ISD requests received prior to July 3rd of the fiscal year, (or Final Offers received by August 17th of the fiscal year in the case of a Title V compactor), must be finalized for distribution in that fiscal year.
 - (ii) For proposals submitted between April 1st and July 3rd of each fiscal

year, or PFSAs awarded between July 3rd and September 30th of each fiscal year, an ISD request must have been submitted on or before July 3rd, (or on or before August 17th in the case of a Final Offer from a Title V compactor), to receive a portion of the ISD fund distribution for that fiscal year.

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

If the awardee fails to submit an ISD request before July 3rd of the subsequent fiscal year, (or before August 17th 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 fiscal year's Pool No. 3 shortfall distribution.

- (iii) For proposals submitted before April 1st and starting in the current fiscal year, failure to submit an ISD request before July 3rd of that fiscal year (or August 17th 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 only be funded through the next fiscal year's Pool 3 shortfall distribution.

NOTE: In the event 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 fiscal year or that ISD funds will have been fully allocated and no ISD funds will be available for a subsequent distribution.

- (iv) ISD requests that are submitted independently of a contract proposal shall be required to be reviewed within an independent 90-day proposal review period associated with just the ISD request, (or 45-day review period in the case of a Title V compactor's Final Offer) (see also section (c)(1)(b) below).
- (v) ISD requests will be funded by first paying 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 with 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 Exhibit ~~04-xx~~-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 is practical, based on all ISD requests received and negotiated. An interim payment in advance of the initial distribution described in paragraph 5(c)(i) above may be made to awardees earlier in the fiscal year 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 fiscal year.
- (viii) If there are no ISD funds to be distributed in the current fiscal year 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 fiscal year.

CHANGE #8) – Clarify allocation for annualizing payments. Break paragraph (ix) into two paragraphs and renumber paragraphs x and xi.

- (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 FISCAL YEAR ONLY.**
- (x) When computing the requirement for the subsequent year the IHS shall ensure, to the greatest extent possible, that funds to cover the same proportionate share of the annual ISD request amount as was paid on the partial year amount, are available for the subsequent year.
- (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 5(B)(3) below.

(2) Pool No. 2 - Prior Year CSC Funding That Remains Justified in the Subsequent Fiscal Year (Ongoing Awards).

- (a) The amount of CSC funds (excluding pre-award and start up costs) paid to an Area in any year will be paid to that Area as a recurring amount. Adjustments will only be made in subsequent years as new funds are made available or as Areas return CSC funds that they no longer require.
- (b) As stated in paragraph 5(C)(2)(a), 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 CSCs 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 in the subsequent year does not exceed 100 percent of the awardee's total CSC requirement. [See paragraph 5(C)(2)(c) below.]

**CHANGE #9) – Discuss funding CSC shortfalls
(50/50 Allocation & Redistribution of Excess CSC Between Areas)
(See also paragraph C.(2)(c) below)**

- (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 fiscal year, 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 *those* 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). After any *Area* redistribution of CSC, if an awardee's 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 Exhibit 04-xx-E.

(3) Pool No. 3 – CSC Increases/ Shortfall Funds.

- (a) Prior year funds provided for CSC to each awardee (excluding pre award and start up costs), if justified in subsequent years, shall not be reduced by the IHS, except as authorized in section 106(b) of the ISDA. 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 Exhibit 04-xx-E.

(b) Several sources of revenue may be available to fund these ongoing shortfalls in CSC. These include:

- 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 Director has used the funds to address existing CSC obligations or significant inequities in CSC funding.)
- Funds remaining (if any) from ISD appropriations after funding the total negotiated ISD requests for the fiscal year, to the extent not prohibited by law.
- Funds appropriated by Congress for general increases on IDC.
- 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 Exhibit 04-xx-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 their overall CSC shortfall.~~

(d) The IHS is just as concerned with providing equity among all tribes in the awarding of CSC as it is in providing full CSC funding to each awardee contracting or compacting pursuant to the ISDEAA. In order to achieve both 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 first allocate 50 percent of the funds available under Pool No. 3 to those tribes with the greatest CSC shortfalls utilizing a "bottom up" allocation methodology and will then allocate the remaining 50 percent of the funds available under Pool No. 3 toward a proportionate allocation to all tribes with a CSC shortfall.

CHANGE #10) – Excess ISD funding in Pool No. 3

(e) The distribution of funds from Pool No. 3 shall be made as expeditiously as possible, but no later than March 30th of any fiscal year.

(i) The distribution of excess ISD funding in Pool No. 3 will be made subsequent to July 3rd of each fiscal year.

CHANGE #11) – Clarify language for updating CSC information

(f) Areas are expected to update the shortfall information used for the distribution of the Pool No. 3 fund **(USE 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% OF ITS TOTAL CSC REQUIREMENT.**

- (g) 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 (bottom up approach as in paragraph (b)(2)(d) above).

C) 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 those activities associated with the determination of initial tribal CSC (ISD) requirements, those activities associated with ongoing management of CSC requirements, and some of the ancillary CSC activities carried out by the IHS.

(1) Initial ISD Request Responsibilities.

- (a) **Initial ISD Request.** 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 Exhibit **04-xx-G**]. The request must include: a clear description of the requested CSC amounts to be negotiated (as specified at 25 C.F.R. 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 106(a)(1) amount to facilitate CSC negotiations. The Area Director or his/her designee will provide a copy of the negotiated ISD request to the IHS Headquarters DFM, and in the case of a Title V compactor, a copy to the Office of Tribal Self-Governance.

CHANGE #12) – Update for Program Delegation #19

- (B) **ISD Negotiation.** The Area office has primary responsibility for negotiating the ISD request with the awardee and forwarding **THE APPROVED REQUEST a recommendation** to Headquarters DFM for **ALLOCATION FROM THE ISD FUND review and approval. (SEE IHS PROGRAM DELEGATION #19 ATTACHED AS EXHIBIT 04-XX-I)**

Headquarters DFM shall have responsibility to review and approve the request. If Headquarters DFM raises an objection to the request, they shall communicate their objection in writing to the Area Director or his/her designee and request re-negotiation with the awardee. The Headquarters DFM may assist the Area in this renegotiation. 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 C.F.R. Section 900.20 – 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 after the submission of a Final Offer, if any) unless the awardee has provided a written extension in accordance with 25 C.F.R. Section 900.17.

(c) ISD Request List. The list of pending ISD requests for each fiscal year for the ISD Fund will be maintained by the Headquarters DFM OFFICE OF TRIBAL PROGRAMS (OTP) and distributed quarterly to the Area offices and to awardees on the list for the current fiscal year. The list will include 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 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-DFM will update the list of estimated amounts of CSCs 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 ISD requests received to date.

(d) Changes in Start Date. Prior to actual startup, any awardee has the right to delay its startup 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 in order to acknowledge the change and to determine a new proposed start date. Delay of the startup date to a subsequent fiscal year 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 upon the circumstances.

In the alternative, if an awardee believes it cannot operate the PFSAs that it is contracting due to the delay in CSC funding under the initial ISD allocation made after July 3rd, that tribe may delay its startup 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 5(B)(1)(c)(vi) above. In the subsequent year, the IHS will then be required to provide this same proportionate share of the initial payment, to the greatest extent possible, annualized for the entire fiscal year.

(2) Subsequent Funding Periods.

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

- (b) 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.

CHANGE #9) – Discuss funding CSC shortfalls
(50/50 Allocation & Redistribution of Excess CSC Between Areas)
(See also paragraph B.(2)(d) and B.(3)(c)&(d) above)

- (c) 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 shortfalls within that Area (see paragraph (B)(2)(d) and (B)(3)(f) above). 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 (P.L. 95-563, as amended, and 25 C.F.R. Section 900.216).
- (d) Each Area Director or his/her designee will report to Headquarters DFM any shortfalls in funding of direct or indirect contract support and such shortfalls should be included in the required Reports to the Congress and be reported to tribes (see Section 6. below).
- (e) 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 not be carried forward and will not be 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)

--DCSC** (Recurring to awardee and Area in Year 2)
--IDC* (Non-recurring to awardee, recurring to Area)
--Program Base** (Section 106(a)(1) amount) (Recurring to awardee and Area)

*IDC base amount in subsequent years is described above. Pool No. 2. Increases/decreases to IDC base amount are governed by Pool No .3, also described above.

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

(3) Other CSC Responsibilities.

- (a) Disputes. Disputes over CSC should be handled as either a formal declination appeal or as a Contract Disputes Act (CDA) claim. An informal conference (25 C.F.R. Section 900.153) or other alternative disputes mechanism (25 C.F.R. 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 in the IHS Headquarters Office of Tribal Programs should be contacted for possible referral to the IHS Headquarters Leadership Team.

- (i) 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 C.F.R. Subpart L, Section 900.150. Declination appeals are most likely to occur as a result of disagreements over an awardee's ISD request [Paragraph 5(C)(1)(b) above]. Declination appeals must be processed pursuant to 25 C.F.R. Subpart L, Sections 900.150 – 177.
- (ii) 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 in the event it is unable to reach agreement with the IHS on the terms of a compact or finding agreement, including funding levels. Final Offer appeals must be processed pursuant to section 507(C)(1) of the ISDEAA and any regulations promulgated there under.
- (iii) Post-Award Contract Disputes Act Claims. 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 5(A)(2)(b) above], the renegotiation of indirect type costs [paragraph 5(A)(2)(c) above], or the allocation of CSC [paragraph 5(B)(2) or (3) above]. Post-award contract disputes must be handled pursuant to 25 C.F.R. Subpart N, Sections 900.215 – 230.
- (b) CSC Pilot Projects and Base Budgets. There are currently several CSC Pilot Projects ongoing (including CSC Base Budgets) that are intended to incorporate innovative approaches to CSC funding issues. Upon completion and evaluation of these projects, this Circular may be amended to incorporate new provisions.

- (c) CSC Budget Projections. Each Area Director or his/her designee shall survey tribes and tribal organizations within that Area to develop accurate CSC need projections on an annual basis. This will include an identification of amounts required for the ISD Fund and projections for the total ongoing CSC requirement for the following fiscal year as well as estimates for the next two fiscal years. This information will be consolidated by the Headquarters DFM and provided to tribes and tribal organizations. This information will also be generated in a report on or before September 30th of each fiscal year and will be used by the IHS in conjunction with the agency's budget formulation process.
- (d) Common Language. The IHS may from time to time propose common language for funding agreements regarding contract support costs. This common language may be considered as an option for negotiations by the tribes and lead negotiators. Tribes and IHS negotiators should be made aware that specific CSC language in contracts, compacts, and funding agreements is negotiable.
- (e) IHS CSC 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 the development of 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.

Section 6. IHS CSC 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. A detailed sample of the data base to be maintained by each Area is provided in Exhibit 04-xx-F.
 - Direct program funds;
 - Startup costs;
 - Direct contract support funds;
 - Indirect cost funding;
 - Indirect-type cost funding;
 - Indirect cost rates;
 - Types of bases;
 - Pass through/exclusions;
- Total IDC Base (direct cost base)
- Direct CSC requirements (including the unduplicated DCSC requirement associated with sub-awards)

- Indirect CSC requirements (including the unduplicated IDC requirement associated with sub-awards)
- (B) Areas shall provide a report to the Headquarters DFM by November 15th of each fiscal year that includes those data elements identified above for the previous fiscal year 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.
- (C) 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 15th as well. Any corrections or changes to the data resulting from awardee review must be certified by the Area FMO and submitted to the Headquarters DFM through the Area Director or his/her designee by December 15th of each fiscal year.
- (D) The Headquarters DFM shall consolidate all Area reports into the **IHS CSC Shortfall Report**. In doing so, the Headquarters DFM shall, in consultation with the Office of Tribal Programs and the Office of Tribal Self-Governance, provide a projection of the CSC shortfall for the current and subsequent fiscal year.
- (E) The Headquarters DFM shall finalize the **IHS CSC Shortfall Report**; obtain concurrence from the Director, Office of Tribal Programs, and the Director, Office of Tribal Self-Governance; and then send it to the Director, IHS, for approval by February 1st of each fiscal year.
- (F) After the report is approved by the Director, IHS, the Headquarters DFM 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.

Section 7. SUPERSEDURE.

Indian Health Service Circular No. 2000-01, "Contract Support Costs," dated January 20, 2000, and any policies or instructions previously issued regarding the allocation of CSC funds, are hereby superseded.

Section 8. EFFECTIVE DATE.

The policy and procedures contained in this Circular are effective and applicable to awards made for fiscal year 2005 2002 and subsequent fiscal years, upon signature by the Director, IHS.

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

Standards for the Review and Approval

of

Contract Support Costs

in the

Indian Health Service

Indian Health Service
Office of Tribal Programs

GUIDELINES FOR PROPOSAL PREPARATION AND COST ANALYSIS OF ISD REQUESTS

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. For some, CSC is a mystery – a confusing category of costs that are seemingly allowed or disallowed without rhyme or reason. For others, CSC provides “that little something extra” that can make the difference between having to sacrifice scarce program resources to cover administrative costs and actually building a stable Tribal infrastructure capable of administering quality programs.

The following documents are intended to remove some of the mystery surrounding 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 of Tribal CSC requests, it became necessary to develop a set of consistent standards. In fiscal year 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 footnoted.

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 so that there will be 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 Act. This is being provided in an effort to achieve consistency in the review, negotiation, and approval of Tribal CSC.

STATUTORY BACKGROUND

Sections 106(a)(1), (a)(2), (a)(3), (a)(5), and (a)(6) of Public Law (P.L.) 93-638, as amended, provide for funding of contract and compact awards for program costs and CSC.

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.

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.

Sections 106(a)(2) and (a)(3) define CSC that are eligible for reimbursement. These costs are:

- Reasonable costs for activities that must be carried out by the Indian Tribe or Tribal organization as a contractor/compact to ensure compliance with the terms of the contract and prudent management.
- Reasonable, necessary, and allowable costs of the contractor/compact that are allocable to the contract/compact based on applicable Federal cost principles.

- 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).
 - Treated as either direct or indirect by the contractor/compact based on applicable cost principles and the contractor/compact's cost allocation policy.
- Direct CSC (DCSC) are both non-recurring and recurring. 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). Recurring DCSC are those costs which are associated directly with the operation of the program.

Indirect costs (IDC) are costs (1) incurred for a common or joint purpose benefiting more than one contract objective, or (2) that are not readily assignable to the contract/compact objectives specifically benefited without effort disproportionate to the results achieved. Indirect costs are not funded as direct program costs but rather are incorporated in the contractor/compact's indirect-cost reimbursement plan as negotiated annually with the cognizant Federal agency.

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/compact 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.

OMB CIRCULAR A-87

OMB Circular A-87 contains cost principles for State, local, and Indian Tribal governments. Most Tribes and Tribal organizations have adopted OMB Circular A-87 as their applicable cost principles. OMB Circular A-87 is useful as it defines the allowability of costs under Federal awards by applying the following three criteria. Costs must be: (1) allowable, (2) reasonable, and (3) allocable. These principles 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:

1. Factors affecting allowability of costs. To be allowable under Federal awards, costs must meet the following general criteria:
 - a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.
 - b. Be allocable to Federal awards under the provisions of this Circular.
 - c. Be authorized or not prohibited under State or local laws or regulations.
 - d. 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.
 - e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.
 - f. 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.
 - g. Except as otherwise provided for in this Circular [OMB Circular A-87], be determined in accordance with generally accepted accounting principles.
 - h. 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.
 - i. Be net of all applicable credits.
 - j. Be adequately documented.

2. **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:

- a. 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.
- b. 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.
- c. Market prices for comparable goods or services.
- d. 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.
- e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.

3. **Allocable costs.**

- a. 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 relative benefits received.
- b. 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.
- c. Any cost allocable to a particular Federal award or cost objective under the principles provided for in this Circular [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.
- d. 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].

CONCLUSION

In an effort to make CSC more understandable, the IHS is providing the following guidelines (standards) for CSC proposal development. The following pages provide the standards against which the IHS will review Tribal CSC requests. The following are provided as guidelines only and are not intended to be read as regulations dictating allowable Tribal CSC. These standards should be interpreted in such a way as to be consistent with the ISDEAA, its implementing regulations, and IHS CSC Policy.

GUIDELINES FOR PROPOSAL PREPARATION AND COST ANALYSIS OF ISD REQUESTS

FOR

PRE-AWARD AND STARTUP SELF-DETERMINATION/CONTRACT SUPPORT COSTS

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 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 ISD 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 contract support costs.

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:

- The Tribe fails to notify the Agency in writing of the nature and extent of the costs before they are incurred.
- 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.
- 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.
- The Tribe cannot provide documentation of the costs.
- The requested costs are found not to be reasonable and necessary by the Agency after they are incurred and submitted for reimbursement.
- The P.L. 93-638 contract proposal for which they are incurred is not awarded.
- 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.

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 (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 reasons for the amounts, to reviewers at all levels of the Agency.

<u>LINE ITEMS</u>	<u>GENERAL GUIDELINES/ Examples of Allowable Costs</u>	<u>DOCUMENTATION</u>	<u>STANDARDS FOR REVIEW AND DUPLICATION</u>
<u>PRE-AWARD COSTS -</u> Sec 106(a)(6) letter	<p>Pursuant to Section 106(a)(6) of the 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 PSFAs 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 provided by 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 <i>SAMPLE pre-award letters, copies attached.</i>***</p>
<u>PRE-AWARD COSTS -</u> <u>(No Award)</u>	Pre-award costs are only awardable when an award of a PFSA is made.	Same as pre-award costs above.	No pre-award costs are awarded in the event the Tribe decides not to enter into a contract or compact for any of the PSFAs proposed.

<u>LINE ITEMS</u>	<u>GENERAL GUIDELINES/ Examples of Allowable Costs</u>	<u>DOCUMENTATION</u>	<u>STANDARDS FOR REVIEW AND DUPLICATION</u>
<u>PRE-AWARD COSTS - (Partial Award)</u>	Pre-award costs are only awardable when an award of a PFSA is made. Costs directly attributable to a specific PSFA 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
<u>STARTUP COSTS</u>	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 due to be paid if any PFSA is contracted for, unless it can be demonstrated that certain pre award costs benefit only the PFSAs 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 cost 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 PFSAs 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/ Examples of Allowable Costs</u>	<u>DOCUMENTATION</u>	<u>STANDARDS FOR REVIEW AND DUPLICATION</u>
<p><u>SUPPLIES:</u></p> <p>Pre-award supply costs are allowable.</p> <p>Startup costs for supplies are allowable to support the startup activities only</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>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>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.</p> <p>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>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, 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>The IHS has considered all startup requests for program supplies to be a duplication of the 106(a)(1) amount.³</p>

3. Some Tribal representatives feel that the cost of medical and 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 / 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 start-up 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/ Examples of Allowable Costs</u>	<u>DOCUMENTATION</u>	<u>STANDARDS FOR REVIEW AND DUPLICATION</u>
<p>EQUIPMENT 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 cost. 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 carryout the contract/compact have generally not been allowed.⁴</p> <p>Costs must meet the CSC definition and are for the use of the administrative unit of the Tribe.</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 carryout the contract/compact have generally not been allowed.⁴</p> <p>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 end user of the equipment.</p>	<p>All costs must be reasonable and necessary to plan for or start up 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/ 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 startup 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>
<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 startup the contract. These costs should be documented with a detailed description of the type and quantity and unit cost of the items and the need 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 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 startup 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>

GUIDELINES FOR PROPOSAL PREPARATION AND COST ANALYSIS OF ISD REQUESTS

FOR

DIRECT CONTRACT SUPPORT COST (DCSC)

DIRECT CONTRACT SUPPORT COSTS. 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 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 Tribal-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 106(a)(1) amount for this activity to avoid duplication of costs. The amount provided in support of these functions included in the 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 expenditure amount 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 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 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

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 106(a)(1) amount are obviously paid with Federal dollars regardless of the source of funds for the employee's salary.

The Agency is required to determine that amounts requested in the DCSC proposal are not duplicated in either the 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 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 the last IHS circular, 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.

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 106(a)(1) program base. These costs have recently been transferred to the Area Offices and should now be available for inclusion in the 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 of the Agency.

<u>LINE ITEMS</u>	<u>GENERAL GUIDELINES/ Examples of Allowable Costs</u>	<u>DOCUMENTATION</u>	<u>STANDARDS FOR REVIEW AND DUPLICATION</u>
<p><u>SALARIES</u></p> <p>In general salaries and wages⁶ for personnel have been completely disallowed for direct contract support costs.</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 106(a)(1) amount.</p>	<p>The Agency has considered all salary requests a duplication of the 106(a)(1) amount or an expansion of the negotiated 106(a)(1) amount.</p>
<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>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 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 106(a)(1) amount available for the PFSA's to be contracted.</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>The Agency totals the amount provided in the 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 106(a)(1) amount, the difference is allowed as a DCSC requirement for the PFSA's transferred.</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 / Examples of Allowable Costs</u>	<u>DOCUMENTATION</u>	<u>STANDARDS FOR REVIEW AND DUPLICATION</u>
<u>FRINGE BENEFITS</u> Workers compensation insurance	Funding for workers compensation costs is not transferred as part of the 106(a)(1) amount.	Awardees should provide documentation for workers compensation costs	Costs of workers compensation insurance are allowed as a DCSC requirement.
Unemployment insurance	Unemployment insurance is not provided as part of the 106(a)(1) amount.	Awardees should provide documentation of State Unemployment Insurance costs	Costs of State Unemployment Insurance ⁷ are allowed as a DCSC requirement.

Example of the fringe benefits calculation:

Item	Tribal Amount	IHS Amount	Difference
FICA	1,000	900	---
Retirement Insurance (Life, Hlth., Disblty)	2,000	1,250	---
Sub-Totals	3,750	3,150	600
Workers Comp.	200	---	200
Unemployment	400	---	400
TOTALS	4,350	3,150	1,200

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.

<u>LINE ITEMS</u>	<u>GENERAL GUIDELINES / Examples of Allowable Costs</u>	<u>DOCUMENTATION</u>	<u>STANDARDS FOR REVIEW AND DUPLICATION</u>
<u>TRAVEL/VEHICLE LEASE</u>	These are generally not provided as an 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 a DCSC requirement.	The Agency has considered most requests for travel duplicative of the 106(a)(1) amount or as an activity that would normally be carried on by the Agency in the direct operation of the program.
<u>SUPPLIES AND DRUGS</u>	These are generally not provided as an allowable DCSC.	Supply costs are not generally allowed by the agency as a DCSC requirement.	The Agency has considered most requests for supplies and drugs duplicative of the 106(a)(1) amount or as an activity that would normally be carried on by the Agency in the direct operation of the program.
<u>INSURANCE</u> General Insurance (property, fire, general liability)	The Office of General Counsel (OGC) has advised the Agency 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.

<u>LINE ITEMS</u>	<u>GENERAL GUIDELINES/ Examples of Allowable Costs</u>	<u>DOCUMENTATION</u>	<u>STANDARDS FOR REVIEW AND DUPLICATION</u>
<u>MALPRACTICE LIABILITY INSURANCE</u> 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 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.
<u>POSTAGE</u>	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 106(a)(1) amount.
<u>PRINTING AND DUPLICATION</u>	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 106(a)(1) amount.
<u>COMMUNICATIONS</u>	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 106(a)(1) amount.

<u>LINE ITEMS</u>	<u>GENERAL GUIDELINES/ Examples of Allowable Costs</u>	<u>DOCUMENTATION</u>	<u>STANDARDS FOR REVIEW AND DUPLICATION</u>
<u>TRAINING</u> 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 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 106(a)(1) amount.
<u>TRAINING</u> Long-term Training	The IHS has made available all Federal dollars supporting long-term career training costs in the 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 106(a)(1) amount.
<u>EQUIPMENT PURCHASE AND MAINTENANCE</u>	This is generally not included in the DCSC requirement. Funds for equipment purchase should be included in the 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 106(a)(1) amount, or are covered in the indirect cost pool.
<u>RENT/UTILITIES</u>	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 106(a)(1) amount because the facility in question continued to be utilized to operate IHS or other Tribally operated programs.	This is allowable when a program is being divided and space currently utilized 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 106(a)(1) amount, or are covered in the indirect cost pool.

<u>LINE ITEMS</u>	<u>GENERAL GUIDELINES/ Examples of Allowable Costs</u>	<u>DOCUMENTATION</u>	<u>STANDARDS FOR REVIEW AND DUPLICATION</u>
<u>OTHER DCSC</u>	<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 106 (a)(1) amount). CSC 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 an IDC-type cost for funding purposes.</p>	<p>Awardees are to provide a detailed description and justification of costs showing they should be allowable pursuant to 106(a)(2). Documentation should show that the costs are neither included in the IDC pool nor generally included in the 106(a)(1) amount.</p>	<p>Each cost must meet the definition of CSC at 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 106(a)(1) amount.</p>

GUIDELINES FOR PROPOSAL PREPARATION AND COST ANALYSIS OF ISD REQUESTS
FOR
INDIRECT CONTRACT SUPPORT COSTS (IDC)

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
2800 Cottage Way, Suite E-2712
Sacramento, CA 95825
Ph. (916) 978-5638
<http://www.oig.doi.gov/icps/icphome.html>

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
Ph. (415)437-7820
<http://rates.psc.gov/dcamgrs.htm>

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 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, Office of Tribal Programs
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.

Sincerely,

**** Authorized Tribal Signature****

Cc: Headquarters, Office of Tribal Programs
Headquarters, OTSG (**** When compacting under Title V****)