

IHS TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE

c/o Self-Governance Communication and Education
Pacific Commerce Center, 5060 Pacific Highway, Suite 101, Ferndale, WA 98248
Telephone (360) 380-1820 ~ Facsimile (360) 380-1981 ~ Email: mkinley@tribalselfgov.org ~ Website: www.tribalselfgov.org

Sent Via Facsimile (301) 443-4794
Original Sent Via USPS

March 15, 2010

Dr. Yvette Roubideaux, Director
Indian Health Service
Department of Health and Human Services
801 Thompson Avenue, Suite 440
Rockville, MD 20852

RE: TSGAC Comments on IHS Tribal Consultation Process

Dear Dr. Roubideaux:

On behalf of the Tribal Self-Governance Advisory Committee (TSGAC), I am writing to provide you with our comments in response to your January 15, 2010 "Dear Tribal Leader" letter requesting recommendations on how to improve the IHS' Tribal consultation process. Our comments included in this letter summarize and re-iterate our discussions with you during the TSGAC meeting held on January 20, 2010 in Washington, DC.

As noted in the *National Tribal Self-Governance Strategic Plan & Priorities for the Obama Administration and the 111th Congress (Second Session) 2010-2011*, Self-Governance Tribes believe the existing Department of Health & Human Services and IHS policy on Government-to-Government Consultation are sound policies overall; and were developed in conjunction with Tribal governments. As we discussed in the TSGAC meeting with you, the real key to the success of the policy is in implementation. Therefore, the consultation process could be strengthened so that it is more meaningful, with specific action and follow-up. Further, implementation of the consultation policy should ensure that it is consistent with Self-Governance goals. We have concerns that some senior staff in the IHS Areas are not fully adhering to the policy as written. Clear directives should be provided from you as IHS Director to the Areas to ensure consistent implementation of the consultation policy.

The TSGAC urges the HHS & IHS to be vigilant in the implementation of the consultation policies and to use these policies to assist other HHS bureaus in developing their respective consultation policies consistent with President Obama's November 5, 2009 Memorandum for the Heads of Executive Departments and Agencies regarding Tribal consultation.

Thank you again for the opportunity to provide input on this important policy issue. We look forward to discussing this further at the upcoming TSGAC meeting schedule April 6-7, 2010. In the meantime, please feel free to contact me at (580) 436-7232 or via email at lt.gov@chickasaw.net if you have any questions or need further information.

Sincerely,



Jefferson Keel, Lt. Governor
Chickasaw Nation

Cc: Hankie Ortiz, Director, Office of Tribal Self-Governance IHS
TSGAC Members

IHS TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE

c/o Self-Governance Communication and Education
5060 Pacific Highway, #101, Ferndale, WA 98248
Telephone (360) 380-1820 ~ Facsimile (360) 380-1982 ~ Email: mkinley@tribalsegov.org ~ Website: www.tribalsegov.org

Sent Via Email: shoppman@hqe.ihs.gov
Original Sent Via USPS

February 2, 2010

Dr. Yvette Roubideaux, Director
Indian Health Service
U.S. Department of Health and Human Services
Suite 448, The Reyes Building
801 Thompson Avenue
Rockville, MD 20852-1627

RE: Contract Support Cost Issues

Dear Dr. Roubideaux:

On behalf of the Tribal Self-Governance Advisory Committee (TSGAC), I want to thank you again for meeting with the Self-Governance Tribal leadership and for your candid and open input on your priorities. As a follow up to the discussions and per your request, this letter is intended to: (1) summarize the main issues and justifications for full funding of Contract Support Costs (CSC); and (2) requests clarification regarding CSC associated with methamphetamine and suicide prevention funding.

Full Funding of CSC

The TSGAC reiterates our strong urging for full funding of Tribal contract support costs. Full funding of CSC is absolutely necessary to meet not only the President's stated commitment to honor and support Tribal self-determination and Tribal self-government, but to also meet the federal government's legal obligations to pay its contracts. It is also critical to creating and sustaining jobs in Indian Country.

As you know, nearly every Tribe in the United States receives CSC funding to support either Self-Determination contracts or Self-Governance compacts (directly or through intertribal consortiums). These Tribes cover 35 States. Their contracts range from small substance abuse programs to the administration of entire area-wide hospitals. Individual CSC requirements range from a few thousand dollars to several million dollars.

Most CSCs are comprised of independently-audited fixed overhead costs that are determined based upon the issuance of indirect cost rates by either the DHHS Division of Cost Allocation or the Department of the Interior National Business Center. Expenditures for CSCs (together with all other expenditures under self-determination and self-governance agreements) are annually audited by independent Certified Public Accountants. There is no difference between the Tribally incurred CSC costs and the ordinary general and administrative costs which government procurement contractors incur; which, I might add, are fully paid in the general contracting system.

The critical element, however, is that contract support costs are fixed. As a result, any failure to pay contract support costs requires an offsetting reduction in program employment and services, to make up the difference. For most Tribes, there simply is no other choice.

We appreciate that CSC shortfalls are partly the result of fiscal constraints. The problem for Tribes, however, is that when fiscal considerations lead to less funding for a program (such as hospitals and clinics or dental operations), the burden is shared equally between the IHS-operated portion of the healthcare delivery system and the Tribally-operated portion of that

February 2, 2010

same system. But when budgetary considerations lead to reduced funding for contract support costs, Tribes and Tribal organizations bear the full brunt of the reduction. This is not fair, and it penalizes Tribes involved in Self-Governance and Self-Determination—precisely contrary to the President's stated goal.

As far as how CSC relates to job creation, we have calculated that every \$10 million in lost CSC payments initially translates into 100 fewer program positions at a generous estimated average of \$100,000 per full-time equivalent employee. With Self-Governance Tribes able to recover as much as an additional 60% of those costs through reimbursements from Medicare, Medicaid and third-party private insurance, and with those reimbursements then plowed into funding additional positions, the iterative effect of foregone third-party revenues means a loss of an additional 143 healthcare positions, for a total loss of up to 243 healthcare positions for every \$10 million in lost CSC payments. Keep in mind that these are good paying positions in severely economically distressed areas of Indian country that provide desperately needed healthcare services to a severely underserved population.

The Tribal Self-Governance Advisory Committee offers two recommended proposals for your consideration:

1. The TSGAC proposes that beginning with the FY 2012 appropriations cycle, the IHS budget a 13.5% increase in CSC requirements for every \$1 budgeted for program increases. This sum represents 25% of the portion of the IHS budget (54%) that is presently under contract or compact to Tribes and Tribal organizations. By including this sum, together with inflation (estimated at 2%), IHS will be able to hold the line on the level of CSC requirements currently being funded through the appropriations process. Based upon historic patterns, and absent extraordinary budgetary events, this sum will likely total approximately \$45 million. This amount is the sum that will be necessary for IHS not to lose any further ground in meeting the government's CSC contract obligations through the ordinary appropriations process.
2. The TSGAC recommends that if IHS adopts the approach outlined above, there will still be remaining an outstanding shortfall of approximately \$100 million in CSC requirements. In the current federal budget climate, it is unlikely that the President will be in a position to propose to Congress full elimination of this shortfall through the appropriations process in one fiscal year. Given these fiscal realities, the TSGAC suggests that consideration be given to eliminating this remaining shortfall over a defined and relatively short period of time. For instance, if a goal is set to eliminate the remaining \$100 million shortfall over the course of three years, funds could be budgeted evenly (i.e., \$35 million annually).. However, given the extraordinary continuing economic crisis that the country will face for some time, the TSGAC recommends that a relatively larger sum be budgeted for this purpose in the first year (\$50 million) to generate jobs growth, with smaller budgets in the second and third years (\$25 million annually).

The President has demonstrated powerfully, both in word and in deed, his extraordinary commitment to Tribal Self-Determination and Self-Governance. So has the Secretary. Now the President has an opportunity to leave a permanent legacy in which the country finally honors its duty to fully respect its Self-Governance and Self-Determination contracts with Indian Tribes. At the same time, there is an opportunity here to institutionalize practices that will help guard against a return to an era of ever growing CSC shortfalls. All that is necessary in this last regard is careful planning and careful budgeting. We look forward to working with you and the Secretary to achieve this goal.¹

¹ The TSGAC is aware that litigation remains pending involving the nature of the government's obligations under Self-Determination and Self-Governance agreements. While the TSGAC believes strongly that every Tribe and Tribal organization has a legally-enforceable right to be paid its full CSC requirements, the TSGAC's goal is to work with the Administration to see that those requirements are paid in an orderly and predictable way so that litigation becomes a thing of the past.

February 2, 2010

CSCs Associated with Methamphetamine & Suicide Prevention Funding

The TSGAC also requests clarification regarding the proper expenditure of methamphetamine and suicide prevention funds. Your recent letter indicates that methamphetamine and suicide prevention funding will be considered part of a Tribe's or Tribal organization's program base when calculating CSC requirements (notwithstanding that additional funds have apparently not been appropriated for the Agency to pay any of those requirements).

Ordinarily, the necessary implication from this, and the rule that would flow from Tribal indirect cost agreements, is that methamphetamine and suicide prevention funds can be spent to recover CSC requirements (precisely as occurs with all other IHS funding). However, at least one IHS Area office has asserted the opposite; that Tribes and Tribal organizations may not use any portion of their methamphetamine and suicide prevention funds to cover indirect and direct CSC costs.

The TSGAC therefore requests your clarification that such expenditures are allowable, and also requests that you convey this information to the appropriate Area Office officials.

In closing, the TSGAC thanks you for your service to Indian Country and for your commitment to the mission of the Indian Health Service. We look forward to hearing from you on the issues addressed in this letter.

Sincerely,



Jefferson Keel, Lt. Governor, Chickasaw Nation
and Chairman, Tribal Self-Governance Advisory Committee (TSGAC)

cc: Ms. Hankie Ortiz, Director, Office of Tribal Self-Governance, IHS
Ronald B. Demaray, Acting Director, Office of Direct and Contracting Tribes
TSGAC Members
TSGAC Technical Workgroup Members



MAR 12 2010

Indian Health Service
Rockville MD 20852

Mr. Jefferson Keel
Lt. Governor, Chickasaw Nation
Chairman, Tribal Self-Governance Advisory Committee
5060 Pacific Highway, #101
Ferndale, WA 98248

Dear Lt. Governor Keel:

I am responding to your February 2 letter on behalf of the Tribal Self-Governance Advisory Committee (TSGAC), in which you justify fully funding contract support costs (CSC) and request clarification about CSC associated with fiscal year (FY) 2008 and FY 2009 methamphetamine and suicide prevention initiative (MSPI) funding.

I am sharing with the Indian Health Service (IHS) budget formulation workgroup (BFWG) your two proposals for fully funding CSC. The BFWG, which guides the IHS headquarters budget formulation process, is already addressing and moving forward with these suggestions in its recommendations for the FY 2012 budget cycle. Also, the FY 2011 President's budget should sufficiently address additional CSC need generated by the proposed FY 2011 program increases, thus maintaining the existing level of CSC need funded the previous fiscal year.

The April 28, 2009, memorandum sent to all IHS Area offices provides guidance for distributing FY 2008 and FY 2009 MSPI funding. The language suggested for the MSPI awards is the same language IHS provided for other new and expanded programs. Additional CSC funds were not available because the IHS had allocated all available CSC funds to existing Tribal contracts and compacts. The statutory "cap" on CSC precluded the IHS from allocating more funding for CSC than Congress had appropriated under the CSC line item. Furthermore, allowing Tribes to build direct or indirect CSC into their proposed program budgets would have violated the statutory cap. Tribes are authorized to rebudget within their approved budgets all allowable contract costs as long as they continue to carry out the scope of work agreed to under the contract. The IHS agreed to include the CSC *need* associated with MSPI funding in the annual CSC shortfall report to Congress. Any additional CSC shortfall funds appropriated by Congress will be distributed according to IHS CSC policy.

Thank you again for the two TSGAC proposals to address CSC funding deficiencies. For information on the BFWG, please contact Appropriations Liaison Coordinator Rosetta Tracy, in the Division of Budget Formulation, IHS Office of Finance & Accounting, at (301) 443-0851 or Rosetta.Tracy@ihs.gov. For information about CSC funding issues, please contact Mr. Ron Demaray, the Associate Director of Self-Determination Services, in the IHS Office of Direct Service and Contracting Tribes, at (301) 443-1104 or Ronald.Demaray@ihs.gov.

Sincerely,

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