

103^D CONGRESS
2^D SESSION

S. 2036

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.

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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 Inte-
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.”;

1 (2) by striking subsection (f) of section 5 and
2 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.”;

20 (3) in section 7(a), by striking “of subcontrac-
21 tors” and inserting in lieu thereof “or subcontrac-
22 tors (excluding tribes and tribal organizations)”;

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

13 (B) by adding at the end the following new
14 paragraph:

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—

20 “(A) proposes in part to plan, conduct, or ad-
21 minister a program, function, service, or activity
22 that is beyond the scope of programs covered under
23 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 subpara-
16 graph (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 mutu-
2 ally 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 PROP-
2 PERTY.—The Secretary shall assist the Contrac-
3 tor in obtaining such confiscated or excess
4 property as may become available to tribes,
5 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 established 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 Inte-
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 subpara-
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

- 1 Secretaries of the Interior and Health and Human Serv-
- 2 ices pursuant to section 107 of this Act”.

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

Attest:

Secretary.

S 2036 ES—2

S 2036 ES—3

S 2036 ES—4

S 2036 ES—5