

Facilities Appropriation Advisory Board



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RADM Gary Hartz, Director
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Indian Health Service
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MAR 1 0 2006

Dear Admiral Hartz:

This is a follow-up to the letter of July 21, 2005, in which I forwarded the Facility Appropriation Advisory Board (FAAB) recommendations for revising the Healthcare Facilities Construction Priority System (HFCPS).

Background

At the January 18-19, 2006 FAAB meeting, the Indian Health Service (IHS) presented its position on the FAAB recommendations. Four of these positions concurred with our recommendations. On the remaining eight issues, the IHS position differed by varying degrees from the initial FAAB recommendations. When the FAAB met with the Director, IHS, on January 18, he indicated that, on four issues where the IHS and the FAAB differed, further Tribal review might be necessary, either because the issue arose during or after the initial Tribal comment or because the issue needed a more focused discussion. Review of the remaining four issues had included much workgroup, IHS, and FAAB discussion as well as Tribal consultation, and the Director indicated that he believed he had sufficient information for a decision.

The FAAB held strong views on many of the issues, including some where the Director proposed seeking further Tribal comment, and we asked that a FAAB panel comprised of Tribal leaders from the FAAB and representatives from the Technical Work Group (TWG) be afforded another opportunity to meet with IHS staff to clarify our views and to see if differences could be resolved. The Director indicated that such a final review might be useful to close the gap between the FAAB recommendation and the IHS position.

In order to attempt to close that gap, we asked the TWG, which had been established last year to review Tribal comments, to

meet and discuss the issues using the following assignment as a guide.

"The TWG will review the IHS position for finalizing the revision to the Healthcare Facilities Construction Priority System. The TWG will provide additional new rationale in support of the IHS position or develop rationale supporting a TWG proposal where the TWG develops an alternative position. The TWG will report TWG discussions and rationale to the FAAB on February 10."

The work group met on February 9 and reported to the FAAB on February 10. At this meeting, the FAAB heard from the workgroup, reviewed the IHS position, and discussed the issues with IHS staff in an attempt to reach some resolution. On some issues, we "agreed-to-disagree;" on other issues, the FAAB adjusted its recommendation; and/or the IHS altered its position. The following is a review of the discussion and the conclusions, including a reiteration or revision of the FAAB recommendations.

Discussion

The following four recommendations from the July 2005 letter were not discussed at length at the February 10 meeting because there is concurrence between the FAAB and the IHS:

- The methodology for estimating the Required Space criterion;
- The factors to be used in the Health Status criterion;
- The method for measuring isolation; and
- Extrapolating the formula for determining Facility Size to provide a value for large facilities.

The IHS and FAAB have reached a resolution of their differences on four recommendations in the July 2005 letter. Below is a summary of our discussion on these four recommendations, including a description of the resolution of the differences.

Business Plan

In the July 2005 letter, The FAAB recommended requiring a business plan for all facilities competing in Phase II of the HFCPS. Based on previous discussions with IHS, we understood that the intent was to require business plans from small

facilities as a way of ensuring feasibility and sustainability. We were concerned about the equitability of requiring business plans of some facilities and not others and so recommended that all facilities be required to develop a business plan.

At the February 10, 2006 meeting, you indicated that business plans provided little additional information useful for the HFCPS. This information is available in other documents used in the planning process, such as the Area Master Plans and key elements of the business plans could be incorporated into the Program Justification Document (PJD). The IHS indicated that it intended to remove mention of business plans from the methodology. For this reason we withdraw our recommendation that business plans be required in the HFCPS process.

There remains some disagreement between IHS staff and the FAAB regarding whether business plans would still be required under the Small Ambulatory Program. It is the position of the FAAB that since all projects would be selected from the national list that business plans would not be required under any of the existing authorities.

Innovation

In the July 2005 letter, the FAAB recommended that those elements of innovation that can be easily measured (e.g., those that will result in a measurable cost savings to the government) should be included in Phase I. The FAAB made this recommendation because including innovation in Phase I is consistent with the Congressional directive that IHS consider the issues of "projects funded primarily by the Tribes" and "alternative financing." Also, giving a higher priority to those facilities where Tribes can fund a portion of a construction project, would actually address more unmet facilities need because IHS construction funds could be maximized by allowing lower priority projects to be addressed. It is noted that the FAAB recommendation would change a given score by no more than a maximum of 50 points out of a total of 1,000 and would minimally affect ranking. However, this slight affect on the ranking would ensure that high ranking facilities where Tribes could assist with financing would be considered in Phase II.

At the February 10, 2006 meeting, you expressed the IHS concern that including innovation in Phase I would give advantage to those Tribes that have the capability to fund construction projects, either with their own money or by borrowing. This

would permit Tribes with resources to have greater access to the limited construction funds as well as other resources that become available as a result of a health facilities project. You further indicated that innovation should be a part of Phase II where it will fine tune the ranking established by facility need in Phase I, and that this fine tuning of ranking would satisfy the Congressional directive. Although many on the FAAB still feel that innovation should be included in Phase I, others agreed that Phase I should be limited to facility need. In the interest of compromise, the FAAB agreed to withdraw its recommendation that innovation be included in Phase I of the HFCPS process

Area Funds Distribution

In the July 2005 letter, the FAAB recommended that the Indian Health Service (IHS) amend the HFCPS to include an Area Fund Distribution section and methodology. We also proposed that 20% of the annual healthcare facilities construction budget, or a minimum of \$20 million, be allocated to the Area Offices for distribution to high priority projects within the Area. This recommendation is consistent with language in the Congressional directive specifying that the agency establish "a base funding amount, which serves as a minimum annual amount in the budget request." It is also compliant with the congressional directive to address "projects funded primarily by the Tribes" and recognize "projects that involve no or minimal increases in operational costs." Finally, including the Area Funds Distribution program as part of the revision to the HFCPS provides a way for it to "accommodate the wide variances in tribal needs and capabilities."

At the February 10 meeting, you indicated that IHS could accept much of this recommendation and indicated funds for Priority Area Projects would be included in a Congressional fundable line on the Facilities 5-year Construction Budget document.

This is consistent with the FAAB recommendation; however, the IHS proposed changing one of the elements of the FAAB recommendation. The original FAAB recommendation was based on the assumption that the Area Funds Distribution program would apply to renovation and small expansion projects that did not require staffing. You indicated that this program, as recommended by the FAAB, might not be distinguishable from some existing authorized programs. You were also concerned that not providing staffing for new facilities would reduce the impact of the construction program on increasing the funds available for

delivery of services. In order distinguish this program and to maximize the impact of facilities construction on services delivery, you recommended that staffing be requested for these facilities at 50 percent of the level currently requested for new facilities.

The FAAB was hesitant to adopt the IHS proposed change because it altered significantly the concepts that have been central to the proposed program from the time it was introduced in early discussions. One of the selling points of the Area Distribution program was that it did not require significant additional operational funding, which was consistent with elements of the Congressional directive. Because the long term costs for staffing would not be attached to construction, this program would be a way for Congress to address facility need without committing to long term funding.

Following a long discussion, the FAAB agreed with you that some staffing would be requested for these facilities when they are completed; however, it is understood that this request for staffing would be less than the level IHS currently requests to staff new facilities. The FAAB decided to leave the level of the staffing request to IHS, but does not expect it to exceed 50% of what is currently requested for newly constructed facilities. Based on these discussions, the FAAB reiterates its recommendation, except to remove any reference to limited staffing.

Appeals Process that includes the Validation Committee

In the July 2005 letter, the FAAB recommended that there be an appeals process that includes a review by the Validation Committee. The FAAB made this recommendation because it believed that, if a Tribe wished to appeal its ranking or prioritization, it should be able to present that appeal to a committee composed of Tribal leaders and/or administrators. The Validation Committee will be composed of Tribal, IHS and other Federal members, would be such a group. However, you pointed out that, in Phase I, appeals would be related to calculations errors. Since these are essentially technical/editorial problems, they could and should be addressed administratively. In Phase II, the Validation Committee will already have reviewed and decided the priority of all facilities being considered. Asking it to consider an appeal to its decisions seems redundant. The FAAB understands that, if an error is found in the data or calculations on which the Validation Committee bases their decision, the IHS will ask the Validation Committee to

review its decision and take appropriate action based on the correct information. The FAAB also understands that the innovation scoring decisions made by the Validation Committee would not be eligible for appeal. Based on this discussion and these understandings, we withdraw our recommendation that an appeals process include the Validation Committee.

Of the recommendations that the FAAB made in the July 2005 letter, there are four where the IHS and the FAAB continue to have some differences. I reiterate the importance the FAAB attaches to their recommendations.

Grandfathering

In the July 2005 letter, the FAAB recommended, with two dissenting votes, that only those projects on the current priority list that have appropriated funding should be grandfathered without evaluation under the revised HFCPS. All other projects on that list should be evaluated in Phase II of the revised HFCPS. We understand the IHS hesitancy about removing any of these projects from the priority list. You noted that these facilities still have a need and that the current priority list has resulted in expectations by Tribes with projects currently being reviewed. You also indicated that there is an expectation on the part of the Congress and others in the government that these facilities would remain on the Priority List. Most FAAB members continue to be concerned that these projects constitute a bottleneck that will prevent access to the priority list for years to come. The Congressional directive to revise the Priority System assumes that a new list based on the revision will be presented, and our chief concern is that we do not know how the current priority for these projects compares with the current priority for all other projects. They were identified 15 years ago and selected as the highest ranking of the 150 proposals submitted. Since that time, the need throughout Indian Country has changed, and the relative priority of these facilities should be compared with other facility needs nationwide. We have concern that after 15 years, the planning documents for many of these projects are only now being finalized. We understand that this is, in part, because funding has not been available to address the need; consequently, there has been no urgency to complete the planning. However, this does not mitigate the need to evaluate these facilities to ensure they represent the highest priority need for health facilities.

Following our discussions with you at the February 10 meeting, the FAAB reiterates its original recommendation with the following clarifications:

- After a project is placed on the Phase II priority list of anticipated fundable projects, it remains on the list until funded. Item 8 of our previous recommendation is revised as follows: 8) IHS selects those highest scoring projects that could be funded in three years (based on the last three years of historic funding) in an interim Phase II process and places them on a priority list in order of ranking. These projects remain on the Phase II priority list until funded.
- All projects identified in the prioritization processes prior to 1993, regardless of their status on the priority list, should be scored in Phase I and ranked on the universal national listing of facilities. They should then be marked to indicate they have been identified for priority consideration in earlier versions of the HFCPS.

The first clarification is a statement of what we understand to be current practices. The second clarification permits identification of these facilities and their relative ranking on the Phase I and/or Phase II national listing of facilities, even if they are removed from the Phase II priority list by the process we recommend.

Criteria Weighting

In the July 2005 letter, the FAAB recommended that weighting of the criteria in the HFCPS formula be as follows:

	Facility Deficiency	+	Health Status/Health Resources	+	Access to Care	+	Facility Size	+	Innovation	Potential Score
Phase I	300	+	300	+	100	+	150	+	500	900 850
Phase II	400	+	200	+	150	+	150	+	100	1000

As discussed earlier we have decided to modify this recommendation as indicated above to remove Innovation from Phase I. However, with regard to the weighting of the Facility Deficiency and the Health Status criteria, the FAAB consensus is unchanged. During discussion of this issue at the February 10 meeting, you indicated that facility deficiency should have the

greater weight because the HFCPS is a system set up to identify and prioritize the facilities that need space to provide access to services. You also presented anecdotal examples that may indicate the presence of a new facility has minimal impact on overall health status. I believe the FAAB understood your views; however, we reiterate that IHS is in the business of trying to improve the status of health for American Indians and Alaska Natives. While the lack of adequate space is critical in prioritizing facility need, an even more critical determinant is the poor health status of a population. We believe that increasing the weighting for Health Status in Phase I helps to compensate for demographic information not captured in Phase I by use of the simple SSF rather than the more complex HSP to calculate eligible space.

Estimating Space for Leased Facilities

In the July 2005 letter, the FAAB recommended that existing space for Maintenance-and-Improvement-eligible leases should be estimated in the same way as for owned space, and existing space for other leases should be set at 0 in the formula. At the February 10 meeting, you indicated that since there is space at these facilities, they should not have the same or greater priority as locations where no space was available. In addition they should not score higher than similar facilities with less adequate space. You also indicated that this recommendation could lead to building space where leasing may be a better option.

There was a general consensus among the FAAB members that it should not change this recommendation. While, as you say, space may be available at these locations, the cost of the lease is generally being paid out of Hospital and Clinics funds. As a result, these funds are not available for delivery of health services, as they would be if the facility providing access were owned. A leased facility may provide access to services, but the cost of the lease reduces the ability of the provider to offer services. Exacerbating this situation is the uncertainty of the access because the availability of leased facilities is not guaranteed beyond the term of the lease. In addition, the quality of the space is not directly controlled by the provider and could vary from lease to lease, or even from year to year within the same lease.

Alternate Condition Adjustment (or Debt Resource Recovery)

In the July 2005 letter, the FAAB recommended that Tribes "that have incurred debt to acquire a facility should be permitted to adjust existing space by 12 percent of the current principal, based on the value of original principal amortized over 30 years (regardless of the actual terms of the lease, payment schedules, or actual payment). This adjustment permits tribes that have borrowed to fund construction, and so reduced the need for repair, improvement, or replacement, to be considered under the HFPCS."

The FAAB is in consensus that this recommendation should be implemented; however, we believe that it should be restated as follows to clarify our intent:

"The FAAB recommends that Tribes that have incurred debt to acquire a facility should be permitted to use 12 percent of the current principle to adjust existing space in the same way that the facility condition adjusts. This adjustment should be based on the current value of original principal amortized over 30 years (regardless of the actual terms of the lease, payment schedules, or actual payment)."

At the February 10 meeting, you indicated concern that incorporating this recommendation would increase the score and ranking of some facilities that are basically new and in good condition. You also indicated that it may be difficult in the minds of some to make the connection between counting debt as a facility condition deficiency in the same way that the Backlog of Essential Maintenance and Repair (BEMAR) is a deficiency.

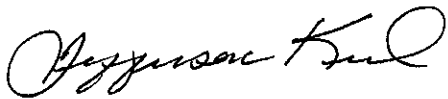
We also recommend that this adjustment be referred to as an "alternate condition adjustment to existing space." These revisions to the recommendation clarify that this adjustment does not commit IHS to retroactively fund construction of a Tribal facility. They also clarify that this adjustment is structured such that it does not involve IHS in supporting or paying a Tribal loan. The recommended adjustment is intended to recognize that a loan obtained to build a facility reduces the space deficiency in Indian Country.

We note that scoring will not be significantly affected by including 12 percent of the value of the mortgage as a condition adjustment. There are two reasons for this: first, a 12 percent facility condition adjustment is not significant in the

formula and result in only minor changes in ranking; and second, this particular "condition" adjustment would apply only to newly constructed facilities that would be ranked quite low during Phase I. Despite the slight impact that it has, this 12 percent alternate condition adjustment is important to those who propose it because it recognizes their effort in augmenting access to services through provision of facilities that IHS should otherwise provide. In addition there are a few exceptional situations where this factor might give affected facilities a slight edge for prioritization.

It is important to note, that as the FAAB and TWG deliberated the issues in revising the HFCPS, there was consensus developed on a number of recommendations based on compromises on many of the issues associated with the HFCPS. While we understand that you will need to review our recommendations based on their merit, we also hope that you will take into consideration how the FAAB and TWG came to consensus on these recommendations. The few differences remaining between our views are reconcilable. IHS and the FAAB have come a long way in the last few weeks, and it would not take much more to finalize this task. I urge IHS to reconsider its position on the last four recommendations. I also recommend that members of the FAAB be invited to present our views with you to the Director, IHS, before decisions are finalized.

Respectfully,



Jefferson Keel, Chairperson
IHS Facilities Appropriation Advisory Board