



# 2017 TRIBAL SELF-GOVERNANCE ANNUAL CONSULTATION CONFERENCE

APRIL 23-27, 2017 | SPOKANE CONVENTION CENTER-SPOKANE, WA  
PROGRESSIVE PARTNERSHIPS: INVESTING IN TRIBAL NATION BUILDING

## Recorder Form

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Recorder: Karen Fierro, Ak-Chin Indian  
Community, Self-Governance Director

Date: April 27, 2017

Session Title: Self-Governance Negotiations Best Practices

### Panelists:

Chris Manydeeds, Program Analyst, Office of Tribal Self-Governance, IHS

Hope Johnson, Agency Lead Negotiator, IHS

Myra Munson, of Counsel, Sonosky, Chambers, Sachse, Miller, Monkman & Flannery, LLP

### Summary of Issues and Items Discussed:

Chris Manydeeds: OTSG is the primary liaison and advocate for Tribes participating in Self-Governance. Oversees the implementation of Tribal SG legislation and authorities within the IHS under Title V of the ISDEAA. There is a compact and funding agreement; within these documents are the PSFA's, programs, services, functions, and activities. Tribes can take on one program at a time. There is flexibility to be able to redesign the PSFA's to tailor their needs. The Compact and FA establish a partnership between IHS and the Tribe. Title I has routine monitoring and reporting, none of that applies to Title V. The Compact is usually written once and talks about the government to government relationship between the United States and the Tribe. The negotiation team is broken out between the Tribe and Indian Health Service. One person in particular, there is an Agency Lead Negotiator, ALN, Tribal Council, Consultants, and Finance Staff. There is a planning, pre-negotiation and final negotiation and post negotiation phases. Planning emphasizes, because planning should be done to best determine the PSFA's. It is important to accomplish the planning phase to have a smooth process in the negotiation phase. The final negotiation can be in person or over the phone, once agreed upon, and then the document is ready for the signature between the Tribe and IHS. Tribal Shares means an Indian Tribes portion of all funds and resources for the PSFA's through the Program Shares, Area Shares, and HQ Shares. There are re-occurring and non-re-occurring funds as well. Once you sign the AFA, then the agreement stays in effect, for as long as you want it. There are some AFA's that were signed over 16 years ago, and they stay the same, until the Tribe comes back for negotiation. Title I- standard contract, in the Title V- 3 provisions, the health status reports, some Tribes gives data from GPRA. Also re-assumption, if anything goes wrong with the PSFA's, if there is a emergency, and complicated provision. There are hearings, meetings, etc.; they have never done a re-assumption to date. Some Tribes have a Multi-Year Funding Agreement, most Tribes do 3 year MFA's, can have one for 10 years to 100 years, however, it is more common to have a less amount of time, in case there are provisions in the law or changes to be able make changes if needed.

Hope Johnson (Bemidji Area): The key part of the negotiation is to establish a relationship with the Agency Lead Negotiator, bring them in during the planning stage. They need to know your story, what you are planning, why you are deciding to go into Self-Governance. Maybe it's because you want to provide a quality of care, you know your story and building a relationship with your ALN. Your ALN is your conduit to the entire team, and let the ALN know who is on your team. The ALN is working on the Area level and also her team is also Chris Manydeeds, etc. The decision to transfer some to the programs into a Title V Compact. The ALN is key relationship to maintain in the final negotiation and post-negotiation.

Myra Munson: Self-Governance is the Tribes ability to be self-determination. Self-Governance enables Tribes to make their own decisions. It is important to know why you are entering into negotiations and the want to improve healthcare for your tribal community. The Tribe's want to have the healthiest Community as possible, to have a healthy economy, and healthy people, it is long term thinking. It is important to see the commitment of the level of healthcare, forever. Generations and generations of the Tribe will benefit from the healthcare. My advice always is to know more than IHS. Don't stop during the negotiation period; know everything and more than Indian Health Service. It's your story; you have a right to know everything about IHS. Start in planning to get enough information as possible in the Planning Phase. The first thing you do, send a letter to IHS, how much it will cost to go through the planning and negotiation phase. Any pre-award cost can be recovered if you gave notice before hand. Estimate the startup costs on the planning and negotiation phase. You can get information SGCE, they can give you FA from other Tribes. They can send folks out to meet with your Tribal Council, etc. Talk to other Tribes to help you in the thought process, write to your Area office, HQ office, etc. Have a consistent team, have it broad base, include your Finance team involved. The people who run the health programs are good administrators; it is rare they are both a doctor and a good administrator. Make sure you have a financial system, to make sure you bill 3<sup>rd</sup> party billing. You need the finance person involved since day 1, who will be your point of contact for the duration of the project. Most of the time IHS is helpful, sometimes IHS is not as helpful, they don't know the program well enough, changing Area Directors frequently, in a place where you are taking a large program, there is a natural belief and they have been running the program this whole time. There could be some resistance, because some feel they were not doing a good job, as a sense of loss. Remind the IHS employees they can become an employee of the Tribe, to reassure them that the opportunity is there to work for you. It gives economic stability, when there are changes in leadership in state and federal governments, people wonder if they will have job, directly affecting their work. So, by ensuring them the opportunity is available to be a part of the Tribe's program. For example, the Cherokee Nation had a 98% retention level of Indian Health Service employees when they took over their facility. The Tribes have the law on your side, the Tribe has genuine control and Tribes are negotiating with the Secretary of Health and Human Services, not the Area Office. Tribes are powerful in this process; it's not always about being angry during sometime frustrating process. I encourage everyone to read the AHCA, and ISDEAA who is in the planning process. PSFA's is everything that IHS has authority to do, and the Tribe can determine which program, service, function, and activities fit in your Community. The protection of the Federal Tort Claims, if the description of the PSFA is in your Annual Funding Agreement it has the security.

#### Questions from the Audience:

Q1: During negotiations, are you told what you can spend the money on? Allowable costs vs. unallowable costs?

A1: Generally, that is not a part of negotiations; you most likely had to address the allowable costs. You follow basic audit rules. You can spend IHS funds for any health programs, etc. However, if there are program funds cannot be used on building costs. The beauty of Self-governance you can re-allocate. The basic principles are not using funds on lobbying efforts, etc.

Q2: WA Tribe- Compacted since 1993, they are interested in re-negotiation. What are good steps to take?

A2: Look at the ACA, look over the compact and if the agreement still fits your needs. Everyone should review your FA and look at them every year. Amend them every year, because of all the changes in healthcare. Most Tribes, have been doing more things on their own and could get the maximum benefit to carry out those programs. Have the Funding Agreement fully reflect the current programs since they can change every year.

Q3: Alaska Tribe- A funding agreement, can you negotiate help in running the clinic and administration? Nepotism and those who are working in the clinic who don't have any experience.

A3: There is TA available from IHS, Alaska is a little different, talk to the Area Director on how the Area office can help. In other Areas, could say, 'you took over the shares,' if you want our help our money is for the Tribes still under IHS. But you can Buy-Back Program and have IHS come back into the facility for training with health administration

Q4: Northeast Tribe- We are in the process in the Tribal Management Grant for a feasibility study. It has been difficult to get the information from the Area. Requested a FOIA, and received a 50 page document to look through to try and find the information. It is not that easy. We are several months in the process and there have been some delays. It is frustrating, we do have the right.

Northeast Tribe Consultant- Any thoughts on getting information?

A4: Keep evaluating the information, FOIA request in the last 4 years, increasingly lawyers from IHS, Tribes asking for information, somehow it transforms into a FOIA request, now they say they cannot talk to the Tribe anymore, can take up to short period to as long as 2 years. Be very weary on asking for a FOIA, exhausted all avenues before you ask for one. This should be a concern for the National TSGAC group on these practices to make Tribes aware of this. It really should be to support Tribes from IHS, keep asking questions.

Q5: In your experience, for going into SG, to be a qualified healthcare center? Medicaid and Medicare?

A5: The ALN, needs to know your story, they are your internal voice. The FOIA request is the last straw to pull, because it is a long process. Keep in mind, change in leadership, how come we cannot get more money. Unfortunately, there are walls involved, what you are entitled to is the money that IHS, what were they are spending 106A amount the year you take over, in addition to CSC and also grants to offset costs. You do have a right to serve non-Indian, is that you cannot diminish the program to the Indians that you took the PSFA in the first place. The non-Indian can bring other revenues through the 3<sup>rd</sup> party billing to reinvest the revenue back into the programs for Indians. Need to consider to if the Tribe will have enough providers to serve the non-Indians, and also serve the Indians. Cannot decrease the programs to Indians to serve non-Indians is important to consider. There is no down side to self-governance, but...there is no one left to blame...except Congress.

Follow Materials, Documents, Websites for Reference: