

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

THE NORTHERN CHEYENNE TRIBE,
Plaintiff,

vs.

THE UNITED STATES OF AMERICA;
the UNITED STATES DEPARTMENT
OF THE INTERIOR; the BUREAU OF
INDIAN AFFAIRS; David
BERNHARDT, in his official capacity as
Secretary of the Interior; Darryl
LACOUNTE, in his official capacity as
Director of the Bureau of Indian Affairs;
Susan MESSERLY, in her official
capacity as Director of the BIA Rocky
Mountain Regional Office; Lenora
NIOCE, in her official capacity as BIA
Special Agent in Charge/Approving
Official;

Defendants.

_ No. CV-20-183-BLG-SPW

COMPLAINT

Plaintiff, by and through the undersigned attorneys, for its Complaint against
the Defendants, hereby alleges as follows:

INTRODUCTION

1. This is an action by Plaintiff, the Northern Cheyenne Tribe (“Tribe”), seeking declaratory, mandamus, injunctive and equitable relief against the United States of America (“United States” or “Government”) due to the Bureau of Indian Affairs’ violation of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5301 *et seq.* (“ISDEAA”) and its implementing regulations at 25 C.F.R. Part 900.

2. Defendants violated the ISDEAA when they declined to enter into a self-determination contract with Plaintiff that would allow Plaintiff to assume operation of the Bureau of Indian Affairs’ Criminal Investigation functions within Plaintiff’s Reservation.

3. Defendants improperly imposed non-regulatory requirements on Plaintiff as a condition of entering into a contract with Plaintiff, failed to adequately support the decision to decline Plaintiff’s contract proposal, and failed to provide technical assistance to Plaintiff, all in contravention of the ISDEAA and its implementing regulations.

4. Plaintiff seeks a declaration by this Court that Defendants violated the ISDEAA and an injunction ordering Defendants to accept Plaintiff's proposed contract, as well as its pre-award costs and other equitable relief.

PARTIES

5. Plaintiff is a federally recognized Indian tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, 48 Stat. 987 (codified at 25 U.S.C. § 5123). The Tribe adopted a Constitution in 1935, which established its Tribal Council as its governing body. The Constitution and associated Bylaws were approved by the United States Assistant Secretary of the Interior on November 23, 1935. The Tribe amended its Constitution and Bylaws in 1960 and again in 1996, both of which were approved by the Bureau of Indian Affairs. Accordingly, the Tribe possesses all legal rights afforded to federally recognized Indian tribes including the right to enter into self-determination contracts under 25 U.S.C. §§ 5321(a)(1) and 5304(e).

6. The Tribe governs and occupies the Northern Cheyenne Reservation in Montana.

7. Defendant United States, acting by and through the Department of the Interior and the Bureau of Indian Affairs, as a matter of federal statutory, regulatory,

and common law, is trustee and a fiduciary to the Northern Cheyenne Tribe and is charged with carrying out trust and statutory duties and responsibilities to provide law and order within the Tribe's Reservation.

8. Defendant United States Department of Interior ("DOI") is an executive department of the United States Government organized and existing under 5 U.S.C. § 101, as amended. Defendant DOI is responsible for, among other things, entering into self-determination contracts with Indian tribes to administer DOI's programs, functions, services and activities under 25 U.S.C. § 5321 and the supervision, management, direction, and oversight of Defendant Bureau of Indian Affairs, which is a federal agency subsidiary of the DOI, pursuant to the provisions of 43 U.S.C. § 1457(10).

9. Defendant Bureau of Indian Affairs ("BIA" or "Bureau") is a subsidiary bureau within DOI. Defendant BIA is responsible for administering federal Indian policy; fulfilling its federal trust responsibilities to American Indians, tribal governments, and Alaska Natives; and promoting tribal self-determination and self-governance.

10. Defendant David Bernhardt, or his successor, is the Secretary of the Department of Interior of the United States of America (the "Secretary") and is

being sued in his official capacity as an officer and agent of the United States Government. The Secretary, as head of an executive department, reports directly to the President of the United States, *see* 43 U.S.C. § 1451, and is responsible for directing and supervising all operations and activities of DOI, including entering into self-determination contracts with tribes under 25 U.S.C. §§ 5321 and 5304(i).

11. Defendant Darryl LaCounte, or his successor, is the Director of the Bureau of Indian Affairs. As Director, he provides direction and coordination of the Bureau's responsibilities in the implementation of the ISDEAA. Indian Affairs Manual, Part 13, Ch.2, § 1.5.A.

12. Defendant Susan Messerly, or her successor, is the Regional Director of the Bureau's Rocky Mountain Regional Office. As Regional Director, she provides for the application of overall policies, procedures and implementation of self-determination services awards within her administrative jurisdictional area pursuant to governing statutes and established policies and procedures, and is responsible for providing technical assistance to tribes. Indian Affairs Manual, Part 13, Ch.2, § 1.5.D.

13. Defendant Lenora Nioce or her successor is a Special Agent in Charge within the Bureau's Office of Justice Services, District V, and was the Bureau