



SEP 24 2012

Dear Tribal leader:

I am writing to provide an update on contract support costs (CSC). Earlier this year, I sent two letters updating Tribes on our CSC consultations. As you may know, in June the Supreme Court rendered a decision on CSC claims against the Department of the Interior (Interior) in the case of *Salazar v. Ramah Navajo Chapter*, 132 S.Ct. 2181 (2012). The Supreme Court held that the Indian Self-Determination and Education Assistance Act (ISDEAA) “mandates that the Secretary [of the Interior] shall pay the full amount of ‘contract support costs’ incurred by tribes in performing their contracts.” *Id.* at 2186. The Supreme Court also agreed, however, that the “not to exceed” language of the annual appropriations acts “prevents the Secretary [of the Interior] from reprogramming other funds to pay contract support costs – thereby protecting funds that Congress envisioned for other [] programs, including tribes that choose not to enter [ISDEAA] contracts.” *Id.* at 2192.

Since June, the Administration has been reviewing the decision and its impact on the Indian Health Service (IHS or Agency), which was not a party to the *Ramah Navajo Chapter* case. We are aware that Tribes are interested in how IHS will implement the decision. Although IHS cannot discuss specific matters that are in litigation, we want to reassure Tribes that the Agency intends to follow the holding of *Ramah Navajo Chapter* when processing Tribal claims for additional CSC funding. In response to the decision, IHS will move into what we hope to be the final stage of the CSC litigation: engaging in the essential task of identifying “the full amount of ‘contract support costs’ incurred by tribes in performing their contracts.” *Id.* IHS will refer to contract records in its possession to identify the CSC incurred for each contract and to calculate any deficiencies in CSC funding, but the Agency also will need to rely on Tribes for additional documentation that helps identify the full amount of CSC incurred by each Tribe. Submission of such documentation with the claim letters to the Agency will help expedite the analysis and bring about a more timely resolution of Tribes’ claims for additional CSC funding. IHS appreciates the willingness of Tribes to continue to work in partnership with the Agency as we carry out the instructions of the Supreme Court. Together we can resolve these complex issues and move forward with the important work of providing quality health care for Indian people.

We understand that Tribes also are interested in how the decision will affect non-litigation matters and we are seeking Tribal input on such issues. Specifically, IHS is interested in Tribal perspectives on:

1. Pre-award issues – after the decision, IHS worked with Tribal lawyers to develop mutually acceptable language for ISDEAA contracts, compacts, and funding agreements for Tribes that want to change the language that is currently in their agreements. The new language acknowledges the Tribes’ right to funding of full costs incurred and estimates that amount in the agreement, while also limiting the amount IHS promises to pay from its capped CSC appropriation; the language reserves Tribes’ right to bring a

claim for unpaid CSC incurred. Negotiations have continued without major problems this summer, and we are grateful for the willingness of Tribes to find a mutually acceptable solution to contract language.

2. CSC reporting – IHS will work with Tribes on the usual schedule to develop the annual CSC deficiency report to Congress that reports the amount of CSC funding awarded to Tribes in the previous year and the estimated unpaid CSC (shortfall) for each Tribe in that year. IHS will continue to work closely with Tribes to ensure that the estimated amounts are reported accurately and consistently for all Tribes. The Secretary of Health and Human Services (Secretary) has cleared all final CSC Deficiency Reports through the fiscal year (FY) 2010 report and submitted the reports to Congress. The FY 2011 report is in the final stages of clearance by the Secretary and will be sent to Congress once cleared. The FY 2012 report is still in progress, as data continues to be gathered, and will be sent to Congress once it is finalized and cleared by the Secretary. IHS is working to develop a website where all of the final CSC Deficiency Reports to Congress will be posted for easy access by Tribes.
3. Appropriations – the Administration is reviewing the impact of the Supreme Court’s decision on the IHS annual appropriations and plans to discuss the issue with Tribes during the FY 2015 budget formulation process this fall. IHS is interested in hearing Tribal ideas on how to address their budget priorities in light of the decision, as well as in the context of the difficult budget climate we are facing.
4. CSC policy – The impact of the decision on the IHS CSC policy, which previously was under review by the CSC Workgroup, is also under review. We anticipate the IHS CSC policy will need to be revised as previously planned. The Agency understands that the revisions must now address the Supreme Court’s decision.

The purpose of this letter is to give Tribes an update on CSC and to request input on Tribal perspectives on the issues identified above. You are welcome to provide input on any of these topics. Your input will be helpful as the Administration reviews options for CSC matters following *Ramah Navajo Chapter*. We appreciate your understanding as we continue our review of the potential implications of the Supreme Court’s decision. The Administration understands how important CSC is to Tribes and recognizes the importance of Tribal consultation on the topic, even while several matters are still under review by the Administration.

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Please send your input by email to consultation@ihs.gov or by mail to Yvette Roubideaux, M.D., M.P.H., Director, Indian Health Service, 801 Thompson Ave, Suite 440, Rockville, MD, 20852 by November 30, 2012. Thank you for your input and partnership on this important topic.

Sincerely,

/Yvette Roubideaux/

Yvette Roubideaux, M.D., M.P.H.
Director