



but if a response is required, it is denied. Deny that the present claims are “simple” contract claims because the claims cover approximately five years, include several contracts and funding agreements and were submitted without supporting documentation. Therefore, Respondents must collect numerous documents that are at least a decade old and analyze them in order to make an informed Contracting Officer’s decision.<sup>1</sup> Respondents also deny that the Appellant’s central issue for its claims have been resolved by the *Cherokee Nation v. Leavitt*, 543 U.S. 631 (2005) case.

3. Admit.

4. Paragraph 4 contains conclusions of law and Appellant’s characterization of provisions of the ISDEAA and Appellant’s Annual Funding Agreement (AFA), to which no response is required. To the extent it may be deemed to contain factual allegations, they are denied.

5. Paragraph 5 contains conclusions of law and characterization of statutes, to which no response is required. To the extent it may be deemed to contain factual allegations, they are denied.

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<sup>1</sup>It should also be noted that the Appellant are only one of numerous Tribes and Tribal organizations who have submitted claims to Respondents covering several years dating back to 1995 to the present. Currently, Respondents have received over 300 claims in the last year and most, if not all, of these claims do not include any supporting documentation.

6. Admit that IHS Headquarters allocates direct CSC on a recurring to the IHS Area Office after Congress enacts the IHS appropriation. Admit that direct CSC is added to the Tribes' contracts on a recurring basis after it is allocated to the Area Offices. The remainder of Paragraph 6 is Appellant's characterizations of provisions in IHS Circular 96-04, to which no response is required, but to the extent it may be deemed to contain factual allegations, they are denied.

7. Admit that the Area Office receives indirect CSC funds allocated for indirect costs on a recurring basis and those funds are available to other area Tribes if Appellant's funding need decreases. Admit that non-recurring funds are awarded on a non-recurring basis to Appellant. The remainder of Paragraph 7 is Appellant's characterizations of provisions in IHS Circular 96-04, to which no response is required, but to the extent it may be deemed to contain factual allegations, they are denied.

8. Admit that indirect costs (IDC) funds are designated non-recurring to allow the Area Office to reduce the amount of IDC awarded to any given Tribe if the prior year level of funding would exceed the present year's need. The remainder of Paragraph 8 is Appellant's characterizations of provisions in IHS Circular 96-04, to which no response is required, but to the extent it may be deemed to contain factual allegations, they are denied.

9. Admit only that the excerpt from the ISDEAA quoted in Paragraph 9 is quoted accurately except for punctuation omission in the quoted subparagraph E. Deny all remaining

allegations in Paragraph 9.

10. Deny Paragraph 10 except to admit that the excerpts from the ATHC Art. II §12(a) and §4(A) from the FY 1998 and 1999 AFAs are quoted accurately, and the Board is referred to the quoted documents for a complete statement of their contents.

11. Deny the first sentence of Paragraph 11. The second sentence of Paragraph 11 is Appellant's characterization of provisions in IHS Circular 96-04, to which no response is required. To the extent the second sentence in Paragraph 11 is deemed to contain factual allegations, they are denied. Deny third sentence except to admit that the excerpt quoted from the IHS Circular is quoted accurately. The fourth sentence is Appellant's characterization of provisions in IHS Circular 96-04, to which no response is required. To the extent the fourth sentence is deemed to contain factual allegations, they are denied. The quote in the fourth sentence is inaccurate as to the last word "amount" which should be "annual need." The Board is referred to IHS Circular 96-04 for a complete and accurate statement of its contents. Deny all remaining allegations in Paragraph 11.

12. Admit that the IHS Circular 96-04 provides a CSC methodology for FY 1997-1999 and that the IHS Circular is not the only factor in calculating what a Tribe may be awarded in its AFA. Deny all remaining allegations in Paragraph 12.

13. Paragraph 13 contains conclusions of law to which no response is required and the

Board is referred to the *Cherokee* decision for a complete and accurate statement of its contents.

Deny all remaining allegations in Paragraph 13.

14. Deny first sentence of Paragraph 14. Admit second sentence that Respondents prepared shortfall reports for FYs 1995-1999 and the Board is referred to the reports for a complete and accurate statement of their contents. Admit that the excerpts in the third sentence are quoted accurately from section 106(c) of the ISDEAA, and the Board is referred to the quoted documents for a complete statement of their contents. Deny fourth sentence except to admit Respondents, including the IHS Alaska Area Office, prepared shortfall reports for FYs 1995-1999. The fifth sentence is Appellant's characterization of the form of the shortfall reports, to which no response is required, but to the extent it may contain factual allegations, they are denied. Deny all remaining allegations in Paragraph 14.

15. Deny Paragraph 15 except to admit Respondents prepared shortfall reports for FYs 1995-1999 and the Board is referred to the reports for a complete and accurate statement of their contents.

16. Admit that new and expanded start up costs were paid from the Indian Self-Determination (ISD) Fund. Deny that Respondents "allocated" funds to the ISD because the ISD Fund was created by Congress. Deny that they ISD Fund was "always inadequate" because there was enough funds in the early 1990s to pay all the ISD requests.

17. Admit Appellant submitted a request for additional start-up costs associated with the development of services and programs necessary to provide expanded functions necessary under Title III of the ISDEAA. Admit that Appellant submitted an ISD Fund application and was placed on the ISD Queue #99-1 at No. 89 as of September 30, 1998. Admit that Appellant's ISD request totaled \$124,554, which included \$63,535 in start-up costs, \$24,230 in recurring direct costs, and \$36,789 in indirect costs. Admit that Appellant submitted a claim dated August 19, 1999 for FY 1999 in the amount of \$132,878. Admit that on April 17, 2000, Respondents denied Appellant's claim and this contracting officer's decision was not appealed. Deny all remaining allegations in Paragraph 17.

18. Admit that Section 4(A) of Appellant's FY 1997 AFA listed \$442,193 for CSC. Deny all remaining allegations in Paragraph 18.

19. Admit.

20. Admit that Congress increased appropriations for CSC in FY 1998 and 1999. Deny that there is a "stable-funding rule" and that applies in FY 1998 and 1999. The rest of Paragraph 20 contains conclusion of law and characterizations of statutes, contracts and the IHS Circular 96-04, to which no response is required. To the extent it may be deemed to contain factual allegations, they are denied.

21. Admit that Appellant sent letters to Respondents regarding unpaid CSC dated June

30, 2005. Admit that Respondents did not reply to the requests for FYs 1995-1998 within 60 days of receipt and that the claims were deemed denied by operation of law no later than August 30, 2005. Deny all remaining allegations in Paragraph 21.

22. Admit that the IHS shortfall reports for FY 1995 through 1997 say what they say for the purposes of providing budgetary information to Congress. The data used in the IHS shortfall reports are base on unaudited calculations. Deny all remaining allegations in Paragraph 22.

23. Deny.

24. Respondents' answers to Paragraphs 1 through 21 of the complaint are incorporated by reference.

25. Admit that Respondents paid Appellant at least \$442,193 for CSC in FY 1995, which included \$357,735 for indirect CSC and \$84,458 for direct CSC. Deny all remaining allegations and claims in Paragraph 25.

26. Respondents' answers to Paragraphs 1 through 22 of the complaint are incorporated by reference.

27. Admit that Respondents paid Appellant at least \$442,193 for CSC in FY 1996, which included \$357,735 for indirect CSC and \$84,458 for direct CSC. Deny all remaining allegations

and claims in Paragraph 27.

28. Respondents' answers to Paragraphs 1 through 25 of the complaint are incorporated by reference.

29. Admit that Respondents paid Appellant at least \$442,193 for CSC in FY 1997, which included \$357,735 for indirect CSC and \$84,458 for direct CSC. Deny all remaining allegations and claims in Paragraph 29.

30. Respondents' answers to Paragraphs 1 through 27 of the complaint are incorporated by reference.

31. Admit that Respondents paid Appellant at least \$442,193 for CSC in FY 1998, which included \$357,735 for indirect CSC and \$84,458 for direct CSC. Deny all remaining allegations and claims in Paragraph 31.

32. Respondents' answers to Paragraphs 1 through 29 of the complaint are incorporated by reference.

33. Admit that Respondents paid Appellant at least \$464,097, which included \$357,735 for indirect CSC, \$84,458 for direct CSC and \$21,904 in ISD Funds for CSC in FY 1999. Deny all remaining allegations and claims in Paragraph 33.

34. Paragraph 34 constitutes Appellant's prayer for relief to which no response is necessary. To the extent an answer may be deemed to be required, Respondents deny that Appellant is entitled to such relief, or to any relief whatsoever.

35. Respondents specifically deny all allegations in the complaint not otherwise answered herein.

AFFIRMATIVE DEFENSES

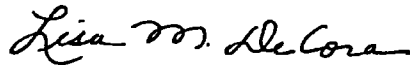
36. The claim concerning FY 1999 is barred based on claim preclusion and waiver.

Appellant received a contracting officer's decision for its FY 1999 claim in April 2000 and did not timely appeal.

37. The claims and appeals concerning FY 1996, 1997, and 1998 are barred because

Appellant's claims and requests for contracting officer's decisions was not presented in writing to the contracting officer within six years of the claims accrued. 41 U.S.C. § 605(a).

Respectfully submitted,



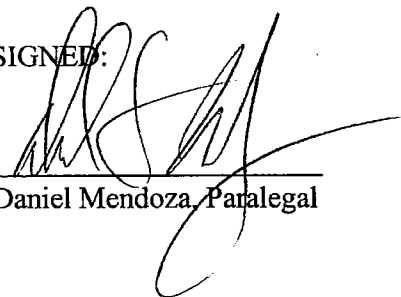
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Answer was served via facsimile and first class mail on June 15, 2006, to:

Appellant's Representative  
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SIGNED:



Daniel Mendoza, Paralegal