

1.1 Purpose. When a Tribe enters into an agreement under the Indian Self-Determination and Education Assistance Act (ISDEAA), Public Law (P.L.) 93-638 (25 U.S.C. section 5301 et seq.), the Tribe is entitled to receive contract support costs (CSC) as provided by law pursuant to 25 U.S.C. section 5325. Congress has determined that the single greatest impediment to the success of Tribal self-determination was the failure to pay CSC. In 2006, the Bureau of Indian Affairs (BIA) and Tribes collaboratively developed National Policy Memorandum NPM-SELFD-1, Contract Support Costs, and NPM-SELFD-IA, Contract Support Costs Appendix A. This chapter replaces those policies.

The purpose of this policy is to provide guidance for the full payment of CSC and to ensure that the payment of CSC is accurate, timely, and meets 100 percent of the Tribe's CSC need as calculated under this policy. Further, this policy simplifies and streamlines CSC calculation to expedite payment, and explains how BIA calculates and pays CSC, as required by the ISDEAA.

1.2 Scope. This policy applies to all Indian Affairs (IA) employees and to agreements made under Title I and Title IV of the ISDEAA. This policy is not legally binding on a Tribe, unless otherwise agreed to by the Tribe and the Secretary, or otherwise required by law.

1.3 Policy. Section 106 of the ISDEAA authorizes funding for four types of CSC: pre-award, startup, direct, and indirect.

- Pre-award CSC are costs incurred before the start of an agreement.
- Startup CSC are costs incurred on a one-time basis during the initial year that the agreement is in effect.
- Direct CSC are costs incurred in connection with direct administration of the program.
- Indirect CSC are "any additional administrative or other expense[s] related to the overhead incurred by the Tribal contractor in connection with the operation of the program.

All costs associated with a program, including CSC, must be reviewed for reasonableness, allowability, and allocability based on the terms of the agreement and applicable cost principles. Further, all costs associated with a program, including CSC, must be reviewed for duplication of funding for cost among cost categories (section 106(a)(1) amount (Secretarial Amount), Direct CSC, Indirect CSC, Pre-Award Costs and Startup Costs). This policy must be liberally construed for the benefit of the Tribe.

1.4 Authority.

A. Statutes and Regulations.

- 1) 25 U.S.C. section 5301 et seq., ISDEAA
- 2) 25 CFR part 900, Contracts under the ISDEAA
- 3) 25 CFR part 1000, Annual Funding Agreements Under the Tribal Self-Government Act Amendments to the ISDEAA

B. Guidance.

- 1) 2 CFR part 200, Subpart E, Cost Principles
- 2) Internal Agency Procedures Handbook for Non-Construction Contracting Under Title I of the Indian Self-Determination and Education Assistance Act (July 28, 1999)(available online at: <http://www.bia.gov/cs/groups/xois/documents/collection/idcO13271.pdf>)

1.5 Responsibilities.

- A. **Assistant Secretary - Indian Affairs** is responsible for reviewing and approving the CSC Annual Report to Congress.
- B. **Director, BIA** discharges the duties delegated from the Principal Deputy Assistant Secretary - Indian Affairs to provide general oversight to the Office of Indian Services (OIS) to ensure national CSC policies are in accordance with the ISDEAA.
- C. **Deputy Bureau Director, OIS** provides direction and support for the execution and coordination of IA responsibilities in the implementation of the ISDEAA as it pertains to CSC. Oversees the development and implementation of national CSC policies in accordance with the ISDEAA and governing regulations.
- D. **Chief, Division of Self-Determination Services (SDS)** provides:
 - monitoring, guidance, technical support and advisory services, including the development of BIA processes and procedures for CSC pursuant to governing statutes, regulations and policies;
 - technical assistance and training on program-specific components and monitoring of compliance with applicable program requirements;
 - decisions, based on Awarding Official's recommendation, whether to approve or decline requests for pre-award and startup CSC funding, and issues declination

letters when requests for pre-award and startup CSC funding are declined, as described in sections 1.7 and 1.8 below.

- E. **Regional Directors, BIA and Director, Office of Self Governance (OSG)** are responsible for:
- the application of policies and procedures and implementation of ISDEAA within their administrative jurisdictional areas pursuant to governing statutes and regulations;
 - establishing policies and procedures;
 - ensuring the certified report described at section 1.13 of this policy is submitted by January 15 of each year, and the certified corrections or changes to the report as described at section 1.13 are submitted by March 15 of each year.
- F. **Awarding Officials**, as designated, are responsible for:
- negotiating and awarding CSC;
 - recommending approval or declination of pre-award and startup CSC funding requests, and assisting SDS in the approval/declination process, as described in sections 1.7 and 1.8 below;
 - identifying, correcting, and processing underpayments, overpayments and other adjustments of CSC, as described in sections 1.11 and 1.12 below;
 - providing each Tribe a copy of the Tribe's CSC data by January 15 of each year, as described in section 1.13 below.

1.6 Definitions.

Definitions can be found at 25 U.S.C. section 5304; 25 CFR sections 900.6 and 1000.2; and in the Internal Agency Procedures Handbook for Non-Construction Contracting under Title I of the ISDEAA.

1.7 Pre-Award CSC (25 U.S.C. section 5325(a)(6)).

Pre-award CSC are incurred to plan, prepare for, and assume the operation of a program that is the subject of a new or expanded agreement. To recover pre-award CSC, a Tribe must notify the Awarding Official (for self-determination contracts) or OSG (for self-governance funding agreements) in writing, detailing the nature and extent of the costs, before incurring the costs and before the initial year of the agreement. Pre-award costs will be reimbursed only if the Tribe gives the Awarding Official or OSG, as applicable, prior written notice of the nature and extent of the costs before they are incurred. Tribes are encouraged to collaborate with Awarding Officials or OSG for technical assistance to discuss eligible pre-award CSC.

The Awarding Official or OSG, as applicable, must: (1) review the proposed funding

request for pre-award costs for cost reasonableness, allowability, and allocability; (2) explain in writing which costs, if any, should be funded, and recommend a funding amount; and (3) forward the request and the recommendation, within 30 days of receipt of the request, to SOS.

SOS must (1) review the request and recommendation, (2) determine whether the costs are eligible pre-award costs, and (3) allocate funds for any award within 30 days of receipt of the recommendation. SOS will make a final decision to approve or decline a request after collaboration with the Tribe and the Awarding Official or OSG. If a request for pre-award CSC funding is declined in whole or in part, SOS must issue a declination letter to the requester identifying disapproved items within 90 days of the Secretary's receipt of the request. If a request for pre-award CSC funding is approved in whole or in part, the Awarding Official (for self-determination contracts) or OSG (for self-governance funding agreements) must ensure that there is no duplication of funding for cost among cost categories (Secretarial Amount, Direct CSC, Indirect CSC, Pre-Award Costs and Startup Costs).

The Tribe has the right to appeal the declination decision pursuant to 25 CFR section 900.31.

Pre-award CSC must be funded, by reimbursement, as a one-time, non-recurring payment and must be calculated based on actual expended costs.

1.8 Startup CSC (25 U.S.C. section 532S(a)(S)).

Startup CSC are incurred on a one-time basis during the initial year that an agreement is in effect. To recover startup CSC, a Tribe must provide the Awarding Official (for self-determination contracts) or OSG (for self-governance funding agreements) a written budget identifying such costs. Tribes are encouraged to collaborate with Awarding Officials or OSG for technical assistance to discuss eligible startup CSC.

The Awarding Official or OSG, as applicable, must: (1) review a funding request for startup costs for cost reasonableness, allowability, and allocability; (2) explain in writing which costs, if any, should be funded, and recommend a funding amount; and (3) forward the request, within 30 days of receipt, along with a written recommendation, to SOS. SOS must (1) review the request and recommendation, (2) determine whether the costs are eligible startup costs, and (3) allocate funds for any award within 30 days of receipt of the recommendation.

SOS will make a final decision to approve or decline a request after collaboration with the Tribe and the Awarding Official or OSG. If a request for startup CSC funding is declined in whole or in part, SOS must issue a declination letter identifying disapproved

items to the requester within 90 days of the Secretary's receipt of the request. If a request for startup CSC funding is approved in whole or in part, the Awarding Official (for self-determination contracts) or OSG (for self-governance funding agreements) must ensure that there is no duplication of funding for cost among cost categories (Secretarial Amount, Direct CSC, Indirect CSC, Pre-Award Costs and Startup Costs).

The Tribe has the right to appeal the declination decision pursuant to 25 CFR section 900.31.

Startup CSC must be funded by reimbursement as a one-time, non-recurring payment and must be calculated based on actual expended costs.

1.9 Direct CSC (25 U.S.C. section 5325(a)(3)(A)(i)).

Direct CSC (DCSC) need must be calculated annually by the Awarding Official (for self-determination contracts) or OSG (for self-governance funding agreements) as follows:

DCSC = (current Tribal budgeted salary cost [not including fringe] of section 106(a)(1) programs) x 18%.

DCSC is part of the direct cost base from which indirect CSC is calculated.

1.10 Indirect CSC (25 U.S.C. section 5325(a)(3)(ii)).

Indirect CSC must be calculated by the Awarding Official (for self-determination contracts) or OSG (for self-governance funding agreements) based on the Tribe's current approved IDC rate(s), as follows:

Indirect CSC = Current approved IDC rate(s) x (the Secretarial Amount awarded to the Tribe, minus exclusions and pass-through).

If the Tribe has no approved IDC rate or has an approved IDC rate that is over four (4) years old (e.g., in 2015, the latest approved rate issued for the years 2012, 2013, 2014, or 2015 is acceptable), BIA or OSG will negotiate with the Tribe a lump-sum amount for indirect-type costs or the Tribe can recover its total CSC need using the Simplified Method, if applicable. If the Tribe does not initiate any of these options, IA will not pay the Tribe any indirect CSC.

- **Negotiated Lump Sum Amount**

Tribes that met the single-audit threshold in the prior fiscal year and do not have an approved IDC rate that is four or fewer years old may negotiate with the Awarding Official or OSG, as applicable, a lump-sum amount for indirect-type costs. The

amount negotiated will be effective for the entire contract year and the Tribe will be required to have a new approved IDC rate or a new negotiated lump-sum amount for each succeeding contract year.

- **Simplified Method**

Tribes that did not meet the single-audit threshold in the prior fiscal year and do not have an approved IDC rate that is four or fewer years old, may have their indirect CSC calculated at 30% of the section 106(a)(1) amount ("Secretarial Amount") that the Tribe receives, minus exclusions and pass-through. The amount will be independently calculated each year.

1.11 Overpayment of CSC.

A CSC overpayment is any amount paid over the amount calculated under this policy. In order to facilitate equitable treatment and establish standard cutoff timeframes, a CSC overpayment is determined at the end of the Tribe's fiscal year, without regard to the later issuance of a different IDC rate for that period. The Awarding Official or OSG will follow a process which allows Tribes to respond to overpayment determinations or identify errors or corrections in CSC payment calculations and a process for repayment.

1.12 Underpayment of CSC or Other Adjustments.

A CSC underpayment is defined as "X" in the equation $C - P = X$, where C is the amount of CSC calculated under this policy at the end of the Tribe's fiscal year, without regard to the later issuance of a different IDC rate for that period, and P is the amount of CSC paid, and X is a positive number.

Tribes may notify Awarding Officials or OSG of possible CSC underpayments or other adjustments, errors, or corrections, as they are identified.

In order to facilitate equitable treatment and establish standard cutoff time frames:

- The IDC rate that will be applied is the applicable rate at the end of the Tribe's fiscal year. No adjustments to that IDC rate will be made after the end of the Tribe's fiscal year, without regard to the later issuance of a different IDC rate for that period.
- The Secretarial amount will generate CSC in the year in which it is awarded, regardless of the year for which funds used for the Secretarial amount were appropriated.

1.13 CSC Annual Report to Congress.

25 U.S.C. section 5325(c) requires that the BIA provide Congress with a detailed report on the implementation of the ISDEAA no later than May 15 of each year.

For this report, by January 15 of each year:

- Regions and OSG must provide each Tribe within their jurisdiction a copy of the Tribe's data that appears in the report, and at least 30 days to identify any errors or omissions in the Tribe's data.
- The Regional Director and OSG must submit to SDS a certified report for the previous fiscal year ended September 30. SDS must prepare the template for the report.

By March 15 of each year, the Regional Director and OSG must submit to SDS certified corrections or changes to the data which result from Tribal review. OIS must forward the report to the Assistant Secretary- Indian Affairs for review and approval by April 15, so that the report can be submitted to Congress by May 15. After the report is submitted to Congress, SDS will provide copies of the report to OSG and each Region. Each Region and OSG will provide a copy of the report to all Tribes within their jurisdiction.

1.14 Disputes.

Any unresolved disputes for any section within this policy will be handled according to the regulations at 25 CFR parts 900 and 1000.

Approval



Lawrence S. Roberts
Principal Deputy Assistant Secretary - Indian
Affairs

1/10/17

Date