



MAY 22 2015

Dear Tribal Leader:

I am writing to provide an update on Contract Support Costs (CSC). The Indian Health Service (IHS) continues to make CSC a priority. This letter is intended to provide an update on the following areas related to CSC: 1) status of resolving past year claims for unpaid CSC; 2) fiscal years (FY) 2014 and 2015 CSC payment and reconciliation activities; 3) implementation of an Annual CSC Calculation (ACC) Estimation Tool; 4) negotiation of direct CSC; 5) the FY 2016 President's Budget proposal to make CSC a mandatory appropriation beginning in FY 2017; and 6) IHS CSC Workgroup activities.

Status of Resolving Past Year Claims for Unpaid CSC

IHS continues to make progress on resolving past year claims presented under the Contract Disputes Act for unpaid CSC. As of May 8, IHS has extended settlement offers on 1,249 claims and has settled 947 claims in the amount of approximately \$705.5 million. IHS remains focused on resolving the remaining claims, with a goal of extending offers on all claims received by January 1, 2015, by the end of the calendar year. The continued success of our efforts to resolve past claims is due in part to the working relationship with Tribes. Please direct any questions regarding the status of your claim to your IHS Area Director. In addition, you may ask your attorney to contact the Office of the General Counsel.

FY 2014 CSC Payment and Reconciliation Activities

The FY 2014 Consolidated Appropriations Act did not specify a limit on the total funds available for payment of CSC; therefore, IHS's goal is to pay full CSC, as defined by the Indian Self-Determination and Education Assistance Act (ISDEAA), for FY 2014. To ensure the Agency met its goal to pay full CSC need in FY 2014, IHS developed a more detailed and consistent reconciliation process to fully fund the estimated CSC need and to account for the variables that can change the estimated CSC need throughout the year. For FY 2014, IHS reconciled and paid CSC in April, September, and December 2014 and April 2015. IHS has worked to improve communication with each Tribe to ensure that IHS and Tribes use the most current data necessary to accurately estimate each Tribe's full CSC need.

The following are the steps used for data and funding reconciliation:

- IHS reviews and updates CSC data on a monthly basis, with a primary focus on updating any changes in the variables that can change the CSC estimated need (i.e., paid funding amount, changes in the Tribe's indirect cost rate, and changes in pass-throughs and exclusions associated with the Tribe's indirect cost rate).
- Based on the monthly data reconciliation findings, the IHS initiates a payment reconciliation.

- IHS notifies Tribes when there are changes in the estimated CSC need based on the best available data, using an Annual CSC Calculation (ACC) Estimation Tool described below.
- IHS will work with the Tribe to modify a Tribe's Title I annual funding agreement (AFA) or amend a Tribe's Title V funding agreement (FA) to pay any additional CSC need.
- In cases where a Tribe has received a CSC overpayment, the IHS will work with the Tribe to recover the overpayment funds and modify the Tribe's Title I AFA or amend the Tribe's Title V FA to update full estimated CSC amounts in the ISDEAA agreement with the IHS.

IHS interprets the ISDEAA to authorize CSC funding for those actual costs that Tribes incur that meet the definition of CSC as described in the ISDEAA at 25 U.S.C. § 450j-1(a). IHS relies, in part, on the Tribe's final audited costs and, in most cases, the applicable indirect cost rate negotiated with Tribes' cognizant federal agencies. To accurately calculate a Tribe's full estimated CSC need, the IHS also reviews costs for reasonableness and duplication. For example, for FY 2014, if the Tribe chose to use an indirect cost rate to estimate its CSC need, IHS expects that the final costs could be determined in FY 2016 once the Tribe receives its FY 2014 indirect cost rate, or later. Therefore, FY 2014 CSC reconciliation will be open until final costs are determined.

FY 2015 CSC Payment and Reconciliation Activities

Similar to FY 2014 payment and reconciliation activities, the IHS is in the process of completing its first FY 2015 reconciliation. We expect to make payments to Tribes no later than May 30, 2015. Payments will be based on: funds paid to date; a Tribe's most current indirect cost rate, where applicable; and applicable pass-through and exclusions as negotiated by the Tribe in the Tribe's negotiated indirect cost rate agreement. In addition, the IHS will assess the reasonableness of costs and duplication, consistent with the ISDEAA and the IHS CSC Policy. IHS will modify Title I AFAs or amend Title V FAs for any additional payments based on reconciled data used to estimate full CSC.

Implementation of an Annual CSC Calculation (ACC) Estimation Tool

In January 2015, IHS implemented the ACC Estimation Tool, which will be used by IHS to assure that full estimated CSC need is calculated in a consistent manner using the best and most current information. The ACC Estimation tool supports a transparent means to calculate each Tribe's full estimated CSC need at any given time. IHS intends to share a completed ACC Estimation tool in advance of CSC negotiations to support full and open discussion. The IHS looks forward to sharing the ACC Estimation tool at IHS Area Tribal meetings and providing additional training on the information necessary to estimate CSC need. Please contact your Area Director for information related to upcoming trainings in your Area.

Negotiation of Direct CSC

When a Tribe negotiates and enters into a contractual agreement with the IHS under the ISDEAA, the Tribe receives the amount of funding the Secretary would have otherwise provided for the operation of the program, function, service, or activity (PFSA) or portion thereof, typically referred to as the “Secretarial amount.” The ISDEAA authorizes an additional amount for CSC, which consists of the reasonable costs for activities which must be carried out by the Tribe or Tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management, but which are activities not normally carried out by IHS in its direct operation of the programs, or are provided by the Secretary in support of the contracted program from resources other than those under the contract. Eligible CSC includes the costs of reimbursing each Tribal contractor for the reasonable and allowable costs for direct program expenses and additional administrative expenses related to the overhead incurred by the Tribal contractor in connection with the operation of the PFSA pursuant to the contract, except that CSC cannot be duplicative; i.e., CSC cannot be paid for activities that are already funded in the amount transferred by the Secretary.

The majority of direct CSC need typically consists of fringe costs that are not already funded as part of the Secretarial amount. In the IHS CSC Policy, fringe costs are a group of five items, including Federal Insurance Contributions Act (FICA); life, health, and disability insurance; retirement; workers’ compensation insurance; and unemployment insurance. In accordance with the IHS CSC Policy, IHS has historically agreed, as to this group of fringe benefit costs, to total the amounts already provided in the Secretarial amount for FICA, retirement, and life, health and disability insurance, and compare these amounts to the reasonable and necessary fringe benefit costs of the Tribe (which also include additional costs for workers’ compensation and unemployment insurance) for the transferred PFSAs. Consistent with IHS CSC Policy, the IHS calculates direct CSC utilizing the most current actual cost data. In FY 2014, IHS reviewed data across the Agency to determine the fringe costs for the three items already provided to a Tribe in its Secretarial amount, as required by the IHS CSC Policy. For FY 2015 direct CSC negotiations, IHS will use the Agency’s final actual fringe costs for those three items for FY 2014, to determine those costs already transferred to a Tribe in its Secretarial amount. IHS will consider proposals for other eligible direct CSC costs as detailed in the IHS CSC Policy.

Consistent with the IHS CSC Policy, the IHS applies the Office of Management and Budget (OMB) non-medical inflation rate to a Tribe’s estimated direct CSC need each year that the Tribe chooses not to renegotiate its need. To simplify this process, the IHS will apply the final OMB non-medical inflation rate from the previous year to the previous year’s negotiated direct CSC need to arrive at the current year estimated need. For example, the final rate for FY 2014, 1.6%, will be applied to arrive at the updated direct CSC need for FY 2015.

The FY 2016 President’s Budget Proposal to make CSC a Mandatory Appropriation

On February 9, IHS announced Tribal Consultation to invite input on the FY 2016 President’s Budget proposal to make CSC funding mandatory starting with the FY 2017 appropriation. The proposal seeks to reclassify CSC as mandatory funding, rather than discretionary funding. The proposal has four components:

- 1) A three-year mandatory appropriation, which provides a specific amount for each year to fully fund CSC;
- 2) No-year funding that allows funding to be available to IHS to carry over in future years;
- 3) New CSC estimates will be provided as a part of the reauthorization process every three years; and;
- 4) In addition to the current amount, up to 2% of CSC totals can be used for administrative capacity and program management.

IHS has received a number of responses from Tribes with overwhelming support for the proposal to reclassify CSC as mandatory funding. IHS will continue to provide updates regarding the status of the mandatory funding proposal at national and regional listening sessions. For additional information on how the proposal will interact with the discretionary caps and how it is scored under the Statutory Pay-As-You-Go Act of 2010 (PAYGO), IHS defers to OMB.

IHS CSC Workgroup Activities

The IHS CSC Workgroup continues to hold face-to-face meetings and telephone or video conference calls. A majority of the Workgroup’s focus is discussion of options that would simplify and streamline the work to negotiate full CSC need. The CSC Workgroup played an instrumental role in the development of the ACC Estimation Tool. I appreciate the valuable work of the CSC Workgroup and will continue to share their recommendations and outcomes.

We appreciate your input and remain committed to work with Tribes on solutions to this very important issue. Thank you for your ongoing support and partnership, which has been critical in achieving progress on CSC-related issues. We welcome your comments, suggestions, and recommendations on any of the topics in this update. Please send your input to consultation@ihs.gov.

Sincerely,

/Robert G. McSwain/

Robert G. McSwain
Acting Director