

DEPARTMENT OF HEALTH AND HUMAN SERVICES

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

CONTRACT SUPPORT COSTS

Sec.

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

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

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

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

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

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

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

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

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

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

Distribution: IHS-wide

Date: September 01, 2004

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

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

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in the Act, or as specified in subpart J, an Indian Tribe or Tribal organization is not required to abide by any unpublished requirements such as program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Indian Tribe or Tribal organization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

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

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

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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.

5. PROCESS.

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

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

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

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

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

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

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

- “(A) The CSC that are eligible costs for the purposes of receiving funding under this Act shall include the costs of reimbursing each Tribal contractor for reasonable and allowable costs of:
 - (i) direct program expenses for the operation of the Federal program that is the subject of the contract, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) unemployment taxes on direct program salaries,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Pool No. 1 - ISD Fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

