

FY 2006 / 2007 /2008 CSC ISSUE

ISSUE: Instructions concerning the negotiation of CSC associated with new or expanded programs, services, functions, or activities (PSFA) being awarded pursuant to the ISDEAA.

CSC language associated with new or expanded program assumptions must be clear as to the unavailability of new ISD (CSC) funding and the obligation of the IHS to fund CSC given the current appropriations "cap" on CSC. If the IHS and Tribes cannot reach agreement on this matter, then the new or expanded program request must be declined.

There are some basic principles at issue that remain at the core of the IHS position in this matter. These include the following:

- The IHS does not have ISD funds available to fund CSC associated with new or expanded PSFAs.
- A congressional earmark has limited the amount of CSC funds available to fund CSC associated with new or expanded PSFAs, and all existing CSC funds have already been obligated for existing contracts and compacts.
- The Tribe has informed the IHS that it still wishes to contract for the new or expanded PSFAs knowing that CSC funding is not available and that the Congress may not appropriate additional CSC funding in future years.
- The Tribe assures the IHS that it can carry out the PSFAs despite the absence of CSC.
- There is no promise to pay for CSC associated with the new or expanded PSFAs.

It is critically important that there be agreement on these principles before any award of new or expanded PSFAs is made. If the IHS and the T/TO cannot reach agreement on these principles, then the Area Office is expected to work with the Headquarters Office of Tribal Programs and its own regional attorney in issuing a declination for the new or expanded PSFAs and the associated CSC being requested by the T/TO.

It is also important to remember that this issue only affects those awards where a T/TO proposes to add new or expanded PSFAs and any declination that might arise as a result of a failure to reach agreement on this issue only affects the new or expanded PSFAs, not the existing award or existing PSFAs. Area Offices and T/TOs have

some latitude in developing alternative language as long as it addresses the principles identified above. The following sample contract language is provided to address the above principles:

“The IHS has informed the Tribe that a congressional earmark has capped the amount of CSC funds available in the IHS [FY 2007] appropriation and that all existing CSC finds have already been obligated for existing contracts and compacts. As a result, there are no funds available to fund the Tribes request for CSC funding associated with the new or expanded PSFAs being transferred to the Tribe pursuant to this AFA/FA, including any pre-award or start-up costs.

The IHS has informed the Tribe that Congress may not appropriate additional contract support cost funds in future years. The Tribe has informed the IHS that it still wishes to contract for the new or expanded PSFAs identified herein, despite the unavailability of CSC and the possibility that Congress will not appropriate additional CSC funds in future years. The Tribe assures the IHS that it can carry out the new or expanded PSFAs despite the absence of CSC.

The Tribe and the IHS agree that the IHS will not provide any CSC funds for new or expanded PSFAs under this AFA/FA. The parties further agree that if Congress appropriates additional CSC funds, such funds will be distributed in accordance with the applicable CSC Circular. Based upon this understanding, the IHS agrees to transfer the new or expanded PSFAs identified herein to the Tribe. The parties further agree that nothing in this AFA/FA or the associated contract/compact creates a promise on the part of the IHS to pay the Tribe CSC for the new or expanded PSFAs identified herein.”

This or similar language would be used in addition to the standard CSC language that is used for ongoing CSC. For your information that standard language is:

“For purposes of this funding agreement, IHS will calculate and pay CSC in accordance with Section 106 of the ISDEAA and IHS Circular 2004-03, or its successor, subject to any statutory requirements imposed by Congress.”

I strongly advise you to make sure that any CSC language in Title I contracts or Title V compacts has been reviewed by your regional attorney or the IHS Branch of the Public Health Division of the OGC.

If you have any questions, please contact Mr. Ronald Demaray, Director, Self-Determination Services at (301) 443-1104.