

## “CONTRACT SUPPORT COSTS” UNDER THE INDIAN SELF-DETERMINATION ACT

- ☐ Under the Indian Self-Determination Act, Indian Tribes carry out essential governmental services such as health care, law enforcement, housing, education and other programs that the IHS and BIA would otherwise carry out in Indian country.
- ☐ **Every Tribe in 33 States operates one or more self-determination contracts**, from substance abuse programs to entire hospitals and police forces.
- ☐ Self-determination contracting has strengthened tribal institutions, increased local employment, and reduced the federal bureaucracy. It is also fully transparent through **independent annual audits**.
- ☐ “Contract support costs” (CSCs) for ISDA contractors cover the independently-audited fixed overhead costs that an ISDA contractor must incur to operate an agency activity (*i.e.*, insurance; annual audits; payroll administration, etc.).
- ☐ CSC’s are equivalent to “general and administrative costs” (G&A) required by government procurement contractors. Both costs are generally set by indirect cost rates that are issued by the federal government.
- ☐ **CSC shortfalls cost jobs**. Since contract support costs are fixed, tribal contractors must cover shortfalls in CSC payments by reducing funding intended for services through personnel reductions.
- ☐ CSC shortfalls penalize Tribes and their members for carrying out the Nation’s most successful initiative to strengthen Indian communities, by forcing program and personnel reductions.
- ☐ Due to CSC shortfalls, **tribally administered IHS and BIA facilities end up with less funding and fewer personnel than non-contracted IHS and BIA facilities providing the same services**.
- ☐ **The United States is liable in money damages for all CSC underpayments**. In *Cherokee Nation v. Leavitt* the Supreme Court held the United States liable for IHS’s failure to pay full CSCs in 1994-1997. In *Ramah Navajo v. Salazar*, 132 S. Ct. 2181 (2012), the Supreme Court reached the same conclusion over the BIA’s 1994-2001 CSC underpayments, and in *Arctic Slope v. Sebelius*, No. 2010-1013 (Fed. Cir. Aug. 22, 2012) the Federal Circuit reached the same conclusion as to IHS underpayments in 1999 and 2000.
- ☐ We project an FY 2013 requirement of \$575.8 million, but IHS has requested only \$476.4 million, leaving **a projected IHS shortfall of \$99.4 million**. The BIA projects a 2013 requirement of \$242 million, but has requested only \$228 million (see May 9, 2012 BIA SF Report released July 13, 2012). **IHS has not released any SF reports since March 2012, showing FY 2010 data**.
- ☐ **Every dollar in CSC shortfalls leads to reduced services and positions in tribally operated programs, and (for IHS contracts) also reduced collections from Medicare, Medicaid and private insurance (all of which fund additional services and positions). This compounds the damage suffered by tribal programs**. No similar impact is visited upon agency operations.
- ☐ All tolled, every \$10 million in lost CSC payments means 243 fewer health care jobs (including jobs that would be paid with third party collections), and at least 100 fewer social service jobs. The FY 2010 IHS increase alone produced 2,820 jobs.
- ☐ CSC appropriations can be obligated to existing tribal contracts within 10 days of agency apportionment. **CSCs directly fund jobs; and those jobs directly enhance services for health care, education, law enforcement and other essential governmental services across Indian country**.
- ☐ Unpaid CSCs represent less than 2% of the combined IHS and BIA appropriations.
- ☐ The deficit should not be reduced by singling out the tribally-operated portion of the IHS and BIA system, leaving untouched the agency-operated portions of those systems.
- ☐ **The United States should immediately negotiate a settlement of all CSC underpayments suffered by all tribal contractors from 1994 to the present. The United States should not erect technical barriers such as statutes of limitation or claim-presentment requirements. Congress should actively facilitate this process**.