



May 17, 2018

VIA E-MAIL  
[consultation@ihs.gov](mailto:consultation@ihs.gov)

RADM Michael Weahkee, Acting Director  
Indian Health Service  
5600 Fishers Lane  
Mail Stop: 08E86  
Rockville, MD 20857

Re: CSC "97/3" Method Tribal Consultation

Dear Acting Director Weahkee,

I write to submit comments on behalf of the Southcentral Foundation regarding the agency's proposed revisions to Section 6-3.2E(3) of the Indian Health Service (IHS) Manual addressing contract support costs (the "97/3 method").

Southcentral Foundation is the Alaska Native tribal health organization designated by Cook Inlet Region, Inc. and the eleven Federally-Recognized Tribes of Aleut Community of St. Paul Island, Igiugig, Iliamna, Kokhanok, McGrath, Newhalen, Nikolai, Nondalton, Pedro Bay, Telida, and Takotna to provide healthcare services to beneficiaries of the Indian Health Service pursuant to a Compact with United States government under the authority of P.L. 93-638, as amended, the Indian Self-Determination and Education Assistance Act.

Southcentral Foundation provides services to more than 65,000 Alaska Native and American Indian people living in the Municipality of Anchorage, the Matanuska-Susitna Borough and 55 rural Alaskan villages. Services provided by Southcentral Foundation include outpatient medical care, home health care, dentistry, optometry, psychiatry, mental health counseling, substance abuse treatment, residential treatment facilities for adolescents and for women, suicide prevention and domestic violence prevention.

As we explain below, we highly emphasize the importance of tribal consultation regarding any decisions of this magnitude and we hope you will continue to look to tribal organizations in the future as partners to resolve agency issues. In that same spirit, we request IHS leave the current Manual language unchanged or if it feels it must make revisions, that the agency use the language developed by the CSC Workgroup, as those are the only alternatives developed with tribal input.

Tribal input is key here, as it not only aligns with past practice but also ensures IHS will arrive at the best result. The 2016 policy resulted from years of CSC Workgroup meetings and a tribal consultation period that resulted in actual changes to the draft language. The final result represented a compromise between tribal and agency perspectives that appropriately respected the government-to-government relationship. Both sides also recognized that trust would be

integral to effective implementation. But we believe that trust was undermined when IHS unilaterally withdrew the duplication provision, one of the ones that received the most positive comments during tribal consultation. Proposing alternative language that has not been developed by the Workgroup challenges our partnership and does not reflect the spirit of collaboration embedded throughout the Policy. That said, we do appreciate your efforts in bringing IHS's concerns to the attention of the tribal community and the Work Group, and we hope you will maintain improved transparency going forward.

Turning to the substance of your proposals, we do not believe there is any need to change the current Manual language. While the agency believes the current language may not fit in every potential situation, we do not believe that this concern warrants changing the Manual because the existing language fits the vast majority of situations. Moreover, Tribes and IHS agreed and acknowledged throughout the last drafting process that there may be outliers that need to be addressed individually. And, this has apparently been borne out in actual practice as IHS undertakes individual conversations with tribal organizations when it does not believe the Manual result would be accurate.

We understand that the agency strongly believes change is necessary. If the status quo is not an option, then we only support the Workgroup recommendation as an appropriate alternative. This option responds to IHS's concern, while otherwise retaining as much of the original policy as possible. The other two IHS-proposed options did not result from joint collaborative processes and will likely lead to additional conflict.

We take issue with the agency options for other reasons too. First, the duplication provision was meant to apply to the negotiation of funding in or after FY 2016 so that it would apply to all negotiations that occurred after the release of the policy. But the two new IHS options would make these options available only for new contracts entered into in or after FY 2017, which may make this provision inapplicable to most tribal contractors.

Second, the two new agency options remove the right of the Tribe to choose which method to use. Although the appearance given is that the agency-proposed options would be more collaborative, in fact we believe those options would actually make negotiations much more contentious, possibly leading to increased litigation, none of which is a positive outcome either for Tribes or for IHS. The goal of the 97/3 method was to provide an efficient compromise in cases where it was already clear that IHS and Tribes could not or would not otherwise reach agreement on duplication, and certainly not within an efficient framework. The agency's options do not meet this goal.

Thank you for the opportunity to submit comments on these CSC policy issues and we hope that your actions moving forward respect the government-to-government relationship and grant due consideration for the opinions of Tribes and tribal organizations.

Sincerely,

SOUTHCENTRAL FOUNDATION



Katherine Gottlieb, MBA, DPS, LHD  
President/CEO  
Southcentral Foundation