

**Report to Congress On Contract Support Cost Funding in
Indian Self-Determination Contracts and Compacts**

**In Response to:
House Report No. 104-173**

May 1997

**Presented to the
Congress of the United States of America**

**Prepared by the
Indian Health Service
with the assistance of the
American Indian and Alaska Native People,
The Department of the Interior, Bureau of Indian Affairs,
and the Office of Inspector General**

**Indian Health Service
Report To Congress**

On contract support cost funding to Indian Self-Determination contracts and compacts as required by House Report 104-173

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Attachments:

1. Section 106, P.L. 93-638
2. Senate Report on 1988 Amendments to the ISDA
3. IHS Circular 96-04
4. IHS Circular 92-02
5. Executive Order dated April 29, 1994
6. ISD Fund Priority List (The Queue)
7. Area Contract Support Costs Reports
8. Population Growth Data by IHS Area
9. Historical View of IHS Funding in Tribal Contracts
10. Letter from the Office of Inspector General

Executive Summary

This report is provided in response to a congressional directive contained in House Report No. 104-173, regarding contract support cost (CSC) escalation. In fiscal (FY) 1997, the House Appropriations Committee directed the Indian Health Service (IHS) to work with tribes, the Department of the Interior, Bureau of Indian Affairs (BIA), and the Office of Inspector General (IG), to contain the cost escalation in CSC.

In developing this report, the IHS convened three meetings, from November 1996 through May 1997, with the above participants. Collectively this group was identified as the Contract Support Cost Workgroup (CSCWG). The report includes the background of CSC funding and policy development within the Agency, the increased need for CSC funding, the impact of not funding CSC shortfall, and several findings and conclusions.

The directive from Congress to the IHS suggests that Congress believes that the reason for the rapid growth in the need for CSC has been increases in the negotiated indirect cost (IDC) rates of the tribes, and that tribal IDC rates increase in response to increases in appropriations of CSC funding. Research for this report found that this is not the case. The research supports the conclusion(s) of the CSCWG that rapid growth in CSC is primarily the result of tribes' assuming additional functions and services under Public Law (P.L.) 93-638. Further, the CSCWG identified other factors that contribute to increased CSC requirements, which include mandatory increases in program recurring base funding, Fixed w/Carry Forward rates incorporating prior year shortfalls, inflation driven increases in costs of tribal administrative activities, evolutionary changes in the organization structure and functions of tribal administrative activities, adoption of modern technology, establishment of administrative systems and procedures to fully comply with the requirements of administrative and audit standards imposed by revision of applicable Office of Management and Budget (OMB) circulars, and reductions in alternate sources of funding for tribal administrative activities. Despite these factors prone to influence an increase in tribal IDC rates, the CSCWG found that IDC rates have remained relatively stable.

Finally, the CSCWG believes that continued work is needed to effectively track tribal IDC rates and costs and to respond to congressional and other concerns. The information contained in this report supports requests for: 1) increases in the level of ISD funding in FY 1998 to ensure that tribes currently waiting for CSC funding are able to exercise their rights under P.L. 93-638, 2) increases in the level of the CSC fund to ensure that existing CSC shortfalls are addressed immediately and do not continue to artificially affect future IDC rates, and 3) continued support for the CSC fund at levels consistent with other IHS and BIA programs.

The CSCWG wishes to thank all the tribes and Federal representatives for the significant work that went into this report, and to thank the United States House and Senate Appropriation Committee members for their interest and concern over the adverse impact the deficient CSC funding has on tribes and tribal organizations contracting under the Indian Self-Determination Act.

Introduction

This report is in response to a congressional directive regarding CSC escalation. In FY 1997, the House Appropriations Committee directed the IHS as follows:

The committee again expects the IHS to work with tribes, the BIA, and the Inspector General at the Department of the Interior to contain the cost escalation in the contract support costs. In today's constrained budget climate the contract support cost activity must receive a fair share of administrative streamlining and procurement reform funding reductions as well as the lower inflation allowances provided for all other programs with [in the] IHS.

The IHS developed this report with the active participation of tribal representatives from Indian country, the Department of the Interior, the BIA, and the IG. Collectively this group is identified as the CSCWG. The workgroup met on three occasions starting in November 1996 to prepare a response to the congressional directive.

Background

It is IHS self-determination policy to support the transition of its programs to tribal control when, and if, tribes elect to assume operation of these programs. This policy is consistent with the position of the Administration, as reflected in the Memorandum for the Heads of Executive Departments and Agencies from President Clinton, April 29, 1994; the Final Rule to implement Public Law (P.L.) 93-638, as amended, and with congressional policy. The policy of the Congress, which is contained within the Indian Self-Determination and Education Assistance Act (ISDA), P. L. 93-638, as amended, states:

The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to Indian people as a whole through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.

In the first decade of self-determination contracting, lack of CSC funding was a major impediment to tribal contracting for IHS programs, services, functions, and activities (PSFA). This impediment was addressed by the Congress when it amended the ISDA in 1988 and again in 1994. These amendments require the Secretary to add CSC funds to the amount of the program funds the Secretary provides. These amounts are for activities either not carried out by the Secretary, or carried out from resources other than those available under contract.

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The Congress was clear in section 106(a)(2) of these amendments 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 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.*

Indian tribes and tribal organizations are not to be required to reduce funding to programs to provide administrative and other services necessary for the prudent management of the contract. The statute requires, however, that the amount of CSC funds provided, and any shortfall in funding, be reported to the Congress on an annual basis.

Contract support funds are utilized to fund both direct and indirect CSC to tribal contractors. Indirect costs; i.e., indirect CSC, finance vital support functions to the contracted program, all of which are required not only by Federal laws and regulations, but also prudent management. Because indirect costs are financed proportionately by other tribal and Federal programs, there is a natural pressure for tribal governments and organizations to streamline and control administrative costs. Consistent with the ISDA and IHS policy, each contract proposal and its related CSC request is scrutinized to avoid any potential duplication of funding. For example, as much as twenty percent of funds supporting PSFAs contracted from IHS Headquarters or Area Offices are utilized to fund CSC requirements because this proportion of PSFAs performed at Headquarters and/or Area Offices are administrative in nature, and therefore similar to CSC.

While the IHS budget requires annual funding increases for CSC, there are offsetting unreported governmental savings in the Federal system. Much of the Federal support of PSFAs operated by the IHS are not accounted for within the IHS appropriation. Commissioned Corps retirement, Department of Justice legal support, General Services Administration lease support, Department of Health and Human Services management support, and Office of General Counsel are but a few examples. Costs such as workers compensation and unemployment taxes on program personnel are treated as "direct CSC" because they are not included in IDC rates, and are not available within program funds provided by the IHS. There are numerous other Federal costs avoided when tribes assume operation of Federal programs. While they are neither measured or reported, they should help offset CSC increases.

Increased Need for CSC Funding

Since the 1988 and 1994 amendments to the ISDA, contracting and compacting under Title I and Title III of the ISDA have rapidly increased as tribes exercise their right to assume operation of IHS programs. Currently, over 40 percent of IHS resources are contracted to Indian tribes and tribal organizations under the provisions of the ISDA.

The IHS has established two funds: the Indian Self Determination (ISD) Fund to support the CSC requirements of new and expanded contracts and the Contract Support Fund for recurring CSC expenditures associated with existing self-determination agreements.

Since 1994, the Congress has annually appropriated \$7.5 million for the ISD Fund for new and expanded contracts. Each subsequent year, this \$7.5 million moves into the recurring part of the Contract Support Fund to continue to support these (now ongoing) programs. In addition, the Congress has noted periodic shortfalls in the Contract Support Fund and has provided supplemental appropriations in 1991 and 1994 to fund this shortfall.

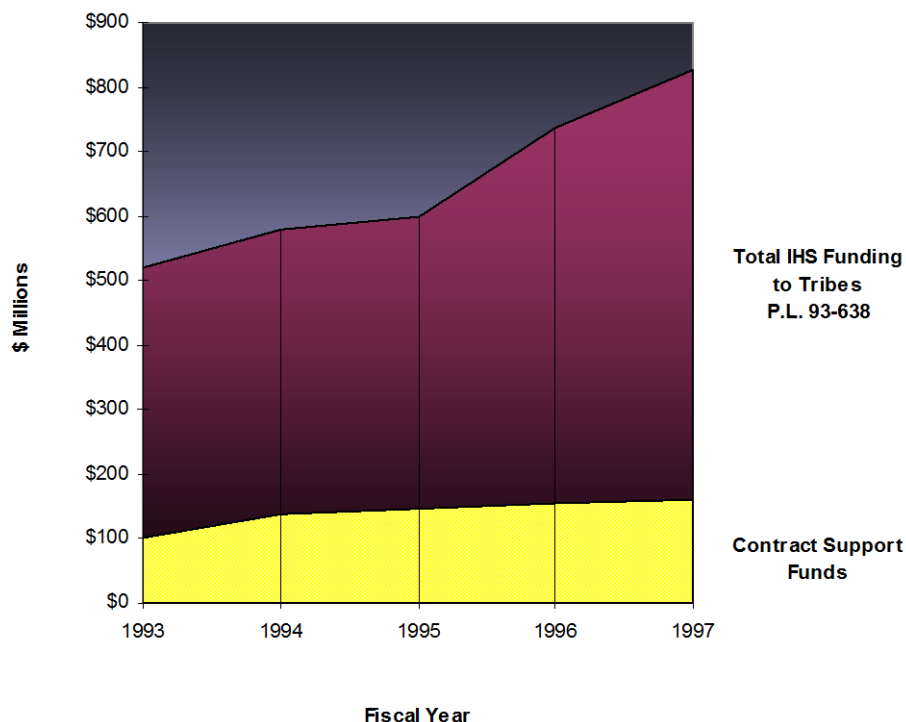
In recent years, funding for the ISD Fund has been increasingly inadequate to support the CSC requirement of all new contract proposals. This has resulted in an unmet need that is growing annually. The current backlog is over \$36 million and is expected to reach \$45 million by the end of this fiscal year. The continued failure to meet this unmet need compels tribes by necessity to fund their administrative costs from direct service funds, or to delay contracting all together.

The directive from the Congress to the IHS suggests Congress believes that the reason for the rapid growth in the need for CSC has been from increases in the negotiated IDC rates of the tribes (the contractors), and that tribal IDC rates increase in response to increases in appropriations of contract support funding. This is not the case. ***More than any other factor, this rapid growth in appropriations and unmet need in CSC is the result of the tribes' contracting additional PSFAs under P. L. 93-638.***

The graph on the following page illustrates a modest rate of increase in CSC funding compared to the rate of increase in IHS PSFAs transferred to tribes through self-determination contracts and self-governance compacts. Implementation of the recent amendments to the ISDA facilitated the contracting process and clarified the right of tribes to assume PSFAs carried out at IHS Headquarters and Area Offices. Since 1993, the number of assumptions of IHS PSFAs and the amount of funding transferred through contracts and compacts has increased at an accelerated rate.

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Increased IHS Funding to Tribes



Note: Data for this chart is found in Appendix #9

Appropriations have not kept pace with corresponding program assumptions, accounting for the \$45 million backlog projected for FY 1997.

The Impact of Not Funding CSC Shortfall

The policy of the Congress as stated in the ISDA is to recognize the obligation of the United States to respond to the strong expression of Indian people for self-determination. The Congress declared its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to individual Indian tribes, and to the Indian people as a whole, through the establishment of a meaningful ISD policy. This policy is intended to permit an orderly transition from the Federal domination of programs for and services to Indians, to effective and meaningful participation by the Indian people, in partnership with their tribal governments, in the planning, conduct, and administration of those programs and services. In accordance with this policy, the Congress stated that the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.

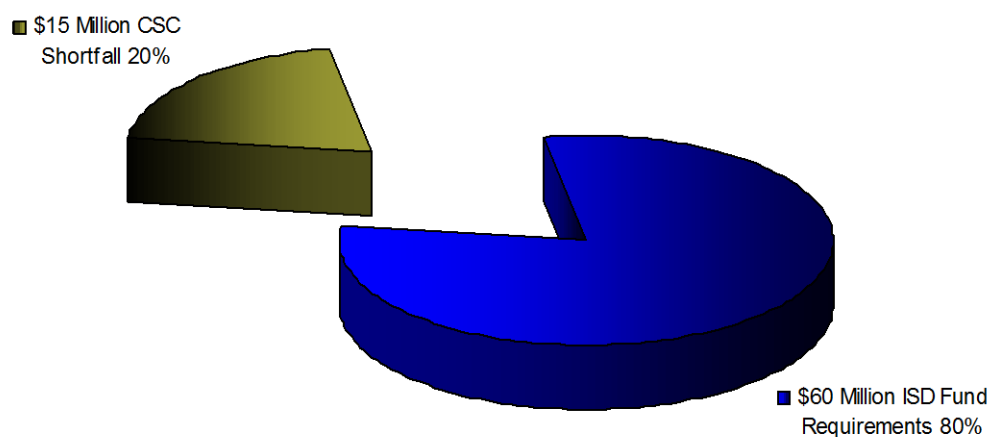
The full funding of CSC is integral to tribes being able to assume the operation of IHS and other Federal programs. Unfortunately, the United States Government is perceived by tribes to be failing in this regard.

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The failure to adequately fund CSC inhibits the ability of tribes to develop the capability and expertise to manage services to their own people, and is directly responsible for inhibiting the number and scope of new tribal contract requests. This is contrary to the policy of the Congress and the intent of the ISDA. It is a significant point of contention in virtually all self-determination contract negotiations, and has resulted in several lawsuits brought by tribes against the IHS.

Since 1995, sufficient funding has not been appropriated to meet the CSC needs of tribes that desire to contract IHS PSFAs. Tribes that have chosen to contract for IHS PSFAs in the absence of sufficient CSC have by necessity been forced to divert significant amounts of direct program services funding to fund administrative support functions. This adversely affects services delivery by reducing the funding that would otherwise be directed to the provision of health care to tribal members. As indicated earlier, the absence of available CSC for new assumptions results in many tribes being unable to exercise their rights under the ISDA to contract to provide services to their own members. There is simply no incentive for tribal governments and organizations to assume IHS PSFAs knowing that they may have to reduce already under-funded health services to finance needed administrative support functions. There is also a future possibility that inadequate CSC funding may result in some tribes retroceding contracted programs to the IHS for operation.

Projected CSC Shortfall in FY 1998



- ◆ *Over \$36 million of the 80% represents current requests to the ISD fund*
- ◆ *The President's budget requests \$12 million for the ISD in FY 1998*

Only \$15 million, or 20 percent, of the total shortfall can be attributed to the overall increased CSC needs of ongoing contracts. The year-to-year increases in CSC requirements for ongoing contracts are driven by:

- Mandatory and other increases in program recurring base funding
- Fixed with Carry Forward IDC rates incorporating prior year under-recoveries
- Inflation driven increases in costs of tribal administrative activities
- Evolutionary changes in the organization structure and functions of tribal administrative activities to fully comply with the requirements of administrative and audit standards imposed by revision of OMB circulars
- Adoption of modern technology
- Reductions in alternate sources of funding for tribal administrative activities
- Changes in the composition of the direct cost base
- Reduction in funding from Federal, State, and other funding agencies

Despite the many factors above that are prone to influence an increase in tribal IDC rates, IDC rates have remained relatively stable, even allowing for the impact that prior year under-recoveries have in pushing rates up artificially. In an independent analysis of seventeen tribes, representative of tribal entities contracting with the BIA and the IHS over an 8-year period, the IG found that rates were relatively constant. The IG study concluded that the principal reason for CSC growth was because more programs were being administered through the tribes (see Attachment 10). Even after factoring in all of the above items that might cause rates to go up, none of the data collected and analyzed from either tribes or the IG suggests that rates are escalating significantly. A summary of the analysis of IDC rates and data graphing a four-year period for the IHS overall and for each Area Office is included as Attachment 7 of this report.

Findings of the CSCWG

- The IHS policies on funding CSC have been constructed to implement the CSC funding provisions of the ISDA.
- Tribal interest in assuming operation of IHS PSFAs has escalated as a result of the 1988 and 1994 amendments to the ISDA.
- Increases in CSC funding have only been provided by Congress either in direct recognition of an historical deficiency in this funding, or to provide support funds for new IHS programs and functions under contract.

(Findings of the CSCWG continued)

- The IDC need has not been materially increased by tribes in response to the availability of CSC funding. In fact tribal IDC rates tend to stabilize and decrease as tribes assume more programs.
- The \$7.5 million per year appropriated by Congress to the ISD Fund has been insufficient to address new CSC requirements. This has resulted in a serious backlog of funding for new P. L. 93-638 contracts. Currently, over \$36 million is needed to finance all pending tribal assumptions of IHS-operated programs, resulting in a projected additional CSC need of \$75 million in 1998.
- Direct program dollars are being diverted by tribes to support administrative functions that should otherwise be financed by CSC.
- The escalation in CSC is largely because of the increase in CSC need associated with new program assumptions and not increased IDC rates.
- The IDC rates have remained relatively stable and have not unreasonably escalated.
- Tribes are bearing their fair share of administrative streamlining as indicated by historical tribal data, which shows relatively stable IDC rates and eroding IDC bases.
- Tribal IDC rates are negotiated and determined by following OMB circulars and guidelines, which check for reasonableness, allowability, and allocability.

Conclusions

The CSCWG concludes that:

1. There has not been an unreasonable increase in IDC rates.
2. The increase in CSC need is primarily because of increased contracting and compacting.
3. The CSC appropriations are a necessary component of implementing congressional Indian Self-Determination Policy.
4. To fully comply with the statutory provisions of the ISDA, full funding of CSC appropriations is necessary.
5. Failure to finance CSC will continue to impede the transfer or PSFAs from Federal to tribal control.
6. Information available to the Congress to support appropriations must continue to be improved and provided on a timely basis.

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Coordination with tribes, the BIA, and the IG (and the Department of Health and Human Services Office of Cost Allocation) is necessary to ensure that congressional concerns regarding CSC cost escalation are properly addressed.

The CSCWG wishes to thank all the tribes and representatives of the Federal Government for the significant work that went into this report, and to thank the United States House and Senate Appropriation Committee members for their interest and concern over the adverse impact that deficient CSC funding has on Indian tribes and tribal organizations contracting under the ISDA.