



FEB 13 2006

Dear Tribal Leader:

After careful deliberation and numerous discussions with Tribal Leaders and my executive staff, I have decided to allocate the fiscal year (FY) 2006 contract support costs (CSC) increase to address ongoing CSC shortfalls.

In FY 2006, the Indian Health Service (IHS) received a \$5 million increase in the CSC appropriation. Congress authorized an across-the-board rescission of .0476 percent (\$1.279 million) on the overall CSC appropriation account. Later, Congress authorized a second across-the-board rescission of 1 percent (\$2.674 million) in the final omnibus appropriation bill. As a result, the IHS was left with a minimal \$1.047 million increase over the FY 2005 CSC appropriation level.

Before considering the potential needs associated with new or expanded programs, we must consider the substantial shortfall associated with existing contracts and compacts. Recently, the Supreme Court addressed the issue of CSC funding in Cherokee Nation of Oklahoma v. Leavitt. Although not directly applicable to this situation, the decision of the court advises the IHS to address existing CSC awards to the extent appropriations are available to do so. Therefore, I am allocating the net FY 2006 CSC appropriation increase of \$1.044 million to address existing CSC shortfalls associated with ongoing contracts and compacts.

The IHS CSC Circular No. 2004-03 provides an allocation methodology for the distribution of shortfall funds available at the Headquarters level under Pool Number 3.

- Fifty percent of the funds is allocated to those awwardees with the greatest CSC need using a "bottom up" allocation methodology.
- Fifty percent is allocated proportionately to all tribes with a CSC shortfall.

This distribution will address some of the most disparate inequities experienced by Tribes and Tribal organizations (T/TO) contracting and compacting under the Indian Self-Determination and Education Assistance Act (ISDEAA), as amended. All T/TOs with a shortfall will receive some relief.

The effect of this decision is, regrettably, that there will be no Indian Self-Determination (ISD) Fund in FY 2006 from which to fund CSC associated with new or expanded contracts or compacts. Given the lack of ISD funding available for new or expanded awards, the IHS must now exercise caution in entering into new or expanded contracts or compacts. Language associated with new or expanded program assumptions must be clear as to the unavailability of ISD/CSC. If there is no agreement to this on the part of the Tribe, the new or expanded program request will likely be declined.

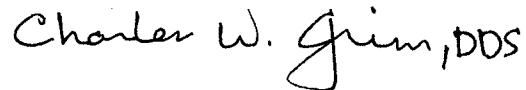
It is important to remember that this issue affects only those awards where a Tribe or Tribal organization proposes to **add new or expanded** programs, services, functions, or activities (PSFAs). Also, any declination that might arise as a result of a failure to reach agreement on this issue affects only the new or expanded PSFAs and not the existing award or existing PSFAs.

Area Offices have been provided instructions concerning the implementation of this decision. They were also provided with sample language that the IHS would find acceptable for transferring new or expanded PSFAs to Tribes. The precise language is negotiable, but it is critically important that there be agreement on the principles incorporated in that language before any award of new or expanded PSFAs is made.

I have asked the IHS/Tribal CSC Workgroup participants to discuss these issues further at their next meeting and advise me if they believe the Agency should consider any additional recommendations. The decision in this letter supersedes previous action on this issue. If you have any questions on this matter, please direct them to your local Area Director or Agency Lead Negotiator.

Thank you for your continued support.

Sincerely yours,



Charles W. Grim, D.D.S., M.H.S.A.
Assistant Surgeon General
Director

cc: Area Directors
Agency Lead Negotiators
Area Senior Contracting Officers
Contract Proposal Liaison Officers