



Mille Lacs Band of Ojibwe Indians

Executive Branch of Tribal Government

Office of the Chief Executive

September 30, 2024

VIA U.S. POSTAL SERVICE CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Asha Petoskey
Acting Area Director
Karen McDonald
Acting Chief, Contracting Officer
Bemidji Area Office
Indian Health Service
U.S. Department of Health and Human Services
Bemidji Technology Park
2225 Cooperative Ct. NW
Bemidji, MN 56601

Re: Mille Lacs Band of Ojibwe– Contract Disputes Act Claim for unpaid contract support costs for FY 2018

Dear Ms. Petoskey and Ms. McDonald:

On behalf of the Mille Lacs Band of Ojibwe (“MLBO”), I hereby tender this claim to the Indian Health Service (“IHS”) Bemidji Area Office, within the U.S. Department of Health and Human Services, pursuant to the Contract Disputes Act, 41 U.S.C. § 7101 *et seq.*, and its implementing regulations (collectively, “CDA”), for full and appropriate relief from the material underpayment by the IHS of MLBO’s contract support costs (“CSC”) due in connection with its Title V FY 2018 Annual Funding Agreement (attached as Exhibit “A”) under the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 5301 *et seq.*).

On June 6, 2024, the U.S. Supreme Court ruled in *Becerra v. San Carlos Apache and Northern Arapaho Tribe* that under that Act, the IHS is legally obligated to pay Indian tribes like MLBO their full contract support costs associated with all of their health program expenditures that further the purposes of its agreements under that Act, including expenditures that are made from program income such as Medicare, Medicaid, and insurance policies. This MLBO 2018 claim for an additional amount of at least \$1,209,700 in contract support cost funding is filed pursuant to the holding in *Becerra*, as described in the following paragraphs.

In FY 2018, MLBO expended at least \$15,053,060 on the direct costs of its federal health program under its Title V agreement. This amount included approximately \$6,145,104 in appropriated funds MLBO received from IHS in FY 2018 for these direct costs. To make up the difference between the IHS direct

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funding and the total direct expenditure costs of its health program, MLBO expended at least \$8,907,956 in tribal dollars, which included funds derived from program income pursuant to its Title V agreement.

MLBO's FY 2018 indirect cost agreement generated an indirect cost rate of 13.58% applicable to its FY 2018 health program expenditures. However, IHS paid CSC only on the \$6,145,104 amount appropriated through IHS; IHS did not pay CSC on the additional amount (\$8,907,956 or more) expended by MLBO on its FY 2018 health program under its Title V agreement. Accordingly, IHS failed to pay the full amount of CSC owed MLBO for FY 2018 and owes MLBO an additional amount of at least \$1,209,700 (\$8,907,956 x 13.58%), plus statutory interest as governed by the CDA, Title V of Pub.L. 93-638, as amended, the Compact of Self-Governance between IHS and MLBO, and the applicable FY 2018 Funding Agreement.

MLBO further requests that IHS award MLBO all of its costs, expenses, and fees, including attorneys' fees, incurred as a result of the foregoing breach and the necessity of pursuing this claim, on authority both equitable in nature and that provided under the Equal Access to Justice Act.

Because the relief sought under this claim exceeds \$100,000, attached hereto as Exhibit B is a certification of the foregoing claim in accordance with the provisions of the CDA at 41 U.S.C. § 7103(b). MLBO hereby specifically reserves and does not waive its right to assert against IHS, the Department of Health and Human Services, and any other entity, any and all other claims which it may have relating to the FY 2018 Agreement, under the CDA or any other applicable law and in any appropriate tribunal. MLBO seeks a prompt final decision by IHS and a prompt transfer of funds to resolve this claim pursuant to the provisions of the CDA.

Sincerely,

MILLE LACS BAND OF OJIBWE



Virgil Wind
Chief Executive

cc: Sheldon Boyd, Secretary/Treasurer
Nicole Anderson, Commissioner of Health
Mel Towle, Commissioner of Finance
Caleb Dogeagle, Solicitor General
Greta Sorvik, Director of MLBO HHS Finance
Philip Baker-Shenk, outside counsel, Holland & Knight LLP

Exhibit A

(See attached FY 2018 Funding Agreement, extension of MFA 2012-2015)

Exhibit B

Certification of Contract Disputes Act Claim

I, Sheldon Boyd, Secretary/Treasurer of the Mille Lacs Band of Ojibwe, hereby certify on this 30th day of September, 2024, in accordance with the Contract Disputes Act, 41 U.S.C. § 7101 *et seq.*, and its implementing regulations, and on behalf of the Mille Lacs Band of Ojibwe (“MLBO”), as to the following:

1. The claim submitted herewith by MLBO, by letter of even date, is authorized and made in good faith;
2. Any and all supporting data are accurate and complete to the best of my knowledge and belief;
3. The amounts requested accurately reflect the minimum amount of FY 2018 contract support costs for which MLBO, as a self-governance provider under the Indian Self-Determination and Education Assistance Act of 1975, as amended, believes the United States government remains liable to pay to MLBO; and
4. In my capacity as MLBO Secretary/Treasurer, I am duly authorized to certify the claim submitted herewith on behalf of MLBO as a tribal self-governance provider under the Indian Self-Determination and Education Assistance Act of 1975, as amended.

Dated: September 30, 2024


Sheldon Boyd, Secretary/Treasurer
Mille Lacs Band of Ojibwe