



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #TUL-04-028

TITLE: Full Payment of Contract Support Costs

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NCAI HEADQUARTERS

1301 Connecticut Avenue, NW
Suite 200
Washington, DC 20036
202.466.7767
202.466.7797 fax
www.ncai.org

WHEREAS, we, the members of the National Congress of American Indians of the United States (“NCAI”), invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, NCAI was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the Pueblo of San Felipe, State of New Mexico, is an NCAI Member in Good Standing pursuant to Article 11, Section 2A of the Constitution and By Laws of NCAI; and

WHEREAS, the Indian Self-Determination and Education Assistance Act (“ISDEA”), 25 U.S.C. § 450 et seq., governs “638 contracts” by which Indian tribes assume responsibility for providing programs and services otherwise provided by the federal government. The ISDEA mandates that, in addition to the actual cost of those services, the contract “shall” include contract support costs (“CSC”) (§ 450j-1(a)(2)). The ISDEA defines CSC as reasonable costs that a federal agency would not have incurred, but which nonetheless a tribe would incur to ensure compliance with the contract; and

WHEREAS, in March 2005, the United States Supreme Court decided the case of Cherokee Nation v. Leavitt. The Court held that IHS cannot avoid its 638 contractual agreement to pay to a tribe CSC if the total amount of lump-sum of IHS, unrestricted appropriations would suffice to pay for an individual tribe’s 638 contract obligation, even if the total amount of 638 CSC obligations of IHS exceed that lump-sum appropriation; and

WHEREAS, citing the Cherokee decision, the Director of the IHS has unilaterally, without rulemaking or consultation with tribes, directed Area offices not to approve any 638 contract for new or expanded services unless the tribe agrees to the inclusion in the contract of certain new language. That language would waive the tribe’s right to CSC for the contract now and in the future, regardless of future appropriations or any right to future shortfall. The compelled waiver language of IHS violates the tribes’ statutory right to CSC; and

WHEREAS, the IHS is requiring tribes to waive their right to statutorily mandated CSC as a condition of IHS approval of new or expanded 638 contracts. In addition, rather than severing the CSC provision and granting a partial approval of the remainder of the contract proposal, as required by statute, IHS is declining to approve any 638 contract in whole or in part unless a tribe agrees to waive its right to CSC; and

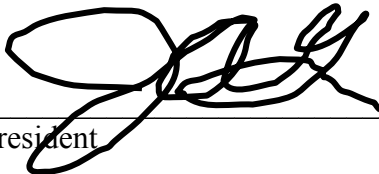
WHEREAS, in addition, IHS is refusing to approve in its entirety any 638 contract that does not contain the compelled waiver. IHS refusal also violates the Act, which mandates that the Secretary "shall approve any severable portion of a contract that does not support a declination finding" (§ 450f(a)(4)). As a result, a tribe must choose between waiving its statutory right to CSC or having its 638 contracts disapproved in their entirety, a dilemma clearly at odds with congressional intent.

NOW THEREFORE BE IT RESOLVED, that the NCAI strongly urges IHS to pay the full CSC in accordance with the law and congressional intent; and

BE IT FURTHER RESOLVED, that this resolution shall be the policy of NCAI until IHS acts according to the law and congressional intent.

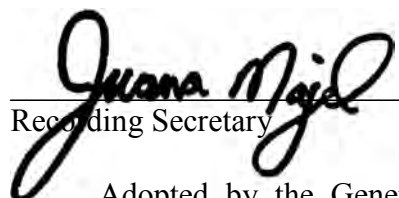
CERTIFICATION

The foregoing resolution was adopted at the 2005 Annual Session of the National Congress of American Indians, held at the 62nd Annual Convention in Tulsa, Oklahoma on November 4, 2005 with a quorum present.



President

ATTEST:



Recording Secretary

Adopted by the General Assembly during the 2005 Annual Session of the National Congress of American Indians held from October 30, 2005 to November 4, 2005 at the Convention Center in Tulsa, Oklahoma.