

trial, and the question of whether it is a responsible contracting party will thus be subject to judicial resolution, as opposed to administrative manipulation.

The Government's motion is belied by the facts. David Congos brought to his supervisors allegations of fraud, waste and abuse concerning the contracts and proposals at issue in this case as early as fall 2001. OIG initiated a criminal investigation on June 21, 2002. The Government investigated this case through April 3, 2007 when it commenced this lawsuit. The Government has had *seven years* to build its case to a point where it should have absolute command of all the relevant facts and documents. Yet, the Government moves this Court for an eleventh-hour deadline extension so as to conduct another privilege review of MRO documents that it has had possession of for *seven years* and has yet to fully produce to Menominee.

Surprisingly, on April 23, 2008, the Government changed course again with respect to the MRO documents. Although the Government obtained an order of this Court allowing it to dump more than 80,000 pages of these documents on Menominee, on April 23 it informed Menominee that it now will produce only the subset of documents originally selected by Menominee, *after* conducting yet another privilege review. While Menominee questions the waste of resources and time caused by the Government's vacillating positions before this Court and to Menominee, Menominee has no objection to the Government producing the subset selected by Menominee. However, if the Government decides to conduct yet another privilege review of that subset, such review should take no more than a few days. To the extent that the Court desires to move the discovery and motion deadlines, Menominee has no objection to a short extension, so long as the September 8 trial date remains in place.

The Government's contentions in support of its request for relief are also unfounded. First, the Government contends that Menominee did not consult with it about a purportedly

privileged document before filing this document with the Court and citing it in one of Menominee's briefs. That is false. Menominee refers the Court to the upper left-hand corner of the document at issue, specifically bates numbers BIAF009442-BIAF009449. Menominee also refers the Court to its February 13, 2007 letter to the Government, specifically calling this document to the Government's attention. Declaration of Joshua Jay Kanassataga dated April 26, 2008, Ex. 1, at p. 3 ("Another issue is that there are blank pages scattered throughout the production. Examples include . . . BIAF009444, BIAF009448 . . ."). The facts are contrary to the Government's assertion.

The Government also contends that Menominee maintains an intent to publicly disclose *all* documents produced by the Government in this case by way of its website. Not so. Menominee intends to disclose only a limited subset of documents, consisting primarily of documents authored by Congos relating to Menominee's performance of its federal 638 contracts, his perceived notions about the nature of the Government's trust responsibilities on the Menominee Reservation, and the investigation leading to this lawsuit. As a compromise, Menominee will agree to provide the Government with advance copies of any government-produced document it intends to post on its website, so that the Government has the opportunity to object to such posting in advance. The Government's attempt to delay trial must be denied.

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