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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' REPLY BRIEF IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

I. The Tribe did not “modify” its Second Proposal, and it continues to obfuscate the aim of its Second Proposal.

Through its Second Proposal, the Tribe sought to contract Program Management solely to help fund (1) “A Supervisory Criminal Investigator . . . to perform the duties as administrator and supervisor of the Northern Cheyenne Investigative Services” and (2) an “Office Manager [to] perform routine clerical

functions for the Criminal Investigators and Telecommunications Operators.” (Doc. 1-5 at 16; Doc. 34 at 10.) The United States repeatedly advised the Tribe that, after it reallocated \$253,303.49 from Program Management to Telecommunications—to satisfy the Tribe’s funding request—there were no remaining funds available in Program Management to provide further support for either Criminal Investigations or Telecommunications. (Doc. 39 at ¶¶ 37–44.) Instead, the \$72,525.51 that remained in Program Management funded a Law Enforcement Assistant supporting OJS’s direct-service operations. (Doc. 39 at ¶ 40.) This all occurred after the United States had already added \$76,632 to the Tribe’s Criminal Investigations contract for “program administration for a law enforcement assistant,” plus a separate increase to Criminal Investigations above OJS budget or expenditures. (Doc. 39-2 at 161.)

The Tribe argues that, in the midst of negotiations, it “modified” its proposal by withdrawing its request to fund a Supervisory Criminal Investigator and to instead “contract for whatever funding and positions were left in the Program Management budget.” (See Doc. 43 at 15, 17.) ISDEAA, however, does not allow for “modification” of a contract proposal by correspondence. And the Tribe submitted no amended proposal that satisfied the requirements of 25 C.F.R. § 900.8.

The Tribe claims its purported modification was authorized by 25 U.S.C. § 5321(a)(4). The Tribe is mistaken. ISDEAA permits an “alteration” in only two circumstances: when (1) the original proposal “proposes in part to plan, conduct or administer a program, function, service or activity that is beyond the scope of programs” sought to be contracted, 25 U.S.C. § 5321(a)(4)(A), or (2) the original proposal “proposes a level of funding that is in excess of the [Secretarial Amount],” 25 U.S.C. § 5321(a)(4)(B). In the case of the former, the Tribe and OJS can *mutually* agree to remove any impermissible portion of the proposal, and OJS can approve the permissible remainder. 25 U.S.C. § 5321(a)(4). In the case of the latter, the Tribe and OJS can *mutually* agree to decrease the requested funding to bring the proposed funding at or under the Secretarial Amount. *Id.* The Tribe’s purported “modification” is neither.

The Tribe’s modification argument fails because the Secretary did not “agree to” any alteration in the scope of the Second Proposal. *See* 25 U.S.C. § 5321(a)(4). Under ISDEAA, the Tribe cannot unilaterally alter its proposal. The Secretary must agree to it. Here, the Secretary never agreed to alter the Tribe’s proposal, so no alteration was made. Nor would the Secretary have agreed because the Tribe sought neither of the alterations permitted by 25 U.S.C. § 5321(a)(4).

The Tribe’s argument is telling because it comes full circle on the intent of its Second Proposal: “Thus, much like the BIA-OJS [Law Enforcement Assistant]

supports multiple BIA-OJS functions at Northern Cheyenne, the Tribe sought funding for a [Law Enforcement Assistant] in the same manner to serve as NCIS's [Northern Cheyenne Investigative Services] office manager." (Doc. 43 at 18 (citations omitted).) The Tribe, though, already received \$76,632 under the Settlement Agreement for "program administration for a law enforcement assistant" as part of its Criminal Investigations contract. (Doc. 39-2 at 161.) The Tribe is already receiving annual funding for its "office manager" and cannot now claim it is owed that same funding again.

The Tribe also makes the remarkable claim that NCIS "oversees all the Tribe's law enforcement functions." (Doc. 43 at 18 (emphasis original).) Not true. OJS continues to directly operate the Uniform Patrol function, and the Tribe exercises no responsibility or oversight for that function.¹ If the Tribe is unsatisfied with how OJS has provided administrative support for both direct service and contracted operations, the Tribe can submit a contract proposal or a redesign proposal containing its plan for how those functions should be provided.

¹ In addition to Telecommunications and Criminal Investigations—the two federal programs for which the Tribe holds contracts under ISDEAA—the Tribe also states that NCIS exercises "inherent Tribal law enforcement authority." Typically, tribes exercising inherent tribal law enforcement authority under ISDEAA do so by contracting for the Uniform Patrol function, which provides funds for tribal patrol officers that enforce tribal law. Here, the Tribe has not sought to contract for Uniform Patrol, and so any expenditure in support of that still-federal function cannot be the basis for a claim under ISDEAA.

To date, OJS has not received any such proposal. Or, alternatively, the Tribe can propose to contract for the entire law enforcement operation at the Northern Cheyenne Reservation, which it is free to do at any time.

If the Tribe truly wished to revise its proposal to provide administrative support to OJS direct service, the Tribe would have needed to submit a revised proposal—including a revised statement of the functions to be performed, revised program standards, revised minimum staff qualifications, and a revised funding amount—reflecting that intention.² 25 C.F.R. § 900.8. This is for good reason. OJS can only properly evaluate and provide a “detailed explanation” of the reason for its decision if the proposal contains the details required by regulation. 25 C.F.R. § 900.29. Requiring OJS to formally decline every potential informal modification to a proposal would set the agency an impossible task and would only sew confusion within the programs BIA operates for the benefit of Indians. Within the context of law enforcement, it would be particularly dangerous for there to be confusion about what functions the Tribe operated versus OJS. The contract proposal process outlined by regulation also supports important ISDEAA

² The Tribe writes that it requested the position description for the law enforcement assistant (the remaining position in Program Management) but that OJS did not provide that description. OJS, however, had previously provided the description to the Tribe. (Doc. 39-2 at 14–24.)

principles of tribal self-determination, as it ensures the support of the tribal governing body for the proposal offered. 25 C.F.R. § 900.8(d).

The Tribe's Second Proposal sought funding solely to support its Northern Cheyenne Investigative Service, which operates Criminal Investigations and Telecommunications. OJS already provided the Tribe all funds available for those two functions. There were no additional funds available for those two funds in Program Management, so the Secretarial Amount was \$0, and OJS correctly partially declined the Second Proposal under 25 U.S.C. § 5321(a)(2)(D).

II. The Tribe continues to demand duplicative funding.

In its Second Proposal, the Tribe proposed a budget of \$360,333.36 for Program Management to fund a Supervisory Criminal Investigator and “office manager” for Criminal Investigations and Telecommunications.³ (Doc. 1-5; Doc. 39 at ¶¶ 43–44; Doc. 39-2 at 147.) The Tribe reasserts this claim in its Complaint and opening summary judgment brief, asking the Court to order OJS to enter a contract for Program Management with annual funding of “at least \$325,829.” (Doc. 34 at 21; Doc. 1 at 31–32.)

³ While OJS had initially budgeted \$325,829 for Program Management's fiscal year 2022 budget, the Tribe's proposed budget of \$360,333.36 was not tied to any amount OJS had ever budgeted or spent for Program Management.

The Tribe argues its request is not duplicative of funding it already receives, but the undisputed facts show otherwise. The Tribe does not dispute that OJS has provided and continues to provide \$253,303.49 to the Tribe from the \$325,829 FY 2022 Program Management budget as part of the Tribe's Telecommunications budget. (Doc. 43 at 12; Doc. 44 at ¶ 39.) The Tribe therefore has already received and continues to annually receive \$253,303.49 of the \$325,829 it now demands. So, to the extent the Tribe continues to make a claim for \$325,829 in Program Management funds, that sum is undisputedly duplicative as to at least \$253,303.49. The Tribe cannot lay claim to the same funds a second time.

Moreover, the Tribe's own arguments cut against its claim. In its response brief, the Tribe argues it is only making a claim for what was "available" in the Program Management budget after OJS reallocated \$253,303.49 to Telecommunications. (Doc. 43 at 19.) The Tribe writes that, through its purported modification, it "sought to contract only the amount of funding available under the Program Management program." (Doc. 43 at 19.) The Tribe further writes it was only seeking what OJS "would have spent" on Program Management. (Doc. 43 at 20 (quoting *Pyramid Lake Paiute Tribe v. Burwell*, 70 F. Supp. 3d 534, 544 (D.D.C. 2014))). The amount of funding left in Program Management and what OJS "would have spent" on that function is \$72,525.51, not \$325,829. But no amount of that sum would have been spent on Criminal Investigations or

Telecommunications. Consequently, there was \$0 available for the Tribe's proposal.

Separately, the Tribe argues at length in its response brief that ISDEAA allows the Tribe to contract for an administrative support person for "all law enforcement functions performed by the Tribe." (Doc. 43 at 19–20 (emphasis added).) This argument misses the point and highlights another duplicative demand by the Tribe. The only law enforcement functions performed by the Tribe are Criminal Investigations and Telecommunications. The Tribe does not perform the Uniform Patrol or Detention/Corrections functions. OJS performs those functions directly. Thus, when the Tribe demands administrative-support funding for "all law enforcement functions performed by the Tribe," it is necessarily demanding administrative support for only its Criminal Investigations and Telecommunications functions—those are the only two functions the Tribe performs pursuant to self-determination contracts. And OJS is already providing this funding through the 2021 Settlement Agreement and resultant Criminal Investigations contract, and through the Telecommunications contract.

OJS does not dispute the Tribe's assertion that it may contract for administrative support functions supporting Criminal Investigations and Telecommunications. But the Tribe cannot receive the same funds twice.

III. OJS explained in its partial declination letter why the Law Enforcement Assistant position funded through Program Management cannot be contracted.

The Tribe argues OJS failed to explain why it could not contract the remaining Law Enforcement Assistant position funded through Program Management. (See Doc. 43 at 20–25.) OJS, however, explained in its partial declination letter that this position “is required to provide administrative support for the BIA OJS direct service uniformed patrol and juvenile corrections,” which is why the Tribe could not use the remaining funding to provide additional positions to the Northern Cheyenne Investigative Services, as proposed. (Doc. 39-2 at 175.) In the alternative, OJS also stated its view that the function cannot “be completed by the Tribe due to the (*sic*) BIA LEA function for BIA law enforcement is specific to Federal Employees.” (Doc. 39-2 at 175.) OJS further explained that the funding for this single position “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.” (Doc. 39-2 at 175.)

Without the Tribe having provided any of the proposal details required by regulation, this is a “specific finding” by OJS that complies with ISDEAA. See 25 U.S.C. § 5321(a)(2). And this was in addition to the other instances OJS had addressed the issue with the Tribe. (Doc. 39-2 at 170–72.)

The Tribe points to an agency appellate decision—*Paiute Indian Tribe of Utah*—to argue that OJS was required to provide “specific examples,” but ISDEAA contains no such requirement, and the *Paiute* decision was unsupported on that point. (See Doc. 34 at 17 (quoting *Paiute Indian Tribe of Utah v. S. Paiute Agency Supt.*, 2008 WL 1902819 at *1, *2, *5 (Int. Bd. of Indian Appeals March 12, 2008)).) ISDEAA does not require OJS to prepare a legal brief justifying its reasons for declination. It requires only “a specific finding that clearly demonstrates that, or that is supported by a controlling legal authority that” a declination criteria applies. 25 U.S.C. § 5321(a)(2); *see also* 25 C.F.R. § 900.29. OJS did that by making the specific finding above.

The Tribe separately argues the functions performed by the Law Enforcement Assistant are contractable because they “are identical to the job duties performed by the NCIS law enforcement/investigative specialist, a position that BIA-OJS previously allowed the Tribe to contract under ISDEAA.” (Doc. 43 at 23.) The Tribe’s argument again misses the point and ignores a key distinction. The Law Enforcement Assistant supporting OJS direct service performs duties related to federal contracts, federal personal property, and federal funds. The Tribe’s assistant supporting Criminal Investigations and Telecommunications performs duties related to tribal contracts, tribal personal property, and tribal funds, subject only to those restrictions provided in the self-determination contract. As

long as OJS operates Uniform Patrol and Telecommunications, the Law Enforcement Assistant supporting those functions cannot be contracted. (See Doc. 38 at 26–29; Doc. 39-2 at 175.)

Of course, the Court need not address this alternative basis for OJS’s declination because the Tribe did not propose to contract for this position in the first place. The Second Proposal did not include a request to contract the Law Enforcement Assistant function. It sought only funding for a Supervisory Criminal Investigator and “office manager” for Criminal Investigations and Telecommunications. OJS only addressed this basis for declination because the Tribe informally made a request related to the position without submitting a revised proposal, as required under 25 C.F.R. § 900.8.

IV. OJS negotiated in good faith, and it has not waived any defenses on that point.

The Tribe’s good-faith argument reveals a contradiction in its claims. On the one hand, in its response brief, the Tribe attempts to recast the duplicative nature of its funding request, arguing it had “modified” its proposal to request “only the amount of funding available under the Program Management program” and only what OJS “would have spent.” (Doc. 43 at 19–20.) The Tribe made a similar point in its opening brief, claiming, “[T]he Tribe is entitled to contract all that BIA-OJS actually spends on the Program Management function.” (Doc. 34 at 18 (emphasis

original).) At the same time, the Tribe argues it is entitled to the \$325,829 that OJS budgeted for Fiscal Year 2022 and that failure to offer that entire sum amounted to agency bad faith. According to the Tribe, OJS was required to “freeze” the Secretarial Amount at this level when the Tribe submitted its Second Proposal. (Doc. 43 at 28.)

There are several problems with this argument. First, the Tribe does not dispute that OJS never “actually spen[t]” nor “would have spent” \$325,829 on Program Management. (Doc. 44 at ¶ 35.) In fiscal year 2021, OJS spent only \$83,480 for Program Management, falling under budget by \$236,082. (Doc. 44 at ¶ 35.) The Tribe does not dispute this fact. (Doc. 44 at ¶ 35.) Indeed, the fact that OJS came under budget in Program Management was a significant factor allowing OJS to reallocate \$253,303.49 from Program Management to the Tribe for its Telecommunications function. (Doc. 44 at ¶ 39.)

Second, the Tribe cannot claim that OJS tied the hands of the Tribe in any way by making the reallocation. The Tribe readily accepted the \$253,303.49 as part of the Telecommunications contract. Never has the Tribe asked OJS to remove the \$253,303.49 from Telecommunications, which OJS approved as part of the same agency action that the tribe challenges here. Still, if the Tribe proposes a different use for those funds today, it need only submit a redesign proposal, which OJS would review according to the declination criteria. 25 U.S.C. § 5324(j).

Third, the Tribe does not point to any provision of ISDEAA or its regulations that prevented the Secretary from reallocating direct-service funds to meet the Tribe’s funding request for Telecommunications. Instead, the Tribe points to *Pyramid Lake*, and the rule created by that court as “an issue of first impression,” unbriefed by either party, to address a specific situation that would have “un[done]” the “structure and purpose” of the statute. *Pyramid Lake*, 70 F. Supp. 3d at 543. Here, unlike in *Pyramid Lake*, none of the purpose-defying facts are in place: OJS did not defund a program nor make any funds unavailable to the Tribe through its reallocation. (See Doc. 41 at 13–17.) The opposite is true—OJS reallocated \$253,303.49 specifically to make those funds available to the Tribe. The Tribe continues to receive this funding through its Telecommunications contract on an annual basis.

The Tribe also points to *Ramah* in support of its freeze-the-budget argument. (Doc. 43 at 26–27 (citing *Ramah Navajo School Board v. Babbitt*, 87 F.3d 1338, 1344 (D.C. Cir. 1996)).) The Tribe writes, “The ISDEAA restricts the Secretary’s discretion to re-allocate funding once a tribal proposal to contract that funding has been received.” (Doc. 43 at 26.) *Ramah* says no such thing. In *Ramah*, the D.C. Circuit addressed “contract support costs,” a category of funding not at issue in this case and governed by different statutory language. 87 F.3d at 1344; (See Doc. 41 at 21, n.8 (noting contract support costs).) In *Ramah*, the court held that agencies do

not have discretion to limit reimbursement to tribes for contract support costs even in the face of insufficient appropriations. *Id.* at 1345–52. *Ramah* does not speak to an agency’s discretion to reallocate program funding. After *Ramah* was decided, the Ninth Circuit held in *Los Coyotes* that an agency’s allocation of lump-sum appropriations is an “unreviewable act[] of agency discretion.” *Los Coyotes Band of Cahuilla & Cupeno Indians v. Jewell*, 729 F.3d 1025, 1038 (9th Cir. 2013) (discussing *Lincoln v. Vigil*, 508 U.S. 182 (1993), and explaining inapplicability of *Ramah*).

As to lump sum appropriations, the Tribe argues, “The ISDEAA clearly requires DOI and BIA to pull funds from elsewhere in their lump-sum appropriation if necessary to satisfy the requirements of ISDEAA.” (Doc. 43 at 28.) The United States does not dispute that the agency has no discretion to allocate from a lump-sum appropriation contrary to a statutory command. The United States disputes only the content of the statutory command, which is to provide funds not less than the 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). Here, it is undisputed that the OJS never would have spent \$325,829 on Program Management. (Doc. 44 at ¶ 35.) In fiscal year 2021, OJS spent only \$83,480, and after it reallocated \$253,303.49 from Program Management to the Tribe, it provided itself only \$72,525.51 for the period covered

by the contract. ISDEAA does not require OJS to “pull funds from elsewhere in [its] lump-sum appropriation” to fund the Tribe’s contract at a level above what it would have otherwise provided.

The Tribe’s insistence that OJS should have allocated \$325,829 for Program Management—even after reallocating \$253,303.49 of that sum to the tribe—illustrates the Tribe’s errant attempt at a double recovery. The Tribe fails to make any showing that OJS negotiated in bad faith by making funding available to the Tribe through the reallocation. As it stands, the Tribe today receives significantly greater funding than what OJS ever allocated or spent on Criminal Investigations, Telecommunications, and Program Management combined. (See Doc. 41 at 21–22.)

CONCLUSION

The Court should grant the United States’ Motion for Summary Judgment and deny the Tribe’s Motion for Summary Judgment.

DATED this 4th day of November 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 3,249 words, excluding the caption and certificates of service and compliance.

DATED this 4th day of November 2025.

/s/ Randy J. Tanner
Assistant U.S. Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of November 2025, a copy of the foregoing document was served on the following person by the following means.

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