



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the General Counsel
General Law Division

C2-05-23 Central Building
7500 Security Blvd.
Baltimore, MD 21244

October 10, 2006

Administrative Judge Bernard V. Parrette
Interior Board of Contract Appeals
801 N. Quincy Street, Suite 300
Arlington, VA 22203

RE: Yukon-Kuskokwin Health Corp, Inc. v. Michael O. Leavitt, Secretary, et al.
IBCA 4785-2006 through IBCA 4791-2006

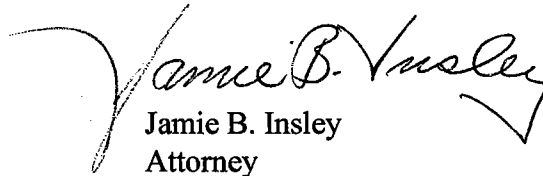
Dear Judge Parrette:

Please find enclosed:

1. An original plus one copy of the Government's Answer in the above captioned matters; and
2. A floppy diskette containing an electronic copy of the Government's Answer and this cover letter.

Should you have any questions, please contact me at 410.786.5770.

Respectfully submitted,


Jamie B. Insley
Attorney

cc: Lloyd Benton Miller, Esq. (w/o diskette)
Melanie Baca Osborne, Esq. (w/o diskette)

UNITED STATES DEPARTMENT OF THE INTERIOR
BOARD OF CONTRACT APPEALS

YUKON-KUSKOKWIM HEALTH)
CORPORATION, INC.)

Appellant)

v.)

Docket Nos. IBCA 4785-2006
thru
IBCA 4791-2006

MICHAEL O. LEAVITT, SECRETARY, U.S.)
DEPARTMENT OF HEALTH AND HUMAN)
SERVICES; CHARLES GRIM, DIRECTOR,)
INDIAN HEALTH SERVICE; UNITED STATES)
OF AMERICA)

October 10, 2006

Appellees)

ANSWER

Pursuant to the Special Rules of Practice Before the Interior Board of Contract Appeals, Section 4.107(b), Appellees, Michael O. Leavitt, Secretary, U.S. Department of Health and Human Services; Charles Grim, Director, Indian Health Service, and the United States of America (hereinafter collectively referred to as the Government), hereby answer the Complaint and assert affirmative defenses, stating:

First Affirmative Defense

The Government paid in full the \$103, 680 contained in Appellant's Claim 3, and asserts the affirmative defense of satisfaction.

Second Affirmative Defense

Appellant's claims are barred by laches.

Third Affirmative Defense

After the making of Contract No. 243-89-0001, ISDA Compact No. ISG950033-01, and ISDA Compact No. ISG950033-02, and before this action commenced, the Appellant and the Government entered annual funding agreements to set the amount of contract support cost compensation. To the extent Claims 1 through and including 7(c) exceed the negotiated funding agreement amounts, the Government asserts the Appellant has failed to state a cause of action upon which relief can be granted.

Fourth Affirmative Defense

As to Claim 7, including all subparts thereof, the Government asserts this Honorable Board lacks jurisdiction because the claim is not ripe pursuant to the Contract Disputes Act of 1978 (41 U.S.C. § 601 *et seq.*).

Fifth Affirmative Defense

The Government and Appellant entered into a settlement Agreement, effective April 3, 1996, which fully settled certain described contract support costs and related interest and attorney fees for Fiscal Years 1995, 1996, and 1997. Pursuant to the said Agreement, the Government paid to the Appellant, and the Appellant accepted, full payment of the described costs. To the extent the Agreement settled cost issues between the parties, the Government asserts the affirmative defenses of: (1) accord and satisfaction and (2) waiver and release.

Sixth Affirmative Defense

As to Claims 7(b) and 7(c), the Government asserts the claims for compensation related

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to Fiscal Years 1997 and 1998 are untimely filed in accordance with the provisions of the Contract Disputes Act of 1978 (41 U.S.C. § 601 *et seq.*), as amended by the Federal Acquisition Streamlining Act of 1994, and therefore this Honorable Board lacks jurisdiction to decide these claims.

Seventh Affirmative Defense

To the extent Appellant's claims are based on statutory authority and not contractual obligations, the Board lacks jurisdiction to decide Appellant's claims.

Eighth Affirmative Defense

The Board lacks jurisdiction over Appellees Michael O. Leavitt and Charles Grim because there is no applicable waiver of sovereign immunity.

The Government answers the numbered paragraphs of the Complaint as follows:

1. Denies. The Government respectfully refers the Board to the full text of the Indian Self Determination and Education Act (ISDA) for a full and complete statement of its contents.

2 (a) through (d). The Government admits that Paragraph 2 is Appellant's description of its claims. The remainder of Paragraph 2 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies.

3. Admits insofar as supported by the cited law, except as indicated in the Affirmative Defenses above. The Government respectfully refers the Board to the full text of "25 U.S.C. §§ 450m-1(a) and (d) of Title I of the ISDA; § 303(d) of the Tribal Self-Governance

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Demonstration Project Act, 25 U.S.C. § 450f note (1999)(repealed) (incorporating by reference the remedies specified in 25 U.S.C. § 450m-1(a) &(d) of Title I of the ISDA); 25 U.S.C. § 458aaa-10(a) of Title V of the ISDA (incorporating by reference the remedies specified in 25 U.S.C. § 450m-1(a) &(d) of Title I of the ISDA); 41 U.S.C. § § 605(c)(5), 606 & 607(d) of the Contract Disputes Act; and 43 C.F.R. § 4.100(b)” for their full and complete contents. To the extent Paragraph 3 asserts legal conclusions, no answer is required. Insofar as an answer is required, the Government denies.

4. The Government lacks sufficient information to either admit or deny, but demands proof of the assertions in Paragraph 4.

5. Admits the first and second sentences. The Government admits the third sentence describes how Appellant uses the terms, “Secretary,” “Director,” and “IHS.” The Government denies that the Secretary of the Department of Health and Human Services, the Director of the Indian Health Service, and the Indian Health Service are the same or otherwise “interchangeable.”

6. Admits.

7. Paragraph 7 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies, and respectfully refers the Board to the full text of 25 U.S.C. § § 450j-1(a)(2), (3) and (5); 25 U.S.C. § 450j-1(g); and Title I of the ISDA for a full and complete statement of their contents.

8. Paragraph 8 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies. The Government respectfully refers the Board to the full text of the “Tribal Self-Governance Demonstration Project [Act]” as amended, and

formerly reprinted at 25 U.S.C. § 450f note (1999) (repealed by Pub. L. No. 106-260, § 10, 114 Stat. 734 (2000)); Titles I and III of the ISDA; and in particular 25 U.S.C. § § 450j-1(a)(2), (3) and (5); 25 U.S.C. § 450j-1(g); and the funding provisions of Title I of the ISDA for a full and complete statement of their contents.

9. Paragraph 9 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies, and respectfully refers the Board to the full text of Title V of the ISDA, 25 U.S.C. §§ 458aaa -- 458aaa-18, 25 U.S.C. 450j-1(a)(1); Compact ISG950033-2; and 25 U.S.C. § § 450j-1(a)(2), (3) (5) and (6) for a full and complete statement of their contents.

10. Paragraph 10 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies. The Government respectfully refers the Board to the full text of Titles I, III, and V of the ISDA for a full and complete statement of their contents.

11. Paragraph 11 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies. The Government respectfully refers the Board to the full text of 25 U.S.C. § § 450j-1(a)(2),(3) and (5); 25 U.S.C. § 450j-1(g), Title 1 of the ISDA and Cherokee Nation v. Leavitt, 543 U.S. 631 (2005) for a full and complete statement of their contents.

12. Paragraph 12 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies. The Government respectfully refers the Board to the full text of 25 U.S.C. § § 450j-1(a)(2),(3) and (5); and 25 U.S.C. § 450j-1(g) for a full and complete statement of their contents.

13. Paragraph 13, including subparagraphs (a) through (c), asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies and respectfully refers the Board to the full text of Cherokee Nation v. Leavitt, 543 U.S.631 (2005); 25 U.S.C. § 450j-1(a); and 25 U.S.C. § 450j-1(b) for a full and complete statement of their contents.

14. Paragraph 14, including items (a) through (d), asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies. The Government respectfully refers the Board to the full text of the following for a full and complete statement of their contents:

- (a) YKHC's contracts and annual funding agreements;
- (b) 25 U.S.C. § § 450j-1(a)(2), 450j-1(a)(3), 450j-1(a)(5), 450j-1(b), 450j-1(d)(2), 450j-1(g) of Title I of the ISDA, as amended;
- (c) section 303(a)(6) of the former title III of the ISDA; and
- (d) 25 U.S.C. § 458aaa-7(c) & (d) of Title V of the ISDA.

15. Paragraph 15, including subparagraphs (a) through (g), asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies. Insofar as Paragraph 15, including subparagraphs (a) through (g), recites the content of damage claims of May 23, 1996, June 21, 1996, September 4, 1996, August 21, 2001, and September 28, 2005, the Government denies and asserts the communications described are the best evidence of their contents. The Government respectfully refers the Board to the full text of Ramah Navajo Chapter v. Lujan, 112 F.3d 1455 (10th Cir. 1997) for a full and complete statement of its contents.

16. The Government denies and asserts that any written communication of August 20, 1996 authored by Carol Sudder is the best evidence of its contents.

17. The Government denies and asserts that any written communication of January 27, 1997 authored by Kay Carpentier is the best evidence of its contents.

18. The Government denies and asserts that any written communication of March 18, 2003 authored by Kathleen Bradley-Nader is the best evidence of its contents.

19. The Government denies and asserts that any written communication of May 4, 2005 authored by Aaron P. Brown is the best evidence of its contents.

20. The Government denies and asserts that any written communications of November 8, 2005 and May 5, 2006 authored by IHS Director Grim are the best evidence of their contents.

21. Admits. The Government represents that draft decisions on four of the seven claims are nearing final decision, and in particular the decisions on claims one (1) and two (2) are near completion.

22. To the extent Paragraph 22 asserts Appellant "timely and properly submitted claims to the appropriate contracting officer for the Indian Health Service," this is a legal conclusion for which no response is required. To the extent an answer is required, the Government denies. The Government admits that it has not rendered any decisions on the referenced claims to date. The Government denies that "in each instance the contracting officers have failed to act on the claims within a reasonable time."

23. The Government reasserts its responses contained in the above numbered paragraphs.

24. Paragraph 24 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies.

25. The Government admits Paragraph 25 identifies Appellant's numbered subparagraphs of Paragraph 5. The Government asserts the remainder of Paragraph 25 contains legal conclusions for which no answer is required. To the extent an answer is required, the Government denies.

26. Paragraph 26 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies.

27. Paragraph 27 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies. The Government respectfully refers the Board to the complete text of Cherokee Nation v. Leavitt, 543 U.S. 631 (2005) and Ferris v. United States, 27 Ct. Cl. 542 (1892) for a full and complete statement of their contents.

28. Paragraph 28 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies.

29. Paragraph 29 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies. The Government respectfully refers the Board to the full text of 25 U.S.C. § 450j-1(b)(2) for a full and complete statement of its contents.

30. The Government reasserts its responses contained in the above numbered paragraphs.

31. Paragraph 31 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies. The Government respectfully refers the Board to the full text of Compact No. ISG950033-02 and 25 U.S.C. § 450j-1(b)(2) for a full and complete statement of their contents.

32. The Government admits that subparagraph 15(c) of the Complaint describes Appellant's Claim 3. As to the remainder of Paragraph 32, it asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies.

33. Paragraph 33 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies.

34. Paragraph 34 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies. The Government respectfully refers the Board to the complete text of Cherokee Nation v. Leavitt, 543 U.S. 631 (2005) and Ferris v. United States, 27 Ct. Cl. 542 (1892) for a full and complete statement of their contents.

35. Paragraph 35 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies. The Government respectfully refers the Board to the full text of 25 U.S.C. § 450j-1(b)(2) for a full and complete statement of its contents.

36. The Government reasserts its responses contained in the above numbered paragraphs.

37. Paragraph 37 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies. The Government respectfully refers the Board to the full text of 25 U.S.C. § 450j-1(c) for a full and complete statement of its contents.

38. The Government admits Paragraph 38 identifies the claim described in subparagraph 15(g)(ii) as Claim 7(b). The remainder of Paragraph 38 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies.

39. Paragraph 39 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies.

40. Paragraph 40 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies. The Government respectfully refers the Board to the complete text of Cherokee Nation v. Leavitt, 543 U.S. 631 (2005) and Ferris v. United States, 27 Ct. Cl. 542 (1892) for a full and complete statement of their contents.

41. Paragraph 41 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies.

42. Paragraph 42 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies. The Government respectfully refers the Board to the full text of 25 U.S.C. § 450j-1(b)(2) for a full and complete statement of its contents.

43. The Government reasserts its responses contained in the above numbered paragraphs.

44. Paragraph 44 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies. The Government respectfully refers the Board to the full text of Office of Management and Budget Circular A-122, 2 C.F.R. § 230.10(b), and Ramah Navajo Chapter v. Lujan, 112 F.3d 1455 (10th Cir. 1997) for a full and complete statement of their contents.

45. The Government admits Paragraph 45 identifies Appellant's claim in subparagraph 15(g)(iii) as Claim 7c. The remainder of Paragraph 45 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies.

46. Paragraph 46 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies.

47. Paragraph 47 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies. The Government respectfully refers the Board to the complete text of Ferris v. United States, 27 Ct. Cl. 542 (1892) for a full and complete statement of its contents.

48. Paragraph 48 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies.

49. Paragraph 49 asserts legal conclusions for which no answer is required. To the extent an answer is required, the Government denies. The Government respectfully refers the Board to the complete text of 25 U.S.C. § 450j-1(b)(2) for a full and complete statement of its contents.

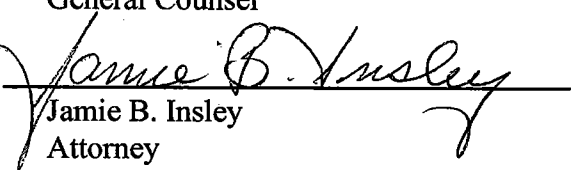
The Government specifically denies all allegations in the complaint not otherwise answered herein, and denies the Appellant is entitled to the relief requested.

WHEREFORE, the Government answers the Complaint and requests a dismissal thereof.

Respectfully submitted this 10th day of October, 2006.

DANIEL MERON
General Counsel

By:

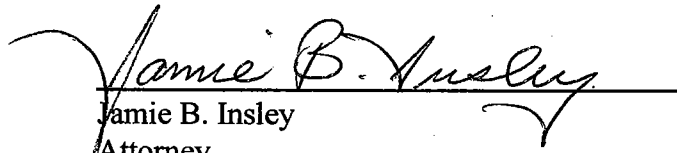

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of October, 2006, a copy of the foregoing Answer was served via facsimile and first class mail to:

Lloyd Benton Miller, Esq.
Melanie Baca Osborne, Esq.
Sonosky, Chambers, Sachse, Miller, & Munson, LLP
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Anchorage, Alaska 99501
FAX: 907.272.8332

A handwritten signature in black ink, reading "Jamie B. Insley", written over a horizontal line.

Jamie B. Insley
Attorney

U.S. Department of Health and Human Services