

THE GENERAL SERVICES ADMINISTRATION
CIVILIAN BOARD OF CONTRACT APPEALS

ARCTIC SLOPE NATIVE ASSOCIATION,
LTD.

Appellant,

v.

INDIAN HEALTH SERVICE; UNITED
STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES

Appellees.

CBCA 190-ISDA through 297-ISDA
(IBCA 4794-4803-2006)

NOTICE OF ADDITIONAL AUTHORITY

Appellee Indian Health Service (IHS) hereby gives notice of additional authority issued since oral argument on its Motion to Dismiss and Motion for Summary Judgment.

In the attached decision in *Southern Ute Indian Tribe v. Michael O. Leavitt, et al*, Docket No. Civil 05-988 WJ/LAM (D.N.M., October 18, 2007) (attached as AR Tab 42), the District Court holds that when Congress has restricted by statute the total amount of appropriations available for contract support costs, IHS may enter into an annual funding agreement providing that no funds are due the tribe for contract support costs until more funds become available. Slip op. at 8-9. Pertinent to this case, the Court states:

Plaintiff should have no objection to the inclusion of terms in the annual funding agreement which reflect the practical ramifications of the current statutory cap on available appropriations. On the other hand, if such language is omitted, it is abundantly clear that the Government will be forced to enter a contract which it must breach up front, *but which it will ultimately be allowed to breach*.

Slip op. at 8-9 (emphasis added). In this case, the appropriations acts from fiscal years 1998-

1999 contain similar restrictions to the appropriations acts at issue in *Southern Ute*. See Appellee's Brief in Opposition to Appellant's Motion for Summary Judgment and in Support of Appellee's Motion for Summary Judgment at 8 (discussing appropriations acts for fiscal years 1998 and thereafter).

In the other attached decision, this Board held that "[i]f a claim accrued -- if all events that fixed the alleged liability were known or should have been known -- more than six years before the claim was submitted to the contracting officer, the Board *lacks jurisdiction* to consider an appeal involving the claim." *Greenlee Construction, Inc. vs. General Services Administration*, CBCA 416 (March 6, 2007) (emphasis added, citations omitted) (attached as AR Tab 43). IHS and the Board agree that the Board has no jurisdiction to hear claims in this Appeal not presented within six years to the contracting officer.

Respectfully submitted,

S/ Sean Dooley

October 31, 2007

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the enclosed Notice of Additional Authority and Statement of Genuine Issues was sent via email and mail this 31st day of October 2007 to:

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