

Meeting Summary
IHS/Tribal Contract Support Cost Workgroup Meeting (CSCWG), Phoenix, AZ
November 28 – 29, 2007

The IHS/Tribal CSCWG assembled on November 28-29th 2007 for a two day meeting. The following agenda items, identified as I-XI, were discussed. All meeting handouts are attached for your convenience and reference.

I. Introduction(s):

Mr. Keith Longie, Phoenix Area, Office of the Director welcomed the group to the area.

Mr. Ronald Demaray, Chair, IHS/Tribal CSCWG welcomed all participants and reviewed the agenda.

II. Opening Remarks:

Ms. Mary Lou Stanton, Deputy Director, Office of Indian Health Policy, welcomed the CSCWG and provided comments on the following:

- Announced Dr. Grim has left Headquarters and Mr. Bob McSwain is now the Acting IHS Director; will continue with same initiatives as Dr. Grim including Contract Support Cost (CSC).
- Indian Health Care Improvement Act will not be acted upon until after Congress reconvenes in January 2008.
- The Agency is currently operating under a Continuing Resolution until December 14, 2007.
- Approximately 530 Contract Dispute Act (CDA) Claims have been received from tribes to date totaling 224 million and the agency has responded to 70%.
- Departmental initiatives funneled down to the Areas and the field. There are nine initiatives; the Agency continues to focus on the Director's top three: Health Promotion and Disease Prevention, Behavioral Health and Chronic Health Care initiatives.
- The Tribal Self-Governance Advisory Committee (TSGAC) continues to be very active.

Open comments from participants: (additional participant comments provided in the discussion(s) below)

- A Tribal representative from the Oklahoma Area expressed concern over the lack of individual tribal member(s) and tribal participation in general at CSC meetings and especially budget formulation meetings. It appears CSC continues to slip in the Agency's budget priorities. Tribal representatives also recommended increased communication between the Agency and Tribal Contractors/Compactors concerning the Agency's internal budget process.

- Tribal representatives were also concerned about CDA claims that have been submitted. The majority of CDA claims are denied and tribal representatives requested increased open dialog and the exchange of information between the Agency and the compactors/contractors during the CDA claims process.
- Concern with IHS and Departmental (DHHS) leadership was expressed by tribal participants regarding barriers to increase(s) in CSC funding. Tribal representatives were keenly interested in where the breakdown for support of increased CSC funding is occurring; at the IHS level, the Departmental level, or Office of Management and Budget (OMB)?
- A Tribal attorney stated the IHS has 90 days to approve or decline a proposal by law, and asked if it is the IHS’s intention to continue to honor the 90 day regulation to approve or decline a proposal. Federal representatives stated the 90 days regulation is reinforced by the Internal Agency Procedural manual; the agency will honor all regulations, policy, and laws regarding contracting/compacting with Tribes. If the area is not in complaint, should be directed to Office of Tribal Programs (OTP), Ronald Demaray or Douglas Black.

III. Appropriation Outlook: FY 2008 CSC Appropriation:

Mr. Charles Sockey discussed the status of the current 2008 CSC appropriation as follows:

FY 2008		
President’s Budget	House	Senate
\$271,638,000	\$274,638,000	\$271,638,000

The President’s Budget of \$271,638,000 is an increase \$1,906,000 over the final FY 2007 CSC Appropriation of \$269,730,000.

The House provided a program increase of \$3,002,000 over the President’s budget representing a \$4,908,000 increase over the FY 2007 final CSC Appropriation. The Senate did not provide any increases – it was the same as President’s Budget. Therefore, we recommended that the Senate defer to the House allowance.

Depending on the final FY 2008 Appropriation, we expect to see, at a minimum, a \$1,906,000 increase in CSC funding (absent any rescissions).

The Agency is currently operating under a Continuing Resolution through December 14, 2007.

UPDATE: An omnibus appropriations bill was signed into law by the President on Wednesday, December 26, 2007. Congress did appropriate an increase for contract support costs over the FY 2007 enacted amount (+ \$1,906,000) but

subsequently took it back by way of a rescission (1.56% or -\$4,237,522) for a net decrease in CSC funding of .86% or \$2,331,522. The decrease will be applied equally (proportionately) to each Area Office's recurring CSC base (including both direct and indirect CSC) and subsequently to each Tribe or Tribal Organization.

To put this into perspective, the CSC appropriation in FY 2008 equals the appropriation received back in 2004 and reflects a reduction of almost \$1 million since 2002. During the span of 6 years (from 2002 through 2008) CSC needs have increased by almost \$97 million or 29% while the appropriation for CSC actually decreased; overall, the IHS appropriation increased by over \$587 million or 21.3% during this same time.

DISCUSSION:

Contract support cost projections (please see attached handouts – Indian Health Service, Contract Support Cost Projections, FYs 2007, 2008, and 2009) were discussed with the workgroup by Mr. Demaray.

Several tribal representatives questioned where the President's & House budget came from? It was explained that the President's budget begins at the Area Office level with Tribal participation. The IHS then submits the budget to the Department, with the Department submitting to OMB, who ultimately develops the President's budget. The Senate and House look at the President's budget and decide what they would like to do with the budget - they may choose to either increase or decrease the budget or leave as requested. Until the official budget is completed, the OTP makes projections from the President's *requested* budget.

A tribal attorney asked to know where a Tribe can increase their advocacy in the process. Unfortunately, the agency has not been able to share detail budget information for a number of years resulting in inadequate funding requests going forward. Every step there is a justification; don't think CSC has been a top priority for a number of years for tribes.

Tribal representative also stated – agency should revamp the category vs disease type format in the Tribal Budget Formulation Process; maybe this will increase funding; change the budget formulation process by category.

Referring to footnote 6 in the CSC projections table, who determines that the IHS HQ will utilize the/an inflation rate of 2.2%? The Agency is instructed to utilize the OMB "non-medical inflation rate." The OMB provides the projected inflation rate to the IHS HQ on a yearly basis; however OMB usually refers to the consumer price index (CPI) at the end of the year.

Tribal representatives asked, based on a given Level of Need Funded (LNF), if there is a minimum LNF that can be officially requested? There is not a minimum level of need other than the agency's request that all Tribes receive a least a 70% need of their LNF (LNF based on current data as reported in the Agency's recent annual CSC Shortfall Report).

Tribal participants also wanted to know if CSC is a non-discretionary budget line item for all other agencies, except for IHS. Can CSC be made a mandatory budget item? It was explained that the IHS has explored with Congressional committee representatives whether to mandate CSC, however, other line items within the IHS budget may suffer.

A tribal representative suggests that the IHS Director submit a CSC number into the president's budget and the Tribes are willing to advocate getting the number approved.

ACTION: A letter of request will be developed and submitted to the IHS Acting Director or TSGAC Chairman, Don Kashevaroff, requesting the IHS budget formulation process be modified to ensure CSC is identified as a higher funding requirement or the number 1 funding priority.

ACTION: Develop a report: Crisis in CSC Funding - A report to tribes, use appropriation to tell the story, what has been going on over the last 10 years. There was widespread support for the development of a "report on CSC" that would be instructive concerning what CSC is and what the status of CSC level of need funded over the past ten years has been; showing any trends that may be evident. The Workgroup recommended that a request be presented to the Director so that such a report might be commissioned.

IV. Litigations Update:

Jocelyn Beer, IHS, Office of General Counsel, provided a Litigation Update as follows: Reported there are a number of cases coming up.

Primarily two kinds of cases:

- Declination cases
- Contract Claims

1. Declination cases – where IHS has declined a contract proposal because the tribe has proposed too much CSC.

There are three active declination cases in the federal district courts – two in New Mexico and one in Oregon. All involve CSC for new and expanded programs.

On the surface, the dispute is about language but the real disagreement is over how much money will be paid. IHS wants language to be clear that it will spend appropriation increases on shortfall for existing contracts unless the appropriation act requires a different result. Tribes have responded saying they may be eligible for funding now and have made proposals to include language to reserve rights to pursue claims to more CSC. If there is this level of disagreement over how much money is due, then this disagreement ought to be addressed before entering into a contract together.

The Southern Ute case is the oldest case, from FY 2005. In that case, the court required IHS to negotiate a contract, but later agreed that IHS could not promise any funding for CSC in the

Annual Funding Agreement (AFA), subject to shortfall distributions. The court also held that the tribe could not get a contract retroactive to the date it proposed to take the program in 2004, because IHS has been paying to operate the program, and the tribe has not. The tribe disagrees, and instead of negotiating a contract with IHS for FY 2008 has appealed to the 10th Circuit Court of Appeals.

Ramah Navajo School Board has also appealed a declination. In that case, the parties have filed motions for summary judgment. Ramah has also requested that the court sequester unobligated contract health service funds because it too would like a retroactive contract. IHS objects that 1. Ramah should not receive payment for services that IHS provides; 2. Contract Health Services (CHS) funds should not languish in the court treasury. The parties are awaiting a decision from the court on all motions.

The third case, Warm Springs v. Leavitt, was filed recently. Again, it is a dispute over funding amounts characterized as a dispute about language.

2. Contract Claims – where the Tribe alleges that IHS has underpaid it under the terms of its contract.

These are appeals of CDA claim denials or deemed denials; there are 29 active appeals. Some are very old – 1993 or 1994, while others are more recent; complex process pulling information together in answering them. With a few exceptions, the claims were submitted to IHS in 2005, some of them more than ten years after they accrued.

Two cases were brought as proposed class actions in federal district court:

Pueblo of Zuni - brought in the District of New Mexico in 2001; stayed pending the Cherokee litigation; and revived in 2005. After extensive discovery and briefing, the Court denied class certification May 2007.

On class certification, the court held that the tribes' contracts and their claims were too dissimilar to support class certification.

The court also had held that Zuni could not bring claims under its contracts without first presenting them to a contracting officer, and that it must satisfy the jurisdictional requirements of the contract disputes act.

Current status: what remains before the Court are Zuni's claims for approximately \$300,000.

Tunica-Biloxi Tribes of Louisiana and Ramah Navajo School Board: (1995-2003) the plaintiffs in this case chose to take a different route and filed motions for summary judgment. If the motions are granted, then the plaintiffs would pursue class certification.

The methodology for calculating indirect cost rates has been a large part of this case. The government's view is that the plaintiffs must first attempt to seek relief from the rate makers

before bringing a lawsuit against the awarding agency. The plaintiffs did not even have final rates for many of the years at issue when they brought the lawsuit. Plaintiffs have not shown that they were in fact harmed by any of the faults that they have alleged in the rates, and entered into contracts with IHS for years, despite what they now say about the problems with the rate system. The Government believes the plaintiffs should be held to their contracts.

Other Federal Court Cases: Menominee, Akiachak, Council of Athabascan Tribal Governments (CATG), and Bristol Bay –These cases are in the District Courts in D.C., Alaska, and the Court of Federal Claims. Menominee has a fully briefed motion to dismiss because Menominee released several of its claims and its claims are untimely. IHS has moved to dismiss Akiachak, in part because Akiachak failed to present its claims to IHS before filing suit in federal court. CATG and Bristol Bay filed very recently. The government has yet to respond.

Many more case are pending before the Civilian Board of Contract Appeals (CBCA). Three have been fully briefed, and the Board has stayed all the other cases until there are decisions in those three cases.

The three briefed cases are Coos, Metlakatla, and Arctic Slope. The common issues in these cases include: Whether tribes may file claims after the six year time period required by the statute has expired? Whether tribes may recover funding in excess of the appropriation cap? What is the role of the IHS shortfall reports compared with the language of the contracts? Is there a statutory entitlement to funding separate and apart from what is set forth in the agreement?

The IHS is awaiting a decision from the CBCA in these three cases, and then would evaluate how they apply to the other twenty CBCA cases.

V. IHS CSC Policy: Part 6, Chapter 3, Contract Support Cost, Indian Health Manual; 6-3.1B. ISD Fund allocation 2007-2010.

http://www.ihs.gov/PublicInfo/Publications/IHSManual/Parts_index.cfm.

Discussion:

The most recent Tribal funding priorities budget worksheet developed during the IHS annual National Budget Formulation meeting, identifying Tribal funding priorities for the Agency's budget was distributed, explained and discussed. CSC was not identified as a top priority in any of the funding priorities categories.

The IHS did adopt changes to the CSC policy and as noted at section 6-3.3A(3)f of the CSC policy, New and expanded programs are to be funded at the average Level of Need Funded (LNF) paid to all existing, ongoing P.L. 93-638 awards; given sufficient appropriations to do so. Further, the Agency noted that any funding beyond that level could be used to address CSC shortfall. In discussions with the House, committee representatives continued to state the IHS should adopt a pro rata system, as the BIA has been allocating their CSC funding like this for some time. The IHS explained to congressional representatives the LNF could/would be more

predictable based on the IHS CSC policy. Although many Tribes were not in support of this change, the tribes did concur that if the IHS Director could secure additional CSC funding with the change in policy, they would agree to the change. However, at the end of FY 2010 the CSC allocation methodology would/will be evaluated to determine if the change(s) should be made permanent.

IHS Manual Part 6-3.3A(3)k: “If ISD funding is insufficient to fund all new or expanded awards at the average LNF paid to all ongoing P.L. 93-638 awards, then the IHS will allocate a percentage to each awardee with an approved ISD Request until the funding is exhausted (CSC associated with ongoing programs is not taken into consideration in this allocation). The remaining unpaid DCSC and IDC will be recorded as part of the overall CSC shortfall used in the allocation of Pool No. 3.”

Additional discussion focused on the “who struck john” tables and if distributing the tables really helped. A federal participant noted that tribal representatives within the Area were requesting the Agency to release information they (feds) had been instructed not to release. However, participants suggested that perhaps the Agency could ask the Department if they could release just the CSC portion of the budget request and not necessarily the entire budget so that an evaluation of certain Agency policies could be accurately evaluated. This suggestion is to be made a part of the “report on CSC” (see above) because participants believed that this level of detailed information would be helpful in analyzing the appropriation history on CSC over the past ten years.

Several participants noted that since so many of the initial primary players in developing CSC policy have since departed, the Agency may want to wait until the very end of FY 2010 to evaluate the effectiveness of more recent changes to the CSC Policy.

Finally, one tribal attorney asked, “Is the OMB not really supportive of IHS CSC requirements, as OMB has been very supportive of the Bureau of Indian Affairs CSC requirements? It certainly leads one to believe there is a lack of advocacy from the Agency/Department leadership concerning CSC funding.”

ACTION: IHS HQ may request CSC budget information under current embargo to evaluation of policy changes as part of the “report on CSC” above.

VI. Language related to new expanded programs: See attached CSC Issue paper attached.

Issue: Instruction concerning the negotiation of CSC associated with new or expanded programs, services, functions, or activities (PFSA) are being awarded pursuant to the ISDEAA.

Subsequent to the last CSC Workgroup Meeting held in November 2005, the IHS Director indicated to Tribal Leadership that he would invite discussion by the IHS/Tribal CSC

Workgroup on alternatives to the Agency's position regarding the declination of contract proposals when a Tribe is unwilling to agree to AFA language that acknowledges the unavailability of CSC to support the new or expanded award. Tribal representatives at the last Workgroup Meeting encouraged the Director to be willing to discuss this issue with them and to be open to their input concerning alternatives to the declination of awards when agreement could not be reached. Discussion on this agenda item was intended to fulfill the Director's commitment and to solicit alternatives to the agency's current practice.

Discussion:

With regards to declination criteria language, some participants stated the agency is fully protected by the CAP/Appropriations law or clause, and do not believe the Agency should have side policies or documents and, as such, the document should be abolished. Agency stated that the situation is a process issue and not a policy issue and that there is now room to talk about some alternatives – do we want to build on this or draft something totally new. The Agency is concerned with equitable distribution of resources and is there a way to award the contract, but still reserve disputes? The real issue surrounds the funding levels of the program vs. CSC.

Declination and partial declination issues should be delinked. If the tribe says it can run a program without CSC funding, should the Agency move forward to award the contract? The issue could be narrowed down, and disputes issues could be put into a declination and still award the funding agreement.

Compromise language concerning Cherokee 2007 funding agreement was shared with the workgroup, and although neither side was very happy with the language, it could be used as a place to begin. Below are some suggestions the group discussed regarding Funding Agreement language to address New or Expanded proposals.

Funding Agreement language to address New or Expanded proposals:

1. Policy should spell out payment distribution details (3rd paragraph in Cherokee Language).
2. CSC need associated with new or expanded program should be included in annual 106(c) Agency CSC Report.
3. ...or do not include any Partial Declination: De-link declination of the award of the programs, services, functions, or activities (PSFA) from a declination of the award of CSC.
4. Tribe can operate the PSFA using programs or other resources for CSC and that doing so with out CSC will not "jeopardize health" (re-assumption).
5. Parties are not intending to "contract outside of the ISDA" – not creating a right for either party outside the ISDA (non-waiver).
6. Language related to the payment of CSC; identify amounts to be paid in a funding table.

The agency is interested in revising this language and preserving the interest of both the tribes and the agency.

General discussion continued on whether CSC funding, if available, should be used for new and expanded programs or pay down the ongoing CSC shortfall. Portland tribal representatives noted they have discussed this issue at length. The Agency should put forth a policy of promoting/supporting new and expanded contracting (self-determination), not just addressing shortfall.

Additional questions focused on whether a tribe that is currently contracting during this policy would somehow be harmed if we now change the policy.

Tribes frequently state they can't operate without CSC – should the Agency transfer a program knowing this?

Tribal participants further stated it's important to remember that in many cases there are other motivators to self-determination and in many cases very practical decisions are being made to contract knowing that there may not be adequate CSC funding.

Another tribal participant (attorney) recommended that any tribe oppose the language discussed because language is in place that would protect the Agency. He wanted to ensure this point was noted in the minutes of the meeting. He recommended language "the agency will pay CSC to the extent it's available"- It's simple and the tribes understand it.

One federal representative stated both parties (feds and tribes) have completely different interpretations of what the ISDA says. Tribal participants believe the way the Agency is going about it amends the statute through a backdoor so to speak.

A federal participant stated that it's not responsible for the agency to agree to contracts in which it does not know what the final contract will be. Putting it off for 6 years is certainly not responsible. We have been discussing situations in which there is no contract.

The IHS is saying there is no CSC funding available. The Agency is trying to bring a level of certainty to the situation and be reasonable at the same time.

Finally, tribal participants stated they are asking for the recognition of the unfunded liability. The option of the tribe should remain open for the tribe to recapture this expense at a later time, ending with stating the statute is clear on what it is supposed to pay/do. "It's just about saving money for the government...it's just become a game."

A couple participants agreed to take a crack at redrafting the language to see what an alternative approach might look like. This was discussed again later on Day Two.

VII. Program profiles for DCSC re-negotiations: 6-3-2.D (2). Renegotiations of Direct CSC. By law cannot duplicate the 106(a) amounts when negotiating [Direct] Contract Support Cost (DCSC).

Discussion:

Initially the IHS did not have the historical detailed financial information when first calculating DCSC to be able to compute the off set for CSC. Fifteen percent (15%) was a baseline used when the agency first started negotiating DCSC. Later, the amounts were increased by inflation. DCSC is primarily driven by personnel costs. The IHS is prohibited from duplicating any cost from the 106(a)(1) amount or in the IDC pool.

The policy lays out generally types of cost for DCSC. DCSC can be negotiated annually. The IHS was challenged to make the negotiation process easier and the current policy methodology allows this. Renegotiation of either direct or indirect, however, seldom results in additional CSC within the current fiscal year. The issue has been put on this meeting agenda because the policy addresses DSCS. The policy states DCSC can be renegotiated on an annual basis – the tribe has the authority to do this, and the challenge is to make this a meaningful process. The renegotiation of these costs is happening on a more frequent basis these days.

One participant asked if the same rules apply to DCSC as to IDC. In many cases, the DCSC need may increase, but it may not necessarily result in an immediate increase in funding. IDC is generally based on a rate that is renegotiated each year and it is applied to a direct cost base that changes every year.

The Agency's Annual Shortfall Report was shared with the workgroup, pointing out where these costs are identified for inclusion in the report.

Questions were asked on how the Agency's profiles are developed. It's addressed or mentioned in the policy that the Agency will develop a profile when the IHS has not operated the program that a tribe may be requesting to take over. How does the Agency develop a neutral profile that will work for negotiations? Is it fair that a tribe should be limited to what the Agency would pay? How accurate is a profile developed today when the program transfer may have taken place ten, twenty, or even thirty years ago?

There was discussion concerning Commission Corp employees and determining an accurate amount for fringe, and it was agreed by the workgroup that this topic should be flagged for further discussion at the next CSC Work group meeting. However, a couple of questions asked were as follows:

- Could commission Corp salary and benefits be addressed and accepted as a DCSC cost?
- Recommend to review the 15% flat rate.
- 50% Tribal Council salary questionable; could potentially unaccepted Tribal Council salary by the National Business Center be applied to DCSC?

NOTE: Subsequent to the meeting, there was a question from a Tucson Area participant concerning a statement by a participant from the Alaska Area that "commissioned corps retirement costs equal 66% of salary." Clarification was provided by Mr. Demaray that when the IHS employs Commissioned Corp personnel that the retirement charge (alleged at 66%) was not paid by the IHS but rather the ultimate

retirement benefit valued at 66% of salary per year is paid from another account within the Federal Government. The point of the Alaska participant was that the Tribes should be entitled to an amount commensurate with this benefit from CSC (DCSC in particular) so that they could offer a higher salary to Tribal Direct Hires replacing Commissioned Corp Officers so they can remain competitive – paying a higher salary in lieu of a greater retirement benefit. As it stands, we (the IHS) only provide the actual salary amounts (inclusive of special pays, housing, etc.) from the 106(a)(1) amount and then allow for retirement at whatever the Tribe documents their retirement benefit to be – generally in the 4% to 8% range from CSC. Clearly, as long as the Tribes continue the Commissioned officer as a MOA then they never have to worry about the Federal benefits and DCSC does not even come into play.

VIII. Indirect Cost Rates and Indirect Type Cost Negotiations: 6-3.2E (2).

Discussion:

The number of awardees without negotiated IDC rates has been increasing. However, a lump sum amount for “indirect type costs” may be negotiated for awardees that do not have formally negotiated agreements with their cognizant Federal agency for reimbursement under an IDC rate.

The attachment on “Standards” contained in the CSC policy provides a brief discussion on IDC type costs. The OTP is preparing to put together information on these type(s) of negotiations for IHS Area staff. The technical assistance is going to have to be detailed and the tone is going to have to consider the difficulty in identifying or determining [tribal] data. Basically, the IHS is stepping into the shoes of the National Business Center (NBC) when negotiating IDC type costs.

Recommend:

- Area Office staff need to be provided all pertinent financial information to conduct thorough Indirect-Type Costs negotiations.
- Generate an allowable list of costs.
- Provide one-on-one guidance per Area request.
- Tribal perspective: Good experience when a face to face visit/guidance from IHS Area to Tribal staff when identifying Indirect-Type Cost or attempting to preparing an IDC proposal for submittal to NBC. Recommend continued support and guidance to Tribes from IHS both nationally and locally to identify DCSC and IDC amounts.

Office of Tribal Self Governance and Office of Tribal Programs met with office of Grants and they are willing to meet with both IHS and the NBC to discuss the IHS policy of 3 year IDC rate acceptance.

IX. Contract Support Cost (CSC) Projections: Related to future years. 6-3.4F (6). Contract Support Cost Budget Projections.

Ron Demaray reviewed the IHS CSC projections for FY2007, 2008 and 2009.

Additional CSC need for:

2007 requirements	376,482,555	(understated by duplicate Tribal Shares)
Base Funding appropriation	<u>269,730,000</u>	
	106,752,555	(an 18 million increase need in one year)

2008 requirements	404,038,320
Base Funding Presidents Budget	<u>271,636,000</u>
	132,402,320

2009 requirements	429,897,530
Base Funding Presidents Budget	<u>271,636,000</u>
	158,261,530

Of the Shortfall onset of FY2007 \$88,168,269.

The 2.2 % OMB inflation rate is applies to the Base Budget (presidents budget) instead of the actual need, because in the budget formulation process, the IHS can not apply the OMB non-medical inflation rate against funding that does not exist.

Shortfall Projection vs. CSC Shortfall Reporting disparity due to:

- The projected higher amount is calculated from the previous two years financial information and
- The lesser amount of need comes from the actual shortfall report.

Currently there are a total of 333 Tribes/Tribal Organizations Contracting or Compacting with an average CSC LNF fundable in FY2006 of 76.79%. \$88,168,269 is needed to fund all Tribes/Tribal Organizations Contracting or Compacting to 100%.

CSC Breakdown by percent:

	<u>CSC Need</u>		<u>CSC Funded</u>		<u>CSC Shortfall</u>
DCSC	72,519,372	19.09%	62,478,702	21.42%	10,040,670
IDC	307,533,943	80.91%	229,206,344	78.58%	78,127,599

Recommend: improvement for methodology process to help Tribes have accurate data when going to Washington to educate legislature concerning CSC need.

The workgroup also recommended dropping the “memo only column” on the CSC data worksheet submitted by the Areas for inclusion in the shortfall report, and capture the full increase on CSC on DCSC.

X. National Business Center – IDC Rate negotiations: Tribal Council Costs.

A brief introduction of this topic was provided then the IHS turned the microphone over to Tribal Representatives to lead the discussion on this issue. NBC feels it is an internal matter (policy) and choose not to attend. They indicated they will make time with individual Tribes to discuss any IDC rate questions.

Bobo Dean briefed the attendees: They were made aware of the issue that Tribes who were negotiating 2007 IDC rates were told they would have to document their Tribal Council expenses in Tribal Indirect Cost Pools when a Tribe manages programs under the Indian Self-Determination Act and Education Assistance Act in their 2008 proposal. These new practices could produce two related harmful results. First, it would reduce the amount of the indirect cost pool a Tribe would be eligible to recover and secondly, increase the direct cost base, resulting in a lower indirect cost rate and further potential reduction in funding for administering federal programs.

NBC reportedly responded by stating they are following the OMB rules.

Jim Sizemore - CPA: Tribes have received letters from NBC of the 2008 changes. He indicated he has advised his Tribes not to give up the 50% rule and appeal any NBC Rate determination. In 2000 Tribes resisted the Office of Inspector General (OIG) proposal to throw out the 50% rule because the difficulty involved in allocating the time would have been disproportionate to any gains in accuracy or fairness given the relatively small amounts of money involved. At that time Office of Management and Budget (OMB) officials agreed with the Tribes position that the 50% rule represented a fair and reasonable default rule that spared both contracts and compacts seeking to include up to 50% of Tribal Council costs in indirect cost pools could do so without further documentation.

Currently 50% rule means managing federal programs. Tribes perform program management responsibility. Tribal councils conduct both legislative and management duties and is why the 50% rule should remain, it was reasonable way to keep records. OMB directed the OIG to continue employing the 50% rule.

Where does NBC get their authority? Department of Interior (DOI) assigns NBC duties. Prior to the NBC assuming the responsibility for negotiating indirect cost agreements with Tribes in 2003, the DOI OIG filled this role. For some Tribal Health organizations, the Division of Cost Allocation in the Department of Health and Human Services served, and still serves, this function.

What can Tribes do? Appeal or defer the rate a year (extend). It is suggested that the Tribes move quickly on the national level.

A meeting is scheduled December 18, 2007 between Tribes and the NBC.

XI. OPEN

Paper for discussion purposes only: FY 2008 CSCs Associated with New and Expanded Contracts.

Issue: Instructions concerning the negotiation of CSC associated with new or expanded PFSA are being awarded pursuant to the ISDEAA.

Ron Demaray reviewed the changes with the participants and they discussed the proposed changes. The document was a compromise between the original language the IHS offered during the negotiation of CSC associated with new or expanded programs in FY 2007; the compromise language adopted by the Cherokee Nation in FY 2007 for their new staffing; and an effort to consider whether a partial declination of the CSC portion of a new or expanded award could be made in instances where a Tribe still wants to contract the program portion but is unwilling to acknowledge the absence of available CSC for the award.

There was still some discussion concerning the precise wording in the document and some Tribal participants indicated that they would probably be unwilling to agree to any such compromise of their proposal to receive full CSC funding. The IHS indicated that it appreciated the Tribal participants' willingness to discuss the issue and consider alternatives. The IHS intends to discuss this issue further internally and may develop revised guidance to its Area Offices in the future. Until that happens, however, the existing guidance provided to Area Offices from the Director, IHS in March, 2006 would remain in effect.

Ron closed the meeting with a re-cap of the past two days.

Included with this Summary are handouts provided to participants at the CSC Workgroup Meeting on November 28 and 29.

- Meeting Agenda
- FY 2008 CSC Budget Request Update
- IHS CSC Projections FYs 2007 and 2008 and 2009
- CSC Projections vs. CSC Shortfalls Comparison
- CSC History: 1998 - 2008
- FY 2009 Tribal National Budget Recommendations
- IHS CSC Policy (provisions related to Agenda topics)
- FY 2006 / 2007 / 2008 CSC Issue
- FY 2008 CSCs Associated with New and Expanded Contracts
- Hobbs, Straus, Dean & Walker, LLP Memorandum – National Business Center Seeks to Reverse Allowing 50% of Tribal Council Costs in Indirect Cost Pool
- Sign – in Sheets