

October 28, 2013

The Honorable Barack Obama
President of the United States of America
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

Dear Mr. President:

We write in advance of the upcoming Tribal Leaders Conference to convey our deep concern over the Administration's reaction to the June 2012 Supreme Court decisions in the Ramah and Arctic Slope tribal contracting cases, and to respectfully urge you to take immediate corrective action so that justice can finally be done for hundreds of Indian Tribes and tribal contractors who were the victims of massive contract breaches by the United States.

In June 2012—more than 16 months ago—the Supreme Court rejected the Government's defense to these breach of contract claims, and ruled that the Government acted illegally in failing to pay Tribes and tribal contractors the full contract price due under their Indian Self-Determination Act contracts. This breach covers thousands of contracts by the BIA and IHS extending back over more than 20 years.

But rather than acting quickly to resolve these claims and to make amends to Tribes and tribal contractors who have had to litigate their claims every step of the way, the agencies have instead engaged in renewed dilatory tactics which only further delay justice and further burden Tribes with slow, expensive and unnecessary accounting battles.

We address these precise problems in the Administration's approach.

First, the Bureau of Indian Affairs and the Indian Health Service have failed to promptly settle all outstanding historic claims over unpaid contract support costs.

This failure is stunning, since the BIA and IHS regularly reported to Congress on the precise extent of the agencies' annual underpayments. The IHS even reported those annual underpayments by individual Tribe. Despite years of contemporaneous data documenting the Government's underpayments, the agencies have launched a campaign to re-audit all contracts, to re-calculate new indirect cost rates, to retroactively create new accounting rules, and to essentially convert fixed-price tribal contracts into cost-reimbursable contracts, all in an effort to laboriously re-determine the amount of underpayments on a Tribe-by-Tribe and year-by-year basis. The result: in 16 months IHS has settled 16 out of roughly 1,600 claims—just one percent of all the outstanding claims against IHS. For its part, the BIA has yet to even begin to re-audit a sample of the 9,000 contracts that were underpaid by the agency, an exercise that could push off any settlement for years.

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The time for delay is over. The Supreme Court has spoken. It has declared that the agencies acted illegally when they failed to fully pay each Tribe's contract. Given the wealth of available data about the underpayments compiled by the agencies themselves, settlement of all cases should have taken but a few months; it should not take a few years. This Administration has settled historic tribal claims when far less data was available and where no court rulings existed, much less definitive Supreme Court rulings in the Tribes' favor. The time to settle all outstanding claims is now.

Second, the Office of Management and Budget has sought to overrule the Supreme Court's Ramah and Arctic Slope rulings by proposing anti-tribal provisions in the fiscal year 2014 appropriations and continuing resolution measures.

These hostile provisions are intended to eliminate all future contract claims—essentially converting mandatory bilateral contracts into discretionary unilateral grants. Nothing could be a more direct attack on the Indian Self-Determination Act and the Nation's commitment to Tribal Self-Governance than this new initiative. Even the U.S. Chamber of Commerce has condemned the proposal as a direct attack on the fundamental rules that control the government contracting process. What is worse, this proposal was developed without any input from Indian Country.

The OMB proposal should be promptly withdrawn, and the Administration should re-commit to honoring in full all tribal contracts and compacts.

Third, the Administration has failed to pursue an inclusive, serious and transparent process for developing reforms in the contract support cost arena in the wake of the Ramah and Arctic Slope decisions. The IHS has refused to re-convene its contract support cost work group, it has disregarded work group recommendations for reforms, and it has announced a plan for non-public small-group consultations with subgroups of other advisory committees. It has failed to hold any national or regional tribal consultation sessions, and even the BIA has only held one such session.

The agencies must re-commit themselves to an open, transparent and good faith consultation process before making changes to any aspect of the tribal contracting and self-governance compacting regime. IHS, in particular, must embrace tribal consultation and must look to the contract support cost work group for additional guidance in this highly technical but vitally important area.

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Mr. President, your Administration has been a beacon of hope in its management of Native American affairs. Among your Administration's most important achievements has been the development of historic settlements with Indian Tribes in several major litigations, its advocacy for amendments to the Indian Health Care Improvement Act and the Violence Against Women's Act, and its commitment on critical appropriations measures. But when it comes to honoring the

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Nation's commitment to the contracting and compacting Tribes who were historically, and illegally, underpaid, and who continue to be underpaid, the Administration has permitted fiscal concerns to eclipse the imperative to do justice and to honor the Nation's obligations.

We Tribal Leaders respectfully but urgently call upon the Administration to promptly settle all outstanding IHS and BIA claims, to honor the Nation's current and future contract obligations to the Tribes, and to put into place concrete and meaningful consultation processes with Indian Country.

We salute your commitment to improving the well-being of Native American Tribes within the framework of the government-to-government relationship, and we look forward to working closely with you to seize the opportunities presented by the Supreme Court's Ramah and Arctic Slope decisions.

Respectfully,

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|  National Congress of American Indians |  Self-Governance Communication and Education Tribal Consortium |  Northwest Indian Fish Commission |
|  California Rural Indian Health Board |  Little River Band of Ottawa Indians |  Confederated Salish and Kootenai Tribes |
|  Sault Ste. Marie Tribe of Chippewa Indians |  Chippewa Cree Tribe of the Rocky Boy's Reservation |  Choctaw Nation |
|  Squaxin Island Tribe |  Citizen Potawatomi Nation |  Reno-Sparks Indian Colony |
|  Confederated Tribes of Grand Ronde |  Arctic Slope Native Association |  Wampanoag Tribe of Gay Head (Aquinnah) |
|  Nooksack Indian Tribe |  Cook Inlet Tribal Council |  Sac & Fox Nation |

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|  Quinault Indian Nation |  Native Village of Tanana |  Nez Perce Tribe |
|  Pueblo of Sandia |  Pit River Health Service |  Pueblo of Zuni |
|  Puyallup Tribe of Indians |  Skokomish Indian Tribe |  Kodiak Area Native Association |
|  Shoshone-Bannock Tribes of the Fort Hall Indian Reservation |  Shoshone-Paiute Tribes of the Duck Valley Indian Reservation |  Riverside - San Bernadino County Indian Health, Inc. |
|  Tanana Chiefs Conference |  Winnebago Tribe of Nebraska |  Swinomish Indian Tribal Community |
|  SouthEast Alaska Regional Health Consortium |  Port Gamble S'Klallam Tribe |  Kansas Kickapoo Tribe |
|  Grand Traverse Band of Ottawa and Chippewa Indians |  Central Council of Tlingit & Haida Indian Tribes of Alaska |  Alaska Native Tribal Health Consortium |
|  Aleutian Pribilof Islands Association |  Red Lake Band of Chippewa Indians |  Yukon-Kuskokwim Health Corporation |
|  Pueblo of Isleta |  Southcentral Foundation |  Knik Tribe |

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|  Santee Sioux Nation |  Southern Indian Health Council |  Cherokee Nation |
|  Kenaitze Indian Tribe |  Chugachmiut |  Tule River Indian Health Center |
|  Assiniboine and Sioux Tribes of the Fort Peck Reservation |  Tule River Indian Tribe of California |  Lower Elwha Klallam Tribe |
|  Hoopa Valley Tribe |  Jamestown S' Klallam Tribe |  Association of Village Council Presidents |
|  Taos Pueblo |  Oneida Tribe of Indians of Wisconsin |  Northwest Portland Area Indian Health Board |