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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

ALASKA NATIVE TRIBAL HEALTH)
CONSORTIUM,)

Plaintiff,)

v.)

XAVIER BECERRA, Secretary, U.S.)
Department of Health and Human)
Services,)

and)

UNITED STATES OF AMERICA,)

Defendants.)

Case No. _____

COMPLAINT

I. INTRODUCTION

1. This action seeks damages for the failure of the Secretary of Health and Human Services, through the Indian Health Service (IHS), to pay the Alaska Native Tribal

Health Consortium (ANTHC) certain “contract support costs” due under ANTHC’s contract with IHS in Fiscal Year (FY) 2014. ANTHC’s rights arise under its contract and the statute under which the contract was awarded, the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 5301–5423 (ISDA).

2. This action follows several Supreme Court decisions finding the federal government’s failure to pay full contract support costs to contractors like ANTHC to be contrary to law and a breach of contract. *See Salazar v. Ramah Navajo Chapter*, 567 U.S. 182, 192-94 (2012); *Arctic Slope Native Ass’n v. Sebelius*, 133 S. Ct. 22 (2012), *on remand* 501 Fed. App’x 957, 959 (Fed. Cir. 2012) (*Arctic Slope II*); *Cherokee Nation v. Leavitt*, 543 U.S. 631, 636-38 (2005) (consolidated cases).

3. ANTHC seeks as damages the unpaid contract support cost funds which the Secretary should have paid in FY 2014.

II. JURISDICTION

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1362; 25 U.S.C. §§ 5331(a), 5531(d); and 41 U.S.C. § 7104 of the Contract Disputes Act (CDA).

III. PARTIES

5. The Alaska Native Tribal Health Consortium (ANTHC) is a tribal organization and at all relevant times carried out a self-governance compact and associated funding agreement with the Secretary of Health and Human Services pursuant to Title V of the ISDA, 25 U.S.C. §§ 5381–5399 and section 325 of Pub. L. No. 105-83, 111 Stat. 55 (1997).

6. Xavier Becerra is the Secretary of the U.S. Department of Health and Human Services (DHHS). Secretary Becerra exercises limited responsibilities delegated to him by Congress pursuant to the ISDA and other applicable law, including authority to enter into contracts on behalf of the United States with Indian tribes and tribal organizations pursuant to the ISDA and other applicable law. Secretary Becerra has further delegated some of these responsibilities to officials of the Indian Health Service (IHS), an agency located within DHHS. As used throughout this Complaint (and unless context commands otherwise), the terms “Secretary,” “DHHS,” and “IHS” are used interchangeably.

7. The United States of America is responsible for payment of all contracts with the Federal government. Pursuant to provisions of the CDA and the ISDA, the United States has waived its sovereign immunity from suit for breach of contract actions.

IV. FACTS AND GENERAL ALLEGATIONS

A. The Contract Documents.

8. During FY 2014, ANTHC operated various Federal health care programs, functions, services, and activities pursuant to Compact No. 58G990058 and its associated funding agreement (collectively referred to in this Complaint as the “contract”).

9. Pursuant to the contract, in FY 2014 ANTHC co-managed the Alaska Native Medical Center (ANMC), a 173-bed tertiary-care hospital located in Anchorage, Alaska, through which it provides comprehensive medical services (including inpatient hospital care and specialty care) for the Alaska Tribal Health System. These services included critical care, emergency medicine, internal medicine, ophthalmology, orthopedic services, otolaryngology, surgery, cardiology, hematology-oncology, clinical and anatomic

laboratory, imaging, pharmacy, respiratory care, and social services. Further, ANTHC provided wellness programs, disease research and prevention, and rural provider training, and supported efforts in public health, traditional foods and nutrition, epidemiology, environmental health, and dental health education (among other programs).

10. The programs described in paragraph 9 of this Complaint were operated pursuant to the Alaska Tribal Health Compact (“the Compact”) with IHS.¹ Ex. A. The Compact is the basic contract document at issue in this case. The terms of the Compact are required by and inextricably intertwined with the ISDA. The Compact states that it “shall be liberally construed to achieve its purposes[.]” Compact, art. I, § 2. Similarly, Title V, which governs the Compact, provides that “[e]ach provision of [Title V] and each provision of a compact or funding agreement shall be liberally construed for the benefit of the Indian tribe participating in self-governance and any ambiguity shall be resolved in favor of the Indian tribe.” 25 U.S.C. § 5392(f).

11. The Compact was written to “carry out a Self-Governance Program authorized by Title V, and is intended to transfer to tribal governments, at a tribe’s request, the power to decide how federal programs, services, functions and activities (or portions thereof) shall be funded and carried out.” Compact, art. I, § 2(a). It was also meant to

¹ The Alaska Tribal Health Compact has been frequently amended and restated since the first version went into effect on October 1, 1994. Relevant to the claims presented here is the FY 2011 version that went into effect on October 1, 2010, and all citations in this Complaint are to that version.

“promote[] the autonomy of the Tribes in Alaska in the realm of health care.” *Id.*

Consistent with this purpose, the Compact relies heavily on the provisions of the ISDA.

12. The core purpose of the Compact between IHS and ANTHC is:

to enable [ANTHC] to re-design health programs, activities, functions, and services of the Indian Health Service; to reallocate funds for programs, activities, functions, or services according to the priorities of [ANTHC]; to enhance the effectiveness and long-term financial stability of [ANTHC]; and to streamline the federal Indian Health Service bureaucracy.

Compact, art. I, § 2(b).

13. The contract documents also include ANTHC’s Funding Agreement (FA).

Funding agreements can cover single or multiyear periods and may be amended throughout the year to take account of appropriations changes and new funds that are made available.

See 25 U.S.C. § 5385(e) (“[E]ach funding agreement shall remain in full force and effect until a subsequent funding agreement is executed.”). In FY 2014, ANTHC operated pursuant to the multiyear FY 2011-2015 FA for its Title V funds. Ex. B (excluding exhibits). ANTHC’s FA was incorporated in its entirety into the Compact. *See* Compact, art. II, § 2(c).

14. The contract documents that are controlling for the FY 2014 claim asserted here are the Alaska Tribal Health Compact, the FA in effect for that year under the Compact, modifications to those documents, and the various statutory and administrative provisions incorporated by law into the contract documents, including the ISDA.

B. The Contract Agreement.

15. ANTHC’s contractual obligation was to administer designated health care programs and to provide certain health care services and functions previously provided by

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