

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
PUBLIC HEALTH SERVICE  
INDIAN HEALTH SERVICE  
ROCKVILLE, MARYLAND 20857

REFER TO: OAM

INDIAN HEALTH SERVICE CIRCULAR NO. 96-04

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CONTRACT SUPPORT COSTS

Sec.

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1. PURPOSE. The purpose of this circular is to provide instructional guidance on:
  - Determining amounts of start-up, direct, and indirect contract support costs (CSC)
  - Allocating pools of Indian Health Service (IHS) funding available for CSC
  - Prioritizing tribal requests for funding of CSC
  - Reporting by the IHS to all tribes and to the Congress

These instructions are not regulations establishing program requirements and are not intended to bind agency personnel. These instructions are intended to provide guidance to IHS personnel to determine and allocate CSC, while allowing judgment and prudence in individual circumstances.

2. AUTHORIZING LEGISLATION. This circular is authorized pursuant to the Transfer Act, title 42 United States Code (USC) §2001 and implementing regulations in Title 42 of the Code of Federal Regulations §36.3. The development of this

circular has involved the active participation of representatives from Indian tribes. Since 1992, the procedures discussed in this circular have been applied to contracts awarded pursuant to Title I of the Indian Self-Determination and Education Assistance Act, Public Law (P.L.) 93-638, as amended. The CSC process has also been applied to compacts awarded to tribes that have been selected to participate in the Tribal Self-Governance Demonstration Project (SGDP) pursuant to Title III of P.L. 93-638, as amended. Section 106 of P.L. 93-638, as amended, authorizes funding for all Indian Self-Determination (ISD) and Self-Governance agreements under the Act. Section 106 is provided as Exhibit 96-04-A to this circular, and is cross-referenced to the pertinent sections where instructions or examples have been provided.

3. DEFINITIONS.

- A. Award. An agreement authorized under Title I (contract) or Title III (compact) of P.L. 93-638, as amended.
- B. Awardee. A recipient (tribe or tribal organization) of an award as defined above.
- C. Contract Proposal. Refer to the regulations implementing P.L. 93-638, as amended, and Title 25, USC.
- D. Recurring Funds. Contract or compact funds that do not require rejustification each year to the Secretary. Annual increases are provided through congressional mandatory increases or other resource allocation methodologies applicable to the respective funding category of the award.
- E. Non-Recurring Funds. Funds that require a rejustification annually, and are awarded based upon an annual resource allocation methodology that considers or is dependent upon other factors (e.g., an indirect cost rate applied to a direct program base that may change the amount to be reimbursed from a single agency as the programs under contract continue to increase).
- F. Programs, Functions, Services, and Activities (PFSA). The PFSA including those administrative activities supportive of, but not included as part of, service delivery programs that are otherwise contractible, without regard to the organizational level within the

department that carries out such functions, as authorized under P.L. 93-638, as amended.

G. Tribal Shares. A term that refers to a tribe's equitable share of Area office and Headquarters resources only. This definition was originally adopted and utilized in negotiating and awarding Annual Funding Agreements (AFA) under Title III, P.L. 93-638, as amended, and is being consistently applied to Title I contracts as authorized under P.L. 93-638, as amended. This term does not refer to a tribe's equitable share of a service unit or program base, which may also be included in a negotiated funding agreement.

H. Self-Governance Request.

(1) Tribes entering the SGDP (Title III) the first year:

The tribe's application to the IHS for a Negotiation Grant, which is subsequently approved for the tribe's participation in the SGDP. The application must include evidence of having completed a sufficient planning activity as described in the Negotiation Grant application instruction.

(2) Tribes joining an existing compact:

The tribe's written notice to the IHS, which is subsequently approved, that it intends to join an existing compact.

(3) Tribes negotiating for new or expanded programs in a subsequent year's AFA:

The tribe's written notice to the IHS that it intends to negotiate for additional programs.

To be considered a valid request for purposes of establishing placement on the ISD priority list, H1, 2, or 3 above must include a clear description of the programs to be negotiated, date that the program operations are to be assumed, or estimate of the amount of program funding required, and the amount of contract support funding required.

4. PROCESS.A. Determining Amounts of Start-Up, Direct, and Indirect CSC.

- (1) Determining the Amount of the Award. Section 106 (a)(1) and 106 (a)(2) of the P.L. 93-638, as amended, provides for funding of contract and compact awards for program costs and CSC respectively. Section 106(a)(1) provides the awardee the right to the funding the Secretary would have otherwise provided for the PFSAs awarded. In addition, section 106(a)(2) authorizes funding that represents costs associated with tribal expenses or PFSAs either not experienced by the Secretary or provided to the Secretary from resources not available to the awardee.
- (2) Providing for Cost Reimbursement. Throughout the operation of the program by the awardee, total contract costs, including CSC, are eligible to be reimbursed as either direct or indirect costs. Since tribes often operate more than one program, many of the costs incurred by the awardee are reimbursed through an indirect cost allocation process, usually negotiated by the cognizant agency. Section 106(a)(3) provides authority for tribes to recover costs in this manner, whether they are indirect in nature (benefiting multiple programs) or additional costs associated with operating a single program.

Since some, but not all, of the funds provided in section 106(a)(2) represent costs that are eligible to be reimbursed through this indirect cost recovery method, the procedures below are intended to ensure that needs are accurately identified but avoid a duplication of funding.

For service unit assumptions, or partial service unit assumptions, the costs historically incurred by the IHS will be reviewed to identify types of costs that are similar in nature to those costs that are included in the awardee's indirect cost pool. Those costs that are in the awardee's indirect cost pool that are similar in nature to the costs incurred by the IHS will be considered as duplicative for purposes of funding for administrative "overhead" purposes (section

106(a)(3)(A)(ii)). In determining whether such costs are similar in nature, the review will consider both the cost category label (travel, supplies, etc.) and how the funds were spent by the IHS.

a. Start Up Costs. Section 106(a)(5) states, "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:

- (i) To plan, prepare for, and assume operation of the program, function, service, or activity that is the subject of the contract; and
- (ii) To ensure compliance with the terms of the contract and prudent management."

Examples include:

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

b. Direct CSC. Requirements for these costs will be determined by negotiation between the awardee and the Secretary. Costs for activities that are not contained in either the indirect cost pool (or indirect cost type budget) or the amount computed pursuant to section 106(a)(1) can be funded as a direct CSC. These funds shall be awarded on a recurring basis.

Examples include, but are not restricted to:

- Unemployment taxes on direct program salaries

- Workers compensation insurance on direct program salaries
- Cost of retirement for direct program salaries
- Long distance telephone charges
- Postage
- Training required to maintain certification of direct program personnel

Items listed above as examples of startup costs and direct CSC must be justified as such and negotiated with the Area office. Items not included as examples above, but requested and justified by awardees shall be submitted by the Area office to IHS Headquarters, Office of Administration and Management (OAM), for approval. This will contribute to greater consistency from Area-to-Area.

c. Indirect or Indirect Types of Costs. Guidelines for the Principles Involved in Negotiating Indirect Costs:

A plan for allocation of indirect costs will be required to support the distribution of any indirect costs related to the awardee's program. All indirect costs included in the plan will be supported by accounting records that will substantiate the propriety of the indirect costs. The allocation plan should cover all indirect costs of the awardee, and contain, but not necessarily be limited to: (1) the nature and extent of services provided and their relevance to the awardee's program; (2) the item of expenses to be included in the indirect cost pool, and (3) the methods to be used in distributing cost.

The Office of Management and Budget (OMB) circulars establish principles and standards for determining indirect costs applicable to the awardee. Public Law 103-413 has made modifications to the OMB cost principles otherwise applicable to tribes and tribal organizations.

- (i) Awardee with Negotiated Indirect Cost Rates. The amount of indirect costs expected to be incurred under awards by tribes or tribal organizations with rates that have been negotiated or are being negotiated with the cognizant Federal agency, will be determined by applying the negotiated rate(s) to the direct cost base amount for this purpose. The amount to be reimbursed will be consistent with the individual awardee rate agreement, reflecting any exclusions required by the agreement.
- (ii) Awardee without Negotiated Indirect Cost Rates (Guidelines for Agency Negotiators). A lump sum amount for "indirect types of costs" may be computed for awardees who do not have formally negotiated agreements with their cognizant agency for reimbursement under an indirect cost 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, General Services, and Expenses. Examples of indirect costs are:

Examples of "Overhead" or  
"Indirect-type" Costs

<u>Management &amp; Administration</u>	<u>Facilities &amp; Equipment</u>	<u>General Services &amp; Expenses</u>
Governing Body	Building	Insurance &
Management & Planning	Utilities	Legal Services
Financial Management	Housekeeping/Janitorial	Audit
Personnel Management	Building & Grounds	General
Procurement/Materiel	Repairs & Maintenance	Interest
Human Resources	Equipment	Depreciation/U
Property Management		
Records Management		
Data Processing		
Office Services		

- (3) Alternative Methods for Calculating Amount of Section 106(a)(1) Funds in Area Office and Headquarters "Tribal Shares". With respect to amounts to be considered as the direct program base (for the purpose of calculating indirect or indirect-type costs) from amounts of PFSAs transferred from Areas and Headquarters "Tribal Shares," at the option of the awardee, the IHS and the awardee will either:

- a. Conduct a case-by-case detailed analysis of the "purpose for which the funds were utilized by the Secretary" in order to avoid a duplication in amounts funded.

In cases where a detailed analysis is performed, it will be conducted in the following manner:

Area/Headquarters tribal shares will be reviewed to identify types of costs that are similar in nature to those costs that are included in the awardee's indirect cost pool. Those costs that are in the awardee's indirect cost pool that are similar in nature to Area/Headquarters tribal shares will be considered as duplicative for purposes of funding for administrative or "overhead" purposes (Section 106(a)(3)(A)(ii)).

In determining whether such costs are similar in nature, the review will consider both the cost category label (travel, supplies, etc.) and how the funds were spent by the IHS.

- b. Apply the following "split" of total Area and Headquarters tribal shares as specified below:

In the absence of a detailed analysis by the awardee and the IHS, 80 percent of Area/Headquarters tribal shares will be considered as direct program funds (section 106(a)(3)(A)(I)) and 20 percent of such tribal shares will be considered as funding for administrative or "overhead" purposes (section 106(a)(3)(A)(ii)).

Once an amount is computed for a direct program or an indirect or overhead purpose



under method a. or b. above, it will be used in accordance with the terms of the rate agreement or alternative method provided herein, for calculating the amount required for indirect or indirect type costs. The balance of the tribal shares not considered as direct program expenses (and therefore not used to calculate indirect cost funding requirements) will be considered as available for CSC for the respective awardee. Any such balance, if in excess of the CSC requirement, shall also remain with the awardee. Any excess CSC requirements not funded by the portion of the Area or Headquarters tribal shares to be considered as available for CSC, will be eligible for payment from the ISD fund, and the processes specified in this circular for allocation of funding in this pool will apply.

Exhibit 96-04-B illustrates how the 80/20 method would be calculated, and Exhibit 96-04-C illustrates how a detailed analysis would be calculated.

- (4) Allocating Funding Available for CSC. Essentially three pools of funding are contained in the single IHS budget activity for CSC. The first pool represents an increase in the IHS appropriation for CSC for new and expanded awards. The second pool represents amounts awarded in the prior year that are made available to the IHS on a recurring basis. The third pool represents amounts provided for mandatory increases on the prior year "base" and shortfall funds, if appropriated. Each one has funding priorities and eligibility requirements for costs to be reimbursed.
- a. Pool No. 1 - The Indian Self-Determination Fund. The ISD Fund will cover CSC when an award is:
- (i) (1) An initial transfer of a program previously operated by the IHS to the tribe or tribal organization; or (2) to expand current tribal operations through the assumption of additional shares of PFSAs previously operated by the IHS, regardless of the organizational level

at which it was operated; or (3) assumption of programs previously operated under awards to other tribes, tribal organizations, contractors, and for newly recognized tribes; or (4) new or expanded programs available because of new appropriations, excluding mandatory increases.

- (ii) Initial Funding Period - First Come First Served. Funds for new and expanded programs will be allocated by IHS Headquarters as expeditiously as possible. Approved requests for CSC for new and expanded programs will be funded at 100 percent of the approved amount on a first come first served basis. Allocation will be based on a priority list until funding for the ISD funds is exhausted. If permitted by appropriations act, any funds that remain in the ISDF at the end of the year will be added to funds to be made available in the subsequent year. If funds are exhausted in any fiscal year (FY), tribes on the priority list will remain on the priority list and be considered in priority order when funding is made available by appropriation or reprogramming.

Indirect CSC (non-recurring) Start-up Costs Direct CSC
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Program Base (106(a)(1) amount)
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*The ISD fund is the source of funds in the initial funding period.*

- (iii) Priority Determined by Date of Request. A priority list for each FY will be developed for every tribe with a requested start date in the proposal (Title I) or request (Title III) in that FY. Tribes will be placed on the priority list within the FY based on:

- (a) The date of receipt by the IHS Area office of a Title I contract proposal.

- (b) The date of receipt by the IHS Area office of a request to negotiate a Title III award.
- (iv) Roles and Responsibilities. Tribes will provide either (a) or (b) above to the Area office. The Area office will provide a copy to OAM, and in the case of Title III, an additional copy will be provided to the Office of Tribal Self-Governance (OTSG). In providing either (a) or (b) above, the tribe will include a clear estimate of the amount of CSC required.

The Area office will be responsible for negotiating the CSC and forwarding the recommendation to OAM. In the case of Title III, an additional copy will be forwarded to the OTSG. The Area office shall ensure that costs are reasonable, necessary, and not duplicative. To the extent that the Area office and the awardee cannot agree on an item(s) of cost, the disputed item(s) shall be submitted to the Director, IHS, through the Headquarters OAM.

- (v) Information and Documentation by IHS. The priority list will be maintained by OAM and distributed quarterly to Area offices. The list will include tribe or tribal organization, proposed start date, date of request or proposal, estimated amount of the program costs to be awarded, estimated amount of CSC approved and awarded, and remaining funds available. The OAM will revise estimated amounts of CSCs as additional data becomes available through negotiations.
- (vi) Changes in Start Date. While awaiting award of ISD funding, tribes or tribal organizations may choose to delay their starting date, if necessary, because of the delay in the award of contract support funding. Such choice shall not change the placement of the tribe or

tribal organization on the priority list. The priority list shall be maintained by OAM and reviewed periodically to ensure the validity of start dates and the amounts needed.

If a tribe changes the FY start date for any reason other than solely the lack of CSC funding, it will be placed in the new FY by its original date.

- (vii) Subsequent Funding Periods. Beginning in year 2, direct contract support and section 106(a)(1) funds will be considered part of the recurring base of the award. Mandatory funding increases will be provided based on congressional appropriation. The amount of direct contract support funds may be renegotiated annually at the option of the awardee. The amount of indirect contract support funds must be justified each year based on the awardee's indirect cost agreement or mutually negotiated amounts. Any shortfalls in funding are reported to the Headquarters OAM by Area offices and the OTSG for inclusion in required reports to the Congress, and other reporting to tribes.

Indirect CSC* (Non-recurring to awardee, recurring to Area)
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Direct CSC** (Recurring to awardee and Area)
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Program Base ** (Section 106(a)(1) amount) (Recurring to awardee and Area)
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\* Indirect CSC base amount in subsequent years is described below, Pool No. 2. Increases/decreases to indirect CSC base amount are governed by Pool No. 3, also described below.

\*\* Treated as recurring i.e., not adjusted unless tribe requests to renegotiate in subsequent years).

- b. Pool No. 2 Prior Year CSC Base (Ongoing Awards). The amount of indirect contract support funds representing the previous year's base will be distributed to Areas as "recurring" to fund each Area's indirect cost need. Each awardee's need for indirect CSC shall be determined by calculating changes, if any, in indirect cost rates, bases, and pools. If the funds available in the Area's indirect cost base are not adequate to meet all awardee's requirements, then the amount available shall be distributed according to each awardee's proportion of total need, except that prior year funds should not be reduced if justified as described below. These funds will be awarded to the contractor as non-recurring funds.
- c. Pool No. 3 Mandatory Increases/ Shortfall Funds. Mandatory increases that represent a percentage of the Area's prior year recurring indirect cost base are distributed annually as available. Additional shortfall funds may also be made available to the IHS and allocated to Area offices for this purpose. Since awardees are required to rejustify their needs for indirect CSC each year, amounts required for indirect CSC may exceed the amount available for this purpose. Mandatories should be allocated in such a manner as to provide increases to awards based on each awardee's proportion of total additional need. If additional need is proportionately greater for some awardee's, they will receive a greater percentage of CSC mandatories and shortfall funds.

Prior year funds provided for indirect CSC to each awardee, if justified in subsequent years, shall not be reduced by the IHS, except as authorized in section 106(b) of the ISDA. Awardee should expect to receive these funds continuously, only if they continue to be justified for at least the same amount or greater annual need. They are awarded as non-recurring funds to enable the Area to adjust amounts previously awarded if the amount of costs allocated to the IHS for reimbursement should decrease. If amounts previously awarded for indirect CSC are not

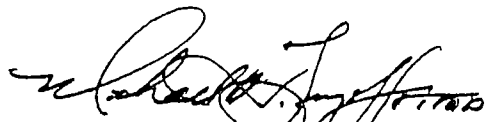
justified by an awardee in a subsequent year, they will be made available for distribution to other awardees in the Area with unfunded CSC needs for this purpose.

Note: It is not intended for Areas to reduce contract amounts of indirect contract support funds allocated prior to FY 1992 (original date of ISDM No. 92-2, Contract Support Cost Policy was February 27, 1992) as recurring funds without approval of the contractor.

B. Requirements for Reporting and Documenting Amounts of CSC Funds Available, Needed, and Requested. Areas shall maintain an historical record of funds negotiated and awarded in each of the categories:

- Direct program funds
- Start-up costs
- Direct contract support funds
- Indirect cost funding
- Indirect-type cost funding
- Indirect cost rates
- Types of rates
- Types of bases
- Pass through/exclusions

5. SUPERSEDURE. Indian Self-Determination Memorandum No. 92-2, "Contract Support Costs Policy," dated February 27, 1992, and any policies or instructions previously issued regarding the allocation of contract support funds.
6. EFFECTIVE DATE. The policy and procedures contained in this circular are retroactive to April 1, 1996, upon signature by the Director, IHS.



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Assistant Surgeon General  
Director, Indian Health Service

**Indian Self-Determination and Education and Assistance Act  
Public Law 93-638, As Amended**

Section 106: [Contract Funding] [25 USC Sec. 450j-1]

[CONTRACT FUNDING]

SEC. 106 [25 USC 450j-1]. (a)(1) 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.

(2) 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.

(3)(A) The contract support costs that are eligible costs for the purposes of receiving funding under this Act shall include the costs of reimbursing each tribal contractor for reasonable and allowable costs of--

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

(ii) any additional administrative or other expense related to the overhead incurred by the tribal contractor in connection with the operation of the Federal program, function, service, or activity pursuant to the contract, except that such funding shall not duplicate any funding provided under section 106(a)(1).

(B) On an annual basis, during such period as a tribe or tribal organization operates a Federal program, function, service, or activity pursuant to a contract entered into under this Act, the tribe or tribal organization shall have the option to negotiate with the Secretary the amount of funds that the tribe or tribal organization is entitled to receive under such contract pursuant to this paragraph.

(4) For each fiscal year during which a self-determination contract is in effect, any savings attributable to the operation of a Federal program,

function, service, or activity under a self-determination contract by a tribe or tribal organization (including a cost reimbursement construction contract) shall--

(A) be used to provide additional services or benefits under the contract; OR

(B) be expended by the tribe or tribal organization in the succeeding fiscal year, as provided in section 8.

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

(A) to plan, prepare for, and assume operation of the program, function, service, or activity that is the subject of the contract; and

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

(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 such costs are incurred.

(b) The amount of funds required by subsection (a)--

(1) shall not be reduced to make funding available for contract monitoring or administration by the Secretary;

(2) shall not be reduced by the Secretary in subsequent years except pursuant to--

(A) a reduction in appropriations from the previous fiscal year for the program or function to be contracted;

(B) a directive in the statement of the managers accompanying a conference report on an appropriation bill or continuing resolution;

(C) a tribal authorization;

(D) a change in the amount of pass-through funds needed under a contract; or

(E) completion of a contracted project, activity, or program;

(3) shall not be reduced by the Secretary to pay for Federal functions, including, but not limited to, Federal pay costs, Federal employee retirement benefits, automated data processing, contract technical assistance or contract monitoring;



(4) shall not be reduced by the Secretary to pay for the costs of Federal personnel displaced by a self-determination contract; and

(5) may, at the request of the tribal organization, be increased by the Secretary if necessary to carry out this Act or as provided in section 105(c)[450](c)]. Notwithstanding any other provision in this Act, the provision of funds under this Act is subject to the availability of appropriations and the Secretary is not required to reduce funding for programs, projects, or activities serving a tribe to make funds available to another tribe or tribal organization under this Act.

(c) The Secretary shall provide an annual report in writing on or before May 15 of each year to the Congress on the implementation of this Act. Such report shall include --

(1) an accounting of the total amounts of funds provided for each program and budget activity for direct program costs and contract support costs of tribal organizations under self-determination contracts during the previous fiscal year;

(2) an accounting of any deficiency of funds needed to provide required contract support costs to all contractors for the current fiscal year;

(3) the indirect costs rate and type of rate for each tribal organization negotiated with the appropriate Secretary;

(4) the direct cost base and type of base from which the indirect cost rate is determined for each tribal organization;

(5) the indirect cost pool amounts and the types of costs included in the indirect cost pools; and

(6) an accounting of any deficiency of funds needed to maintain the preexisting level of services to any tribes affected by contracting activities under this Act, and a statement of the amount of funds needed for transitional purposes to enable contractors to convert from a Federal fiscal year accounting cycle to a different accounting cycle, as authorized by section 105(d).

(d)(1) Where a tribal organization's allowable indirect cost recoveries are below the level of indirect costs that the tribal organizations should have received for any given year pursuant to its approved indirect cost rate, and such shortfall is the result of lack of full indirect cost funding by any Federal, State, or other agency, such shortfall in recoveries shall not form the basis for any theoretical over-recovery or other adverse adjustment to any future years' indirect cost rate or amount for such tribal organization, nor shall any agency seek to collect such shortfall from the tribal organization.

(2) Nothing in this subsection shall be construed to authorize the Secretary to fund less than the full amount of need for indirect costs associated with a self-determination contract.

(e) Indian tribes and tribal organizations shall not be held liable for amounts of indebtedness attributable to theoretical or actual under-recoveries or theoretical over-recoveries of indirect costs, as defined in Office of Management and Budget Circular A-87, incurred for fiscal years prior to fiscal year 1992.

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(f) Any right of action or other remedy (other than those relating to a criminal offense) relating to any disallowance of costs shall be barred unless the Secretary has given notice of any such disallowance within three hundred and sixty-five days of receiving any required annual single agency audit report or, for any period covered by law or regulation in force prior to enactment of Chapter 75 of Title 31, United States Code, or any other required final audit report.

Such notice shall set forth the right of appeal and hearing to the board of contract appeals pursuant to section 110 [450m-1]. For the purpose of determining the 365-day period specified in this paragraph, an audit report shall be deemed to have been received on the date of actual receipt by the Secretary, if, within 60 days after receiving the report, the Secretary does not give notice of a determination by the Secretary to reject the single-agency report as insufficient due to noncompliance with chapter 75 of title 31, United States Code, or noncompliance with any other applicable law. Nothing in this subsection shall be deemed to enlarge the rights of the Secretary with respect to section 16 of the Indian Reorganization Act of June 18, 1934 (25 USC 476, 48 Stat. 984).

(g) Upon the approval of a self-determination contract, the Secretary shall add to the contract the full amount of funds to which the contractor is entitled under section 106(a), subject to adjustments for each subsequent year that such tribe or tribal organization administers a Federal program, function, service, or activity under such contract.

(h) In calculating the indirect costs associated with a self-determination contract for a construction program, the Secretary shall take into consideration only those costs associated with the administration of the contract and shall not take into consideration those moneys actually passed on by the tribal organization to construction contractors and subcontractors.

(I) On an annual basis, the Secretary shall consult with, and solicit the participation of, Indian tribes and tribal organizations in the development of the budget for the Indian Health Service and the Bureau of Indian Affairs (including participation of Indian tribes and tribal organizations in formulating annual budget requests that the Secretary submits to the President for submission to Congress pursuant to section 1105 of title 31, United States Code).

(j) Notwithstanding any other provision of law, a tribal organization may use funds provided under a self-determination contract to meet matching or cost participation requirements under other Federal and non-Federal programs.

(k) Without intending any limitation, a tribal organization may, without the approval of the Secretary, expend funds provided under a self-determination contract for the following purposes, to the extent that the expenditure of the funds is supportive of a contracted program:

(1) Depreciation and use allowances not otherwise specifically prohibited by law, including the depreciation of facilities owned by the tribe or tribal organization.

(2) Publication and printing costs.

(3) Building, realty, and facilities costs, including rental costs or mortgage expenses.

(4) Automated data processing and similar equipment or services.

(5) Costs for capital assets and repairs.

(6) Management studies.

(7) Professional services, other than services provided in connection with judicial proceedings by or against the United States.

(8) Insurance and indemnification, including insurance covering the risk of loss of or damage to property used in connection with the contract without regard to the ownership of such property.

(9) Costs incurred to raise funds or contributions from non-Federal sources for the purpose of furthering the goals and objectives of the self-determination contract.

(10) Interest expenses paid on capital expenditures such as buildings, building renovation, or acquisition or fabrication of capital equipment, and interest expenses on loans necessitated due to delays by the Secretary in providing funds under a contract.

(11) Expenses of a governing body of a tribal organization that are attributable to the management or operation of programs under this Act.

(12) Costs associated with the management of pension funds, self-insurance funds, and other funds of the tribal organization that provide for participation by the Federal Government.

(l)(1) The Secretary may only suspend, withhold, or delay the payment of funds for a period of 30 days beginning on the date the Secretary makes a determination under this paragraph to a tribal organization under a self-determination contract, if the Secretary determines that the tribal organization has failed to substantially carry out the contract without good cause. In any such case, the Secretary shall provide the tribal organization with reasonable advance written notice, technical assistance (subject to available resources) to assist the tribal organization, a hearing on the record not later than 10 days after the date of such determination or such later date as the tribal organization shall approve, and promptly release any funds withheld upon subsequent compliance.

(2) With respect to any hearing or appeal conducted pursuant to this subsection, the Secretary shall have the burden of proof to establish by clearly demonstrating the validity of the grounds for suspending, withholding, or delaying payment of funds.

(m) The program income earned by a tribal organization in the course of carrying out a self-determination contract--

(1) shall be used by the tribal organization to further the general purposes of the contract; and

(2) shall not be a basis for reducing the amount of funds otherwise obligated to the contract.

(n) To the extent that programs, functions, services, or activities carried out by tribal organizations pursuant to contracts entered into under

(4/12/96)

this Act reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings that have not otherwise been included in the amount of contract funds determined under subsection (a), the Secretary shall make such savings available for the provision of additional services to program beneficiaries, either directly or through contractors, in a manner equitable to both direct and contracted programs.

(o) Notwithstanding any other provision of law (including any regulation), a tribal organization that carries out a self-determination contract may, with respect to allocations within the approved budget of the contract, rebudget to meet contract requirements, if such rebudgeting would not have an adverse effect on the performance of the contract.

**Contract Support Costs Calculated  
Using the 80/20 Method**

Assumptions:

1. Tribe A has \$100,000 in Area and Headquarters Tribal Shares
2. Indirect cost rate = 30%
3. New budgeted tribal wages = \$48,000
4. Direct Contract Support = 15% of wages
5. No excluded items
6. Other Direct Contract Support Costs = \$5,000

Expanded program base \$100,000 tribal shares x 80%	\$80,000
DCSC fringe \$48,000 wages x 15%	\$7,200
Other DCSC	\$5,000
Sub-total direct	\$92,200
Less excluded items	\$0
Total direct	\$92,200
x 30% indirect cost rate	\$27,660
TOTAL Direct and Indirect	\$119,860

ISD Calculation

DCSC recurring	\$12,200
ICSC non-recurring	\$27,660
TOTAL CSC	\$39,860
Less tribal shares available for CSC	\$(20,000)
TOTAL ISD Request	\$19,860

Tribe A would receive \$100,000 from tribal shares and \$19,860 would be requested from the ISD fund.

### Contract Support Costs Calculation Based on a Detailed Analysis

Assumptions:

1. Tribe B has \$100,000 in Area and Headquarters tribal shares
2. Detailed analysis indicates that \$10,000 of tribal shares are similar in nature to costs included in tribe B's indirect cost pool
3. Indirect cost rate = 30%
4. New budgeted tribal wages = \$48,000
5. Direct contract support fringe = 15% of new wages
6. Other direct contract support = \$5,000
7. No excluded items

Expanded program base \$100,000-\$10,000	\$90,000
DCSC fringe \$48,000 x 15%	\$7,200
Other DCSC	\$5,000
Sub-total direct	\$102,200
Less excluded items	\$0
Total direct base	\$102,200
x 30% indirect cost rate	\$30,660
TOTAL Direct and Indirect	\$132,860

ISD Calculation

DCSC recurring	\$12,200
ICSC non-recurring	\$30,660
TOTAL CSC	\$42,860
Less tribal shares available for CSC	\$(10,000)
TOTAL ISD Request	\$32,860

Tribe B would receive \$100,000 from tribal shares and \$32,860 would be requested from the ISD fund.