



SEP 02 2014

Indian Health Service  
Rockville MD 20852

Dear Tribal Leader:

I am writing to provide an update on fiscal year (FY) 2014 Contract Support Costs (CSC). This letter includes updates on the following topics: 1) the Indian Health Service's (IHS or Agency) progress on resolving claims for additional CSC funding for prior years; and 2) CSC need in FY 2014 and the need for reprogramming other Services funds to address the full CSC need from within the FY 2014 appropriation.

#### Resolution of Claims for Additional CSC Funding for Prior Years

Working together with Tribes, IHS continues to make progress on settling prior year claims for additional CSC funding. In November 2013, we had negotiated settlement of only three claims since the Supreme Court's decision in *Salazar v. Ramah Navajo Chapter*. At that time, IHS had extended offers on 60 additional claims, and 82 additional claims had been analyzed. As of August 26, 2014, approximately 1,250 claims have been analyzed or are in the process of being analyzed, and settlement offers have been made on approximately 620 claims, of which 504 claims have settled and are in various stages of completing the settlement process. The total value of the settlements to date is approximately \$550 million. If you have questions on the status of your claims, please contact your IHS Area Director or ask your attorney to contact the Office of the General Counsel.

#### CSC Need in FY 2014 and Reprogramming from the FY 2014 Appropriation

With regard to CSC need and payments in FY 2014, I explained in my May 12 letter that the FY 2014 Consolidated Appropriations Act did not specify a limit on the total amount of funds available for the payment of CSC and that the Services appropriation must be used to cover CSC even if other parts of the budget needed to be reduced. IHS submitted an operating plan to Congress, as required by the Appropriations Act, that identified IHS's plan to fully fund the CSC need as estimated at that time, which required a \$10 million reduction in other items in the budget. At that time, IHS indicated that additional funds would need to be reallocated if the CSC need exceeded the \$587 million initially identified in the operating plan. Additional need was likely, given the various updates and adjustments in CSC need that were expected later in the year and given that Tribes could also decide to enter into Indian Self-Determination and Education Assistance Act (ISDEAA) negotiations later in the year for new or expanded programs, functions, services, or activities, which would also generate new CSC need.

I am writing to inform you that IHS has notified Congress of the need to reprogram funds in order to fully fund the CSC need in FY 2014. The staff in the 12 IHS Area Offices have been working to reconcile the amounts of CSC owed to Tribes in FY 2014. For the purpose of preparing the reprogramming notification, IHS recently collected the reconciled data as of August 22, 2014, along with the amounts of CSC proposed for new and expanded programs and for requests to renegotiate CSC. The data indicates that IHS should be prepared to reprogram \$44 million for the purpose of funding CSC. However, to account for any additional requests or

fluctuations, e.g., as a result of increases in final indirect cost rates, between now and the end of the FY, IHS notified Congress of its intent to reprogram a maximum of \$48 million to fully fund CSC from the FY 2014 appropriation. More than half of this additional need is related to requests from Tribes to renegotiate their CSC need for existing contracts. Another portion is the result of typical adjustments that may need to be made as information becomes available, such as applying an updated inflation rate projected for 2014, indirect cost rate increases, etc. In addition, Tribes have submitted proposals for CSC related to new or expanded ISDEAA agreements. The remaining portion represents overpayments that IHS has identified but not yet recovered from Tribes. In the case of overpayments, until IHS and Tribes agree and IHS recovers the overpayment from the Tribe, IHS must account for the full CSC amount, including the potential overpayment amount, as pending CSC need.

IHS has submitted the reprogramming request to Congress because the Agency is legally obligated to ensure that it has enough funds available in its appropriation for all of its obligations, including the full amount of CSC that is estimated for FY 2014, based on information currently available as well as subsequent negotiations and fluctuations in the amounts. Since Congress removed the statutory cap on CSC, CSC must be funded from the FY 2014 appropriation. As a result, in FY 2014 IHS has had to make additional reductions in funding from the Services budget to fund CSC fully.

IHS has worked to limit the impact of the reprogramming on direct service programs. During the development of the operating plan in April, IHS consulted with Tribes and chose reductions that were not related to Tribal shares. The reductions were taken in the Director's Emergency Fund, Indian Health Professions, and Tribal Self-Governance and Tribal Management Grants. Unfortunately, the amount of funding requiring reprogramming at this time cannot be limited to exclude budgets related to Tribal shares, and cannot be limited to funds at Headquarters only. If it ultimately becomes necessary to reprogram the maximum amount reported to Congress, half of the reprogramming would be accomplished with Headquarters funds and half would be accomplished with Area funds. All Areas have been asked to ensure a specific amount of Hospitals and Health Clinics funds remains unobligated for this purpose, and Headquarters intends to reprogram funds from several budget line items in the Services account for this purpose. Area staff will continue to work on reconciling CSC amounts for each Tribe as updated information becomes available and will also work on recovering overpayments. IHS will only reprogram the amount needed to fully fund the CSC need and, if that amount decreases with updated information, IHS will lower the amount of reprogramming. I will provide a final update for FY 2014 once the fiscal year has ended.

The need to take this action highlights the difficulty in projecting CSC need. We knew the amount set aside when developing the operating plan in May, including the \$10 million set aside for new and expanded programs, might not be the final amount of CSC need since the law allows Tribes to propose new and expanded ISDEAA agreements later in the year and, due to the complex nature of CSC, adjustments to amounts determined early in the year would likely be needed.

Congress recognized that the nature of the CSC obligation would have “the potential to impact all other programs funded” through the appropriations act. 160 Cong. Rec. H. 475 and 975 (Jan. 15, 2014). Congress also indicated that IHS and the Bureau of Indian Affairs should engage in consultation with Tribes “to formulate long-term accounting, budget, and legislative strategies to address the situation.” *Id.* We hope that consultation on the long-term solution will result in ways to make CSC need more predictable, which would reduce the need to reprogram the rest of the Services budget. The need for a long-term solution is clear given the potential annual need for reprogramming other funds in the budget to fully fund CSC. We appreciate all the input from Tribes to date on recommendations for a long-term solution. IHS is waiting for final input from the four IHS advisory groups (IHS CSC Workgroup, IHS Tribal Self Governance Advisory Committee, IHS Direct Service Tribes Advisory Committee, and IHS Tribal Budget Formulation Workgroup).

We have held several listening sessions and have included discussion on CSC in multiple forums with Tribes since May.

If you have any additional comments, please send them to [consultation@ihs.gov](mailto:consultation@ihs.gov) as soon as possible. We appreciate all the input to date and are committed to finding a solution that supports self-determination and self-governance for Tribes and that provides a more predictable way to fund CSC need without adversely impacting the rest of the budget. Thank you for your continued cooperation on this important matter.

Sincerely,

/Yvette Roubideaux/

Yvette Roubideaux, M.D., M.P.H.  
Acting Director