### Indian Health Service

**Part 6 - Services To Tribal Governments And Organizations**

**Chapter 3 - Contract Support Costs**

<table>
<thead>
<tr>
<th>Title</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Introduction</strong></td>
<td>6-3.1</td>
</tr>
<tr>
<td><strong>Purpose</strong></td>
<td>6-3.1A</td>
</tr>
<tr>
<td><strong>Background</strong></td>
<td>6-3.1B</td>
</tr>
<tr>
<td><strong>Policy</strong></td>
<td>6-3.1C</td>
</tr>
<tr>
<td><strong>Authorizing Legislation</strong></td>
<td>6-3.1D</td>
</tr>
<tr>
<td><strong>Definitions</strong></td>
<td>6-3.1E</td>
</tr>
<tr>
<td><strong>Process</strong></td>
<td>6-3.2</td>
</tr>
<tr>
<td><strong>Determining Amounts of Startup, Direct, and Indirect CSC</strong></td>
<td>6-3.2A</td>
</tr>
<tr>
<td><strong>Determining CSC Requirements</strong></td>
<td>6-3.2B</td>
</tr>
<tr>
<td><strong>Startup and Pre-Award Costs</strong></td>
<td>6-3.2C</td>
</tr>
<tr>
<td><strong>Direct CSC</strong></td>
<td>6-3.2D</td>
</tr>
<tr>
<td><strong>Indirect Costs</strong></td>
<td>6-3.2E</td>
</tr>
<tr>
<td><strong>Alternative Methods for Calculating CSC Associated With Tribal Shares</strong></td>
<td>6-3.2F</td>
</tr>
<tr>
<td><strong>Funding</strong></td>
<td>6-3.3</td>
</tr>
<tr>
<td><strong>Pool No. 1 - ISD Fund</strong></td>
<td>6-3.3A</td>
</tr>
<tr>
<td><strong>Pool No. 2 - Prior Year CSC Funding that Remains Justified in the Subsequent FY (Ongoing Awards)</strong></td>
<td>6-3.3B</td>
</tr>
<tr>
<td><strong>Pool No. 3 - Contract Support Costs Increases/Shortfall Funds</strong></td>
<td>6-3.3C</td>
</tr>
<tr>
<td><strong>Roles and Responsibilities</strong></td>
<td>6-3.4</td>
</tr>
<tr>
<td><strong>Overview - Initial ISD Request Responsibilities</strong></td>
<td>6-3.4A</td>
</tr>
<tr>
<td><strong>Indian Self-Determination Request Negotiation</strong></td>
<td>6-3.4B</td>
</tr>
<tr>
<td><strong>Indian Self-Determination Request List</strong></td>
<td>6-3.4C</td>
</tr>
<tr>
<td><strong>Changes in Start Date</strong></td>
<td>6-3.4D</td>
</tr>
<tr>
<td><strong>Subsequent Funding Periods</strong></td>
<td>6-3.4E</td>
</tr>
<tr>
<td><strong>Other CSC Responsibilities</strong></td>
<td>6-3.4F</td>
</tr>
<tr>
<td><strong>Contract Support Costs Shortfall Report</strong></td>
<td>6-3.5</td>
</tr>
<tr>
<td><strong>Requirements for Reporting and Documenting Amounts of CSC Available, Needed, and Requested</strong></td>
<td>6-3.5A</td>
</tr>
<tr>
<td><strong>Annual Report</strong></td>
<td>6-3.5B</td>
</tr>
</tbody>
</table>
### Manual Exhibits Description

- **Manual Exhibit 6-3-A**: Title 25, Chapter 14, Miscellaneous, Subchapter II, Indian Self-Determination and Education Assistance, Part A, "Indian Self-Determination," Section 450j-1 and Section 450j-2
- **Manual Exhibit 6-3-B**: Contract Support Cost Calculation Based on a Detailed Analysis
- **Manual Exhibit 6-3-C**: Contract Support Cost Calculation Using the 80/20 Method
- **Manual Exhibit 6-3-D**: Allocation of Indian Self-Determination Funds Against Contract Support Costs Requirements for New and Expanded Awards
- **Manual Exhibit 6-3-E**: Allocation of Pool No. 3 Funds Against Overall Contract Support Costs Shortfall for Ongoing Contracts (Bottom-up Plus Proportionate Distribution)
- **Manual Exhibit 6-3-F**: Fiscal Year 2007 Contract Support Costs Shortfall Report
- **Manual Exhibit 6-3-G**: Fiscal Year 2007 Indian Self-Determination Funding Request
- **Manual Exhibit 6-3-H**: Standards for Review and Approval of Contract Support Costs in the Indian Health Service

### 6-3.1 INTRODUCTION

**A. Purpose.** This chapter provides guidance to both Tribal and Agency personnel in the preparation and negotiation of requests for contract funding in support of new and continuing Indian Self-Determination and Education Assistance Act (ISDEAA), Public Law (P.L.) 93-638, as amended, contracts and compacts. The chapter provides instructional guidance on the following:

1. determining amounts of startup, direct, and indirect contract support costs (CSC);
2. allocating pools of Indian Health Service (IHS) funding available for CSC;
3. prioritizing Tribal requests for CSC funding; and
4. reporting by the IHS to all Tribes and to the Congress.

These instructions are not regulations establishing program requirements and are issued in accordance with 25 Code of Federal Regulations (CFR) Section 900.5, which states:

“Except as specifically provided in the Act, or as specified in subpart J, an Indian Tribe or Tribal organization is not required to abide by any unpublished requirements such as program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Indian Tribe or Tribal organization and the Secretary, or otherwise required by law.”

The development of this chapter has involved the active participation of representatives from Indian Tribes. The procedures discussed here will be applied to contracts awarded pursuant to Title I of the ISDEAA, as amended, and to compacts awarded to Tribes that have been selected to participate in the Tribal Self-Governance Program pursuant to Title V of P.L. 93-638, as amended.

**B. Background.** All policies and circulars concerning the administration of CSC in the IHS have been developed and revised through coordination and consultation with Tribes and Tribal organizations. The CSC policies and circulars developed and revised to date include:


The change in this chapter, developed through consultation with Tribes and Tribal organizations, affects only the allocation methodology for CSC associated with new or expanded awards under the ISDEAA, P.L. 93-638, as amended, at Section 6-3.3A(3) and Manual Exhibit 6-3-D. All other aspects are unchanged.

The change is being temporarily implemented for the fiscal year (FY) 2007-2010 funding periods. To ensure responsiveness to the needs of Tribes in administering their health programs, and continued support of the IHS’s commitment to the Federal Government’s policy of Indian Self-Determination, the change will be monitored and fully evaluated during the FY 2010 funding period to determine if the change should be made permanent.

This chapter is the successor to the IHS Circular No. 2004-03.

C. **Policy.** The IHS will provide for a uniform and equitable system of distributing CSC funds to new and existing P.L. 93-638 compacts and contracts and preserve and support each awardee’s right to contract under P.L. 93-638.

D. **Authorizing Legislation.**

1. Transfer Act, Title 42, United States Code (U.S.C.) §2001

2. Title 42 CFR §36.3

3. Title I of P.L. 93-638, as amended

4. Title V of P.L. 93-638, as amended

E. **Definitions.**

1. **Award.** An agreement authorized under Title I (contract) or Title V (compact) of P.L. 93-638, as amended, including the associated annual funding agreement (AFA) or funding agreement (FA).

2. **Awardee.** A Tribe or Tribal organization that receives an award as defined above.

3. **Contract Proposal.** A proposal for programs, functions, services, or activities (PFSA) that the Secretary, Department of Health and Human Services (HHS), is authorized to perform, but which a Tribe or Tribal organization is not currently carrying out. The requirements of a Self-Determination contract proposal are found in 25 CFR Section 900.8.

4. **Contract Support Costs Available.** Total CSC funding allocated to an awardee (including any portion of Tribal shares that are available for CSC requirements pursuant to paragraph 6-3.2F of this chapter).

5. **Contract Support Costs Requirement.** The full amount of CSC need for new and expanded programs (plus ongoing contracted or compacted programs) as determined under this chapter pursuant to Section 106 of P.L. 93-638, as amended. (Manual Exhibit 6-3-A)

6. **Indian Self-Determination Fund.** Funds specifically appropriated by Congress to fund CSC requirements associated with new or expanded programs under the ISDEAA, as amended. In a FY where the Congress does not specifically appropriate funds for an ISD Fund, the ISD Fund will consist of those CSC funds identified by the Director, IHS, to provide CSC for new or expanded awards to the extent not prohibited by law.
7. **Indian Self-Determination Programs.** The PFSA associated with an ISD Fund request that are eligible for ISD funding in accordance with paragraph 6-3.3A of this chapter.

8. **Non-Indian Self-Determination Programs.** All awardee-operated PFSA, exclusive of PFSA associated with an ISD Fund request that are operated by an awardee in accordance with paragraph 6-3.3A of this chapter.

9. **Non-Recurring Funds.** Funds that require an annual rejustification and are awarded based on an annual resource allocation methodology that considers or is dependent on other factors (e.g., an indirect cost rate applied to a direct program base that may change the amount to be reimbursed from a single agency as the programs under contract continue to increase).

10. **Ongoing CSC Shortfall.** This is the remainder of the total CSC shortfall after subtracting the CSC shortfall associated with the awardee’s ISD programs.

11. **Programs, Functions, Services, and Activities.** The PFSA are those programs, functions, services, and activities that are contractible under the ISDEAA, as amended. Including those administrative activities that support, but are not a part of, service delivery programs that are otherwise contractible without regard to the organizational level within the HHS that carries out such functions (as authorized under P.L. 93-638, as amended).

12. **Recurring Funds.** Contract or compact funds that do not require annual rejustification to the Secretary are recurring funds. Annual increases may be provided through congressional increases or other resource allocation methodologies applicable to the respective funding category of the award.

13. **Self-Governance Request.** A self-governance request is any one of the following requests from a Tribe or Tribal organization. A request:
   a. to enter into the Self-Governance Program for the first time, including Title V; or
   b. to join an existing Self-Governance compact; or
   c. to negotiate for new or expanded programs in a subsequent year’s compact or FA from a tribe with an existing self-governance agreement.

14. **Total CSC Shortfall.** The difference between the total CSC requirement and the total CSC allocated to the awardee.

15. **Tribal Shares.** Refers only to an awardee’s equitable share of PFSA associated with Area Office or Headquarters resources (including Tribal shares of discretionary IHS grants). This definition was originally adopted and used in negotiating and awarding an AFA under Title III, P.L. 93-638, as amended, and is being consistently applied to Title I contracts and Title V compacts as authorized under P.L. 93-638, as amended. This term does not refer to an awardee’s equitable share of a service unit or program base, which may also be included in a negotiated FA.

**NOTE:** The term “Tribal shares” is used in this chapter to refer only to Area Office and Headquarters PFSA, notwithstanding the definition of Tribal shares set forth in Title V, Section 501(a)(8) of the ISDEAA, as amended.

6-3.2 **PROCESS**

A. **Determining Amounts of Startup, Direct, and Indirect CSC.** Sections 106(a)(1), (a)(2), and (a)(3) of the ISDEAA, as amended, provide for funding of ISD awards for program costs and CSC respectively. Section 106(a)(1) provides that:

“The amount of funds provided under the terms of self-determination contracts entered into pursuant to this
Act shall not be less than the appropriate Secretary would have otherwise provided for the operation of the programs or portions thereof for the period covered by the contract, without regard to any organizational level within the Department of the Interior or the Department of Health and Human Services, as appropriate, at which the program, function, service, or activity or portion thereof, including supportive administrative functions that are otherwise contractible, is operated."

In addition, Section 106(a)(2) provides that:

"There shall be added to the amount required by paragraph (1) contract support costs which shall consist of an amount for the reasonable costs for activities which must be carried on by a Tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management, but which:

a. normally are not carried on by the respective Secretary in his [her] direct operation of the program; or

b. are provided by the Secretary in support of the contracted program from resources other than those under contract."

And finally, Section 106(a)(3) provides that:

A. The CSC that are eligible costs for the purposes of receiving funding under this Act shall include the costs of reimbursing each Tribal contractor for reasonable and allowable costs of:

i. direct program expenses for the operation of the Federal program that is the subject of the contract, and

ii. any additional administrative or other expense related to the overhead incurred by the Tribal contractor in connection with the operation of the Federal program, function, service, or activity pursuant to the contract, except that such funding shall not duplicate any funding provided under Section 106(a)(1).

B. On an annual basis, during such period as a Tribe or Tribal organization operates a Federal program, function, service, or activity pursuant to a contract entered into under this Act, the Tribe or Tribal organization shall have the option to negotiate with the Secretary the amount of funds that the Tribe or Tribal organization is entitled to receive under such contract pursuant to this paragraph."

B. Determining CSC Requirements. Throughout the operation of the program by the awardee, total contract costs (including CSC) are eligible to be paid as either direct or indirect costs. Since Tribes often operate more than one program, many of the costs incurred by the awardee are paid through an indirect cost allocation process, usually negotiated by the "Federal Agency" as identified under the applicable Office of Management and Budget (OMB) Circular. The procedures below are intended to ensure that CSC requirements are accurately identified while avoiding any duplication of funding between CSC and PFSA funding amounts.

When awardees choose to use sub-awards with Tribes or Tribal organizations (that meet in all respects the requirements to contract directly with the IHS, but choose, through Tribal resolution, to subcontract to carry out IHS PFSA), to carry out all or part of the PFSA transferred, the eligible CSC costs of the Tribal sub-awardee may also be included in the CSC requirement of the awardee.

Section 106(a)(3) authorizes awardees to be paid CSC costs whether they are "indirect" in nature (benefitting multiple programs) or additional costs associated with operating a single program, except that such funding shall not duplicate any funding provided under section 106(a)(1).

To ensure there is no duplication of costs in the CSC amounts, the IHS will review the CSC request to identify any costs that duplicate costs incurred by the IHS in the operation of the program and included in the Section 106(a)(1) program funding to be transferred, or that may have been duplicated within the CSC.
amount. When the PFSA to be contracted have not previously been operated by the IHS, the identification
of the duplicative costs will be negotiated based on the program budget submitted by the awardee and a
budget from the IHS reflecting the expenditure patterns of how the Secretary would have otherwise operated
the PFSA. On rare occasions, the IHS has provided general health services to Indian beneficiaries by
purchasing care as opposed to providing services directly in an IHS facility. When Tribes contract to
assume control of these types of programs, the IHS must develop a profile to show indirect types of costs
that are funded within the program amount.

This profile is used as a basis to show the historical costs and amounts transferred with the program, and
for the purposes of determining whether duplication exists between amounts requested as CSC and
amounts provided as a part of the program.

For awardees with Indirect Costs (IDC) rates, the IDC agreement and proposal will be analyzed and costs
will be considered duplicative if the amounts historically used for specific categorical purposes under
Section 106(a)(1) are duplicated in the IDC pool.

For CSC on sub-awards, the costs and amounts requested for the sub-awardee will be analyzed. Amounts
may be considered duplicative to the extent that CSC funding for these costs has already been included in
the CSC requirement of the awardee.

When duplicative costs are determined and agreed on between the awardee and the Agency, they will be
deducted from the negotiated CSC requirement. This adjusted CSC requirement is the Section 106(a)(2)
amount that the awardee is eligible to receive, subject to available appropriations.

C. **Startup and Pre-Award Costs.**

1. Section 106(a)(5) of the ISDEAA, as amended, states:

   “Subject to paragraph (6), during the initial year that a self-determination contract is in effect, the
   amount required to be paid under paragraph (2) shall include startup costs consisting of the reasonable
   costs that have been incurred or will be incurred on a one-time basis pursuant to the contract
   necessary to plan, prepare for, and assume operation of the PFSA that is the subject of the contract;
   and to ensure compliance with the terms of the contract and prudent management.”

2. Section 106(a)(6) of the ISDEAA, as amended, 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) if the Secretary does not receive a written
   notification of the nature and extent of the costs prior to the date on which the costs are incurred.”

NOTE: Examples of startup and pre-award costs are described in the standards for the review and
approval of CSC in Manual Exhibit 3-6-H.

Startup costs for PFSA will only be provided to an awardee one time in the initial year of transfer, and
no additional startup costs will be justified if the PFSA is subsequently transferred to a sub-awardee.

Pursuant to Section 106(a)(6) of the ISDEAA, as amended, notification from awardees for pre-award
costs must clearly indicate the nature and extent of the costs to be incurred and such notification
must be provided in writing before any of the costs are actually incurred. Tribes should provide a pre-
award notice to the appropriate IHS Area Director as soon as they anticipate contracting or
compacting a PFSA, and before they incur any of the costs. If such a notice is received by any other
IHS Area Office, it should be immediately forwarded to the appropriate IHS Area Director. The review of
pre-award and startup costs by Area Office staff should ensure that there is no duplication with any
costs funded under a Tribal management grant, when appropriate.

D. **Direct CSC.** Direct contract support costs (DCSC) pay for activities that are not contained in either the IDC
pool (or indirect-type cost budget) or the amount computed pursuant to Section 106(a)(1). Direct contract
support costs may be incurred directly by the awardee or by an eligible sub-awardee. Direct contract
support costs amounts are awarded on a recurring basis.

1. Examples of DCSC are described in the standards for the review and approval of CSC in Manual Exhibit 3-6-H. These may include, but are not limited to:

   a. unemployment taxes on direct program salaries,
   
   b. workers compensation insurance on direct program salaries,
   
   c. cost of retirement for converted civil service and United States Public Health Service Commissioned Corps Officer salaries,
   
   d. insurance,
   
   e. facilities support costs to the extent not already made available,
   
   f. training required to maintain certification of direct program personnel, and
   
   g. 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 Section 106(a)(1) amount.

2. Funds for DCSC need not be rejustified each year and will be provided to the awardee on a recurring basis. Notwithstanding this provision, if a cost that has previously been funded as a DCSC is moved to the Indirect Cost Pool (See Section 6-3.2 E), the DCSC requirement shall be reduced. The amount of each awardee’s DCSC need shall be adjusted annually by the OMB non-medical inflation rate in order to account for the normal increased DCSC need. In accordance with Section 106(a)(3)(B) of the ISDEAA, as amended; however, the amount of funds needed for DCSC may be renegotiated on an annual basis at the option of the awardee. To the extent that a greater amount of DCSC need is agreed to, that additional requirement will be recognized as CSC shortfall and will be considered for funding under Pool No. 3 (See Section 6-3.3C). To the extent that the DCSC requirement is reduced, excess DCSC funds may first be used to fully fund the awardee’s IDC requirements before the IHS reduces any excess funds.

E. Indirect Costs. Guidelines for the Principles Involved in Negotiating Indirect and Indirect-Type Costs. A plan for the allocation of IDC is required to support the distribution of any IDC related to the awardee’s program. All IDC included in the plan are required to be supported by accounting records that substantiate the propriety of the indirect costs. The allocation plan should cover all IDC of the awardee and contain, but not necessarily be limited to, the nature and extent of services provided and their relevance to the awardee’s program; the item of expense to be included in the IDC pool; and the methods to be used in distributing costs.

Various OMB circulars establish principles and standards for determining IDC applicable to the awardee. Section 106(k), P.L. 93-638, as amended, has made modifications to the OMB cost principles otherwise applicable to awardees. See also the standards for the review and approval of CSC in Manual Exhibit 6-3-H.

In determining the amount of CSC required, Areas should review the awardee’s cost allocation plan, its associated IDC proposal, and approved IDC negotiation agreement. The allowable indirect costs of an eligible sub-awardee may also be included in the CSC requirement of the awardee when the sub-awards are excluded from the IDC base of the awardee, or are subject to a pass-through IDC rate. The awardee shall be responsible for providing documentation of these costs to the IHS.

1. Awardees with Negotiated IDC Rates. The amount of IDC expected to be incurred by awardees using rates negotiated with the cognizant Federal agency will be determined by applying the negotiated rate(s) to the appropriate direct cost base amount subject to special provisions relating to any Tribal shares included in the direct cost base, as explained in paragraph 6-3.2F. The amount determined as the awardee’s CSC requirement will be consistent with the individual
If an awardee’s IDC rate is applicable to an FY that is more than three-years old, the IHS will not provide IDC associated with the application of that IDC rate. In these cases, the Area will negotiate “indirect-type costs” with the awardee (see paragraph 6-3.2E(3) that follows). The rate applicable to the current FY is considered current, and the rate applicable to the previous FY shall be considered one-year old.

2. **Awardees Without Negotiated IDC Rates (Guidelines for Agency Negotiators).** A lump sum amount for “indirect type costs” may be computed for awardees that do not have formally negotiated agreements with their cognizant Federal agency for reimbursement under an IDC rate. This annual lump sum amount may be calculated by negotiating a fixed amount for “indirect-type costs.” Categories of costs often considered “overhead” or “indirect-type” are generally in the categories of:

- Management and Administration
- Facilities and Facilities Equipment
- General Services and Expenses

Indirect-type costs must be renegotiated not less than once every four years, but they can be renegotiated more frequently at the Tribe’s option. Examples of indirect and indirect type costs are:

<table>
<thead>
<tr>
<th>Management and Administration</th>
<th>Facilities and Facilities Equipment</th>
<th>General Services and Expenses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governing Body</td>
<td>Building Rent/Lease/Cost Recovery</td>
<td>Insurance and Bonding</td>
</tr>
<tr>
<td>Management and Planning</td>
<td>Utilities</td>
<td>Legal Services</td>
</tr>
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<td>Financial Management</td>
<td>Housekeeping/Janitorial</td>
<td>Audit</td>
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<td>Personnel Management</td>
<td>Building and Grounds</td>
<td>General Support Services</td>
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<td>Property Management</td>
<td>Repairs and Maintenance</td>
<td>Interest</td>
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<td>Records Management</td>
<td>Equipment</td>
<td>Depreciation/Use Fees</td>
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**F. Alternative Methods for Calculating CSC Associated With Tribal Shares.** If an awardee’s contract includes Tribal shares, the awardee shall elect the method for determining the CSC associated with the Tribal shares in one of two ways:

1. **Alternative A.** The awardee and the Area Director or his or her designee shall conduct a case-by-case detailed analysis (Manual Exhibit 3-6-B) of the “purpose for which the (Tribal share) funds were utilized by the Secretary.” Tribal shares will be reviewed to identify types costs that are duplicative of costs that are already included in the awardee’s IDC pool, or are proposed to be funded as DCSC. The costs already in the awardee’s IDC pool or DCSC budget will be considered as duplicative of the Tribal shares for purposes of funding IDC for administrative or “overhead” purposes (Section 106(a)(3)(A)(ii)). In determining whether such costs are duplicative, the review will consider both the cost category labels (travel, supplies, etc.) and how the IHS expended the funds.

2. **Alternative B.** The awardee and the Area Director or his or her designee will apply the following “split” of total Tribal shares, the 80/20 method (Manual Exhibit 3-6-C):

   a. Eighty percent of the Tribal shares amounts will be considered as part of the awardee’s direct program base (Section 106(a)(3)(A)(i)).

   b. Twenty percent of the Tribal shares amounts will be retained by the awardee and considered as available funding for administrative or “overhead” purposes (Section 106(a)(3)(A)(ii)).
If the amount set aside for CSC requirements (20 percent) exceeds the awardee’s negotiated CSC requirements, the awardee shall retain the excess funds for program purposes.

NOTE: The IHS and Tribes conducted a cost study of Area and Headquarters Tribal shares in FY 2000 and FY 2001 and found that the 80/20 split between program-type costs and CSC-type costs remains an appropriate allocation method. The IHS CSC Workgroup concluded that there was not sufficient data to warrant modifying the allocation methodology in FY 2002, but it recommended a periodic review of this issue to determine if a subsequent change to the allocation methodology is warranted. It was agreed if the split is modified in the future, it would not be retroactively applied because the 80/20 split was determined to be accurate for Tribal shares being transferred under this chapter and previous IHS CSC policies.

Once these 80/20 amounts are computed, they will be used in accordance with the terms of the rate agreement (or alternative method provided herein) for calculating the CSC requirement. The balance of the Tribal shares not considered as part of the direct program base will be considered available for CSC. Any excess CSC requirements not funded by the portion of the Tribal shares considered available for CSC will be eligible for payment as provided herein; the processes specified in this chapter for the allocation of funding in this pool will apply. Manual Exhibit 6-3-B illustrates how Alternative A (a detailed analysis) is calculated and Manual Exhibit 6-3-C illustrates how Alternative B (the 80/20 method) is calculated.

6-3.3 FUNDING

Funding for CSC is subject to the availability of appropriations as stated in Section 106(b) and Section 519(b) of the Indian Self-Determination and Education Assistance Act, as amended. In theory, CSC funding is composed of three “pools.” The first pool (Pool No. 1) is any funding increase appropriated for CSC associated with new and expanded awards. The second pool (Pool No. 2) is the total amounts awarded by the IHS in the prior year for direct and indirect CSC (the prior year’s “base”). The third pool (Pool No. 3) is amounts, appropriated for increases on the prior year “base,” such as mandatory increases or shortfall funds. Each pool has separate funding priorities and eligibility requirements.

A. Pool No. 1-ISD Fund

1. Eligibility. The ISD Fund covers CSC requirements associated with the following awards:

   a. An initial transfer of a PFSA previously operated by the IHS to an awardee, including the initial transfer of each Intergovernmental Personnel Act (IPA) agreement/memorandum of agreement (MOA) position to direct-hire, whether or not such transfer of the IPA agreement/MOA position to direct-hire occurs in the first year of the associated program transfer.

   b. Expansion of a PFSA through the assumption of additional shares of PFSA previously operated by the IHS, regardless of the organizational level at which the expanded PFSA was operated.

   c. Assumption of programs previously operated under awards to other awardees.

   d. New or expanded PFSA available due to new appropriations, excluding general program increases and increases for inflation, pay costs, population growth, and the Indian Health Care Improvement Fund.

2. Withdrawal. When an awardee withdraws a PFSA from an existing award between the IHS and a second awardee, who has been operating that PFSA on behalf of the first awardee, the existing CSC is subject to reallocation between the two awardees. In the absence of an agreement between the awardees, the existing CSC will be divided as follows:

   a. The DCSC is directly associated with the direct program funds and should be reallocated
proportionately between the awardees on the same basis as the direct program funds are reallocated.

b. Conversely, IDC funding should be applied first to the existing awardee up to the full amount that can be justified by that awardee. Excess IDC funds should then be transferred to the new awardee.

The new awardee is then eligible for ISD funds to recover any additional IDC requirements it has in accordance with the Pool No. 1 allocation process. If IDC funds were not sufficient for the first awardee, its additional IDC need shall be treated as shortfall and eligible for funding under Pool No. 3. The full IDC requirement of the new awardee should be considered for funding under its ISD Request.

3. Initial Funding Period - New and Expanded Contracts. Contract support cost funds for new and expanded programs will be allocated by IHS Headquarters as expeditiously as possible. Funding is provided to the extent available to each CSC request on the ISD list. The ISD list (“ISD Requests”) contains a listing of all requests for CSC funding. The funding is based on the total amount associated with the PFSA awarded from the date of assumption through the end of the FA performance period, not to exceed 12 months. Contract support costs funding will be determined as follows:

a. First, subject to paragraph 6-3.3A(3)g, the initial distribution of the ISD Fund will be made subsequent to July 3 of each FY; based on contract proposals received by July 3 of that FY. If the IHS and the Tribe fail to reach an agreement on the amount of the ISD Request by the time of the initial distribution of the ISD Fund, an appropriate amount will be identified and reserved for a subsequent distribution. All ISD Requests received prior to July 3 of the FY, (or by August 17 for a Final Offer from a Title V compactor), must be finalized for distribution in that FY.

b. For proposals submitted between April 1 and July 3 of each FY, or the PFSA awarded between July 3 and September 30 of each FY, an ISD Request must have been submitted on or before July 3, (or by August 17 for a Final Offer from a Title V compactor), to receive a portion of the ISD Fund distribution for that FY.

If no ISD Request is submitted in the current FY, the awardee may submit an ISD Request against the subsequent year’s ISD Fund if submitted before July 3 of that year, (or before August 17 for a Final Offer from a Title V compactor).

If the awardee fails to submit an ISD Request before July 3 of the subsequent FY, (or before August 17 for a Final Offer from a Title V compactor), the program amount will be included in the awardee’s ongoing shortfall calculation and CSC will only be funded through the next FY’s Pool No. 3 shortfall distribution.

c. For proposals submitted before April 1 and starting in the current FY, failure to submit an ISD Request before July 3 of that FY (or by August 17 for a Final Offer from a Title V compactor) will preclude the contractor from submitting an ISD Request in the subsequent year. Instead, the program amount will be included in the contractor’s ongoing shortfall calculation, and CSC will be funded only through the next FY’s Pool No. 3 shortfall distribution.

NOTE: If an awardee does not submit an ISD Request in time for the initial distribution of the ISD Fund, the potential exists that an award will not be made within the current FY, or that ISD funds will have been fully allocated and no ISD funds will be available for a subsequent distribution.

d. All ISD Requests submitted independently of a contract proposal must be reviewed within 90-days of receipt (or within 45 days of receipt of a final offer from a Title V compactor). (See also 6-3.4A below).

e. All ISD Requests will be funded by paying first the full startup and pre-award cost requirement negotiated under each ISD Request. If the ISD Fund is not sufficient to fully fund the total
startup/pre-award costs of all ISD Requests negotiated, the amount available will be divided against the total negotiated startup and pre-award costs of all negotiated requests.

f. New or expanded awards are funded at the average Level of Need Funded (LNF) paid to all existing, ongoing P.L. 93-638 awards (CSC associated with ongoing programs are not taken into consideration in this type of allocation). (See Manual Exhibit 6-3-D for a description and an example of this funding methodology.)

g. An allocation will be made by IHS Headquarters as expeditiously as possible based on all ISD Requests received and negotiated. An interim payment in advance of the initial distribution described in paragraph 6-3.3A(a) may be made to awardees earlier in the FY if the IHS determines that sufficient funds will be available to fund all expected new and expanded contracts or compacts to at least that same level during the balance of the FY.

h. If there are no ISD funds in the current FY to pay ISD Requests, all unfunded requests will be considered a part of the overall CSC shortfall for funding under Pool No. 3 in the current year and will not be considered for ISD funds in the subsequent FY.

i. If an awardee proposes to start a new or expanded activity for less than a full year, an annual amount for the ISD requirement will be computed consistent with the methodologies included in this chapter. Startup and pre-award costs should be identified at their full amount, and all other costs should be prorated to reflect the reduced award period in the first year of the award. Funding of the pro-rated amount in the first award period will be based on the CSC need attributable to that FY only.

j. When computing the amount to be paid for the subsequent year, the IHS shall ensure, to the greatest extent possible, that funds are available to cover the same proportionate share of the annual ISD Request paid on the partial year amount.

k. If ISD funding is insufficient to fund all new or expanded awards at the average CSC LNF paid to all ongoing P.L. 93-638, as amended, awards, then the IHS will allocate a percentage to each awardee with an approved ISD Request until the funding is exhausted (CSC associated with ongoing programs is not taken into consideration in this allocation). The remaining unpaid DCSC and IDC will be recorded as part of the overall CSC shortfall used in the allocation of Pool No. 3.

l. If excess ISD funds remain after paying all ISD Requests, as described in paragraphs 6-3.3A(3)e and 6-3.3A(3)f above, the remaining ISD funds will be added to Pool No. 3 (to the extent not prohibited by law) and be distributed according to the methodology described in paragraph 6-3.3C.

B. Pool No. 2 - Prior Year CSC Funding that Remains Justified in the Subsequent FY (Ongoing Awards).

1. The amount of CSC funds (excluding pre-award and startup costs) paid to an Area in any year will be paid to that Area as a recurring amount. Adjustments will be made in subsequent years only as new funds are available, or as Areas return CSC funds that they do not require.

2. As stated in paragraph 6-3.2D, DCSC funding is provided on a recurring basis. Pool No. 2 shall be increased from appropriated CSC increases by the amount needed to increase prior year DCSC funding by the national OMB non-medical inflation rate before adding funds to Pool No. 3.

3. All indirect CSC funds will be paid to the awardee as non-recurring funds. Each awardee’s requirement for indirect CSC shall be determined by calculating any changes in IDC rates, bases, and pools. Prior year funding for an awardee’s indirect CSC will not be reduced in subsequent years as long as the CSC funding for indirect CSC does not exceed 100 percent of the awardee’s total CSC requirement in the subsequent year (see 6-3.4E).

4. Upon receipt of its Pool No. 2 allocation, each Area shall only withhold amounts necessary to minimize the potential that an awardee will receive in excess of 100 percent of the awardee’s total CSC...
requirement based on currently available CSC data. Any amount so withheld shall be paid to the awardee if, prior to the end of the FY, the awardee has established that the payment of the amounts so withheld will not result in an overpayment for the current year. Any withheld amounts not so paid, shall be redistributed by the Area to Tribes with the greatest CSC needs so as to raise the minimum level of CSC being funded to the maximum percentage possible, given the available resources (bottom-up approach). If an awardee’s CSC base is not adequate to meet all of the awardee’s CSC requirements, following any Area redistribution of CSC, any shortfalls shall be considered for funding under Pool No. 3 according to the methodology provided in Manual Exhibit 6-3-E.

C. Pool No. 3 - Contract Support Costs Increase/Shortfall Funds.

1. Prior year funds provided for CSC to each awardee (excluding pre-award and startup costs), if justified in subsequent years, shall not be reduced by the IHS except as authorized in Section 106(b) of the ISDEAA, as amended. Awardees should expect to receive these funds continuously, if they continue to justify the same or greater annual need. If an awardee’s current CSC base is not adequate to meet all of the awardee’s CSC requirements, any shortfalls shall be considered for funding under Pool No. 3 according to the methodology provided in Manual Exhibit 6-3-E.

2. Several sources of funding may be available to fund these ongoing shortfalls in CSC. These sources include the following:

   a. Funds returned from non-recurring startup funding from the prior year, to the extent that they are available. Such funds may not be available under Pool No. 3 if the Director, IHS, has used the funds to address existing CSC obligations or significant inequities in CSC funding.

   b. Funds remaining, if any, from ISD appropriations after funding the total negotiated ISD requests for the FY, to the extent not prohibited by law (see Section 6-3.3A).

   c. Funds appropriated by Congress for general increases of IDC.

   d. Funds appropriated by Congress for CSC shortfalls.

   e. Funds received from any of the sources above shall be allocated to contractors in the ongoing Pool No. 3 to reduce their CSC according to the methodology provided in Manual Exhibit 6-3-E.

   f. The intent of this allocation is to provide greater equity in Pool No. 3 funding and to allocate a portion of available CSC shortfall funds to each awardee in proportion to the awardee’s CSC shortfall.

   g. In order to achieve a greater degree of equity in CSC funding among awardees and continue to move all awardees toward full funding of their CSC needs, the IHS will do the following: allocate 50 percent of the funds available under Pool No. 3 to Tribes with the greatest CSC shortfalls using a bottom-up allocation methodology; allocate the remaining 50 percent of the funds available under Pool No. 3 proportionately to all Tribes with a CSC shortfall.

   h. The distribution of funds from Pool No. 3 shall be made as expeditiously as possible. No later than March 30 of any FY.

      NOTE: The distribution of any excess ISD funding, if any, in Pool No. 3 will be made subsequent to July 3 of each FY.

   i. Areas must update the shortfall information used for the distribution of the Pool No. 3 fund (use the most current IDC rate and changes to the direct program base in the current year) before they provide any CSC shortfall distributions in order to ensure that no awardee is funded in excess of 100 percent of its total CSC requirement. It is not, however, intended that the shortfall report be re-calculated and the Pool No. 3 distribution altered, except to prevent such excess funding from occurring.
6-3.4 ROLES AND RESPONSIBILITIES

Awardees and IHS staff have distinct roles and responsibilities in facilitating the determination of Tribal CSC requirements and in the allocation of CSC resources. This section will describe the activities associated with the determination of initial Tribal CSC (ISD Fund) requirements; the activities associated with ongoing management of CSC requirements; and some of the ancillary CSC activities carried out by the IHS.

A. Overview - Initial ISD Request Responsibilities. Awardees must provide a detailed ISD Request to the Area Director or his or her designee. Awardees should be encouraged to complete their ISD Requests on forms developed by the IHS for that purpose (see sample ISD Request form in Manual Exhibit 6-3-G). The request must include a clear description of the requested CSC amounts to be negotiated (as specified at 25 CFR Sec. 900.8) along with supporting justification; the date that the PFSA are to be assumed; and an identification of the amount of program funding to be transferred. Additionally, the awardee is encouraged to provide a detailed line item Tribal budget for the Section 106(a)(1) amount to facilitate CSC negotiations. The Area Director or his or her designee will provide a copy of the negotiated ISD Request to the IHS Headquarters Office of Finance and Accounting (OFA), and a copy to the Office of Tribal Self-Governance (OTSG) in the case of a Title V compactor.

B. Indian Self-Determination Request Negotiation. The Area Director or his or her designee has the primary responsibility for negotiating the ISD Request with the awardee and forwarding the approved request to the Headquarters OFA for allocation from the ISD fund. If the Area Director or his or her designee and the awardee do not agree on an item(s) of cost, the Area Director or designee shall issue a partial declination of the awardee’s contract proposal in accordance with 25 CFR Sections 900.20 through 900.33. The declination must be issued within 90 days from the receipt of the awardee’s proposal (or in the case of a Title V awardee, within 45 days of the submission of a Final Offer, if any) unless the awardee has provided a written request for an extension in accordance with 25 CFR Section 900.17.

C. Indian Self-Determination Request List. The list of pending ISD Requests for each FY for the ISD Fund will be maintained by the IHS Headquarters Office of Tribal Programs (OTP) and distributed quarterly to the Area Director or his/her designee and to awardees on the list for the current FY. The list will include the following: the name of the awardee; the proposed start date; the date of request or proposal; an estimated amount of the program costs to be awarded, i.e., the Section 106(a)(1) amounts; the estimated amount of CSC approved; the estimated percentage of the approved CSC requirement to be awarded; and an estimate of any remaining ISD funds anticipated after subtracting all existing ISD Requests. The IHS Headquarters OTP will update the list of estimated amounts of CSC as additional data becomes available through negotiations. As soon as possible after the appropriation is signed, but not later than the 15th day of the month following the end of each quarter, the IHS will notify the awardees with pending ISD requests of the total amount of negotiated ISD Requests that are eligible for payment in the initial distribution of ISD funding, and the awardee’s calculated proportion of the ISD Request, if any, that can be expected to be paid by the IHS based on the ISD Requests received to date.

D. Changes in Start Date. Prior to actual startup, an awardee has the right to delay its start date, if in its sole discretion and absent a declination issued by the IHS, the expected amount of CSC funding to the awardee is insufficient to properly carry out the program. If an awardee elects to delay its start date, the Area Director or his or her designee will contact the awardee to acknowledge the change and to determine a new proposed start date. Delay of this start date to a subsequent FY shall not require an awardee to submit a new or revised CSC proposal, although it may require a revision or renegotiation of the CSC amounts, depending on the circumstances.

Alternatively, if an awardee believes it cannot operate the PFSA that it is contracting for due to the delay in CSC funding under the initial ISD allocation made after July 3, the awardee may delay its start date until the initial allocation can be made. At that time, the awardee will receive a prorated share of its CSC allocation.
in accordance with paragraph 6-3.3A(3)d. In the subsequent year, the IHS will provide this same proportionate share of the initial payment, to the greatest extent possible, annualized for the entire FY (See also Section 6-3.3 A(3)j).

E. Subsequent Funding Periods.

1. Beginning in year two, DCSC requirements will first be funded up to the total amount of the original ISD Request for the DCSC. The DCSC, along with other Section 106(a)(1) funds, will be considered part of the recurring base of the award. Funding increases will be paid based on congressional appropriations. The amount of the DCSC is provided to the awardee on a recurring basis and will not be reduced, but the amount may be renegotiated annually at the option of the awardee (See also Section 6-3.2D and Section 6-3.2D(2)).

2. All IDC funding paid in connection with an ISD request will be transferred to Pool No. 2, the “Ongoing Pool,” in year two. Thereafter, it will be paid on a non-recurring basis to the awardee and will recur in subsequent years to the extent it does not exceed 100 percent of the awardee’s calculated IDC requirement (See also Section 6-3.2E, Section 6-3.3B(3) and (4)).

3. When an awardee’s IDC rate is reduced, either because a provisional rate is made final or because a lower subsequent fixed-with-carry-forward rate is approved, the Area Director or his or her designee is required to determine if the reduction has resulted in the awardee receiving more IDC funding than is otherwise permissible under the new rate. If available IDC funding exceeds this new IDC requirement, excess IDC funds may first be used by the awardee to fully fund existing DCSC shortfall requirements before the IHS reduces any excess funds. The Area Director or his or her designee is required to collect excess CSC funds from awardees for redistribution to other Tribal contractors/compactors with identified shortfalls within that Area (see paragraphs 6-3.3B(3) and 6-3.3C(7)).

If the awardee refuses to execute a bilateral modification to return excess IDC funds, the Area Director or his or her designee will file a claim against the awardee in the amount of the overpayment in accordance with the Contract Disputes Act (CDA), P.L. 95-563, as amended, and 25 CFR Section 900.216.

4. Each Area Director or his or her designee will report to IHS Headquarters OFA any shortfalls in funding of direct or indirect CSC. Such shortfalls should be included in the required Reports to the Congress and reported to Tribes (See 6-3.5).

5. Startup funding does not recur to the awardee in year two. Instead, to the extent available, such funds shall be added to Pool No. 3 in the subsequent year. Startup costs not funded in the initial year of the award will neither be carried forward nor included in subsequent CSC shortfall reports. A graphic illustration of CSC is provided as follows:

STARTUP
(non-recurring to Area Awardee in year 2)

<table>
<thead>
<tr>
<th>DCSC - (recurring to Area and Awardee in year 2)</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>This is treated as recurring, i.e., not adjusted except pursuant to P.L. 93-638 in subsequent years.</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>IDC - (non-recurring to Awardee, recurring to Area)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The IDC base amount in subsequent years is described above in Pool No. 2. Any increase/decrease to the IDC base amount are governed by Pool No. 3. <em>This is also described above.</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Program Base - (recurring to Area and Awardee)</th>
</tr>
</thead>
</table>
F. Other CSC Responsibilities.

1. **Disputes.** Disputes over CSC should be resolved as either a formal declination appeal or as a CDA claim. An informal conference (25 CFR Section 900.153) or other alternative dispute mechanism (25 CFR Section 900.217) may also be useful in resolving disagreements over CSC. When it is unclear whether a dispute should be resolved as a declination or a CDA claim, the Associate Director of Self-Determination Services, OTP, should be contacted for possible referral to the IHS Headquarters Leadership Team.

2. **Pre-Award Declination Appeals.** Declination appeals may arise from a pre-award decision to decline a proposal, in whole or in part; a pre-award decision to decline a proposed amendment to an award; or any of the other reasons cited at 25 CFR Subpart L, Section 900.150. Declination appeals are most likely to occur as a result of disagreements over an awardee’s ISD Request (paragraph 6-3.4B). Declination appeals must be processed pursuant to 25 CFR Subpart L, Sections 900.150 through 900.177.

3. **Appeals of Rejections of Final Offers.** Final Offer appeals may arise out of a pre-award decision by the IHS to reject, in whole or in part, a Final Offer submitted by a compactor when it is unable to reach agreement with the IHS on the terms of a compact or FA, including funding levels. Final Offer appeals must be processed pursuant to Section 507(C)(1) of the ISDEAA, as amended, and any regulations promulgated thereunder.

4. **Post-Award Contract Disputes Act Claims.** Disputes over CSC should be resolved as either a formal declination appeal or as a CDA claim. All CDA claims arise out of a post-award dispute regarding an awarding official’s decision related to a Self-Determination award. Post-award contract dispute generally occurs as a result of the parties’ failure to agree concerning the amount of DCSC due (paragraph 6-3.2D), the amount of indirect or indirect-type costs due (paragraph 6-3.2E), or the allocation of CSC (paragraph 6-3.3B or 6-3.3C). Post-award contract disputes must be handled pursuant to 25 CFR Subpart N, Sections 900.215 through 900.230.

5. **Pilot Projects Contract Support Costs and Base Budgets.** There are currently several ongoing CSC pilot projects (including CSC base budgets) that are intended to incorporate innovative approaches to CSC funding issues. Upon the completion and evaluation of these projects, this chapter may be amended to incorporate new provisions.

6. **Contract Support Costs Budget Projections.** Each Area Director or his or her designee shall survey Tribes and Tribal organizations within that Area to develop accurate projections of CSC need on an annual basis. This will include identification of the amounts required for the ISD Fund and projections for the total ongoing CSC requirement for the following FY as well as estimates for the next two FYs. The information will be consolidated by the IHS Headquarters OFA and provided to Tribes and Tribal organizations as expeditiously as possible. The information will also be generated in the "Contract Support Costs Budget Projections (for the appropriate FY)," and submitted to the Director, Headquarters OFA, on or before September 30 of each FY and will be used by the IHS in conjunction with the Agency’s budget formulation process.

7. **Common Language.** The IHS may from time to time propose common language for FA regarding CSC. This common language may be considered as an option for negotiations by the Tribes and IHS negotiators. Tribes and IHS negotiators should be made aware that specific CSC language in contracts, compacts, and FA is negotiable.

8. **Contract Support Costs Meetings.** From time to time, the IHS will hold meetings that will be open to the public, in order to provide an opportunity for the free exchange of information related to the CSC and the IHS CSC policy. These meetings are not a substitute for Tribal consultation.
6-3.5 CONTRACT SUPPORT COSTS SHORTFALL REPORT

A. Requirements for Reporting and Documenting Amounts of CSC Available, Needed, and Requested. The Area Director or his or her designee shall maintain a historical record of funds negotiated and awarded in each of the categories listed below. Manual Exhibit 6-3-F contains a detailed sample of the database.

1. Direct program funds
2. Startup costs
3. Direct contract support funds
4. Indirect cost funding
5. Indirect-type cost funding
6. Indirect cost rates
7. Types of bases
8. Pass through/exclusions
9. Total IDC base (direct cost base)
10. Direct CSC requirements (including the unduplicated DCSC requirement associated with sub-awards)
11. Indirect CSC requirements (including the unduplicated IDC requirement associated with sub-awards)

B. Annual Report. Area Directors shall provide a report to the Director, OFA, no later than November 15 of each FY that includes those data elements identified above for the previous FY ending on September 30. Before the report is submitted, the amounts included in the report shall be certified as accurate by the IHS Area Finance Management Officer (FMO) and the Area Director or his or her designee.

1. A copy of the Area’s data shall be provided by the Area Director or his or her designee to the awardees within that Area no later than November 15. Any corrections or changes to the data resulting from an awardee review must be certified by the Area FMO and submitted to the IHS Headquarters OFA through the Area Director or his or her designee no later than December 15.
2. The IHS Headquarters Director, OFA, shall consolidate all Area reports into the “IHS CSC Shortfall Report.” In doing so, the IHS Headquarters Director, OFA, shall, in consultation with the Director, OTP, and the Director, OTSG, provide a projection of the CSC shortfall for the current and subsequent FY.
3. The Headquarters Director, OFA, shall finalize the “IHS CSC Shortfall Report,” obtain concurrence from the Director, OTP, and the Director, OTSG; and transmit the report to the Director, IHS, for approval no later than February 1.
4. After the “IHS CSC Shortfall Report” is approved by the Director, IHS, the Headquarters Director, OFA, will provide copies to each Area Director or his or her designee, who shall then be responsible for providing a copy of the report to all awardees compacting or contracting within that Area.