

DEPARTMENT OF HEALTH AND HUMAN SERVICES

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

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CONTRACT SUPPORT COSTS

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

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

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Distribution: IHS-wide

Date: September 01, 2004

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

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

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in the Act, or as specified in subpart J, an Indian Tribe or Tribal organization is not required to abide by any unpublished requirements such as program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Indian Tribe or Tribal organization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

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

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

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

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

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

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5. PROCESS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) unemployment taxes on direct program salaries,

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

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

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

