

Appendix A

Standards for the Review and Approval

of

Contract Support Costs

in the

Bureau of Indian Affairs

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GUIDELINES FOR PROPOSAL PREPARATION AND COST ANALYSIS OF ISD REQUESTS

INTRODUCTION

The Bureau of Indian Affairs (BIA) has developed its Contract Support Costs (CSC) policy with the active participation of Indian Tribes and interested tribal representatives. The BIA has always sought to maintain an openness concerning CSC issues and has consistently provided information, guidance, and technical assistance to Awardees in their development of CSC proposals. For some, CSC is a mystery – a confusing category of costs that are seemingly allowed or disallowed without rhyme or reason. For others, CSC provides “that little something extra” that can make the difference between having to sacrifice scarce program resources to cover administrative costs and actually building a stable tribal infrastructure capable of administering quality programs.

The following documents are intended to remove some of the mystery surrounding CSC. Awardees have requested that the BIA develop standards for CSC to be used in the review and approval of Indian Self-Determination (ISD) Fund requests. The Office of Management and Budget (OMB) has also supported the development of CSC standards as a means of ensuring consistency in the review of tribal ISD requests, and for assuring consistency between the BIA's and the Indian Health Service's methodologies for calculating contract support cost requirements. In order to help Awardees understand the BIA's rationale for approving or disapproving of tribal CSC requests, it became necessary to develop a set of consistent standards. In fiscal year 2004, the BIA initiated the process of developing standards for CSC. Consensus with tribal representatives has been achieved on most items of cost. On issues that have not been resolved, the Federal position is incorporated into the document and footnoted.

Adoption and dissemination of these standards are prerequisites for any delegation of ISD negotiation responsibilities to BIA Regional Offices. Area negotiators will also require some training in the application of these standards so that there will be broad acceptance and consistent application of the standards.

STATUTORY BACKGROUND

Sections 106(a)(1), (a)(2), (a)(3), (a)(5), and (a)(6) of Public Law (P.L.) 93-638, as amended, provide for funding of contract and compact awards for program costs and CSC.

Section 106 (a)(1) states that the amount of funding available to a self-determination contract shall not be less than the Secretary would have provided for the operation of the program.

Section 106 (a)(2) requires the Secretary to add CSC to the amount of the program funds the Secretary provides. Section 106 (a)(2) states that CSC is the cost of activities either not carried out by the Secretary, or carried out from resources other than those available under contract.

Sections 106(a)(2) and (a)(3) define CSC that are eligible for reimbursement. These costs are:

- Reasonable costs for activities that must be carried out by the Indian Tribe or tribal organization as a contractor/compact to ensure compliance with the terms of the contract and prudent management.

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- Reasonable, necessary, and allowable costs of the contractor/compactor that are allocable to the contract/compact based on applicable Federal cost principles.
- Costs that are not provided for under the allocation of program funds available for the contract/compact as defined in P.L. 93-638, as amended, Section 106(a)(1).
- Treated as either direct or indirect by the contractor/compactor based on applicable cost principles and the contractor/compactor's cost allocation policy.

Direct Contract Support Costs (DCSC) are both non-recurring and recurring. Non-recurring DCSC are those costs generally required for the program to begin operations. These costs are also referred to as start-up costs. They are not intended to be an additional category. Costs for these activities are not contained in either the indirect cost pool or the amount computed pursuant to Section 106(a)(1). Recurring DCSC are those costs that are associated directly with the operation of the program.

Indirect costs (IDC) are costs (1) incurred for a common or joint purpose benefiting more than one contract objective and (2) that are not readily assignable to the contract/compact objectives specifically benefited without effort disproportionate to the results achieved. Indirect costs are not funded as direct program costs but rather are incorporated in the contractor/compactor's indirect-cost reimbursement plan as negotiated annually with the cognizant Federal agency.

For programs without negotiated IDC rates, indirect type costs consist of those that are normally found in IDC pools of contractors with rates, but are negotiated directly between the contractor/compactor and the BIA. Generally, these amounts are negotiated as a lump-sum amount. Both indirect and indirect type costs are awarded as non-recurring, as indirect amounts must be negotiated on an annual basis. Indirect costs generally fall into one of the following three categories: (1) management and administration; (2) facilities and equipment; and (3) general services and expenses.

OMB CIRCULAR A-87

OMB Circular A-87 contains cost principles for State, local, and Indian tribal governments. Most tribes and tribal organizations have adopted OMB Circular A-87 as their applicable cost principles. OMB Circular A-87 is useful as it defines the allowability of costs under Federal awards by applying the following three criteria. Costs must be: (1) allowable, (2) reasonable, and (3) allocable. These principles are incorporated herein and should be considered in terms of the allowability of CSC under BIA contracts and compacts. The following is copied from OMB Circular A-87, Attachment A:

1. **Factors affecting allowability of costs.** To be allowable under Federal awards, costs must meet the following general criteria:
 - a. **Be necessary and reasonable** for proper and efficient performance and administration of Federal awards.
 - b. **Be allocable** to Federal awards under the provisions of this Circular.
 - c. **Be authorized** or not prohibited under State or local laws or regulations.
 - d. **Conform to any limitations or exclusions** set forth in these principles [OMB Circular A-87], Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.
 - e. **Be consistent with policies, regulations, and procedures** that apply uniformly to both Federal awards and other activities of the governmental unit.
 - f. **Be accorded consistent treatment.** A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

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- g. Except as otherwise provided for in this Circular (OMB Circular A-87), be determined in accordance with generally accepted accounting principles.
 - h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.
 - i. Be net of all applicable credits.
 - j. Be adequately documented.
2. **Reasonable costs.** A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally-funded. In determining reasonableness of a given cost, consideration shall be given to:
- a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award.
 - b. The restraints or requirements imposed by such factors as: sound business practices; arms length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award.
 - c. Market prices for comparable goods or services.
 - d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.
 - e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.
3. **Allocable costs.**
- a. A cost is allocable to a particular contract objective if the goods or services involved are chargeable or assignable to such contract objective in accordance with relative benefits received.
 - b. All activities that benefit from the governmental unit's indirect cost, including unallowable activities and services donated to the governmental unit by third parties, will receive an appropriate allocation of indirect costs.
 - c. Any cost allocable to a particular Federal award or contract objective under the principles provided for in this Circular (OMB Circular A-87) may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons. However, this prohibition would not preclude governmental units from shifting costs that are allowable under two or more awards in accordance with existing program agreements.
 - d. Where an accumulation of indirect costs will ultimately result in charges to a Federal award, a cost allocation plan will be required as described in Attachments C, D, and E of OMB Circular A-87.

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CONCLUSION

In an effort to make CSC more understandable, the BIA is providing the following guidelines (standards) for CSC proposal development. The following pages provide the standards against which the BIA will review tribal CSC requests. The following are provided as guidelines only and are not intended to be read as regulations dictating allowable tribal CSC. These standards should be interpreted in such a way as to be consistent with the Indian Self-Determination and Education Assistance Act, as amended (Act), its implementing regulations, and the BIA CSC Policy.

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**GUIDELINES FOR PROPOSAL PREPARATION AND COST ANALYSIS OF ISD
REQUESTS FOR
START-UP SELF-DETERMINATION/CONTRACT SUPPORT COSTS**

START-UP CONTRACT SUPPORT COSTS: Start-up costs, as defined by the Act, are one time costs incurred either prior to or after award to plan, prepare for, and assume the operation of a Program, Function, Service, or Activity (PFSA). Start-up costs are not a recurring contract support cost required for the future ongoing operation of the program. Start-up costs can vary significantly from program to program depending on the existing capacity of the Awardee, and the size and scope of the proposed award.

Start-up costs must be reasonable and necessary and pay for activities that are not provided in the amount computed pursuant to Section 106(a)(1) or in the Awardee's recurring direct or indirect contract support costs.

START-UP COST – DURING THE INITIAL YEAR

Section 106(a)(5) of the Act states: "...during the initial year that a self-determination contract is in effect, the amount required to be paid under paragraph (2) [Section 106(a)(2)] shall include start-up 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 program, function, service, or activity that is the subject of the contract; and (B) to ensure compliance with the terms of the contract and prudent management."

Start-up costs include costs that occur after the award of the contract. Start-up costs are authorized pursuant to Section 106(a)(5) of the Act. They are costs that have been or will be incurred within the first year that the contract/compact is in effect and are necessary to plan, prepare for, or assume operation of the contract/compact. Start-up costs must be reasonable and necessary, and pay for non-recurring activities that normally are not carried on by the Secretary in the direct operation of the program or are provided by the Secretary in the support of the contracted program from resources other than those under contract. In addition, to the extent that any of these start-up costs are found to have been provided in the amount computed pursuant to 106(a)(1), or in the DCSC or indirect cost amounts, these duplicated amounts will not be allowable. Start-up costs cannot be used for costs that are otherwise provided for within program funding or for expanding program activities. As next discussed, start-up costs also include costs incurred before the award of the contract.

START-UP COST – BEFORE THE INITIAL YEAR

Section 106(a)(6) of the Act 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) [Section 106(a)(2)] if the Secretary does not receive a written notification of the nature and extent of the costs prior to the date on which such costs are incurred."

Pursuant to Section 106(a)(6) of the Act, start-up costs incurred before the initial year that a self-determination contract or compact is in effect are allowable only when the Secretary has been provided written notification of the nature and extent of the costs prior to the date on which such costs are incurred.

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Awardees are encouraged to estimate their costs accurately. Costs will not be disallowed in the event these costs otherwise found to be reasonable and necessary exceed the initial estimate.

The BIA has determined that the payment of start-up costs, including reimbursement of start-up costs already incurred, is contingent on the contract being finally awarded. If funds are not available to pay these costs in the year the contract is awarded, the BIA has determined, based on appropriation language, it is currently statutorily prohibited from paying them in future years (i.e., the CSC requirement for start-up costs cannot carry over from one fiscal year to the next). If the Awardee is not paid in the year the contract is awarded, the costs are never paid.

Start-up costs incurred prior to award are normally computed on the basis of actual expended costs; start-up costs to be incurred after the award date are awarded on the basis of a budget for costs submitted and negotiated with the BIA prior to final award.

The BIA only becomes liable to reimburse start-up costs incurred prior to the award date when the P.L. 93-638 contract or compact for the contemplated PFSA is actually awarded. There is thus a risk to a tribe that costs will be incurred in preparing to operate the contract that may not be reimbursed if:

- The tribe fails to notify the Awarding Official in writing of the nature and extent of the costs before they are incurred.
- Congress fails to appropriate sufficient (or any) CSC to fully pay the costs.
- Congress prohibits the BIA from paying the costs from the CSC appropriation.
- The tribe expends funds for activities or items that are outside the "nature" of the costs described in the pre-award letter.
- The tribe cannot provide documentation of the costs.
- The requested costs are not reasonable.
- The P.L. 93-638 contract proposal for which they are incurred is not awarded.
- The costs being requested have already been paid by the BIA through other means, such as another PFSA's 106(a)(1) amount, a Tribal Management Grant or other existing BIA grant or contract.

Awardees can reduce the risk associated with incurring start-up costs by ensuring that a pre-award letter is received by the BIA before the costs are incurred; maintaining close communication with the Regional Office regarding the reasonableness and nature of the costs being incurred; ensuring the estimated amount provided in the pre-award letter is sufficient to cover all the costs; and updating the pre-award letter as appropriate. Awardees should ensure that the description of the nature of the activities to be performed is inclusive enough to cover all potential activities needed to begin to operate the PFSA.

A pre-award request letter should address the unique needs of each tribe as it contemplates what it will require in the planning, preparation, and assumption of the contract. Awardees should provide additional letters if circumstances change or additional costs are anticipated.

The development of a proposal for start-up costs, including those incurred prior to the award, and the evaluation guidelines for each type of cost, are outlined on the following pages. The guidelines are for the development and evaluation of a proposal under typical circumstances. Some proposals will have unique circumstances that do not fit the criteria in these guidelines. In such cases, one must review the statutory intent and the BIA CSC Policy to determine if other costs will be required. In these circumstances, however, the Awardee should expect to furnish the BIA with documentation of the amounts, and reasons for the amounts, to reviewers at all levels of the BIA.

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<u>LINE ITEMS</u>	<u>GENERAL GUIDELINES</u>	<u>DOCUMENTATION</u>	<u>STANDARDS FOR REVIEW</u>
<p><u>PERSONNEL COSTS INCLUDING FRINGE BENEFITS</u></p> <p>Personnel costs are allowable for personnel to plan, prepare for, and assume operation of the program.</p>	<p>Generally personnel costs are allowable for these activities carried out by tribal employees, such as a Tribal Administrator, planner or other employees (to the extent not already paid for with indirect costs) who assist with the planning, development and improvement of management systems, or negotiations for program assumption.</p>	<p>Awardees must provide a budget and budget justification or a description of costs that are reasonable and necessary to plan, prepare for, and assume operation of the contract.</p> <p>Awardees must also provide documentation or careful estimates of the costs to be incurred. Awardees should keep careful financial records of these costs. Examples of data needed for review are: dates of service, hourly rate, estimated or actual number of hours billed, and purpose of the service</p>	<p>All costs must be reasonable and necessary to plan, prepare for, or assume the proposed contract.</p> <p>Costs may be considered duplicative if they have already been provided to an Awardee in the 106(a)(1) amount, the indirect cost amount, the indirect type cost amount, or paid under another BIA grant or contract.</p>

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<u>LINE ITEMS</u>	<u>GENERAL GUIDELINES</u>	<u>DOCUMENTATION</u>	<u>STANDARDS FOR REVIEW</u>
<p><u>SUPPLIES</u></p> <p>Costs for supplies are allowable to support the start-up activities only.</p>	<p>Costs of software or supplies may be allowable provided they support the activities necessary to plan, prepare for, and assume operation of the program, or the implementation of the systems developed.</p> <p>Cost of supplies necessary to develop inventories have generally not been allowed.¹</p>	<p>Awardees must provide a budget and budget justification or a description of costs that are reasonable and necessary to plan, prepare for, and assume operation of the contract or costs for implementation of the systems developed.</p> <p>Awardees must also provide documentation or careful estimates of the costs to be incurred. Awardees should keep careful financial records of these costs.</p>	<p>All costs must be reasonable and necessary to plan, prepare for, or assume the proposed contract.</p> <p>Costs may be considered duplicative if they have already been provided to an Awardee in the 106(a)(1) amount, the indirect cost amount, the indirect type cost amount, or paid under another BIA grant or contract.</p>

1. Some Tribal representatives feel that the cost for supplies should be allowed if the contract divides a program, the inventory is not transferred with the program, and the Tribe must build up an inventory of program supplies to operate the program.

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<u>LINE ITEMS</u>	<u>GENERAL GUIDELINES</u>	<u>DOCUMENTATION</u>	<u>STANDARDS FOR REVIEW</u>
<p><u>TRAVEL</u></p> <p>Travel costs are allowable for Tribal Board Members, tribal personnel, and consultants to plan, prepare for, and assume operation of the program.</p>	<p>This includes travel costs for staff, board members, and consultants to attend meetings and negotiations in preparation for program assumption</p> <p>Travel costs may be allowable for education, training, and developmental activities for either Board Members or tribal employees, provided that such travel is directly related to the program to be contracted</p>	<p>Awardees must provide a budget and budget justification or a description of costs that are reasonable and necessary to plan, prepare for, and assume operation of the contract.</p> <p>Awardees must provide documentation of the expenditures including the name or position of the traveler, the purpose of the travel, and the costs and duration of the trip.</p>	<p>All costs must be reasonable and necessary to plan, prepare for, or assume the proposed contract.</p> <p>Costs may be considered duplicative if they have already been provided to an Awardee in the 106(a)(1) amount, the indirect cost amount, indirect type cost amount, or paid under another BIA grant or contract.</p>

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<p><u>EQUIPMENT</u> Cost of equipment to support the PFSA is allowable.</p>	<p>The cost of equipment necessary to plan, prepare for, and assume the operation of a PFSA is allowable.</p>	<p>Awardees must provide a budget and budget justification or a description of costs that are reasonable and necessary to plan, prepare for, and assume operation of the contract.</p>	<p>All costs must be reasonable and necessary to plan, prepare for, or assume the proposed contract. Costs may be considered duplicative if they have already been provided to an Awardee in the 106(a)(1) amount, the indirect cost amount, indirect type cost amount, or paid under another BIA grant or contract.</p>

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<p><u>CONSULTANTS</u> Consultant costs are allowable to plan, prepare for, and assume the PFSA.</p>	<p>Consultant costs directly related to proposal planning, preparation, contract, compact and AFA development, negotiations, board training, management systems development, etc. are allowable.</p>	<p>Budgets and budget justifications are required in the ISD/CSC proposal, including estimates or bids from consultants for the work to be performed. Estimates should include the rate and time involved for each task to be performed.</p>	<p>All costs must be reasonable and necessary to plan, prepare for, or assume the proposed contract. Costs may be considered duplicative if they have already been provided to an Awardee in the 106(a)(1) amount, the indirect cost amount, indirect type cost amount, or paid under another BIA grant or contract.</p>

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<u>LINE ITEMS</u>	<u>GENERAL GUIDELINES</u>	<u>DOCUMENTATION</u>	<u>STANDARDS FOR REVIEW</u>
<p><u>OTHER</u></p> <p>Other costs are allowable to plan, prepare for, and assume the PFSA.</p>	<p>Awardees may incur other costs necessary to support the activities needed to plan for and start up the contract. These costs should be documented with a detailed description of the type and quantity and unit cost of the items and the need for such costs.</p>	<p>Budgets and budget justifications are required in the ISD/CSC proposal, including estimates of the reasonable and necessary costs to support the start-up activities.</p>	<p>All costs must be reasonable and necessary to plan, prepare for, or assume the proposed contract.</p> <p>Costs may be considered duplicative if they have already been provided to an Awardee in the 106(a)(1) amount, the indirect cost amount, indirect type cost amount, or paid under another BIA grant or contract.</p>