

August 10, 2001

Letter to: IHS Area Directors
Contract Proposal Liaison Officers (CPLOs)
Title III & V Agency Lead Negotiators (ALNs)

RE: Revised CSC Pilot Project Program

Ladies and Gentlemen:

On Tuesday, June 12th the Director approved the findings and recommendations of the IHS CSC Workgroup as they pertain to the evaluation of the Tribal Self-Governance CSC Pilot Project Program. The result will be the implementation of a revised CSC Pilot Project Program. The new program is intended to be a transitional program which would allow time for the IHS to consult with tribes concerning the implementation of more innovative CSC options while at the same time allowing additional tribes the ability to participate in the program.

The extension of the revised CSC Pilot Project Program to eligible tribes and tribal organizations is intended to be implemented as a means of bringing order to the existing array of current CSC pilot projects and establishing a direction for future innovation in CSC implementation. This remains a "pilot project" and as such is subject to continuation or termination based on tribal consultation and subsequent evaluation. It is offered in the spirit of progressive implementation of Congressional and Secretarial Self-Determination policy. Tribes and tribal organizations interested in participating in the program will contact their Area Office for information concerning implementation of this Program. Area Offices, or ALNs in the case of Self-Governance compacts, will be responsible for the negotiation of the terms of participation under this Program. The Headquarters, Office of Tribal Programs (OTP) will provide support for these negotiations. Care must be exercised so that the terms of participation are not inconsistent with, or extend beyond, what has been authorized by the Director. Training will be provided by the Headquarters, OTP in an effort to implement this program in a consistent manner in accordance with the recommendations approved by the Director. The attached information should answer most questions as they pertain to the revised CSC Pilot Project Program, however, Area Offices should contact the Headquarters, OTP if you have any questions concerning the implementation of this program.

/s/ Ronald B. Demaray, Director
Self-Determination Services, OTP
Indian Health Service

Implementation Guidelines

Revised CSC Pilot Project Program

I. Program Description:

A. The revised Contract Support Cost (CSC) Pilot Project Program is a CSC pilot program offered on an interim basis to tribes and tribal organizations operating Title I mature contracts or Title III and V compacts, who have demonstrated stability in the administration of CSC.

II. Purpose:

A. The primary purpose for the revised CSC Pilot Project Program is to introduce innovative approaches to the administration of CSC in hopes of streamlining the process and improving the allocation of CSC.

B. The Program is also intended to provide stability for tribal planning purposes and program management;

C. To reduce the time and expense involved in annual CSC negotiations;

D. To encourage tribes to create efficiencies in their administration of Self-Determination programs; and

E. To allow the IHS and Congress to better predict budget needs for CSC.

III. Eligibility:

A. Tribes or tribal organizations contracting or compacting pursuant to Public Law 93-638 as amended that qualify to carry out a mature contract under Title I or are operating a self-governance agreement under Title V of the Act., and

B. The tribe's or tribal organization's indirect cost rate has not varied more than 10 percent of its value over the prior year's rate applicable to each of the preceding 3 years. For tribes or tribal organizations that have no indirect rate, this criterion shall be satisfied if the negotiated requirement for contract support costs to the tribe or tribal organization has not varied more than 10 percent over the prior year's requirement for the preceding 3 years. (For example, 10% of the value of a 28.7% indirect cost rate is 2.9%. Therefore the rate would have to remain between 25.8% and 31.6% from one year to the next to be considered stable.)

IV. Election of Option:

A. Tribes or tribal organizations that meet the above eligibility criteria have the option of having their contract support costs administered under the revised CSC Pilot Project Program by electing either a Fixed-Fee/Lump Sum amount or a Fixed Rate as a means of receiving CSC under their contract or compact agreement.

V. Term:

A. Tribes or tribal organizations electing to participate in the revised CSC Pilot Project Program will do so for a period of three (3) years. Participation in the Program is renewable in additional three (3) year increments. Renewals are subject to continuation of the Program as an ongoing part of IHS CSC Policy.

B. If a tribe elects to re-negotiate its CSC requirement within the term of its participation in the Program, then the tribe would withdraw from participation in the Program; re-negotiate under the provisions of the then current IHS CSC Circular; and would then need to re-qualify for participation in the CSC Pilot Program before being allowed to participate in the Program again (see eligibility criteria above).

C. This remains a “pilot project” and as such is subject to continuation or termination based on tribal consultation and subsequent evaluation. It is offered in the spirit of progressive implementation of Congressional and Secretarial Self-Determination policy and must be implemented consistent with the ISDA and any other applicable statutory requirements.

VI. Amount of Funding:

Once the tribe has made an election as to whether it intends to negotiate a Fixed-Fee/Lump Sum amount or a Fixed Rate as a means of receiving CSC under their contract or compact agreement the Area will proceed as follows. The terms negotiated for the funding agreement (FA) or annual funding agreement (AFA) must be consistent with these guidelines:

A. Fixed-Fee/Lump Sum amount:

1. The Area and the Tribe will negotiate the full requirement for CSC applicable to the PFSAs administered by the tribe.

2. The Fixed-Fee/Lump Sum may be based on an application of the tribe's **current** indirect cost (IDC) rate times its appropriate direct cost base plus the amount of direct contract support cost (DCSC) requirement presently identified. In the alternative, the tribe may wish to totally rejustify its CSC need and negotiate a new "lump sum" amount for its full CSC need, inclusive of amounts for DCSC and IDC.
3. The Area should use IHS CSC Circular No. 2001-05, Section 5(A) as a guide in determining the appropriate CSC need.
4. The tribe's DCSC and IDC need should be adjusted annually based on the national OMB non-medical inflation index. Funding of this increased need is subject to Congressional appropriation and provided on the same basis as all other tribes as a part of the CSC shortfall;
5. Amounts negotiated as the tribe's Fixed-Fee/Lump Sum amount should not be decreased except due to Congressional appropriations reductions or other appropriation action;
6. Tribes are held harmless to how lump sum amounts are expended within IHS programs (appropriations authority applies);
7. To the extent the existing funding is not available to fully fund the negotiated CSC Fixed-Fee/Lump Sum amount, then the tribe remains eligible for shortfall funds on the same basis as all other tribes;
8. Amounts for new and expanded PSFAs (ISD funded programs) would be negotiated pursuant to the appropriate IHS CSC Circular. Amounts for DCSC and IDC would be added to the Fixed-Fee/Lump Sum amount under the Program when funded.

B. Fixed Rate:

1. The Area and the tribe will negotiate a "Fixed Rate" for the provision of **indirect** CSC associated with the PSFAs contracted or compacted by the tribe.
2. The Fixed Rate is negotiable and may be based on the adoption of a **current** OIG or DCA negotiated IDC rate, an average of the past three year's approved IDC rates, or a new Fixed Rate negotiated between the IHS and the tribe.

3. The tribe may utilize the DCSC need presently identified in its contract or compact or may negotiate a new amount for DCSC upon entering the Program.
4. The Area should use IHS CSC Circular No. 2001-05, Section 5(A) as a guide in determining the appropriate CSC need.
5. The amount generated by applying the approved Fixed Rate to the appropriate direct cost base, plus an amount negotiated for DCSC shall constitute the full requirement for CSC applicable to the PSFAs administered by the tribe.
6. The amount identified for DCSC will be adjusted annually based on the national OMB non-medical inflation index. Funding of this increased need is subject to Congressional appropriation and provided on the same basis as all other tribes;
7. No mandatory increases are applied to the Fixed Rate for IDC increases due to the fact that this need is considered in the application of the Fixed Rate to each new fiscal year's direct cost base;
8. The Fixed Rate will remain fixed for the "term" of the Program and will not be adjusted unless the tribe either withdraws from participation in the Program or renegotiates a new rate at the conclusion of the current "term" of the Program in order to begin another "term" of participation in the Program.
9. The Fixed Rate will be applied in the same way a final IDC rate is applied pursuant to OMB Circular A-87.
10. Tribes are held harmless to how lump sum amounts are expended within IHS programs (appropriations authority applies). There is no carry forward adjustment to be made;
11. To the extent that existing funding is not available to fully fund the CSC need resulting from the tribe's Fixed Rate, then the tribe remains eligible for shortfall funds on the same basis as all other tribes;
12. Amounts for new and expanded PSFAs (ISD funded programs) would be computed using the Fixed Rate and added to the base amount when funded.

VII. Renewal:

Upon renewal for a subsequent 3 year term:

- A. The amount computed for indirect CSC shall be renegotiated for each subsequent 3 year term based on the level of indirect CSC funding required pursuant to Section 106 of the ISDA.
- B. The amount of DCSC funding can be renegotiated at the option of the tribe or tribal organization or the awardee may elect to continue receiving the same amount of DCSC currently identified in its FA or AFA as appropriate.
- C. Renewals under the revised CSC Pilot Project Program shall be negotiated in accordance with the guidelines described above or current IHS CSC policy in the event this interim Program has been terminated.

CSC Pilot Language
(Fixed Fee/Lump Sum)

Section ___ -- Contract Support Costs:

- a.) The _____ Tribe will participate in the CSC Pilot Project Program for a three year period beginning in [fiscal / calendar] year _____. For [specify current FY / CY] _____, the total Fixed Fee/Lump Sum need (inclusive of both direct and indirect CSC) is \$ _____, of which the total amount of CSC available for payment is \$ _____.
- b.) The total Fixed Fee/Lump Sum need will be adjusted annually based on the national OMB non-medical inflation index. Funding of any increased need, including but not limited to increases for inflation, is subject to the availability of appropriations and is provided on the same basis as all other tribes as a part of the CSC shortfall.
- c.) The Fixed Fee/Lump Sum payment amount will not be decreased except due to reductions in Congressional appropriations or other appropriation action.
- d.) The _____ Tribe will be held harmless (within the limits of appropriations and other Federal statutory authority) as to how the Fixed Fee/Lump Sum amount is expended among its IHS funded programs.
- e.) To the extent existing funding is not available or sufficient to fully fund the negotiated Fixed Fee/Lump Sum amount, the _____ Tribe remains eligible for shortfall funds, subject to the availability of appropriations, on the same basis as all other tribes.
- f.) Amounts for any new or expanded programs will be negotiated pursuant to the appropriate statutory and regulatory requirements and IHS Circular guidelines.
- g.) The _____ Tribe reserves the option to withdraw and re-negotiate the contract support costs provided consistent with the terms of the Pilot Project program. If the _____ Tribe chooses to re-negotiate, it will re-negotiate under the terms of the then applicable statutory and regulatory requirements and the terms of the CSC Pilot Project Program, as outlined in the "Implementation Guidelines - Revised CSC Pilot Project Program" dated August 10, 2001, Page 2, Section V, Paragraph B.
- h.) Should the IHS Director choose to terminate or modify the CSC Pilot Project Program prior to the end of [FY/ CY] _____, the tribe will have the option of continuing its participation in the Pilot Project Program until the end of [FY/ CY] _____; amending this agreement to reflect any modifications to the Pilot Project Program; or withdrawing from the Pilot Project Program and receiving CSC on the same basis as other tribes.

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CSC Pilot Language (Fixed Rate)

Section ____ -- Contract Support Costs:

- a.) The _____ Tribe will participate in the CSC Pilot Project Program for a three year period beginning in [fiscal / calendar] year _____. For the duration of this term of participation, the IHS and the Tribe agree to use ____ % as the Fixed Rate for determining the indirect CSC need. The Tribe and the IHS agree that the need for direct CSC is \$_____.
- b.) For [specify the current FY / CY] _____, the amount of \$_____ is available for payment as indirect CSC and \$_____ is available for payment as direct CSC.
- c.) The total indirect CSC requirement will be adjusted annually as the Fixed Rate is applied against the appropriate direct cost base each year. No mandatory increases are applied to the Fixed Rate for IDC increases due to the fact that this need is considered in the application of the Fixed Rate to each new fiscal year's direct cost base.
- d.) To the extent existing funding is not available or sufficient to fully fund the computed indirect CSC requirement, the _____ Tribe remains eligible for shortfall funds, subject to the availability of appropriations, on the same basis as all other tribes.
- e.) To the extent the computed indirect CSC requirement is less than the amount available, the CSC payment amount will be decreased based on the amount computed by applying the Fixed Rate to the appropriate base.
- f.) The total DCSC requirement will be adjusted annually based on the national OMB non-medical inflation index. Funding of this increased need is subject to the availability of appropriations and provided on the same basis as all other tribes as a part of the CSC shortfall.
- g.) The _____ Tribe will be held harmless (within the limits of appropriations and other Federal statutory authority) as to how the CSC amount is expended among its IHS funded programs.
- h.) Indirect CSC amounts for any new or expanded programs will be computed using the Fixed Rate and added to the base amount when funded. Direct CSC amounts for any new or expanded programs will be negotiated pursuant to the appropriate statutory and regulatory requirements and IHS Circular guidelines.
- i.) The _____ Tribe reserves the option to withdraw and re-negotiate the contract support costs provided consistent with the terms of the Pilot Project program. If the _____ Tribe chooses to re-negotiate, it will re-negotiate under the terms of the then applicable statutory and regulatory requirements and the terms of the CSC Pilot Project Program, as outlined in the "Implementation Guidelines - Revised CSC Pilot Project Program" dated August 10, 2001, Page 2, Section V, Paragraph B.
- j.) Should the IHS Director choose to terminate or modify the CSC Pilot Project Program prior to the end of [FY/ CY] _____, the tribe will have the option of continuing its participation in the Pilot Project Program until the end of [FY/ CY] _____; amending this agreement to reflect any modifications to the Pilot Project Program; or withdrawing from the Pilot Project Program and receiving CSC on the same basis as other tribes.