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[Laws in effect as of January 24, 2002]
[Document not affected by Public Laws enacted between
January 24, 2002 and December 19, 2002]
[CITE: *25USC450*]

TITLE 25--INDIANS

CHAPTER 14--MISCELLANEOUS

SUBCHAPTER II--INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE

Sec. 450. Congressional statement of findings

- (a) Findings respecting historical and special legal relationship, and resultant responsibilities

The Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, American Indian people, finds that--

(1) the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities; and

(2) the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons.

- (b) Further findings

The Congress further finds that--

(1) true self-determination in any society of people is dependent upon an educational process which will insure the development of qualified people to fulfill meaningful leadership roles;

(2) the Federal responsibility for and assistance to education of Indian children has not effected the desired level of educational achievement or created the diverse opportunities and personal satisfaction which education can and should provide; and

(3) parental and community control of the educational process is of crucial importance to the Indian people.

(Pub. L. 93-638, Sec. 2, Jan. 4, 1975, 88 Stat. 2203.)

Short Title of 2000 Amendments

Pub. L. 106-568, title VIII, Sec. 801, Dec. 27, 2000, 114 Stat. 2916, provided that: ``This title [amending sections 4501, 458cc, 1407, and 3207 of this title and sections 5604, 5608, and 5609 of Title 20,

Education, and repealing section 84 of this title and sections 438 and 439 of Title 18, Crimes and Criminal Procedure] may be cited as the `Native American Laws Technical Corrections Act of 2000'.'

Pub. L. 106-568, title XIII, Sec. 1301, Dec. 27, 2000, 114 Stat. 2936, provided that: ``This title [enacting part F (Sec. 458bbb et seq.) of this subchapter] may be cited as the `American Indian Education Foundation Act of 2000'.'

Pub. L. 106-260, Sec. 1, Aug. 18, 2000, 114 Stat. 711, provided that: ``This Act [enacting part E (Sec. 458aaa et seq.) of this subchapter, amending sections 450f, 450j, and 450j-1 of this title, enacting provisions set out as notes under sections 450f and 458aaa of this title, and repealing provisions set out as a note under section 450f of this title] may be cited as the `Tribal Self-Governance Amendments of 2000'.'

Short Title of 1994 Amendment

Pub. L. 103-413, Sec. 1, Oct. 25, 1994, 108 Stat. 4250, provided that: ``This Act [enacting part D (Sec. 458aa et seq.) of this subchapter and section 450l of this title, amending sections 450b, 450c, 450e, 450f, 450j to 450k, 450m, and 450m-1 of this title, and enacting provisions set out as notes under this section and section 458aa of this title] may be cited as the `Indian Self-Determination Act Amendments of 1994'.'

Pub. L. 103-413, title I, Sec. 101, Oct. 25, 1994, 108 Stat. 4250, provided that: ``This title [enacting section 450l of this title and amending sections 450b, 450c, 450e, 450f, 450j to 450k, 450m, and 450m-1 of this title] may be cited as the `Indian Self-Determination Contract Reform Act of 1994'.'

Pub. L. 103-413, title II, Sec. 201, Oct. 25, 1994, 108 Stat. 4270, provided that: ``This title [enacting part D (Sec. 458aa et seq.) of this subchapter and provisions set out as notes under section 458aa of this title] may be cited as the `Tribal Self-Governance Act of 1994'.'

Short Title of 1990 Amendment

Pub. L. 101-644, title II, Sec. 201, Nov. 29, 1990, 104 Stat. 4665, provided that: ``This title [amending sections 450b, 450c, 450f, 450h, 450j, 450j-1, and 450k of this title and enacting provisions set out as a note under section 450h of this title] may be cited as the `Indian Self-Determination and Education Assistance Act Amendments of 1990'.'

Short Title of 1988 Amendment

Pub. L. 100-472, title I, Sec. 101, Oct. 5, 1988, 102 Stat. 2285, provided that: ``This Act [enacting sections 450j-1 and 450m-1 of this title, amending sections 13a, 450a to 450c, 450f to 450j, 450k, and 450n of this title, sections 3371 and 3372 of Title 5, Government Organization and Employees, sections 2004b and 4762 of Title 42, The Public Health and Welfare, and section 456 of the Appendix to Title 50, War and National Defense, transferring section 450l of this title to section 450c(f) of this title, and enacting provisions set out as notes under this section and section 450f of this title] may be cited as the `Indian Self-Determination and Education Assistance Act Amendments of

1988'.'

Short Title

Section 1 of Pub. L. 93-638 provided: ``That this Act [enacting this subchapter, section 13a of this title, and section 2004b of Title 42, The Public Health and Welfare, amending section 3371 of Title 5, Government Organization and Employees, section 4762 of Title 42, and section 456 of Title 50, Appendix, War and National Defense, and enacting provisions set out as notes under sections 450f, 455, and 457 of this title] may be cited as the `Indian Self-Determination and Education Assistance Act'.'

Section 101 of title I of Pub. L. 93-638 provided that: ``This title [enacting part A (Sec. 450f et seq.) of this subchapter and section 2004b of Title 42, The Public Health and Welfare, and amending section 3371 of Title 5, Government Organization and Employees, section 4762 of Title 42, and section 456 of the Appendix to Title 50, War and National Defense] may be cited as the `Indian Self-Determination Act'.'

Section 201 of title II of Pub. L. 93-638 provided that: ``This title [enacting part C (Sec. 458 et seq.) of this subchapter, sections 455 to 457 of this title, and provisions set out as a note under section 457 of this title] may be cited as the `Indian Education Assistance Act'.'

Savings Provisions

Pub. L. 100-472, title II, Sec. 210, Oct. 5, 1988, 102 Stat. 2298, provided that: ``Nothing in this Act [see Short Title of 1988 Amendment note above] shall be construed as--

``(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe; or

``(2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to Indian people.'

Severability

Pub. L. 100-472, title II, Sec. 211, Oct. 5, 1988, 102 Stat. 2298, provided that: ``If any provision of this Act [see Short Title of 1988 Amendment note above] or the application thereof to any Indian tribe, entity, person or circumstance is held invalid, neither the remainder of this Act, nor the application of any provisions herein to other Indian tribes, entities, persons, or circumstances, shall be affected thereby.'

Executive Order No. 13084

Ex. Ord. No. 13084, May 14, 1998, 63 F.R. 27655, which provided for agencies to establish regular and meaningful consultation and collaboration with Indian tribal governments in the development of regulatory practices on Federal matters that significantly or uniquely affect their communities, to reduce the imposition of unfunded mandates upon Indian tribal governments, and to streamline the application process for and increase the availability of waivers to Indian tribal

governments, was revoked, effective 60 days after Nov. 6, 2000, by Ex. Ord. No. 13175, Sec. 9(c), Nov. 6, 2000, 65 F.R. 67251, set out below.

Ex. Ord. No. 13175. Consultation and Coordination With Indian Tribal Governments

Ex. Ord. No. 13175, Nov. 6, 2000, 65 F.R. 67249, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

Section 1. Definitions. For purposes of this order:

(a) ``Policies that have tribal implications'' refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) ``Indian tribe'' means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) ``Agency'' means any authority of the United States that is an ``agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) ``Tribal officials'' means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. Fundamental Principles. In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. Policymaking Criteria. In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet

the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) encourage Indian tribes to develop their own policies to achieve program objectives;

(2) where possible, defer to Indian tribes to establish standards; and

(3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. Special Requirements for Legislative Proposals. Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

Sec. 5. Consultation. (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation, (A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with

tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. 6. Increasing Flexibility for Indian Tribal Waivers.

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 7. Accountability.

(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993 [5 U.S.C. 601 note], each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. Independent Agencies. Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 9. General Provisions. (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review) [5 U.S.C. 601 note], Executive Order 12988 (Civil Justice Reform) [28 U.S.C. 519 note], OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments [set out below].

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism) [5 U.S.C. 601 note].

(c) Executive Order 13084 (Consultation and Coordination with Indian

Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

Sec. 10. Judicial Review. This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

William J. Clinton.

Government-to-Government Relations With Native American Tribal Governments

Memorandum of President of the United States, Apr. 29, 1994, 59 F.R. 22951, provided:

Memorandum for the Heads of Executive Departments and Agencies

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ('`Enhancing the Intergovernmental Partnership'') [former 5 U.S.C. 601 note] and 12866 ('`Regulatory Planning and Review'') [5 U.S.C. 601 note] to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

William J. Clinton.

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[Laws in effect as of January 7, 2003]
[Document not affected by Public Laws enacted between
January 7, 2003 and February 12, 2003]
[*CITE*: *25USC450a*]

TITLE 25--INDIANS

CHAPTER 14--MISCELLANEOUS

SUBCHAPTER II--INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE

Sec. 450a. Congressional declaration of policy

(a) Recognition of obligation of United States

The Congress hereby recognizes 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 so as to render such services more responsive to the needs and desires of those communities.

(b) Declaration of commitment

The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.

(c) Declaration of national goal

The Congress declares that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

(Pub. L. 93-638, Sec. 3, Jan. 4, 1975, 88 Stat. 2203; Pub. L. 100-472, title I, Sec. 102, Oct. 5, 1988, 102 Stat. 2285.)

Amendments

1988--Subsec. (b). Pub. L. 100-472 added subsec. (b) and struck out former subsec. (b) which read as follows: ``The Congress declares its

commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.''

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[Document not affected by Public Laws enacted between
January 7, 2003 and February 12, 2003]
[*CITE*: *25USC450a*-*1*]

TITLE 25--INDIANS

CHAPTER 14--MISCELLANEOUS

SUBCHAPTER II--INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE

Sec. 450a-*1*. Tribal and Federal advisory committees

Notwithstanding any other provision of law (including any regulation), the Secretary of the Interior and the Secretary of Health and Human Services are authorized to jointly establish and fund advisory committees or other advisory bodies composed of members of Indian tribes or members of Indian tribes and representatives of the Federal Government to ensure tribal participation in the implementation of the Indian Self-Determination and Education Assistance Act (Public Law 93-638) [25 U.S.C. 450 et seq.].

(Pub. L. 101-644, title II, Sec. 204, as added Pub. L. 103-435, Sec. 22(b), Nov. 2, 1994, 108 Stat. 4575.)

References in Text

The Indian Self-Determination and Education Assistance Act, referred to in text, is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to this subchapter (Sec. 450 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

Codification

Section was enacted as part of the Indian Self-Determination and Education Assistance Act Amendments of 1990, and not as part of the Indian Self-Determination and Education Assistance Act which comprises this subchapter.

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[CITE: 25USC450b]

TITLE 25--INDIANS

CHAPTER 14--MISCELLANEOUS

SUBCHAPTER II--INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE

Sec. 450b. Definitions

For purposes of this subchapter, the term--

(a) ``construction programs'' means programs for the planning, design, construction, repair, improvement, and expansion of buildings or facilities, including, but not limited to, housing, law enforcement and detention facilities, sanitation and water systems, roads, schools, administration and health facilities, irrigation and agricultural work, and water conservation, flood control, or port facilities;

(b) ``contract funding base'' means the base level from which contract funding needs are determined, including all contract costs;

(c) ``direct program costs'' means costs that can be identified specifically with a particular contract objective;

(d) ``Indian'' means a person who is a member of an Indian tribe;

(e) ``Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(f) ``indirect costs'' means costs incurred for a common or joint purpose benefiting more than one contract objective, or which are not readily assignable to the contract objectives specifically benefited without effort disproportionate to the results achieved;

(g) ``indirect cost rate'' means the rate arrived at through negotiation between an Indian tribe or tribal organization and the appropriate Federal agency;

(h) ``mature contract'' means a self-determination contract that has been continuously operated by a tribal organization for three or more years, and for which there are no significant and material audit exceptions in the annual financial audit of the tribal organization: Provided, That upon the request of a tribal organization or the tribal organization's Indian tribe for purposes of section 450f(a) of this title, a contract of the tribal organization which meets this definition shall be considered to be a mature contract;

(i) ``Secretary'', unless otherwise designated, means either the Secretary of Health and Human Services or the Secretary of the Interior or both;

(j) ``self-determination contract'' means a contract (or grant

or cooperative agreement utilized under section 450e-1 of this title) entered into under part A of this subchapter between a tribal organization and the appropriate Secretary for the planning, conduct and administration of programs or services which are otherwise provided to Indian tribes and their members pursuant to Federal law: Provided, That except as provided \1\ the last proviso in section 450j(a) \2\ of this title, no contract (or grant or cooperative agreement utilized under section 450e-1 of this title) entered into under part A of this subchapter shall be construed to be a procurement contract;

\1\ So in original. Probably should be ``provided in''.
\2\ See References in Text note below.

(k) ``State education agency'' means the State board of education or other agency or officer primarily responsible for supervision by the State of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law;

(l) ``tribal organization'' means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, That in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant; and

(m) ``construction contract'' means a fixed-price or cost-reimbursement self-determination contract for a construction project, except that such term does not include any contract--

(1) that is limited to providing planning services and construction management services (or a combination of such services);

(2) for the Housing Improvement Program or roads maintenance program of the Bureau of Indian Affairs administered by the Secretary of the Interior; or

(3) for the health facility maintenance and improvement program administered by the Secretary of Health and Human Services.

(Pub. L. 93-638, Sec. 4, Jan. 4, 1975, 88 Stat. 2204; Pub. L. 100-472, title I, Sec. 103, Oct. 5, 1988, 102 Stat. 2286; Pub. L. 100-581, title II, Sec. 208, Nov. 1, 1988, 102 Stat. 2940; Pub. L. 101-301, Sec. 2(a)(1)-(3), May 24, 1990, 104 Stat. 206; Pub. L. 101-644, title II, Sec. 202(1), (2), Nov. 29, 1990, 104 Stat. 4665; Pub. L. 103-413, title I, Sec. 102(1), Oct. 25, 1994, 108 Stat. 4250.)

References in Text

This subchapter, referred to in text, was in the original ``this Act'', meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this subchapter (Sec. 450 et seq.). For complete classification of this Act to the Code, see Short Title

note set out under section 450 of this title and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (e), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (Sec. 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43, and Tables.

Part A of this subchapter, referred to in subsec. (j), was in the original ``title I of this act'', meaning title I of Pub. L. 93-638, known as the Indian Self-Determination Act, which is classified principally to part A (Sec. 450f et seq.) of this subchapter. For complete classification of title I to the Code, see Short Title note set out under section 450 of this title and Tables.

Section 450j(a) of this title, referred to in subsec. (j), was repealed and a new subsec. (a) of section 450j was added by Pub. L. 103-413, title I, Sec. 102(10), Oct. 25, 1994, 108 Stat. 4253, which does not contain provisos.

Amendments

1994--Subsec. (g). Pub. L. 103-413, Sec. 102(1)(A), substituted ``indirect cost rate'' for ``indirect costs rate''.

Subsec. (m). Pub. L. 103-413, Sec. 102(1)(B)-(D), added subsec. (m).

1990--Subsec. (e). Pub. L. 101-301, Sec. 2(a)(1), inserted a comma before ``which is recognized''.

Subsec. (h). Pub. L. 101-644, Sec. 202(1), struck out ``in existence on October 5, 1988,'' before ``which meets this definition''.

Subsec. (j). Pub. L. 101-644, Sec. 202(2), substituted ``contract (or grant or cooperative agreement utilized under section 450e-1 of this title) entered'' for ``contract entered'' in two places.

Pub. L. 101-301, Sec. 2(a)(2), (3), substituted ``under this subchapter'' for ``pursuant to this Act'' in two places and struck out ``the'' before ``Secretary''.

1988--Pub. L. 100-472 amended section generally, substituting subsecs. (a) to (l) for former subsecs. (a) to (d) and (f) which defined ``Indian'', ``Indian tribe'', ``Tribal organization'', ``Secretary'', and ``State education agency''.

Subsec. (h). Pub. L. 100-581, Sec. 208(a)(1), substituted ``by a tribal organization'' for ``by tribal organization''.

Pub. L. 100-581, Sec. 208(a)(2), which directed the amendment of subsec. (h) by substituting ``a tribal organization or the tribal organization's Indian tribe for purposes of section 450f(a) of this title'' for ``a tribal organization or a tribal governing body'' was executed by substituting the new language for ``a tribal organization or tribal governing body'' to reflect the probable intent of Congress.

Subsec. (j). Pub. L. 100-581, Sec. 208(b), substituted ``the Secretary for the planning'' for ``Secretary the planning'' and ``except as provided the last proviso in section 450j(a) of this title, no contract'' for ``no contract''.

Section Referred to in Other Sections

This section is referred to in sections 81, 458aaa, 1665c, 2902, 3202, 3307, 3322, 3402, 3602, 4302 of this title; title 2 section 1602; title 5 section 3371; title 7 sections 1471, 1926, 2012; title 8 section 1612; title 10 sections 2323a, 2411; title 15 sections 632, 6312; title 16 section 1002; title 20 sections 80q-14, 1411, 1443, 1461, 2326,

6381a, 7253c, 9402; title 21 section 1532; title 22 section 2124c; title 29 sections 2887, 2911; title 31 section 1352; title 33 section 2902; title 38 section 3764; title 42 sections 290ff, 300n, 300w-1, 300x-33, 619, 622, 628, 654, 3057c, 379611-2, 3797d, 9858n, 10402, 10407, 10408, 10410, 10414, 10601, 12340; title 49 section 5102.

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[Laws in effect as of January 7, 2003]
[Document not affected by Public Laws enacted between
January 7, 2003 and February 12, 2003]
[*CITE*: *25USC450c*]

TITLE 25--INDIANS

CHAPTER 14--MISCELLANEOUS

SUBCHAPTER II--INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE

Sec. 450c. Reporting and audit requirements for recipients of
Federal financial assistance

(a) Maintenance of records

(1) Each recipient of Federal financial assistance under this subchapter shall keep such records as the appropriate Secretary shall prescribe by regulation promulgated under sections 552 and 553 of title 5, including records which fully disclose--

(A) the amount and disposition by such recipient of the proceeds of such assistance,

(B) the cost of the project or undertaking in connection with which such assistance is given or used,

(C) the amount of that portion of the cost of the project or undertaking supplied by other sources, and

(D) such other information as will facilitate an effective audit.

(2) For the purposes of this subsection, such records for a mature contract shall consist of quarterly financial statements for the purpose of accounting for Federal funds, the annual single-agency audit required by chapter 75 of title 31 \1\ and a brief annual program report.

\1\ So in original. Probably should be followed by a comma.

(b) Access to books, documents, papers, and records for audit and examination by Comptroller General, etc.

The Comptroller General and the appropriate Secretary, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in the preceding subsection of this section, have access (for the purpose of audit and examination) to any books, documents, papers, and records of such recipients which in the opinion of the Comptroller General or the appropriate Secretary may be related or pertinent to the grants, contracts, subcontracts, subgrants, or other arrangements referred to in the preceding subsection.

(c) Availability by recipient of required reports and information to Indian people served or represented

Each recipient of Federal financial assistance referred to in subsection (a) of this section shall make such reports and information available to the Indian people served or represented by such recipient as and in a manner determined to be adequate by the appropriate Secretary.

(d) Repayment to Treasury by recipient of unexpended or unused funds

Except as provided in section 13a or 450j-1(a)(3) \2\ of this title, funds paid to a financial assistance recipient referred to in subsection (a) of this section and not expended or used for the purposes for which paid shall be repaid to the Treasury of the United States through the respective Secretary.

\2\ See References in Text note below.

(e) Annual report to tribes

The Secretary shall report annually in writing to each tribe regarding projected and actual staffing levels, funding obligations, and expenditures for programs operated directly by the Secretary serving that tribe.

(f) Single-agency audit report; additional information; declination criteria and procedures

(1) For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract entered into, or grant made, under this subchapter, the tribal organization that requested such contract or grant shall submit to the appropriate Secretary a single-agency audit report required by chapter 75 of title 31.

(2) In addition to submitting a single-agency audit report pursuant to paragraph (1), a tribal organization referred to in such paragraph shall submit such additional information concerning the conduct of the program, function, service, or activity carried out pursuant to the contract or grant that is the subject of the report as the tribal organization may negotiate with the Secretary.

(3) Any disagreement over reporting requirements shall be subject to the declination criteria and procedures set forth in section 450f of this title.

(Pub. L. 93-638, Sec. 5, formerly Sec. 5 and title I, Sec. 108, Jan. 4, 1975, 88 Stat. 2204, 2212; renumbered and amended Pub. L. 100-472, title I, Sec. 104, title II, Sec. 208, Oct. 5, 1988, 102 Stat. 2287, 2296; Pub. L. 100-581, title II, Sec. 209, Nov. 1, 1988, 102 Stat. 2940; Pub. L. 101-301, Sec. 2(a)(4), May 24, 1990, 104 Stat. 206; Pub. L. 101-644, title II, Sec. 202(3), Nov. 29, 1990, 104 Stat. 4665; Pub. L. 103-413, title I, Sec. 102(2), Oct. 25, 1994, 108 Stat. 4250.)

References in Text

Section 450j-1(a)(3) of this title, referred to in subsec. (d), was repealed and a new subsec. (a)(3) of section 450j-1 was added by Pub. L. 103-413, title I, Sec. 102(14)(C), Oct. 25, 1994, 108 Stat. 4257. See section 450j-1(a)(4) of this title.

Amendments

1994--Subsec. (f). Pub. L. 103-413 added subsec. (f) and struck out former subsec. (f) which read as follows: ``For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract or grant under this subchapter, the Indian tribe which requested such contract or grant shall submit to the appropriate Secretary a report including, but not limited to, an accounting of the amounts and purposes for which Federal funds were expended, information on the conduct of the program or service involved, and such other information as the appropriate Secretary may request through regulations promulgated under sections 552 and 553 of title 5.''

1990--Subsec. (a)(2). Pub. L. 101-301 substituted ``chapter 75 of title 31'' for ``the Single Audit Act of 1984 (98 Stat. 2327, 31 U.S.C. 7501 et seq.),''.

Subsec. (d). Pub. L. 101-644 substituted ``Except as provided in section 13a or 450j-1(a)(3) of this title,' ' for ``Any'' and inserted ``through the respective Secretary'' before period at end.

1988--Subsec. (a). Pub. L. 100-472, Sec. 104(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ``Each recipient of Federal financial assistance from the Secretary of Interior or the Secretary of Health Education, and Welfare, under this Act, shall keep such records as the appropriate Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.''

Subsec. (e). Pub. L. 100-581 substituted ``to each tribe'' for ``to tribes''.

Pub. L. 100-472, Sec. 104(b), added subsec. (e).

Subsec. (f). Pub. L. 100-472, Sec. 208, redesignated section 4501 of this title as subsec. (f) of this section and inserted ``through regulations promulgated under sections 552 and 553 of title 5''.

Section Referred to in Other Sections

This section is referred to in sections 458ff, 458aaa-15, 2507, 3307 of this title; title 29 section 741; title 42 section 612.

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[Laws in effect as of January 7, 2003]
[Document not affected by Public Laws enacted between
January 7, 2003 and February 12, 2003]
[*CITE*: *25USC450d*]

TITLE 25--INDIANS

CHAPTER 14--MISCELLANEOUS

SUBCHAPTER II--INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE

Sec. 450d. Criminal activities involving grants, contracts,
etc.; penalties

Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any recipient of a contract, subcontract, grant, or subgrant pursuant to this subchapter or the Act of April 16, 1934 (48 Stat. 596), as amended [25 U.S.C. 452 et seq.], embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds assets, or property which are the subject of such a grant, subgrant, contract, or subcontract, shall be fined not more than \$10,000 or imprisoned for not more than two years, or both, but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(Pub. L. 93-638, Sec. 6, Jan. 4, 1975, 88 Stat. 2205.)

References in Text

Act of April 16, 1934, referred to in text, is act Apr. 16, 1934, ch. 147, 48 Stat. 596, as amended, popularly known as the Johnson-O'Malley Act, which is classified generally to section 452 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 452 of this title and Tables.

Section Referred to in Other Sections

This section is referred to in sections 458ff, 458aaa-15, 2507, 3307 of this title; title 29 section 741.

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[Laws in effect as of January 7, 2003]
[Document not affected by Public Laws enacted between
January 7, 2003 and February 12, 2003]
[*CITE*: *25USC450e*]

TITLE 25--INDIANS

CHAPTER 14--MISCELLANEOUS

SUBCHAPTER II--INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE

Sec. 450e. Wage and labor standards

(a) Similar construction in locality

All laborers and mechanics employed by contractors or subcontractors (excluding tribes and tribal organizations) in the construction, alteration, or repair, including painting or decorating of buildings or other facilities in connection with contracts or grants entered into pursuant to this subchapter, shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended [40 U.S.C. 276a et seq.]. With respect to construction, alteration, or repair work to which the Act of March 3, 1921 is applicable under the terms of this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14, of 1950, and section 276c of title 40.

(b) Preference requirements for wages and grants

Any contract, subcontract, grant, or subgrant pursuant to this subchapter, the Act of April 16, 1934 (48 Stat. 596), as amended [25 U.S.C. 452 et seq.], or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible--

(1) preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and

(2) preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 1452 of this title.

(c) Self-determination contracts

Notwithstanding subsections (a) and (b) of this section, with respect to any self-determination contract, or portion of a self-determination contract, that is intended to benefit one tribe, the tribal employment or contract preference laws adopted by such tribe shall govern with respect to the administration of the contract or portion of the contract.

(Pub. L. 93-638, Sec. 7, Jan. 4, 1975, 88 Stat. 2205; Pub. L. 103-413,

title I, Sec. 102(3), (4), Oct. 25, 1994, 108 Stat. 4251.)

References in Text

The Davis-Bacon Act, referred to in subsec. (a), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

Act of March 3, 1921, referred to in subsec. (a), probably means the act of March 3, 1931, ch. 411, 46 Stat. 1494, as amended, known as the Davis Bacon Act. See note above.

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (a), is set out in the Appendix to Title 5, Government Organization and Employees.

Act of April 16, 1934, referred to in subsec. (b), is act Apr. 16, 1934, ch. 147, 48 Stat. 596, as amended, popularly known as the Johnson-O'Malley Act, which is classified generally to section 452 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 452 of this title and Tables.

Amendments

1994--Subsec. (a). Pub. L. 103-413, Sec. 102(3), substituted ``or subcontractors (excluding tribes and tribal organizations)'' for ``of subcontractors''.

Subsec. (c). Pub. L. 103-413, Sec. 102(4), added subsec. (c).

Section Referred to in Other Sections

This section is referred to in sections 458aaa-15, 2012, 2507, 3307 of this title; title 23 section 204; title 29 section 741; title 42 section 5662.

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[Laws in effect as of January 7, 2003]
[Document not affected by Public Laws enacted between
January 7, 2003 and February 12, 2003]
[*CITE*: *25USC450e*-*1*]

TITLE 25--INDIANS

CHAPTER 14--MISCELLANEOUS

SUBCHAPTER II--INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE

Sec. 450e-*1*. Grant and cooperative agreements

The provisions of this subchapter shall not be subject to the requirements of chapter 63 of title 31: Provided, That a grant agreement or a cooperative agreement may be utilized in lieu of a contract under sections 450f and 450g *1*\ of this title when mutually agreed to by the appropriate Secretary and the tribal organization involved.

1\ See References in Text note below.

(Pub. L. 93-638, Sec. 9, as added Pub. L. 98-250, Sec. *1*, Apr. 3, 1984, 98 Stat. 118; amended Pub. L. 101-301, Sec. 2(a)(5), May 24, 1990, 104 Stat. 206.)

References in Text

Section 450g of this title, referred to in text, was in the original ``section 103 of this Act'', meaning section 103 of Pub. L. 93-638, the Indian Self-Determination Act. Section 103(a) and (b) and the first sentence of section 103(c) of Pub. L. 93-638, were repealed, and the remainder of section 103(c) of Pub. L. 93-638, was redesignated as section 102(d) of Pub. L. 93-638 (section 450f(d) of this title), by Pub. L. 100-472, title II, Sec. 201(b)(*1*), Oct. 5, 1988, 102 Stat. 2289. Section 104 of Pub. L. 93-638 was renumbered as section 103 of Pub. L. 93-638 by section 202(a) of Pub. L. 100-472, and is classified to section 450h of this title.

Amendments

1990--Pub. L. 101-301 substituted ``chapter 63 of title 31'' for ``the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95-224; 92 Stat. 3)''.

Section Referred to in Other Sections

This section is referred to in section 450b of this title.

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[Laws in effect as of January 7, 2003]
[Document not affected by Public Laws enacted between
January 7, 2003 and February 12, 2003]
[*CITE*: *25USC450e*-*2*]

TITLE 25--INDIANS

CHAPTER 14--MISCELLANEOUS

SUBCHAPTER II--INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE

Sec. 450e-*2*. Use of excess funds

Beginning in fiscal year 1998 and thereafter, where the actual costs of construction projects under self-determination contracts, compacts, or grants, pursuant to Public Laws 93-638, 103-413, or 100-297, are less than the estimated costs thereof, use of the resulting excess funds shall be determined by the appropriate Secretary after consultation with the tribes.

(Pub. L. 105-83, title III, Sec. 310, Nov. 14, 1997, 111 Stat. 1590.)

References in Text

Public Law 93-638, referred to in text, is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this subchapter (Sec. 450 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

Public Law 103-413, referred to in text, is Pub. L. 103-413, Oct. 25, 1994, 108 Stat. 4250, known as the Indian Self-Determination Act Amendments of 1994, which is classified principally to part D (Sec. 458aa et seq.) of this subchapter. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 450 of this title and Tables.

Public Law 100-297, referred to in text, is Pub. L. 100-297, Apr. 28, 1988, 102 Stat. 130, as amended, known as the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 6301 of Title 20, Education, and Tables.

Codification

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1998, and not as part of the Indian Self-Determination and Education Assistance Act which comprises this subchapter.

Prior Provisions

Provisions similar to those in this section were contained in the

following prior appropriation acts:

Pub. L. 104-208, div. A, title I, Sec. 101(d) [title III, Sec. 310],
Sept. 30, 1996, 110 Stat. 3009-181, 3009-221.

Pub. L. 104-134, title I, Sec. 101(c) [title III, Sec. 310], Apr.
26, 1996, 110 Stat. 1321-156, 1321-197; renumbered title I, Pub. L. 104-
140, Sec. 1(a), May *2*, 1996, 110 Stat. 1327.

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[Laws in effect as of January 24, 2002]
[Document not affected by Public Laws enacted between
January 24, 2002 and December 19, 2002]
[CITE: 25USC450f]

TITLE 25--INDIANS

CHAPTER 14--MISCELLANEOUS

SUBCHAPTER II--INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE

Part A--Indian Self-Determination

Sec. 450f. Self-determination contracts

(a) Request by tribe; authorized programs

(1) The Secretary is directed, upon the request of any Indian tribe by tribal resolution, to enter into a self-determination contract or contracts with a tribal organization to plan, conduct, and administer programs or portions thereof, including construction programs--

(A) provided for in the Act of April 16, 1934 (48 Stat. 596), as amended [25 U.S.C. 452 et seq.];

(B) which the Secretary is authorized to administer for the benefit of Indians under the Act of November 2, 1921 (42 Stat. 208) [25 U.S.C. 13], and any Act subsequent thereto;

(C) provided by the Secretary of Health and Human Services under the Act of August 5, 1954 (68 Stat. 674), as amended [42 U.S.C. 2001 et seq.];

(D) administered by the Secretary for the benefit of Indians for which appropriations are made to agencies other than the Department of Health and Human Services or the Department of the Interior; and

(E) for the benefit of Indians because of their status as Indians without regard to the agency or office of the Department of Health and Human Services or the Department of the Interior within which it is performed.

The programs, functions, services, or activities that are contracted under this paragraph shall include administrative functions of the Department of the Interior and the Department of Health and Human Services (whichever is applicable) that support the delivery of services to Indians, including those administrative activities supportive of, but not included as part of, the service delivery programs described in this paragraph that are otherwise contractable. The administrative functions referred to in the preceding sentence shall be contractable without regard to the organizational level within the Department that carries out such functions.

(2) If so authorized by an Indian tribe under paragraph (1) of this subsection, a tribal organization may submit a proposal for a self-determination contract, or a proposal to amend or renew a self-determination contract, to the Secretary for review. Subject to the provisions of paragraph (4), 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 that contains a specific finding that clearly demonstrates that, or that is supported by a controlling legal authority that--

(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 450j-1(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.

Notwithstanding any other provision of law, the Secretary may extend or otherwise alter the 90-day period specified in the second sentence of this subsection, \1\ if before the expiration of such period, the Secretary obtains the voluntary and express written consent of the tribe or tribal organization to extend or otherwise alter such period. The contractor shall include in the proposal of the contractor the standards under which the tribal organization will operate the contracted program, service, function, or activity, including in the area of construction, provisions regarding the use of licensed and qualified architects, applicable health and safety standards, adherence to applicable Federal, State, local, or tribal building codes and engineering standards. The standards referred to in the preceding sentence shall ensure structural integrity, accountability of funds, adequate competition for subcontracting under tribal or other applicable law, the commencement, performance, and completion of the contract, adherence to project plans and specifications (including any applicable Federal construction guidelines and manuals), the use of proper materials and workmanship, necessary inspection and testing, and changes, modifications, stop work, and termination of the work when warranted.

\1\ So in original. Probably should be ``paragraph,''.

(3) Upon the request of a tribal organization that operates two or more mature self-determination contracts, those contracts may be consolidated into one single contract.

(4) The Secretary shall approve any severable portion of a contract proposal that does not support a declination finding described in paragraph (2). If the Secretary determines under such paragraph that a contract proposal--

(A) proposes in part to plan, conduct, or administer a program, function, service, or activity that is beyond the scope of programs covered under paragraph (1), or

(B) proposes a level of funding that is in excess of the applicable level determined under section 450j-1(a) of this title,

subject to any alteration in the scope of the proposal that the Secretary and the tribal organization agree to, the Secretary shall, as appropriate, approve such portion of the program, function, service, or activity as is authorized under paragraph (1) or approve a level of funding authorized under section 450j-1(a) of this title. If a tribal organization elects to carry out a severable portion of a contract proposal pursuant to this paragraph, subsection (b) of this section shall only apply to the portion of the contract that is declined by the Secretary pursuant to this subsection.

(b) Procedure upon refusal of request to contract

Whenever the Secretary declines to enter into a self-determination

contract or contracts pursuant to subsection (a) of this section, the Secretary shall--

- (1) state any objections in writing to the tribal organization,
- (2) provide assistance to the tribal organization to overcome the stated objections, and
- (3) provide the tribal organization with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter and the opportunity for appeal on the objections raised, under such rules and regulations as the Secretary may promulgate, except that the tribe or tribal organization may, in lieu of filing such appeal, exercise the option to initiate an action in a Federal district court and proceed directly to such court pursuant to section 450m-1(a) of this title.

(c) Liability insurance; waiver of defense

(1) Beginning in 1990, the Secretary shall be responsible for obtaining or providing liability insurance or equivalent coverage, on the most cost-effective basis, for Indian tribes, tribal organizations, and tribal contractors carrying out contracts, grant agreements and cooperative agreements pursuant to this subchapter. In obtaining or providing such coverage, the Secretary shall take into consideration the extent to which liability under such contracts or agreements are covered by the Federal Tort Claims Act.

(2) In obtaining or providing such coverage, the Secretary shall, to the greatest extent practicable, give a preference to coverage underwritten by Indian-owned economic enterprises as defined in section 1452 of this title, except that, for the purposes of this subsection, such enterprises may include non-profit corporations.

(3)(A) Any policy of insurance obtained or provided by the Secretary pursuant to this subsection shall contain a provision that the insurance carrier shall waive any right it may have to raise as a defense the sovereign immunity of an Indian tribe from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage or limits of the policy of insurance.

(B) No waiver of the sovereign immunity of an Indian tribe pursuant to this paragraph shall include a waiver to the extent of any potential liability for interest prior to judgment or for punitive damages or for any other limitation on liability imposed by the law of the State in which the alleged injury occurs.

(d) Tribal organizations and Indian contractors deemed part of Public Health Service

For purposes of section 233 of title 42, with respect to claims by any person, initially filed on or after December 22, 1987, whether or not such person is an Indian or Alaska Native or is served on a fee basis or under other circumstances as permitted by Federal law or regulations for personal injury, including death, resulting from the performance prior to, including, or after December 22, 1987, of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations, or for purposes of section 2679, title 28, with respect to claims by any such person, on or after November 29, 1990, for personal injury, including death, resulting from the operation of an emergency motor vehicle, an Indian tribe, a tribal organization or Indian contractor carrying out a contract, grant agreement, or cooperative agreement under sections \2\ 450f or 450h of this title is deemed to be part of the Public Health Service in the Department of Health and Human Services while carrying out any such

contract or agreement and its employees (including those acting on behalf of the organization or contractor as provided in section 2671 of title 28 and including an individual who provides health care services pursuant to a personal services contract with a tribal organization for the provision of services in any facility owned, operated, or constructed under the jurisdiction of the Indian Health Service) are deemed employees of the Service while acting within the scope of their employment in carrying out the contract or agreement: Provided, That such employees shall be deemed to be acting within the scope of their employment in carrying out such contract or agreement when they are required, by reason of such employment, to perform medical, surgical, dental or related functions at a facility other than the facility operated pursuant to such contract or agreement, but only if such employees are not compensated for the performance of such functions by a person or entity other than such Indian tribe, tribal organization or Indian contractor.

\2\ So in original. Probably should be ``section''.

(e) Burden of proof at hearing or appeal declining contract; final agency action

(1) With respect to any hearing or appeal conducted pursuant to subsection (b)(3) of this section or any civil action conducted pursuant to section 450m-1(a) of this title, the 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).

(2) Notwithstanding any other provision of law, a decision by an official of the Department of the Interior or the Department of Health and Human Services, as appropriate (referred to in this paragraph as the ``Department'') that constitutes final agency action and that relates to an appeal within the Department that is conducted under subsection

(b)(3) of this section shall be made either--

(A) by an official of the Department who holds a position at a higher organizational level within the Department than the level of the departmental agency (such as the Indian Health Service or the Bureau of Indian Affairs) in which the decision that is the subject of the appeal was made; or

(B) by an administrative judge.

(Pub. L. 93-638, title I, Sec. 102, formerly Secs. 102 and 103(c), Jan. 4, 1975, 88 Stat. 2206; Pub. L. 100-202, Sec. 101(g) [title II, Sec. 201], Dec. 22, 1987, 101 Stat. 1329-213, 1329-246; Pub. L. 100-446, title II, Sec. 201, Sept. 27, 1988, 102 Stat. 1817; renumbered Sec. 102 and amended Pub. L. 100-472, title II, Sec. 201(a), (b)(1), Oct. 5, 1988, 102 Stat. 2288, 2289; Pub. L. 100-581, title II, Sec. 210, Nov. 1, 1988, 102 Stat. 2941; Pub. L. 101-644, title II, Sec. 203(b), Nov. 29, 1990, 104 Stat. 4666; Pub. L. 103-413, title I, Sec. 102(5)-(9), Oct. 25, 1994, 108 Stat. 4251-4253; Pub. L. 106-260, Sec. 6, Aug. 18, 2000, 114 Stat. 732.)

References in Text

Act of April 16, 1934, referred to in subsec. (a)(1)(A), is act Apr. 16, 1934, ch. 147, 48 Stat. 596, as amended, popularly known as the Johnson-O'Malley Act, which is classified generally to section 452 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 452 of this title and Tables.

Act of August 5, 1954, referred to in subsec. (a)(1)(C), is act Aug. 5, 1954, ch. 658, 68 Stat. 674, as amended, which is classified generally to subchapter I (Sec. 2001 et seq.) of chapter 22 of Title 42,

The Public Health and Welfare. For complete classification of this Act to the Code, see Tables.

This subchapter, referred to in subsec. (c)(1), was in the original ``this Act'', meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this subchapter (Sec. 450 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

The Federal Tort Claims Act, referred to in subsec. (c)(1), is classified generally to section 1346(b) and chapter 171 (Sec. 2671 et seq.) of Title 28, Judiciary and Judicial Procedure.

Amendments

2000--Subsec. (e)(1). Pub. L. 106-260 inserted ``or any civil action conducted pursuant to section 450m-1(a) of this title'' after ``subsection (b)(3) of this section''.

1994--Subsec. (a)(1). Pub. L. 103-413, Sec. 102(5), inserted concluding provisions.

Subsec. (a)(2). Pub. L. 103-413, Sec. 102(6)(A)(i), (ii), (vi), inserted `` , or a proposal to amend or renew a self-determination contract,' ' before ``to the Secretary for review'' in first sentence and, in second sentence, substituted ``Subject to the provisions of paragraph (4), the Secretary'' for ``The Secretary'', inserted ``and award the contract'' after ``approve the proposal'', substituted ``the Secretary provides written notification to the applicant that contains a specific finding that clearly demonstrates that, or that is supported by a controlling legal authority that'' for `` , within sixty days of receipt of the proposal, a specific finding is made that'', and inserted concluding provisions.

Subsec. (a)(2)(D), (E). Pub. L. 103-413, Sec. 102(6)(A)(iii)-(v), added subpars. (D) and (E).

Subsec. (a)(4). Pub. L. 103-413, Sec. 102(6)(B), added par. (4).

Subsec. (b)(3). Pub. L. 103-413, Sec. 102(7), inserted ``with the right to engage in full discovery relevant to any issue raised in the matter'' after ``record'' and `` , except that the tribe or tribal organization may, in lieu of filing such appeal, exercise the option to initiate an action in a Federal district court and proceed directly to such court pursuant to section 450m-1(a) of this title'' before period at end.

Subsec. (d). Pub. L. 103-413, Sec. 102(8), substituted ``as provided in section 2671 of title 28 and including an individual who provides health care services pursuant to a personal services contract with a tribal organization for the provision of services in any facility owned, operated, or constructed under the jurisdiction of the Indian Health Service)' ' for ``as provided in section 2671 of title 28)' '.

Subsec. (e). Pub. L. 103-413, Sec. 102(9), added subsec. (e).

1990--Subsec. (d). Pub. L. 101-644 inserted ``or for purposes of section 2679, title 28, with respect to claims by any such person, on or after November 29, 1990, for personal injury, including death, resulting from the operation of an emergency motor vehicle,' ' after ``investigations,' '.

1988--Pub. L. 100-472, Sec. 201(a), amended section generally, revising and restating provisions of subsecs. (a) to (c).

Subsec. (c)(2). Pub. L. 100-581 which directed amendment of par. (2) by substituting ``section 1452 of this title'' for ``section 1425 of title 25, United States Code'' was executed by making the substitution for ``section 1425, title 25, United States Code'' to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 100-472, Sec. 201(b)(1), redesignated the last sentence of subsec. (c) of section 450g of this title as subsec. (d) of

this section and substituted ``sections 450f or 450h of this title'' for ``sections 450g and 450h(b) of this title''.

Pub. L. 100-446 inserted into sentence beginning ``For purposes of'' the words ``by any person, initially filed on or after December 22, 1987, whether or not such person is an Indian or Alaska Native or is served on a fee basis or under other circumstances as permitted by Federal law or regulations'' after ``claims'', ``prior to, including, or after December 22, 1987,'' after ``performance'', ``an Indian tribe,'' after ``investigations,'' and ``: Provided, That such employees shall be deemed to be acting within the scope of their employment in carrying out such contract or agreement when they are required, by reason of such employment, to perform medical, surgical, dental or related functions at a facility other than the facility operated pursuant to such contract or agreement, but only if such employees are not compensated for the performance of such functions by a person or entity other than such Indian tribe, tribal organization or Indian contractor'' after ``the contract or agreement''.

1987--Subsec. (d). Pub. L. 100-202 inserted sentence at end deeming a tribal organization or Indian contractor carrying out a contract, grant agreement, or cooperative agreement to be part of the Public Health Service while carrying out any such contract or agreement and its employees to be employees of the Service while acting within the scope of their employment in carrying out the contract or agreement.

Short Title of 1991 Amendment

Pub. L. 102-184, Sec. 1, Dec. 4, 1991, 105 Stat. 1278, provided that: ``This Act [amending provisions set out below] may be cited as the `Tribal Self-Governance Demonstration Project Act'.''

Short Title

For short title of title I of Pub. L. 93-638, which is classified principally to this part, as the ``Indian Self-Determination Act'', see section 101 of Pub. L. 93-638, set out as a note under section 450 of this title.

Savings Provision

Pub. L. 106-260, Sec. 11, Aug. 18, 2000, 114 Stat. 734, provided that: ``Funds appropriated for title III of the Indian Self-Determination and Education Assistance Act ([Pub. L. 93-638, former] 25 U.S.C. 450f note) shall be available for use under title V of such Act [25 U.S.C. 458aaa et seq.].''

Tribal Self-Governance--Department of Health and Human Services

Title VI of Pub. L. 93-638, as added by Pub. L. 106-260, Sec. 5, Aug. 18, 2000, 114 Stat. 731, provided that:

``SEC. 601. DEFINITIONS.

``(a) In General.--In this title, the Secretary may apply the definitions contained in title V [25 U.S.C. 458aaa et seq.].

``(b) Other Definitions.--In this title:

``(1) Agency.--The term `agency' means any agency or other organizational unit of the Department of Health and Human Services, other than the Indian Health Service.

``(2) Secretary.--The term `Secretary' means the Secretary of Health and Human Services.

``SEC. 602. DEMONSTRATION PROJECT FEASIBILITY.

``(a) Study.--The Secretary shall conduct a study to determine the feasibility of a tribal self-governance demonstration project for appropriate programs, services, functions, and activities (or portions thereof) of the agency.

``(b) Considerations.--In conducting the study, the Secretary shall consider--

``(1) the probable effects on specific programs and program beneficiaries of such a demonstration project;

``(2) statutory, regulatory, or other impediments to implementation of such a demonstration project;

``(3) strategies for implementing such a demonstration project;

``(4) probable costs or savings associated with such a demonstration project;

``(5) methods to assure quality and accountability in such a demonstration project; and

``(6) such other issues that may be determined by the Secretary or developed through consultation pursuant to section 603.

``(c) Report.--Not later than 18 months after the date of the enactment of this title [Aug. 18, 2000], the Secretary shall submit a report to the Committee on Indian Affairs of the Senate and the Committee on Resources of the House of Representatives. The report shall contain--

``(1) the results of the study under this section;

``(2) a list of programs, services, functions, and activities (or portions thereof) within each agency with respect to which it would be feasible to include in a tribal self-governance demonstration project;

``(3) a list of programs, services, functions, and activities (or portions thereof) included in the list provided pursuant to paragraph (2) that could be included in a tribal self-governance demonstration project without amending statutes, or waiving regulations that the Secretary may not waive;

``(4) a list of legislative actions required in order to include those programs, services, functions, and activities (or portions thereof) included in the list provided pursuant to paragraph (2) but not included in the list provided pursuant to paragraph (3) in a tribal self-governance demonstration project; and

``(5) any separate views of tribes and other entities consulted pursuant to section 603 related to the information provided pursuant to paragraphs (1) through (4).

``SEC. 603. CONSULTATION.

``(a) Study Protocol.--

``(1) Consultation with Indian tribes.--The Secretary shall consult with Indian tribes to determine a protocol for consultation under subsection (b) prior to consultation under such subsection with the other entities described in such subsection.

``(2) Requirements for protocol.--The protocol shall require, at a minimum, that--

``(A) the government-to-government relationship with Indian tribes forms the basis for the consultation process;

``(B) the Indian tribes and the Secretary jointly conduct the consultations required by this section; and

``(C) the consultation process allows for separate and direct recommendations from the Indian tribes and other entities described in subsection (b).

``(b) Conducting Study.--In conducting the study under this title, the Secretary shall consult with Indian tribes, States, counties, municipalities, program beneficiaries, and interested public interest groups, and may consult with other entities as appropriate.

``SEC. 604. AUTHORIZATION OF APPROPRIATIONS.

``There are authorized to be appropriated such sums as may be

necessary to carry out this title. Such sums shall remain available until expended.'

Indian Tribal Tort Claims and Risk Management

Pub. L. 105-277, div. A, Sec. 101(e) [title VII], Oct. 21, 1998, 112 Stat. 2681-231, 2681-335, provided that:

``SEC. 701. SHORT TITLE.

``This title may be cited as the `Indian Tribal Tort Claims and Risk Management Act of 1998'.'

``SEC. 702. FINDINGS AND PURPOSE.

``(a) Findings.--Congress finds that--

``(1) Indian tribes have made significant achievements toward developing a foundation for economic self-sufficiency and self-determination, and that economic self-sufficiency and self-determination have increased opportunities for the Indian tribes and other entities and persons to interact more frequently in commerce and intergovernmental relationships;

``(2) although Indian tribes have sought and secured liability insurance coverage to meet their needs, many Indian tribes are faced with significant barriers to obtaining liability insurance because of the high cost or unavailability of such coverage in the private market;

``(3) as a result, Congress has extended liability coverage provided to Indian tribes to organizations to carry out activities under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.); and

``(4) there is an emergent need for comprehensive and cost-efficient insurance that allows the economy of Indian tribes to continue to grow and provides compensation to persons that may suffer personal injury or loss of property.

``(b) Purpose.--The purpose of this title is to provide for a study to facilitate relief for a person who is injured as a result of an official action of a tribal government.

``SEC. 703. DEFINITIONS.

``In this title:

``(1) Indian tribe.--The term `Indian tribe' has the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

``(2) Secretary.--The term `Secretary' means the Secretary of the Interior.

``(3) Tribal organization.--The term `tribal organization' has the meaning given that term in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)).

``SEC. 704. STUDY AND REPORT TO CONGRESS.

``(a) In General.--

``(1) Study.--In order to minimize and, if possible, eliminate redundant or duplicative liability insurance coverage and to ensure that the provision of insurance to Indian tribes is cost-effective, the Secretary shall conduct a comprehensive survey of the degree, type, and adequacy of liability insurance coverage of Indian tribes at the time of the study.

``(2) Contents of study.--The study conducted under this subsection shall include--

``(A) an analysis of loss data;

``(B) risk assessments;

``(C) projected exposure to liability, and related matters;

and

``(D) the category of risk and coverage involved, which may include--

``(i) general liability;

- ``(ii) automobile liability;
- ``(iii) the liability of officials of the Indian tribe;
- ``(iv) law enforcement liability;
- ``(v) workers' compensation; and
- ``(vi) other types of liability contingencies.

``(3) Assessment of coverage by categories of risk.--For each Indian tribe, for each category of risk identified under paragraph (2), the Secretary, in conducting the study, shall determine whether insurance coverage or coverage under chapter 171 of title 28, United States Code, applies to that Indian tribe for that activity.

``(b) Report.--Not later than June 1, 1999, and annually thereafter, the Secretary shall submit a report to Congress that contains legislative recommendations that the Secretary determines to--

``(1) be appropriate to improve the provision of insurance coverage to Indian tribes; or

``(2) otherwise achieve the purpose of providing relief to persons who are injured as a result of an official action of a tribal government.

``SEC. 705. AUTHORIZATION OF APPROPRIATIONS.

``There are authorized to be appropriated to the Department of the Interior such sums as may be necessary to carry out this title.''

Claims Resulting From Performance of Contract, Grant Agreement, or Cooperative Agreement; Civil Action Against Tribe, Tribal Organization, Etc., Deemed Action Against United States; Reimbursement of Treasury for Payment of Claims

Pub. L. 101-512, title III, Sec. 314, Nov. 5, 1990, 104 Stat. 1959, as amended by Pub. L. 103-138, title III, Sec. 308, Nov. 11, 1993, 107 Stat. 1416, provided that: ``With respect to claims resulting from the performance of functions during fiscal year 1991 and thereafter, or claims asserted after September 30, 1990, but resulting from the performance of functions prior to fiscal year 1991, under a contract, grant agreement, or any other agreement or compact authorized by the Indian Self-Determination and Education Assistance Act of 1975, as amended (88 Stat. 2203; 25 U.S.C. 450 et seq.) [Pub. L. 93-638, see Short Title note set out under section 450 of this title and Tables] or by title V, part B, Tribally Controlled School Grants of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988, as amended (102 Stat. 385; 25 U.S.C. 2501 et seq.), an Indian tribe, tribal organization or Indian contractor is deemed hereafter to be part of the Bureau of Indian Affairs in the Department of the Interior or the Indian Health Service in the Department of Health and Human Services while carrying out any such contract or agreement and its employees are deemed employees of the Bureau or Service while acting within the scope of their employment in carrying out the contract or agreement: Provided, That after September 30, 1990, any civil action or proceeding involving such claims brought hereafter against any tribe, tribal organization, Indian contractor or tribal employee covered by this provision shall be deemed to be an action against the United States and will be defended by the Attorney General and be afforded the full protection and coverage of the Federal Tort Claims Act [28 U.S.C. 1346(b), 2671 et seq.]: Provided further, That beginning with the fiscal year ending September 30, 1991, and thereafter, the appropriate Secretary shall request through annual appropriations funds sufficient to reimburse the Treasury for any claims paid in the prior fiscal year pursuant to the foregoing provisions: Provided further, That nothing in this section shall in any way affect the provisions of section 102(d) of the Indian Self-Determination and Education Assistance Act of 1975, as amended (88 Stat. 2203; 25 U.S.C. 450 et seq.) [25 U.S.C. 450f(d)].''

Reference to Section 450g(c) in Public Law 100-446

Section 201(b)(2) of Pub. L. 100-472 provided that: ``Any reference to section 103(c) [Sec. 103(c) of Pub. L. 93-638, formerly 25 U.S.C. 450g(c)] contained in an Act making appropriations for the Department of the Interior and Related Agencies for fiscal year 1989 [Pub. L. 100-446] shall be deemed to apply to section 102(d) of such Act [Sec. 102(d) of Pub. L. 93-638, 25 U.S.C. 450f(d)] as amended by this Act.''

Tribal Self-Governance Demonstration Project

Title III of Pub. L. 93-638, as added by Pub. L. 100-472, title II, Sec. 209, Oct. 5, 1988, 102 Stat. 2296; amended by Pub. L. 102-184, Secs. 2-6, Dec. 4, 1991, 105 Stat. 1278; Pub. L. 102-573, title VIII, Sec. 814, Oct. 29, 1992, 106 Stat. 4590; Pub. L. 103-435, Sec. 22(a)(2), (3), Nov. 2, 1994, 108 Stat. 4575; Pub. L. 103-437, Sec. 10(c)(1), Nov. 2, 1994, 108 Stat. 4589; Pub. L. 105-244, title IX, Sec. 901(d), Oct. 7, 1998, 112 Stat. 1828, related to tribal self-governance research and demonstration project conducted by Secretary of the Interior and Secretary of Health and Human Services, prior to repeal by Pub. L. 106-260, Sec. 10, Aug. 18, 2000, 114 Stat. 734.

Section Referred to in Other Sections

This section is referred to in sections 450b, 450c, 450e-1, 450h, 450j, 450k, 450l, 450m, 450m-1, 458cc, 458ff, 458aaa-5, 458aaa-15, 1631, 1724, 2021 of this title; title 20 section 2326; title 29 section 741; title 42 section 2004b.

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[*CITE*: *25USC450g*]

TITLE 25--INDIANS

CHAPTER 14--MISCELLANEOUS

SUBCHAPTER II--INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE

Part A--Indian Self-Determination

Sec. 450g. Repealed or Transferred. Pub. L. 100-472, title II,
Sec. 201(b) (1), Oct. 5, 1988, 102 Stat. 2289

Section, Pub. L. 93-638, title I, Sec. 103, Jan. 4, 1975, 88 Stat. 2206; Pub. L. 96-88, title V, Sec. 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 100-202, Sec. 101(g) [title II], Dec. 22, 1987, 101 Stat. 1329-213, 1329-246; Pub. L. 100-446, title II, Sept. 27, 1988, 102 Stat. 1817, which related to contracts by Secretary of Health and Human Services with tribal organizations, was repealed except for the last sentence of subsec. (c), providing that tribal organizations and Indian contractors be deemed part of Public Health Service, which was redesignated subsec. (d) of section 450f of this title.

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[Laws in effect as of January 7, 2003]
[Document not affected by Public Laws enacted between
January 7, 2003 and February 12, 2003]
[*CITE*: *25USC450h*]

TITLE 25--INDIANS

CHAPTER 14--MISCELLANEOUS

SUBCHAPTER II--INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE

Part A--Indian Self-Determination

Sec. 450h. Grants to tribal organizations or tribes

- (a) Request by tribe for contract or grant by Secretary of the Interior for improving, etc., tribal governmental, contracting, and program planning activities

The Secretary of the Interior is authorized, upon the request of any Indian tribe (from funds appropriated for the benefit of Indians pursuant to section 13 of this title, and any Act subsequent thereto) to contract with or make a grant or grants to any tribal organization for--

(1) the strengthening or improvement of tribal government (including, but not limited to, the development, improvement, and administration of planning, financial management, or merit personnel systems; the improvement of tribally funded programs or activities; or the development, construction, improvement, maintenance, preservation, or operation of tribal facilities or resources);

(2) the planning, training, evaluation of other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 450f of this title and the additional costs associated with the initial years of operation under such a contract or contracts; or

(3) the acquisition of land in connection with items (1) and (2) above: Provided, That in the case of land within Indian country (as defined in chapter 53 of title 18) or which adjoins on at least two sides lands held in trust by the United States for the tribe or for individual Indians, the Secretary of \1\ Interior may (upon request of the tribe) acquire such land in trust for the tribe.

\1\ So in original. Probably should be followed by ``the''.

- (b) Grants by Secretary of Health and Human Services for development, maintenance, etc., of health facilities or services and improvement of contract capabilities implementing hospital and health facility functions

The Secretary of Health and Human Services may, in accordance with regulations adopted pursuant to section 450k of this title, make grants to any Indian tribe or tribal organization for--

(1) the development, construction, operation, provision, or

maintenance of adequate health facilities or services including the training of personnel for such work, from funds appropriated to the Indian Health Service for Indian health services or Indian health facilities; or

(2) planning, training, evaluation or other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 450g \2\ of this title.

\2\ See References in Text note below.

(c) Use as matching shares for other similar Federal grant programs

The provisions of any other Act notwithstanding, any funds made available to a tribal organization under grants pursuant to this section may be used as matching shares for any other Federal grant programs which contribute to the purposes for which grants under this section are made.

(d) Technical assistance

The Secretary is directed, upon the request of any tribal organization and subject to the availability of appropriations, to provide technical assistance on a nonreimbursable basis to such tribal organization--

(1) to develop any new self-determination contract authorized pursuant to this subchapter;

(2) to provide for the assumption by such tribal organization of any program, or portion thereof, provided for in section 450f(a)(1) of this title; or

(3) to develop modifications to any proposal for a self-determination contract which the Secretary has declined to approve pursuant to section 450f of this title.

(e) Grants for technical assistance and for planning, etc., Federal programs for tribe

The Secretary is authorized, upon the request of an Indian tribe, to make a grant to any tribal organization for--

(1) obtaining technical assistance from providers designated by the tribal organization, including tribal organizations that operate mature contracts, for the purposes of program planning and evaluation, including the development of any management systems necessary for contract management, and the development of cost allocation plans for indirect cost rates; and

(2) the planning, designing, monitoring, and evaluating of Federal programs serving the tribe, including Federal administrative functions.

(Pub. L. 93-638, title I, Sec. 103, formerly Sec. 104, Jan. 4, 1975, 88 Stat. 2207; renumbered Sec. 103 and amended Pub. L. 100-472, title II, Sec. 202, Oct. 5, 1988, 102 Stat. 2289; Pub. L. 101-644, title II, Sec. 203(g)(1), Nov. 29, 1990, 104 Stat. 4666.)

References in Text

Section 450g of this title, referred to in subsec. (b)(2), was in

the original ``section 103 of this Act'', meaning section 103 of Pub. L. 93-638, the Indian Self-Determination Act. Section 103(a) and (b) and the first sentence of section 103(c) of Pub. L. 93-638 were repealed, and the remainder of section 103(c) of Pub. L. 93-638 was redesignated as section 102(d) of Pub. L. 93-638 (section 450f(d) of this title) by Pub. L. 100-472, title II, Sec. 201(b)(1), Oct. 5, 1988, 102 Stat. 2289. Section 104 of Pub. L. 93-638 was renumbered as section 103 of Pub. L. 93-638 by section 202(a) of Pub. L. 100-472, and is classified to this section.

Prior Provisions

A prior section 103 of Pub. L. 93-638 was classified to section 450g of this title and was repealed in part and transferred in part by section 201(b)(1) of Pub. L. 100-472.

Amendments

1990--Subsec. (a)(3). Pub. L. 101-644, which directed the substitution of ``Indian country (as defined in chapter 53 of title 18)'' for ``reservation boundaries'' in ``section 301(a)(3) of the Indian Self-Determination Act (25 U.S.C. 450h(a)(3))'', was executed to this section, section 103(a)(3) of that Act, to reflect the probable intent of Congress.

1988--Subsec. (a). Pub. L. 100-472, Sec. 202(b), inserted ``or'' at end of par. (2), substituted a period for ``; or'' at end of par. (3), and struck out par. (4) which read as follows: ``the planning, designing, monitoring, and evaluating of Federal programs serving the tribe.''

Subsec. (b). Pub. L. 100-472, Sec. 202(c), substituted ``Health and Human Services'' for ``Health, Education, and Welfare''.

Subsecs. (d), (e). Pub. L. 100-472, Sec. 202(d), added subsecs. (d) and (e).

Authority of Secretary To Acquire Lands In Trust

Section 203(g)(2) of Pub. L. 101-644 provided that: ``The amendment made by paragraph (1) [amending this section] shall not alter or otherwise modify or affect existing prohibitions or limitations on the Secretary's authority to acquire lands in trust.''

Section Referred to in Other Sections

This section is referred to in sections 450b, 450f, 450j, 450k, 450m, 2010, 2020, 2021 of this title; title 42 section 2004b.

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January 7, 2003 and February 12, 2003]
[*CITE*: *25USC450j*]

TITLE 25--INDIANS

CHAPTER 14--MISCELLANEOUS

SUBCHAPTER II--INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE

Part A--Indian Self-Determination

Sec. 450j. Contract or grant provisions and administration

(a) Applicability of Federal contracting laws and regulations; waiver of requirements

(1) Notwithstanding any other provision of law, subject to paragraph (3), the contracts and cooperative agreements entered into with tribal organizations pursuant to section 450f of this title shall not be subject to Federal contracting or cooperative agreement laws (including any regulations), except to the extent that such laws expressly apply to Indian tribes.

(2) Program standards applicable to a nonconstruction self-determination contract shall be set forth in the contract proposal and the final contract of the tribe or tribal organization.

(3) (A) With respect to a construction contract (or a subcontract of such a construction contract), the provisions of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) and the regulations relating to acquisitions promulgated under such Act shall apply only to the extent that the application of such provision to the construction contract (or subcontract) is--

- (i) necessary to ensure that the contract may be carried out in a satisfactory manner;
- (ii) directly related to the construction activity; and
- (iii) not inconsistent with this subchapter.

(B) A list of the Federal requirements that meet the requirements of clauses (i) through (iii) of subparagraph (A) shall be included in an attachment to the contract pursuant to negotiations between the Secretary and the tribal organization.

(C) (i) Except as provided in subparagraph (B), no Federal law listed in clause (ii) or any other provision of Federal law (including an Executive order) relating to acquisition by the Federal Government shall apply to a construction contract that a tribe or tribal organization enters into under this subchapter, unless expressly provided in such law.

(ii) The laws listed in this paragraph are as follows:

- (I) The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).
- (II) Section 3709 of the Revised Statutes [41 U.S.C. 5].
- (III) Section 9(c) of the Act of Aug. 2, 1946 (60 Stat. 809,

chapter 744).

(IV) Title III of the Federal Property and Administrative Services Act of 1949 (63 Stat. 393 et seq., chapter 288) [41 U.S.C. 251 et seq.].

(V) Section 13 of the Act of Oct. 3, 1944 (58 Stat. 770; chapter 479) [50 App. U.S.C. 1622].

(VI) Chapters 21, 25, 27, 29, and 31 of title 44.

(VII) Section 2 of the Act of June 13, 1934 (48 Stat 948, chapter 483 \1\) [40 U.S.C. 276c].

\1\ So in original. probably should be ``482''.

(VIII) Sections 1 through 12 of the Act of June 30, 1936 (49 Stat. 2036 et seq. chapter 881) [41 U.S.C. 35-45].

(IX) The Service Control Act of 1965 (41 U.S.C. 351 et seq.).

(X) The Small Business Act (15 U.S.C. 631 et seq.).

(XI) Executive Order Nos. 12138, 11246, 11701 and 11758.

- (b) Payments; transfer of funds by Treasury for disbursement by tribal organization; accountability for interest accrued prior to disbursement

Payments of any grants or under any contracts pursuant to sections 450f and 450h of this title may be made in advance or by way of reimbursement and in such installments and on such conditions as the appropriate Secretary deems necessary to carry out the purposes of this part. The transfer of funds shall be scheduled consistent with program requirements and applicable Treasury regulations, so as to minimize the time elapsing between the transfer of such funds from the United States Treasury and the disbursement thereof by the tribal organization, whether such disbursement occurs prior to or subsequent to such transfer of funds. Tribal organizations shall not be held accountable for interest earned on such funds, pending their disbursement by such organization.

- (c) Term of self-determination contracts; annual renegotiation

(1) A self-determination contract shall be--

(A) for a term not to exceed three years in the case of other than a mature contract, unless the appropriate Secretary and the tribe agree that a longer term would be advisable, and

(B) for a definite or an indefinite term, as requested by the tribe (or, to the extent not limited by tribal resolution, by the tribal organization), in the case of a mature contract.

The amounts of such contracts shall be subject to the availability of appropriations.

(2) The amounts of such contracts may be renegotiated annually to reflect changed circumstances and factors, including, but not limited to, cost increases beyond the control of the tribal organization.

- (d) Calendar year basis for contracts

(1) Beginning in fiscal year 1990, upon the election of a tribal organization, the Secretary shall use the calendar year as the basis for any contracts or agreements under this subchapter, unless the Secretary and the Indian tribe or tribal organization agree on a different period.

(2) The Secretary shall, on or before April 1 of each year beginning in 1992, submit a report to the Congress on the amounts of any additional obligation authority needed to implement this subsection in the next following fiscal year.

(e) Effective date for retrocession of contract

If an Indian tribe, or a tribal organization authorized by a tribe, requests retrocession of the appropriate Secretary for any contract or portion of a contract entered into pursuant to this subchapter, unless the tribe or tribal organization rescinds the request for retrocession, such retrocession shall become effective on--

(1) the earlier of--

(A) the date that is 1 year after the date the Indian tribe or tribal organization submits such request; or

(B) the date on which the contract expires; or

(2) such date as may be mutually agreed by the Secretary and the Indian tribe.

(f) Use of existing school buildings, hospitals, and other facilities and equipment therein; acquisition and donation of excess or surplus Government personal property

In connection with any self-determination contract or grant made pursuant to section 450f or 450h of this title, the appropriate Secretary may--

(1) permit an Indian tribe or tribal organization in carrying out such contract or grant, to utilize existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property owned by the Government within the Secretary's jurisdiction under such terms and conditions as may be agreed upon for their use and maintenance;

(2) donate to an Indian tribe or tribal organization title to any personal or real property found to be excess to the needs of the Bureau of Indian Affairs, the Indian Health Service, or the General Services Administration, except that--

(A) subject to the provisions of subparagraph (B), title to property and equipment furnished by the Federal Government for use in the performance of the contract or purchased with funds under any self-determination contract or grant agreement shall, unless otherwise requested by the tribe or tribal organization, vest in the appropriate tribe or tribal organization;

(B) if property described in subparagraph (A) has a value in excess of \$5,000 at the time of the retrocession, rescission, or termination of the self-determination contract or grant agreement, at the option of the Secretary, upon the retrocession, rescission, or termination, title to such property and equipment shall revert to the Department of the Interior or the Department of Health and Human Services, as appropriate; and

(C) all property referred to in subparagraph (A) shall remain eligible for replacement on the same basis as if title to such property were vested in the United States; and

(3) acquire excess or surplus Government personal or real property for donation to an Indian tribe or tribal organization if the Secretary determines the property is appropriate for use by the

tribe or tribal organization for a purpose for which a self-determination contract or grant agreement is authorized under this subchapter.

(g) Performance of personal services

The contracts authorized under section 450f of this title and grants pursuant to section 450h of this title may include provisions for the performance of personal services which would otherwise be performed by Federal employees including, but in no way limited to, functions such as determination of eligibility of applicants for assistance, benefits, or services, and the extent or amount of such assistance, benefits, or services to be provided and the provisions of such assistance, benefits, or services, all in accordance with the terms of the contract or grant and applicable rules and regulations of the appropriate Secretary: Provided, That the Secretary shall not make any contract which would impair his ability to discharge his trust responsibilities to any Indian tribe or individuals.

(h) Fair and uniform provision by tribal organization of services and assistance to covered Indians

Contracts and grants with tribal organizations pursuant to sections 450f and 450h of this title shall include provisions to assure the fair and uniform provision by such tribal organizations of the services and assistance they provide to Indians under such contracts and grants.

(i) Division of administration of program

(1) If a self-determination contract requires the Secretary to divide the administration of a program that has previously been administered for the benefit of a greater number of tribes than are represented by the tribal organization that is a party to the contract, the Secretary shall take such action as may be necessary to ensure that services are provided to the tribes not served by a self-determination contract, including program redesign in consultation with the tribal organization and all affected tribes.

(2) Nothing in this part shall be construed to limit or reduce in any way the funding for any program, project, or activity serving a tribe under this or other applicable Federal law. Any tribe or tribal organization that alleges that a self-determination contract is in violation of this section may apply the provisions of section 450m-1 of this title.

(j) Proposal to redesign program, activity, function, or service

Upon providing notice to the Secretary, a tribal organization that carries out a nonconstruction self-determination contract may propose a redesign of a program, activity, function, or service carried out by the tribal organization under the contract, including any nonstatutory program standard, in such manner as to best meet the local geographic, demographic, economic, cultural, health, and institutional needs of the Indian people and tribes served under the contract. The Secretary shall evaluate any proposal to redesign any program, activity, function, or service provided under the contract. With respect to declining to approve a redesigned program, activity, function, or service under this subsection, the Secretary shall apply the criteria and procedures set

forth in section 450f of this title.

(k) Access to Federal sources of supply

For purposes of section 201(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a)) (relating to Federal sources of supply, including lodging providers, airlines and other transportation providers), a tribal organization carrying out a contract, grant, or cooperative agreement under this subchapter shall be deemed an executive agency and part of the Indian Health Service when carrying out such contract, grant, or agreement and the employees of the tribal organization shall be eligible to have access to such sources of supply on the same basis as employees of an executive agency have such access. For purposes of carrying out such contract, grant, or agreement, the Secretary shall, at the request of an Indian tribe, enter into an agreement for the acquisition, on behalf of the Indian tribe, of any goods, services, or supplies available to the Secretary from the General Services Administration or other Federal agencies that are not directly available to the Indian tribe under this section or under any other Federal law, including acquisitions from prime vendors. All such acquisitions shall be undertaken through the most efficient and speedy means practicable, including electronic ordering arrangements.

(l) Lease of facility used for administration and delivery of services

(1) Upon the request of an Indian tribe or tribal organization, the Secretary shall enter into a lease with the Indian tribe or tribal organization that holds title to, a leasehold interest in, or a trust interest in, a facility used by the Indian tribe or tribal organization for the administration and delivery of services under this subchapter.

(2) The Secretary shall compensate each Indian tribe or tribal organization that enters into a lease under paragraph (1) for the use of the facility leased for the purposes specified in such paragraph. Such compensation may include rent, depreciation based on the useful life of the facility, principal and interest paid or accrued, operation and maintenance expenses, and such other reasonable expenses that the Secretary determines, by regulation, to be allowable.

(m) Statutory requirements; technical assistance; precontract negotiation phase; fixed price construction contract

(1) Each construction contract requested, approved, or awarded under this subchapter, shall be subject to--

(A) except as otherwise provided in this subchapter, the provisions of this subchapter, other than sections 450f(a)(2), 450j-1(1), 450l and 450m of this title; and

(B) section 314 of the Department of the Interior and Related Agencies Appropriations Act, 1991 (104 Stat. 1959).

(2) In providing technical assistance to tribes and tribal organizations in the development of construction contract proposals, the Secretary shall provide, not later than 30 days after receiving a request from a tribe or tribal organization, all information available to the Secretary regarding the construction project, including construction drawings, maps, engineering reports, design reports, plans of requirements, cost estimates, environmental assessments or environmental impact reports, and archaeological reports.

(3) Prior to finalizing a construction contract proposal pursuant to section 450f(a) of this title, and upon request of the tribe or tribal organization that submits the proposal, the Secretary shall provide for a precontract negotiation phase in the development of a contract proposal. Such phase shall include, at a minimum, the following elements:

(A) The provision of technical assistance pursuant to section 450h of this title and paragraph (2).

(B) A joint scoping session between the Secretary and the tribe or tribal organization to review all plans, specifications, engineering reports, cost estimates, and other information available to the parties, for the purpose of identifying all areas of agreement and disagreement.

(C) An opportunity for the Secretary to revise the plans, designs, or cost estimates of the Secretary in response to concerns raised, or information provided by, the tribe or tribal organization.

(D) A negotiation session during which the Secretary and the tribe or tribal organization shall seek to develop a mutually agreeable contract proposal.

(E) Upon the request of the tribe or tribal organization, the use of an alternative dispute resolution mechanism to seek resolution of all remaining areas of disagreement pursuant to the dispute resolution provisions under subchapter IV of chapter 5 of title 5.

(F) The submission to the Secretary by the tribe or tribal organization of a final contract proposal pursuant to section 450f(a) of this title.

(4)(A) Subject to subparagraph (B), in funding a fixed-price construction contract pursuant to section 450j-1(a) of this title, the Secretary shall provide for the following:

(i) The reasonable costs to the tribe or tribal organization for general administration incurred in connection with the project that is the subject of the contract.

(ii) The ability of the contractor that carries out the construction contract to make a reasonable profit, taking into consideration the risks associated with carrying out the contract and other relevant considerations.

(B) In establishing a contract budget for a construction project, the Secretary shall not be required to separately identify the components described in clauses (i) and (ii) of subparagraph (A).

(C) The total amount awarded under a construction contract shall reflect an overall fair and reasonable price to the parties, including the following costs:

(i) The reasonable costs to the tribal organization of performing the contract, taking into consideration the terms of the contract and the requirements of this subchapter and any other applicable law.

(ii) The costs of preparing the contract proposal and supporting cost data.

(iii) The costs associated with auditing the general and administrative costs of the tribal organization associated with the management of the construction contract.

(iv) In the case of a fixed-price contract, a fair profit determined by taking into consideration the relevant risks and local

market conditions.

(v) If the Secretary and the tribe or tribal organization are unable to develop a mutually agreeable construction contract proposal pursuant to the procedures set forth in this subsection, the tribe or tribal organization may submit a final contract proposal to the Secretary. Not later than 30 days after receiving such final contract proposal, the Secretary shall approve the contract proposal and award the contract, unless, during such period the Secretary declines the proposal pursuant to subsections (a) (2) and (b) \2\ of section 450f of this title (including providing opportunity for an appeal pursuant to section 450f(b) of this title).

\2\ See References in Text note below.

(n) Rental rates for housing for Government employees in Alaska

Notwithstanding any other provision of law, the rental rates for housing provided to an employee by the Federal Government in Alaska pursuant to a self-determination contract shall be determined on the basis of--

(1) the reasonable value of the quarters and facilities (as such terms are defined under section 5911 of title 5) to such employee, and

(2) the circumstances under which such quarters and facilities are provided to such employee,

as based on the cost of comparable private rental housing in the nearest established community with a year-round population of 1,500 or more individuals.

(o) Patient records

(1) In general

At the option of an Indian tribe or tribal organization, patient records may be deemed to be Federal records under those provisions of title 44 that are commonly referred to as the ``Federal Records Act of 1950'' for the limited purposes of making such records eligible for storage by Federal Records Centers to the same extent and in the same manner as other Department of Health and Human Services patient records.

(2) Treatment of records

Patient records that are deemed to be Federal records under those provisions of title 44 that are commonly referred to as the ``Federal Records Act of 1950'' pursuant to this subsection shall not be considered Federal records for the purposes of chapter 5 of title 5.

(Pub. L. 93-638, title I, Sec. 105, formerly Sec. 106, Jan. 4, 1975, 88 Stat. 2210; renumbered Sec. 105 and amended Pub. L. 100-472, title II, Sec. 204, Oct. 5, 1988, 102 Stat. 2291; Pub. L. 101-301, Sec. 2(a)(7), May 24, 1990, 104 Stat. 207; Pub. L. 101-644, title II, Sec. 203(c)-(e), Nov. 29, 1990, 104 Stat. 4666; Pub. L. 103-413, title I, Secs. 102(10)-

(13), 106, Oct. 25, 1994, 108 Stat. 4253-4255, 4270; Pub. L. 104-109, Sec. 7, Feb. 12, 1996, 110 Stat. 764; Pub. L. 106-260, Secs. 7, 8, Aug. 18, 2000, 114 Stat. 732, 733.)

References in Text

The Office of Federal Procurement Policy Act, referred to in subsec. (a)(3)(A), is Pub. L. 93-400, Aug. 30, 1974, 88 Stat. 796, as amended, which is classified principally to chapter 7 (Sec. 401 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 41 and Tables.

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (a)(3)(C)(ii)(I), (IV), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Provisions of the Act relating to management and disposal of Government property are classified to chapter 10 (Sec. 471 et seq.) of Title 40, Public Buildings, Property, and Works. Title III of the Act is classified generally to subchapter IV (Sec. 251 et seq.) of chapter 4 of Title 41. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

Section 9(c) of the Act of Aug. 2, 1946, referred to in subsec. (a)(3)(C)(ii)(III), is section 9(c) of act Aug. 2, 1946, ch. 744, 60 Stat. 809, which amended section 5 of Title 41.

The Service Control Act of 1965, referred to in subsec. (a)(3)(C)(ii)(IX), probably means the Service Contract Act of 1965, or Pub. L. 89-286, Oct. 22, 1965, 79 Stat. 1034, as amended, which is classified generally to chapter 6 (Sec. 351 et seq.) of Title 41. For complete classification of this Act to the Code, see Short Title note set out under section 351 of Title 41 and Tables.

The Small Business Act, referred to in subsec. (a)(3)(C)(ii)(X), is Pub. L. 85-536, July 18, 1958, 72 Stat. 384, as amended, which is classified generally to chapter 14A (Sec. 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

Executive Order Nos. 12138, 11246, 11701 and 11758, referred to in subsec. (a)(3)(C)(ii)(XI), are Ex. Ord. No. 12138, May 18, 1979, 44 F.R. 29637, as amended, which is set out as a note under section 631 of Title 15, Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319, as amended, which is set out as a note under section 2000e of Title 42, The Public Health and Welfare, Ex. Ord. No. 11701, Jan. 24, 1973, 38 F.R. 2675, which is set out as a note under section 4212 of Title 38, Veterans' Benefits, and Ex. Ord. No. 11758, Jan. 15, 1974, 39 F.R. 2075, as amended, which is set out as a note under section 701 of Title 29, Labor.

This part, referred to in subsecs. (b) and (i)(2), was in the original ``this title'', meaning title I of Pub. L. 93-638, known as the Indian Self-Determination Act, which is classified principally to this part (450f et seq.). For complete classification of title I to the Code, see Short Title note set out under section 450 of this title and Tables.

Section 314 of the Department of the Interior and Related Agencies Appropriations Act, 1991, referred to in subsec. (m)(1)(B), is section 314 of Pub. L. 101-512, which is set out as a note under section 450f of this title.

Subsections (a)(2) and (b) of section 450f of this title, referred to in subsec. (m)(4)(C)(v), was in the original ``sections 102(a)(2) and 102(b) of section 102'', and was translated as reading ``subsections (a)(2) and (b) of section 102'', meaning section 102 of Pub. L. 93-638,

to reflect the probable intent of Congress.

The Federal Records Act of 1950, referred to in subsec. (o), was title V of act June 30, 1949, ch. 288, as added Sept. 5, 1950, ch. 849, Sec. 6(d), 64 Stat. 583, which was classified generally to sections 392 to 396 and 397 to 401 of former Title 44, Public Printing and Documents. Title V of act June 30, 1949, was repealed by Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1238, the first section of which enacted Title 44, Public Printing and Documents. For disposition of sections of former Title 44, see Table at the beginning of Title 44.

Prior Provisions

A prior section 105 of Pub. L. 93-638 was renumbered section 104 by Pub. L. 100-472 and is classified to section 450i of this title.

Amendments

2000--Subsec. (k). Pub. L. 106-260, Sec. 7, substituted ``deemed an executive agency and part of the Indian Health Service'' for ``deemed an executive agency'' and inserted at end ``For purposes of carrying out such contract, grant, or agreement, the Secretary shall, at the request of an Indian tribe, enter into an agreement for the acquisition, on behalf of the Indian tribe, of any goods, services, or supplies available to the Secretary from the General Services Administration or other Federal agencies that are not directly available to the Indian tribe under this section or under any other Federal law, including acquisitions from prime vendors. All such acquisitions shall be undertaken through the most efficient and speedy means practicable, including electronic ordering arrangements.''

Subsec. (o). Pub. L. 106-260, Sec. 8, added subsec. (o).

1996--Subsec. (e). Pub. L. 104-109 made technical amendment to directory language of Pub. L. 103-413, Sec. 102(11). See 1994 Amendment note below.

1994--Subsec. (a). Pub. L. 103-413, Sec. 102(10), added subsec. (a) and struck out former subsec. (a) which read as follows: ``Contracts with tribal organizations pursuant to section 450f of this title shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the appropriate Secretary, such contracts may be negotiated without advertising and need not conform with the provisions of sections 270a to 270d of title 40: Provided, That the appropriate Secretary may waive any provisions of such contracting laws or regulations which he determines are not appropriate for the purposes of the contract involved or inconsistent with the provisions of this Act: Provided further, That, except for construction contracts (or sub-contracts of such a construction contract), the Office of Federal Procurement Policy Act (88 Stat. 796; 41 U.S.C. 401 et seq.) and Federal acquisition regulations promulgated thereunder shall not apply to self-determination contracts.''

Subsec. (e). Pub. L. 103-413, Sec. 102(11), as amended by Pub. L. 104-109, added subsec. (e) and struck out former subsec. (e) which read as follows: ``Whenever an Indian tribe requests retrocession of the appropriate Secretary for any contract entered into pursuant to this Act, such retrocession shall become effective one year from the date of the request by the Indian tribe or at such date as may be mutually agreed by the Secretary and the Indian tribe.''

Subsec. (f)(2). Pub. L. 103-413, Sec. 102(12), added par. (2) and struck out former par. (2) which read as follows: ``donate to an Indian tribe or tribal organization the title to any personal or real property found to be excess to the needs of the Bureau of Indian Affairs, the Indian Health Service, or the General Services Administration, including property and equipment purchased with funds under any self-determination contract or grant agreement; and''.

Subsec. (h). Pub. L. 103-413, Sec. 106, struck out ``and the rules and regulations adopted by the Secretaries of the Interior and Health and Human Services pursuant to section 450k of this title'' after ``sections 450f and 450h of this title''.

Subsecs. (i) to (n). Pub. L. 103-413, Sec. 102(13), added subsecs. (i) to (n).

1990--Subsec. (a). Pub. L. 101-301 substituted ``sub-contracts of such a construction contract'' for ``sub-contracts in such cases where the tribal contractor has sub-contracted the activity''.

Subsec. (c)(1)(B). Pub. L. 101-644, Sec. 203(c), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ``for an indefinite term in the case of a mature contract.''

Subsec. (d). Pub. L. 101-644, Sec. 203(d), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

``(1) No later than fiscal year 1990, the Secretary shall begin using the calendar year as the basis for contracts and agreements under this Act except for instances where the Secretary and the Indian tribe or tribal organization agree on a different period.

``(2) The Secretary shall submit a report to the Congress within ninety days of October 5, 1988, on the amounts of any additional obligational authority needed to implement this subsection in fiscal year 1989.''

Subsec. (f)(2), (3). Pub. L. 101-644, Sec. 203(e), inserted ``or real'' after ``personal''.

1988--Subsec. (a). Pub. L. 100-472, Sec. 204(b), (c), substituted ``section 450f'' for ``sections 450f and 450g'' and inserted proviso relating to nonapplication of Office of Federal Procurement Policy Act to self-determination contracts.

Subsec. (b). Pub. L. 100-472, Sec. 204(d), which directed the amendment of subsec. (b) by substituting ``sections 450f and 450h'' for ``sections 450f, 450g, and 450h'' was executed by substituting the new language for ``section 450f, 450g, or 450h'' as the probable intent of Congress.

Subsec. (c). Pub. L. 100-472, Sec. 204(e), added subsec. (c) and struck out former subsec. (c) which read as follows: ``Any contract requested by a tribe pursuant to sections 450f and 450g of this title shall be for a term not to exceed one year unless the appropriate Secretary determines that a longer term would be advisable: Provided, That such term may not exceed three years and shall be subject to the availability of appropriations: Provided, further, That the amounts of such contracts may be renegotiated annually to reflect factors, including but not limited to cost increases beyond the control of a tribal organization.''

Subsec. (d). Pub. L. 100-472, Sec. 204(e), added subsec. (d) and struck out former subsec. (d) which related to revision or amendment of contracts or grants at request or with consent of tribal organization and effective date for retrocession of contracts.

Subsec. (e). Pub. L. 100-472, Sec. 204(e), added subsec. (e) and struck out former subsec. (e) which authorized the Secretary to permit tribal organizations to use existing school buildings, hospitals, and

other facilities and equipment therein in carrying out grants or contracts.

Subsec. (f). Pub. L. 100-472, Sec. 204(e), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 100-472, Sec. 204(f), redesignated former subsec. (f) as (g) and substituted ``section 450f'' for ``sections 450f and 450g''. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 100-472, Sec. 204(g), (h), redesignated former subsec. (g) as (h), substituted ``sections 450f and 450h'' for ``sections 450f, 450g, and 450h'', and ``Health and Human Services'' for ``Health, Education, and Welfare''. Former subsec. (h), which related to minimum amount of funds under terms of contracts, was struck out.

Continued Availability of Certain Funds

Pub. L. 105-277, div. A, Sec. 101(e) [title I], Oct. 21, 1998, 105 Stat. 2681-231, 2681-246, provided in part that: ``hereafter funds made available to tribes and tribal organizations through contracts, compact agreements, or grants, as authorized by the Indian Self-Determination Act of 1975 [25 U.S.C. 450f et seq.] or grants authorized by the Indian Education Amendments of 1988 (25 U.S.C. 2001 and 2008A [probably means prior versions of 25 U.S.C. 2001 and 2008a]) shall remain available until expended by the contractor or grantee''.

Section Referred to in Other Sections

This section is referred to in sections 450b, 450j-1, 450k, 450l, 458cc, 458ff, 458aaa-5, 458aaa-7, 458aaa-8, 458aaa-15, 458aaa-16, 2001, 2503, 2507, 3307 of this title.

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TITLE 25--INDIANS

CHAPTER 14--MISCELLANEOUS

SUBCHAPTER II--INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE

Part A--Indian Self-Determination

Sec. 450j-*1*. Contract funding and indirect costs

(a) Amount of funds provided

(*1*) The amount of funds provided under the terms of self-determination contracts entered into pursuant to this subchapter 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, without regard to any organizational level within the Department of the Interior or the Department of Health and Human Services, as appropriate, at which the program, function, service, or activity or portion thereof, including supportive administrative functions that are otherwise contractable, is operated.

(2) There shall be added to the amount required by paragraph (*1*) contract support costs which shall consist of an amount for the reasonable costs for activities which must be carried on by a tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management, but which--

(A) normally are not carried on by the respective Secretary in his direct operation of the program; or

(B) are provided by the Secretary in support of the contracted program from resources other than those under contract.

(3) (A) The contract support costs that are eligible costs for the purposes of receiving funding under this subchapter shall include the costs of reimbursing each tribal contractor for reasonable and allowable costs of--

(i) direct program expenses for the operation of the Federal program that is the subject of the contract, and

(ii) any additional administrative or other expense related to the overhead incurred by the tribal contractor in connection with the operation of the Federal program, function, service, or activity pursuant to the contract,

except that such funding shall not duplicate any funding provided under subsection (a) (*1*) of this section.

(B) On an annual basis, during such period as a tribe or tribal organization operates a Federal program, function, service, or activity pursuant to a contract entered into under this subchapter, the tribe or tribal organization shall have the option to negotiate with the

Secretary the amount of funds that the tribe or tribal organization is entitled to receive under such contract pursuant to this paragraph.

(4) For each fiscal year during which a self-determination contract is in effect, any savings attributable to the operation of a Federal program, function, service, or activity under a self-determination contract by a tribe or tribal organization (including a cost reimbursement construction contract) shall--

(A) be used to provide additional services or benefits under the contract; or

(B) be expended by the tribe or tribal organization in the succeeding fiscal year, as provided in section 13a of this title.

(5) Subject to paragraph (6), during the initial year that a self-determination contract is in effect, the amount required to be paid under paragraph (2) shall include startup costs consisting of the reasonable costs that have been incurred or will be incurred on a one-time basis pursuant to the contract necessary--

(A) to plan, prepare for, and assume operation of the program, function, service, or activity that is the subject of the contract; and

(B) to ensure compliance with the terms of the contract and prudent management.

(6) Costs incurred before the initial year that a self-determination contract is in effect may not be included in the amount required to be paid under paragraph (2) if the Secretary does not receive a written notification of the nature and extent of the costs prior to the date on which such costs are incurred.

(b) Reductions and increases in amount of funds provided

The amount of funds required by subsection (a) of this section--

(*1*) shall not be reduced to make funding available for contract monitoring or administration by the Secretary;

(2) shall not be reduced by the Secretary in subsequent years except pursuant to--

(A) a reduction in appropriations from the previous fiscal year for the program or function to be contracted;

(B) a directive in the statement of the managers accompanying a conference report on an appropriation bill or continuing resolution;

(C) a tribal authorization;

(D) a change in the amount of pass-through funds needed under a contract; or

(E) completion of a contracted project, activity, or program;

(3) shall not be reduced by the Secretary to pay for Federal functions, including, but not limited to, Federal pay costs, Federal employee retirement benefits, automated data processing, contract technical assistance or contract monitoring;

(4) shall not be reduced by the Secretary to pay for the costs of Federal personnel displaced by a self-determination contract; and

(5) may, at the request of the tribal organization, be increased by the Secretary if necessary to carry out this subchapter or as provided in section 450j(c) of this title.

Notwithstanding any other provision in this subchapter, the provision of funds under this subchapter 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 under this subchapter.

(c) Annual reports

Not later than May 15 of each year, the Secretary shall prepare and submit to Congress an annual report on the implementation of this subchapter. Such report shall include--

(*1*) an accounting of the total amounts of funds provided for each program and the budget activity for direct program costs and contract support costs of tribal organizations under self-determination;

(2) an accounting of any deficiency in funds needed to provide required contract support costs to all contractors for the fiscal year for which the report is being submitted;

(3) the indirect cost rate and type of rate for each tribal organization that has been negotiated with the appropriate Secretary;

(4) the direct cost base and type of base from which the indirect cost rate is determined for each tribal organization;

(5) the indirect cost pool amounts and the types of costs included in the indirect cost pool; and

(6) an accounting of any deficiency in funds needed to maintain the preexisting level of services to any Indian tribes affected by contracting activities under this subchapter, and a statement of the amount of funds needed for transitional purposes to enable contractors to convert from a Federal fiscal year accounting cycle, as authorized by section 450j(d) of this title.

(d) Treatment of shortfalls in indirect cost recoveries

(*1*) Where a tribal organization's allowable indirect cost recoveries are below the level of indirect costs that the tribal organizations should have received for any given year pursuant to its approved indirect cost rate, and such shortfall is the result of lack of full indirect cost funding by any Federal, State, or other agency, such shortfall in recoveries shall not form the basis for any theoretical over-recovery or other adverse adjustment to any future years' indirect cost rate or amount for such tribal organization, nor shall any agency seek to collect such shortfall from the tribal organization.

(2) Nothing in this subsection shall be construed to authorize the Secretary to fund less than the full amount of need for indirect costs associated with a self-determination contract.

(e) Liability for indebtedness incurred before fiscal year 1992

Indian tribes and tribal organizations shall not be held liable for amounts of indebtedness attributable to theoretical or actual under-recoveries or theoretical over-recoveries of indirect costs, as defined in Office of Management and Budget Circular A-87, incurred for fiscal years prior to fiscal year 1992.

(f) Limitation on remedies relating to cost disallowances

Any right of action or other remedy (other than those relating to a criminal offense) relating to any disallowance of costs shall be barred unless the Secretary has given notice of any such disallowance within three hundred and sixty-five days of receiving any required annual single agency audit report or, for any period covered by law or regulation in force prior to October 19, 1984, any other required final audit report. Such notice shall set forth the right of appeal and hearing to the board of contract appeals pursuant to section 450m-*1* of this title. For the purpose of determining the 365-day period specified in this paragraph, an audit report shall be deemed to have been received on the date of actual receipt by the Secretary, if, within 60 days after receiving the report, the Secretary does not give notice of a determination by the Secretary to reject the single-agency report as insufficient due to noncompliance with chapter 75 of title 31 or noncompliance with any other applicable law. Nothing in this subsection shall be deemed to enlarge the rights of the Secretary with respect to section 476 of this title.

(g) Addition to contract of full amount contractor entitled; adjustment

Upon the approval of a self-determination contract, the Secretary shall add to the contract the full amount of funds to which the contractor is entitled under subsection (a) of this section, subject to adjustments for each subsequent year that such tribe or tribal organization administers a Federal program, function, service, or activity under such contract.

(h) Indirect costs for contracts for construction programs

In calculating the indirect costs associated with a self-determination contract for a construction program, the Secretary shall take into consideration only those costs associated with the administration of the contract and shall not take into consideration those moneys actually passed on by the tribal organization to construction contractors and subcontractors.

(i) Indian Health Service and Bureau of Indian Affairs budget consultations

On an annual basis, the Secretary shall consult with, and solicit the participation of, Indian tribes and tribal organizations in the development of the budget for the Indian Health Service and the Bureau of Indian Affairs (including participation of Indian tribes and tribal organizations in formulating annual budget requests that the Secretary submits to the President for submission to Congress pursuant to section 1105 of title 31).

(j) Use of funds for matching or cost participation requirements

Notwithstanding any other provision of law, a tribal organization may use funds provided under a self-determination contract to meet matching or cost participation requirements under other Federal and non-Federal programs.

(k) Allowable uses of funds without approval of Secretary

Without intending any limitation, a tribal organization may, without

the approval of the Secretary, expend funds provided under a self-determination contract for the following purposes, to the extent that the expenditure of the funds is supportive of a contracted program:

(*1*) Depreciation and use allowances not otherwise specifically prohibited by law, including the depreciation of facilities owned by the tribe or tribal organization.

(2) Publication and printing costs.

(3) Building, realty, and facilities costs, including rental costs or mortgage expenses.

(4) Automated data processing and similar equipment or services.

(5) Costs for capital assets and repairs.

(6) Management studies.

(7) Professional services, other than services provided in connection with judicial proceedings by or against the United States.

(8) Insurance and indemnification, including insurance covering the risk of loss of or damage to property used in connection with the contract without regard to the ownership of such property.

(9) Costs incurred to raise funds or contributions from non-Federal sources for the purpose of furthering the goals and objectives of the self-determination contract.

(10) Interest expenses paid on capital expenditures such as buildings, building renovation, or acquisition or fabrication of capital equipment, and interest expenses on loans necessitated due to delays by the Secretary in providing funds under a contract.

(11) Expenses of a governing body of a tribal organization that are attributable to the management or operation of programs under this subchapter.

(12) Costs associated with the management of pension funds, self-insurance funds, and other funds of the tribal organization that provide for participation by the Federal Government.

(1) Suspension, withholding, or delay in payment of funds

(*1*) The Secretary may only suspend, withhold, or delay the payment of funds for a period of 30 days beginning on the date the Secretary makes a determination under this paragraph to a tribal organization under a self-determination contract, if the Secretary determines that the tribal organization has failed to substantially carry out the contract without good cause. In any such case, the Secretary shall provide the tribal organization with reasonable advance written notice, technical assistance (subject to available resources) to assist the tribal organization, a hearing on the record not later than 10 days after the date of such determination or such later date as the tribal organization shall approve, and promptly release any funds withheld upon subsequent compliance.

(2) With respect to any hearing or appeal conducted pursuant to this subsection, the Secretary shall have the burden of proof to establish by clearly demonstrating the validity of the grounds for suspending, withholding, or delaying payment of funds.

(m) Use of program income earned

The program income earned by a tribal organization in the course of carrying out a self-determination contract--

(*1*) shall be used by the tribal organization to further the general purposes of the contract; and

(2) shall not be a basis for reducing the amount of funds otherwise obligated to the contract.

(n) Reduction of administrative or other responsibilities of Secretary; use of savings

To the extent that programs, functions, services, or activities carried out by tribal organizations pursuant to contracts entered into under this subchapter reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings that have not otherwise been included in the amount of contract funds determined under subsection (a) of this section, the Secretary shall make such savings available for the provision of additional services to program beneficiaries, either directly or through contractors, in a manner equitable to both direct and contracted programs.

(o) Rebudgeting by tribal organization

Notwithstanding any other provision of law (including any regulation), a tribal organization that carries out a self-determination contract may, with respect to allocations within the approved budget of the contract, rebudget to meet contract requirements, if such rebudgeting would not have an adverse effect on the performance of the contract.

(Pub. L. 93-638, title I, Sec. 106, as added Pub. L. 100-472, title II, Sec. 205, Oct. 5, 1988, 102 Stat. 2292; amended Pub. L. 101-301, Sec. 2(a)(8), (9), May 24, 1990, 104 Stat. 207; Pub. L. 101-644, title II, Sec. 203(a), Nov. 29, 1990, 104 Stat. 4666; Pub. L. 103-413, title I, Sec. 102(14)-(19), Oct. 25, 1994, 108 Stat. 4257-4259; Pub. L. 105-362, title VIII, Sec. 801(g), Nov. 10, 1998, 112 Stat. 3288; Pub. L. 106-260, Sec. 9, Aug. 18, 2000, 114 Stat. 733.)

Prior Provisions

A prior section 106 of Pub. L. 93-638 was renumbered section 105 by Pub. L. 100-472 and is classified to section 450j of this title.

Amendments

2000--Subsecs. (c) to (o). Pub. L. 106-260 added subsec. (c) and redesignated former subsecs. (c) to (n) as (d) to (o), respectively.

1998--Subsecs. (c) to (o). Pub. L. 105-362 redesignated subsecs. (d) to (o) as (c) to (n), respectively, and struck out former subsec. (c) which related to Secretary's annual report to Congress on implementation of this subchapter.

1994--Subsec. (a)(*1*). Pub. L. 103-413, Sec. 102(14)(A), inserted before period at end ``', without regard to any organizational level within the Department of the Interior or the Department of Health and Human Services, as appropriate, at which the program, function, service, or activity or portion thereof, including supportive administrative functions that are otherwise contractable, is operated''.

Subsec. (a)(2). Pub. L. 103-413, Sec. 102(14)(B), inserted ``an amount for'' after ``consist of''.

Subsec. (a)(3). Pub. L. 103-413, Sec. 102(14)(C), added par. (3) and struck out former par. (3) which read as follows: ``Any savings in operation under a self-determination contract shall be utilized to provide additional services or benefits under the contract or be expended in the succeeding fiscal year as provided in section 13a of this title.''

Subsec. (a)(4) to (6). Pub. L. 103-413, Sec. 102(14)(C), added pars. (4) to (6).

Subsec. (c). Pub. L. 103-413, Sec. 102(15)(A), substituted ``May 15'' for ``March 15'' in introductory provisions.

Subsec. (c)(1*), (2). Pub. L. 103-413, Sec. 102(15)(B), substituted ``contract support costs'' for ``indirect costs''.

Subsec. (c)(6). Pub. L. 103-413, Sec. 102(15)(C)-(E), added par. (6).

Subsec. (f). Pub. L. 103-413, Sec. 102(16), inserted after second sentence ``For the purpose of determining the 365-day period specified in this paragraph, an audit report shall be deemed to have been received on the date of actual receipt by the Secretary, if, within 60 days after receiving the report, the Secretary does not give notice of a determination by the Secretary to reject the single-agency report as insufficient due to noncompliance with chapter 75 of title 31 or noncompliance with any other applicable law.''

Subsec. (g). Pub. L. 103-413, Sec. 102(17), added subsec. (g) and struck out former subsec. (g) which read as follows: ``Upon the approval of a self-determination contract and at the request of an Indian tribe or tribal organization, the Secretary shall add the indirect cost funding amount awarded for a self-determination contract to the amount awarded for direct program funding for the first year and, subject to adjustments in the amount of direct program costs for the contract, for each subsequent year that the program remains continuously under contract.''

Subsec. (i). Pub. L. 103-413, Sec. 102(18), added subsec. (i) and struck out former subsec. (i) which read as follows: ``Within one month after October 5, 1988, the Secretary is mandated to establish a team in each area of the Bureau of Indian Affairs which consists of agency personnel (area personnel in the Navajo Area and in the case of Indian tribes not served by an agency) and tribal representatives for the purpose of analyzing the `Indian Priority System' and other aspects of the budgeting and funding allocation process of the Bureau of Indian Affairs for the purpose of making a report to Congress with appropriate recommendations for changes and legislative actions to achieve greater tribal decision-making authority over the use of funds appropriated for the benefit of the tribes and their members. The report along with the analysis, findings and recommendations of the area teams shall be submitted to Congress within six months of October 5, 1988. The Secretary may submit to Congress separate comments on the information and recommendations on the report.''

Subsecs. (j) to (o). Pub. L. 103-413, Sec. 102(19), added subsecs. (j) to (o).

1990--Subsec. (e). Pub. L. 101-644 substituted ``1992'' for ``1988''.

Subsec. (f). Pub. L. 101-301, Sec. 2(a)(8), substituted ``prior to enactment of chapter 75 of title 31'' for ``prior to enactment of the Single Agency Audit Act of 1984 (chapter 75 of title 31)'' , which for purposes of codification was translated as ``prior to October 19, 1984'' , requiring no change in text.

Subsec. (i). Pub. L. 101-301, Sec. 2(a)(9), substituted ``agency

personnel (area personnel in the Navajo Area and in the case of Indian tribes not served by an agency)'' for ``agency personnel''.

Section Referred to in Other Sections

This section is referred to in sections 13a, 450c, 450f, 450j, 450l, 458aaa-4, 458aaa-5, 458aaa-7, 458aaa-15, 2008, 2507 of this title.

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TITLE 25--INDIANS

CHAPTER 14--MISCELLANEOUS

SUBCHAPTER II--INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE

Part A--Indian Self-Determination

Sec. 450j-*2*. Indian Health Service: availability of funds for
Indian self-determination or self-governance contract or grant
support costs

Before, on, and after October 21, 1998, and notwithstanding any other provision of law, funds available to the Indian Health Service in this Act or any other Act for Indian self-determination or self-governance contract or grant support costs may be expended only for costs directly attributable to contracts, grants and compacts pursuant to the Indian Self-Determination Act [25 U.S.C. 450f et seq.] and no funds appropriated by this or any other Act shall be available for any contract support costs or indirect costs associated with any contract, grant, cooperative agreement, self-governance compact, or funding agreement entered into between an Indian tribe or tribal organization and any entity other than the Indian Health Service.

(Pub. L. 105-277, div. A, Sec. 101(e) [title II], Oct. 21, 1998, 112 Stat. 2681-231, 2681-280.)

References in Text

The Indian Self-Determination Act, referred to in text, is title I of Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to this part (Sec. 450f et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

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January 7, 2003 and February 12, 2003]
[*CITE*: *25USC450j*-*3*]

TITLE 25--INDIANS

CHAPTER 14--MISCELLANEOUS

SUBCHAPTER II--INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE

Part A--Indian Self-Determination

Sec. 450j-*3*. Department of the Interior: availability of funds
for Indian self-determination or self-governance contract or
grant support costs

Notwithstanding any other provision of law, including but not
limited to the Indian Self-Determination Act of 1975, as amended [25
U.S.C. 450f et seq.], on and after November 29, 1999, funds available to
the Department of the Interior for Indian self-determination or self-
governance contract or grant support costs may be expended only for
costs directly attributable to contracts, grants and compacts pursuant
to the Indian Self-Determination Act of 1975 and on and after November
29, 1999, funds appropriated in this title \1\ shall not be available
for any contract support costs or indirect costs associated with any
contract, grant, cooperative agreement, self-governance compact or
funding agreement entered into between an Indian tribe or tribal
organization and any entity other than an agency of the Department of
the Interior.

\1\ See References in Text note below.

(Pub. L. 106-113, div. B, Sec. 1000(a)(*3*) [title I, Sec. 113], Nov. 29,
1999, 113 Stat. 1535, 1501A-157.)

References in Text

The Indian Self-Determination Act of 1975, referred to in text,
probably means the Indian Self-Determination Act, title I of Pub. L. 93-
638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified
principally to this part (Sec. 450f et seq.). For complete
classification of this Act to the Code, see Short Title note set out
under section 450 of this title and Tables.

This title, referred to in text, is title I of the Department of the
Interior and Related Agencies Appropriations Act, 2000, as enacted by
Pub. L. 106-113, div. B, Sec. 1000(a)(*3*), Nov. 29, 1999, 113 Stat. 1535,
1501A-135. For complete classification of this title to the Code, see
Tables.

Similar Provisions

Similar provisions were contained in Pub. L. 105-277, div. A, Sec. 101(e) [title I, Sec. 114], Oct. 21, 1998, 112 Stat. 2681-231, 2681-255.

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[Document not affected by Public Laws enacted between
January 7, 2003 and February 12, 2003]
[*CITE*: *25USC450k*]

TITLE 25--INDIANS

CHAPTER 14--MISCELLANEOUS

SUBCHAPTER II--INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE

Part A--Indian Self-Determination

Sec. 450k. Rules and regulations

- (a) Authority of Secretaries of the Interior and of Health and Human Services to promulgate; time restriction

(1) Except as may be specifically authorized in this subsection, or in any other provision of this subchapter, the Secretary of the Interior and the Secretary of Health and Human Services may not promulgate any regulation, nor impose any nonregulatory requirement, relating to self-determination contracts or the approval, award, or declination of such contracts, except that the Secretary of the Interior and the Secretary of Health and Human Services may promulgate regulations under this subchapter relating to chapter 171 of title 28, commonly known as the ``Federal Tort Claims Act'', the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.), declination and waiver procedures, appeal procedures, reassumption procedures, discretionary grant procedures for grants awarded under section 450h of this title, property donation procedures arising under section 450j(f) of this title, internal agency procedures relating to the implementation of this subchapter, retrocession and tribal organization relinquishment procedures, contract proposal contents, conflicts of interest, construction, programmatic reports and data requirements, procurement standards, property management standards, and financial management standards.

(2) (A) The regulations promulgated under this subchapter, including the regulations referred to in this subsection, shall be promulgated--

- (i) in conformance with sections 552 and 553 of title 5 and subsections (c), (d), and (e) of this section; and
- (ii) as a single set of regulations in title 25 of the Code of Federal Regulations.

(B) The authority to promulgate regulations set forth in this subchapter shall expire if final regulations are not promulgated within 20 months after October 25, 1994.

- (b) Conflicting laws and regulations

The provisions of this subchapter shall supersede any conflicting provisions of law (including any conflicting regulations) in effect on the day before October 25, 1994, and the Secretary is authorized to repeal any regulation inconsistent with the provisions of this

subchapter.

(c) Revisions and amendments; procedures applicable

The Secretary of the Interior and the Secretary of Health and Human Services are authorized, with the participation of Indian tribes and tribal organizations, to revise and amend any rules or regulations promulgated pursuant to this section: Provided, That prior to any revision or amendment to such rules or regulations, the respective Secretary or Secretaries shall present the proposed revision or amendment to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives and shall, to the extent practicable, consult with appropriate national or regional Indian organizations and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

(d) Consultation in drafting and promulgating; negotiation process; interagency committees; extension of deadlines

(1) In drafting and promulgating regulations as provided in subsection (a) of this section (including drafting and promulgating any revised regulations), the Secretary of the Interior and the Secretary of Health and Human Services shall confer with, and allow for active participation by, representatives of Indian tribes, tribal organizations, and individual tribal members.

(2) (A) In carrying out rulemaking processes under this subchapter, the Secretary of the Interior and the Secretary of Health and Human Services shall follow the guidance of--

(i) subchapter III of chapter 5 of title 5, commonly known as the ``Negotiated Rulemaking Act of 1990''; and

(ii) the recommendations of the Administrative Conference of the United States numbered 82-4 and 85-5 entitled ``Procedures for Negotiating Proposed Regulations'' under sections 305.82-4 and 305.85-5 of title 1, Code of Federal Regulations, and any successor recommendation or law (including any successor regulation).

(B) The tribal participants in the negotiation process referred to in subparagraph (A) shall be nominated by and shall represent the groups described in this paragraph and shall include tribal representatives from all geographic regions.

(C) The negotiations referred to in subparagraph (B) shall be conducted in a timely manner. Proposed regulations to implement the amendments made by the Indian Self-Determination Contract Reform Act of 1994 shall be published in the Federal Register by the Secretary of the Interior and the Secretary of Health and Human Services not later than 180 days after October 25, 1994.

(D) Notwithstanding any other provision of law (including any regulation), the Secretary of the Interior and the Secretary of Health and Human Services are authorized to jointly establish and fund such interagency committees or other interagency bodies, including advisory bodies comprised of tribal representatives, as may be necessary or appropriate to carry out the provisions of this subchapter.

(E) If the Secretary determines that an extension of the deadlines under subsection (a) (2) (B) of this section and subparagraph (C) of this paragraph is appropriate, the Secretary may submit proposed legislation

to Congress for the extension of such deadlines.

(e) Exceptions in or waiver of regulations

The Secretary may, with respect to a contract entered into under this subchapter, make exceptions in the regulations promulgated to carry out this subchapter, or waive such regulations, if the Secretary finds that such exception or waiver is in the best interest of the Indians served by the contract or is consistent with the policies of this subchapter, and is not contrary to statutory law. In reviewing each request, the Secretary shall follow the timeline, findings, assistance, hearing, and appeal procedures set forth in section 450f of this title.

(Pub. L. 93-638, title I, Sec. 107, Jan. 4, 1975, 88 Stat. 2212; Pub. L. 96-88, title V, Sec. 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 100-472, title II, Sec. 207, Oct. 5, 1988, 102 Stat. 2295; Pub. L. 101-644, title II, Sec. 203(f), Nov. 29, 1990, 104 Stat. 4666; Pub. L. 103-413, title I, Sec. 105, Oct. 25, 1994, 108 Stat. 4269; Pub. L. 103-435, Sec. 22(a)(1), Nov. 2, 1994, 108 Stat. 4575; Pub. L. 103-437, Sec. 10(c)(2), Nov. 2, 1994, 108 Stat. 4589; Pub. L. 104-133, Sec. 1, Apr. 25, 1996, 110 Stat. 1320; Pub. L. 104-287, Sec. 6(e), Oct. 11, 1996, 110 Stat. 3399.)

References in Text

The Contract Disputes Act of 1978, referred to in subsec. (a)(1), is Pub. L. 95-563, Nov. 1, 1978, 92 Stat. 2383, as amended, which is classified principally to chapter 9 (Sec. 601 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 41 and Tables.

The Indian Self-Determination Contract Reform Act of 1994, referred to in subsec. (d)(2)(C), is title I of Pub. L. 103-413, Oct. 25, 1994, 108 Stat. 4250, which enacted section 450l of this title, amended this section and sections 450b, 450c, 450e, 450f, 450j, 450j-1, 450m, and 450m-1 of this title, and enacted provisions set out as a note under section 450 of this title. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 450 of this title and Tables.

Amendments

1996--Subsec. (a)(2)(B). Pub. L. 104-133 substituted ``20 months'' for ``18 months''.

Subsec. (b). Pub. L. 104-287 repealed Pub. L. 103-437, Sec. 10(c)(2)(A). See 1994 Amendment note below.

1994--Subsec. (a). Pub. L. 103-413, Sec. 105(1), added subsec. (a) and struck out former subsec. (a) which read as follows: ``The Secretaries of the Interior and of Health and Human Services are each authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purposes of carrying out the provisions of this subchapter: Provided, however, That all Federal requirements for self-determination contracts and grants under this Act shall be promulgated as regulations in conformity with sections 552 and 553 of title 5.''

Subsec. (b). Pub. L. 103-437, Sec. 10(c)(2)(A), which directed that subsec. (b) be repealed, was itself repealed by Pub. L. 104-287,

Sec. 6(e). See Effective Date and Construction of 1996 Amendment note below.

Pub. L. 103-435, which directed substitution of ``Committee on Natural Resources'' for ``Committee on Interior and Insular Affairs'' in par. (2), could not be executed because ``Committee on Interior and Insular Affairs'' did not appear in text subsequent to amendment by Pub. L. 103-413, Sec. 105(1). See below.

Pub. L. 103-413, Sec. 105(1), added subsec. (b) and struck out former subsec. (b) which read as follows:

``(b) (1) Within three months from October 5, 1988, the Secretary shall consider and formulate appropriate regulations to implement the provisions of this Act, with the participation of Indian tribes. Such proposed regulations shall contain all Federal requirements applicable to self-determination contracts and grants under this Act.

``(2) Within six months from October 5, 1988, the Secretary shall present the proposed regulations to the Select Committee on Indian Affairs of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives.

``(3) Within seven months from October 5, 1988, the Secretary shall publish proposed regulations in the Federal Register for the purpose of receiving comments from tribes and other interested parties.

``(4) Within ten months from October 5, 1988, the Secretary shall promulgate regulations to implement the provisions of such Act.''

Subsec. (c). Pub. L. 103-437, Sec. 10(c)(2)(B), substituted ``Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives'' for ``Committees on Interior and Insular Affairs of the United States Senate and House of Representatives''.

Subsecs. (d), (e). Pub. L. 103-413, Sec. 105(2), added subsecs. (d) and (e).

1990--Subsec. (c). Pub. L. 101-644 inserted ``, with the participation of Indian tribes and tribal organizations,' after ``authorized''.

1988--Subsec. (a). Pub. L. 100-472, Sec. 207(a), substituted ``Health and Human Services'' for ``Health, Education, and Welfare'', and inserted proviso relating to promulgation of Federal requirements for self-determination contracts as regulations.

Subsec. (b). Pub. L. 100-472, Sec. 207(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

``(1) Within six months from January 4, 1975, the Secretary of the Interior and the Secretary of Health and Human Services shall each to the extent practicable, consult with national and regional Indian organizations to consider and formulate appropriate rules and regulations to implement the provisions of this subchapter.

``(2) Within seven months from January 4, 1975, the Secretary of the Interior and the Secretary of Health and Human Services shall each present the proposed rules and regulations to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

``(3) Within eight months from January 4, 1975, the Secretary of the Interior and the Secretary of Health and Human Services shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

``(4) Within ten months from January 4, 1975, the Secretary of the Interior and the Secretary of Health and Human Services shall promulgate rules and regulations to implement the provisions of this subchapter.''

Change of Name

``Secretary of Health and Human Services'' substituted for ``Secretary of Health, Education, and Welfare'' in subsec. (c), pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

Effective Date and Construction of 1996 Amendment

Section 6(e) of Pub. L. 104-287 provided that: ``Effective November 2, 1994, section 10(c)(2)(A) of the Act of November 2, 1994 (Public Law 103-437, 108 Stat. 4589) [amending this section], is repealed and section 107(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450k(b)), as amended by section 105(1) of the Indian Self-Determination Act (Public Law 103-413, 108 Stat. 4269), is revived and shall read as if section 10(c)(2)(A) of the Act of November 2, 1994 (Public Law 103-437, 108 Stat. 4589), had not been enacted.

Section Referred to in Other Sections

This section is referred to in sections 450b, 450h of this title.

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[Document not affected by Public Laws enacted between
January 7, 2003 and February 12, 2003]
[*CITE*: *25USC4501*]

TITLE 25--INDIANS

CHAPTER 14--MISCELLANEOUS

SUBCHAPTER II--INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE

Part A--Indian Self-Determination

Sec. 4501. Contract or grant specifications

(a) Terms

Each self-determination contract entered into under this subchapter shall--

(1) contain, or incorporate by reference, the provisions of the model agreement described in subsection (c) of this section (with modifications where indicated and the blanks appropriately filled in), and

(2) contain such other provisions as are agreed to by the parties.

(b) Payments; Federal records

Notwithstanding any other provision of law, the Secretary may make payments pursuant to section 1(b)(6) of such model agreement. As provided in section 1(b)(7) of the model agreement, the records of the tribal government or tribal organization specified in such section shall not be considered Federal records for purposes of chapter 5 of title 5.

(c) Model agreement

The model agreement referred to in subsection (a)(1) of this section reads as follows:

``SECTION 1. AGREEMENT BETWEEN THE SECRETARY AND THE _____ TRIBAL GOVERNMENT.

``(a) Authority and Purpose.--

``(1) Authority.--This agreement, denoted a Self-Determination Contract (referred to in this agreement as the `Contract'), is entered into by the Secretary of the Interior or the Secretary of Health and Human Services (referred to in this agreement as the `Secretary'), for and on behalf of the United States pursuant to title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) and by the authority of the _____ tribal government or tribal organization (referred to in this agreement as the `Contractor'). The provisions of title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) are incorporated in this agreement.

``(2) Purpose.--Each provision of the Indian Self-Determination

and Education Assistance Act (25 U.S.C. 450 et seq.) and each provision of this Contract shall be liberally construed for the benefit of the Contractor to transfer the funding and the following related functions, services, activities, and programs (or portions thereof), that are otherwise contractable under section 102(a) of such Act, including all related administrative functions, from the Federal Government to the Contractor: (List functions, services, activities, and programs).

``(b) Terms, Provisions, and Conditions.--

``(1) Term.--Pursuant to section 105(c)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(c)(1)), the term of this contract shall be __ years. Pursuant to section 105(d)(1) of such Act (25 U.S.C. 450j(d)), upon the election by the Contractor, the period of this Contract shall be determined on the basis of a calendar year, unless the Secretary and the Contractor agree on a different period in the annual funding agreement incorporated by reference in subsection (f)(2).

``(2) Effective date.--This Contract shall become effective upon the date of the approval and execution by the Contractor and the Secretary, unless the Contractor and the Secretary agree on an effective date other than the date specified in this paragraph.

``(3) Program standard.--The Contractor agrees to administer the program, services, functions and activities (or portions thereof) listed in subsection (a)(2) of the Contract in conformity with the following standards: (list standards).

``(4) Funding amount.--Subject to the availability of appropriations, the Secretary shall make available to the Contractor the total amount specified in the annual funding agreement incorporated by reference in subsection (f)(2). Such amount shall not be less than the applicable amount determined pursuant to section 106(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j-1).

``(5) Limitation of costs.--The Contractor shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds awarded under this Contract. If, at any time, the Contractor has reason to believe that the total amount required for performance of this Contract or a specific activity conducted under this Contract would be greater than the amount of funds awarded under this Contract, the Contractor shall provide reasonable notice to the appropriate Secretary. If the appropriate Secretary does not take such action as may be necessary to increase the amount of funds awarded under this Contract, the Contractor may suspend performance of the Contract until such time as additional funds are awarded.

``(6) Payment.--

``(A) In general.--Payments to the Contractor under this Contract shall--

``(i) be made as expeditiously as practicable; and

``(ii) include financial arrangements to cover funding during periods covered by joint resolutions adopted by Congress making continuing appropriations, to the extent permitted by such resolutions.

``(B) Quarterly, semiannual, lump-sum, and other methods of payment.--

``(i) In general.--Pursuant to section 108(b) of the

Indian Self-Determination and Education Assistance Act, and notwithstanding any other provision of law, for each fiscal year covered by this Contract, the Secretary shall make available to the Contractor the funds specified for the fiscal year under the annual funding agreement incorporated by reference pursuant to subsection (f)(2) by paying to the Contractor, on a quarterly basis, one-quarter of the total amount provided for in the annual funding agreement for that fiscal year, in a lump-sum payment or as semiannual payments, or any other method of payment authorized by law, in accordance with such method as may be requested by the Contractor and specified in the annual funding agreement.

``(ii) Method of quarterly payment.--If quarterly payments are specified in the annual funding agreement incorporated by reference pursuant to subsection (f)(2), each quarterly payment made pursuant to clause (i) shall be made on the first day of each quarter of the fiscal year, except that in any case in which the Contract year coincides with the Federal fiscal year, payment for the first quarter shall be made not later than the date that is 10 calendar days after the date on which the Office of Management and Budget apportions the appropriations for the fiscal year for the programs, services, functions, and activities subject to this Contract.

``(iii) Applicability.--Chapter 39 of title 31, United States Code, shall apply to the payment of funds due under this Contract and the annual funding agreement referred to in clause (i).

``(7) Records and monitoring.--

``(A) In general.--Except for previously provided copies of tribal records that the Secretary demonstrates are clearly required to be maintained as part of the recordkeeping system of the Department of the Interior or the Department of Health and Human Services (or both), records of the Contractor shall not be considered Federal records for purposes of chapter 5 of title 5, United States Code.

``(B) Recordkeeping system.--The Contractor shall maintain a recordkeeping system and, upon reasonable advance request, provide reasonable access to such records to the Secretary.

``(C) Responsibilities of contractor.--The Contractor shall be responsible for managing the day-to-day operations conducted under this Contract and for monitoring activities conducted under this Contract to ensure compliance with the Contract and applicable Federal requirements. With respect to the monitoring activities of the Secretary, the routine monitoring visits shall be limited to not more than one performance monitoring visit for this Contract by the head of each operating division, departmental bureau, or departmental agency, or duly authorized representative of such head unless--

``(i) the Contractor agrees to one or more additional visits; or

``(ii) the appropriate official determines that there is reasonable cause to believe that grounds for reassumption of the Contract, suspension of Contract payments, or other serious Contract performance deficiency may exist.

No additional visit referred to in clause (ii) shall be made until such time as reasonable advance notice that includes a description of the nature of the problem that requires the additional visit has been given to the Contractor.

``(8) Property.--

``(A) In general.--As provided in section 105(f) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(f)), at the request of the Contractor, the Secretary may make available, or transfer to the Contractor, all reasonably divisible real property, facilities, equipment, and personal property that the Secretary has used to provide or administer the programs, services, functions, and activities covered by this Contract. A mutually agreed upon list specifying the property, facilities, and equipment so furnished shall also be prepared by the Secretary, with the concurrence of the Contractor, and periodically revised by the Secretary, with the concurrence of the Contractor.

``(B) Records.--The Contractor shall maintain a record of all property referred to in subparagraph (A) or other property acquired by the Contractor under section 105(f)(2)(A) of such Act for purposes of replacement.

``(C) Joint use agreements.--Upon the request of the Contractor, the Secretary and the Contractor shall enter into a separate joint use agreement to address the shared use by the parties of real or personal property that is not reasonably divisible.

``(D) Acquisition of property.--The Contractor is granted the authority to acquire such excess property as the Contractor may determine to be appropriate in the judgment of the Contractor to support the programs, services, functions, and activities operated pursuant to this Contract.

``(E) Confiscated or excess property.--The Secretary shall assist the Contractor in obtaining such confiscated or excess property as may become available to tribes, tribal organizations, or local governments.

``(F) Screener identification card.--A screener identification card (General Services Administration form numbered 2946) shall be issued to the Contractor not later than the effective date of this Contract. The designated official shall, upon request, assist the Contractor in securing the use of the card.

``(G) Capital equipment.--The Contractor shall determine the capital equipment, leases, rentals, property, or services the Contractor requires to perform the obligations of the Contractor under this subsection, and shall acquire and maintain records of such capital equipment, property rentals, leases, property, or services through applicable procurement procedures of the Contractor.

``(9) Availability of funds.--Notwithstanding any other provision of law, any funds provided under this Contract--

``(A) shall remain available until expended; and

``(B) with respect to such funds, no further--

``(i) approval by the Secretary, or

``(ii) justifying documentation from the Contractor,

shall be required prior to the expenditure of such funds.

``(10) Transportation.--Beginning on the effective date of this Contract, the Secretary shall authorize the Contractor to obtain interagency motor pool vehicles and related services for performance of any activities carried out under this Contract.

``(11) Federal program guidelines, manuals, or policy directives.--Except as specifically provided in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) the Contractor is not required to abide by program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Contractor and the Secretary, or otherwise required by law.

``(12) Disputes.--

``(A) Third-party mediation defined.--For the purposes of this Contract, the term 'third-party mediation' means a form of mediation whereby the Secretary and the Contractor nominate a third party who is not employed by or significantly involved with the Secretary of the Interior, the Secretary of Health and Human Services, or the Contractor, to serve as a third-party mediator to mediate disputes under this Contract.

``(B) Alternative procedures.--In addition to, or as an alternative to, remedies and procedures prescribed by section 110 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450m-1), the parties to this Contract may jointly--

``(i) submit disputes under this Contract to third-party mediation;

``(ii) submit the dispute to the adjudicatory body of the Contractor, including the tribal court of the Contractor;

``(iii) submit the dispute to mediation processes provided for under the laws, policies, or procedures of the Contractor; or

``(iv) use the administrative dispute resolution processes authorized in subchapter IV of chapter 5 of title 5, United States Code.

``(C) Effect of decisions.--The Secretary shall be bound by decisions made pursuant to the processes set forth in subparagraph (B), except that the Secretary shall not be bound by any decision that significantly conflicts with the interests of Indians or the United States.

``(13) Administrative procedures of contractor.--Pursuant to the Indian Civil Rights Act of 1968 (25 U.S.C. 1301 et seq.), the laws, policies, and procedures of the Contractor shall provide for administrative due process (or the equivalent of administrative due process) with respect to programs, services, functions, and activities that are provided by the Contractor pursuant to this Contract.

``(14) Successor annual funding agreement.--

``(A) In general.--Negotiations for a successor annual funding agreement, provided for in subsection (f) (2), shall begin not later than 120 days prior to the conclusion of the preceding annual funding agreement. Except as provided in section 105(c) (2) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(c) (2)) the funding for each such

successor annual funding agreement shall only be reduced pursuant to section 106(b) of such Act (25 U.S.C. 450j-1(b)).

``(B) Information.--The Secretary shall prepare and supply relevant information, and promptly comply with any request by the Contractor for information that the Contractor reasonably needs to determine the amount of funds that may be available for a successor annual funding agreement, as provided for in subsection (f) (2) of this Contract.

``(15) Contract requirements; approval by secretary.--

``(A) In general.--Except as provided in subparagraph (B), for the term of the Contract, section 2103 of the Revised Statutes (25 U.S.C. 81), section 16 of the Act of June 18, 1934 (48 Stat. 987, chapter 576; 25 U.S.C. 476), and the Act of July 3, 1952 (25 U.S.C. 82a), shall not apply to any contract entered into in connection with this Contract.

``(B) Requirements.--Each Contract entered into by the Contractor with a third party in connection with performing the obligations of the Contractor under this Contract shall--

``(i) be in writing;

``(ii) identify the interested parties, the authorities of such parties, and purposes of the Contract;

``(iii) state the work to be performed under the Contract; and

``(iv) state the process for making any claim, the payments to be made, and the terms of the Contract, which shall be fixed.

``(c) Obligation of the Contractor.--

``(1) Contract performance.--Except as provided in subsection (d) (2), the Contractor shall perform the programs, services, functions, and activities as provided in the annual funding agreement under subsection (f) (2) of this Contract.

``(2) Amount of funds.--The total amount of funds to be paid under this Contract pursuant to section 106(a) shall be determined in an annual funding agreement entered into between the Secretary and the Contractor, which shall be incorporated into this Contract.

``(3) Contracted programs.--Subject to the availability of appropriated funds, the Contractor shall administer the programs, services, functions, and activities identified in this Contract and funded through the annual funding agreement under subsection (f) (2).

``(4) Trust services for individual indians.--

``(A) In general.--To the extent that the annual funding agreement provides funding for the delivery of trust services to individual Indians that have been provided by the Secretary, the Contractor shall maintain at least the same level of service as the Secretary provided for such individual Indians, subject to the availability of appropriated funds for such services.

``(B) Trust services to individual indians.--For the purposes of this paragraph only, the term `trust services for individual Indians' means only those services that pertain to land or financial management connected to individually held allotments.

``(5) Fair and uniform services.--The Contractor shall provide services under this Contract in a fair and uniform manner and shall provide access to an administrative or judicial body empowered to

adjudicate or otherwise resolve complaints, claims, and grievances brought by program beneficiaries against the Contractor arising out of the performance of the Contract.

``(d) Obligation of the United States.--

``(1) Trust responsibility.--

``(A) In general.--The United States reaffirms the trust responsibility of the United States to the _____ Indian tribe(s) to protect and conserve the trust resources of the Indian tribe(s) and the trust resources of individual Indians.

``(B) Construction of contract.--Nothing in this Contract may be construed to terminate, waive, modify, or reduce the trust responsibility of the United States to the tribe(s) or individual Indians. The Secretary shall act in good faith in upholding such trust responsibility.

``(2) Good faith.--To the extent that health programs are included in this Contract, and within available funds, the Secretary shall act in good faith in cooperating with the Contractor to achieve the goals set forth in the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

``(3) Programs retained.--As specified in the annual funding agreement, the United States hereby retains the programs, services, functions, and activities with respect to the tribe(s) that are not specifically assumed by the Contractor in the annual funding agreement under subsection (f) (2).

``(e) Other Provisions.--

``(1) Designated officials.--Not later than the effective date of this Contract, the United States shall provide to the Contractor, and the Contractor shall provide to the United States, a written designation of a senior official to serve as a representative for notices, proposed amendments to the Contract, and other purposes for this Contract.

``(2) Contract modifications or amendment.--

``(A) In general.--Except as provided in subparagraph (B), no modification to this Contract shall take effect unless such modification is made in the form of a written amendment to the Contract, and the Contractor and the Secretary provide written consent for the modification.

``(B) Exception.--The addition of supplemental funds for programs, functions, and activities (or portions thereof) already included in the annual funding agreement under subsection (f) (2), and the reduction of funds pursuant to section 106(b) (2), shall not be subject to subparagraph (A).

``(3) Officials not to benefit.--No Member of Congress, or resident commissioner, shall be admitted to any share or part of any contract executed pursuant to this Contract, or to any benefit that may arise from such contract. This paragraph may not be construed to apply to any contract with a third party entered into under this Contract if such contract is made with a corporation for the general benefit of the corporation.

``(4) Covenant against contingent fees.--The parties warrant that no person or selling agency has been employed or retained to solicit or secure any contract executed pursuant to this Contract upon an agreement or understanding for a commission, percentage,

brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

``(f) Attachments.--

``(1) Approval of contract.--Unless previously furnished to the Secretary, the resolution of the _____ Indian tribe(s) authorizing the contracting of the programs, services, functions, and activities identified in this Contract is attached to this Contract as attachment 1.

``(2) Annual funding agreement.--

``(A) In general.--The annual funding agreement under this Contract shall only contain--

``(i) terms that identify the programs, services, functions, and activities to be performed or administered, the general budget category assigned, the funds to be provided, and the time and method of payment; and

``(ii) such other provisions, including a brief description of the programs, services, functions, and activities to be performed (including those supported by financial resources other than those provided by the Secretary), to which the parties agree.

``(B) Incorporation by reference.--The annual funding agreement is hereby incorporated in its entirety in this Contract and attached to this Contract as attachment 2.''

(Pub. L. 93-638, title I, Sec. 108, as added Pub. L. 103-413, title I, Sec. 103, Oct. 25, 1994, 108 Stat. 4260; amended Pub. L. 106-568, title VIII, Sec. 812(a), Dec. 27, 2000, 114 Stat. 2917.)

References in Text

The Indian Self-Determination and Education Assistance Act, referred to in section 1(a), (b) (6) (B) (i), (11) of the provisions of subsec. (c) setting out the model agreement, is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to this subchapter (Sec. 450 et seq.). Title I of the Act is classified principally to this part (Sec. 450f et seq.). Section 102(a) of the Act is classified to section 450f(a) of this title. Section 108(b) of the Act is classified to subsec. (b) of this section. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

The Indian Civil Rights Act of 1968, referred to in section 1(b) (13) of the provisions of subsec. (c) setting out the model agreement, is title II of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 77, as amended, which is classified generally to subchapter I (Sec. 1301 et seq.) of chapter 15 of this title. For complete classification of this Act to the Code, see Tables.

The Act of July 3, 1952, referred to in section 1(b) (15) (A) of the provisions of subsec. (c) setting out the model agreement, is act July 3, 1952, ch. 549, 66 Stat. 323, which enacted section 82a of this title and provisions set out as a note under section 82a of this title.

The Indian Health Care Improvement Act, referred to in section 1(d) (2) of the provisions of subsec. (c) setting out the model agreement, is Pub. L. 94-437, Sept. 30, 1976, 90 Stat. 1400, as amended, which is classified principally to chapter 18 (Sec. 1601 et seq.) of

this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

Prior Provisions

A prior section 450l, Pub. L. 93-638, title I, Sec. 108, Jan. 4, 1975, 88 Stat. 2212, which related to report by tribe requesting contract or grant, was renumbered section 5(f) of Pub. L. 93-638, by Pub. L. 100-472, title II, Sec. 208, Oct. 5, 1988, 102 Stat. 2296, and is classified to section 450c(f) of this title.

Amendments

2000--Subsec. (c). Pub. L. 106-568 substituted ``section 16 of the Act of June 18, 1934'' for ``and section 16 of the Act of June 18, 1934'' and ``and the Act of July 3, 1952 (25 U.S.C. 82a), shall not apply'' for ``shall not apply'' in section 1(b)(15)(A) of the provisions setting out the model agreement.

Quarterly Payments of Funds to Tribes

Pub. L. 105-83, title III, Sec. 311, Nov. 14, 1997, 111 Stat. 1590, provided that: ``Notwithstanding Public Law 103-413 [see Short Title of 1994 Amendment note set out under section 450 of this title], quarterly payments of funds to tribes and tribal organizations under annual funding agreements pursuant to section 108 of Public Law 93-638 [25 U.S.C. 450l], as amended, beginning in fiscal year 1998 and thereafter, [sic] may be made on the first business day following the first day of a fiscal quarter.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104-208, div. A, title I, Sec. 101(d) [title III, Sec. 311], Sept. 30, 1996, 110 Stat. 3009-181, 3009-221.

Pub. L. 104-134, title I, Sec. 101(c) [title III, Sec. 311], Apr. 26, 1996, 110 Stat. 1321-156, 1321-197; renumbered title I, Pub. L. 104-140, Sec. 1(a), May 2, 1996, 110 Stat. 1327.

Section Referred to in Other Sections

This section is referred to in sections 450j, 2507 of this title.

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[*CITE*: *25USC450m*]

TITLE 25--INDIANS

CHAPTER 14--MISCELLANEOUS

SUBCHAPTER II--INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE

Part A--Indian Self-Determination

Sec. 450m. Rescission of contract or grant and assumption of control of program, etc.; authority; grounds; procedure; correction of violation as prerequisite to new contract or grant agreement; construction with occupational safety and health requirements

Each contract or grant agreement entered into pursuant to sections 450f, 450g, and 450h \1\ of this title shall provide that in any case where the appropriate Secretary determines that the tribal organization's performance under such contract or grant agreement involves (1) the violation of the rights or endangerment of the health, safety, or welfare of any persons; or (2) gross negligence or mismanagement in the handling or use of funds provided to the tribal organization pursuant to such contract or grant agreement, or in the management of trust fund, trust lands or interests in such lands pursuant to such contract or grant agreement, such Secretary may, under regulations prescribed by him and after providing notice and a hearing on the record to such tribal organization, rescind such contract or grant agreement, in whole or in part, and assume or resume control or operation of the program, activity, or service involved if he determines that the tribal organization has not taken corrective action as prescribed by the Secretary to remedy the contract deficiency, except that the appropriate Secretary may, upon written notice to a tribal organization, and the tribe served by the tribal organization, immediately rescind a contract or grant, in whole or in part, and resume control or operation of a program, activity, function, or service, if the Secretary finds that (i) there is an immediate threat of imminent harm to the safety of any person, or imminent substantial and irreparable harm to trust funds, trust lands, or interests in such lands, and (ii) such threat arises from the failure of the contractor to fulfill the requirements of the contract. In such cases, the Secretary shall provide the tribal organization with a hearing on the record within ten days or such later date as the tribal organization may approve. Such Secretary may decline to enter into a new contract or grant agreement and retain control of such program, activity, or service until such time as he is satisfied that the violations of rights or endangerment of health, safety, or welfare which necessitated the rescission has been corrected. In any hearing or appeal provided for under this section, the Secretary shall have the burden of proof to establish, by clearly demonstrating the validity of the grounds for rescinding, assuming, or reassuming the contract that is the subject of

the hearing. Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970, as amended [29 U.S.C. 651 et seq.].

\1\ See References in Text note below.

(Pub. L. 93-638, title I, Sec. 109, Jan. 4, 1975, 88 Stat. 2212; Pub. L. 100-581, title II, Sec. 211, Nov. 1, 1988, 102 Stat. 2941; Pub. L. 101-301, Sec. 2(a)(10), May 24, 1990, 104 Stat. 207; Pub. L. 103-413, title I, Sec. 104(1), Oct. 25, 1994, 108 Stat. 4268.)

References in Text

Sections 450g and 450h of this title, referred to in text, was in the original ``sections 103 and 104 of this Act'', meaning sections 103 and 104 of Pub. L. 93-638, the Indian Self-Determination Act. Section 103(a) and (b) and the first sentence of section 103(c) of Pub. L. 93-638 were repealed, and the remainder of section 103(c) of Pub. L. 93-638 was redesignated as section 102(d) of Pub. L. 93-638 (section 450f(d) of this title), by Pub. L. 100-472, title II, Sec. 201(b)(1), Oct. 5, 1988, 102 Stat. 2289. Sections 104 and 105 of Pub. L. 93-638 were renumbered as sections 103 and 104, respectively, of Pub. L. 93-638 by sections 202(a) and 203(a) of Pub. L. 100-472, and are classified to sections 450h and 450i, respectively, of this title.

The Occupational Safety and Health Act of 1970, as amended, referred to in text, is Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (Sec. 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

Amendments

1994--Pub. L. 103-413 inserted ``or in the management of trust fund, trust lands or interests in such lands pursuant to such contract or grant agreement,'' after ``pursuant to such contract or grant agreement,'' and ``, in whole or in part,'' after ``rescind such contract or grant agreement'', substituted ``action as prescribed by the Secretary to remedy the contract deficiency, except that the appropriate Secretary may, upon written notice to a tribal organization, and the tribe served by the tribal organization, immediately rescind a contract or grant, in whole or in part, and resume control or operation of a program, activity, function, or service, if the Secretary finds that (i) there is an immediate threat of imminent harm to the safety of any person, or imminent substantial and irreparable harm to trust funds, trust lands, or interests in such lands, and (ii) such threat arises from the failure of the contractor to fulfill the requirements of the contract. In such cases, the Secretary'' for ``action as prescribed by him: Provided, That the appropriate Secretary may, upon notice to a tribal organization, immediately rescind a contract or grant and resume control or operation of a program, activity, or service if he finds that there is an immediate threat to safety and, in such cases, he'', struck out second period after ``the tribal organization may approve'', and inserted before last sentence ``In any hearing or appeal provided for under this section, the Secretary shall have the burden of proof to establish, by clearly demonstrating the validity of the grounds for

rescinding, assuming, or reassuming the contract that is the subject of the hearing.'

1990--Pub. L. 101-301 substituted ``providing notice and a hearing'' for ``providing notice and hearing''.

1988--Pub. L. 100-581 inserted ``on the record'' after ``providing notice and hearing''.

Pub. L. 100-581 which directed amendment of this section by substituting ``in such cases, he shall provide the tribal organization with a hearing on the record within ten days or such later date as the tribal organization may approve.' for ``in such cases, he shall hold a hearing within ten days thereof'' was executed by substituting the new language for ``in such cases, he shall hold a hearing on such action within ten days thereof'' to reflect the probable intent of Congress.

Section Referred to in Other Sections

This section is referred to in sections 450b, 450j, 2507, 3307 of this title.

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January 7, 2003 and February 12, 2003]
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TITLE 25--INDIANS

CHAPTER 14--MISCELLANEOUS

SUBCHAPTER II--INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE

Part A--Indian Self-Determination

Sec. 450m-*1*. Contract disputes and claims

(a) Civil actions; concurrent jurisdiction; relief

The United States district courts shall have original jurisdiction over any civil action or claim against the appropriate Secretary arising under this subchapter and, subject to the provisions of subsection (d) of this section and concurrent with the United States Court of Claims, over any civil action or claim against the Secretary for money damages arising under contracts authorized by this subchapter. In an action brought under this paragraph, the district courts may order appropriate relief including money damages, injunctive relief against any action by an officer of the United States or any agency thereof contrary to this subchapter or regulations promulgated thereunder, or mandamus to compel an officer or employee of the United States, or any agency thereof, to perform a duty provided under this subchapter or regulations promulgated hereunder (including immediate injunctive relief to reverse a declination finding under section 450f(a)(2) of this title or to compel the Secretary to award and fund an approved self-determination contract).

(b) Revision of contracts

The Secretary shall not revise or amend a self-determination contract with a tribal organization without the tribal organization's consent.

(c) Application of laws to administrative appeals

The Equal Access to Justice Act (Public Law 96-481, Act of October 1980; 92 Stat. 2325, as amended), section 504 of title 5, and section 2412 of title 28 shall apply to administrative appeals pending on or filed after October 5, 1988, by tribal organizations regarding self-determination contracts.

1 So in original. Probably should be ``Public'', ``21'', and
``94'', respectively.

(d) Application of Contract Disputes Act

The Contract Disputes Act (Public Law 95-563, Act of November *1*, 1978; 92 Stat. 2383, as amended) [41 U.S.C. 601 et seq.] shall apply to self-determination contracts, except that all administrative appeals relating to such contracts shall be heard by the Interior Board of Contract Appeals established pursuant to section 8 of such Act (41 U.S.C. 607).

(e) Application of subsection (d)

Subsection (d) of this section shall apply to any case pending or commenced on or after March 17, 1986, before the Boards of Contract Appeals of the Department of the Interior or the Department of Health and Human Services except that in any such cases finally disposed of before October 5, 1988, the thirty-day period referred to in section 504(a)(2) of title 5 shall be deemed to commence on October 5, 1988.

(Pub. L. 93-638, title I, Sec. 110, as added Pub. L. 100-472, title II, Sec. 206(a), Oct. 5, 1988, 102 Stat. 2294; amended Pub. L. 100-581, title II, Sec. 212, Nov. *1*, 1988, 102 Stat. 2941; Pub. L. 101-301, Secs. *1*(a)(2), 2(b), May 24, 1990, 104 Stat. 206, 207; Pub. L. 103-413, title I, Sec. 104(2), (3), Oct. 25, 1994, 108 Stat. 4268.)

References in Text

The Equal Access to Justice Act, referred to in subsec. (c), is Pub. L. 96-481, title II, Oct. 21, 1980, 94 Stat. 2325. For complete classification of this Act to the Code, see Short Title note set out under section 504 of Title 5, Government Organization and Employees, and Tables.

The Contract Disputes Act of 1978, referred to in subsec. (d), is Pub. L. 95-563, Nov. *1*, 1978, 92 Stat. 2383, as amended, which is classified principally to chapter 9 (Sec. 601 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 41 and Tables.

October 5, 1988, referred to in subsec. (e), was in the original ``the date of enactment of these amendments'' and ``the date of enactment of this subsection'', meaning the date of enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1988, Pub. L. 100-472, which enacted this section.

Prior Provisions

A prior section 110 of Pub. L. 93-638 was renumbered section 111 by Pub. L. 100-472 and is classified to section 450n of this title.

Amendments

1994--Subsec. (a). Pub. L. 103-413, Sec. 104(2), inserted before period at end ``(including immediate injunctive relief to reverse a declination finding under section 450f(a)(2) of this title or to compel the Secretary to award and fund an approved self-determination contract)''.

Subsec. (d). Pub. L. 103-413, Sec. 104(3), inserted before period at end ``, except that all administrative appeals relating to such

contracts shall be heard by the Interior Board of Contract Appeals established pursuant to section 8 of such Act (41 U.S.C. 607)''.

1990--Subsec. (a). Pub. L. 101-301, Sec. *1*(a)(2), made technical correction to directory language of Pub. L. 100-581, Sec. 212(a). See 1988 Amendment note below.

Subsec. (b). Pub. L. 101-301, Sec. 2(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ``Unless otherwise agreed to by the resolution of tribal organization, the Secretary shall not revise or amend a self-determination contract with such tribal organization.''

Subsec. (c). Pub. L. 101-301, Sec. *1*(a)(2), made technical correction to directory language of Pub. L. 100-581, Sec. 212(c). See 1988 Amendment note below.

1988--Subsec. (a). Pub. L. 100-581, Sec. 212(a), as amended by Pub. L. 101-301, Sec. *1*(a)(2), substituted ``over any civil action'' for ``over civil action'' after ``Court of Claims,''.

Subsec. (b). Pub. L. 100-581, Sec. 212(b), substituted ``of tribal organization'' for ``of an Indian tribe'' and ``such tribal organization'' for ``such tribe''.

Subsec. (c). Pub. L. 100-581, Sec. 212(c), as amended by Pub. L. 101-301, Sec. *1*(a)(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ``The Equal Access to Justice Act (Public Law 96-481, Act of October *1* [21], 1980; 94 Stat. 2325, as amended) shall apply to administrative appeals by tribal organizations regarding self-determination contracts.''

Section Referred to in Other Sections

This section is referred to in sections 450b, 450f, 450j, 450j-*1*, 450l, 458cc, 458ff, 458aaa-6, 458aaa-10, 458aaa-14, 3307 of this title.

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TITLE 25--INDIANS

CHAPTER 14--MISCELLANEOUS

SUBCHAPTER II--INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE

Part A--Indian Self-Determination

Sec. 450n. Sovereign immunity and trusteeship rights unaffected

Nothing in this subchapter shall be construed as--

- (1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe; or
- (2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

(Pub. L. 93-638, title I, Sec. 111, formerly Sec. 110, Jan. 4, 1975, 88 Stat. 2213; renumbered Sec. 111, Pub. L. 100-472, title II, Sec. 206(b), Oct. 5, 1988, 102 Stat. 2295.)

Section Referred to in Other Sections

This section is referred to in sections 450b, 458ff, 458aaa-15, 2507 of this title.