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January 4, 2016

VIA ELECTRONIC MAIL

MEMORANDUM NO. 01A-2016

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TO: National Tribal Contract Support Cost Coalition
FROM: Sonosky, Chambers, Sachse, Miller & Munson, LLP
SUBJECT: Update on IHS Revisions to Tribal Draft of CSC Policy

We write to provide another update on the revisions to IHS's contract support cost manual. (Please refer to Memoranda 38A-2015 and 43A-2015 for our prior discussion of this topic.) After the Workgroup meetings last month, it appeared the only two issues that remained in dispute concerned IHS's incurred cost method and IHS's interpretation of the ISDA duplication provisions. Since that time, however, IHS provided a marked up version ("redline") of the tribal draft policy.

The IHS redline revealed a significant number of issues that were not previously in dispute. IHS not only rejected most of the tribal proposals, but also rejected many pre-existing agency positions too. The agency's redline, attached here, contains 116 comments. In discussions with tribal members of the CSC Workgroup, we isolated the 12 most significant areas of disagreement presented by the IHS redline. See attached chart labeled "IHS CSC Policy Table of Major Issues." If the Workgroup can find common ground on these 12 issues, it should be able to complete a new policy. However, if IHS remains unwilling to compromise or negotiate on any of these issues, Tribes may be unwilling to further engage as they consider many of these issues to be "dealbreakers."

IHS has scheduled a call tomorrow at 2 p.m. EST to present this policy to Workgroup members. However, IHS is unlikely to dig into the details until the next in-person CSC Workgroup meeting on January 14 and 15 in Washington, D.C. The meeting is open to the public and will be held at the Holiday Inn Capitol, 550 C Street, S.W., Washington, D.C. 20024. IHS has not yet provided an exact start time for the meeting, but we believe it will start Thursday afternoon in order to accommodate those wishing to attend the State of Indian Nations address on Thursday morning. Substantial progress must be made at these meetings if the Workgroup is going to meet its goal of circulating a draft policy to all Tribes for review by mid-February 2016.

We will continue to keep you informed as further developments unfold.

Respectfully,

SONOSKY, CHAMBERS, SACHSE,
MILLER & MUNSON, LLP

By: Lloyd B. Miller
Rebecca A. Patterson

Enclosures (as stated)

Issue	Reference in Draft Policy	Tribal Position	IHS Position
Guiding Principles	§ 6-3.1A	Tribes support including in the Policy the original 19 principles set forth by Mary Smith in November 2015.	"The original 19 items tend to be overly subjective, in the potentially subject to multiple interpretation [sic], as well as overlapping. In addition, we discussed not including anything that could be interpreted to conflict with either legal position and not referencing actual litigation in the policy. We have tried to condense the principles here. It may also be worth considering whether they are necessary here, or are these principles captured [in § 6-3.2C (Policy)]."
Sharing CSC Information	§ 6-3.1A(4); § 6-3.6B	To increase transparency, IHS should provide an annual CSC report to Tribes that shows funding provided on an area-by-area and Tribe-by-Tribe basis.	The ISDA does not require IHS to report to Tribes so it will not agree to this new requirement.
Definitions	§ 6-3.1E	Tribes added a number of definitions to clarify certain terms used throughout the Policy and to ensure the terms used are consistent with the ACC template. IHS made several revisions and additions to this section that Tribes do not agree with, e.g., the "ineligible programs" and "expanded PFSA" definitions. This whole section will need to be reviewed once the policy is finalized.	
Types of CSC reviewed for duplication/reconciliation	§ 6-3.2B, 6-3.2C	Only DCSC and IDC amounts need to be reviewed for duplication and need to be reconciled at a later time. Pre-award and startup costs are reviewed for duplication during initial negotiations and are one-time lump sum payments. The only reconciliation that may be permissible is to ensure the amounts paid were spent on enhancing the IHS programs.	DCSC, IDC, pre-award and startup costs must be reviewed for duplication and reconciled at a later date.
Duplication (how applied)	§ 6-3.2B; § 6-3.2E	IHS is entitled to a dollar-for-dollar credit for any duplication of costs in the Secretarial amount.	IHS will not pay any funds for any activity funded in the Secretarial amount or that IHS would have to pay if it was still running the programs today.
Frequency of DCSC Negotiation	§ 6-3.2D	DCSC funding is recurring and does not need to be renegotiated. The law only gives a Tribe the "option" to request a renegotiation.	Tribes must renegotiate DCSC funding periodically (preferably every year).
Negotiation of CSC for Expanded Programs	§ 6-3.2D	Tribes may negotiate CSC for expanded programs separately, as an amount to be added to its existing CSC requirements. Again, by law it is the Tribe's option to renegotiate existing CSC requirements.	Tribes must renegotiate all CSC amounts (DCSC and IDC) if it wants CSC for expanded programs.
Incurred Costs	§ 6-3.2E; § 6-3.4	IHS should abandon the incurred cost method because these are fixed price contracts as required by the ISDA. Consequently, IHS must pay full CSC at the beginning of the contract year and to the extent a Tribe carries over ISDA funds the Tribe does not need to return any unused money	The <i>Ramah</i> decision requires IHS to use the cost incurred method. Consequently, Tribes are not entitled to CSC associated with program funds it has not spent and must return any carried over CSC to IHS.
Use of Negotiated IDC Rates	§ 6-3.2E(1)	IHS should accept a negotiated rate up to 3 years old.	IHS will only accept a rate up to 2 years old.
Reconciliation	§ 6-3.2E(1); 6-3.4	IHS should complete all reconciliation within 90 days of the end of the fiscal year. At that time, IHS should only update IDC rates and funding amounts.	IHS can only accept the 90-day proposal for fixed with carryforward rates (if the Tribe has a current rate for the year). For provisional/final contractors, IHS will agree to reconcile within 90 days after receiving the audit or a final rate based on audited costs. IHS needs to reconcile all 4 types of CSC and review whether the Tribe's expenditures were reasonable, necessary, non-duplicative, etc.
Withdrawal Provisions	§ 6-3.3(A)	DCSC and IDC should be reallocated proportionately between the awardees on the same basis as the direct program funds are reallocated. Again, it is the Tribe's option, alone, to renegotiate CSC requirements.	Both awardees must renegotiate their CSC needs.
Inflation	§ 6-3.2D; 6-3.2E(2).	The most current CPI medical inflation rate in effect at the beginning of the contract year will be used for DCSC inflation. The most current CPI "all items" inflation rate will be applied at the beginning of the contract year to inflate lump sum indirect-type cost amounts.	IHS will apply the OMB non-medical inflation rate to inflate DCSC requirements in one of the following ways: 1. 3 year average applied at beginning of the contract term. This could potentially be different for FY and CY Tribes depending on how we define its application. 2. Last known final rate applied at the beginning of contract term. This could potentially be different for FY and CY Tribes depending on how we define its application. 3. Inflation added after the 1st quarter of the year, both FY and CY Tribes are inflated by the previous year's final rate. IHS will not inflate lump sum IDC-type costs amounts.

Part 6 - Services To Tribal Governments And Organizations
Chapter 3 - Contract Support Costs

Title	TOC TO BE REVISED AND RENUMBERED AFTER DRAFT COMPLETED	Section
<u>Introduction</u>		6-3.1
<u>Purpose</u>		6-3.1A
<u>Background</u>		6-3.1B
<u>Policy</u>		6-3.1C
<u>Authorizing Legislation</u>		6-3.1D
<u>Definitions</u>		6-3.1E
<u>Process</u>		6-3.2
<u>Determining Amounts of Startup, Direct, and Indirect CSC</u>		6-3.2A
<u>Determining CSC Requirements</u>		6-3.2B
<u>Startup and Pre-Award Costs</u>		6-3.2C
<u>Direct CSC</u>		6-3.2D
<u>Indirect Costs</u>		6-3.2E
<u>Alternative Methods for Calculating CSC Associated With Tribal Shares</u>		6-3.2F
<u>Funding</u>		6-3.3
CSC Funding for New or Expanded PSFAs		6-3.3A
Prior Year CSC Funding that Remains Justified in the Subsequent FY Ongoing Awards		6-3.3B
		6-3.3C
Reconciliation		6-3.4
Program Base		6-3.4A
IDC Rate		6-3.4B
Exclusions		6-3.4C
Duplicated Costs		6-3.4D
<u>Roles and Responsibilities</u>		6-3.5
<u>Overview - Initial New and Expanded CSC Request Responsibilities</u>		6-3.5A
<u>New and Expanded CSC Request Negotiation</u>		6-3.5B
<u>Subsequent Funding Periods</u>		6-3.5C

Commented [A1]: Since this section will need to be revised once the draft is complete, we have redlined it for now.

<u>Other CSC Responsibilities</u>	6-3.5D
<u>Contract Support Costs Report</u>	6-3.6
<u>Requirements for Reporting and Documenting Amounts of CSC Available, Needed and Requested</u>	6-3.6A
<u>Annual Report to Tribes</u>	6-3.6B
<u>Annual Report to Congress</u>	6-3.6c

Exhibit	Description
<u>Manual Exhibit 6-3-A</u>	Title 25, Chapter 14, Miscellaneous, Subchapter II, Indian Self-Determination and Education Assistance, Part A "Indian Self-Determination," Section 450j-1 and Section 450j-2
<u>Manual Exhibit 6-3-B</u>	Contract Support Cost Calculation Based on a Detailed Analysis
<u>Manual Exhibit 6-3-C</u>	Contract Support Cost Calculation Using the 80/20 Method
<u>Manual Exhibit 6-3-D</u>	Annual Contract Support Cost Calculation Tool (ACC) with instruction and supporting worksheets
<u>Manual Exhibit 6-3-E</u>	Currently proposed pilot Projects Including E1 - Fixed CSC Implementation Guidelines E2 - Fixed 15% DCSC Implementation Guidelines E3 - IHS reconciliation Pilot Project Guidelines
<u>Manual Exhibit 6-3-F</u>	Contract Support Costs Report
<u>Manual Exhibit 6-3-G</u>	Indian Self-Determination Funding Request
<u>Manual Exhibit 6-3-H</u>	Standards for Review and Approval of Contract Support Costs in the Indian Health Service

6-3.1 INTRODUCTION

A. **Purpose.** This ~~e~~Chapter of the Indian Health Manual (Chapter) provides guidance to both Tribal and Agency personnel in the preparation, negotiation, ~~determination,~~ payment, and reconciliation ~~and closeout~~ of contract support costs funding in support of new, ~~expanded,~~ and/or ~~continuingongoing~~ Indian Self-Determination and Education Assistance Act (ISDEAA), Public Law (P.L.) 93-638, as amended, contracts and compacts. The ~~e~~Chapter provides instructional guidance on the following:

1. ~~d~~~~Determination ofing~~ amounts of pre-award, startup, direct, and indirect contract support costs (CSC) ~~funding;~~
2. payment of ~~Indian Health Service (IHS) funding available for~~ CSC ~~funding~~ to awardees;
3. ~~reconciliation and closeout~~ of CSC payments to awardees; and
4. reporting by the IHS ~~to all Tribes and~~ to Congress.

These instructions are not regulations establishing program requirements and are issued ~~in accordance~~ consistent with 25 Code of Federal Regulations (C.F.R.) Section 900.5, which states:

“Except as specifically provided in the Act, or as specified in subpart J, an Indian Tribe or Tribal organization is not required to abide by any unpublished requirements such as program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Indian Tribe or Tribal organization and the Secretary, or otherwise required by law.”

The development of this ~~e~~Chapter has involved the active participation of representatives from ~~American Indian and Alaska Native~~ Tribes. The procedures discussed here will be applied to contracts ~~and compacts~~ awarded pursuant to Title I ~~of the ISDEAA, as amended,~~ and ~~to compacts awarded pursuant to~~ Title V, ~~respectively,~~ of ~~the ISDEAA~~ P.L. 93-638, as amended.

This policy was drafted in accordance with the following ~~guiding principles~~:

1. ~~The process for negotiating CSC should be simple and efficient.~~
- 4.2. ~~The process for negotiating CSC should assure consistency, transparency, integrity, and accountability.~~

Commented [A2]: At the December CSC Workgroup meeting, it was agreed to reference “determination,” payment, and reconciliation.

Commented [A3]: “Closeout” is added, but not defined. If “closeout” is going to be used it needs to be specifically defined. IHS prefers “reconciliation” to closeout, especially in light of the often multi-year nature of FAs. See below – how are reconciliation and closeout differentiated from one another?

At the December CSC Workgroup meeting, there was some discussion of removing the term “closeout,” though there was also discussion of coming up with a different phrase.

Commented [A4]: Clarify that expanded programs are also addressed under the policy.

Commented [A5]: For consistency, use “ongoing” throughout.

Commented [A6]: See above comment.

Commented [A7]: This creates a new requirement not included in the statute. Instead of creating a new report, IHS would prefer any information sharing be addressed as a step in preparing the report to Congress.

Commented [A8]: Generally, the original 19 items tend to be overly subjective, in the potentially subject to multiple interpretation, as well as overlapping. In addition, we discussed not including anything that could be interpreted to conflict with either legal position and not referencing actual litigation in the policy. We have tried to condense the principles here. It may also be worth considering whether they are necessary here, or are these principles captured in the paragraph under item 6 on page 5 and under “Policy” on page 5.

3. The policy should be reassessed on a regular basis.

~~The process should be simple and efficient.~~

~~2. Costs incurred do not have to be reconciled to a single fiscal year.~~

~~3. This Policy assumes full funding of contract support costs.~~

~~4. To the maximum extent practicable, this Policy should align with BIA contract support cost policy.~~

~~5. This Policy is designed to assure that the perfect does not become the enemy of the good.~~

~~6. This Policy assures accountability.~~

~~7. This Policy is intended to minimize future litigation.~~

~~8. This Policy avoids putting at risk past contract support cost settlements.~~

~~9. This Policy assures that post year-end reconciliation will not take several years~~

~~10. This Policy has been developed and will be implemented in accordance with the government-to-government relationship.~~

~~11. This Policy provided needed certainty for the agency and Tribes and tribal organizations.~~

~~12. This Policy has received broad support across Tribes and tribal organizations.~~

~~13. This Policy is designed to minimize burdens imposed upon Tribes and IHS.~~

~~14. This Policy is designed to assure consistency.~~

~~15. This Policy is designed to assure transparency.~~

~~16. This Policy is designed to assure integrity in the government-to-government relationship.~~

~~17. This Policy has been built on trust amongst the IHS, Tribes, and tribal organizations.~~

~~18. This Policy will be supplemented with regular training for IHS and tribal personnel to assure consistency in its application.~~

~~19. This Policy will be reassessed on a regular basis. _~~

Nothing in this Chapter is intended to limit an ISDEAA contractor/compactor's right to be paid ~~its~~ the full CSC amount under the ISDEAA contract support cost requirement. If a contractor/compactor ~~concludes~~ believes that it has not been fully paid, it may request additional CSC funding from IHS and, if agreement cannot be reached, must invoke the remedies available in section 110 of the Act ISDEAA, as amended. ~~This eChapter does not reflect the IHS position on damages in any pending claims for underfunding as of the date that this policy is enacted.~~

Commented [A9]: Clarify the paragraph, which is a new paragraph in the tribal proposal.

- B. **Background.** All policies and circulars concerning the administration of CSC in the IHS have been developed and revised through coordination and consultation with Tribes ~~and Tribal organizations~~. The CSC policies and circulars developed and revised to date include:

1. Indian Self-Determination Memorandum No. 93-02, "Contract Support Cost Policy," signed by Dr. Everett Rhodes, February 27, 1992.
2. Indian Health Circular No. 96-04, "Contract Support Cost," signed by Dr. Michael Trujillo, April 12, 1996.
3. Indian Health Circular No. 2001-01, "Contract Support Cost," signed by Dr. Michael Trujillo, January 20, 2000.
4. Indian Health Circular No. 2001-05, "Contract Support Cost," signed by Dr. Michael Trujillo (Michael E. Lincoln. for), July 6, 2001.
5. Indian Health Circular No. 2004-03, "Contract Support Cost," signed by Dr. Charles W. Grim, September 1, 2004.
6. Indian Health Service Manual, Part 6, Chapter 3, "Contract Support Costs," signed by Dr. Charles Grim, April 6, 2007.

This version of the Chapter is the successor to the same Chapter implemented on April 6, 2007. The changes in this successor version of the Chapter are provided to streamline and simplify CSC the processes for the determination, payment, and reconciliation of full CSC funding and to accommodate the payment of full Contract Support Costs as required by under the ISDEAA. The IHS CSC Workgroup will continue to reassess the policy on a regular basis, but and further changes will only be implemented after tribal consultation and tribal concurrence.

Commented [A10]: At the December CSC Workgroup meeting, it was suggested that the reference to "CSC Workgroup" should be changed because this duty rests with IHS and, otherwise, would seem to require a perpetual CSC Workgroup.

C. **Policy.** The IHS will provide for a uniform and equitable system of computing determining, distributing paying, and reconciling CSC funds for new, expanded, and existing ongoing P.L. 93-638 compacts and contracts and preserve and support each awardee's right to contract/compact under P.L. 93-638.

Commented [A11]: See prior comment – these paragraphs seem to capture the principles on page 3. Consider using these in lieu of the principles.

D. **Authorizing Legislation.**

1. Transfer Act, Title 42, United States Code (U.S.C.) §2001
2. Title I of P.L. 93-638, as amended
3. Title V of P.L. 93-638, as amended

Commented [A12]: Additional definitions may need to be added as the policy continues to be discussed. We have recommended a few that have already arisen. Other terms that may need to be defined include:
ACC tool
Closeout (if it is still used)

E. **Definitions.**

1. **Award.** An agreement authorized under Title I (contract) or Title V (compact) of P.L. 93-638, as amended, including the associated annual funding agreement (AFA) or funding agreement (FA).

2. **Awardee.** A Tribe or Tribal organization that receives an award as defined above. See also Contractor.

~~3. **Annual CSC Report to Tribes.** Yearly summary of CSC data gathered for each Tribe of the funding provided for each of the categories listed in Section 3.6(A). This report is provided to every Tribe contracting under the ISDEAA.~~

~~5.3.~~ **Annual CSC Report to Congress.** Report provided to Congress from the IHS Director pursuant to Section 106(c)(1)-(5) of the ISDEAA; including “an accounting of any deficiency ~~(or reprogramming necessary)~~ in funds needed to provide required contract support costs to all contractors for the fiscal year for which the report is being submitted ~~(the current fiscal year).~~”

Commented [A13]: Stay with the statutory language.

~~6.4.~~ **Buy-Back Services.** Services contracted by a Tribe, but that it “buys back” from the IHS and, accordingly, IHS provides pursuant to a full-cost reimbursement agreement with the Tribe ~~provided by the IHS under an ISDEAA agreement through reimbursements, withhold amounts or other financial arrangements. Costs of Buy-back services are normally included in the program base.~~

Commented [A14]: This would seem to depend on the negotiation with the rate agency, as this is arguably a subcontract that should be treated as an exclusion/passthrough.

Contract Proposal. A proposal for programs, functions, services, or activities (PFSA or PSFA) that the Secretary, Department of Health and Human Services (HHS), is authorized to perform, but which a Tribe or Tribal organization is not currently carrying out. The requirements of a Self-Determination contract proposal are found in 25 C.F.R. Section 900.8.

~~**Cognizant Agency.** The Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost (IDC) proposals developed under 2 C.F.R. Part 200 on behalf of all Federal agencies. The cognizant agency for IDC is not necessarily the same as the cognizant agency for audit. For assignments of cognizant agencies see 2 C.F.R. Part 200.~~

Commented [A15]: This is taken from 2 C.F.R. 200.19.

~~7. **Contract Support Costs Awarded Available.** Total CSC funding allocated to an awardee ~~(including any portion of Tribal shares that are available for CSC requirements pursuant to paragraph 6-3.2F of this Chapter).~~~~

Commented [A16]: Changes suggested for clarification. Tribal shares is not CSC funding but, instead, includes funding for IDC. As a result of this IDC funding in the Secretarial amount, it reduces the amount of IDC that are eligible for CSC funding.

5. **Contract Support Costs Need or Requirement.** The full amount of CSC ~~funding need~~ for new, ~~and~~ expanded programs, ~~plus and~~ ongoing contracts ~~or compacted programs~~, as determined under this ~~e~~Chapter pursuant to Section 106 of P.L. 93-638, as amended. ~~(Manual Exhibit 6-3-A)~~

6. **Contractor.** A Tribe or Tribal organization that receives an award as defined above. See also Awardee.

9.

7. **Direct Cost Base.** ~~The program base minus any pass-through expenditures and exclusions~~ The accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute IDC to individual Federal awards. -The direct cost base for each year is determined by a negotiation between each Tribe and its cognizant agency.

Commented [A17]: Direct Cost Base is determined in negotiation with the cognizant agency and is affected by variables such as type of rate, pass-through amounts and exclusions.

This definition is taken from the OMB regulations, Appendix VII.

40-8. **Direct CSC.** Direct program expenses for the operation of the ISDEAA Programs that are the subject of the award. Such expenses also must be reasonable costs for activities which must be carried on by a Tribe or Tribal organization as a contractor to ensure contract compliance with the terms of the contract and prudent management, but which – (a) normally are not carried on by the Secretary in his/her direct operation of the program; or (b) are provided by the Secretary from resources other than those under contract.

Commented [A18]: This language is taken from the ISDEAA.

41-9. **Exclusions.** Direct expenditures excluded from the ~~program~~ direct costs base in order to calculate the direct cost base to which the indirect cost rate is applied. These types of expenditures vary by Tribe and are defined in the indirect cost rate agreement. ~~In the absence of other information, exclusions will be applied consistent with the CSC Exclusions Matrix.~~

10. **Expanded PSFA.** Expansion of a PSFA through the assumption of additional PSFA previously operated by IHS, the assumption of programs previously operated under awards to other awardees, an increase in staff funding (e.g., pursuant to a Congressional increase consistent with a joint venture agreement), and increases due to new appropriations (excluding general program increases and increases for inflation, pay costs, population growth, and the Indian Health Care Improvement Fund).

11. **Indirect Costs.** Costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved.

Commented [A19]: This language is taken from the OMB Circular.

12. **Indirect CSC.** Additional administrative or other expenses related to the overhead incurred by a Tribal contractor in connection with the operation of ISDEAA Programs pursuant to the contract and that are eligible under Section 106(a) of the ISDEAA. Such expenses also must be reasonable costs for activities which must be carried on by a Tribe or Tribal organization as a contractor to ensure contract compliance with the terms of the contract and prudent management, but which – (a) normally are not carried on by the Secretary in his/her direct operation of the program; or (b) are provided by the Secretary from resources other than those under contract.

Commented [A20]: This language is taken from the ISDEAA.

13. **Ineligible Funding.** Categories of funding not eligible for inclusion in the calculation of CSC funding because the related activities are not PSFA transferred and funded under Section 106(a)(1) of the ISDEAA. These categories of funding include, but are not limited to: Medicare, Medicaid, Private Insurance, Base Medical Payments (BMP), Reimbursements (including Catastrophic Health Emergency Fund payments), Construction, Sanitation Facilities Construction, Methamphetamine and Suicide Prevention Initiative (MSPI), Domestic Violence Prevention Initiative (DVPI), Special Diabetes Program for Indians (SDPI), Government Performance and Results Act (GPRA), grants from agencies other than IHS, and any new special initiative funding.

14. **Indian Self-Determination Programs (ISDEAA Programs).** The PSFAs associated with an ISDEAA award that are eligible for CSC funding in accordance with paragraph 6-3.3A of this eChapter.

~~12-15.~~ **New PSFA.** ISDEAA Programs that are being assumed by the awardee and transferred by IHS for the first time in the current contract period, including new PSFA available due to new appropriations (excluding general program increases and increases for inflation, pay costs, population growth, and the Indian Health Care Improvement Fund).

~~13-16.~~ **Non-Indian Self-Determination Programs.** All other awardee-operated PSFAs programs, exclusive of PSFAs associated with an ISDEAA award, ~~that~~ which are not eligible for CSC funding.

17. **Non-Recurring Funds.** Funds that require an annual justification ~~and are awarded on a one-time basis. Non-recurring funds provided for ISDEAA programs are normally included in the program base.~~

~~14-18.~~ **Ongoing Programs.** All awardee-operated PSFA that were assumed by the Tribe or Tribal organization prior to the current contract period.

19. ~~Pass-Through Expenditures~~ – Similar to exclusions in that they may be excluded from the main program based direct cost base to which the IDC rate is typically applied, but they though such expenditures also may be assigned a lower nominal IDC rate or be excluded consistent with the approved IDC agreement. The IDC rate(s) should be applied to such expenditures, consistent with the IDC rate agreement. If assigned a Pass-through IDC rate, indirect costs on those expenditures shall be computed using the pass-through rate.

15-20. ~~Preaward Costs.~~ Costs incurred before the initial year that an award is in effect may be eligible for CSC funding if they are the reasonable costs for activities which must be carried on by a Tribe or Tribal organization as a contractor to ensure contract compliance with the terms of the contract and prudent management, but which – (a) normally are not carried on by the Secretary in his/her direct operation of the program; or (b) are provided by the Secretary from resources other than those under contract. CSC funding is authorized for preaward costs only if the Secretary receives a written notification of the nature and extent of the costs prior to the date on which such costs are incurred.

Commented [A21]: This language is taken from the ISDEAA.

16. ~~Program Base~~ Includes all ISDEAA funds in the award eligible for indirect CSC, and is comprised of all program recurring amounts, plus Area Tribal Shares, plus Headquarters Tribal Shares, plus non-recurring program amounts, plus the Tribe's DCSC requirement, minus 20% of Area and Headquarters Tribal Shares (or the alternative deduction calculated under Alternative A in Section 6-3.2(F)(2)).

Commented [A22]: Program Base definition shouldn't be confused with the "direct cost base". There are some "program" funds that are ineligible for indirect CSC, some that are exclusions, and some that are actually funds for costs a Tribe has put in its IDC pool. Because "program base" often causes confusion for all of these reasons, it seems better to define Secretarial amount, indirect, direct, etc., rather than to use "program base."

However, if this definition were kept, we would need to discuss the inclusion of non-recurring funding for the purpose of calculating CSC. Historically, the base was only recurring dollars. Non-recurring dollars have their own line item on the ACC tool.

17-21. ~~Programs, Services, Functions, and Activities (PSFA).~~ PSFA are those programs, services, functions, and activities that are contractible under the ISDEAA, as amended, including those administrative activities that support such PSFA, but are not a part of, service delivery programs and that are otherwise contractible, without regard to the organizational level within the HHS that carries out such functions (as authorized under P.L. 93-638, as amended).

Commented [A23]: Revise to be more consistent with the statutory language.

18-22. ~~Reconciliation.~~ Final Review by IHS and a Tribe of the Tribe's total CSC requirement and payments made by IHS, normally completed within 90 days of the end of the fiscal year or award period, whichever comes later, which incorporated the most current IDC rate in effect on the last day of the contract period and all applicable adjustments or amendments to the program base of the awardee, including during the course of the contract year and for the purpose of issuing a final contract amendment consistent with section [].

Commented [A24]: The tribal proposal may work for fixed with carry-forward IDC rates, but it does not work for Provisional/Final. In the latter case, we cannot look to 90 days after the end of the fiscal year, but rather, something like 90 days after receiving the audit or a final rate based on audited costs.

19-23. ~~Recurring Funds.~~ Contract or compact funds that do not require annual justification to the Secretary are recurring funds. Annual increases may be provided through congressional increases or other resource allocation methodologies applicable to the respective funding category of the award.

24. **Retained Services.** Funding which is eligible to be contracted but for which the awardee has chosen not to contract, and thus, for which the IHS has retained associated funding ~~to provide~~. -Funds for Retained Services are ~~normally~~ not included in the ~~program base or~~ direct cost base ~~or for~~ computing CSC requirements.

Commented [A25]: Propose to strike "normally" – IHS is not aware of any scenario where we would calculate CSC on retained. Eliminating "normally" then reflects this as an absolute.

20-25. **Secretarial, or 106(a)(1), Amount.** The amount of funds provided for the PSFA transferred under the award. The Secretarial amount shall not be less than the appropriate Secretary would have otherwise provided for the operation of the PSFAs or portions thereof for the period covered by the contract, including Tribal shares.

24-26. **Self-Governance Request.** A self-governance request is any one of the following requests from a Tribe or Tribal organization. A request:

- a. to enter into the Self-Governance Program for the first time, including Title V; or
- b. to join an existing Self-Governance compact; or
- c. to negotiate for new or expanded programs in a subsequent year's compact or FA from a ~~tribe~~ Tribe with an existing self-governance agreement.

27. **Startup Costs.** Costs incurred on a one-time basis during the initial year that an award is in effect may be eligible for CSC funding if they are the reasonable costs for activities which must be carried on by a Tribe or Tribal organization as a contractor to ensure contract compliance with the terms of the contract and prudent management, but which – (a) normally are not carried on by the Secretary in his/her direct operation of the program; or (b) are provided by the Secretary from resources other than those under contract. CSC funding is authorized for startup costs only if the costs are necessary: (a) to plan, prepare for, and assume operation of the PSFA that is the subject of the contract; and (b) to ensure compliance with the terms of the contract and prudent management.

Commented [A26]: This language is taken from the ISDEEA.

28. **Total CSC Shortfall or Overpayment.** The difference between the total CSC requirement and the total CSC ~~available~~ paid to the awardee.

22-29. **Total Health Care Program.** The health care program operated by the Tribe from all resources, including but not limited to IHS, other Federal and State agencies, Tribal contributions, and collections from Medicare, Medicaid, and private insurance.

~~23. Tribal Shares. For the purposes of this Chapter, R~~ refers only to an awardee's equitable share of PSFA associated with Area Office or Headquarters resources (including Tribal shares of discretionary IHS grants), notwithstanding the definition of Tribal shares set forth in Title V, Section 501(a)(8) of the ISDEAA, as amended. ~~This definition was originally adopted and used in negotiating and awarding an AFA under Title III, P.L. 93-638, as amended, and is being consistently applied to Title I contracts and Title V compacts as authorized under P.L. 93-638, as amended.~~ This term does not refer to an awardee's equitable share of a service unit or program base, which may also be included in a negotiated FA.

~~24.~~
NOTE: The term "Tribal shares" is used in this Chapter to refer only to Area Office and Headquarters PSFA, notwithstanding the definition of Tribal shares set forth in Title V, Section 501(a)(8) of the ISDEAA, as amended.
~~26-30.~~

6-3.2 PROCESSEDETERMINING CSC AMOUNTS

A. Determining Amounts of Categories of ISDEAA Funding: Secretarial Amount, Pre-award, Startup, Direct CSC, and Indirect CSC.

~~Sections 106(a)(1)-(3), (5), and (6), (a)(2), and (a)(3) of the ISDEAA, as amended, provide for~~ authorizes funding of an award, including for program costs the Secretarial amount and CSC respectively. Section 106(a)(1) provides for the Secretarial amount ~~that~~:

"The amount of funds provided under the terms of self-determination contracts entered into pursuant to this Act shall not be less than the appropriate Secretary would have otherwise provided for the operation of the programs or portions thereof for the period covered by the contract, without regard to any organizational level within the Department of the Interior or the Department of Health and Human Services, as appropriate, at which the program, function, service, or activity or portion thereof, including supportive administrative functions that are otherwise contractible, is operated."

In addition, Section 106(a)(2) ~~provides that~~ authorizes CSC funding:

"There shall be added to the amount required by paragraph (1) contract support costs which shall consist of an amount for the reasonable costs for activities which must be carried on by a Tribal

Commented [A27]: This section includes significant discussion of both costs incurred and duplication, which are areas of potential disagreement. IHS is committed to finding a resolution that works for both IHS and the Tribes, without requiring any compromise to anyone's interpretation of the ISDEAA, by identifying a process that addresses all concerns.

This redline includes some revisions that relate to both topics, but it does not represent any final agency decision on either issue. The Agency may have additional proposals or changes to the proposals in this redline as we move forward.

organization as a contractor to ensure compliance with the terms of the contract and prudent management, but which:

- a. normally are not carried on by the respective Secretary in his [her] direct operation of the program; or
- b. are provided by the Secretary in support of the contracted program from resources other than those under contract.”

The statute further identifies four categories of CSC funding. Direct and indirect CSC are defined in ~~And finally,~~ Section 106(a)(3) ~~provides that:~~

“(A) The CSC that are eligible costs for the purposes of receiving funding under this Act shall include the costs of reimbursing each Tribal contractor for reasonable and allowable costs of:

- i. direct program expenses for the operation of the Federal program that is the subject of the contract, and
- ii. any additional administrative or other expense related to the overhead incurred by the Tribal contractor in connection with the operation of the Federal program, function, service, or activity pursuant to the contract, except that such funding shall not duplicate any funding provided under Section 106(a)1).

(B) On an annual basis, during such period as a Tribe or Tribal organization operates a Federal program, function, service, or activity pursuant to a contract entered into under this Act, the Tribe or Tribal organization shall have the option to negotiate with the Secretary the amount of funds that the Tribe or Tribal organization is entitled to receive under such contract pursuant to this paragraph.”

The ISDEAA also defines startup and pre-award costs in section 106(a)(5)-(6):

(5) Subject to paragraph (6), during the initial year that a self-determination contract is in effect, the amount required to be paid under paragraph (2) shall include startup costs consisting of the reasonable costs that have been incurred or will be incurred on a one-time basis pursuant to the contract necessary –

(A) to plan, prepare for, and assume operation of the [PFSA] that is the subject of the contract; and

(B) to ensure compliance with the terms of the contract and prudent management.

(6) Costs incurred before the initial year that a self-determination contract is in effect may not be included in the amount required to be paid under paragraph (2) if the Secretary does not receive written notification of the nature and extent of the costs prior to the date on which such costs are incurred.

Commented [A28]: Since all of the other statutory provisions are included here, add the provisions regarding startup and preaward.

B. Determining CSC Requirements – Statutory Factors that Determine Eligible Costs.

The definition of CSC in Section 106(a)(2), as amended, establishes certain statutory criteria for determining which costs are eligible for any category of CSC funding, including: (a) reasonable costs; (b) activities that must be carried on to ensure contract compliance and prudent management; (c) in support of the ISDEAA PSFA; and (d) that normally are not carried on by IHS or are provided by IHS from resources other than those under the contract. Each of these factors must be evaluated when negotiating the amount of CSC funding required under the ISDEAA.

Commented [A29]: This incorporates the statutory definition in a way that highlights some of the main criteria that should be evaluated when negotiating CSC amounts. Although the section already has some detailed discussion of one of these factors (duplication), the policy should be clear on all of the factors (e.g., whether the activity is necessary and in support of the ISDEAA PSFA).

~~Throughout the operation of the program by the awardee, total contract costs (including CSC) are eligible to be paid as either direct or indirect costs.~~ Since Tribes often operate more than one program, many of the costs incurred by the awardee are paid through an indirect cost allocation process, usually negotiated by the “cognizant agency” as identified under the applicable Office of Management and Budget (OMB) regulations at 2 C.F.R. Part 200. In the case of ISDEAA awards, both the Secretarial amount and CSC funding include funding for both direct and indirect costs. The procedures below are intended to ensure that CSC requirements are accurately identified based on the statutory definition of which costs are eligible for CSC funding and the prohibition against while avoiding any duplication of funding between CSC and PSFA funding amountsthe Secretarial amount.

Commented [A30]: Referencing the statutory criteria, e.g., distinguishing between IDC generally and indirect CSC specifically.

~~When awardees choose to use sub-awards with Tribes or Tribal organizations (that meet in all respects the requirements to contract directly with the IHS, but choose, through Tribal resolution, to subcontract to carry out IHS PSFA), to carry out all or part of the PSFA transferred, the eligible CSC costs of the Tribal sub-awardee may also be included in the CSC requirement of the awardee.~~

Commented [A31]: Moved below, to the other paragraph that discussing subawards. (See below)

Section 106(a)(3) authorizes awardees to be paid CSC funding for eligible costs, whether they are “indirect” in nature (benefitting multiple programs) or additional costs associated with operating a single program, except that such funding shall not duplicate any funding provided under section 106(a)(1).

To ensure there is no duplication of costs in the CSC amounts, the IHS will review the CSC request to identify any costs that duplicate costs incurred by the IHS in the operation of the program and included in the Section 106(a)(1) ~~program~~ funding to be transferred, or that may have been duplicated within the CSC amount. When the PSFA to be contracted have not previously been operated by the IHS, ~~for example, where IHS provided general health services to Indian beneficiaries by purchasing care as opposed to providing services direct in an IHS facility,~~ the identification of the duplicative costs will be negotiated based on the program budget submitted by the awardee and a budget from the IHS reflecting the expenditure patterns of how the Secretary would have otherwise operated the PSFA. ~~The IHS budget may be based on comparable PFSA being operated by IHS. The use of such comparison is used to show PFSA and the corresponding funding transferred in the Secretarial amount, for purposes such as determining duplication.~~

Commented [A32]: Retain this language, which is a specific example in the current policy.

~~For pre-award, startup, direct, and indirect-type CSC funding, duplication will be assessed by considering each cost proposed by the Tribe to determine whether it is eligible for CSC funding. Examples of pre-award, startup, and direct CSC are discussed in the standards in Manual Exhibit 6-3-H. For awardees using with Indirect Costs (IDC) rates to negotiate indirect CSC funding, the IDC agreement and proposal will be analyzed and costs will be considered duplicative only if the amounts historically used for specific categorical purposes expended and provided under Section 106(a)(1) for administrative costs are duplicated in the IDC pool. Costs that exceed the amount historically expended and provided in the Section 106(a)(1) amounts will not be considered duplicative. The Indian Health Service will provide documentation of all duplicative costs within the Section 106(a)(1) amounts. When duplicative costs are determined and agreed on between the awardee and the Agency, they will be deducted from the awardee's total indirect costs to determine the indirect CSC requirement that the awardee is eligible to receive under Section 106(a)(2), subject to available appropriations.~~

Commented [A33]: Replaces the current policy discussion of a "profile," which was delete from the tribal proposal. This provision is important to situations where IHS did not previously operate the PFSA to be run by the Tribe. Such language may also need to be included in other sections, e.g., in direct CSC and/or exhibits.

Commented [A34]: All exhibits will have to be reviewed (and potentially revised) as well.

Commented [A35]: The discussion seems to focus only on indirect CSC for those that negotiate using rates. Reference the other types of CSC here as well, since the general principles in these paragraphs apply to all categories of CSC funding.

Commented [A36]: Revise to return the current language of the policy. All of the redline reflects a rejection of changes proposed in the tribal draft. At least until some agreement can be reached on this principle, retain the current language.

Commented [A37]: Move from below, to keep the duplication discussion together before moving onto the topic of subawards.

~~When awardees choose to use sub-awards with Tribes or Tribal organizations (that in all respects meet the requirements to contract directly with the IHS, but choose, through Tribal resolution, to subcontract to carry out IHS PSFA), to carry out all or part of the PSFA transferred, the eligible costs of the Tribal sub-awardee may also be included in the CSC requirement of the awardee.~~

Commented [A38]: Moved from above.

For CSC on sub-awards, the costs and amounts requested for the sub-awardee will be analyzed ~~and negotiated~~. Amounts may be considered duplicative to the extent that CSC funding for these costs has already been included in the CSC requirement of the awardee.

~~When duplicative costs are determined and agreed on between the awardee and the Agency, they will be deducted from the negotiated CSC requirement. This adjusted~~

~~CSC requirement is the Section 106(a)(2) amount that the awardee is eligible to receive, subject to available appropriations.~~

Commented [A39]: Moved up (see above).

C. **Startup and Pre-Award Costs.**

Commented [A40]: There has been little or no discussion about how to reconcile pre-award or startup.

1. ~~Section 106(a)(5) of the ISDEAA, as amended, states:~~

~~“Subject to paragraph (6), during the initial year that a self-determination contract is in effect, the amount required to be paid under paragraph (2) shall include startup costs consisting of the reasonable costs that have been incurred or will be incurred on a one-time basis pursuant to the contract necessary to plan, prepare for, and assume operation of the PSFA that is the subject of the contract; and to ensure compliance with the terms of the contract and prudent management.”~~

2. ~~Section 106(a)(6) of the ISDEAA, as amended, states:~~

~~“Costs incurred before the initial year that a self-determination contract is in effect may not be included in the amount required to be paid under paragraph (2) if the Secretary does not receive a written notification of the nature and extent of the costs prior to the date on which the costs are incurred.”~~

Commented [A41]: Since all of the other provisions are included above, move these statutory provisions to the same section and delete them here.

The amount of CSC funding to be awarded for startup and pre-award costs shall be negotiated consistent with the requirements of Section 106(a)(2)-(3), (5), and (6). Depending on the nature of the costs as direct or indirect, the amount of CSC funding also will be negotiated consistent with the guidance below on direct and indirect CSC funding. NOTE: Examples of startup and pre-award costs are described in the standards for the review and approval of CSC in Manual Exhibit 3-6-3-H.

Commented [A42]: Most startup and pre-award costs are direct in nature, but should reference the sections on direct and indirect CSC funding, which have more detail on how to negotiate specific costs.

Startup costs for PSFA will only be provided to an awardee on a one-time basis, during the initial year that the award is in effect, on a non-recurring basis. Expenditure of start-up costs may occur over two award years as long as they are made within the first 12 months of operation. No additional startup costs will be justified for that Awardee if the PSFA is subsequently transferred to a sub-awardee. Pre-award costs will be paid in their entirety in the initial award year of transfer.

Commented [A43]: Added back this language, which is in the current policy and the statute but has been deleted from the tribal draft.

Commented [A44]: Unnecessary to refer to these costs as non-recurring when they are provided only on a one-time basis per the statute.

Commented [A45]: This new sentence in the tribal proposal is not entirely clear, though it seems to be potentially inconsistent with the statutory language that startup is only for costs “during the initial year that the contract is in effect.”

Commented [A46]: Address in the section on payment.

Commented [A47]: The statute provides that the notice must be received by the Secretary.

Commented [A48]: This change is consistent with the statute, which requires such notice from tribes.

Pursuant to Section 106(a)(6) of the ISDEAA, as amended, notification from awardees for pre-award costs must clearly indicate the nature and extent of the costs to be incurred and such notification must be provided/received by IHS in writing before any of the costs are actually incurred. Tribes ~~should~~must provide a pre-award notice to the appropriate IHS Area Director as soon as they anticipate contracting or compacting a

PSFA, and before they incur any of the costs. If such a notice is received by any other IHS Area Office, it should be immediately forwarded to the appropriate IHS Area Director. ~~IHS must acknowledge receipt and sufficiency of this notice.~~

The review of pre-award and startup costs by Area Office staff should ensure that there is no duplication ~~of the Secretarial amount or other CSC funding, as well as~~ with any costs funded under a Tribal management grant, when appropriate. See also Manual Exhibit 6-3-H for Sample Pre-Award letters.

D. Direct CSC.

~~Direct contract support costs (DCSC) funding pays for costs activities that are not contained in either the IDC pool (or indirect-type cost budget) or the amount computed pursuant to Section 106(a)(1) amount and shall be negotiated consistent with the requirements of Section 106(a)(2)-(3). Direct costs eligible for contract support costs CSC funding may be incurred directly by the awardee or by an eligible sub-awardee. Direct contract support costs CSC amounts are awarded on a recurring basis.~~

3.1. Examples of DCSC are described in the standards for the review and approval of CSC in Manual Exhibit 3-6-3-H. These may include, but are not limited to:

- a. ~~unemployment taxes on direct program salaries funded in the Secretarial amount,~~
- b. ~~workers compensation insurance on direct program salaries funded in the Secretarial amount,~~
- c. ~~cost of retirement for converted civil service and United States Public Health Service Commissioned Corps Officer salaries,~~
- d. ~~insurance, but only for coverage not included in the IDC pool (or indirect-type-costs budget) and not covered by the Federal Tort Claims Act, and~~
- e. ~~facilities support costs to the extent not already made available,~~
- f. ~~training required to maintain certification of direct program personnel, and~~
- i.e. any other item of cost that meets the definition of CSC at Section 106(a)(2), but is not included in the awardee's IDC pool ~~(or indirect-type-costs budget)~~ or the Section 106(a)(1) amount.

Commented [A49]: If "DCSC" is going to be used, start from the first time it is mentioned and then use it consistently throughout.

Commented [A50]: The policy currently says "activities," and the tribal propose is to change it to "costs." Retain the language of the current policy.

Commented [A51]: Nothing in the ISDEAA makes direct CSC recurring. IHS is considering whether direct CSC should be renegotiated periodically. The policy currently recognizes that this may be appropriate, e.g., if a tribe shifts costs into its IDC pool. There is more discussion below, where we have identified instances in which a re-negotiation may be appropriate.

Commented [A52]: These changes correspond to similar changes in the definition section.

Commented [A53]: We would like to discuss this particular example at the in person meeting.

Commented [A54]: Since insurance is approved only in limited circumstances, as discussed more in Exhibit 6-3-H, include that limiting language here to be more clear.

Commented [A55]: Per Exhibit 6-3-H, these do not seem like appropriate examples. The Exhibit suggests that these categories are rarely, if ever, eligible for direct CSC because they are funded in the 106(a)(1) amount.

4-2. Funds for DCSC ~~are recurring and~~ need not be justified each year and will be provided to the awardee on a recurring basis. Notwithstanding this provision, if the awardee ~~has an assumes new or expanded PSFA, contract due to either a new program or transfer of IPA/MOA federal employees to direct hire the awardee may negotiate an incremental increase in DCSC on the new or expanded portion of the award without requesting a renegotiation of the entire recurring DCSC amounts~~ the DCSC need of the entire PSFA must be renegotiated. Similarly, if a cost that has previously been funded as a DCSC is moved to the Tribe's IDC ~~Indirect Cost P~~ pool (See Section 6-3.2 E), the entire DCSC need shall be renegotiated to make the proper adjustment ~~requirement shall be reduced~~. In addition, when an awardee withdraws a PSFA from an existing award between the IHS and a second awardee operating that PSFA on behalf of the first awardee, the direct CSC need of both awardees must be negotiated. Finally, if IHS has information demonstrating that the DCSC funding provided exceeds the current need, a renegotiation of DCSC funding will be required. ~~Unless renegotiation is necessary for these reasons, the amount of~~ each awardee's DCSC need shall be adjusted at the beginning of each contract year by the most recent ~~national CPI~~ OMB non-medical inflation rate in order to account for the normal increased DCSC need.

Commented [A56]: Adding "recurring" here is repetitive since it is already in the sentence later.

Commented [A57]: See comment above about DCSC being "recurring" and possibly requiring a periodic renegotiation.

Commented [A58]: Renegotiation of the entire amount of DCSC seems appropriate, at least in some circumstances, which have been added here. IHS is continuing to consider this issue.

Commented [A59]: Options discussed for applying OMB non-medical inflation rate include:

1. 3 year average applied at beginning of the contract term. This could potentially be different for FY and CY Tribes depending on how we define its application. Example for FY2017 the prior 3 year (final) rates available to average at the start of the contract period would be – 2015, 2014, and 2013; for a CY Tribe the prior 3 year (final) rates available to average at the start of CY2017 would be – 2016, 2015, and 2014.

2. Last known final rate applied at the beginning of contract term. This could potentially be different for FY and CY Tribes depending on how we define its application. Example for FY 2017 the rate to apply at the start of FY2017 would be the final rate for FY2015; for CY2017 the final rate available to apply at the beginning of the contract period would be FY2016.

3. Inflation added after the 1st quarter of the year, both FY and CY Tribes are inflated by the previous year's final rate. Example for FY and CY2017, inflation is added after/or at the end of the 1st quarter using FY2016 final rate.

The Agency received the write up on the applicability of the medical inflation rate.

Commented [A60]: It does not seem appropriate to have a retroactive change to DCSC need.

Commented [A61]: This sentence does not seem necessary when IHS has full funding.

Commented [A62]: The indirect CSC section touches on the costs incurred and duplication issues. As already noted, IHS is committed to finding a resolution that works for both IHS and the Tribes, without requiring any compromise to anyone's interpretation of the ISDEAA, by identifying a process that addresses all concerns. The section has been highlighted in yellow because it is one of the sections that IHS believes will require the most attention/discussion.

This redline includes some revisions that relate to both topics, including a specific proposal below regarding determination of the indirect CSC amounts, but it does not represent any final agency decision on either issue. The Agency may have additional proposals or changes to the proposals in this redline as we move forward.

Commented [A63]: Addresses the distinction between IDC generally and indirect CSC specifically, though it may be helpful to elaborate even further.

In accordance with Section 106(a)(3)(B) of the ISDEAA, as amended, however, the amount of funds needed for ~~recurring~~ DCSC also may be renegotiated on an annual basis at the option of the awardee. Renegotiated DCSC requirements become effective ~~for the contract period in which the parties reach agreement for the entire fiscal year in which the DCSC renegotiation request was submitted based on the final negotiated adjustment and will be funded on this basis. To the extent that the DCSC requirement is reduced, excess DCSC funds may first be used to fully fund the awardee's IDC requirements before the IHS reduces any excess funds.~~

E. Indirect Costs CSC.

–Guidelines for the Principles Involved in Negotiating Indirect and Indirect-Type Costs. A plan for the allocation of IDC is required to support the distribution of any IDC related to the awardee's program ~~and the determination of which IDC are eligible for indirect CSC funding~~. All IDC included in the plan are required to be supported by accounting records that substantiate the propriety of the indirect costs ~~and establish the costs as either: (a) funded in the Secretarial amount; or (b) eligible for indirect CSC funding~~. The allocation plan should cover all IDC of the awardee and contain, but not necessarily be limited to, the nature and extent of services provided and their relevance to the awardee's program; the item of expense to be included in the IDC pool; and the methods to be used in distributing costs.

Title 2, C.F.R.- Part 200 establishes principles and standards for determining IDC rates applicable to the awardee and the negotiation of IDC rates with the awardee's cognizant agency. Section 106(k), P.L. 93-638, as amended, has made modifications to the OMB cost principles otherwise applicable to awardees. Once these principles are applied to identify an awardee's total IDC, the costs must be analyzed to determine which costs are for activities IHS normally provides with resources under the contract and which costs are eligible for CSC funding. See also the standards for the review and approval of CSC in Manual Exhibit 6-3-H.

Commented [A64]: Addresses the distinction between IDC generally and indirect CSC.

In determining the amount of CSC funding required in relation to the awardee's IDC, Areas should review the awardee's cost allocation plan, its associated IDC proposal, and approved IDC negotiation agreement. Consistent with Section 106(a)(2)-(3), indirect CSC funding may be awarded for the reasonable costs for activities required for contract compliance and prudent management, but that normally are not carried on by IHS, and that are related to the overhead incurred by the tribal contractor in connection with the operation of the ISDEAA PSFA. The allowable indirect costs of an eligible sub-awardee may also be included in the indirect CSC requirement of the awardee when the sub-awards are excluded from the IDC base of the awardee, or are subject to a pass-through IDC rate. The awardee shall be responsible for providing documentation of these costs to the IHS.

Commented [A65]: Addresses the distinction between IDC generally and indirect CSC.

1. **Awardees with Negotiated IDC Rates.** The amount of IDC expected to be incurred by awardees using rates negotiated with the cognizant Federal agency will be ~~determined~~ ~~estimated annually~~ ~~determined~~ by applying the most recent negotiated IDC rate(s) to the appropriate direct cost base amount subject to special provisions relating to any Tribal shares included in the direct cost base, as explained in paragraph 6-3. ~~2E(3)F, 2F. Exceptions to utilization of an approved rate may only occur pursuant to a bilateral agreement, in accordance with pilot projects and negotiated lump sum amounts.~~

The amount determined as the awardee's CSC requirement will be consistent with the individual awardee's IDC rate agreement, and reflect any exclusions required by the IDC rate agreement.

~~Awardees may receive modifications from time to time providing program or DCSC increases for new and expanded programs or for other reasons, such as inflation, population increases, and distributions from the Indian Health Care Improvement Fund. Additional indirect CSC will be calculated and paid with each amendment to the awardee's agreement to ensure full funding of indirect CSC throughout the award year. Specifically, any amendment or modification to the funding agreement during the award year resulting in an increase to the direct cost base will also include an increase in indirect contract support cost~~

~~funding, calculated by applying the most recent approved indirect cost rate to the increased amount of the direct cost base.~~

Commented [A66]: This is something the Agency is working towards but is not able to commit to in policy at this point.

If an awardee's IDC rate is applicable to an FY that is more than ~~three~~**two**-years old, the IHS will not provide IDC associated with the application of that IDC rate. In these cases, the Area will negotiate "indirect-type costs" with the awardee (see paragraph 6-3.2E(2) that follows). The rate applicable to the current FY is considered current, and the rate applicable to the previous FY shall be considered one-year old; **for example, in FY2016 a rate agreement for FY2014 is the oldest rate that will be used in calculations.** ~~Final reconciliation of indirect CSC will be based on the most recent rate in effect as of the last date of the award period and indirect CSC required may be adjusted to reflect these rates consistent with section 6-3.4.~~

Commented [A67]: This part of the tribal proposal will be addressed in the reconciliation section itself. Prior to the Denver meeting of the CSC Workgroup, the technical workgroup discussed waiting until 90 days after receipt of the rate applicable to the contract year.

~~When an IDC rate application has been pending with the DOI Interior Business Center or the DHHS Cost Allocation Services for at least 90 days, the IHS shall use the proposed IDC rate as a "provisional rate" until such time as a final IDC rate is approved.~~

Commented [A72]: IHS is not the cognizant agency and does not have the authority to agree to this part of the tribal proposal.

Based on these principles, IHS will apply the IDC rate to determine a Tribe's IDC need (which shall be adjusted for duplication, as discussed below, to determine the indirect CSC need) as follows.

a. Estimate of IDC Prior to the Contract Year

- 1) In advance of the contract year, IHS and the Tribe will negotiate an estimate of the Tribe's IDC need using the Tribe's most recent (no more than two years old) negotiated IDC rate agreement.
 - a) Total direct costs will be used based on either:
 - i) The eligible funding in the Secretarial amount plus the direct CSC funding (or the salaries funded by IHS for those Tribes that use a salary base), if the total direct costs of the total health care program reflected in the IDC rate agreement are at least that amount; or
 - ii) The total direct costs of the total health care program operated by the Tribe, if those costs as reflected in the IDC rate agreement are less than the eligible funding in the Secretarial amount plus the direct CSC funding.
 - b) The passthrough and exclusion amount will be determined by [describe the current approach]. This amount will be deducted from the total direct costs to determine the direct cost base.
 - c) Application of IDC rate: the IDC rate will be applied to the direct cost base to estimate the amount of IDC, which shall be subject to

Commented [A68]: Alternatively, an average of the past three years could be used.

adjustments for duplication to determine the amount of indirect CSC funding.

Commented [A69]: This is reference to the 80/20 split and whatever option can be developed for duplication on the service unit level. The language is meant to be neutral and simply to reference that duplication must be addressed.

b. Determination of Final Amount for IDC

1) Consistent with the reconciliation process outlined in section xx, after the end of the contract period, IHS and the Tribe will negotiate the final amount of IDC as follows.

Commented [A70]: Language will also need to be developed for the reconciliation section of the policy, for any approach that is adopted. IHS has not yet had time to draft any proposed language.

a) Total direct costs will be based on the amount negotiated pursuant to paragraph (a)(1)(a) above, without further information being required of the Tribe, though the Tribe may propose to increase the amount for:

i) Increases in eligible funding in the Secretarial amount or direct CSC funding awarded during the contract year, for those whose total direct costs were estimated under paragraph (a)(1)(a)(ii) above; or

ii) Increases in expenditures, for those whose total direct costs were determined under paragraph (a)(1)(a)(ii) above.

b) Passthrough and exclusion amounts will be based on the amounts negotiated pursuant to paragraph (a)(1)(b) above, without further information being required of the Tribe, though the Tribe may propose adjustments based on expenditures throughout the year.

c) Application of IDC rate: the applicable IDC rate – i.e., either the fixed carryforward rate or the final rate applicable to the contract year – will be applied to the direct cost base to determine the amount of IDC, which shall be subject to adjustments for duplication to determine the amount of indirect CSC funding.

Commented [A71]: As already noted, IHS is committed to finding a resolution on the issue of costs incurred that works for both IHS and the Tribes. During the Tuesday afternoon meeting in Denver, an option was briefly discussed that is outlined here. This proposal does not represent any final agency decision on either issue. The Agency may have additional proposals or changes to the proposals in this redline as we move forward.

This option is meant to address IHS's understanding of one of the primary tribal concerns with costs-incurred: protracted reconciliation. To date, IHS has been considering the need to reconcile to actual costs after contract performance. Tribes have expressed concerns about the uncertainty and burden this could cause. The compromise proposal in these paragraphs seeks to eliminate the need for such a post-contract process and provide for more certainty, at least in most instances, while also using past expenditures to demonstrate that the assumption that current-year funds will be expended is reasonable. It provides an option that, for almost all tribes, will allow for quick reconciliation once the final rate for the year at issue is received. For the few tribes whose historical expenditures are lower, it provides an option to limit reconciliation too, though such tribes would also have other options to select from. We believe this calculation can be achieved in the current draft ACC tool, with only a couple of minor changes to the formulas.

2. **Awardees Without Negotiated IDC Rates (Guidelines for Agency Negotiators).** A lump sum amount for "indirect type costs" may be computed/negotiated with computed for awardees that do not have formally negotiated IDC agreements with their cognizant agency for reimbursement under an IDC rate or at that the request such a negotiation, even if they have of a Tribe with a negotiated rate. This annual lump sum amount may be calculated by negotiating a fixed amount for "indirect-type costs," adjusted annually by the all-items CPI inflation rate until renegotiated. Additional indirect CSC will be calculated and paid with each amendment to the awardee's agreement to ensure full funding of indirect CSC throughout the award year. Specifically, IHS will take the ratio of (a) the lump sum for indirect type costs to (b) the initial direct cost base used to negotiate that lump sum amount, and multiply that ratio against the increased amount of the direct cost base. Categories of costs often considered "overhead" or "indirect-type" are generally in the categories of:

Commented [A73]: Another option that could be included in the policy is the 10% de minimus rate that appears to be an option in the new OMB circular. However, that option is limited to certain circumstances, e.g., for awardees that have never negotiated an IDC rate.

Commented [A74]: IHS has not agreed to apply inflation – if a tribe wants an increase in indirect-type costs, the amount needs to be renegotiated.

Commented [A75]: For flow, we recommend moving this below.

Commented [A76]: This language may be unacceptable and the inflation rate has no applicability – again when indirect type costs are re-negotiated they should be based on audit – adjusted to actual costs from a prior fiscal year (increases can be considered in the negotiation based on sufficient justification).

Management and Administration; Facilities and Facilities Equipment; and General Services and Expenses. Indirect-type costs must be renegotiated not less than once every four years, but they can be renegotiated more frequently at the Tribe's option. More specific Examples of indirect and indirect-type costs include but are not necessarily limited to the following:

Commented [A77]: For flow, we recommend moving this below.

Management and Administration	Facilities and Facilities Equipment	General Services and Expenses
Governing Body	Building Rent/Lease/Cost Recovery	Insurance and Bonding
Management and Planning	Utilities	Legal Services
Financial Management	Housekeeping/Janitorial	Audit
Personnel Management	Building and Grounds	General Support Services
Property Management	Repairs and Maintenance	Interest
Records Management	Equipment	Depreciation/Use Fees
Data Processing		
Office Services		

As with all IDC, however, the negotiation of indirect CSC funding based on indirect-type costs must address the fact that many of types of costs are funded in the Secretarial amount. Accordingly, adjustments are necessary to avoid duplicative funding.

Commented [A78]: This is included to further explain the distinction between IDC and indirect CSC, in the context of indirect-type costs.

Indirect-type costs must be renegotiated not less than once every fourthree years, but they can be renegotiated more frequently at the Tribe's option. Additional indirect CSC will be calculated and paid with each amendment to the awardee's agreement to ensure full funding of indirect CSC throughout the award year. Specifically, IHS will take the ratio of (a) the lump sum for indirect type costs to (b) the initial direct cost base used to negotiate that lump sum amount, and multiply that ratio against the increased amount of the direct cost base.

Commented [A79]: The ability to renegotiate is available at any point during the year if the negotiated lump sum amount does not fully address the Indirect CSC need.

Commented [A80]: Since the 80/20 split affects the indirect CSC calculation, move under the IDC section specifically. This does not address duplication at the service unit level.

3. Alternative Methods for Calculating Indirect Cost Funding CSC CSC Associated With Tribal Shares. If an awardee's contract includes Tribal shares, the awardee shall elect the method for determining the indirect cost funding CSC CSC associated with the Tribal shares and, the remaining indirect costs that are eligible for CSC funding, in one of two ways:

At this point, IHS has not incorporated any specific recommendations with regard to duplication on the service unit level, but we have a broad suggestion of what might be considered. IHS is considering an option comparable to the 80/20 split, to be applied to all IHS funding (using either one approach for all funding, or continuing the current approach for tribal shares and developing something comparable to apply to the service-unit level funding). For the 80/20 split, a study was conducted to demonstrate the reasonable amount of any offset; a similar study would be necessary if this type of approach were applied to service unit shares, and IHS could start on that immediately if this seems like an option that would interest tribes. This proposal does not represent any final agency decision. The Agency may have additional proposals or changes to the proposals in this redline as we move forward.

a. **Alternative A.** The awardee and the Area Director or his or her designee shall conduct a case-by-case detailed analysis (Manual Exhibit 3-6-3-B) of the "purpose for which the (Tribal share) funds were utilized by the Secretary." Tribal shares will be

reviewed to identify ~~types of costs that are duplicative of costs that are already included in the awardee's IDC pool, or are proposed to be funded as DCSC to determine the IDC already covered by the Tribal shares.- The costs already in the awardee's IDC pool or DCSC budget will be considered as duplicative of the Tribal shares for purposes of funding IDC for administrative or "overhead" purposes Section 106a(3)(A)(ii).~~ In determining whether such costs are duplicative, the review will consider both the cost category labels (travel, supplies, etc.) and how the IHS expended the funds. ~~The IDC covered by the Tribal shares will be deducted from the awardee's total indirect costs to avoid duplication when determining the indirect CSC funding amount.~~

Commented [A81]: Reinserting language that is in the current policy but was removed in the tribal proposal.

Commented [A82]: This seems to confuse two types of duplication – one is direct and indirect, and the other is Secretarial and CSC. This section is meant to address the latter. Deleted language that is talking about direct versus indirect to avoid confusion over the two. Also, if something is funded in tribal shares, it should not be allowed as direct CSC per the guidance above.

b. **Alternative B.** The awardee and the Area Director or his or her designee will apply the following "split" of total Tribal shares, the 80/20 method (Manual Exhibit 3-6-3-C):

Commented [A83]: Studies show that 20% is significantly understated. The current policy anticipates that IHS will review this amount periodically, though the tribal redline suggests deleting that language

- i. Eighty percent of the Tribal shares amounts will be considered as part of the awardee's direct ~~program cost base (Section 106(a)(3)(A)(i)).~~
- ii. Twenty percent of the Tribal shares amounts will be ~~computed and considered as available IDC funding for administrative or "overhead" purposes (Section 106(a)(A)(ii)).~~
- iii. If the ~~twenty percent that is considered IDC funding amount amount set aside for CSC requirements (20 percent) exceeds the awardee's total negotiated CSC requirements on tribal shares, the awardee shall retain the excess funds for program direct costs purposes purposes.~~

Commented [A84]: This phrase was added in the tribal redline. Removed to keep the current policy provision.

Once these 80/20 amounts are computed, they will be used in accordance with the terms of the rate agreement (or alternative method provided herein) for calculating the CSC requirement. The balance of the Tribal shares ~~not considered IDC funding as a part of the direct program base will be considered available reduce the portion of the awardee's IDC that are eligible for available for CSC funding.~~ Any excess ~~CSC requirements IDC need associated with the IHS PSFA that is requirements not funded by the portion of the Tribal shares considered available for CSC IDC funding CSC will be eligible for payment as indirect CSC, as provided herein.~~ Manual Exhibit 6-3-B illustrates how Alternative A (a detailed analysis) is calculated and Manual Exhibit 6-3-C illustrates how Alternative B (the 80/20 method) is calculated.

Commented [A85]: As already noted, all exhibits must be reviewed before finalizing the policy.

Commented [A86]: Is there a way to "reserve" the current funding sections for immediate reinstatement, if Congress were to reinstate an appropriations cap at some point in the future? If that is not done in the Policy, perhaps it could be done at the beginning, in a footnote to the background section..

Commented [A87]: At the December CSC Workgroup meeting, there seemed to be agreement to use the terms determination, payment, and reconciliation. Payment seems more appropriate than "funding," since the section previously addressed the funding pools, etc., when IHS had a limited appropriation.

6-3.3 FUNDING CSC PAYMENTS

Much of the tribal redline still seems to be tied to the concept of shortfall funding and allocation of appropriations. In addition, other portions seem more relevant to the determination of CSC (which is addressed above). It seems this section could be shortened/simplified significantly.

Awards will include ~~Funding for CSC is to reflect the~~ payment of the full amount of CSC ~~contract support costs as specified~~ negotiated in accordance with the ISDEAA and section 6-3.2 of this Policy.

CSC Funding for New or Expanded PSFAs

Eligibility. ~~This section covers CSC requirements associated with the following awards: An initial transfer of a PSFA previously operated by the IHS to an awardee, including the initial transfer of each Intergovernmental Personnel Act (IPA) agreement/memorandum of agreement (MOA) position to direct-hire, whether or not such transfer of the IPA agreement/MOA position to direct-hire occurs in the first year of the associated program transfer.~~

~~Expansion of a PSFA through the assumption of additional shares of PSFA previously operated by the IHS, regardless of the organizational level at which the expanded PSFA was operated.~~

~~Assumption of programs previously operated under awards to other awardees~~

~~Expanded staffing funding for new IHS or JVCP facilities.~~

~~New or expanded PSFA available due to new appropriations, excluding general program increases and increases for inflation, pay costs, population growth, and the Indian Health Care Improvement Fund.~~

A. Withdrawal.

Withdrawal. ~~When an awardee withdraws a PSFA from an existing award between the IHS and a second awardee, who has been operating that PSFA on behalf of the first awardee, the existing CSC need of both awardees must be negotiated. is subject to reallocation between the two awardees. In the absence of an agreement between the awardees, the existing CSC will be divided as follows:~~

~~Any overpayment to the second awardee must either: (a) be returned to IHS for allocation to the first awardee; or (b) offset against the second awardee's CSC need in the subsequent year.~~

a. ~~The DCSC is directly associated with the direct program funds and should be reallocated proportionately between the awardees on the same basis as the direct program funds are reallocated.~~

b. ~~IDC funding should be split on the same basis as the direct program funds are reallocated. The existing awardee will retain the amount associated with the direct program funds retained, and the new awardee will receive the amount associated with the direct program funds transferred. Both the new and existing awardees are then eligible for CSC funds to recover any additional indirect CSC~~

Commented [A88]: These paragraphs do not seem relevant to "payment." They are useful for defining new and expanded programs, which has been incorporated into the definitions section. Also, there is a second section on new/expanded below.

Commented [A89]: IHS and tribes could use either option, especially with the new language in the 2016 appropriation.

~~requirements they have consistent with full funding of CSC and reconciliation of final payments~~

Commented [A90]: This section needs to be revised to apply in the context of full funding. It should also be addressed in the sections on determining CSC amounts since IHS will need to negotiate the need of both awardees in this context.

B. Initial Funding Period—New and Expanded Contracts.—

~~All requests for CSC funding associated with new or expanded PSFA that are submitted independently of a contract proposal or a final offer must be reviewed within the time provided by the ISDEAA, as amended. Sections 102, 507.~~

Commented [A91]: Move this paragraph from below for flow but revise to reference the statute for the timeframes.

~~Negotiated amounts for CSC funding contract support cost funds for new and expanded PSFA programs will be allocated by IHS Headquarters paid along with the award of any 106(a)(1) program funds.—Contract support costs funding will be determined as follows: This includes pre-award, startup, direct, and indirect CSC funding.~~

Commented [A92]: Reference how payment will be issued, not internal processes (which IHS could opt/be required to change, without any impact on tribes).

~~All new and expanded CSC requests submitted independently of a contract proposal must be reviewed within 90 days of receipt (or within 45 days of receipt of a final offer from a Title V compactor).—(See also 6-3.4A below).~~

If an awardee proposes to start a new or expanded activity for less than a full year, an annual amount for ~~the CSC requirement will may be computed determined~~ consistent with the methodologies included in this ~~e~~Chapter; ~~however, —Direct and indirect CSC funding will be pro-rated in the first award period and annualized in succeeding awards.~~ Start-up and pre-award costs will be non recurring, and ~~the negotiated amount will be~~ paid entirely in the first year of the award.

Commented [A93]: In the full funding context, an annualized calculation no longer seems necessary since the amounts will be renegotiated each year.

Commented [A94]: In the full funding context, annual negotiations will be needed. As a result, this provision is no longer necessary.

C. Subsequent and Ongoing CSC Awards.

~~Negotiated amounts for direct and indirect CSC funding for ongoing awards will be paid along with the initial payment of the 106(a)(1) funding.~~

~~The amount of CSC funds (excluding pre-award and startup costs) paid to an Area in any year will be paid to that Area as a recurring amount.—Adjustments to Area allocations will be made in subsequent years as needed.~~

~~As stated in paragraph 6-3.2D, DCSC funding is provided on a recurring basis and shall be increased by the amount needed to increase prior year DCSC funding by the~~

~~national CPI medical inflation rate.~~

Commented [A95]: No medical inflation rate, as noted above.

~~All indirect CSC funds will be paid to the awardee as non-recurring funds. Each awardee's requirement for indirect CSC shall be determined by calculating any applicable changes in IDC rates, bases, and pools. Prior year funding for an awardee's indirect CSC will not be reduced in subsequent years as long as the CSC funding for indirect CSC does not exceed 100 percent of the awardee's total CSC requirement in the subsequent year (see 6-3.2E).~~

~~Prior year funds provided for CSC to each awardee (excluding pre-award and startup costs), if justified in subsequent years, shall not be reduced by the IHS except as authorized in Section 106(b) of the ISDEAA, as amended. Awardees should expect to receive these funds continuously, if they continue to justify the same or greater annual need. If an awardee's current CSC base is not adequate to meet the awardee's full CSC requirement, IHS shall make additional payments to ensure full CSC funding.~~

~~Awardees may determine, consistent with 6-3.2, that the CSC provided under the award is not adequate to fully fund the CSC requirement due to an increase in IDC rates or changes in the program base, or exclusions provided in the indirect cost proposal applicable to the award. The awardee may request and negotiate an adjustment in the CSC by providing documentation of the increased requirement on the Annual Contract Support Costs Calculations (ACC) form and supporting documentation as required and provided in exhibit 6-3-D.~~

Commented [A96]: All of these provisions seem related to funding in a less than full funding context. To the extent any of the language addresses how to determine full CSC funding, that has been (or should be) addressed in the previous section.

~~Subsequent payments may be made if a new amount is negotiated during the contract year, e.g., due to updates to the awardee's IDC rate, consistent with the determination of CSC in section 6-3.2 and the reconciliation process in section 6-3.4. Areas must continually update the CSC requirement information used for the distribution of CSC appropriations, including by using the most current IDC rate and changes to the direct program base in the current year, before they provide any additional indirect CSC distributions in order to ensure that no awardee is funded in excess of 100 percent of its total CSC requirement.~~

Commented [A97]: This also seems related in large part to funding under a limited appropriation. To the extent it relates to how CSC will be determined, that should be addressed in the previous section.

Commented [A98]: The reconciliation section touches on the costs incurred and duplication issues. As already noted, IHS is committed to finding a resolution that works for both IHS and the Tribes, without requiring any compromise to anyone's interpretation of the ISDEAA, by identifying a process that addresses all concerns. The section has been highlighted in yellow because it is one of the sections that IHS believes will require the most attention/discussion.

6-3.4 RECONCILIATION

~~Reconciliation of payments will be conducted to ensure full funding of CSC as required by the ISDEAA. The IHS will reconcile all CSC payments the CSC amounts after the end of the award consistent with the following process.~~

This redline includes some revisions that relate to both topics. However, while we discuss the option on indirect CSC that was included above, minimal changes have been made to this section. Once agreement is reached on that section, the reconciliation process should become more clear. The redline to this section does not represent any final agency decision. The Agency may have additional proposals or changes to the proposals in this redline as we move forward.

~~For indirect CSC funding, this reconciliation shall be conducted quarterly, with the final reconciliation to be completed within 90 days of the end of the fiscal year contract term or receipt of the negotiated IDC rate applicable to the contract term, whichever occurs later.~~

Commented [A99]: Other issues to address in the reconciliation section:

- 1.As drafted, it only seems to address indirect. What about direct and indirect-type, as well as startup and preaward?
- 2.How often will reconciliation occur during the contract term? Quarterly? Some other interval?

A. Program Base Direct costs. The program basedirect costs will be adjusted to reflect all eligible funding increases to the Secretarial amount and direct CSC funding modifications or amendments to the award throughout the course of the contract term.

Commented [A100]: Further revisions are likely to be needed for the direct costs portion, depending on the options discussed with regard to costs incurred. Also, not all mods or amendments will increase the direct cost base. For example – what if the mod is an increase for CHEF or if an increase to P/RC is an exclusion? Finally, IHS is still considering whether this can be done with each mod/amendment or needs to be done at set intervals throughout the year.

B. Exclusions. Exclusions will be reviewed to ensure that the amounts are determined consistent with the IDC rate agreement.

B.C. IDC rate. The IDC rate will be adjusted to reflect the fixed with carryforward rate or final rate most recent rate in effect on the final date of applicable to the award period. For awardees negotiating indirect-type costs utilizing a lump sum amount or other rate as provided for participating in pilot projects, the indirect CSC will be adjusted as required in the award or the terms of the pilot project.

Commented [A101]: Moved from below for flow. Further revisions are likely to be needed for the exclusions portion, depending on the options discussed with regard to costs incurred.

C. Exclusions. Exclusions will be reviewed to ensure exclusions are computed consistent with types of costs identified as exclusions in the IDC proposal.

Commented [A102]: Moved above.

D. Duplication of costs. To the extent duplication of amounts in the 106(a)(1) program have been documented, negotiated, and agreed to, adjustments may be made in the amount of CSC funding to be provided.

Commented [A103]: This will require further discussion.

No additional adjustment or recalculations of the CSC requirement shall be done in the reconciliation process. Once final reconciliation is complete, and both parties agree on the amount of indirect CSC funding, on the final amounts due and IHS has paid any shortfall or been reimbursed any overpayment each the parties may shall enter agree to a bilateral amendment/modification setting for the amount as the indirect CSC funding required under the ISDEAA for a release of claims for CSC on for the award. If any amount is still owed, IHS will may make payment according to the payment provisions of the award. If the awardee was overpaid, either: (a) it will reimburse IHS for the overpayment; or (b) IHS will apply the overpayment to the awardee's CSC need in the subsequent year.

Commented [A104]: Reworded to no longer require a waiver while still establishing that there is a meeting of the minds that, at least as of that point in time, IHS provided full funding.

6-3.5 ROLES AND RESPONSIBILITIES

Awardees and IHS staff have distinct roles and responsibilities in facilitating the determination of Tribal CSC requirements and in the allocation of CSC resources. This section will describe the roles and responsibilitiesactivities associated with the determination of initial Tribal CSC (New and Expanded) requirements; the activities

~~associated with~~ the determination of ongoing ~~management of~~ CSC requirements; and some of the ancillary CSC activities carried out by the IHS.

A. **Overview - ~~Initial~~ New and Expanded CSC Requests**

Responsibilities. Awardees must provide a detailed CSC request to the Area Director or his or her designee. ~~Awardees should be encouraged to complete their requests on forms developed by the IHS~~ ~~has developed example sample request forms~~ ~~letters~~ for that purpose, ~~at the option of the awardee to use to submit their requests~~ (see sample ~~Request form~~ ~~letters~~ in Manual Exhibit 6-3-G ~~and the ACC tool in Manual Exhibit []~~). The request must include a clear description of the requested CSC ~~amounts~~ ~~funding~~ to be negotiated (as specified at 25 C.F.R. Sec. 900.8) along with supporting justification; the date that the PSFA are to be assumed; and an identification of the ~~Secretarial~~ amount ~~of program funding~~ to be transferred. Additionally, the awardee is encouraged to provide a detailed line item Tribal budget for the Section 106(a)(1) amount to facilitate CSC negotiations. The Area Director or his or her designee will provide a copy of the ~~proposal to the Headquarters Office of Direct Service and Contracting Tribes (ODSCT) and a copy of the final~~ negotiated request to the IHS Headquarters Office of Finance and Accounting (OFA), and a copy to the Office of Tribal Self-Governance (OTSG) in the case of a Title V compactor.

Commented [A105]: Revised to call sample letters, consistent with exhibit sample letter.

B. **New and Expanded CSC ~~Request~~ Negotiations.** The Area Director or his or her designee (or the Agency Lead Negotiator in the case of a Title V Self-Governance award) has the primary responsibility for negotiating the new and expanded CSC Request with the awardee and forwarding ~~the proposal to the Headquarters ODSCT as well as the final~~ approved request to the Headquarters OFA for funding ~~to be released for payment~~. If the Area Director or his or her designee and the awardee do not agree on an item(s) of cost, the Area Director or designee shall issue a partial declination of the awardee's contract proposal ~~or final offer~~ in accordance ~~the ISDEAA and~~ with 25 C.F.R. Sections 900.20 through 900.33 ~~and 42 C.F.R. Sections 137.140 to 137.48~~. The declination ~~or final offer rejection~~ must be issued within ~~the time required by the ISDEAA, as amended, 90 days from the receipt of the awardee's proposal (or in the case of a Title V awardee, within 45 days of the submission of a Final Offer, if any)~~ unless the awardee has provided ~~a written~~ ~~request for consent to~~ an extension in accordance with 25 C.F.R. Section 900.17 ~~or 42 C.F.R. Section 137.135~~. In the event CSC issues are unresolved at the time a program transfer or expansion goes into effect, the final resolution of CSC issues shall be retroactive to the start date of the transfer or expansion.

Commented [A106]: Reference the statute for the timeframes.

Commented [A107]: Please clarify what this statement is intended to represent? Possible suggested revisions once clarification is received.

C. **~~Subsequent Funding Periods~~ Ongoing Awards.**

4. ~~The Area Director or his or her designee (or the Agency Lead Negotiator in the case of a Title V Self-Governance award) will provide a completed ACC tool during negotiations of successor annual funding agreements or funding agreements, in order to assist the parties in determining the amount of CSC funding to be added to the contract. (Consistent with section 6-3.2.) Beginning in year two, DCSC requirements will first be funded up to the total amount of the original CSC request for the DCSC. The DCSC, along with other Section 106(a)(1) funds, will be considered part of the recurring base of the award. The amount of the DCSC is provided to the awardee on a recurring basis and will not be reduced, but the amount may be renegotiated annually at the option of the awardee (See also Section 6-3.2D and Section 6-3.2D(2)).~~

2. ~~All IDC funding paid in connection with a CSC request will be transferred to the Area on a recurring basis in year two. Thereafter, it will be paid on a non-recurring basis to the awardee and will recur in subsequent years to the extent it does not exceed 100 percent of the awardee's calculated IDC requirement (See also Section 6-3.2E, Section 6-3.3B(3) and (4)).~~

3. ~~When an awardee's IDC rate is reduced, the Area Director or his or her designee is required to determine if the reduction has resulted in the awardee receiving more IDC funding than is otherwise permissible under the new rate. If available IDC funding exceeds this new IDC requirement, excess IDC funds may first be used by the awardee to fully fund existing DCSC shortfall requirements before the IHS reduces any excess funds. The Area Director or his or her designee is required to collect excess CSC funds from awardees for redistribution to other Tribal contractors/compactors with identified shortfalls within that Area (see paragraphs 6-3.3B(3) and 6-3.3C(7)).~~

4. ~~If the awardee refuses to execute a bilateral modification to return excess IDC funds, the Area Director or his or her designee will file a claim against the awardee in the amount of the overpayment in accordance with the Contract Disputes Act (CDA), P.L. 95-563, as amended, and 25 CFR Section 900.216.~~

~~Each Area Director or his or her designee will report to IHS Headquarters OFA on a quarterly basis any new indirect or direct CSC needs that have been established since the previous quarter in projected shortfalls in funding of full direct or indirect CSC from ongoing awards.~~

~~Startup and pre-award funding does not recur to the awardee in the second year. Instead, to the extent available, such funds shall be available to the Area for funding CSC in subsequent years.~~

Commented [A108]: It seems like (C) can be simplified to one paragraph.

The first two paragraphs discuss either funding issues that don't really apply in the full funding context or issues of determining CSC, which have already been addressed in that section. Also, concepts such as "recurring to the Area" seem to address internal procedures that IHS may need to change in the future (even though it would not impact funding to tribes).

Commented [A109]: This paragraph also is addressed by the determination, payment, and reconciliation sections. It no longer seems necessary to include here.

Commented [A110]: This seems unnecessary here because it is addressed below, in the section on disputes.

Commented [A111]: Again, this seems to be unnecessary/irrelevant in the full-funding context.

Startup and Pre-award (non-recurring to Area and Awardee in year 2)

DCSC - (recurring to Area and Awardee in year 2)

This is treated as recurring and adjusted annually for inflation and may be renegotiated annually at awardees request.

IDC - (non-recurring to Awardee, recurring to Area)

Non-recurring and subject to change due to changes in applicable rate or negotiated base until final reconciliation of CSC and award closeout.

Program Base - (recurring to Area and Awardee)

This is primarily recurring, i.e., not adjusted except pursuant to modification of award

Commented [A112]: Again, this seems repetitive of the section on determining CSC and also continues some of the language that is not necessarily relevant in the full funding context.

D. Other CSC Responsibilities.

1. **Disputes.** Disputes over CSC should be resolved as either a formal declination or final offer rejection appeal or as a CDA claim under the Contract Disputes Act, P. L. 111-350, as amended. An informal conference (25 C.F.R. Section 900.153) or other alternative dispute mechanism (25 C.F.R. Section 900.217) may also be useful in resolving disagreements over CSC. When it is unclear whether a dispute should be resolved as a declination or a CDA claim, the Associate Director of Self-Determination Services, Office of Direct Service and Contracting Tribes (ODSCT), should be contacted for possible referral to the IHS Headquarters Leadership Team.
2. **Pre-Award Declination Appeals.** Declination appeals may arise from a pre-award decision to decline a proposal, in whole or in part; a pre-award decision to decline a proposed amendment to an award; or any of the other reasons cited at 25 C.F.R. Subpart L, Section 900.150. Declination appeals are most likely to occur as a result of disagreements over an awardee's new or expanded CSC request (paragraph 6-3.4B). Declination appeals must be processed pursuant to 25 C.F.R. Subpart L, Sections 900.150 through 199.177.
3. **Appeals of Rejections of Final Offers.** Final Offer appeals may arise out of a pre-award decision by the IHS to reject, in whole or in part, a Final Offer submitted by a compactor when it is unable to reach agreement with the IHS on the

terms of a compact or FA, including funding levels. Final Offer appeals must be processed pursuant to Section 507(c)(1) of the ISDEAA, as amended, and any regulations promulgated there under.

4. **Post-Award Contract Disputes Act Claims.** ~~Disputes over CSC should be resolved as either a formal declination appeal or as a CDA claim. All CDA claims arise out of a~~ post-award disputes regarding an awarding official's decision related to a Self-Determination award, including post-award disputes over CSC funding, must be addressed under the CDA. Post-award contract disputes generally occurs as a result of the parties' failure to agree concerning the amount of DCSC due (paragraph 6-3.2D) or the amount of indirect ~~CSC funding or indirect-type costs~~ due (paragraph 6-3.2E), ~~or.~~ Post-award contract disputes must be handled pursuant to the CDA and 25 C.F.R. Subpart N, Sections 900.215 through 900.230.

5. **Pilot Projects.** The IHS may adopt pilot projects to incorporate innovative approaches to CSC funding issues to simplify and streamline the administration of CSC for Tribes and the IHS. The IHS Director may approve these pilot projects without requiring revisions in this chapter. Pilot projects must be optional for awardees ~~and,~~ of limited duration ~~and are subject to evaluation and review. There are currently several proposed CSC pilot projects (see Exhibits 6-3-E(1), E(2), and E(3)) that are intended to incorporate innovative approaches to CSC funding issues.~~ Upon the ~~approval and~~ completion and evaluation of these projects, this chapter may be amended following Tribal consultation to incorporate new provisions implementing these projects on a permanent basis.

Commented [A113]: Move this up from later in the paragraph. It is part of the current policy. The deleted phrase is a new part of the tribal recommendation and seems to limit the pilot project authority.

Commented [A114]: This is unclear – subject to evaluation and review by whom and for what?

6. **Contract Support Costs Budget Projections.** Each Area Director or his or her designee shall survey Tribes and Tribal organizations within that Area to develop accurate projections of CSC need at the end of the second and fourth quarter. This will include identification of the amounts required for any new and expanded projects as well as projections for the total ongoing CSC requirement for the following FY as well as estimates for the next two FYs. The information will be consolidated by the IHS Headquarters OFA and provided to Tribes and Tribal organizations as expeditiously as possible. The information will also be generated in the "Contract Support Costs Budget Projections (for the appropriate FY)," and submitted to the Director, Headquarters OFA, on or before September 30 of each FY and will be used by the IHS in conjunction with the Agency's budget formulation process.

7. **Common Language.** The IHS may from time to time propose common language for AFA and FA regarding CSC. This common language may be considered as an option for negotiations by the Tribes and IHS negotiators. Tribes and IHS negotiators should be made aware that specific CSC language in contracts,

compacts, AFA, and FA is negotiable and cannot be imposed on tribal contractors as a condition of contracting.

8. ~~IHS CSC Workgroup. An IHS CSC Workgroup, comprised of Federal and Tribal participants who possess knowledge of CSC issues, shall convene at least annually. The Workgroup will provide advice and guidance to the IHS in the development and annual evaluation of agency CSC policy, ongoing management of CSC issues, recommendations for and evaluation of CSC pilot projects, and development of any proposed common language (if any) for funding agreements. The CSC Workgroup is not a substitute for Tribal consultation.~~

6-3.6 CONTRACT SUPPORT COSTS REPORTS TO CONGRESS

- A. **Requirements for Reporting and Documenting Amounts of CSC Available, Needed, and Requested.** The Area Director or his or her designee shall maintain a historical record of funds negotiated and awarded in each of the categories listed below. Manual Exhibit 6-3-F contains a detailed sample of the database.

1. ~~Direct program funds~~ Secretarial amount
2. Pre-award costs
- ~~2-3.~~ Startup costs
- ~~3-4.~~ Direct ~~contract support~~ CSC fundings
- ~~4-5.~~ Indirect ~~cost~~ CSC funding for those awardees that use an IDC rate
- ~~5-6.~~ Indirect ~~CSC funding for those awardees that negotiate indirect-type costs~~ funding
- ~~6-7.~~ Indirect cost rates
- ~~7-8.~~ Types of bases
- ~~8-9.~~ Pass-through/exclusions
- ~~9-10.~~ Total ~~IDC base~~ (direct cost base)
- ~~10-11.~~ Direct CSC requirements (including the unduplicated DCSC requirement associated with sub-awards)

~~44.12.~~ Indirect CSC requirements (including the unduplicated ~~IDC~~ indirect CSC requirement associated with sub-awards)

~~12.~~ Funds required to be reprogrammed from other IHS sub activities to fully fund CSC costs.

~~44.13.~~ CSC funds remaining unobligated from prior years.

Commented [A115]: The last two items are not required by the ISDEAA. The omnibus bill making CSC indefinite could alleviate any need for reporting this information. The IHS is always able to provide additional reports when necessary.

~~B.~~ **Annual CSC Funding Report to Tribes** . Area Directors shall provide a report to the Director, OFA, no later than November 15 of each FY that includes those data elements identified above on a Tribe by Tribe basis for the previous FY ending on September 30. Before the report is submitted, the amounts included in the report shall be certified as accurate by the IHS Area Finance Management Officer (FMO) and the Area Director or his or her designee.

~~1.~~ A copy of the Area Director's report inclusive of all Area wide CSC funding information shall be provided by the Area Director or his or her designee to the awardees within that Area no later than November 15. Any corrections or changes to the data resulting from an awardee review must be certified by the Area FMO and a [revised / corrected] final Area Director's report shall be submitted to the IHS Headquarters OFA through the Area Director or his or her designee no later than December 15. A copy of this report shall also be provided by the Area Director or his or her designee to the awardees within that Area no later than December 15.

~~2.~~ The IHS Headquarters Director, OFA, shall consolidate all Area reports into the "IHS CSC Funding Report to Tribes." In doing so, the IHS Headquarters Director, OFA, shall, in consultation with the Director, ODSCT, and the Director, OTSG; provide a projection of the full CSC Requirement for the current and subsequent FY.

~~3.~~ The Headquarters Director, OFA, shall finalize the "IHS CSC Funding Report to Tribes" obtain concurrence from the Director, ODSCT, and the Director, OTSG; and transmit the report to the Director, IHS, for approval no later than February 1.

~~4.~~ After the "IHS CSC Funding Report to Tribes" is approved by the Director, IHS, the Headquarters Director, OFA, will provide copies to each Area Director or his or her designee, who shall then be responsible for promptly providing a copy of the IHS CSC Funding Report to Tribes to all awardees compacting or contracting within that Area. The IHS CSC Funding Report shall be furnished to tribes on or before March 1 of the year following the close of the fiscal year that is the subject of the Report.

- C. **Annual CSC Report to Congress** -The IHS also has a responsibility pursuant to Section 106(c)1-5 to provide a report to Congress on the implementation of the Indian Self-Determination and Education Assistance Act and its administration of CSC; including “an accounting of any deficiency in funds needed to provide required contract support costs to all contractors for the fiscal year for which the report is being submitted” ~~[the current fiscal year]. The Director shall rely on the data gathered in the Annual CSC Funding Report to Tribes to develop a CSC Report to Congress. In developing the CSC Report to Congress the Director shall carefully consider any comments received from Tribes on the IHS CSC Funding Report to Tribes~~

The Director, IHS or his / her designee shall also provide each Awardee with a copy of the CSC Report to Congress, once that report has been cleared by the Administration for submission to Congress.

Part 6, Chapter 3: Manual Exhibits

Commented [A116]: Exhibits are an important part of the policy – all exhibits will need to be reviewed before the policy can be finalized.

(ALL EXHIBITS WILL REQUIRE ADDITIONAL REVIEW AND CORRECTION AFTER POLICY REVIEW IS SUBSTANTIALLY COMPLETE)
