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**SUBMITTED VIA EMAIL**

March 27, 2018

RADM Michael D. Weahkee  
Acting Director  
Indian Health Service  
5600 Fishers Lane  
Rockville, MD 20857

***RE: Consultation on IHS Contract Support Cost Policy's "97/3 Option" for  
Determining Indirect Costs in Service Unit Shares***

Dear Acting Director Weahkee:

On behalf of the tribal representatives on the Indian Health Service (IHS) Contract Support Cost (CSC) Workgroup, I thank you again for attending our meeting on March 6-7, 2018 in Albuquerque. I hope it was helpful to hear, in person, the concerns of tribal leaders in response to IHS's unilateral decision to rescind, without notice or consultation, a key provision of the IHS CSC Policy, the so-called 97/3 option.<sup>1</sup> As you heard, the original negotiations resulting in this provision were long and hard. Neither federal nor tribal representatives were entirely happy with the result, but we made a deal. IHS's abrupt rescission of the 97/3 option damaged tribal representatives' trust in the agency. The Workgroup met in hopes of repairing this damage and developing a concrete recommendation on the 97/3 option.

Prior to the meeting, I had asked you to restore the 97/3 option pending Workgroup consideration and full tribal consultation, but you refused.<sup>2</sup> In Albuquerque, IHS presented data it said supported the agency's contention that the 97/3 option, in some circumstances, violates the Indian Self-Determination Act by resulting in overpayments due to duplication offsets lower than the "known" indirect costs associated with the Service Unit shares. The data turned out to be highly misleading, in that only one of the tribes had actually engaged with the agency on the duplication issue, no overpayment had actually occurred in any instance, and the so-called "known" duplicate amounts were in some instances simply unilateral agency assertions of an amount.

<sup>1</sup> This provision gives tribes, in certain circumstances, the option to avoid costly and contentious line-by-line duplication analysis by electing to deem 97% of Service Unit funding direct cost funding, and 3% indirect cost funding. The 3% is subtracted from the direct cost base for the purpose of indirect CSC calculations, and applied as an offset to the indirect CSC otherwise due.

<sup>2</sup> See my letter of January 3, 2018 and your letter dated February 16, 2018.

RADM Michael D. Weahkee

March 27, 2018

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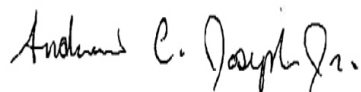
Tribal representatives found the agency's data flawed, inconclusive and misleading. Further, it also showed that in most cases the 97/3 approach provided a fair and efficient approximation. Tribes' initial recommendation was to reinstate the 97/3 option and deal with outliers on a case-by-case basis. IHS rejected this approach and insisted that the policy would be changed, either with or without work group participation. The Workgroup proceeded to develop consensus language that addressed IHS's specific scenario of concern—when IHS believes the 97/3 option will result in an overpayment because a higher duplication offset has been identified in a prior funding agreement—while preserving the 97/3 option in all other circumstances. IHS said it would issue a "Dear Tribal Leader" letter announcing the proposed change and setting a 30-day period for consultation.

It has now been three weeks since the meeting, and no consultation has been held or even announced. It is essential that consultation and final IHS decision-making be accomplished promptly. Because IHS has refused to reinstate the 97/3 option pending consultation, currently no tribe in any circumstance has the 97/3 option available. The Workgroup respectfully requests that IHS expedite the consultation and decision-making process, so that the 97/3 option is promptly restored.

At the March 7<sup>th</sup> meeting the CSC Work Group and you also agreed to organize a smaller agency-tribal technical workgroup to explore issues raised in connection with section 6-3.2E(2) of the Manual. The issue here concerns the determination of indirect-type costs for tribes and tribal organizations that do not have applicable indirect cost rates, and the interplay between that process and the duplication offset process laid out in subsection (3). It was agreed that this work would be completed reasonably quickly so that the full CSC Work Group could reconvene and discuss this matter within 45 to 60 days. Since 21 days have already passed without any notice about a meeting of the technical workgroup, we respectfully request that this matter be given high priority so that the agreed-upon timeline can be honored.

Thank you again for your personal involvement and interest in this issue. As always, the Workgroup remains committed to working with IHS to resolve CSC issues in accordance with the Policy's guiding principles of transparency and collaboration in the government-to-government relationship.

Sincerely,



Andy Joseph, Jr., NPAIHB Chairperson  
Colville Tribal Council Member

cc: IHS CSC Workgroup members