



September 2004. The contracting officer notified Appellant that IHS needed more time to evaluate their claims, and advised Appellant that a response would be provided within 120 days. Appellant filed this appeal with the Interior Board of Contract Appeals prior to the expiration of the 120-day period. Furthermore, the Board may not have jurisdiction over some of the claims because of the applicable statute of limitations and Appellant's failure to present some of the claims to the contracting officer.

3. Admits the allegations contained in paragraph 3 to the extent supported by the cited contracts, which are the best evidence of their contents; otherwise denies the allegations in paragraph 3.

4. Admits the allegations contained in paragraph 4 to the extent supported by the statute cited, which is the best evidence of its contents; otherwise denies the allegations contained in paragraph 4.

5. Admits the allegations contained in paragraph 5 to the extent supported by the statute cited, which is the best evidence of its contents; otherwise denies the allegations contained in paragraph 5.

6. Admits the allegations contained in paragraph 6 to the extent supported by the policy cited and relevant statute, which is the best evidence of its contents; otherwise denies the allegations contained in paragraph 6.

7. Admits the allegations contained in the first sentence of paragraph 7 to the extent supported by the statute cited, which is the best evidence of its contents; otherwise denies the allegations contained in the first sentence of paragraph 7. Admits the allegations contained in the second sentence of paragraph 7 to the extent supported by the cited contract, which is the best

evidence of its contents; otherwise denies the allegations contained in the second sentence of paragraph 7.

8. Admits to the extent there is a memorandum dated July 26, 1994, from the Portland Area Office, to the Office of Tribal Activities, citing a CSC request in the amount of \$186,979, and that the Tribe assumed responsibility the referenced service unit, Area Office, and Headquarters shares; otherwise denies the allegations contained in paragraph 8.

9. Admits the allegations contained in the first and second sentences of paragraph 9 to the extent supported by the cited IHS policy, which is the best evidence of its contents; otherwise denies the allegations contained in the first and second sentences of paragraph 9. Admits the allegations contained in the third and fourth sentences of paragraph 9 to the extent supported by the Indirect Cost Negotiation Agreement, dated December 18, 1992, which is the best evidence of its contents; otherwise denies the allegations contained in the third and fourth sentences of paragraph 9.

10. Admits the allegations contained in the first sentence of paragraph 10 to the extent that there are handwritten changes to the ISD request; otherwise denies the allegations contained in the first sentence of paragraph 9. Admits the allegations in the second sentence of paragraph 10 to the extent supported by the documents cited, which are the best evidence of their contents; otherwise denies the allegations contained in the second sentence of paragraph 10.

11. The allegations contained in paragraph 11 constitute Appellant's characterization of its case to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

12. Admits the allegations contained in paragraph 12 only to the extent that Appellant submitted an ISD Fund request, the Portland Area Office submitted the request to IHS Headquarters, who reviewed Appellant's request, and to the extent the process is supported by the IHS policy cited, which is the best evidence of its contents; otherwise denies the allegations contained in paragraph 12.

13. Admits the allegation in the first sentence of paragraph 13 only to the extent that the amount in the ISD fund was inadequate to fund all tribal contractor CSC needs for new and expanded programs; otherwise denies the allegations contained in the first sentence of paragraph 13. Admit the allegations contained in the second, third, and fourth sentences to the extent supported by the cited IHS policy; otherwise denies the allegations contained in the second, third, and fourth sentences in paragraph 13.

14. Denies the allegations in paragraph 14, except to the extent that an April 19, 1996, memorandum from the Portland Area Director, to the Office of Tribal Activities, resubmitted Appellant's \$186,979 CSC request. In 1996 and 1998, Appellant received additional CSC funding in the amount of \$186,058 and \$79,066, respectively.

15. The allegations contained in paragraph 16 constitute conclusions of law and Appellant's characterization of case law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

16. The first sentence in paragraph 16 is Appellant's characterization of the holding in *Cherokee* to which a response is not required. Appellee refers the Board to the decision in *Cherokee*, which is the best evidence of its contents. To the extent the allegations in the first sentence of paragraph 16 are deemed allegations of fact, they are denied, except to the extent that

IHS received a lump sum appropriation for those years. Admits the allegations contained in sentence two of paragraph 16 only to the extent that Appellant's ISD request was placed on the queue; otherwise denies the allegations contained in the second sentence of paragraph 16.

17. Denies the allegations in paragraph 17. The language of each Appropriation Act cited in paragraph 17 speaks for itself and is the best evidence of its contents.

18. The allegations contained in paragraph 18 constitute conclusions of law and Appellant's characterization of case law to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

19. Denies the allegations contained in paragraph 19.

20. Admits the allegations contained in the first and second sentences of paragraph 20 only to the extent that start-up costs are non-recurring and other direct contract support costs associated with new and expanded programs are considered to be recurring costs; otherwise denies the allegations contained in the first and second sentences of paragraph 20. Denies the allegations in the third sentence of paragraph 20. Admits the allegation contained in the fourth sentence of paragraph 20 only to the extent that additional indirect costs, to the extent available, would have been recurring to the Portland Area; otherwise denies the allegations contained in the fourth sentence of paragraph 20.

21. Denies the allegation contained in paragraph 21.

22. Paragraph 22 incorporates and realleges paragraphs 1 through 21, therefore a response is not required. To the extent a response is required the allegations are denied.

23. Admits the allegations contained in the first sentence of paragraph 23 to the extent supported by the statute cited, which is the best evidence of its contents; otherwise denies the

allegations contained in the first sentence of paragraph 23. The allegations in the second sentence of paragraph 23 are Appellant's characterization of the Cherokee decision to which a response is not required. Appellee refers the Board to the decision in *Cherokee*, which is the best evidence of its contents. To the extent the allegations in the second sentence of paragraph 23 are deemed allegations of fact, they are denied. Denies the remaining allegations contained in the third sentence of paragraph 23.

24. Denies the allegations contained in paragraph 24.

25. Denies the allegations contained in paragraph 25. The amounts specified in this paragraph were not properly presented to the contracting officer.

26. Denies the allegations contained in paragraph 26. The amounts specified in this paragraph were not properly presented to the contracting officer.

27. Denies the allegations contained in paragraph 27. The amounts specified in this paragraph were not properly presented to the contracting officer. Table 1 following paragraph 27 is Appellant's characterization of its case to which a response is not required. To the extent they may be deemed allegations of fact, they are denied.

28. Paragraph 28 incorporates and realleges paragraphs 1 through 27; therefore a response is not required. To the extent a response is required the allegations are denied.

29. The allegations contained in paragraph 29 are Appellant's characterization of its case to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

30. Admits the allegation contained in the first sentence of paragraph 30 to the extent supported by the statute cited. Admits the allegation in the second sentence of paragraph 30 to the extent it refers to the fiscal years at issue in this matter (1995-1998).

31. The allegations contained in paragraph 31 are Appellant's characterization of its case to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

32. The allegations contained in paragraph 32 Appellant's characterization of its case to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

33. Denies that plaintiff is entitled to the relief requested following paragraph 32, or to any relief whatsoever.

34. Denies each and every allegation not previously admitted or otherwise qualified.

#### AFFIRMATIVE DEFENSES

35. Appellant's claims are barred by the applicable statute of limitations.

36. Relief cannot be granted on Appellant's 1998 claim because the 1998 Congressional appropriation imposed a cap on contract support cost funds for that fiscal year.

37. The Board lacks jurisdiction to the extent that Appellant claims additional amounts not presented to the contracting officer in paragraphs 25 - 27.

WHEREFORE, Appellee requests that the Board enter judgment in its favor, order dismissal of the complaint, and grant Appellee such other and further relief as the Board may deem just and proper.

Dated: January 18, 2006

Respectfully submitted,



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U.S. Department of Health and Human Services

Attorney for Appellee


CERTIFICATE OF SERVICE

I hereby certify that I have made service to the foregoing ANSWER by distributing a copy of these documents via Federal Express on January 18, 2006, as noted below to:

Administrative Judge Bernard V. Parrette  
Interior Board of Contract Appeals  
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SIGNED:



Steven Poitra