



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #ECWS-14-008

TITLE: Urging Full Contract Support Costs, Consultation, Swifter Settlement and Supporting Parity of Opportunity between Contracted and Non-Contracted Program Delivery

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WHEREAS, we, the members of the National Congress of American Indians of the United States, 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, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, in the class action *Salazar v. Ramah Navajo Chapter*, 132 S. Ct. 2181 (2012), the United States Supreme Court reaffirmed the binding contractual nature of contracts and compacts issued pursuant to directives of the Indian Self-Determination Act, 25 U.S. C. 450 *et seq.*, as amended; and

WHEREAS, the Indian Self-Determination Act has been the most effective and beneficial policy of the United States in reference to its Native peoples because it combines acknowledgement of the United States' perpetual trust responsibilities to American Indians with recognition that true self-government is essential to the economic, social, and psychological welfare of Indian Tribes and people; and

WHEREAS, from its inception in the 1970s through its two major amendments in 1988 and 1994, the Indian Self-Determination Act has rested on the premise that the decision to contract should rest on the opportunity to operate contracted programs at the same level the Secretaries would conduct them; and

WHEREAS, in 1975 shortly after passage of P.L. 93-638, the Bureau of Indian Affairs, understanding this essential principle, created a budget category called "contract support costs" as the mechanism for maintaining this parity of opportunity, that category now carried into the Act by later amendment; and

WHEREAS, in turn it was understood that as contracting expands, the infrastructures of the two Indian service agencies would retract; and

WHEREAS, although the parity principle has been expressed in every major Congressional action on the subject, its implementation has been deficient, with the agencies not reporting their own or the Federal government's savings when program operations are contracted or how in-house management has been reduced; and

WHEREAS, failure of the Interior and Health and Human Services (HHS) departments to pay full contract support costs has forced tribal contractors to reduce services or divert tribal monies from other essential governmental uses; and

WHEREAS, in the wake of the *Salazar* decision, the Congress has now directed the two Indian service agencies to offer a plan for consultation with Indian tribes and organizations by May 7, 2014, with tribes and tribal organizations working together with the Indian service agencies to develop reforms to guide Indian self-determination policy from now on; and

WHEREAS, over the years, failure to pay adequate contract support costs has resulted in less delivery of governmental services to Indian people whose tribes have elected to contract and generated continuing legal disputes over that failure, as exemplified by the *Ramah* case now into its twenty-fourth year; and

WHEREAS, the National Congress of American Indians believes it is essential that this new set of reforms restore and implement **parity of opportunity** as provided in the Act and in its legislative history as well as in its regulations, so that the decision to contract or not contract not be driven by the weight of immediate economic considerations; and

WHEREAS, the absence of a requirement that the Indian service agencies report their in-house management costs for directly operated services for Indians and have not measured the savings to themselves and other Federal agencies when tribes perform the services, and have not reduced their in-house management accordingly, has forced contracting tribes to cover shortfalls in contract support costs by reducing program levels or use tribal monies for overhead in a manner in violation of the fundamental principles of Indian self-determination; and

WHEREAS, Congress, the agencies, Indian Tribes and the public at large would all benefit from periodic accounting of the true costs and savings of contracting to the Governments; and

WHEREAS, the consultation process should involve nationwide Indian organizations such as NCAI and regional Indian tribal organizations as well as individual Tribes; and

WHEREAS, NCAI wishes to offer its immediate and long term assistance to an effort to develop a comprehensive plan based on the parity principle by measuring the true costs of contract support and savings to the Federal government realized from contracting out the operations to tribes; and

WHEREAS, NCAI is also greatly concerned over the length of time and strategies used by both Indian service agencies delaying settlement of past claims now required to be paid under the *Salazar v. Ramah* decision.

NOW THEREFORE BE IT RESOLVED THAT:

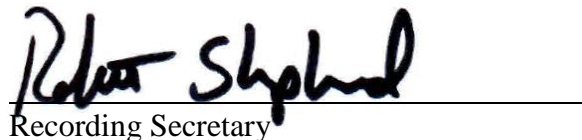
1. NCAI urges the Department of the Interior and the Department of Health and Human Services to fashion a long term plan to implement the Indian Self-Determination Act through provision of full contract support costs based on preserving and promoting the principle of parity as stated above.
2. NCAI urges the Administration and Indian service agencies to institute a comprehensive consultation process for the investigation of the factors to be included in a full funding regime for contract support costs including participation by NCAI in such investigation.
3. NCAI urges the Administration to dramatically speed up the settlement negotiations with the Ramah Class now engaged in a laborious and expensive statistical sampling exercise and develop a rapid and equitable system for resolving past claims brought by individual Tribal contractors of the Indian Health Service in order to reach speedy and equitable settlements of claims against that agency.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2014 Executive Council Winter Session of the National Congress of American Indians, held at the Westin Washington City Center March 11 -13, 2014, in Washington, DC with a quorum present.


President

ATTEST:


Recording Secretary