



Alaska Area Native Health Services  
4141 Ambassador Drive Suite 300  
Anchorage, Alaska 99508-5928

June 1, 2006

Mr. George Peter, Tribal Administrator  
Akiachak Native Community  
P.O. Box 51070  
Akiachak, AK 99551

**Subject: Contract Disputes Act Claims for Contract Support Costs in FY 1997  
for Contract No. 243-97-6029.**

Dear Mr. Peter:

This is in response to your letter dated February 28, 2006, requesting start up costs for fiscal year (FY) 1997 in the amount of \$27,007. Based on the reasons outlined below, the contracting officer's final decision is to deny payment to the Akiachak Native Community's claim for additional Contract Support Costs of \$27,007 for fiscal year 1997 (the FY 97 Claim).

#### I. Description of Claims

Your February 28, 2006, letter alleges that the Indian Health Service (IHS) promised to pay the Akiachak Native Community start up costs for their Title I Contract No. 243-97-6029 under the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. § 450 et seq.

In support of its claim, Akiachak Native Community claimed that "the Community was promised the Contract Support 'Start Up' Budget by Indian Health Service" but were never paid. The Akiachak Native Community requested that the IHS pay the unpaid start up costs.

#### II. Findings of Fact

The Title I Agreement and the Annual Funding Agreement (AFA) between the Akiachak Native Community and IHS do not cite funds for start up costs. The AFA's attachment two (2) included \$60,141 in non-recurring contract support costs (CSC) for FY 97 but was silent regarding start up costs. According to an FY97 Advice of Allowance, dated September 30, 1997, \$60,141 was available to the Akiachak Native Community for CSC.

The Akiachak Native Community submitted a Contract Support "Start Up" Budget to the Alaska Area Native Health Service (AANHS) in the amount of \$45,457.00 on or around April 19, 1996. On May 31, 1996, the AANHS responded by letter stating: the proposed support costs for start-up and on-going operations were to be negotiated; any amount above the approximate amount from Yukon Kuskokwim Health Corporation (\$45,000) would be requested from the Indian Self-

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Determination (ISD) Fund; the waiting period for ISD funding was over two years; and Akiachak Native Community should decide if the program could be operated within the CSC funding available in FY 97 (approximately \$45,000). The Akiachak Native Community decided to proceed with the contract.

After meeting in July 1996, Akiachak Native Community submitted a new "start up" budget in the amount of \$42,177 with the knowledge that funding was not available or expected to be available in the next fiscal year, but an application could be made to the ISD Fund.

On August 12, 1996, Akiachak's ISD Fund application was transmitted to IHS headquarters in the amount of \$42,177. Akiachak Native Community was placed in the "ISD Queue" on April 25, 1996, and the request was assigned the number 97-04.

Formal negotiations were held on September 5, 1996, with no mention of start-up costs.

In fiscal year 1999, the IHS received an increase in appropriations for \$35 million to pay, in part, CSC requirements in the ISD Queue. The Akiachak Native Community received \$20,763 from this distribution but did not receive funds for start-up costs. The Akiachak Native Community received two letters in October 1999 informing them that the final distribution of ISD funds in September 1999 did not include any funds for start-up costs prior to fiscal year 1999 and that Section 314 of Public Law 105-277 prohibited the IHS from paying prior year start-up costs from fiscal year 1999 appropriations. One letter was from the AANHS and the other was from the Director of IHS.

### III. Decision

#### A. Start-Up Costs Were Not Specified in the Annual Funding Agreement

Akiachak Native Community's claim is denied because the IHS did not breach any contractual duty to pay CSC funds beyond those already awarded to Akiachak Native Community. The IHS and the Akiachak Native Community contracted to pay those funds agreed upon in the AFAs. The Akiachak Native Community's Title I Contract, Section (b)(4), Funding Amount, states that "subject to the availability of appropriations, the Secretary shall make available to [Akiachak Native Community] the total amount specified in the annual funding agreement incorporated by reference in subsection (f)(2)." Nowhere in the AFA is there an amount specified in start-up costs for the Akiachak Native Community. All funds specified in the AFA were paid to the Akiachak Native Community.

#### B. Statute of Limitations

Akiachak Native Community's claim is denied because the claims were filed more than six years after the date that they accrued, in violation of the six-year statute of limitations in the Contract

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Letter to George Peter  
June 1, 2006

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Disputes Act. 41 U.S.C. § 605(a). Specifically, the claim would have accrued on the last day of the AFA period in September 1999,<sup>1</sup> but it was not received by the contracting officer until March 2006, more than six years after the claim would have accrued.

#### IV. Appeal Rights

This is a final decision. You may appeal this decision to the Interior Board of Contract Appeals (IBCA), U.S. Department of the Interior, 801 North Quincy Street, Arlington, VA 22203. If you decide to appeal, you shall, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the IBCA and provide a copy to the individual from whose decision the appeal is taken. The notice shall indicate that an appeal is intended, and refer to the decision and contract number. Instead of appealing to the IBCA, you may bring an action in the U.S. Court of Federal Claims or in the United States District Court within 12 months of the date you receive this notice.

Sincerely,



Burt Humphrey  
Senior Contracting Officer  
Alaska Area Native Health Service

cc: Executive Secretariat, IHS HQ  
Christopher Mandregan, Jr., Director, AANHS  
Lisa DeCora, Office of General Counsel

<sup>1</sup> "A claim against the United States first accrues on the date when all the events have occurred which fix the liability of the Government and entitle the claimant to institute an action. . . . [W]here a claim is based upon a contractual obligation of the Government to pay money, the claim first accrues on the date when the payment becomes due and is wrongfully withheld in breach of the contract." *Oceanic Steamship Co. v. United States*, 165 Ct. Cl. 217, 225 (1964) (internal citations omitted). In this situation, the claims accrued on the first day after the end of the term at issue when any possibility of the Government paying additional funds during the term of the FY 1996 would also have ended.

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Akiachak Native Community  
PO Box 51070  
Akiachak, Alaska 99551

February 28, 2006

Burt Humphrey  
Senior Contracting Officer  
Alaska Area Native Health Services  
4141 Ambassador Drive, Suite 300  
Anchorage, Alaska 99508-5928

Re: Akiachak Contract Support Start Up Cost

Dear Burt,

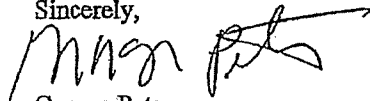
I'm not too thrilled in receiving your letter dated February 17, 2006 concerning the claim I made to collect the funding owed to the Community from Indian Health Services. I'm not a liar nor can I make allegation to anyone. I will not forget what was promised to the Community.

When the Community first entered a Clinical Services Contract in 1996, the Community was promised the Contract Support "Start Up" Budget by Indian Health Services. The Community is yet to receive one red cent from the IHS concerning the start up cost. The proper documentation is enclosed for your information. For further clarification on this matter you can talk to Duff Phanner. He was the lead IHS negotiator when we negotiated the contract in 1996.

You are right, I over estimate the amount which I showed the amount to be \$375,000.00 or did not paid any attention by stating that Akiachak's first contract year was 1993. I thought and over estimated Contract Support Start Up Budget to be \$125,000.00 instead of \$27,007.00. I apologize for my mistake.

I will honor assistance to the Community by keeping your commitment that you made in 1996 by awarding the community the Contract Start Up Cost. Let me know if you still have any problems.

Sincerely,



George Peter  
Tribal Administrator

Cc, Gene Peltola, YKHC President

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October 27, 2005

Alaska Area Native Health Services  
4141 Ambassador Drive  
Anchorage, Alaska 99508-5928

George Peter  
Tribal Administrator  
Akiachak Native Community  
PO Box 51070  
Akiachak, Alaska 99551

Dear Mr. Peter:

Re: Contract No 243-97-6029 Request for Contracting Officer's  
Decision for Contract Support Costs for FY 1993:

On October 5, 2005, we received your letter dated September 27, 2005 requesting a contracting officer's decision under the Contract Disputes Act for "damages arising out of the failure of the Indian Health Service (IHS) to pay full contract support costs (including indirect costs and direct contract supports)" for contract year 1993 for the above referenced Indian Self-Determination Title I contract.

For claims over \$100,000, the Contract Disputes Act requires that the IHS, within sixty days of receipt of a claim, either issue a decision or notify the contractor of the time within which a decision will be issued. At this time, the IHS has not had an opportunity to adequately review and make a final decision on these claims for a variety of reasons, including size, complexity, age, lack of specificity and adequacy of supporting documentation. The IHS anticipates that it will issue a final contracting officer's decision within 180 days of this letter.

This letter is not an acknowledgment of the validity of the claims, nor does it waive any legal defenses that the IHS may have regarding these claims.

Sincerely,

Burton J. Humphrey  
Senior Contracting Officer  
Alaska Area Native Health Service

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Akiachak Native Community  
P.O. BOX 51070  
Akiachak, Alaska 99551  
Ph. (907) 825-4626  
Fax (907) 825-4029

September 27, 2005

RECEIVED  
EXECUTIVE SECRETARIAT  
INDIAN HEALTH SERVICE  
2005 OCT -5 A 10: 58

Dr. Charles Grim, Director, Indian Health Service  
in Rockville, MD for self-governance agreements

243-97-6029

Re: Contract No. \_\_\_-Contract Disputes Act  
claim for contract support costs due in FY1993

Dear Mr. Grim:

The Akiachak Native Community hereby claims the right to immediate payment of \$375,000.00, plus interest, due and owing to the Akiachak Native Community under the provisions of the above-referenced contract, as amended, in effect between the parties for the fiscal year 1993 ("covered year"). This claim is submitted pursuant to the provisions of the Contract Disputes Act, 41 U.S.C. 601 et seq. and 110(a) and (d) of the Indian Self-Determination and Education Assistance Act, as amended (ISDA), for all damages arising out of the failure of the Indian Health Service to pay full contract support costs (including indirect costs and direct contract support costs).

The Akiachak Native Community's contracts and contract amendments, the Akiachak Native Community's funding agreements, the Akiachak Native Community indirect cost agreements and the Indian Self-Determination and Education Assistance Act during the covered year obligated the United States to pay the Akiachak Native Community no less than the full amount of contract support costs, including indirect costs and direct contract support costs, associated with programs, functions, services and activities operated by the Akiachak Native Community under the foregoing contract, as amended.

The Akiachak Native Community asserts that IHS failed to meet its contractual and statutory obligations in two ways. First, IHS failed to pay the full amount of the Akiachak Native Community's contract support cost requirement calculated pursuant to Indian Health Service's policies, by applying an unlawful policy limiting the total amount that would be paid to Akiachak Native Community.

Second, by the applications of Indian Health Service's policies, IHS failed to include in the calculation of the Akiachak Native Community's contract support cost requirement the full indirect contract support costs associated with the Akiachak Native Community's contracts. IHS did so by employing the same illegal calculations of the Akiachak Native Community's indirect cost requirements associated with this contract

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that was struck down by the Tenth Circuit in Ramah Navajo Chapter v. Lujan, 112 F.ed 1455 (10<sup>th</sup> Cir. 1997). Specifically, IHS failed to adjust the indirect cost amount calculated by applying the Akiachak Native Community's indirect cost rate to account for the dilution in IHS's responsibility to pay indirect contract support costs caused by the erroneous assumption (reflected in applicable OMB circulars concerning indirect cost rates) that all agencies funding the Akiachak Native Community contribute to the Akiachak Native Community's indirect cost pool at the full rate. By failing to make a further adjustment, IHS violated its contractual and statutory obligations to the Akiachak Native Community.

This claim seeks, without limitation, all damages arising out of IHS's failure to pay full contract support costs as required by the ISDA and the Akiachak Native Community's contracts. This claim is supported by the originals of all contracts, contract modifications, funding agreements, amendments thereto, and indirect cost rate agreements, all of which are in the custody of the Government.

Please recall that, under the terms of the Prompt Payment Act, 31 U.S.C 611 and the Contract Disputes Act, interest is accruing on the amount due.

Sincerely,



Akiachak Native Community

George Peter

Tribal Administrator

Exhibit

A

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