

“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 35 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 IHS or BIA facility or program (*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 payment 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.
- In *Cherokee Nation v. Leavitt* the Supreme Court held the United States liable for IHS’s failure to pay full CSCs in fiscal years 1994-1997. The Court reasoned that ISDA contractors have no fewer rights to be paid than do other government contractors.
- Absent any increases, IHS projects an FY 2011 shortfall of \$140 million, while the BIA projected shortfall is \$64 million.
- Every dollar in CSC shortfalls leads to reduced services and positions, and (for IHS contracts) also reduced collections from Medicare, Medicaid and private insurance (all of which fund additional services and positions).
- 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.
- Appropriations for CSCs can be obligated to Tribes under existing contracts, within 10 days of apportionment to the IHS and BIA. CSCs directly fund jobs, and those jobs directly enhance services for health care, education, law enforcement and other essential governmental services across Indian country.
- The FY 2011 unpaid CSCs represent only 3.5% of the combined IHS and BIA appropriations.
- The deficit should not be reduced by singling out the tribally-operated portion of the IHS system for deeper cuts than the IHS-operated portion of that same system.
- A plan should be developed to close the CSC funding gap within 2 years (BIA) to 3 years (IHS). Future program increases should include CSC impact statements.
- The President and Congress should not permit Indian contracts to remain the only government contracts that go unpaid. Deliberately underpaying government contracts with Tribes raises grave constitutional issues.

Cherokee Nation and Shoshone Paiute Tribes v. Leavitt, 543 U.S. 631 (2005)

Two Tribes sued over IHS’s failure to pay the full amounts specified in their ISDA contracts. The Court held the United States liable. The Court found the government’s promises to pay indistinguishable from its promises to pay other government contractors. It also suggested strongly that Congress would be acting unconstitutionally if it attempted to cut off ISDA contract rights.