UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE NAVAJO NATION, a federally recognized Indian tribe, Navajo Nation Department of Justice P.O. Box 2010 Window Rock, Arizona 86515 Plaintiff, v. UNITED STATES DEPARTMENT OF THE INTERIOR 1849 C Street, N.W. Washington, D.C. 20240 and SALLY JEWELL, in her official capacity as Secretary, United States Department of the Interior 1849 C Street, N.W. Washington, D.C. 20240, Defendants.	)	No.1:14-cv-01909-TSC

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

FRYE LAW FIRM, P.C.
Paul E. Frye (Bar ID: AZ0008)
10400 Academy Rd. NE, Suite 310
Albuquerque, NM 87111
Tel: (505) 296-9400
Fax: (505) 296-9401

HOLLAND & KNIGHT LLP
Philip Baker-Shenk (D.C. Bar No. 386662)
800 17th Street, N.W., Suite 1100
Washington, D.C. 20006
Tel: (202) 955-3000
Fax: (202) 995-5564

Attorneys for Plaintiff the Navajo Nation

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I. INTRODUCTION

Effective January 1, 2012, the Navajo Nation ("Nation") and the United States, through the Department of the Interior and its Bureau of Indian Affairs ("BIA") (collectively, the "Government"), entered into a five-year contract under the Indian Self-Determination and Education Assistance Act ("ISDEAA"), 25 U.S.C. §§ 450, 450a *et seq.*, to fund operations of the Nation's Judicial Branch. On October 4, 2013, the Nation hand-delivered its funding proposal for the 2014 calendar year (comprised of a cover letter and the Calendar Year 2014 Annual Funding Agreement with attachments (the "CY 2014 AFA")) to the ISDEAA Specialist in the BIA's Self-Determination Office. The BIA failed to take any statutorily required action to either decline or approve that proposal within the 90-day period prescribed by the ISDEAA and its implementing regulations. Consequently, under the statute and the BIA regulations, the CY 2014 AFA proposed by the Nation is deemed approved by the United States as a matter of law. *See* 25 U.S.C. § 450f(a)(2); 25 C.F.R. §§ 900.16-.18; *Seneca Nation v. United States Dep't of Health and Human Services*, 945 F.Supp. 2d 135, 145 (D.D.C. 2013), *app. dism'd*, No. 13-5219, 2013 WL 6818212 (D.C. Cir. Dec. 12, 2013); *Maniilaq Ass'n v. Burwell*, No. 13-cv-380 (TFH), __ F.Supp. 3d __, 2014 WL 5558336 at *10 (D.D.C. Nov. 3, 2014).

Nonetheless, the BIA has refused to honor the CY 2014 AFA, so the Nation submitted to the BIA its claim seeking relief from the Government for its breaches of that AFA under the Contracts Dispute Act ("CDA"), 41 U.S.C. § 7101 *et seq.*, and the ISDEAA, 25 U.S.C. §§ 450m-1(a), (d). The BIA denied the claim and the Nation filed its Complaint here, as permitted by 25 U.S.C. § 450m-1(a) (conferring original jurisdiction on the United States district courts over any civil action or claims arising under the ISDEAA). The First Claim for Relief seeks a declaration that the CY 2014 AFA was deemed approved as a matter of law on January 3, 2014. The Second Claim for Relief seeks

injunctive relief including an order compelling the Government to award and fund the CY 2014 AFA. Count III seeks damages for Defendants' breach of the CY 2014 AFA in the amount of $15,762,985 plus interest, fees and costs.

There are no material facts in dispute, and Defendants' conceded failure to act within the 90-day period prescribed by the ISDEAA and its implementing regulations entitles the Nation to judgment as a matter of law on all three claims for relief.

II. STATEMENT OF FACTS

The Nation has filed a separate Statement of Material Facts ("SMF") as to which the Nation contends there is no genuine issue. *See* LCvR 7(h)(1). This Memorandum generally refers to the SMF, which, in turn, refers to parts of the record relied on to support the factual averments below.

A. Parties

The Nation is a federally recognized Indian Tribe. SMF 1. The Nation has a three-branch government, one branch being the Judicial Branch. SMF 2; *see Atkinson Trading Co. v. Navajo Nation*, 866 F.Supp. 506, 512 (D.N.M. 1994) ("The Navajo Nation has developed a sophisticated judicial system with highly competent jurists.").

Defendant United States Department of the Interior ("Department") is an agency of the United States government, whose constituent agencies include the BIA. SMF 3. Defendant Sally Jewell is the Secretary of the Department, oversees the BIA, and is generally responsible for contracting with the Nation under the ISDEAA. SMF 4. The BIA has twelve Regional Offices. One of those, and the only one that serves only one tribe, is the Navajo Regional Office headquartered in Gallup, New Mexico. SMF 5.

B. The FY 2014 AFA and Defendants' Untimely Purported Denial

The Nation and the Department entered into a contract, No. A12AV00698 (the "Contract") under the ISDEAA to fund operations of the Nation's Judicial Branch for a five-year term from January 1, 2012 through December 31, 2016. SMF 6. The Contract requires the Nation and the Secretary to negotiate successive Annual Funding Agreements ("AFAs"), each of which is incorporated into the Contract. SMF 7. The amount of funds to be paid to the Nation under the Contract for any given year is determined by the Contract and the AFA for that year. SMF 8.

The Nation's funding proposal for Calendar Year ("CY") 2014 consisted of a cover letter and the CY 2014 AFA signed by the Nation's Chief Justice as the administrator of the Nation's Judicial Branch with its attachments. SMF 9. In the proposed 2014 AFA, the Nation agreed to administer and perform those portions of the BIA's Judicial - Tribal Courts program identified in the Scope of Work, attached to the 2014 AFA as Attachment A. SMF 10. The Scope of Work under the proposed 2014 AFA included various tasks and objectives set forth in Attachment A to the 2014 AFA and recited at paragraph 11 of the Complaint. SMF 11. Those same tasks and objectives were previously included in the BIA-approved CY 2012 and 2013 AFAs. SMF 12. The Tribal Court Program Budget Summary for the proposed 2014 AFA provided a breakdown of functions and corresponding budget amounts, totaling $17,055,517.00. SMF 13.

The Nation's proposed 2014 AFA was hand-delivered on October 4, 2013 by the

Nation's Principal Contract Analyst, Ronald Duncan, to Raymond Slim, the BIA's ISDEAA Specialist in the Self-Determination Office of the Navajo Regional Office as of that date. SMF 14. Duncan logged in with a uniformed officer of the BIA on October 4, 2013 at the BIA's Navajo Regional Office, and Duncan immediately thereafter hand-delivered the Nation's proposed 2014 AFA to Slim. *Id.* By letter dated October 21, 2013, the BIA acknowledged receipt of the Nation's proposed 2014 AFA that the Nation had hand-delivered to Slim on October 4, 2013. *Id.*

Under the ISDEAA, the Secretary had 90 days after receipt of the Nation's proposed 2014 AFA within which to decline it or award the contract, and that 90-day period ended on January 2, 2014 without any action by the Secretary. SMF 15. Seven days after the expiration of the 90-day period, on January 9, 2014, the BIA requested an extension to consider the proposed 2014 AFA. SMF 16. The Nation did not respond to this untimely request. *Id.*

Thirteen days after the expiration of the 90-day period, by letter dated January 15, 2014, the BIA purported to partially decline the Nation's proposed 2014 AFA. SMF 17. On January 27, 2014, the Nation sent a letter to the BIA noting that, by operation of law, the Nation's proposed 2014 AFA was deemed approved on January 3, 2014 as proposed on October 4, 2013. SMF 18.

A *month* after the expiration of the 90-day period, by letter dated February 4, 2014, the BIA provided additional justifications for its purported partial declination of the Nation's

proposed 2014 AFA. SMF 19. *Five weeks* after the expiration of the 90-day period, by letter dated February 7, 2014 to Navajo Nation President Ben Shelly, the BIA raised its *post hoc* rationales that (a) a partial federal shutdown during October 1-16, 2013 impliedly and unilaterally extended the 90-day period prescribed by the ISDEAA and its implementing regulations, and (b) receipt of the Nation's proposed 2014 AFA on October 4, 2013 by Mr. Slim did not constitute "receipt" by the Government because Slim personally was not ultimately involved with the review of the Nation's proposed 2014 AFA. SMF 20. At no time did the Nation consent to any extension of the 90-day time for BIA to respond to its proposed CY 2014 AFA. SMF 21.

The BIA therefore sought to avoid the statutory and regulatory requirement for tribal consent to any extension of the 90-day period. *Eight weeks* after the expiration of the 90-day period, by letter dated February 28, 2014, the BIA purported to effect a "Unilateral Modification" of the 2014 AFA by substituting a CY *2012* Scope of Work for the one actually executed, submitted and proposed by the Nation, and by removing the Nation's Budget Summary from the 2014 AFA entirely. SMF 22. The BIA attempted to justify its "Unilateral Modification" by reference to a revocable limited delegation from the Nation to the BIA by letter dated November 19, 2013, Ex. A Att. 1, to which the BIA responded by letter dated December 10, 2013, Ex. A Att. 2. SMF 23. However, the Nation had conditioned that limited delegation in several ways, including, in Condition # 1, accepted by the BIA, that "[t]he Model 108 [ISDEAA] Contract and Annual Funding Agreements

(AFAs) have already been executed and bear the signatures of the President of the Navajo Nation or Chief Justice of the Navajo Nation . . ." SMF 24. In this case, the relevant AFA that was signed by the Chief Justice, as proposed on October 4, 2013 and as deemed approved on January 3, 2014, included a CY 2014, not CY 2012, Scope of Work and a Fiscal Year 2014 Tribal Court Program Budget Summary as Attachments A and B, respectively, thereto. SMF 25.

Under the revocable limited delegation agreed to by the Nation and BIA, the BIA lacked authority to unilaterally modify the 2014 AFA, to replace the CY 2014 Scope of Work with a 2012 Scope of Work, or to remove the FY 2014 Tribal Court Program Budget Summary entirely, without the signed agreement of the President or the Chief Justice of the Nation, which neither gave. SMF 26. The BIA did not honor the CY 2014 AFA and has failed to make payment as required under the ISDEAA. SMF 27.

C. The Nation's CDA Claim and Its Rejection by Defendants

The Nation then submitted its claim under the Contract Dispute Act ("CDA") for BIA's violation of the deemed-approved contract by letter dated March 24, 2014, supplemented by the Nation's letter dated April 17, 2014 to include the correct version of the 2014 AFA document. SMF 28. The BIA responded by letter dated May 13, 2014, denying the Nation's CDA claim. SMF 29. The Nation received such letter on May 20, 2014. *Id.* The BIA's May 13, 2014 letter relied on and cited *Yurok Tribe v. Office of Justice Affairs, Bureau of Indian Affairs*, No. IBIA 13-136 (Nov. 1, 2013), SMF Ex. B, which granted a stay

pending a further order of the Civilian Board of Contract Appeals ("CBCA") concerning another tribe's unclear request for funding. In fact, the CBCA's decision, *Yurok Tribe v. Department of the Interior*, CBCA 3519-ISDA (Feb. 14, 2014), SMF Ex. C, supports the Nation's position because the CBCA recognized that the *Seneca* decision of this Court controls where, as in the instant case, "a tribe held a Title I contract and requested additional funding for it," *id*. at 5. SMF 30.

The BIA paid the Nation only $1,814,135.00 for CY 2014 Judicial Branch operations. SMF 31.

III. THE ISDEAA AND APPLICABLE LEGAL STANDARDS

The ISDEAA followed President Nixon's Special Message to the Congress on Indian Affairs, 1970 Pub. Papers 564 (1970); *see* S. Rep. No. 100-274 at 2-3 (1987) ("Senate Report"). In the ISDEAA, Congress found that "the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities," 25 U.S.C. § 450(a)(1), *Seneca Nation*, 945 F.Supp. 2d at 142-43, and "recognize[d] the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities," 25 U.S.C. § 450a(a). The BIA has historically provided most Federal services to Native Americans. *See* 25 U.S.C. §§ 2, 13; *Nevada v. United States*, 463 U.S. 110, 127 (1983). Under 25 U.S.C. § 450k, the Department of the Interior, together with the Department of Health and Human

Services (which includes the Indian Health Service), promulgated regulations to implement the ISDEAA, at 25 C.F.R. part 900. Those regulations repeat the congressional findings and declarations of policy, 25 C.F.R. § 900.3, *see Southern Ute Indian Tribe v. Leavitt*, 564 F.3d 1198, 1209 n. 4 (10th Cir. 2009), *op. after remand*, *Southern Ute Indian Tribe v. Sebelius*, 657 F.3d 1071 (10th Cir. 2011), *cert. denied*, 133 S.Ct. 24 (2012), and acknowledge that "each provision of the Act and each provision of contracts entered into thereunder shall be liberally construed for the benefit of the tribes or tribal organizations to transfer the funding . . . from the Federal government to the contractor," 25 C.F.R. § 900.3(a)(5); *see generally Salazar v. Ramah Navajo Chapter*, 132 S.Ct. 2181, 2193 (2012) (ISDEAA "is construed in favor of tribes"); *Cobell v. Norton*, 240 F.3d 1081, 1101 (D.C. Cir. 2001) (canon of construction favoring Indian interests where statute is intended to benefit tribes trumps deference to agency's interpretation of such statute); *Maniilaq*, 2014 WL 5558336 at *3-*4 (same); *Southern Ute Indian Tribe v. Sebelius*, 657 F.3d at 1078 (applying canon of construction favoring Indians in ISDEAA context). That rule of construction also governs the interpretation of regulations. *See, e.g.,*1A N. Singer & S. Singer, *Sutherland Statutory Construction* § 31.6, p. 698 & n.3 (7th ed. 2009)*; United States v. Ray*, 488 F.2d 15, 18 (10th Cir. 1973); *Betesh v. United States*, 400 F.Supp. 238, 244-45 & n.11 (D.D.C. 1974).

Congress provided the BIA with as little discretion as practicable in the ISDEAA. *See Ramah Navajo School Bd. v. Babbitt*, 87 F.3d 1338, 1344 (D.C. Cir. 1996) ("Congress left the Secretary with as little discretion as feasible" in the allocation of ISDEAA contract

support costs); *Pyramid Lake Paiute Tribe v. Burwell*, No. 1:13-cv-01771 (CRC), __ F.Supp. 3d __, 2014 WL 5013206 at *5 (D.D.C. Oct. 7, 2014). It limited the permissible bases for the BIA to decline to enter into a contract to five specific grounds. 25 U.S.C. § 450f(a)(2); 25 C.F.R. §§ 900.22, 900.24; *Pyramid Lake, supra*; *Seneca Nation*, 945 F.Supp. at 143-44; *see Southern Ute*, 657 F.3d at 1079 (agency "may not decline a contract proposal for exceeding the applicable funding level"). Most significant here, if the agency does not act within ninety days of delivery of a contract proposal, that contract as proposed is deemed approved as a matter of law. *Seneca Nation*, 945 F.Supp. 2d at 145; *Maniilaq*, 2014 WL 5558336 at *10. If an agency violates the ISDEAA or its implementing regulations in failing to enter into a contract or contract renewal, a reviewing court need not address the merits of the agency's actions, and the proposed contract must be executed by the Government. *Cheyenne River Sioux Tribe v. Kempthorne*, 496 F.Supp. 2d 1059, 1068 (D.S.D. 2007). If a contract proposal is deemed approved because an agency failed to act within the time prescribed by the ISDEAA, the agency does not get a second chance to review the contract proposal. *Seneca Nation*, 945 F.Supp. 2d at 147-48, 152; *Maniilaq*, 2014 WL 5558336 at *9-*11. Nor may the agency revise or amend an approved contract without the consent of the tribal contractor. 25 U.S.C. § 450m-1(b); *Seneca Nation*, 945 F.Supp. 2d at 143.

The ISDEAA puts federal bureaucrats in the awkward position of being responsible for contracting themselves out of jobs and resources. *See* Senate Report at 6. So,

notwithstanding the congressional findings and statements of policy, federal agencies erected numerous roadblocks frustrating the ability of tribes to obtain contracts and funding, including excessive paperwork, undue delays, inappropriate application of federal procurement laws, and inadequate funding of contract support costs. *Id.* at 7-9. In response, Congress amended the ISDEAA "to give self-determination contractors viable remedies for compelling BIA and IHS compliance with the Self-Determination Act. The strong remedies provided in these amendments are required because of those agencies' consistent failures over the past decade to administer self-determination contracts in conformity with the law." *Id.* at 37. Then-existing law had made it "virtually impossible for self-determination contractors to enforce their rights under the Act." *Id*. Under the 1988 amendments, and unlike the usual civil case where the plaintiff bears the burden of proof by a preponderance of the evidence, the ISDEAA places the burden of proof in any hearing or on appeal on the Secretary to establish by "clearly demonstrating the validity of the grounds for declining the contract proposal (or portion thereof)." 25 U.S.C. § 450f(e); *Seneca Nation*, 945 F.Supp. 2d at 151 (quoting same).

The 1988 amendments to the ISDEAA confer original jurisdiction on the federal district courts and provide a wide range of remedies for an aggrieved tribal contractor. *See generally Southern Ute*, 657 F.3d at 1075. The ISDEAA, as amended, permits the district courts to "order appropriate relief including *money damages*, . . . or mandamus to compel [the agency] to perform a duty provided under this subchapter or regulations promulgated

hereunder (*including immediate injunctive relief . . . to compel the Secretary to award and fund an approved self-determination contract*)." 25 U.S.C. § 450m-1(a) (emphases added); *Southern Ute*, 657 F.3d at 1073. The Senate Report "leaves no doubt that Congress intended exactly what it wrote" in providing a very strong remedial scheme for tribal contractors. *Ramah Navajo School Bd.*, 87 F.3d at 1344 (quoting Senate Report at 37). The Navajo Nation seeks in this suit money damages and injunctive remedies expressly provided by the ISDEAA.

Thus, a tribal contractor who prevails under the ISDEAA may be entitled to expectation damages, specific performance and injunctive relief, *Red Lake Band of Chippewa Indians v. United States Dep't of Interior*, 624 F.Supp. 2d 1, 14-19, 24-26 (D.D.C. 2009); a declaration that an agency that fails to act on a contract proposal within 90 days is bound to honor the proposed contract, *Seneca Nation*, 945 F.Supp. 2d at 152; a writ of mandamus requiring the agency to enter into the rejected contracts, *Cheyenne River Sioux*, 496 F.Supp. 2d at 1068-69; *Crownpoint Inst. of Tech. v. Norton* ("*CIT*"), Civ. No. 04-531 JP/DJS, Dkt. No. 86 at 26 (D.N.M. Sept. 16, 2005); immediate payment of the full amount of a contract renewal improperly declined, *Cheyenne River Sioux*, 496 F.Supp. 2d at 1068; costs incurred by the contractor in performing the contract services before a court-mandated execution of a contract, *Southern Ute*, 657 F.3d at 1083-84; injunctive relief, prejudgment interest, and attorney fees, *see Shoshone-Bannock Tribes of Ft. Hall Res. v. Shalala*, 999 F.Supp. 1395, 1398 (D. Or. 1998); contract support costs, *CIT*, *supra*, Dkt. 86 at 25;

expectation damages in certain circumstances, *id.* at 14-19; and consequential (including intangible) damages, *Ramah Navajo School Bd. v. Sebelius*, No. CV 07-0289 MV, Dkt. No. 143 at 72 (D.N.M. May 9, 2013), *cross appeals filed*, Nos. 14-2051 and 14-2055 (10th Cir. Apr. 4 and 10, 2014).

The specific provision in the ISDEAA authorizing injunctive (including "immediate" injunctive) relief and mandamus coupled with Congress' clear intention to guide the exercise of the courts' discretion in the ISDEAA "relieves [the tribal contractor] of proving the usual equitable elements including irreparable injury and absence of an adequate remedy at law." *Pyramid Lake Paiute Tribe*, 2014 WL 5013206 at *7; *accord Susanville Indian Rancheria v. Leavitt*, No. 2:07-cv-259-GEB-DAD, 2008 WL 58951 at *11 (E.D. Cal. Jan. 3, 2008); *CIT*, *supra* Dkt. 86 at 26 (*citing, inter alia, Star Fuel Marts, LLC v. Sam's East, Inc.*, 362 F.3d 639, 651-52 (10th Cir. 2004)).

IV. THE NATION IS ENTITLED TO JUDGMENT ON ITS FIRST, SECOND AND THIRD CLAIMS FOR RELIEF.

The Nation hand-delivered its proposed CY 2014 AFA to the ISDEAA Specialist in the Self-Determination Office of the BIA on October 4, 2013. Under the statute and BIA's own regulations, BIA had to act on that contract proposal by January 2, 2014 or the contract is deemed approved by the BIA. The BIA did not act by that date, the Nation's CY 2014 AFA was deemed approved, and the Secretary is required to fully fund it, including without limitation the Secretarial amount and contract support costs. 25 U.S.C. § 450j-1(a); 25 U.S.C. § 450f(a)(2).

The ISDEAA and its implementing regulations are clear on this point. The statute provides

that "the Secretary shall, within ninety days after receipt of the proposal, approve the proposal and award the contract unless the Secretary provides written notification to the applicant" clearly demonstrating that any of five listed declination criteria applies in whole or in part to the proposal. 25 U.S.C. § 450f(a)(2), (4). The statute admits of only one exception, where "before the expiration of such period, the Secretary obtains the voluntary and express written consent of the tribe . . . to extend or otherwise alter such period." 25 U.S.C. § 450f(a)(2). There is no exception for extending the 90-day period when, as in this case, the Department, through its authorized ISDEAA Specialist, receives the proposal but other employees are not working on the day of receipt, or when the Department ultimately decides that someone else will review the proposal. Such a construction of the statute would make the 90-day limit in the ISDEAA illusory; an agency could effectively toll the 90-day period by throwing a proposal in a stack and unilaterally deciding when to start the 90-day period by delaying the review assignment to someone other than the ISDEAA Specialist who received the proposal.

The Department (together with the Department of Health and Human Services or "HHS") was authorized to promulgate regulations under the ISDEAA. 25 U.S.C. § 450k. Those regulations construe section 450f(a)(2) as follows in 25 C.F.R. part 900, subpart D:

> **§ 900.14 What does this subpart cover?** This subpart covers any proposal to enter into a self-determination contract, to amend an existing self-determination contract, to renew an existing self-determination contract, or to redesign a program through a self-determination contract.
>
> * * *
>
> **§ 900.16 How long does the Secretary have to review and approve the proposal and award the contract, or decline a proposal?** *The Secretary has 90 days after receipt of a proposal to review and approve the proposal and award the contract or decline the proposal in compliance with [25 U.S.C. § 450f and 25*

> *C.F.R.] subpart E [concerning declination procedures]*. At any time during the review period the Secretary may approve the proposal and award the requested contract.
>
> **§ 900.17 Can the statutory 90-day period be extended?** Yes, with written consent of the Indian tribe or tribal organization. If consent is not given, the 90-day deadline applies.
>
> **§ 900.18 What happens if a proposal is not declined within 90 days after it is received by the Secretary?** *A proposal that is not declined within 90 days (or within any agreed extension under § 900.17) is deemed approved and the Secretary shall award the contract or any amendment or renewal within that 90-day period and add to the contract the full amount of funds pursuant to section 106(a) of the Act* [25 U.S.C. § 450j].

(Italics added.) The absolute nature of the 90-day deadline was underscored by the Department (and HHS) in explaining the above rules. *See* 61 Fed. Reg. 32,482, 32,486 (June 24, 1996).[1] Defendants are bound by their own regulations. *See, e.g., Vitarelli v. Seaton*, 359 U.S. 535, 539-40 (1959); *Cherokee Nation of Okla. v. Babbitt*, 117 F.3d 1489, 1499 (D.C. Cir. 1997).

Consistent with the canon of statutory construction that statutes intended to benefit Indian tribes must be construed in their favor, *see supra* at 8, the ISDEAA is interpreted strictly in favor of tribal contractors, including the requirement that a contract proposal be deemed approved and fully funded if the Secretary fails to act within 90 days of her receipt of the proposal. *E.g., Maniilaq*, 2014 WL 5558336 at *3-*4 (Hogan, J.). Indeed, in *Cheyenne River Sioux Tribe v. Kempthorne*, 496 F.Supp. 2d 1059 (D.S.D. 2007), the Secretary *did* act within the 90-day period, but failed to provide

[1] "A comment inquired whether the 90-day period continues to run if the Indian tribe is notified that there are missing items, or whether the 90-day period starts only when there is a complete proposal. The regulation in [25 C.F.R.] § 900.15(b) requires the Secretary to notify the applicant of any missing items, and to request the applicant to furnish these items within 15 days. If the applicant fails to submit the missing items altogether, the Secretary must either approve or decline the proposal that was received within 90 days of receipt. Similarly, if the applicant submits the missing items within the 15-day deadline, the 90-day period continues to run from the time of receipt of the original proposal." *Id.*

a sufficient explanation as to his decision to deny a proposed ISDEAA contract amendment. But even though the decision was rendered timely, its insufficiency meant that the 90-day period expired without issuance of a lawful declination and thus the proposed amendment was deemed by the court to have been approved, obligating the Secretary to award and fully fund it. *Id.*, 496 F.Supp. 2d at 1068. The court rejected the Secretary's position that the failure to comply with the regulations was a "technical" one or that his omissions were "inconsequential." *Id*. The court ruled that, "[g]iven the Secretary's failure to comply with the declination statutes and regulations, the court need not address the merits of the actions taken by the defendants. The contract and successor AFA for SY [School Year] 06-07 are deemed approved by operation of law. The defendants are to be ordered to forthwith pay to the plaintiff [the amount proposed in the contract amendment] in SY 06-07 funds . . ." *Id.* Other cases and administrative opinions have similarly required strict compliance with the 90-day limit applicable to deemed-approved tribal proposals. *See, e.g., CIT, supra*, Dkt. No. 86 at 26 (finding three self-determination contract proposals deemed approved because of the Secretary's failure to approve or decline them within 90 days); *Delaware Tribe of Indians v. Bureau of Indian Affairs*, Dkt. No. IBIA 02-65-A, Recommended Decision, Hearings Division, Interior Board of Indian Appeals at 10 (July 26, 2002) (deeming tribal self-determination contract proposal approved because of BIA failure to approve or deny within 90-day period, notwithstanding that such failure resulted from BIA employee's mistake).

This Court's precedents are equally clear. If the Secretary fails to act on a contract proposal within 90-days of her receipt of it, the proposal is deemed approved, and the Secretary must award the contract as proposed and fully fund it. *Seneca Nation*, 945 F.Supp. 2d at 152 (Collyer, J.); *Maniilaq*, 2014 WL 5558336 at *11 (Hogan, J.).

The Secretary, through her ISDEAA Specialist, received the Nation's CY 2014 proposal on October 4, 2014. The Secretary did not decline, in whole or in part, the proposal within 90 days of such receipt. Under 25 U.S.C. § 450f(a)(2) and 25 C.F.R. § 900.18, the Nation's proposal is deemed approved and the Secretary is required to award and fully fund it as proposed.

V. CONCLUSION

For the above reasons, the Navajo Nation requests entry of an Order granting it judgment on its first, second and third claims for relief. A proposed Order is submitted herewith pursuant to LCvR 7(c).

Respectfully submitted,

FRYE LAW FIRM, P.C.

By: /s/ Paul E. Frye

Paul E. Frye (Bar ID: AZ0008)
10400 Academy Rd. NE, Suite 310
Albuquerque, NM 87111
Tel: (505) 296-9400
Fax: (505) 296-9401

HOLLAND & KNIGHT LLP

By: /s/ Philip Baker-Shenk

Philip Baker-Shenk (D.C. Bar No. 386662)
800 17th Street, N.W., Suite 1100
Washington, D.C. 20006
Tel: (202) 955-3000
Fax: (202) 995-5564

Attorneys for Plaintiff the Navajo Nation

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2015 I filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record in this matter.

/s/ Paul E. Frye
Paul E. Frye (Bar ID: AZ0008)