

ment in the year the interest is earned or in any subsequent fiscal year. Funds transferred under this part shall be managed using the prudent investment standard.

**(i) Carryover of funds**

All funds paid to an Indian tribe in accordance with a compact or funding agreement shall remain available until expended. In the event that an Indian tribe elects to carry over funding from 1 year to the next, such carryover shall not diminish the amount of funds the Indian tribe is authorized to receive under its funding agreement in that or any subsequent fiscal year.

**(j) Program income**

All Medicare, Medicaid, or other program income earned by an Indian tribe shall be treated as supplemental funding to that negotiated in the funding agreement. The Indian tribe may retain all such income and expend such funds in the current year or in future years except to the extent that the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.) provides otherwise for Medicare and Medicaid receipts. Such funds shall not result in any offset or reduction in the amount of funds the Indian tribe is authorized to receive under its funding agreement in the year the program income is received or for any subsequent fiscal year.

**(k) Limitation of costs**

An Indian tribe shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds transferred under a compact or funding agreement. If at any time the Indian tribe has reason to believe that the total amount provided for a specific activity in the compact or funding agreement is insufficient the Indian tribe shall provide reasonable notice of such insufficiency to the Secretary. If the Secretary does not increase the amount of funds transferred under the funding agreement, the Indian tribe may suspend performance of the activity until such time as additional funds are transferred.

(Pub. L. 93-638, title V, §508, as added Pub. L. 106-260, § 4, Aug. 18, 2000, 114 Stat. 722.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (c) and (d), 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 (§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 Indian Health Care Improvement Act, referred to in subsec. (j), is Pub. L. 94-437, Sept. 30, 1976, 90 Stat. 1400, as amended, which is classified principally to chapter 18 (§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.

**§ 458aaa-8. Construction projects**

**(a) In general**

Indian tribes participating in tribal self-governance may carry out construction projects under this part if they elect to assume all Federal responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.),

the National Historic Preservation Act (16 U.S.C. 470 et seq.), and related provisions of law that would apply if the Secretary were to undertake a construction project, by adopting a resolution—

(1) designating a certifying officer to represent the Indian tribe and to assume the status of a responsible Federal official under such laws; and

(2) accepting the jurisdiction of the Federal court for the purpose of enforcement of the responsibilities of the responsible Federal official under such environmental laws.

**(b) Negotiations**

Construction project proposals shall be negotiated pursuant to the statutory process in section 450j(m) of this title and resulting construction project agreements shall be incorporated into funding agreements as addenda.

**(c) Codes and standards**

The Indian tribe and the Secretary shall agree upon and specify appropriate building codes and architectural and engineering standards (including health and safety) which shall be in conformity with nationally recognized standards for comparable projects.

**(d) Responsibility for completion**

The Indian tribe shall assume responsibility for the successful completion of the construction project in accordance with the negotiated construction project agreement.

**(e) Funding**

Funding for construction projects carried out under this part shall be included in funding agreements as annual advance payments, with semiannual payments at the option of the Indian tribe. Annual advance and semiannual payment amounts shall be determined based on mutually agreeable project schedules reflecting work to be accomplished within the advance payment period, work accomplished and funds expended in previous payment periods, and the total prior payments. The Secretary shall include associated project contingency funds with each advance payment installment. The Indian tribe shall be responsible for the management of the contingency funds included in funding agreements.

**(f) Approval**

The Secretary shall have at least one opportunity to approve project planning and design documents prepared by the Indian tribe in advance of construction of the facilities specified in the scope of work for each negotiated construction project agreement or amendment thereof which results in a significant change in the original scope of work. The Indian tribe shall provide the Secretary with project progress and financial reports not less than semiannually. The Secretary may conduct on-site project oversight visits semiannually or on an alternate schedule agreed to by the Secretary and the Indian tribe.

**(g) Wages**

All laborers and mechanics employed by contractors and subcontractors (excluding tribes and tribal organizations) in the construction, al-

teration, or repair, including painting or decorating of a building or other facilities in connection with construction projects funded by the United States under this subchapter shall be paid wages at not less than those prevailing wages on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141-3144, 3146, and 3147 of title 40. With respect to construction alteration, or repair work to which sections 3141-3144, 3146, and 3147 of title 40 are applicable under this section, the Secretary of Labor shall have the authority and functions set forth in the Reorganization Plan numbered 14, of 1950, and section 3145 of title 40.

**(h) Application of other laws**

Unless otherwise agreed to by the Indian tribe, no provision of the Office of Federal Procurement Policy Act [41 U.S.C. 401 et seq.], the Federal Acquisition Regulations issued pursuant thereto, or any other law or regulation pertaining to Federal procurement (including Executive orders) shall apply to any construction project conducted under this part.

(Pub. L. 93-638, title V, §509, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 724.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The National Historic Preservation Act, referred to in subsec. (a), is Pub. L. 89-665, Oct. 15, 1966, 80 Stat. 915, as amended, which is classified generally to subchapter II (§470 et seq.) of chapter 1A of Title 16, Conservation. For complete classification of this Act to the Code, see section 470(a) of Title 16 and Tables.

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

The Office of Federal Procurement Policy Act, referred to in subsec. (h), is Pub. L. 93-400, Aug. 30, 1974, 88 Stat. 796, as amended, which is classified principally to chapter 7 (§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.

CODIFICATION

In subsec. (g), “sections 3141-3144, 3146, and 3147 of title 40” substituted for “the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494)”, “sections 3141-3144, 3146, and 3147 of title 40 are” substituted for “the Act of March 3, 1931, is”, and “section 3145 of title 40” substituted for “section 2 of the Act of June 13, 1934 (48 Stat. 948)” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

**§ 458aaa-9. Federal procurement laws and regulations**

Regarding construction programs or projects, the Secretary and Indian tribes may negotiate for the inclusion of specific provisions of the Office of Federal Procurement and Policy Act (41 U.S.C. 401 et seq.) and Federal acquisition regulations in any funding agreement entered into under this part. Absent a negotiated agreement, such provisions and regulatory requirements shall not apply.

(Pub. L. 93-638, title V, §510, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 726.)

REFERENCES IN TEXT

The Office of Federal Procurement and Policy Act, referred to in text, probably means the Office of Federal Procurement Policy Act, Pub. L. 93-400, Aug. 30, 1974, 88 Stat. 796, as amended, which is classified principally to chapter 7 (§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.

**§ 458aaa-10. Civil actions**

**(a) Contract defined**

For the purposes of section 450m-1 of this title, the term “contract” shall include compacts and funding agreements entered into under this part.

**(b) Applicability of certain laws**

Section 81 of this title and section 476 of this title, shall not apply to attorney and other professional contracts entered into by Indian tribes participating in self-governance under this part.

**(c) References**

All references in this subchapter to section 501 of this title are hereby deemed to include section 82a of this title.

(Pub. L. 93-638, title V, §511, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 726.)

**§ 458aaa-11. Facilitation**

**(a) Secretarial interpretation**

Except as otherwise provided by law, the Secretary shall interpret all Federal laws, Executive orders, and regulations in a manner that will facilitate—

(1) the inclusion of programs, services, functions, and activities (or portions thereof) and funds associated therewith, in the agreements entered into under this section;

(2) the implementation of compacts and funding agreements entered into under this part; and

(3) the achievement of tribal health goals and objectives.

**(b) Regulation waiver**

**(1) In general**

An Indian tribe may submit a written request to waive application of a regulation promulgated under section 458aaa-16 of this title or the authorities specified in section 458aaa-4(b) of this title for a compact or funding agreement entered into with the Indian Health Service under this part, to the Secretary identifying the applicable Federal regulation sought to be waived and the basis for the request.

**(2) Approval**

Not later than 90 days after receipt by the Secretary of a written request by an Indian tribe to waive application of a regulation for a compact or funding agreement entered into under this part, the Secretary shall either approve or deny the requested waiver in writing. A denial may be made only upon a specific finding by the Secretary that identified lan-