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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

THE NORTHERN CHEYENNE
TRIBE,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

CV-24-52-BLG-SPW-TJC

UNITED STATES' BRIEF IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

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The United States of America moves for summary judgment on The Northern Cheyenne Tribe's claims. The undisputed facts show the BIA Office of Justice Services (OJS) properly declined the Tribe's funding contract proposal for the Program Management function of the Tribe's law enforcement program. The Tribe's proposal requested duplicative funding, sought funding for a position that does not exist under OJS's operation of Program Management, and sought to contract for positions that cannot lawfully be carried out by the Tribe. The Court should grant summary judgment in favor of the United States.

BACKGROUND

I. The ISDEAA framework

Recognizing tribes' desire for self-determination, Congress passed the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. §§ 5301 *et seq.*, in 1975. Upon request of a tribe or authorized tribal organization, ISDEAA requires the Secretary to enter a self-determination contract with the tribe to administer "programs or portions thereof" that are "otherwise provided" by the BIA for the benefit of the tribe. *See* 25 U.S.C. §§ 5304(j), 5321(a)(1).¹ Such contracts are also referred to as "638 contracts" or "ISDEAA contracts." 25 U.S.C. § 5321.

¹ ISDEAA defines "self-determination contract" to mean a contract between a tribe and the Secretary for the "planning, conduct, and administration of programs

Funding transferred pursuant to an ISDEAA contract “shall not be less than the appropriate Secretary would have otherwise provided for the operation of the programs or portions thereof for the period covered by the contract” 25 U.S.C. § 5325(a)(1). This amount is sometimes called the “Secretarial Amount” or “base funding.” Tribes also receive contract support costs with their ISDEAA contracts. 25 U.S.C. § 5325(a)(3)(A). “Contract support costs reimburse the tribe for expenses not contemplated by the secretarial amount, like contract compliance expenses that are borne by the tribe but that the federal government would not incur if it still ran the programs.” *Navajo Nation v. United States Dep’t of Interior (Navajo Nation II)*, 57 F.4th 285, 290 (D.C. Cir. 2023) (cleaned up).

The “provision of funds under [ISDEAA] is subject to the availability of appropriations and the Secretary is not required to reduce funding for programs, projects, or activities serving a tribe to make funds available to another tribe or tribal organization” that receives an ISDEAA contract. 25 U.S.C. § 5325(b).

Within ninety days of receiving a proposal for a new or renewed contract, the Secretary must approve the proposal and award the contract unless the Secretary makes a specific written finding that clearly demonstrates that there are grounds to decline the proposal under the ISDEAA. 25 U.S.C. § 5321(a)(2).

or services that are *otherwise provided* to Indian Tribes and members of Indian Tribes pursuant to Federal law.” 25 U.S.C. 5304(j) (emphasis added).

Failure to decline a proposal within 90 days “is deemed approved” by operation of law unless the tribe agrees to an extension. 25 C.F.R. § 900.18. The statutory grounds for declination are:

- (A) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory;
- (B) adequate protection of trust resources is not assured;
- (C) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract;
- (D) the amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 5325(a) of this title; or
- (E) the program, function, service, or activity (or portion thereof) that is the subject of the proposal is beyond the scope of programs, functions, services, or activities covered under paragraph (1) because the proposal includes activities that cannot lawfully be carried out by the contractor.

Id.; see also 25 C.F.R. § 900.22.

The Secretary must approve “any severable portion of a contract proposal that does not support a declination finding” including any “such portion of the program, function, service, or activity as is authorized” by federal law or any level of funding required by ISDEAA. 25 U.S.C. § 5321(a)(4). The statute does not define the term “severable.”

ISDEAA identifies a process by which a tribe with an existing self-determination contract may propose a redesign of a program, activity, function, or

service currently under contract. *See* 25 U.S.C. § 5324(j). The Secretary must evaluate any redesign proposal using the same criteria applicable to an initial contract proposal. *Id.* (citing 25 U.S.C. § 5321). By contrast, tribes participating in Title IV self-governance² may redesign programs operated under a compact without approval of the Secretary. 25 U.S.C. § 5365(d). Title IV, unlike Title I, also permits self-governance tribes to “consolidate programs” or “reallocate funds for programs.” *Id.*

A tribe may challenge a declination through a civil action. *See* 25 U.S.C. § 5331(a). In such an action, “[T]he Secretary shall have the burden of proof to establish by clearly demonstrating the validity of the grounds for declining the contract proposal (or portion thereof).” 25 U.S.C. § 5321(e)(1).

II. OJS law enforcement in Indian Country

Tribes, states, and the Federal Government each possess certain law enforcement authority in Indian country depending on the state, the tribe, and the tribal-member status of those involved in a crime. *United States v. Bryant*, 579 U.S. 140, 145 (2016) (citation omitted). OJS—established by Congress in 1990,

² Two principal titles of ISDEAA apply to BIA programs: Title I self-determination and Title IV self-governance. *See* 25 U.S.C. ch. 46, subchs. I, IV. Title IV self-governance operates through a system of compacts and funding agreements between the Secretary and tribes that meet eligibility requirements set by statute. *See* 25 U.S.C. §§ 5362–5364.

under the Indian Country Law Enforcement Reform Act of 1990, Pub. L. 101-379, 104 Stat. 473—has authority to enforce federal law in Indian country, as well as tribal law with the consent of the tribe. *See* 25 U.S.C. § 2802(b)–(c). OJS operates direct law enforcement services programs in some areas of Indian country; however, most tribes that receive law enforcement services from OJS have entered ISDEAA contracts with OJS for operation of their own law enforcement programs. (SUF ¶ 2.) Under an ISDEAA contract, a tribe assumes responsibility for the day-to-day operation of its law enforcement program, including hiring, compensation, scheduling, and other operational decisions. (SUF ¶ 6.)

OJS receives funding for its direct services and ISDEAA law enforcement programs as part of the annual lump sum appropriation for “Operation of Indian Programs” that funds most of the BIA. (SUF ¶ 4.) From this lump sum, Congress further specifies certain amounts through explanatory statements and committee reports, including amounts for “Criminal Investigations and Police Services” and “Detention/Corrections.” (SUF ¶ 4.) OJS must then divide and distribute funds to the 198 law enforcement programs it funds or operates, as well as its regional and headquarters functions and national programs. (SUF ¶ 4.)

BIA publishes a table in its annual budget justifications showing this breakdown by tribe. (SUF ¶ 11.) Each OJS direct service agency additionally divides its funding into several functional areas, as tracked by the BIA financial

management system. (SUF ¶ 12.) These functional areas are Uniform Patrol/Police, Criminal Investigations, Telecommunications/Dispatch, and Program Management.

III. Direct-service and contracted law enforcement operations on the Northern Cheyenne Indian Reservation

As of 2020, OJS operated all aspects of the law enforcement program at the Northern Cheyenne Indian Reservation, including Uniform Patrol, Criminal Investigations, Telecommunications/Dispatch, Program Management, and Detention/Corrections. (SUF ¶ 13.)

On August 19, 2020, OJS received from the Northern Cheyenne Tribe (“the Tribe”) a proposal (“First Proposal”) dated August 18, 2020, to contract for “the functions of criminal investigations and support staff . . . and those services related to criminal investigations.” (SUF ¶ 25.) The First Proposal requested \$1,198,823 to fund eight positions: a Supervisory Investigator, four Investigators, an Investigative Specialist, and two Investigative Assistants. (SUF ¶ 25.) The First Proposal explained that these positions were to constitute a new law enforcement entity called the “Northern Cheyenne Investigative Services.” (SUF ¶ 25.)

On September 11, 2020, OJS informed the Tribe that the amount identified by the First Proposal was significantly higher than the funding allocation of \$203,846 for the Criminal Investigations program operated by OJS. (SUF ¶ 26.)

Following several months of information exchange and technical assistance to the Tribe, OJS on November 17, 2020, declined the First Proposal after failing to secure an extension from the Tribe. (SUF ¶ 27.) On December 15, 2020, the Tribe filed suit in U.S. District Court for the District of Montana, alleging that the declination violated ISDEAA (“2020 Lawsuit”). (SUF ¶ 28.)

On May 24, 2021, Judge Cavan conducted a mediation with OJS and the Tribe to resolve the 2020 Lawsuit. (SUF ¶ 28.) On November 26, 2021, BIA and the Tribe entered into a Settlement Agreement. (SUF ¶ 28.) The Settlement Agreement noted, “[T]he parties are entering into an Annual Funding Agreement and Model Agreement for the Tribe to contract the Criminal Investigations Services Function, including associated program administration, for fiscal years 2021–23 with DOI BIA under the ISDEAA.” (SUF ¶ 28.) The Settlement Agreement further provided, “DOI BIA shall award the initial ISDEAA contract to the Tribe for a three (3) year term beginning FY2022, in the following amounts per annum: Criminal Investigations (\$377,085) and program administration for a law enforcement assistant (\$76,632).” (SUF ¶ 28.) On February 14, 2022, BIA and the Tribe executed a self-determination contract for a total amount of \$453,717. (SUF ¶ 29.)

IV. OJS's declination of the Tribe's ISDEAA contract proposal for Program Management

Separate from the 2020 Lawsuit, the Tribe passed Tribal Resolution No. DOI-044 (2021), dated December 7, 2020, which expressed the Tribe's intent to contract for "the criminal investigation unit of the Bureau of Indian Affairs, including Program Management, and Telecommunications." (SUF ¶ 30.) For several months, OJS and the Tribe exchanged letters and information and engaged in technical assistance meetings regarding the proposal. (SUF ¶ 30.)

On September 1, 2021, the Tribe submitted a new letter of intent to contract Law Enforcement Telecommunications (also referred to as Dispatch) and Program Management. (SUF ¶ 31.) The Program Management service includes a variety of administrative and support services for law enforcement.

The Tribe's letter of intent requested budgets for both services for fiscal years 2021 and 2022. (SUF ¶ 31.) OJS responded to the Tribe's letter and provided information the Tribe requested. (SUF ¶ 32.) OJS explained the amount budgeted for Telecommunications for fiscal year 2021 was \$269,871, and the amount budgeted for Program Management was \$319,562. (SUF ¶ 32.) At the time, OJS was not able to provide allocated amounts for fiscal year 2022 because the agency was operating under a continuing resolution and did not have actual figures to provide. (SUF ¶ 32.)

In that same response, OJS also explained that the total number of full-time employees for Telecommunications was six employees—a Lead Dispatcher and five Dispatchers. (SUF ¶ 33.) The total number of full-time employees for Program Management was one employee—a single Law Enforcement Assistant. (SUF ¶¶ 33–34.)

The Telecommunications budget data for fiscal year 2021 showed that OJS spent a total of \$381,409 to provide the service, going over budget by \$111,538. (SUF ¶ 35) The Program Management budget data, however, showed that OJS spent only \$83,480 for that service, falling under budget by \$236,082. (SUF ¶ 35.)

A. The Tribe’s contract proposal

On July 25, 2022, the Tribe submitted a second contract proposal for Telecommunications and Program Management functions to begin in fiscal year 2023 (“Second Proposal”). (SUF ¶ 36.) The Second Proposal requested a total budget of \$888,801.15 for the first fiscal year. (SUF ¶ 36.) The Program Management function listed funding for a “Supervisory Criminal Investigator”³ and “Office Manager.” (SUF ¶ 36.) The Telecommunications function listed a Lead Dispatcher and six additional operators. (SUF ¶ 36.)

³ Based on the Tribe’s proposal, the Supervisory Criminal Investigator would serve as the official in charge of the Criminal Investigations function. (SUF ¶ 36.)

B. OJS identifies several issues with the Tribe's proposal

There were several problems with the Tribe's Second Proposal, which OJS addressed in a letter to the Tribe identifying potential grounds for declination. A couple of these grounds related to the Tribe's request for a "Supervisory Criminal Investigator" position. First, OJS's Program Management operations and budget did not include a supervisor position. (SUF ¶ 37.) The Tribe's Second Proposal for this position was duplicative because the Tribe already received all funding for Criminal Investigations operations, including an increase of \$173,239 over the Secretarial Amount. (SUF ¶ 37.) There was no basis for the Tribe to request a second allocation for the same function. Second, under the terms of the Settlement Agreement, the Tribe had already received the portion of the Program Management funding (\$76,632) allocated for Criminal Investigations. (SUF ¶ 37.) That sum was provided to the Tribe through the Criminal Investigations ISDEAA contract. (SUF ¶ 37.) Thus, OJS's budget for Program Management did not contain any funding related to or allocated for Criminal Investigations. (SUF ¶ 37.)

The Tribe then asked OJS to explain how a Supervisory Criminal Investigator position is funded if not through Program Management. (SUF ¶ 38.) The Tribe also contended that OJS organizational charts included a Supervisory Criminal Investigator as part of the broader law enforcement program but that the position was not included in the Criminal Investigations funding. (SUF ¶ 38.) OJS

explained that the Supervisory Criminal Investigator position shown in the organizational chart is the Chief of Police, funded through the Uniform Patrol budget (operated directly by OJS). (SUF ¶ 38.) “Supervisory Criminal Investigator,” advised OJS, is a term of art under Office of Personnel Management (OPM) standards that may also include a Chief of Police. (SUF ¶ 38.) Thus, the title “Supervisory Criminal Investigator,” as used in the organizational charts, referred to Uniform Patrol’s Chief of Police, not a position within the Criminal Investigations function. (SUF ¶ 38.) The Tribe had already received all funding from Program Management that was related to Criminal Investigations. (SUF ¶ 38.)

Separately, OJS agreed to fund the Tribe’s proposed Telecommunications budget of \$528,467.49, even though OJS had spent only \$381,409 to operate the service in fiscal year 2021. (SUF ¶ 39.) To meet the Tribe’s request, OJS reallocated \$253,303.49 from Program Management, which came under budget by \$236,082 in fiscal year 2021. (SUF ¶ 39.) OJS explained this reallocation from Program Management to Telecommunications in correspondence dated Dec. 16, 2022, and March 23, 2023. (SUF ¶ 39.)

After OJS moved funds from Program Management to Telecommunications to meet the Tribe’s requested Telecommunications budget, only \$72,525 remained in the Program Management budget. (SUF ¶ 40.) That sum, however, was not

available for contracting because it funded the OJS administrative support staff employee for OJS's remaining direct-service operations—Uniformed Police and Juvenile Corrections. (SUF ¶ 40.)

C. OJS approves the Tribe's Telecommunications proposal and declines the Tribe's Program Management proposal

On August 21, 2023, OJS approved the Tribe's contract proposal for Telecommunications in the amount of \$528,467.49 and simultaneously declined the Tribe's contract proposal for Program Management. (SUF ¶ 41.)

OJS provided a detailed explanation of the reasons for the declination. After outlining the statutory declination criteria, OJS found that, with respect to Program Management:

Under the Tribe's proposal, the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory under [25 U.S.C. § 5321(a)(2)(A)]; the amount of funds proposed under the contract is in excess of the applicable funding level for the contract under [25 U.S.C. § 5321(a)(2)(D)]; and the Program Management proposal is beyond the scope of the ISDEAA under [25 U.S.C. § 5321(a)(2)(E)].

(SUF ¶ 42.)

After summarizing prior correspondence, OJS recounted that the Tribe requested \$360,333.66 for Program Management to fund an administrative position and a Supervisory Criminal Investigator. (SUF ¶ 43.) OJS explained, however:

[T]here is no funding appropriated or allocated within the BIA OJS Program Management line item that funds a Criminal Investigator or

Supervisory Criminal Investigator. The Tribe did receive a share of the BIA OJS Program Management funding for administrative support functions when the Criminal Investigations PFSA was transferred”

(SUF ¶ 43.)

OJS went on to explain, “The remaining program management funding retained by BIA OJS is required to provide administrative support for the BIA OJS direct service Uniform Patrol and juvenile corrections.” (SUF ¶ 44.) OJS found that “[t]his is a function that cannot be transferred to another BIA OJS Agency nor can it be completed by the Tribe due to the (*sic*) BIA LEA [Law Enforcement Assistant] function for BIA law enforcement is specific to Federal Employees” and that “[t]he funding for this function cannot be separated out as it would not provide enough funding for the requirements to be carried out on either the Tribal or BIA OJS side.” (SUF ¶ 44.) OJS concluded by declining the entire request of \$360,333.66. (SUF ¶ 44.)

The Tribe requested and received an informal conference with the BIA to review OJS’s declination decision. (SUF ¶ 45.) The informal conference report of November 3, 2023, concluded OJS properly partially declined the Tribe’s contract proposal for Program Management. (SUF ¶ 45.)

The Tribe and BIA executed the Telecommunications contract on December 1, 2023. (SUF ¶ 46.) The Tribe then filed this lawsuit.

STANDARD

Summary judgment is appropriate when the moving party “shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

ANALYSIS

OJS correctly declined the Tribe’s Second Proposal for Program Management because all funding and functions attributable to Criminal Investigations had already been transferred to the Tribe in February 2022 and all funding and functions attributable to Telecommunications were included in the simultaneous approval of the Tribe’s Second Proposal for Telecommunications. To the extent the Tribe sought to create new positions through its proposal, ISDEAA does not compel the agency to fund portions of programs that were not otherwise provided under direct service. To the extent the Tribe sought to operate functions as part of the residual OJS Uniform Patrol service, OJS validly concluded that such functions could not lawfully be carried out by the Tribe as long as OJS operated that service. Critically, OJS and the Tribe agree that the Tribe is free to contract for the entire Uniform Patrol function at any time. The questions raised by this litigation are therefore unique to the narrow context of split operations within a law enforcement program. Within that context, OJS was justified in concluding that declination was warranted here.

I. The Tribe’s contract proposal for Program Management improperly included funding for a supervisory position.

The Tribe’s proposed funding for a “Supervisory Criminal Investigator” position triggered two declination criteria under ISDEAA.

A. There was no “Supervisory Criminal Investigator” position under Program Management, and OJS had already provided all available funding in Criminal Investigations.

The Tribe’s contract proposal for Program Management requested a “Supervisory Criminal Investigator” position. (SUF ¶¶ 36–37.) But no such position was part of Program Management under OJS’s operation of the service. (SUF ¶ 37.) There was, therefore, no budget for a “Supervisory Criminal Investigator” position and no such position to contract to the Tribe. ISDEAA does not compel OJS to create positions for a contract that do not already exist. *See, e.g., Los Coyotes Band of Cahuilla & Cupeno Indians v. Jewell*, 729 F.3d 1025, 1037–38 (9th Cir. 2013) (holding the BIA was not required to approve a contract proposal for services that did not exist or were not already funded).

To the extent the Tribe sought funding for a supervisor for the Criminal Investigations function it operated, OJS already provided all Criminal Investigations funding when the Tribe contracted for the Criminal Investigations function. (SUF ¶ 37.) In its letter of February 18, 2021, OJS quoted the Secretarial Amount for Criminal Investigations to be \$203,846. (SUF ¶ 47.) Following

negotiations between the parties, the Settlement Agreement executed on November 26, 2021, between OJS and the Tribe provided for \$377,085 for Criminal Investigations plus \$76,632 (from Program Management) for a law enforcement assistant, for a total of \$453,717. (SUF ¶¶ 28–29, 37.) OJS and the Tribe executed a contract for that amount on February 14, 2022. (SUF ¶ 29.) This amount fully settled the entirety of the Tribe’s claims related to its First Proposal to create the Northern Cheyenne Investigative Service. Thus, the “applicable funding level” for any Supervisory Criminal Investigator position (indeed, any Criminal Investigations position) was \$0 because no such position existed within or was funded through Program Management and any contract proposal seeking funding for such a position would be “in excess of the applicable funding level.” See 25 U.S.C. 5321(a)(2)(D).

B. OJS validly concluded that the Chief of Police could not lawfully be contracted to the Tribe as long as the position oversees federal employees.

The “Supervisory Criminal Investigator” position the Tribe observed in OJS’s organizational chart is, in fact, the Chief of Police for Uniform Patrol, which OJS operates. (SUF ¶ 38.) OJS explained to the Tribe that, under OPM standards, the title “Supervisory Criminal Investigator” covers chiefs of police, among other positions. (SUF ¶ 38.)

To the extent that the Tribe sought to contract for the Chief of Police, OJS validly concluded that the agency could not lawfully contract for that position as long as OJS is operating Uniform Patrol.

ISDEAA permits declination when a function “cannot lawfully be carried out by the contractor.” 25 U.S.C. § 5321(a)(2)(E). Federal courts have long recognized that certain delegations of federal authority to outside entities may violate statutory or constitutional limits. *See, e.g., A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935); *Assiniboine & Sioux Tribes of Fort Peck Indian Reservation v. Board of Oil & Gas Conservation*, 792 F.2d 782, 795–96 (9th Cir. 1986); *U.S. Telecom Ass’n v. FCC*, 359 F.3d 554, 565 (D.C. Cir. 2004).

Federal courts have also identified an important exception when the non-federal entity “itself possesses independent authority over the subject matter.” *United States v. Mazurie*, 419 U.S. 544, 557 (1975) (noting also that “Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory”); *S. Pacific Transp. Co. v. Watt*, 700 F.2d 550, 556 (9th Cir. 1983) (applying the *Mazurie* principle to a redelegation of statutory authority by the Secretary of the Interior).

Under applicable federal law, supervision of federal employees may not be delegated to the Tribe. In 1998, Congress adopted a definition of “inherently governmental function” to mean “a function that is so intimately related to the

public interest as to require performance by Federal Government employees” and included within such functions “the interpretation and execution of the laws of the United States so as . . . to commission, appoint, direct, or control officers or employees of the United States” Federal Activities Inventory Reform Act of 1998, Pub. L. 105-270, sec. 5(2)(B)(iv), 112 Stat. 2382, 2385 (Oct. 19, 1998). This language is similar to longstanding executive branch policy. *See* Office of Management and Budget, Office of Federal Procurement Policy, Policy Letter on Inherently Governmental Functions, 57 Fed. Reg. 45,096, 45,100 (Sept. 30, 1992); *see also* 76 Fed. Reg. 56,227, 56,236 (Sept. 12, 2011). This definition, however, does not account for the independent authority of the Tribe, which must be separately assessed. *See Mazurie*, 419 U.S. at 557.

Here, OJS was justified in concluding that the Tribe lacks independent authority over the federal law enforcement officers supervised by the Chief of Police position. *See United States v. White Mountain Apache*, 784 F.2d 917, 920 (9th Cir. 1986) (concluding that tribes are “without authority to restrict federal officials in their conduct of official business” on a reservation); *United States v. Blackfeet Tribe*, 364 F. Supp. 192, 194 (D. Mont. 1973) (“It is beyond the power of the tribe to in any way regulate, limit, or restrict a federal law officer in the performance of his duties”).

This analysis turns on facts particular to the joint operation of programs at the Northern Cheyenne Reservation. If the Tribe were to contract for Uniform Patrol in its entirety, the tribe would have independent authority over its own tribal officers, and tribal supervision would be appropriate. But, as long as OJS operates Uniform Patrol, supervision of the officers lies outside the Tribe's sovereignty and "cannot lawfully be carried out by the contractor." 25 U.S.C. § 5321(a)(2)(E). The only way for the Tribe to contract for the Chief of Police position is to contract for the Uniform Patrol service in its entirety, which the Tribe is free to do at any time.

II. The Tribe's contract proposal for Program Management services improperly included funding for an administrative position.

The Tribe's request to fund an administrative position was improper for two reasons.

A. OJS had already provided funding for a law enforcement assistant for the tribally operated Criminal Investigations program.

To the extent the Tribe sought funding for an administrative position in support of Criminal Investigations, the Settlement Agreement for Criminal Investigations already provided \$76,632 for "program administration for a law enforcement assistant." (SUF ¶¶ 28, 37.) This represented all administrative funding applicable to the Criminal Investigation function. The duties of this law enforcement assistant are currently being performed by an "Investigative

Specialist” under the terms of the Criminal Investigations contract. (SUF ¶ 29.) OJS already fully funds this position on an annual basis under the terms of the Settlement Agreement and Criminal Investigations contract. (SUF ¶ 29.) The Tribe’s request to provide additional funding for a law enforcement assistant is therefore improperly duplicative. There was therefore no remaining funding to be contracted, and OJS properly declined the Tribe’s proposal under criterion (D).

B. OJS validly concluded that the Law Enforcement Assistant position could not lawfully be contracted as long as the position supports federal programs.

To the extent the Tribe sought to contract for the residual Law Enforcement Assistant position supporting OJS operations, OJS validly concluded that the function could not lawfully be carried out by the Tribe. 25 U.S.C. § 5321(a)(2)(E). As long as OJS operates uniform patrol and juvenile detention, the function of providing administrative support to those programs cannot lawfully be delegated outside of the federal government because it requires the management of federal contracts, the acquisition and disposition of federal personal property, and the control and disbursement of federal appropriations. *See* Pub. L. 105-270, sec. 5(2)(B)(ii), (v).

The duties of the Law Enforcement Assistant position fit within the definition of “inherently governmental function” adopted by the legislative and executive branches. *See* Pub. L. 105-270, sec. 5(2)(B)(ii), (v), 112 Stat. at 2385 ;

76 Fed. Reg. at 56,236. A major duty of the Law Enforcement Assistant position is “work related to the preparation, execution, and/or tracking of grants, interagency cooperative agreements, or contracts within the Agency,” including work related to “complex supply transactions.” (SUF ¶ 20.) The position is responsible for “obtaining and monitoring the use of services, supplies, or equipment for the office.” (SUF ¶ 20.) The position must also “monitor budgets, submit requests or changes” and review budget submissions for “adequacy of funds.” (SUF ¶ 20.)

Federal statutes and regulations governing these tasks support the conclusion that these functions—as long as they serve a federal law enforcement agency—must be performed by a federal employee. Federal acquisition of services and supplies is governed by the Federal Acquisition Regulation. *See* 48 U.S.C. Chapter 1. Most purchases made at the field level are executed through micro-purchase authority. (SUF ¶ 21.) Delegation of micro-purchase authority is permissible to “individuals who are employees of an executive agency or members of the Armed Forces of the United States.” 48 C.F.R. § 1.603-3.

The Law Enforcement Assistant for an direct service law enforcement agency has additional responsibilities related to the issuance, transfer, inventory, disposal, and reporting of lost federal firearms and ammunition.⁴ Federal law

⁴ Indian Affairs Manual, Part 23, Chapter 9, Section 1.7.

specifies that “[t]he holding agency is responsible for the custody of” firearms and ammunition, 41 C.F.R. §§ 102-40.65, 70, 145, 175, and imposes certain requirements that must be performed by federal employees. *See, e.g.*, 41 C.F.R. § 102-40.175(d).

Likewise, the BIA system of financial accountability relies on the Antideficiency Act and its provision of administrative discipline or criminal penalties for knowing and willful violations. 31 U.S.C. §§ 1349–1350. Critically, the Antideficiency Act only applies to “officer[s] or employee[s] of the United States Government or of the District of Columbia government.” 31 U.S.C. § 1341. It is for that reason that individuals not subject to the Antideficiency Act cannot take part in the management of federal funds.⁵

None of these responsibilities intersect with the sovereignty of the Tribe because the Tribe lacks jurisdiction over federal contracts, federal personal property, and federal appropriations. *See Mazurie*, 419 U.S. at 557. Such instruments of the federal government are not within the independent authority of the Tribe. *Cf. Blackfeet Tribe*, 364 F. Supp. at 195 (concluding that a tribe has no jurisdiction over personal property found on the reservation that is lawfully in the

⁵ Indian Affairs Manual, Part 26, Chapter 2, Section 1.3 (“It is IA’s policy that officials receiving funds must be held administratively accountable and are subject to the provisions of the [Antideficiency Act].”).

possession of the United States). Once again, this analysis would be different if the Tribe elected to contract for the entire law enforcement program on the Northern Cheyenne Reservation, which the Tribe can do at any time.

CONCLUSION

For the reasons above, the Court should grant Summary Judgment in favor of the United States.

DATED this 1st day of October 2025.

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(d)(2)(E), the attached brief is proportionately spaced, has a typeface of 14 points and contains 4,940 words, excluding the caption and certificates of service and compliance.

DATED this 1st day of October 2025.

/s/ Randy J. Tanner
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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of October 1, 2025, a copy of the foregoing document was served on the following person by the following means.

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