

103D CONGRESS  
2D SESSION

# S. 2036

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IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 1994

Referred to the Committee on Natural Resources

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## AN ACT

To specify the terms of contracts entered into by the United States and Indian tribal organizations under the Indian Self-Determination and Education Assistance Act, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-  
2       tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Indian Self-Determina-  
5       tion Contract Reform Act of 1994”.

1   **SEC. 2. GENERAL AMENDMENTS.**

2       The Indian Self-Determination and Education Assist-  
3   ance Act (25 U.S.C. 450 et seq.) is amended—

4           (1) in section 4—

5              (A) in subsection (g), by striking “indirect  
6   costs rate” and inserting “indirect cost rate”;

7              (B) by striking “and” at the end of sub-  
8   section (k);

9              (C) by striking the period at the end of  
10   subsection (l) and inserting “; and”; and

11              (D) by adding at the end the following new  
12   subsection:

13           “(m) ‘construction contract’ means a fixed-price or  
14   cost-reimbursement self-determination contract for a con-  
15   struction project, except that such term does not include  
16   any contract—

17              “(1) that is limited to providing planning serv-  
18   ices and construction management services (or a  
19   combination of such services);

20              “(2) for the Housing Improvement Program or  
21   roads maintenance program of the Bureau of Indian  
22   Affairs administered by the Secretary of the Inter-  
23   rior; or

24              “(3) for the health facility maintenance and im-  
25   provement program administered by the Secretary of  
26   Health and Human Services.”;

(2) by striking subsection (f) of section 5 and  
inserting the following new subsection:

3       “(f)(1) For each fiscal year during which an Indian  
4 tribal organization receives or expends funds pursuant to  
5 a contract entered into, or grant made, under this Act,  
6 the tribal organization that requested such contract or  
7 grant shall submit to the appropriate Secretary a single-  
8 agency audit report required by chapter 75 of title 31,  
9 United States Code.

10       “(2) In addition to submitting a single-agency audit  
11 report pursuant to paragraph (1), a tribal organization re-  
12 ferred to in such paragraph shall submit such additional  
13 information concerning the conduct of the program, func-  
14 tion, service, or activity carried out pursuant to the con-  
15 tract or grant that is the subject of the report as the tribal  
16 organization may negotiate with the Secretary.

17       “(3) Any disagreement over reporting requirements  
18 shall be subject to the declination criteria and procedures  
19 set forth in section 102.”;

23 (4) at the end of section 7, add the following  
24 new subsection:

1       “(c) Notwithstanding subsections (a) and (b), with  
2 respect to any self-determination contract, or portion of  
3 a self-determination contract, that is intended to benefit  
4 one tribe, the tribal employment or contract preference  
5 laws adopted by such tribe shall govern with respect to  
6 the administration of the contract or portion of the con-  
7 tract.”;

8                     (5) at the end of section 102(a)(1), add the fol-  
9 lowing new flush sentence:

10    “The programs, functions, services, or activities that are  
11 contracted under this paragraph shall include administra-  
12 tive functions of the Department of the Interior and the  
13 Department of Health and Human Services (whichever is  
14 applicable) that support the delivery of services to Indians,  
15 including those administrative activities supportive of, but  
16 not included as part of, the service delivery programs de-  
17 scribed in this paragraph that are otherwise contractable.  
18 The administrative functions referred to in the preceding  
19 sentence shall be contractable without regard to the orga-  
20 nizational level within the department that carries out  
21 such functions.”;

22                     (6) in section 102(a)—

23                         (A) in paragraph (2)—

24                             (i) in the first sentence, by inserting  
25                                 “, or a proposal to amend or renew a self-

1 determination contract,” before “to the  
2 Secretary for review”;

3 (ii) in the second sentence—

4 (I) by striking “The” and insert-  
5 ing “Subject to the provisions of para-  
6 graph (4), the”;

7 (II) by inserting “and award the  
8 contract” after “approve the pro-  
9 posal”;

10 (III) by striking “, within sixty  
11 days of receipt of the proposal.”; and

12 (IV) by striking “a specific find-  
13 ing is made that” and inserting “the  
14 Secretary provides written notification  
15 to the applicant that contains a spe-  
16 cific finding supported by clearly dem-  
17 onstrated evidence or a controlling  
18 legal authority that”;

19 (iii) in subparagraph (B), by striking  
20 “or” after the semicolon;

21 (iv) in subparagraph (C), by striking  
22 the period at the end and inserting a semi-  
23 colon;

24 (v) by adding at the end the following  
25 new subparagraphs:

1               “(D) the amount of funds proposed under  
2               the contract is in excess of the applicable fund-  
3               ing level for the contract, as determined under  
4               section 106(a); or

5               “(E) the program, function, service, or ac-  
6               tivity (or portion thereof) that is the subject of  
7               the proposal is beyond the scope of programs,  
8               functions, services, or activities covered under  
9               paragraph (1) because the proposal includes ac-  
10               tivities that cannot lawfully be carried out by  
11               the contractor.”; and

12               (vi) by adding at the end of the para-  
13               graph the following new flush material:

14       “Notwithstanding any other provision of law, the Sec-  
15       retary may extend or otherwise alter the 90-day period  
16       specified in the second sentence of this subsection, if be-  
17       fore the expiration of such period, the Secretary obtains  
18       the voluntary and express written consent of the tribe or  
19       tribal organization to extend or otherwise alter such pe-  
20       riod. The contractor shall include in the proposal of the  
21       contractor the standards under which the tribal organiza-  
22       tion will operate the contracted program, service, function,  
23       or activity, including in the area of construction, provi-  
24       sions regarding the use of licensed and qualified archi-  
25       tects, applicable health and safety standards, adherence

1 to applicable Federal, State, local, or tribal building codes  
2 and engineering standards. The standards referred to in  
3 the preceding sentence shall ensure structural integrity,  
4 accountability of funds, adequate competition for sub-  
5 contracting under tribal or other applicable law the com-  
6 mencement, performance, and completion of the contract,  
7 adherence to project plans and specifications (including  
8 any applicable Federal construction guidelines and manu-  
9 als), the use of proper materials or workmanship, nec-  
10 essary inspection and testing, and changes, modifications,  
11 stop work, and termination of the work when warranted.”;  
12 and

15       “(4) The Secretary shall approve any severable por-  
16 tion of a contract proposal that does not support a declina-  
17 tion finding described in paragraph (2). If the Secretary  
18 determines under such paragraph that a contract pro-  
19 posal—

“(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

1               “(B) proposes a level of funding that is in ex-  
2               cess of the applicable level determined under section  
3               106(a),

4               subject to any alteration in the scope of the proposal that  
5               the Secretary and the tribal organization agree to, the  
6               Secretary shall, as appropriate, approve such portion of  
7               the program, function, service, or activity as is authorized  
8               under paragraph (1) or approve a level of funding author-  
9               ized under section 106(a). If a tribal organization elects  
10          to carry out a severable portion of a contract proposal pur-  
11          suant to this paragraph, subsection (b) shall only apply  
12          to the portion of the contract that is declined by the Sec-  
13          retary pursuant to this subsection.”;

14               (7) in section 102(b)(3)—

15               (A) by inserting after “record” the follow-  
16               ing: “with the right to engage in full discovery  
17               relevant to any issue raised in the matter”; and

18               (B) by inserting before the period the fol-  
19               lowing: “, except that the tribe or tribal organi-  
20               zation may, in lieu of filing such appeal, exer-  
21               cise the option to initiate an action in a Federal  
22               district court and proceed directly to such court  
23               pursuant to section 110(a)”;

24               (8) in section 102(d), by striking “as provided  
25               in section 2671 of title 28)” and inserting “as pro-

1       vided in section 2671 of title 28, United States  
2       Code, and including an individual who provides  
3       health care services pursuant to a personal services  
4       contract with a tribal organization for the provision  
5       of services in any facility owned, operated, or con-  
6       structed under the jurisdiction of the Indian Health  
7       Service)’’;

8                 (9) by adding at the end of section 102 the fol-  
9       lowing new subsection:

10                 “(e)(1) With respect to any hearing or appeal con-  
11       ducted pursuant to subsection (b)(3), the Secretary shall  
12       have the burden of proof to establish by clearly dem-  
13       onstrated evidence the validity of the grounds for declining  
14       the contract proposal (or portion thereof).

15                 “(2) Notwithstanding any other provision of law, a  
16       decision by an official of the Department of the Interior  
17       or the Department of Health and Human Services, as ap-  
18       propriate (referred to in this paragraph as the ‘Depart-  
19       ment’) that constitutes final agency action and that relates  
20       to an appeal within the Department that is conducted  
21       under subsection (b)(3) shall be made either—

22                 “(A) by an official of the Department who holds  
23       a position at a higher organizational level within the  
24       Department than the level of the departmental agen-  
25       cy (such as the Indian Health Service or the Bureau

1       of Indian Affairs) in which the decision that is the  
2       subject of the appeal was made; or

3               “(B) by an administrative judge.”;

4               (10) by striking subsection (a) of section 105  
5       and inserting the following new subsection:

6               “(a)(1) Notwithstanding any other provision of law,  
7       subject to paragraph (3), the contracts and cooperative  
8       agreements entered into with, and grants made to, tribal  
9       organizations pursuant to sections 102 and 103 shall not  
10      be subject to Federal contracting, discretionary grant or  
11      cooperative agreement laws (including any regulations),  
12      except to the extent that such laws expressly apply to In-  
13      dian tribes.

14               “(2) Program standards applicable to a nonconstruc-  
15      tion self-determination contract shall be set forth in the  
16      contract proposal and the final contract of the tribe or  
17      tribal organization.

18               “(3)(A) With respect to a construction contract (or  
19      a subcontract of such a construction contract), the provi-  
20      sions of the Office of Federal Procurement Policy Act (41  
21      U.S.C. 401 et seq.) and the regulations relating to acqui-  
22      sitions promulgated under such Act shall apply only to the  
23      extent that the application of such provision to the con-  
24      struction contract (or subcontract) is—

1           “(i) necessary to ensure that the contract may  
2       be carried out in a satisfactory manner;

3           “(ii) directly related to the construction activity;  
4       and

5           “(iii) not inconsistent with this Act.

6       “(B) A list of the Federal requirements that meet  
7       the requirements of clauses (i) through (iii) of subpara-  
8       graph (A) shall be included in an attachment to the con-  
9       tract pursuant to negotiations between the Secretary and  
10      the tribal organization.

11      “(C)(i) Except as provided in subparagraph (B), no  
12     Federal law listed in clause (ii) or any other provision of  
13     Federal law (including an Executive order) relating to ac-  
14     quisition by the Federal Government shall apply to a con-  
15     struction contract that a tribe or tribal organization enters  
16     into under this Act, unless expressly provided in such law.

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

18           “(I) The Federal Property and Administrative  
19           Services Act of 1949 (40 U.S.C. 471 et seq.).

20           “(II) Section 3709 of the Revised Statutes.

21           “(III) Section 9(c) of the Act of Aug. 2, 1946  
22           (60 Stat. 809, chapter 744).

23           “(IV) Title III of the Federal Property and Ad-  
24           ministrative Services Act of 1949 (63 Stat. 393 et  
25           seq., chapter 288).

1           “(V) Section 13 of the Act of Oct. 3, 1944 (58  
2       Stat. 770; chapter 479).

3           “(VI) Chapters 21, 25, 27, 29, and 31 of title  
4       44, United States Code.

5           “(VII) Section 2 of the Act of June 13, 1934  
6       (48 Stat 948, chapter 483).

7           “(VIII) Sections 1 through 12 of the Act of  
8       June 30, 1936 (49 Stat. 2036 et seq. chapter 881).

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

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

13          “(XI) Executive Order Nos. 12138, 11246,  
14       11701 and 11758.”;

15           (11) by striking subsection (e) and inserting the  
16       following new subsection:

17          “(e) If an Indian tribe, or a tribal organization au-  
18       thorized by a tribe, requests retrocession of the appro-  
19       priate Secretary for any contract or portion of a contract  
20       entered into pursuant to this Act, unless the tribe or tribal  
21       organization rescinds the request for retrocession, such  
22       retrocession shall become effective on—

23           “(1) the earlier of—

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

4               “(B) the date on which the contract ex-  
5               pires; or

6               “(2) such date as may be mutually agreed by  
7               the Secretary and the Indian tribe.”;

8               (12) by striking paragraph (2) of section 105(f)  
9               and inserting the following new paragraph:

10              “(2) donate to an Indian tribe or tribal organi-  
11              zation title to any personal or real property found to  
12              be excess to the needs of the Bureau of Indian Af-  
13              fairs, the Indian Health Service, or the General  
14              Services Administration, except that—

15              “(A) subject to the provisions of subparagraph  
16              (B), title to property and equipment fur-  
17              nished by the Federal Government for use in  
18              the performance of the contract or purchased  
19              with funds under any self-determination con-  
20              tract or grant agreement shall, unless otherwise  
21              requested by the tribe or tribal organization,  
22              vest in the appropriate tribe or tribal organiza-  
23              tion;

24              “(B) if property described in subparagraph  
25              (A) has a value in excess of \$5,000 at the time

1           of the retrocession, rescission, or termination of  
2           the self-determination contract or grant agree-  
3           ment, at the option of the Secretary, upon the  
4           retrocession, rescission, or termination, title to  
5           such property and equipment shall revert to the  
6           Department of the Interior or the Department  
7           of Health and Human Services, as appropriate;  
8           and

9                 “(C) all property referred to in subpara-  
10          graph (A) shall remain eligible for replacement  
11          on the same basis as if title to such property  
12          were vested in the United States; and”;

13                 (13) by adding at the end of section 105 the  
14          following new subsections:

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

1       “(2) Nothing in this title shall be construed to limit  
2 or reduce in any way the funding for any program, project,  
3 or activity serving a tribe under this or other applicable  
4 Federal law. Any tribe or tribal organization that alleges  
5 that a self-determination contract is in violation of this  
6 section may apply the provisions of section 110.

7       “(j) Upon providing notice to the Secretary, a tribal  
8 organization that carries out a nonconstruction self-deter-  
9 mination contract may propose a redesign of a program,  
10 activity, function, or service carried out by the tribal orga-  
11 nization under the contract, including any nonstatutory  
12 program standard, in such manner as to best meet the  
13 local geographic, demographic, economic, cultural, health,  
14 and institutional needs of the Indian people and tribes  
15 served under the contract. The Secretary shall evaluate  
16 any proposal to redesign any program, activity, function,  
17 or service provided under the contract. With respect to de-  
18 clining to approve a redesigned program, activity, func-  
19 tion, or service under this subsection, the Secretary shall  
20 apply the criteria and procedures set forth in section 102.

21       “(k) For purposes of section 201(a) of the Federal  
22 Property and Administrative Services Act of 1949 (40  
23 U.S.C. 481(a)) (relating to Federal sources of supply, in-  
24 cluding lodging providers, airlines and other transpor-  
25 tation providers), a tribal organization carrying out a con-

1 tract, grant, or cooperative agreement under this Act shall  
2 be deemed an executive agency when carrying out such  
3 contract, grant, or agreement and the employees of the  
4 tribal organization shall be eligible to have access to such  
5 sources of supply on the same basis as employees of an  
6 executive agency have such access.

7       “(l)(1) Upon the request of an Indian tribe or tribal  
8 organization, the Secretary shall enter into a lease with  
9 the Indian tribe or tribal organization that holds title to,  
10 a leasehold interest in, or a trust interest in, a facility  
11 used by the Indian tribe or tribal organization for the ad-  
12 ministration and delivery of services under this Act.

13       “(2) The Secretary shall compensate each Indian  
14 tribe or tribal organization that enters into a lease under  
15 paragraph (1) for the use of the facility leased for the pur-  
16 poses specified in such paragraph. Such compensation  
17 may include rent, depreciation based on the useful life of  
18 the facility, principal and interest paid or accrued, oper-  
19 ation and maintenance expenses, and such other reason-  
20 able expenses that the Secretary determines, by regula-  
21 tion, to be allowable.

22       “(m)(1) Each construction contract requested, ap-  
23 proved, or awarded under this Act shall be subject to—

1           “(A) except as otherwise provided in this Act,  
2       the provisions of this Act, other than sections  
3       102(a)(2), 106(m), 108 and 109; and

4           “(B) section 314 of the Department of the In-  
5       terior and Related Agencies Appropriations Act,  
6       1991 (104 Stat. 1959).

7           “(2) In providing technical assistance to tribes and  
8       tribal organizations in the development of construction  
9       contract proposals, the Secretary shall provide, not later  
10      than 30 days after receiving a request from a tribe or trib-  
11      al organization, all information available to the Secretary  
12      regarding the construction project, including construction  
13      drawings, maps, engineering reports, design reports, plans  
14      of requirements, cost estimates, environmental assess-  
15      ments or environmental impact reports, and archaeological  
16      reports.

17           “(3) Prior to finalizing a construction contract pro-  
18      posal pursuant to section 102(a), and upon request of the  
19      tribe or tribal organization that submits the proposal, the  
20      Secretary shall provide for a precontract negotiation phase  
21      in the development of a contract proposal. Such phase  
22      shall include, at a minimum, the following elements:

23           “(A) The provision of technical assistance pur-  
24      suant to section 103 and paragraph (2).

1           “(B) A joint scoping session between the Sec-  
2         retary and the tribe or tribal organization to review  
3         all plans, specifications, engineering reports, cost es-  
4         timates, and other information available to the par-  
5         ties, for the purpose of identifying all areas of agree-  
6         ment and disagreement.

7           “(C) An opportunity for the Secretary to revise  
8         the plans, designs, or cost estimates of the Secretary  
9         in response to concerns raised, or information pro-  
10         vided by, the tribe or tribal organization.

11          “(D) A negotiation session during which the  
12         Secretary and the tribe or tribal organization shall  
13         seek to develop a mutually agreeable contract pro-  
14         posal.

15          “(E) Upon the request of the tribe or tribal or-  
16         ganization, the use of an alternative dispute resolu-  
17         tion mechanism to seek resolution of all remaining  
18         areas of disagreement pursuant to the dispute reso-  
19         lution provisions under subchapter IV of chapter 5  
20         of title 5, United States Code.

21          “(F) The submission to the Secretary by the  
22         tribe or tribal organization of a final contract pro-  
23         posal pursuant to section 102(a).

1       “(4)(A) Subject to subparagraph (B), in funding a  
2 fixed-price construction contract pursuant to section  
3 106(a), the Secretary shall provide for the following:

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

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

13          “(B) In establishing a contract budget for a construc-  
14 tion project, the Secretary shall not be required to sepa-  
15 rately identify the components described in clauses (i) and  
16 (ii) of subparagraph (A).

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

20           “(i) The reasonable costs to the tribal organiza-  
21 tion of performing the contract, taking into consider-  
22 ation the terms of the contract and the requirements  
23 of this Act and any other applicable law.

24           “(ii) The costs of preparing the contract pro-  
25 posal and supporting cost data.

1           “(iii) The costs associated with auditing the  
2 general and administrative costs of the tribal organi-  
3 zation associated with the management of the con-  
4 struction contract.

5           “(iv) In the case of a fixed-price contract, a fair  
6 profit determined by taking into consideration the  
7 relevant risks and local market conditions.

8           “(v) If the Secretary and the tribe or tribal or-  
9 ganization are unable to develop a mutually agree-  
10 able construction contract proposal pursuant to the  
11 procedures set forth in this subsection, the tribe or  
12 tribal organization may submit a final contract pro-  
13 posal to the Secretary. Not later than 30 days after  
14 receiving such final contract proposal, the Secretary  
15 shall approve the contract proposal and award the  
16 contract, unless, during such period the Secretary  
17 declines the proposal pursuant to sections 102(a)(2)  
18 and 102(b) of section 102 (including providing op-  
19 portunity for an appeal pursuant to section 102(b)).

20           “(n) Notwithstanding any other provision of law, the  
21 rental rates for housing provided to an employee by the  
22 Federal Government in Alaska pursuant to a self-deter-  
23 mination contract shall be determined on the basis of—

24           “(1) the reasonable value of the quarters and  
25 facilities (as such terms are defined under section

1       5911 of title 5, United States Code) to such em-  
2       ployee, and

3           “(2) the circumstances under which such quar-  
4       ters and facilities are provided to such employee,  
5       as based on the cost of comparable private rental housing  
6       in the nearest established community with a year-round  
7       population of 1,500 or more individuals.”;

8           (14) in section 106(a)—

9               (A) in paragraph (1), by inserting before  
10       the period at the end the following: “, without  
11       regard to any organizational level within the  
12       Department of the Interior or the Department  
13       of Health and Human Services, as appropriate,  
14       at which the program, function, service, or ac-  
15       tivity or portion thereof, including supportive  
16       administrative functions that are otherwise con-  
17       tractable, is operated”;

18               (B) in paragraph (2), by inserting after  
19       “consist of” the following: “an amount for”;  
20       and

21               (C) by striking paragraph (3) and insert-  
22       ing the following new paragraphs:

23               “(3)(A) The contract support costs that are eligible  
24       costs for the purposes of receiving funding under this Act

1 shall include the costs of reimbursing each tribal contrac-  
2 tor for reasonable and allowable costs of—

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

6                 “(ii) any additional administrative or other ex-  
7                 pense related to the overhead incurred by the tribal  
8                 contractor in connection with the operation of the  
9                 Federal program, function, service, or activity pursu-  
10                 ant to the contract,

11 except that such funding shall not duplicate any funding  
12 provided under section 106(a)(1).

13                 “(B) On an annual basis, during such period as a  
14 tribe or tribal organization operates a Federal program,  
15 function, service, or activity pursuant to a contract en-  
16 tered into under this Act, the tribe or tribal organization  
17 shall have the option to negotiate with the Secretary the  
18 amount of funds that the tribe or tribal organization is  
19 entitled to receive under such contract pursuant to this  
20 paragraph.

21                 “(4) For each fiscal year during which a self-deter-  
22 mination contract is in effect, any savings attributable to  
23 the operation of a Federal program, function, service, or  
24 activity under a self-determination contract by a tribe or

1 tribal organization (including a cost reimbursement con-  
2 struction contract) shall—

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

5           “(B) be expended by the tribe or tribal organi-  
6 zation in the succeeding fiscal year, as provided in  
7 section 8.

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

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

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

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

25           (15) in section 106(c)—

1                             (A) by striking “March 15” and inserting  
2                             “May 15”;

3                             (B) in paragraphs (1) and (2), by striking  
4                             “indirect costs” each place it appears and in-  
5                             serting “contract support costs”;

6                             (C) in paragraph (4), by striking “and” at  
7                             the end;

8                             (D) in paragraph (5), by striking the pe-  
9                             riod at the end and inserting “; and”; and

10                           (E) by adding at the end the following new  
11                             paragraph:

12                           “(6) an accounting of any deficiency of funds  
13                             needed to maintain the preexisting level of services  
14                             to any tribes affected by contracting activities under  
15                             this Act, and a statement of the amount of funds  
16                             needed for transitional purposes to enable contrac-  
17                             tors to convert from a Federal fiscal year accounting  
18                             cycle to a different accounting cycle, as authorized  
19                             by section 105(d).”;

20                           (16) in section 106(f), by inserting immediately  
21                             after the second sentence the following new sentence:  
22                             “For the purpose of determining the 365-day period  
23                             specified in this paragraph, an audit report shall be  
24                             deemed to have been received on the date of actual  
25                             receipt by the Secretary, if, within 60 days after re-

1 ceiving the report, the Secretary does not give notice  
2 of a determination by the Secretary to reject the sin-  
3 gle-agency report as insufficient due to noncompli-  
4 ance with chapter 75 of title 31, United States  
5 Code, or noncompliance with any other applicable  
6 law.”;

7 (17) by striking subsection (g) of section 106  
8 and inserting the following new subsection:

9 “(g) Upon the approval of a self-determination con-  
10 tract, the Secretary shall add to the contract the full  
11 amount of funds to which the contractor is entitled under  
12 section 106(a), subject to adjustments for each subsequent  
13 year that such tribe or tribal organization administers a  
14 Federal program, function, service, or activity under such  
15 contract.”;

16 (18) by striking subsection (i) of section 106  
17 and inserting the following new subsection:

18 “(i) On an annual basis, the Secretary shall consult  
19 with, and solicit the participation of, Indian tribes and  
20 tribal organizations in the development of the budget for  
21 the Indian Health Service and the Bureau of Indian Af-  
22 fairs (including participation of Indian tribes and tribal  
23 organizations in formulating annual budget requests that  
24 the Secretary submits to the President for submission to

1 Congress pursuant to section 1105 of title 31, United  
2 States Code).”; and

3 (19) by adding at the end of section 106 the  
4 following new subsections:

5 “(j) Notwithstanding any other provision of law, a  
6 tribal organization may use funds provided under a self-  
7 determination contract to meet matching or cost participa-  
8 tion requirements under other Federal and non-Federal  
9 programs.

10 “(k) Without intending any limitation, a tribal orga-  
11 nization may, without the approval of the Secretary, ex-  
12 pend funds provided under a self-determination contract  
13 for the following purposes, to the extent that the expendi-  
14 ture of the funds is supportive of a contracted program:

15 “(1) Depreciation and use allowances not other-  
16 wise specifically prohibited by law, including the de-  
17 preciation of facilities owned by the tribe or tribal  
18 organization.

19 “(2) Publication and printing costs.

20 “(3) Building, realty, and facilities costs, in-  
21 cluding rental costs or mortgage expenses.

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

24 “(5) Costs for capital assets and repairs.

25 “(6) Management studies.

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

4           “(8) Insurance and indemnification, including  
5 insurance covering the risk of loss of or damage to  
6 property used in connection with the contract with-  
7 out regard to the ownership of such property.

8           “(9) Costs incurred to raise funds or contribu-  
9 tions from non-Federal sources for the purpose of  
10 furthering the goals and objectives of the self-deter-  
11 mination contract.

12           “(10) Interest expenses paid on capital expendi-  
13 tures such as buildings, building renovation, or ac-  
14 quisition or fabrication of capital equipment, and in-  
15 terest expenses on loans necessitated due to delays  
16 by the Secretary in providing funds under a con-  
17 tract.

18           “(11) Expenses of a governing body of a tribal  
19 organization that are attributable to the manage-  
20 ment or operation of programs under this Act.

21           “(12) Costs associated with the management of  
22 pension funds, self-insurance funds, and other funds  
23 of the tribal organization that provide for participa-  
24 tion by the Federal Government.

1       “(l) The Secretary may only suspend, withhold, or  
2 delay the payment of funds for a period of 30 days begin-  
3 ning on the date the Secretary makes a determination  
4 under this paragraph to a tribal organization under a self-  
5 determination contract, if the Secretary determines that  
6 the tribal organization has failed to substantially carry out  
7 the contract without good cause. In any such case, the  
8 Secretary shall provide the tribal organization with rea-  
9 sonable advance written notice, technical assistance (sub-  
10 ject to available resources) to assist the tribal organiza-  
11 tion, a hearing on the record not later than 10 days after  
12 the date of such determination or such later date as the  
13 tribal organization shall approve, and promptly release  
14 any funds withheld upon subsequent compliance.

15       “(2) With respect to any hearing or appeal conducted  
16 pursuant to this subsection, the Secretary shall have the  
17 burden of proof to establish by clearly demonstrated evi-  
18 dence the validity of the grounds for suspending, withhold-  
19 ing, or delaying payment of funds.

20       “(m) The program income earned by a tribal organi-  
21 zation in the course of carrying out a self-determination  
22 contract—

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

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

3               “(n) To the extent that programs, functions, services,  
4               or activities carried out by tribal organizations pursuant  
5               to contracts entered into under this Act reduce the admin-  
6               istrative or other responsibilities of the Secretary with re-  
7               spect to the operation of Indian programs and result in  
8               savings that have not otherwise been included in the  
9               amount of contract funds determined under subsection  
10      (a), the Secretary shall make such savings available for  
11      the provision of additional services to program bene-  
12      ficiaries, either directly or through contractors, in a man-  
13      ner equitable to both direct and contracted programs.

14               “(o) Notwithstanding any other provision of law (in-  
15      cluding any regulation), a tribal organization that carries  
16      out a self-determination contract may, with respect to allo-  
17      cations within the approved budget of the contract,  
18      rebudget to meet contract requirements, if such  
19      rebudgeting would not have an adverse effect on the per-  
20      formance of the contract.”.

21 **SEC. 3. CONTRACT SPECIFICATIONS.**

22               The Indian Self-Determination Education Assistance  
23      Act (25 U.S.C. 450 et seq.) is amended by inserting after  
24      section 107 the following new section:

1     **“SEC. 108. CONTRACT OR GRANT SPECIFICATIONS.**

2         “(a) Each self-determination contract entered into  
3 under this Act shall—

4             “(1) contain, or incorporate by reference, the  
5 provisions of the model agreement described in sub-  
6 section (c) (with modifications where indicated and  
7 the blanks appropriately filled in), and

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

10         “(b) Notwithstanding any other provision of law, the  
11 Secretary may make payments pursuant to section 1(b)(6)  
12 of such model agreement. As provided in section 1(b)(7)  
13 of the model agreement, the records of the tribal govern-  
14 ment or tribal organization specified in such section shall  
15 not be considered Federal records for purposes of chapter  
16 5 of title 5, United States Code.

17         “(c) The model agreement referred to in subsection  
18 (a)(1) reads as follows:

19     **“SECTION 1. AGREEMENT BETWEEN THE SECRETARY AND**  
20                     **THE \_\_\_\_ TRIBAL GOVERNMENT.**

21         ““(a) AUTHORITY AND PURPOSE.—

22             “(1) AUTHORITY.—This agreement, denoted a  
23 Self-Determination Contract (referred to in this  
24 agreement as the “Contract”), is entered into by the  
25 Secretary of the Interior or the Secretary of Health  
26 and Human Services (referred to in this agreement

1       as the “Secretary”), for and on behalf of the United  
2       States pursuant to title I of the Indian Self-Deter-  
3       mination and Education Assistance Act (25 U.S.C.  
4       450 et seq.) and by the authority of the \_\_\_\_ tribal  
5       government or tribal organization (referred to in this  
6       agreement as the “Contractor”). The provisions of  
7       title I of the Indian Self-Determination and Edu-  
8       cation Assistance Act (25 U.S.C. 450 et seq.) are in-  
9       corporated in this agreement.

10      “‘(2) PURPOSE.—Each provision of the Indian  
11     Self-Determination and Education Assistance Act  
12     (25 U.S.C. 450 et seq.) and each provision of this  
13     Contract shall be liberally construed for the benefit  
14     of the Contractor to transfer the funding and the  
15     following related functions, services, activities, and  
16     programs (or portions thereof), that are otherwise  
17     contractable under section 102(a) of such Act, in-  
18     cluding all related administrative functions, from the  
19     Federal Government to the Contractor: (List func-  
20     tions, services, activities, and programs).

21      “‘(b) TERMS, PROVISIONS, AND CONDITIONS.—

22      “‘(1) TERM.—Pursuant to section 105(c)(1) of  
23     the Indian Self-Determination and Education Assist-  
24     ance Act (25 U.S.C. 450j(c)(1)), the term of this  
25     contract shall be \_\_\_\_ years. Pursuant to section

1       105(d)(1) of such Act (25 U.S.C. 450j(d)), upon the  
2       election by the Contractor, the period of this Con-  
3       tract shall be determined on the basis of a calendar  
4       year, unless the Secretary and the Contractor agree  
5       on a different period in the annual funding agree-  
6       ment incorporated by reference in subsection (f)(2).

7           “‘(2) EFFECTIVE DATE.—This Contract shall  
8       become effective upon the date of the approval and  
9       execution by the Contractor and the Secretary, un-  
10      less the Contractor and the Secretary agree on an  
11      effective date other than the date specified in this  
12      paragraph.

13          “‘(3) PROGRAM STANDARD.—The Contractor  
14      agrees to administer the program, services, functions  
15      and activities (or portions thereof) listed in sub-  
16      section (a)(2) of the Contract in conformity with the  
17      following standards: (list standards).

18          “‘(4) FUNDING AMOUNT.—Subject to the avail-  
19      ability of appropriations, the Secretary shall make  
20      available to the Contractor the total amount speci-  
21      fied in the annual funding agreement incorporated  
22      by reference in subsection (f)(2). Such amount shall  
23      not be less than the applicable amount determined  
24      pursuant to section 106(a) of the Indian Self-Deter-

1 mination and Education Assistance Act (25 U.S.C.  
2 450j-1).

3 ““(5) LIMITATION OF COSTS.—The Contractor  
4 shall not be obligated to continue performance that  
5 requires an expenditure of funds in excess of the  
6 amount of funds awarded under this Contract. If, at  
7 any time, the Contractor has reason to believe that  
8 the total amount required for performance of this  
9 Contract or a specific activity conducted under this  
10 Contract would be greater than the amount of funds  
11 awarded under this Contract, the Contractor shall  
12 provide reasonable notice to the appropriate Sec-  
13 retary. If the appropriate Secretary does not take  
14 such action as may be necessary to increase the  
15 amount of funds awarded under this Contract, the  
16 Contractor may suspend performance of the Con-  
17 tract until such time as additional funds are award-  
18 ed.

19 ““(6) PAYMENT.—

20 ““(A) IN GENERAL.—Payments to the  
21 Contractor under this Contract shall—

22 ““(i) be made as expeditiously as  
23 practicable; and

24 ““(ii) include financial arrangements  
25 to cover funding during periods covered by

1 joint resolutions adopted by Congress mak-  
2 ing continuing appropriations, to the ex-  
3 tent permitted by such resolutions.

4 ““(B) QUARTERLY, SEMIANNUAL, LUMP-  
5 SUM, AND OTHER METHODS OF PAYMENT.—

6 ““(i) IN GENERAL.—Pursuant to sec-  
7 tion 108(b) of the Indian Self-Determina-  
8 tion and Education Assistance Act, and  
9 notwithstanding any other provision of law,  
10 for each fiscal year covered by this Con-  
11 tract, the Secretary shall make available to  
12 the Contractor the funds specified for the  
13 fiscal year under the annual funding agree-  
14 ment incorporated by reference pursuant  
15 to subsection (f)(2) by paying to the Con-  
16 tractor, on a quarterly basis, one-quarter  
17 of the total amount provided for in the an-  
18 nual funding agreement for that fiscal  
19 year, in a lump-sum payment or as semi-  
20 annual payments, or any other method of  
21 payment authorized by law, in accordance  
22 with such method as may be requested by  
23 the Contractor and specified in the annual  
24 funding agreement.

1                 ““(ii) METHOD OF QUARTERLY PAY-  
2 MENT.—If quarterly payments are speci-  
3 fied in the annual funding agreement in-  
4 corporated by reference pursuant to sub-  
5 section (f)(2), each quarterly payment  
6 made pursuant to clause (i) shall be made  
7 on the first day of each quarter of the fis-  
8 cal year, except that in any case in which  
9 the contract year coincides with the Fed-  
10 eral fiscal year, payment for the first quar-  
11 ter shall be made not later than the date  
12 that is 10 calendar days after the date on  
13 which the Office of Management and  
14 Budget apportions the appropriations for  
15 the fiscal year for the programs, services,  
16 functions, and activities subject to this  
17 Contract.

18                 ““(iii) APPLICABILITY.—Chapter 39  
19 of title 31, United States Code, shall apply  
20 to the payment of funds due under this  
21 Contract and the annual funding agree-  
22 ment referred to in clause (i).

23                 ““(7) RECORDS AND MONITORING.—

24                 ““(A) IN GENERAL.—Except for previously  
25 provided copies of tribal records that the Sec-

1           retary demonstrates are clearly required to be  
2           maintained as part of the recordkeeping system  
3           of the Department of the Interior or the De-  
4           partment of Health and Human Services (or  
5           both), records of the Contractor shall not be  
6           considered Federal records for purposes of  
7           chapter 5 of title 5, United States Code.

8                 “(B) RECORDKEEPING SYSTEM.—The  
9           Contractor shall maintain a recordkeeping sys-  
10          tem and, upon reasonable advance request, pro-  
11          vide reasonable access to such records to the  
12          Secretary.

13                 “(C) RESPONSIBILITIES OF CONTRAC-  
14          TOR.—The Contractor shall be responsible for  
15          managing the day-to-day operations conducted  
16          under this Contract and for monitoring activi-  
17          ties conducted under this Contract to ensure  
18          compliance with the contract and applicable  
19          Federal requirements. With respect to the mon-  
20          itoring activities of the Secretary, the routine  
21          monitoring visits shall be limited to not more  
22          than one performance monitoring visit for this  
23          Contract by the head of each operating division,  
24          departmental bureau, or departmental agency,

1           or duly authorized representative of such head  
2           unless—

3                 “(i) the Contractor agrees to one or  
4                 more additional visits; or

5                 “(ii) the appropriate official deter-  
6                 mines that there is reasonable cause to be-  
7                 lieve that grounds for reassumption of the  
8                 Contract, suspension of contract payments,  
9                 or other serious contract performance defi-  
10                 ciency may exist.

11                 No additional visit referred to in clause (ii)  
12                 shall be made until such time as reasonable ad-  
13                 vance notice that includes a description of the  
14                 nature of the problem that requires the addi-  
15                 tional visit has been given to the Contractor.

16                 “(8) PROPERTY.—

17                 “(A) IN GENERAL.—As provided in sec-  
18                 tion 105(f) of the Indian Self-Determination  
19                 and Education Assistance Act (25 U.S.C.  
20                 450j(f)), at the request of the Contractor, the  
21                 Secretary may make available, or transfer to  
22                 the Contractor, all reasonably divisible real  
23                 property, facilities, equipment, and personal  
24                 property that the Secretary has used to provide  
25                 or administer the programs, services, functions,

1 and activities covered by this Contract. A mutually  
2 agreed upon list specifying the property, fa-  
3 cilities, and equipment so furnished shall also  
4 be prepared by the Secretary, with the concur-  
5 rence of the Contractor, and periodically revised  
6 by the Secretary, with the concurrence of the  
7 Contractor.

8 ““(B) RECORDS.—The Contractor shall  
9 maintain a record of all property referred to in  
10 subparagraph (A) or other property acquired by  
11 the Contractor under section 105(f)(2)(A) of  
12 such Act for purposes of replacement.

13 ““(C) JOINT USE AGREEMENTS.—Upon  
14 the request of the Contractor, the Secretary  
15 and the Contractor shall enter into a separate  
16 joint use agreement to address the shared use  
17 by the parties of real or personal property that  
18 is not reasonably divisible.

19 ““(D) ACQUISITION OF PROPERTY.—The  
20 Contractor is granted the authority to acquire  
21 such excess property as the Contractor may de-  
22 termine to be appropriate in the judgment of  
23 the Contractor to support the programs, serv-  
24 ices, functions, and activities operated pursuant  
25 to this Contract.

1               ““(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.

6               ““(F) SCREENER IDENTIFICATION  
7               CARD.—A screener identification card (General  
8               Services Administration form numbered 2946)  
9               shall be issued to the Contractor not later than  
10              the effective date of this Contract. The des-  
11              ignated official shall, upon request, assist the  
12              Contractor in securing the use of the card.

13              ““(G) CAPITAL EQUIPMENT.—The Con-  
14              tractor shall determine the capital equipment,  
15              leases, rentals, property, or services the Con-  
16              tractor requires to perform the obligations of  
17              the Contractor under this subsection, and shall  
18              acquire and maintain records of such capital  
19              equipment, property rentals, leases, property, or  
20              services through applicable procurement proce-  
21              dures of the Contractor.

22              ““(9) AVAILABILITY OF FUNDS.—Notwith-  
23              standing any other provision of law, any funds pro-  
24              vided under this contract—

1               ““(A) shall remain available until ex-  
2               pended; and

3               ““(B) with respect to such funds, no fur-  
4               ther—

5               ““(i) approval by the Secretary, or  
6               ““(ii) justifying documentation from  
7               the Contractor, shall be required prior to  
8               the expenditure of such funds.

9               ““(10) TRANSPORTATION.—Beginning on the  
10          effective date of this Contract, the Secretary shall  
11          authorize the Contractor to obtain interagency  
12          motor pool vehicles and related services for perform-  
13          ance of any activities carried out under this Con-  
14          tract.

15               ““(11) FEDERAL PROGRAM GUIDELINES, MANU-  
16          ALS, OR POLICY DIRECTIVES.—Except as specifically  
17          provided in the Indian Self-Determination and Edu-  
18          cation Assistance Act (25 U.S.C. 450 et seq.) the  
19          Contractor is not required to abide by program  
20          guidelines, manuals, or policy directives of the Sec-  
21          retary, unless otherwise agreed to by the Contractor  
22          and the Secretary, or otherwise required by law.

23               ““(12) DISPUTES.—

24               ““(A) THIRD-PARTY MEDIATION DE-  
25          FINED.—For the purposes of this Contract, the

1           term “third-party mediation” means a form of  
2           mediation whereby the Secretary and the Con-  
3           tractor nominate a third party who is not em-  
4           ployed by or significantly involved with the Sec-  
5           retary of the Interior, the Secretary of Health  
6           and Human Services, or the Contractor, to  
7           serve as a third-party mediator to mediate dis-  
8           putes under this Contract.

9           ““(B) ALTERNATIVE PROCEDURES.—In  
10          addition to, or as an alternative to, remedies  
11          and procedures prescribed by section 110 of the  
12          Indian Self-Determination and Education As-  
13          sistance Act (25 U.S.C. 450m–1), the parties to  
14          this Contract may jointly—

- 15           ““(i) submit disputes under this Con-  
16          tract to third-party mediation;
- 17           ““(ii) submit the dispute to the adju-  
18          dicatory body of the Contractor, including  
19          the tribal court of the Contractor;
- 20           ““(iii) submit the dispute to mediation  
21          processes provided for under the laws, poli-  
22          cies, or procedures of the Contractor; or
- 23           ““(iv) use the administrative dispute  
24          resolution processes authorized in sub-

1                   chapter IV of chapter 5 of title 5, United  
2                   States Code.

3                 ““(C) EFFECT OF DECISIONS.—The Sec-  
4                 retary shall be bound by decisions made pursu-  
5                 ant to the processes set forth in subparagraph  
6                 (B), except that the Secretary shall not be  
7                 bound by any decision that significantly con-  
8                 flicts with the interests of Indians or the United  
9                 States.

10                ““(13) ADMINISTRATIVE PROCEDURES OF CON-  
11               TRACTOR.—Pursuant to the Indian Civil Rights Act  
12               of 1968 (25 U.S.C. 1301 et seq.), the laws, policies,  
13               and procedures of the Contractor shall provide for  
14               administrative due process (or the equivalent of ad-  
15               ministrative due process) with respect to programs,  
16               services, functions, and activities that are provided  
17               by the Contractor pursuant to this Contract.

18               ““(14) SUCCESSOR ANNUAL FUNDING AGREE-  
19               MENT.—

20               ““(A) IN GENERAL.—Negotiations for a  
21               successor annual funding agreement, provided  
22               for in subsection (f)(2), shall begin not later  
23               than 120 days prior to the conclusion of the  
24               preceding annual funding agreement. Except as  
25               provided in section 105(c)(2) of the Indian Self-

1 Determination and Education Assistance Act  
2 (25 U.S.C. 450j(c)(2)) the funding for each  
3 such successor annual funding agreement shall  
4 only be reduced pursuant to section 106(b) of  
5 such Act (25 U.S.C. 450j-1(b)).

6 ““(B) INFORMATION.—The Secretary shall  
7 prepare and supply relevant information, and  
8 promptly comply with any request by the Con-  
9 tractor for information that the Contractor rea-  
10 sonably needs to determine the amount of funds  
11 that may be available for a successor annual  
12 funding agreement, as provided for in sub-  
13 section (f)(2) of this Contract.

14 ““(15) CONTRACT REQUIREMENTS; APPROVAL  
15 BY SECRETARY.—

16 ““(A) IN GENERAL.—Except as provided  
17 in subparagraph (B), for the term of the Con-  
18 tract, section 2103 of the Revised Statutes (25  
19 U.S.C. 81) and section 16 of the Act of June  
20 18, 1934 (48 Stat. 987, chapter 576; 25 U.S.C.  
21 476), shall not apply to any contract entered  
22 into in connection with this Contract.

23 ““(B) REQUIREMENTS.—Each Contract  
24 entered into by the Contractor with a third  
25 party in connection with performing the obliga-

1           tions of the Contractor under this Contract  
2           shall—

3                 “(i) be in writing;

4                 “(ii) identify the interested parties,  
5                 the authorities of such parties, and pur-  
6                 poses of the Contract;

7                 “(iii) state the work to be performed  
8                 under the Contract; and

9                 “(iv) state the process for making  
10                 any claim, the payments to be made, and  
11                 the terms of the Contract, which shall be  
12                 fixed.

13                 “(c) OBLIGATION OF THE CONTRACTOR.—

14                 “(1) CONTRACT PERFORMANCE.—Except as  
15                 provided in subsection (d)(2), the Contractor shall  
16                 perform the programs, services, functions, and ac-  
17                 tivities as provided in the annual funding agreement  
18                 under subsection (f)(2) of this Contract.

19                 “(2) AMOUNT OF FUNDS.—The total amount  
20                 of funds to be paid under this Contract pursuant to  
21                 section 106(a) shall be determined in an annual  
22                 funding agreement entered into between the Sec-  
23                 retary and the Contractor, which shall be incor-  
24                 porated into this Contract.

1           “‘(3) CONTRACTED PROGRAMS.—Subject to the  
2 availability of appropriated funds, the Contractor  
3 shall administer the programs, services, functions,  
4 and activities identified in this Contract and funded  
5 through the annual funding agreement under sub-  
6 section (f)(2).

7           “‘(4) TRUST SERVICES FOR INDIVIDUAL INDI-  
8 ANS.—

9           “‘(A) IN GENERAL.—To the extent that  
10 the annual funding agreement provides funding  
11 for the delivery of trust services to individual  
12 Indians that have been provided by the Sec-  
13 retary, the Contractor shall maintain at least  
14 the same level of service as the Secretary pro-  
15 vided for such individual Indians, subject to the  
16 availability of appropriated funds for such serv-  
17 ices.

18           “‘(B) TRUST SERVICES TO INDIVIDUAL IN-  
19 DIANS.—For the purposes of this paragraph  
20 only, the term “trust services for individual In-  
21 dians” means only those services that pertain to  
22 land or financial management connected to in-  
23 dividually held allotments.

24           “‘(5) FAIR AND UNIFORM SERVICES.—The  
25 Contractor shall provide services under this Contract

1       in a fair and uniform manner and shall provide ac-  
2       cess to an administrative or judicial body empowered  
3       to adjudicate or otherwise resolve complaints, claims,  
4       and grievances brought by program beneficiaries  
5       against the Contractor arising out of the perform-  
6       ance of the Contract.

7       ““(d) OBLIGATION OF THE UNITED STATES.—

8           ““(1) TRUST RESPONSIBILITY.—

9               ““(A) IN GENERAL.—The United States  
10          reaffirms the trust responsibility of the United  
11          States to the \_\_\_\_ Indian tribe(s) to protect  
12          and conserve the trust resources of the Indian  
13          tribe(s) and the trust resources of individual In-  
14          dians.

15               ““(B) CONSTRUCTION OF CONTRACT.—  
16          Nothing in this Contract may be construed to  
17          terminate, waive, modify, or reduce the trust re-  
18          sponsibility of the United States to the tribe(s)  
19          or individual Indians. The Secretary shall act in  
20          good faith in upholding such trust responsibil-  
21          ity.

22               ““(C) GOOD FAITH.—To the extent that  
23          health programs are included in this Contract,  
24          and within available funds, the Secretary shall  
25          act in good faith in cooperating with the Con-

1           tractor to achieve the goals set forth in the In-  
2           dian Health Care Improvement Act (25 U.S.C.  
3           1601 et seq.).

4           ““(2) PROGRAMS RETAINED.—As specified in  
5           the annual funding agreement, the United States  
6           hereby retains the programs, services, functions, and  
7           activities with respect to the tribe(s) that are not  
8           specifically assumed by the Contractor in the annual  
9           funding agreement under subsection (f)(2).

10          ““(e) OTHER PROVISIONS.—

11          ““(1) DESIGNATED OFFICIALS.—Not later than  
12           the effective date of this Contract, the United States  
13           shall provide to the Contractor, and the Contractor  
14           shall provide to the United States, a written des-  
15           ignation of a senior official to serve as a representa-  
16           tive for notices, proposed amendments to the Con-  
17           tract, and other purposes for this Contract.

18          ““(2) CONTRACT MODIFICATIONS OR AMEND-  
19           MENT.—

20          ““(A) IN GENERAL.—Except as provided  
21           in subparagraph (B), no modification to this  
22           Contract shall take effect unless such modifica-  
23           tion is made in the form of a written amend-  
24           ment to the Contract, and the Contractor and

1           the Secretary provide written consent for the  
2           modification.

3           ““(B) EXCEPTION.—The addition of sup-  
4           plemental funds for programs, functions, and  
5           activities (or portions thereof) already included  
6           in the annual funding agreement under sub-  
7           section (f)(2), and the reduction of funds pur-  
8           suant to section 106(b)(2), shall not be subject  
9           to subparagraph (A).

10          ““(3) OFFICIALS NOT TO BENEFIT.—No Mem-  
11          ber of Congress, or resident commissioner, shall be  
12          admitted to any share or part of any contract exe-  
13          cuted pursuant to this Contract, or to any benefit  
14          that may arise from such contract. This paragraph  
15          may not be construed to apply to any contract with  
16          a third party entered into under this Contract if  
17          such contract is made with a corporation for the  
18          general benefit of the corporation.

19          ““(4) COVENANT AGAINST CONTINGENT  
20          FEES.—The parties warrant that no person or sell-  
21          ing agency has been employed or retained to solicit  
22          or secure any contract executed pursuant to this  
23          Contract upon an agreement or understanding for a  
24          commission, percentage, brokerage, or contingent  
25          fee, excepting bona fide employees or bona fide es-

1       tablished commercial or selling agencies maintained  
2       by the Contractor for the purpose of securing busi-  
3       ness.

4       “ ‘(f) ATTACHMENTS.—

5           “ ‘(1) APPROVAL OF CONTRACT.—Unless pre-  
6       viously furnished to the Secretary, the resolution of  
7       the \_\_\_\_ Indian tribe(s) authorizing the contracting  
8       of the programs, services, functions, and activities  
9       identified in this Contract is attached to this Con-  
10       tract as attachment 1.

11       “ ‘(2) ANNUAL FUNDING AGREEMENT.—

12           “ ‘(A) IN GENERAL.—The annual funding  
13       agreement under this Contract shall only con-  
14       tain—

15           “ ‘(i) terms that identify the pro-  
16       grams, services, functions, and activities to  
17       be performed or administered, the general  
18       budget category assigned, the funds to be  
19       provided, and the time and method of pay-  
20       ment; and

21           “ ‘(ii) such other provisions, including  
22       a brief description of the programs, serv-  
23       ices, functions, and activities to be per-  
24       formed (including those supported by fi-  
25       nancial resources other than those provided

1           by the Secretary), to which the parties  
2           agree.

3           ““(B) INCORPORATION BY REFERENCE.—

4           The annual funding agreement is hereby incor-  
5           porated in its entirety in this Contract and at-  
6           tached to this Contract as attachment 2.’”.

7 **SEC. 4. ADDITIONAL AMENDMENTS.**

8           The Indian Self-Determination and Education Assist-  
9       ance Act (25 U.S.C. 450 et seq.), as amended by sections  
10      2 and 3, is further amended—

11           (1) in section 109—

12           (A) by inserting after “pursuant to such  
13       contract or grant agreement,” the following “or  
14       in the management of trust fund, trust lands or  
15       interests in such lands pursuant to such con-  
16       tract or grant agreement.”;

17           (B) by striking “action as prescribed by  
18       him” and all that follows through “in such  
19       cases, he” and inserting the following: “action  
20       as prescribed by the Secretary to remedy the  
21       contract deficiency, except that the appropriate  
22       Secretary may, upon written notice to a tribal  
23       organization, and the tribe served by the tribal  
24       organization, immediately rescind a contract or  
25       grant, in whole or in part, and resume control

1           or operation of a program, activity, function, or  
2           service, if the Secretary finds that (i) there is  
3           an immediate threat of imminent harm to the  
4           safety of any person, or imminent substantial  
5           and irreparable harm to trust funds, trust  
6           lands, or interests in such lands, and (ii) such  
7           threat arises from the failure of the contractor  
8           to fulfill the requirements of the contract. In  
9           such cases, the Secretary”;

10                 (C) by inserting after “rescind such con-  
11                 tract or grant agreement” the following: “, in  
12                 whole or in part.”;

13                 (D) by striking the second period after  
14                 “the tribal organization may approve”; and

15                 (E) by inserting before the last sentence,  
16                 the following new sentence: “In any hearing or  
17                 appeal provided for under this section, the Sec-  
18                 retary shall have the burden of proof to estab-  
19                 lish, by clearly demonstrated evidence, the va-  
20                 lidity of the grounds for rescinding, assuming,  
21                 or reassuming the contract that is the subject  
22                 of the hearing.”;

23                 (2) in section 110(a), by inserting immediately  
24                 before the period at the end the following: “(includ-  
25                 ing immediate injunctive relief to reverse a declina-

1       tion finding under section 102(a)(2) or to compel  
2       the Secretary to award and fund an approved self-  
3       determination contract); and

4                     (3) in section 110(d), by inserting immediately  
5       before the period at the end the following: “, except  
6       that all administrative appeals relating to such con-  
7       tracts shall be heard by the Interior Board of Con-  
8       tract Appeals established pursuant to section 8 of  
9       such Act (41 U.S.C. 607)”.

10 **SEC. 5. REGULATIONS.**

11       The Indian Self-Determination and Education Assist-  
12       ance Act (25 U.S.C. 450 et seq.), as amended by sections  
13       2 through 4, is further amended—

14                     (1) by striking subsections (a) and (b) of sec-  
15       tion 107 and inserting the following new subsections:

16                     “(a)(1) Except as may be specifically authorized in  
17       this subsection, or in any other provision of this Act, the  
18       Secretary of the Interior and the Secretary of Health and  
19       Human Services may not promulgate any regulation, nor  
20       impose any nonregulatory requirement, relating to self-de-  
21       termination contracts or the approval, award, or declina-  
22       tion of such contracts, except that the Secretary of the  
23       Interior and the Secretary of Health and Human Services  
24       may promulgate regulations under this Act relating to  
25       chapter 171 of title 28, United States Code, commonly

1 known as the ‘Federal Tort Claims Act’, the Contract Dis-  
2 putes Act of 1978 (41 U.S.C. 601 et seq.), declination and  
3 waiver procedures, appeal procedures, reassumption proce-  
4 dures, discretionary grant procedures for grants awarded  
5 under section 103, property donation procedures arising  
6 under section 105(f), internal agency procedures relating  
7 to the implementation of this Act, retrocession and tribal  
8 organization relinquishment procedures, contract proposal  
9 contents, conflicts of interest, construction, programmatic  
10 reports and data requirements, procurement standards,  
11 property management standards, and financial manage-  
12 ment standards.

13       “(2)(A) The regulations promulgated under this Act,  
14 including the regulations referred to in this subsection,  
15 shall be promulgated—

16           “(i) in conformance with sections 552 and 553  
17 of title 5, United States Code and subsections (c),  
18 (d), and (e) of this section; and

19           “(ii) as a single set of regulations in title 25 of  
20 the Code of Federal Regulations.

21       “(B) The authority to promulgate regulations set  
22 forth in this Act shall expire if final regulations are not  
23 promulgated within 18 months after the date of enactment  
24 of the Indian Self-Determination Contract Reform Act of  
25 1994.

1       “(b) The provisions of this Act shall supersede any  
2 conflicting provisions of law (including any conflicting reg-  
3 ulations) in effect on the day before the date of enactment  
4 of the Indian Self-Determination Contract Reform Act of  
5 1994, and the Secretary is authorized to repeal any regu-  
6 lation inconsistent with the provisions of this Act.”; and

7                     (2) by adding at the end of section 107, the fol-  
8 lowing new subsections:

9       “(d)(1) In drafting and promulgating regulations as  
10 provided in subsection (a) (including drafting and promul-  
11 gating any revised regulations), the Secretary of the Inter-  
12 rior and the Secretary of Health and Human Services  
13 shall confer with, and allow for active participation by,  
14 representatives of Indian tribes, tribal organizations, and  
15 individual tribal members.

16       “(2)(A) In carrying out rulemaking processes under  
17 this Act, the Secretary of the Interior and the Secretary  
18 of Health and Human Services shall follow the guidance  
19 of—

20                     “(i) subchapter III of chapter 5 of title 5, Unit-  
21 ed States Code, commonly known as the ‘Negotiated  
22 Rulemaking Act of 1990’; and

23                     “(ii) the recommendations of the Administrative  
24 Conference of the United States numbered 82–4 and  
25 85–5 entitled ‘Procedures for Negotiating Proposed

1       Regulations' under sections 305.82–4 and 305.85–5  
2       of title 1, Code of Federal Regulations, and any suc-  
3       cessor recommendation or law (including any succes-  
4       sor regulation).

5       “(B) The tribal participants in the negotiation proc-  
6       ess referred to in subparagraph (A) shall be nominated  
7       by and shall represent the groups described in this para-  
8       graph and shall include tribal representatives from all geo-  
9       graphic regions.

10      “(C) The negotiations referred to in subparagraph  
11     (B) shall be conducted in a timely manner. Proposed regu-  
12     lations to implement the amendments made by the Indian  
13     Self-Determination Contract Reform Act of 1994 shall be  
14     published in the Federal Register by the Secretary of the  
15     Interior and the Secretary of Health and Human Services  
16     not later than 180 days after the date of enactment of  
17     such Act.

18      “(D) Notwithstanding any other provision of law (in-  
19     cluding any regulation), the Secretary of the Interior and  
20     the Secretary of Health and Human Services are author-  
21     ized to jointly establish and fund such interagency com-  
22     mittees or other interagency bodies, including advisory  
23     bodies comprised of tribal representatives, as may be nec-  
24     essary or appropriate to carry out the provisions of this  
25     Act.

1       “(E) If the Secretary determines that an extension  
2 of the deadlines under subsection (a)(2)(B) and subparagraph  
3 graph (C) of this paragraph is appropriate, the Secretary  
4 may submit proposed legislation to Congress for the exten-  
5 sion of such deadlines.

6       “(e) The Secretary may, with respect to a contract  
7 entered into under this Act, make exceptions in the regula-  
8 tions promulgated to carry out this Act, or waive such reg-  
9 ulations, if the Secretary finds that such exception or  
10 waiver is in the best interest of the Indians served by the  
11 contract or is consistent with the policies of this Act, and  
12 is not contrary to statutory law. In reviewing each request,  
13 the Secretary shall follow the timeline, findings, assist-  
14 ance, hearing, and appeal procedures set forth in section  
15 102.”.

16 **SEC. 6. CONFORMING AMENDMENTS.**

17       Section 105(h) of the Indian Self-Determination and  
18 Education Assistance Act (25 U.S.C. 450j(h)) is amended  
19 by striking “and the rules and regulations adopted by the  
20 Secretaries of the Interior and Health and Human Serv-  
21 ices pursuant to section 107 of this Act”.

Passed the Senate October 6 (legislative day, September 12), 1994.

Attest:

MARTHA S. POPE,

*Secretary.*