

ATTACHMENT 5

**DIRECT CONTRACT SUPPORT COSTS
BRIEFING PAPER**

D R A F T

Direct Contract Support Costs ("DCSC") represent the reasonable and necessary costs associated with a particular program which (1) must be incurred by a Tribe or tribal organization to carry out a BIA program under the Indian Self-Determination Act, but (2) are neither transferred by the BIA to the Tribe as part of the "Secretarial amount" covering the program, nor paid to the Tribe within the indirect cost pool.

DCSC costs, like other CSC costs, cover costs that are not included in the Secretarial amount. This can occur for a number of reasons. For instance, BIA programs do not pay for worker's compensation insurance. Instead, the federal government self-insures these costs and pays them as they are incurred. The government pays them from resources outside the program funds that are transferred to tribes as part of the Secretarial amount. Since tribally-operated programs must purchase worker's compensation insurance to prudently manage the programs, worker's compensation is a required DCSC cost.

DCSC costs, like other CSC costs, may therefore (1) represent costs incurred by the BIA at a different level than the program level that was transferred to the tribal contractor, (2) represent federal costs incurred outside the agency at the Departmental level, (3) represent federal costs supporting the BIA from agencies outside the Department, or (4) represent costs not incurred at all by the federal government, but which a tribal contractor must incur (such as various forms of insurance).

DCSC costs by their very nature are to be distinguished from indirect CSC costs. DCSC costs can be readily associated with a particular BIA program (or a set of BIA programs). Indirect costs, in contrast, are pooled together and accounted for together; they support all of a tribal contractor's programs whether funded by the BIA, IHS, DOEd., other agencies, or the Tribe itself. Examples of pooled indirect costs of this type are the costs of a financial management system or a payroll system. By their very pooled nature, indirect CSC costs cannot be divided and separately tracked without administrative efforts disproportionate to the results achieved. This is the basic OMB rule used by the BIA Inspector General to determine whether a cost is eligible for inclusion in a Tribe's indirect cost pool. If the cost can be separately tracked, it does not belong in the indirect cost pool.

Worker's compensation costs are a good example. Since such costs are directly attributable to particular positions (say, in a tribally-administered BIA law enforcement program), they can be readily tracked program by program. They therefore do not belong in a Tribe's indirect cost pool. The same is true of other fringe benefit costs associated with a Tribe's program personnel.

The IHS historical experience has been that roughly 20% of all CSC costs are DCSC costs, and that the overwhelming majority of those DCSC costs are personnel-related costs such as retirement, health insurance, unemployment insurance, worker's compensation, etc. Most of the tribally employed personnel in the IHS programs that are generating these DCSC costs are not doctors or nurses, because medical professionals in tribally-operated IHS programs tend to be *federal* employees who have been assigned to work for the tribes under the Intergovernmental Personnel Act. Thus, the IHS experience in this area since 1991 is helpful in developing a BIA position in the matter.

Although DCSC costs by their very nature are not indirect costs, the agency is nonetheless required by section 106(a) to recognize these costs. In addition, section 106(a)(3) requires that CSC costs, including DCSC costs, must not duplicate amounts paid in the Secretarial amount originally transferred to the Tribe with the BIA program. For most categories of DCSC costs, this is readily apparent by the very nature of the costs.

Examples of costs that IHS considers eligible DCSC costs are as follows:

- Unemployment taxes on direct program salaries;
- Workers compensation insurance on direct program salaries;
- Cost of retirement for converted civil service salaries;
- Insurance;
- Facilities support costs to the extent not already made available;
- Training required to maintain certification of direct program personnel; and
- 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 the 106(a)(1) amount.

**PROPOSED DIRECT CONTRACT SUPPORT COST
LANGUAGE TO ADD TO THE BIA ANNUAL CIRCULAR**

The BIA will recognize direct contract support costs and, within available appropriations, pay such costs together with indirect contract support costs. Direct contract support costs are the reasonable costs which must be incurred by a Tribe to carry out BIA programs under contract, but which (1) are not included in the Secretarial amount as a cost incurred by the BIA, and (2) are not included in a Tribe's indirect cost pool (i.e., because they are directly attributable to BIA programs without effort disproportionate to the result achieved). Examples of DCSC costs include:

- Unemployment taxes on direct program salaries;
- Workers compensation insurance on direct program salaries;
- Cost of retirement for converted civil service salaries;
- Insurance;
- Facilities support costs to the extent not already made available;
- Training required to maintain certification of direct program personnel; and
- 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 the 106(a)(1) amount.

Regional Area Offices should work with tribal contractors and self-governance tribes to help ensure that such costs are included in the annual determination of individual total tribal CSC needs that are forwarded to the Central Office.