

Calendar No. 625

103D CONGRESS
2D SESSION

S. 2036

[Report No. 103-374]

A BILL

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.

SEPTEMBER 26 (legislative day, SEPTEMBER 12), 1994
Reported with an amendment

Calendar No. 625

103^D CONGRESS
2^D SESSION

S. 2036

[Report No. 103-374]

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.

IN THE SENATE OF THE UNITED STATES

APRIL 20 (legislative day, APRIL 11), 1994

Mr. MCCAIN (for himself and Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

SEPTEMBER 26 (legislative day, SEPTEMBER 12), 1994

Reported by Mr. INOUE, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. CONTRACT SPECIFICATIONS.**

5 Section 105 of the Indian Self-Determination and
6 Education Assistance Act (25 U.S.C. 450j) is amended to
7 read as follows:

8 **“SEC. 105. CONTRACT OR GRANT SPECIFICATIONS.**

9 “Each contract or grant entered into under this Act,
10 except an agreement entered into pursuant to title III (25
11 U.S.C. 450f note), shall contain, or incorporate by ref-
12 erence, the following provisions, with modifications where
13 indicated and the blanks appropriately filled:

14 “(a) **AUTHORITY AND PURPOSE.**—

15 “(1) **AUTHORITY.**—This agreement, denoted a
16 Contract of Self-Determination (hereinafter referred
17 to as the ‘Contract’), is entered into by the Sec-
18 retary of the Interior (or the Secretary of Health
19 and Human Services) (hereinafter referred to as the
20 ‘Secretary’), for and on behalf of the United States
21 pursuant to the Indian Self-Determination and Edu-
22 cation Assistance Act and by the authority of the
23 ~~XXXXXXXX~~ tribal government. Unless otherwise
24 provided in this agreement, all of the provisions of
25 the Indian Self-Determination and Education Assist-
26 ance Act are incorporated herein.

1 “(2) PURPOSE.—This Contract shall be lib-
2 erally construed to transfer the funding, functions,
3 and activities for the following programs from the
4 Federal Government to the ~~XXXXXXXX~~ tribal gov-
5 ernment: (List functions, activities, and programs.)

6 “(3) TRIBAL LAW AND FORUMS.—The laws of
7 the ~~XXXXXXXX~~ tribal government shall be applied
8 in the execution of this Contract and the powers and
9 decisions of the Tribal Court shall be respected to
10 the extent that Federal law, construed in accordance
11 with the applicable canons of construction and the
12 Indian Self-Determination and Education Assistance
13 Act, is not inconsistent.

14 “(b) TERMS, PROVISIONS AND CONDITIONS.—

15 “(1) TERM.—The term of this Contract shall
16 not exceed 3 years, unless the Secretary and the
17 tribe agree on a longer period pursuant to section
18 106 of the Indian Self-Determination and Education
19 Assistance Act. The calendar year is the basis for
20 contracts under this Act, unless the Secretary and
21 the tribe agree on a different period.

22 “(2) EFFECTIVE DATE.—This Contract shall
23 become effective upon approval and execution by the
24 tribe and the Secretary, unless otherwise provided by
25 law.

1 ~~“(3) FUNDING AMOUNT.—~~Subject to the appro-
2 piation of funds by Congress, the Secretary shall
3 make available to the tribe the total amount speci-
4 fied in the annual agreement incorporated by ref-
5 erence in subsection (f)(2).

6 ~~“(4) PAYMENT.—~~

7 ~~“(A) IN GENERAL.—~~Payments shall be
8 made as expeditiously as possible in compliance
9 with applicable Treasury Department regula-
10 tions and shall include financial arrangements
11 to cover funding during periods under continu-
12 ing resolutions to the extent permitted by such
13 resolutions.

14 ~~“(B) QUARTERLY PAYMENTS.—~~To the ex-
15 tent authorized by law, for each fiscal year cov-
16 ered by this Contract, the Secretary shall make
17 available the funds specified for the fiscal year
18 under the annual agreement by paying to the
19 tribe on a quarterly basis one-quarter of the
20 total amount provided for in the annual agree-
21 ment for that fiscal year, or by using an instru-
22 ment such as a letter of credit, or other method
23 authorized by law, as may be specified in the
24 annual agreement. To the extent applicable,
25 each quarterly payment shall be made on the

1 first day of each quarter of the fiscal year ex-
2 cept for the first quarter, for which the quar-
3 terly payment shall be made not later than the
4 date that is 10 calendar days after the date on
5 which the Office of Management and Budget
6 apportions the appropriations for the fiscal year
7 for the programs, services, functions, and ac-
8 tivities subject to the Contract.

9 ~~“(5) RECORDS.—(A) Except for previously pro-~~
10 ~~vided copies of tribal records that the Secretary~~
11 ~~demonstrates are clearly required to be maintained~~
12 ~~as part of the recordkeeping system of the Depart-~~
13 ~~ment of the Interior, tribal records shall not be con-~~
14 ~~sidered Federal records for purposes of chapter 5 of~~
15 ~~title 5, United States Code.~~

16 ~~“(B) The tribe shall maintain a recordkeeping~~
17 ~~system, and provide reasonable access to records to~~
18 ~~the Secretary that permits the Department of the~~
19 ~~Interior to meet its minimum legal recordkeeping~~
20 ~~program requirements under chapter 31 of title 44,~~
21 ~~United States Code.~~

22 ~~“(6) PROPERTY.—(A) At the request of the~~
23 ~~tribe, the Secretary shall make available to the tribe~~
24 ~~reasonably divisible real property, facilities, equip-~~
25 ~~ment, and personal property that the Department~~

1 had previously utilized to provide the programs,
2 services, functions, and activities now consolidated
3 by the tribe pursuant to subsection (c)(1) of this
4 Contract. A mutually agreed upon list specifying the
5 property, facilities, and equipment so made available
6 shall also be prepared and periodically revised.

7 “(B) Subject to the agreement of the General
8 Services Administration, the Secretary shall delegate
9 to the tribe the authority to acquire such ‘excess’
10 property as may be appropriate in the judgment of
11 the tribe to support the programs, services, func-
12 tions, and activities consolidated under subsection
13 (c)(1) of this Contract. The Secretary agrees to
14 make best efforts to assist the tribe in obtaining
15 such confiscated or excess property as may become
16 available to tribes or local governments. Subject to
17 the agreement of the General Services Administra-
18 tion, a screener identification card (General Services
19 Administration form 2946) shall be issued to the
20 tribe not later than the effective date of this Con-
21 tract. The designated official shall, upon request, as-
22 sist the tribe in securing the use of the card.

23 “(C) The tribe shall, upon acquisition of excess
24 United States Government property, provide ade-
25 quate documentation to the Secretary to facilitate

1 recordation of the property in the Bureau of Indian
2 Affairs Property Inventory.

3 ~~“(D) The tribe shall determine what capital~~
4 ~~equipment, leases, rentals, property, or services it~~
5 ~~shall require to perform its obligations under this~~
6 ~~subsection, and shall acquire and maintain records~~
7 ~~of such capital equipment, property rentals, leases,~~
8 ~~property, or services through tribal procurement pro-~~
9 ~~cedures.~~

10 ~~“(7) SAVINGS.—Notwithstanding any other pro-~~
11 ~~vision of law, any funds appropriated pursuant to~~
12 ~~the Act of November 2, 1921 (42 Stat. 208, chapter~~
13 ~~115; 25 U.S.C. 13) shall remain available until ex-~~
14 ~~pended.~~

15 ~~“(8) TRANSPORTATION.—~~

16 ~~“(A) USE OF MOTOR VEHICLES.—Subject~~
17 ~~to the agreement of the General Services Ad-~~
18 ~~ministration, the Secretary hereby authorizes~~
19 ~~the tribe to obtain interagency motor pool vehi-~~
20 ~~cles and related services, if available, for per-~~
21 ~~formance of any activities under this Contract.~~

22 ~~“(B) USE OF OTHER TRANSPORTATION~~
23 ~~SERVICES.—The Secretary shall make best ef-~~
24 ~~forts to obtain the concurrence of the General~~
25 ~~Services Administration to provide the tribe and~~

1 its employees with eligibility for services and
 2 supplies pursuant to General Services Adminis-
 3 tration programs and contracts with private en-
 4 tities, including airlines and other transpor-
 5 tation carriers.

6 ~~“(9) REGULATORY AUTHORITY.—~~The tribe is
 7 not required to abide by Federal program guidelines,
 8 manuals, or policy directives unless otherwise agreed
 9 to by the tribe and the Secretary.

10 ~~“(10) DISPUTES.—(A) Obligations of the Unit-~~
 11 ed States under this Contract shall be considered to
 12 be ‘duties’ under section 110 of the Indian Self-De-
 13 termination and Education Assistance Act.

14 ~~“(B) Section 110 of the Indian Self-Determina-~~
 15 tion and Education Act shall apply to disputes under
 16 this Contract.

17 ~~“(C) In addition or as an alternative to rem-~~
 18 edies and procedures prescribed by section 110 of
 19 the Indian Self-Determination and Education Assist-
 20 ance Act the parties may jointly—

21 ~~“(i) submit disputes under this Contract to~~
 22 third-party mediation, which for purposes of
 23 this section means that the Secretary and the
 24 tribe nominate a third party who together
 25 choose a third party mediator (‘third-party’

means a person not employed by or significantly involved with either the tribe, the Secretary, or the Department of the Interior);

“(ii) submit the dispute to the Court of the tribe; or

“(iii) submit the dispute to mediation processes provided for under the law of the tribe.

“(D) The Secretary shall accept decisions reached by mediation processes or the tribal court, but shall not be bound by any decision that might be in conflict with the interests of the Indians or the United States.

“(11) TRIBAL ADMINISTRATIVE PROCEDURES.—Tribal law and tribal forums shall provide for administrative due process with respect to programs, services, functions, and activities that are provided by the tribe pursuant to this Contract and pursuant to the Indian Civil Rights Act of 1968 (25 U.S.C. 1301 et seq.).

“(12) SUCCESSOR ANNUAL AGREEMENT.—Negotiations for a successor annual agreement, as provided for in subsection (f)(2), shall begin not later than 120 days prior to the conclusion of the preceding annual agreement. The tribe is hereby assured that future funding of successor annual agreements

1 shall only be reduced pursuant to section 106(b) of
 2 the Indian Self-Determination and Education Assist-
 3 ance Act. The Secretary agrees to prepare and sup-
 4 ply relevant information, and to promptly comply
 5 with any request by the tribe for information reason-
 6 ably needed to determine the funds that may be
 7 available for a successor annual agreement as pro-
 8 vided for in a subsection (f)(2) of this Contract.

9 “(13) SECRETARIAL APPROVAL.—(A) Except as
 10 provided in subparagraph (B), for the term of the
 11 Contract, section 2103 of the Revised Statutes (25
 12 U.S.C. 81) and section 16 of the Act of June 18,
 13 1934 (25 U.S.C. 476), shall not apply to any con-
 14 tract entered into by the tribe in connection with
 15 this Contract.

16 “(B) Each contract entered into by the tribe
 17 shall—

18 “(i) be in writing;

19 “(ii) identify the interested parties, their
 20 authorities, and purposes;

21 “(iii) state the work to be performed; and

22 “(iv) state the basis for any claim, the pay-
 23 ments to be made, and the terms of the con-
 24 tract, which shall be fixed.

25 “(c) OBLIGATION OF THE TRIBE.—

1 “(1) CONSOLIDATION.—Except as provided in
2 subsection (d)(2), the Tribally Controlled Commu-
3 nity College Assistance Act of 1978 (25 U.S.C. 1801
4 et seq.), and title XI of the Education Amendments
5 of 1978 (25 U.S.C. 2001 et seq.), the tribe shall
6 perform the programs, services, functions, and ac-
7 tivities as provided in the annual agreement under
8 subsection (f)(2) of this Contract.

9 “(2) AMOUNT OF FUNDS.—The total amount of
10 funds covered by the Contract provided for in para-
11 graph (1) that the Secretary shall make available to
12 the ~~XXXXXXXX~~ Indian tribe shall be determined in
13 an annual agreement between the Secretary and the
14 tribe, which shall be incorporated in its entirety into
15 this Contract and attached as provided in subsection
16 (f)(2).

17 “(3) TRIBAL PROGRAMS.—The tribe agrees to
18 provide the programs, services, functions, and activi-
19 ties identified in the annual agreement. The tribe
20 pledges to practice good faith in upholding its re-
21 sponsibility to provide such programs, services, func-
22 tions, and activities.

23 “(4) TRUST SERVICES FOR INDIVIDUAL INDI-
24 ANS.—To the extent that the annual agreement en-
25 deavors to provide trust services to individual Indi-

ans that were formerly provided by the Secretary;
 the tribe shall maintain at least the same level of
 service as was previously provided by the Secretary;
 subject to the availability of appropriated funds for
 such services. The tribe pledges to practice good
 faith in upholding its responsibility to provide such
 service. Trust services for individual Indians means
 only services that pertain to land or financial man-
 agement connected to individually held allotments.

“(d) OBLIGATION OF THE UNITED STATES.—

“(1) TRUST RESPONSIBILITY.—The United
 States reaffirms its trust responsibility to the
~~XXXXXXX~~ Indian tribe of the ~~XXXXXXX~~ Indian
 Reservation to protect and conserve the trust re-
 sources of the ~~XXXXXXX~~ Indian tribe and of indi-
 vidual Indians of the ~~XXXXXXX~~ Indian Reserva-
 tion. Nothing in this Contract is intended to, nor
 shall be construed, to terminate, waive, modify, or
 reduce the trust responsibility of the United States
 to the tribe or individual Indians. The Secretary
 pledges to practice good faith in upholding said trust
 responsibility.

“(2) PROGRAMS RETAINED.—As specified in
 the annual agreement, the United States hereby re-
 tains the programs, services, functions, and activities

1 with respect to the tribe that are not specially as-
2 sumed by the tribe in the annual agreement.

3 ~~“(e) OTHER PROVISIONS.—~~

4 ~~“(1) DESIGNATED OFFICIALS.—On or before~~
5 ~~the effective date of this Contract, both the United~~
6 ~~States and the tribe shall provide each other with a~~
7 ~~written designation of a senior official as its rep-~~
8 ~~resentative for notices, proposed amendments to the~~
9 ~~Contract and other purposes for this Contract.~~

10 ~~“(2) INDIAN PREFERENCE IN EMPLOYMENT,~~
11 ~~CONTRACTING, AND SUBCONTRACTING.—Tribal law~~
12 ~~shall govern the provision of Indian preference in~~
13 ~~employment, contracting, and subcontracting pursu-~~
14 ~~ant to this Contract. Section 5 of the Indian Self-~~
15 ~~Determination and Education Assistance Act shall~~
16 ~~apply to individuals who leave Federal employment~~
17 ~~for tribal employment pursuant to this contract.~~

18 ~~“(3) CONTRACT MODIFICATIONS OR AMEND-~~
19 ~~MENT.—To be effective any modifications of this~~
20 ~~Contract shall be in the form of a written amend-~~
21 ~~ment to the Contract, and shall require the written~~
22 ~~consent of the tribe and the Secretary.~~

23 ~~“(4) OFFICIALS NOT TO BENEFIT.—No Mem-~~
24 ~~ber of Congress, or resident commissioner, shall be~~
25 ~~admitted to any share or part of any contract exe-~~

1 cuted pursuant to this Contract, or to any benefit
 2 that may arise therefrom; but this provision shall
 3 not be construed to extend to any contract under
 4 this Contract if made with a corporation for its gen-
 5 eral benefit.

6 ~~“(5) COVENANT AGAINST CONTINGENT FEES.—~~

7 The parties warrant that no person or selling agency
 8 has been employed or retained to solicit or secure
 9 any contract executed pursuant to this Contract
 10 upon an agreement or understanding for a commis-
 11 sion, percentage, brokerage, or contingent fee, ex-
 12 cepting bona fide employees or bona fide established
 13 commercial or selling agencies maintained by the
 14 contractor for the purpose of securing business. For
 15 breach or violation of this warranty the Government
 16 shall have the right to annul any contract without li-
 17 ability or, in its discretion, to deduct from the Con-
 18 tract price or consideration, or otherwise recover, the
 19 full amount of such commission, percentage, broker-
 20 age, or contingent fee.

21 ~~“(f) ATTACHMENTS.—~~

22 ~~“(1) APPROVAL OF CONTRACT.—~~The resolution
 23 of the ~~XXXXXXXX~~ Indian tribe approving this Con-
 24 tract is attached hereto as attachment 1.

1 “(2) ANNUAL AGREEMENT.—The negotiated
2 and duly approved annual agreement with respect to
3 the ~~XXXXXXX~~ Indian tribe which shall only con-
4 tain terms that identify the programs, services, func-
5 tions, and activities to be performed, the general
6 budget category assigned, the funds to be provided,
7 the time and method of payment, and a requirement
8 that all modifications or amendments shall be writ-
9 ten and signed by both parties, is hereby incor-
10 porated in its entirety in this Contract and attached
11 hereto as attachment 2.”.

12 **SEC. 3. REGULATIONS.**

13 “(a) IN GENERAL.—The Secretary of the Interior
14 and the Secretary of Health and Human Services shall
15 not promulgate any regulation relating to grants, con-
16 tracts, or cooperative agreements entered into pursuant to
17 the Indian Self-Determination and Education Assistance
18 Act (25 U.S.C. 450 et seq.).

19 “(b) EXISTING REGULATIONS.—The provisions of
20 this Act shall supersede any conflicting provisions of law
21 or regulation in existence on the date of enactment of this
22 Act.

1 **SEC. 4. REPEAL.**

2 “(a) ~~IN GENERAL.~~—Section 107 of the Indian Self-
3 Determination and Education Assistance Act (25 U.S.C.
4 450k) is repealed.

5 “(b) ~~CONFORMING AMENDMENTS.~~—

6 “(1) Section 104(b) of the Indian Self-Deter-
7 mination and Education Assistance Act (25 U.S.C.
8 450h(b)) is amending by striking “, in accordance
9 with regulations adopted pursuant to section 107,”.

10 “(2) Section 106(h) of such Act (25 U.S.C.
11 450j(h)) is amended by striking “and the rules and
12 regulations adopted by the Secretaries of the Inte-
13 rior and Health and Human Services pursuant to
14 section 107”.

15 **SECTION 1. SHORT TITLE.**

16 *This Act may be cited as the “Indian Self-Determina-*
17 *tion Contract Reform Act of 1994”.*

18 **SEC. 2. GENERAL AMENDMENTS.**

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

21 *(1) in section 4—*

22 *(A) by redesignating subsections (a) through*
23 *(l) as paragraphs (2) through (13), respectively;*
24 *(B) by inserting before paragraph (2), as so*
25 *redesignated, the following new paragraph:*

1 “(1) ‘Construction contract’ means a fixed-price
2 or cost-reimbursement self-determination contract for
3 a construction project. Such term does not include
4 any contract—

5 “(A) that is limited to providing architec-
6 tural and engineering services, planning services,
7 or construction management services (or a com-
8 bination of such services);

9 “(B) for the Housing Improvement Pro-
10 gram or roads maintenance program of the Bu-
11 reau of Indian Affairs administered by the Sec-
12 retary of the Interior; or

13 “(C) for the health facility maintenance and
14 improvement program administered by the Sec-
15 retary of Health and Human Services.”;

16 (C) in each of paragraphs (2) through (12),
17 by striking the semicolon at the end and insert-
18 ing a period;

19 (D) in paragraph (2), as so redesignated, by
20 striking “construction programs” and inserting
21 “Construction programs”;

22 (E) in paragraph (3), as so redesignated, by
23 striking “contract funding base” and inserting
24 “Contract funding base”;

1 (F) in paragraph (4), as so redesignated, by
2 striking “direct program costs” and inserting
3 “Direct program costs”;

4 (G) in paragraph (7), as so redesignated, by
5 striking “indirect costs” and inserting “Indirect
6 costs”;

7 (H) in paragraph (8), as so redesignated,
8 by striking “indirect costs rate” and inserting
9 “Indirect cost rate”;

10 (I) in paragraph (9), as so redesignated, by
11 striking “mature contract” and inserting “Ma-
12 ture contract”;

13 (J) in paragraph (11), as so redesignated,
14 by striking “self-determination contract” and in-
15 serting “Self-determination contract”; and

16 (K) in paragraph (13), as so redesignated,
17 by striking “tribal organization” and inserting
18 “Tribal organization”;

19 (2) by striking subsection (f) of section 5 and in-
20 serting the following new subsection:

21 “(f)(1) For each fiscal year during which an Indian
22 tribal organization receives or expends funds pursuant to
23 a contract entered into, or grant made, under this Act, the
24 tribal organization that requested such contract or grant
25 shall submit to the appropriate Secretary a single-agency

1 *audit report required by chapter 75 of title 31, United*
 2 *States Code.*

3 “(2) *In addition to submitting a single-agency audit*
 4 *report pursuant to paragraph (1), a tribal organization re-*
 5 *ferred to in such paragraph shall submit such additional*
 6 *information concerning the conduct of the program, func-*
 7 *tion, service, or activity carried out pursuant to the con-*
 8 *tract or grant that is the subject of the report as the tribal*
 9 *organization may negotiate with the Secretary.*

10 “(3) *Any disagreement over reporting requirements*
 11 *shall be subject to the declination criteria and procedures*
 12 *set forth in section 102.”;*

13 (3) *in section 7(a), by striking “of subcontrac-*
 14 *tors” and inserting in lieu thereof “or subcontractors*
 15 *(excluding tribes and tribal organizations)”;*

16 (4) *at the end of section 7, add the following new*
 17 *subsection:*

18 “(c) *Notwithstanding subsections (a) and (b), with re-*
 19 *spect to any self-determination contract, or portion of a self-*
 20 *determination contract, that is intended to benefit one tribe,*
 21 *the tribal employment or contract preference laws adopted*
 22 *by such tribe shall govern with respect to the administration*
 23 *of the contract or portion of the contract.”;*

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

1 *“The programs, functions, services, or activities that are*
 2 *contracted under this paragraph shall include administra-*
 3 *tive functions of the Department of the Interior and the De-*
 4 *partment of Health and Human Services (whichever is ap-*
 5 *plicable) that support the delivery of services to Indians,*
 6 *including those administrative activities related to, but not*
 7 *included as part of, the service delivery programs described*
 8 *in this paragraph that are otherwise contractable. The ad-*
 9 *ministrative functions referred to in the preceding sentence*
 10 *shall be contractable without regard to the organizational*
 11 *level within the department that carries out such func-*
 12 *tions.”;*

13 *(6) in section 102(a)—*

14 *(A) in paragraph (2)—*

15 *(i) in the first sentence, by inserting “,*
 16 *or a proposal to amend or renew a self-de-*
 17 *termination contract,” before “to the Sec-*
 18 *retary for review”;*

19 *(ii) in the second sentence—*

20 *(I) by striking “The” and insert-*
 21 *ing “Subject to the provisions of para-*
 22 *graph (4), the”;*

23 *(II) by inserting “and award the*
 24 *contract” after “approve the proposal”;*
 25 *and*

1 (III) by striking “a specific find-
2 ing is made that” and inserting “the
3 Secretary provides written notification
4 to the applicant that contains a spe-
5 cific finding (citing clear and convinc-
6 ing evidence or a controlling legal au-
7 thority) that”;

8 (iii) in subparagraph (A)—

9 (I) by inserting “by the tribal or-
10 ganization” after “rendered”; and

11 (II) by striking “not be satisfac-
12 tory” and inserting “endanger the
13 health, safety, or welfare of the bene-
14 ficiaries”;

15 (iv) in subparagraph (B), by inserting
16 “by the tribal organization” after “re-
17 sources”;

18 (v) in subparagraph (C), by striking
19 the period at the end and inserting the fol-
20 lowing: “because—

21 “(i) the amount of funds proposed
22 under the contract is in excess of the appli-
23 cable funding level for the contract, as deter-
24 mined under section 106(a); or

1 “(ii) the program, function, service, or
2 activity (or portion thereof) that is the sub-
3 ject of the proposal is beyond the scope of
4 programs, functions, services, or activities
5 covered under paragraph (1) because the
6 proposal includes activities that cannot
7 lawfully be carried out by the contractor.”;
8 and

9 (vi) by adding at the end of the para-
10 graph the following new flush sentence:

11 “Notwithstanding any other provision of law, the Secretary
12 may extend or otherwise alter a 60-day or 90-day period
13 specified in the first or second sentence of this subsection,
14 if before the expiration of such period, the Secretary obtains
15 the voluntary and express written consent of the tribe or
16 tribal organization to extend or otherwise alter such pe-
17 riod.”; and

18 (B) by adding at the end the following new
19 paragraph:

20 “(4) The Secretary shall approve any severable portion
21 of a contract proposal that does not support a declination
22 finding described in paragraph (2). If the Secretary deter-
23 mines under such paragraph that a contract proposal—

24 “(A) proposed in part to plan, conduct, or ad-
25 minister a program, function, service, or activity that

1 *is beyond the scope of programs covered under para-*
 2 *graph (1), or*

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

16 *(7) in section 102(b)(3)—*

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

20 *(B) by inserting before the period the follow-*
 21 *ing: “, except that the tribe or tribal organiza-*
 22 *tion may, in lieu of filing such appeal, exercise*
 23 *the option to initiate an action in a Federal dis-*
 24 *trict court and proceed directly to such court*
 25 *pursuant to section 110(a)”;*

1 (8) *in section 102(d), by striking “as provided in*
2 *section 2671 of title 28)” and inserting “as provided*
3 *in section 2671 of title 28, United States Code, and*
4 *including an individual who provides health care*
5 *services pursuant to a personal services contract with*
6 *a tribal organization for the provision of services in*
7 *any facility owned, operated, or constructed under the*
8 *jurisdiction of the Indian Health Service)”;*

9 (9) *by adding at the end of section 102 the fol-*
10 *lowing new subsections:*

11 “(e)(1) *With respect to any hearing or appeal con-*
12 *ducted pursuant to subsection (b)(3), the Secretary shall*
13 *have the burden of proof to establish by clear and convinc-*
14 *ing evidence—*

15 “(A) *the validity of the grounds for declining the*
16 *contract proposal (or portion thereof); and*

17 “(B) *that the tribe or tribal organization, would*
18 *not be able after the Secretary has provided such as-*
19 *sistance as the Secretary is required to provide, to*
20 *overcome the reasons for the objections to the contract*
21 *proposal stated in a notice of declination issued by*
22 *the Secretary pursuant to subsection (b).*

23 “(2) *Notwithstanding any other provision of law, a de-*
24 *cision by an official of the Department of the Interior or*
25 *the Department of Health and Human Services, as appro-*

1 *priate (referred to in this paragraph as the ‘Department’)*
 2 *that constitutes final agency action and that relates to an*
 3 *appeal within the Department that is conducted under sub-*
 4 *section (b)(3) shall be made by an official of the Department*
 5 *who holds a position at a higher organizational level within*
 6 *the Department than the level of the departmental agency*
 7 *(such as the Indian Health Service or the Bureau of Indian*
 8 *Affairs) in which the decision that is the subject of the ap-*
 9 *peal was made.*

10 “(f)(1) Notwithstanding any other provision of law, a
 11 *tribal organization that is located in Alaska that is author-*
 12 *ized by a tribal resolution to enter into a contract under*
 13 *this Act for the operation of a program, function, service,*
 14 *or activity that meets the requirements of this Act may*
 15 *redelegate the authority to enter into such a contract to an-*
 16 *other tribal organization.*

17 “(2) The redelegation of authority referred to in para-
 18 *graph (1) may be carried out by formal action of the gov-*
 19 *erning body of the tribal organization to another tribal or-*
 20 *ganization, if the tribal organization provides advance no-*
 21 *tice of such redelegation and provides a copy of the contract*
 22 *proposal to all tribes served by the tribal organization prior*
 23 *to submitting the contract proposal to the Secretary.*

24 “(3)(A) A tribe that receives notice of a proposed re-
 25 *delegation of authority under paragraph (2) may—*

1 “(i) not later than 60 days after the date of re-
2 ceipt of the notification, notify the tribal organization
3 of its intent to adopt a limiting resolution prohibit-
4 ing or conditioning the proposed redelegation; and

5 “(ii) during the 60-day period beginning on the
6 date of termination of the period referred to in sub-
7 paragraph (A), adopt and transmit such resolution to
8 the tribal organization.

9 “(B) A tribal organization that receives notification
10 of the intent of a tribe to adopt a limiting resolution pursu-
11 ant to subparagraph (A)(i) shall not proceed with the re-
12 delegation that is the subject of the notification until the
13 expiration of the period specified in subparagraph (A)(ii).

14 “(4) Nothing in this subsection may be construed as
15 a limitation on the authority of a tribe to limit, restrict,
16 or rescind a resolution to enter into a contract described
17 in paragraph (1) at any time or in any manner.”;

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

20 “(a)(1) Notwithstanding any other provision of law,
21 subject to paragraph (2), the contracts and cooperative
22 agreements entered into with, and grants made to, tribal
23 organizations pursuant to sections 102 and 103 shall not
24 be subject to any Federal laws (including any regulations)
25 of general applicability relating to contracts or discre-

1 *tionary cooperative agreements entered into or grants made*
2 *by the Federal Government, except to the extent that such*
3 *laws expressly apply to Indian tribes.*

4 “(2)(A) *With respect to a construction contract (or a*
5 *subcontract of such a construction contract), the provisions*
6 *of the Office of Federal Procurement Policy Act (41 U.S.C.*
7 *401 et seq.) and the regulations relating to acquisitions pro-*
8 *mulgated under such Act shall apply only to the extent that*
9 *the application of such provision to the construction con-*
10 *tract (or subcontract) is—*

11 “(i) *necessary to ensure that the contract may be*
12 *carried out in a satisfactory manner;*

13 “(ii) *directly related to the construction activity;*
14 *and*

15 “(iii) *not inconsistent with this Act.*

16 “(B) *A list of the Federal requirements that meet the*
17 *requirements of clauses (i) through (iii) of subparagraph*
18 *(A) shall be included in an attachment to the contract pur-*
19 *suant to negotiations between the Secretary and the tribal*
20 *organization.*

21 “(C)(i) *Except as provided in subparagraph (B), no*
22 *Federal law listed in clause (ii) or any other provision of*
23 *Federal law (including an Executive order) relating to ac-*
24 *quisition by the Federal Government shall apply to a con-*

1 *struction contract that a tribe or tribal organization enters*
 2 *into under this Act, unless expressly provided in such law.*

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

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

6 *“(II) Section 3709 of the Revised Statutes.*

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

9 *“(IV) Title III of the Federal Property and Ad-*
 10 *ministrative Services Act of 1949 (63 Stat. 393 et*
 11 *seq., chapter 288).*

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

14 *“(VI) Chapters 21, 25, 27, 29, and 31 of title 44,*
 15 *United States Code.*

16 *“(VII) The Work Hours Act of 1962 (40 U.S.C.*
 17 *328 et seq.).*

18 *“(VIII) Section 2 of the Act of June 13, 1934 (48*
 19 *Stat 948, chapter 483).*

20 *“(IX) Sections 1 through 12 of the Act of June*
 21 *30, 1936 (49 Stat. 2036 et seq. chapter 881).*

22 *“(X) The Service Control Act of 1965 (41 U.S.C.*
 23 *351 et seq.).*

24 *“(XI) The Small Business Act (15 U.S.C. 631 et*
 25 *seq.).*

1 “(XII) *Executive Order Nos. 12138, 11246,*
2 *11701 and 11758.*”;

3 *(11) by striking subsection (e) and inserting the*
4 *following new subsection:*

5 “(e) *If an Indian tribe or tribal organization requests*
6 *retrocession of the appropriate Secretary for any contract*
7 *or portion of a contract entered into pursuant to this Act,*
8 *unless the tribe or tribal organization rescinds the request*
9 *for retrocession, such retrocession shall become effective on—*

10 “(1) *the earlier of—*

11 “(A) *the date that is 1 year after the date*
12 *the Indian tribe or tribal organization submits*
13 *such request; or*

14 “(B) *the date on which the contract expires;*
15 *or*

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

18 *(12) by striking paragraph (2) of section 105(f)*
19 *and inserting the following new paragraph:*

20 “(2) *donate to an Indian tribe or tribal organi-*
21 *zation title to any personal or real property found to*
22 *be excess to the needs of the Bureau of Indian Affairs,*
23 *the Indian Health Service, or the General Services*
24 *Administration, except that—*

1 “(A) title to property and equipment (other
2 than property and equipment described in sub-
3 paragraph (B)) furnished by the Federal Govern-
4 ment for use in the performance of the contract
5 or purchased with funds under any self-deter-
6 mination contract or grant agreement shall, un-
7 less otherwise requested by the tribe or tribal or-
8 ganization, vest in the appropriate tribe or trib-
9 al organization; and

10 “(B) if property described in subparagraph
11 (A) has a value in excess of \$5,000 at the time
12 of the retrocession, rescission, or termination of
13 the self-determination contract or grant agree-
14 ment, and if such property remains in use in
15 support of the contracted program, at the option
16 of the Secretary, upon the retrocession, rescis-
17 sion, or termination, title to such property and
18 equipment shall revert to the Department of the
19 Interior or the Department of Health and
20 Human Services, as appropriate; and”;

21 (13) by adding at the end of section 105 the fol-
22 lowing new subsections:

23 “(i)(1) If a self-determination contract requires the
24 Secretary to divide the administration of a program that
25 has previously been administered for the benefit of a greater

1 *number of tribes than are represented by the tribal organi-*
2 *zation that is a party to the contract, the Secretary shall—*

3 *“(A) endeavor to minimize any adverse effect on*
4 *the level of services to be provided to all affected*
5 *tribes;*

6 *“(B) notify all affected tribes that are not a*
7 *party to the contract, as soon as practicable after re-*
8 *ceipt of the contract proposal—*

9 *“(i) of the receipt of the contract proposal;*
10 *and*

11 *“(ii) of the right of such tribes to comment*
12 *on the best means of dividing the administration*
13 *of the program to meet the needs of all affected*
14 *tribes;*

15 *“(C) explore the feasibility of instituting cooper-*
16 *ative agreements among the affected tribes that are*
17 *not a party to the contract, the tribal organization*
18 *operating the contract, and the Secretary; and*

19 *“(D)(i) identify the nature of any diminution in*
20 *quality, level, or quantity of services to any affected*
21 *tribe resulting from the division of the program; and*

22 *“(ii) submit a report to Congress that contains*
23 *the identification, together with an estimate of the*
24 *funds required to raise the quality, level, or quantity,*
25 *of services to correct the diminution.*

1 “(2) In determining whether to decline a contract
2 under section 102(a)(2), the Secretary may not consider the
3 effect that a contract proposal would have on—

4 “(A) tribes not represented by the tribe or tribal
5 organization that submits such proposal; or

6 “(B) Indians who are not served by the portion
7 of the program to be contracted.

8 “(3) The Secretary shall take such action as may be
9 necessary to ensure that services are provided to the tribes
10 not served by a self-determination contract.

11 “(j) Upon providing notice to the Secretary, a tribal
12 organization that carries out a self-determination contract
13 may redesign a program, activity, function, or service car-
14 ried out by the tribal organization under the contract, in-
15 cluding any program standard, in such manner as to best
16 meet the local geographic, demographic, economic, cultural,
17 health, and institutional needs of the Indian people and
18 tribes served under the contract. The Secretary shall evalu-
19 ate any proposal to redesign any program, activity, func-
20 tion, or service provided under the contract. With respect
21 to declining to approve a redesigned program, activity,
22 function, or service under this subsection, the Secretary
23 shall apply the criteria and procedures set forth in section
24 102.

1 “(k) For purposes of section 201(a) of the Federal
2 Property and Administrative Services Act of 1949 (40
3 U.S.C. 481(a)) (relating to Federal sources of supply, in-
4 cluding lodging providers, airlines and other transportation
5 providers), a tribal organization carrying out a contract,
6 grant, or cooperative agreement under this Act shall be
7 deemed an executive agency when carrying out such con-
8 tract, grant, or agreement and the employees of the tribal
9 organization shall be eligible to have access to such sources
10 of supply on the same basis as employees of an executive
11 agency have such access.

12 “(l)(1) Upon the request of an Indian tribe or tribal
13 organization, the Secretary shall enter into a lease with the
14 Indian tribe or tribal organization that holds title to, a
15 leasehold interest in, or a beneficial interest in, a facility
16 used by the Indian tribe or tribal organization for the ad-
17 ministration and delivery of services under this Act.

18 “(2) The Secretary shall compensate each Indian tribe
19 or tribal organization that enters into a lease under para-
20 graph (1) for the use of the facility leased for the purposes
21 specified in such paragraph. Such compensation may in-
22 clude rent, depreciation based on the useful life of the facil-
23 ity, principal and interest paid or accrued, operation and
24 maintenance expenses, and such other reasonable expenses

1 *that the Secretary determines, by regulation, to be allow-*
2 *able.*

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

5 “(A) *the provisions of this Act, including sec-*
6 *tions 7, 102(a), 102(b), 103 (d) and (e), 105(f),*
7 *106(a), 106(f), 110 and 111; and*

8 “(B) *section 314 of the Department of the Inte-*
9 *rior and Related Agencies Appropriations Act, 1991*
10 *(104 Stat. 1959).*

11 “(2) *In providing technical assistance to tribes and*
12 *tribal organizations in the development of construction con-*
13 *tract proposals, the Secretary shall provide, not later than*
14 *30 days after receiving a request from a tribe or tribal orga-*
15 *nization, all information available to the Secretary regard-*
16 *ing the construction project, including construction draw-*
17 *ings, maps, engineering reports, design reports, plans of re-*
18 *quirements, cost estimates, environmental assessments or*
19 *environmental impact reports, and archaeological reports.*

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

1 “(A) *The provision of technical assistance pursu-*
2 *ant to section 103 and paragraph (2).*

3 “(B) *A joint scoping session between the Sec-*
4 *retary and the tribe or tribal organization to review*
5 *all plans, specifications, engineering reports, cost esti-*
6 *mates, and other information available to the parties,*
7 *for the purpose of identifying all areas of agreement*
8 *and disagreement.*

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

13 “(D) *A negotiation session during which the Sec-*
14 *retary and the tribe or tribal organization shall seek*
15 *to develop a mutually agreeable contract proposal.*

16 “(E) *Upon the request of the tribe or tribal orga-*
17 *nization, the use of an alternative dispute resolution*
18 *mechanism to seek resolution of all remaining areas*
19 *of disagreement pursuant to the dispute resolution*
20 *provisions under subchapter IV of chapter 5 of title*
21 *5, United States Code.*

22 “(F) *The submission to the Secretary by the tribe*
23 *or tribal organization of a final contract proposal*
24 *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 or-
5 ganization 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 con-
12 siderations.

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 proposal
25 and supporting cost data.

1 “(iii) The costs associated with auditing the gen-
2 eral and administrative costs of the tribal organiza-
3 tion.

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

7 “(n) Notwithstanding any other provision of law, the
8 rental rates for housing provided to an employee by the Fed-
9 eral Government in Alaska pursuant to a self-determination
10 contract shall be determined on the basis of—

11 “(1) the reasonable value of the quarters and fa-
12 cilities (as such terms are defined under section 5911
13 of title 5, United States Code) to such employee, and

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

19 (14) in section 106(a)—

20 (A) in paragraph (1), by inserting before
21 the period at the end of the following: “, without
22 regard to any organizational level within the De-
23 partment of the Interior or the Department of
24 Health and Human Services, as appropriate, at
25 which the program, function, service, or activity

1 or portion thereof, including supportive adminis-
 2 trative functions that are otherwise contractable,
 3 is operated”;

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

6 (C) by striking paragraph (3) and inserting
 7 the following new paragraphs:

8 “(3)(A) The contract support costs that are eligible
 9 costs for the purposes of receiving funding under this Act
 10 shall include the costs of reimbursing each tribal contractor
 11 for reasonable and allowable costs of—

12 “(i) direct program expenses for the operation of
 13 the Federal program that is the subject of the con-
 14 tract; and

15 “(ii) any additional administrative or other ex-
 16 pense related to the overhead incurred by the tribal
 17 contractor in connection with the operation of the
 18 Federal program, function, service, or activity pursu-
 19 ant to the contract.

20 “(B) On an annual basis, during such period as a
 21 tribe or tribal organization operates a Federal program,
 22 function, service, or activity pursuant to a contract entered
 23 into under this Act, the tribe or tribal organization shall
 24 have the option to negotiate with the Secretary the amount

1 *of funds that the tribe or tribal organization is entitled to*
2 *receive under such contract pursuant to this paragraph.*

3 “(4) *For each fiscal year during which a self-deter-*
4 *mination contract is in effect, any savings attributable to*
5 *the operation of a Federal program, function, service, or*
6 *activity under a self-determination contract by a tribe or*
7 *tribal organization (including a cost reimbursement con-*
8 *struction contract) shall—*

9 “(A) *be used to provide additional services or*
10 *benefits under the contract; or*

11 “(B) *be expended by the tribe or tribal organiza-*
12 *tion in the succeeding fiscal year, as provided in sec-*
13 *tion 8.*

14 “(5) *Subject to paragraph (6), during the initial year*
15 *that a self-determination contract is in effect, the amount*
16 *required to be paid under paragraph (2) shall include start-*
17 *up costs consisting of the reasonable costs that have been*
18 *incurred or will be incurred on a one-time basis pursuant*
19 *to the contract necessary—*

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

23 “(B) *to ensure compliance with the terms of the*
24 *contract and prudent management.*

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

7 (15) in section 106(c)—

8 (A) in paragraphs (1) and (2), by striking
9 “indirect costs” each place it appears and insert-
10 ing “indirect costs and other negotiated contract
11 support costs”;

12 (B) in paragraph (4), by striking “and” at
13 the end;

14 (C) in paragraph (5), by striking the period
15 at the end and inserting “; and”; and

16 (D) by adding at the end the following new
17 paragraph:

18 “(6) an accounting of any deficiency of funds
19 needed to maintain the preexisting level of services to
20 any tribes affected by contracting activities under this
21 Act, and a statement of the amount of funds needed
22 for transitional purposes to enable contractors to con-
23 vert from a Federal fiscal year accounting cycle to a
24 different accounting cycle, as authorized by section
25 105(d).”;

1 (16) in section 106(f), by inserting immediately
2 after the second sentence the following new sentence:
3 “For the purpose of determining the 365-day period
4 specified in this paragraph, an audit report shall be
5 deemed to have been received on the date of actual re-
6 ceipt by the Secretary, if, within 60 days after receiv-
7 ing the report, the Secretary does not give notice of
8 a determination by the Secretary to reject the single-
9 agency report as insufficient due to noncompliance
10 with chapter 75 of title 31, United States Code, or
11 noncompliance with any other applicable law.”;

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

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

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

23 “(i) On an annual basis, the Secretary shall consult
24 with, and solicit the participation of, Indian tribes and
25 tribal organizations in the development of the budget for

1 *the Indian Health Service and the Bureau of Indian Affairs*
2 *(including participation of Indian tribes and tribal organi-*
3 *zations in formulating annual budget requests that the Sec-*
4 *retary submits to the President for submission to Congress*
5 *pursuant to section 1105 of title 31, United States Code).’;*
6 *and*

7 *(19) by adding at the end of section 106 the fol-*
8 *lowing new subsections:*

9 *“(j) A tribal organization may use funds provided*
10 *under a self-determination contract to meet matching or*
11 *cost participation requirements under other Federal and*
12 *non-Federal programs.*

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

18 *“(1) Depreciation and use allowances not other-*
19 *wise specifically prohibited by law, including the de-*
20 *preciation of facilities owned by the tribe or tribal or-*
21 *ganization and constructed with Federal financial as-*
22 *sistance.*

23 *“(2) Publication and printing costs.*

24 *“(3) Building, realty, and facilities costs, includ-*
25 *ing rental costs or mortgage expenses.*

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

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

4 “(6) Management studies.

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

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

12 “(9) Costs incurred to raise funds or contribu-
13 tions from non-Federal sources for the purpose of fur-
14 thering the goals and objectives of the self-determina-
15 tion contract.

16 “(10) Interest expenses paid on capital expendi-
17 tures such as buildings, building renovation, or acqui-
18 sition or fabrication of capital equipment, and inter-
19 est expenses on loans necessitated due to delays by the
20 Secretary in providing funds under a contract.

21 “(11) Expenses of a governing body of a tribal
22 organization that are attributable to the management
23 or operation of programs under this Act.

24 “(12) Costs associated with the management of
25 pension funds, self-insurance funds, and other funds

1 *of the tribal organization that provide for participa-*
2 *tion by the Federal Government.*

3 “(l) Not later than 1 year after the date of enactment
4 of this subsection, the Director of the Office of Management
5 and Budget, with the active participation of Indian tribes
6 and tribal organizations, the Inspector General of the De-
7 partment of the Interior, and the head of the Cost Deter-
8 mination Branch of the Department of Health and Human
9 Services, shall develop a separate set of cost principles ap-
10 plicable to Indian tribes and tribal organizations that is
11 consistent with the government-to-government, Federal-trib-
12 al relationship provided for in this Act.

13 “(m) Except with respect to a rescission and
14 reassumption of a contract made under section 109, the Sec-
15 retary shall in no circumstance suspend, withhold, or delay
16 the payment of funds to a tribal organization under a self-
17 determination contract.

18 “(n) The program income earned by a tribal organiza-
19 tion in the course of carrying out a self-determination con-
20 tract—

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

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

25 “(o) To the extent that—

1 “(1) programs, functions, services, or activities
2 carried out by tribal organizations pursuant to con-
3 tracts entered into under this Act reduce the adminis-
4 trative or other responsibilities of the Secretary with
5 respect to the operation of Indian programs and re-
6 sult in savings that have not otherwise been included
7 in the amount of contract funds determined under
8 subsection (a), and

9 “(2) making such savings available to tribal or-
10 ganizations that carry out contracts under this Act
11 will not adversely affect the ability of the Secretary
12 to carry out the responsibilities of the Secretary with
13 respect to other tribes and tribal organizations,
14 the Secretary shall make such savings available to tribal
15 organizations described in paragraph (1).

16 “(p) Notwithstanding any other provision of law (in-
17 cluding any regulation), a tribal organization that carries
18 out a self-determination contract may, with respect to allo-
19 cations within the approved budget of the contract, rebudget
20 to meet contract requirements, if such rebudgeting would
21 not have a significant and adverse effect on the level or na-
22 ture of services provided pursuant to the contract.”.

1 **SEC. 3. CONTRACT SPECIFICATIONS.**

2 *Section 108 of the Indian Self-Determination and*
 3 *Education Assistance Act (25 U.S.C. 450j) is amended to*
 4 *read as follows:*

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

6 *“(a) Each self-determination contract entered into*
 7 *under this Act, or grant made pursuant to this Act, shall—*

8 *“(1) contain, or incorporate by reference, the*
 9 *provisions of the model agreement described in sub-*
 10 *section (c) (with modifications where indicated and*
 11 *the blanks appropriately filled in), and*

12 *“(2) contain such other provisions as are agreed*
 13 *to by the parties.*

14 *“(b) Notwithstanding any other provision of law, the*
 15 *Secretary may make payments pursuant to section 1(b)(4)*
 16 *of such model agreement. As provided in section 1(b)(5) of*
 17 *the model agreement, the records of the tribal government*
 18 *or tribal organization specified in such section shall not be*
 19 *considered Federal records for purposes of chapter 5 of title*
 20 *5, United States Code.*

21 *“(c) The model agreement referred to in subsection*
 22 *(a)(1) reads as follows:*

23 **“SECTION 1. AGREEMENT BETWEEN THE SECRETARY AND**
 24 **THE ____ TRIBAL GOVERNMENT.**

25 *“(a) AUTHORITY AND PURPOSE. —*

1 “(1) *AUTHORITY.*—This agreement, denoted a
2 *Self-Determination Contract* (referred to in this
3 agreement as the “Contract”), is entered into by the
4 Secretary of the Interior or the Secretary of Health
5 and Human Services (referred to in this agreement as
6 the “Secretary”), for and on behalf of the United
7 States pursuant to title I of the Indian Self-Deter-
8 mination and Education Assistance Act (25 U.S.C.
9 450 et seq.) and by the authority of the ____ tribal
10 government or tribal organization (referred to in this
11 agreement as the “Contractor”). Unless otherwise pro-
12 vided in this agreement, the provisions of title I of the
13 Indian Self-Determination and Education Assistance
14 Act (25 U.S.C. 450 et seq.) are incorporated in this
15 agreement.

16 “(2) *PURPOSE.*—Each provision of the Indian
17 *Self-Determination and Education Assistance Act* (25
18 U.S.C. 450 et seq.) and each provision of this Con-
19 tract shall be liberally construed for the benefit of the
20 Contractor to transfer the funding and the following
21 related functions, services, activities, and programs
22 (or portions thereof), including all related adminis-
23 trative functions, from the Federal Government to the
24 Contractor: (List functions, services, activities, and
25 programs).

1 “(3) *TRIBAL LAW AND FORUMS.*—The laws or
2 policies (or both) and procedures of the Contractor
3 shall be applied in the performance of this Contract
4 and the powers and decisions of the tribal court of the
5 Contractor or other dispute resolution mechanism
6 shall be binding to the extent that such laws or poli-
7 cies (or both) and procedures are not inconsistent
8 with applicable Federal laws, including the Indian
9 Self-Determination and Education Assistance Act (25
10 U.S.C. 450 et seq.), construed in accordance with the
11 applicable canons of construction.

12 “(b) *TERMS, PROVISIONS, AND CONDITIONS.*—

13 “(1) *TERM.*—The term of this Contract shall
14 not exceed 3 years, unless the Secretary and the Con-
15 tractor agree to a longer period pursuant to section
16 105(c)(1)(B) of the Indian Self-Determination and
17 Education Assistance Act (25 U.S.C. 450j(c)(1)(B)).
18 Pursuant to section 105(d)(1) of such Act (25 U.S.C.
19 450j(d)), upon the election by the Contractor, the pe-
20 riod of this Contract shall be determined on the basis
21 of a calendar year, unless the Secretary and the Con-
22 tractor agree on a different period in the annual
23 funding agreement incorporated by reference in sub-
24 section (f)(2).

1 “(2) *EFFECTIVE DATE.*—This Contract shall be-
2 come effective upon the date of the approval and exe-
3 cution by the Contractor and the Secretary, unless the
4 Contractor and the Secretary agree on an effective
5 date other than the date specified in this paragraph.

6 “(3) *FUNDING AMOUNT.*—Subject to the avail-
7 ability of appropriations, the Secretary shall make
8 available to the Contractor the total amount specified
9 in the annual funding agreement incorporated by ref-
10 erence in subsection (f)(2). Such amount shall not be
11 less than the applicable amount determined pursuant
12 to section 106(a) of the Indian Self-Determination
13 and Education Assistance Act (25 U.S.C. 450j–1).

14 “(4) *LIMITATION OF COSTS.*—The Contractor
15 shall not be obligated to continue performance that re-
16 quires an expenditure of funds in excess of the
17 amount of funds awarded under this Contract. If, at
18 any time, the Contractor has reason to believe that the
19 total amount required for performance of this Con-
20 tract or a specific activity conducted under this Con-
21 tract would be greater than the amount of funds
22 awarded under this Contract, the Contractor shall no-
23 tify the appropriate Secretary. If the appropriate
24 Secretary does not take such action as may be nec-
25 essary to increase the amount of funds awarded under

1 *this Contract, the Contractor may suspend perform-*
 2 *ance of the Contract until such time as additional*
 3 *funds are awarded. If, pursuant to the preceding sen-*
 4 *tence, the Contractor suspends performance of the*
 5 *Contract, all duties and responsibilities assumed by*
 6 *the Contractor before the date on which the Contractor*
 7 *suspends performance shall be transferred to the ap-*
 8 *propriate Secretary, and the appropriate Secretary*
 9 *shall carry out such duties and responsibilities.*

10 “(5) *PAYMENT.—*

11 “(A) *IN GENERAL.—Payments to the Con-*
 12 *tractor under this Contract shall—*

13 “(i) *be made as expeditiously as prac-*
 14 *ticable; and*

15 “(ii) *include financial arrangements*
 16 *to cover funding during periods covered by*
 17 *joint resolutions adopted by Congress mak-*
 18 *ing continuing appropriations, to the extent*
 19 *permitted by such resolutions.*

20 “(B) *QUARTERLY SEMIANNUAL, LUMP-SUM,*
 21 *AND OTHER METHODS OF PAYMENT.—*

22 “(i) *IN GENERAL.—Pursuant to sec-*
 23 *tion 108(b) of the Indian Self-Determina-*
 24 *tion and Education Assistance Act, and*
 25 *notwithstanding any other provision of law,*

1 for each fiscal year covered by this Contract,
2 the Secretary shall make available to the
3 Contractor the funds specified for the fiscal
4 year under the annual funding agreement
5 incorporated by reference pursuant to sub-
6 section (f)(2) by paying to the Contractor,
7 on a quarterly basis, one-quarter of the total
8 amount provided for in the annual funding
9 agreement for that fiscal year, in a lump-
10 sum payment or as semiannual payments,
11 or any other method of payment authorized
12 by law, in accordance with such method as
13 may be requested by the Contractor and
14 specified in the annual funding agreement.

15 “(ii) METHOD OF QUARTERLY PAY-
16 MENT.—If quarterly payments are specified
17 in the annual funding agreement incor-
18 porated by reference pursuant to subsection
19 (f)(2), each quarterly payment made pursu-
20 ant to clause (i) shall be made on the first
21 day of each quarter of the fiscal year, except
22 that in any case in which the contract year
23 coincides with the Federal fiscal year, pay-
24 ment for the first quarter shall be made not
25 later than the date that is 10 calendar days

1 *after the date on which the Office of Man-*
2 *agement and Budget apportions the appro-*
3 *priations for the fiscal year for the pro-*
4 *grams, services, functions, and activities*
5 *subject to this Contract.*

6 *“(iii) APPLICABILITY.—Chapter 39 of*
7 *title 31, United States Code, shall apply to*
8 *the payment of funds due under this Con-*
9 *tract and the annual funding agreement re-*
10 *ferred to in clause (i).*

11 *“(6) RECORDS AND MONITORING.—*

12 *“(A) IN GENERAL.—Except for previously*
13 *provided copies of tribal records that the Sec-*
14 *retary demonstrates are clearly required to be*
15 *maintained as part of the recordkeeping system*
16 *of the Department of the Interior or the Depart-*
17 *ment of Health and Human Services (or both),*
18 *records of the Contractor shall not be considered*
19 *Federal records for purposes of chapter 5 of title*
20 *5, United States Code.*

21 *“(B) RECORDKEEPING SYSTEM.—The Con-*
22 *tractor shall maintain a recordkeeping system*
23 *and, upon reasonable advance request, provide*
24 *reasonable access to such records to the Sec-*
25 *retary.*

1 “(C) *RESPONSIBILITIES OF CONTRAC-*
 2 *TOR.—The Contractor shall be responsible for*
 3 *managing the day-to-day operations conducted*
 4 *under this Contract and for monitoring activi-*
 5 *ties conducted under this Contract to ensure*
 6 *compliance with the contract and applicable*
 7 *Federal requirements. With respect to the mon-*
 8 *itoring activities of the Secretary, the monitoring*
 9 *visits shall be limited to not more than one per-*
 10 *formance monitoring visit for this Contract by*
 11 *the head of each operating division, depart-*
 12 *mental bureau, or departmental agency, or duly*
 13 *authorized representative of such head unless—*

14 “(i) *the Contractor agrees to one or*
 15 *more additional visits; or*

16 “(ii) *the appropriate official deter-*
 17 *mines that there is reasonable cause to be-*
 18 *lieve that grounds for reassumption of the*
 19 *Contract or other serious contract perform-*
 20 *ance deficiency exists.*

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

1 “(7) *PROPERTY.*—

2 “(A) *IN GENERAL.*—As provided in section
3 105(f) of the Indian Self-Determination and
4 Education Assistance Act (25 U.S.C. 450j(f)), at
5 the request of the Contractor, the Secretary shall
6 make available, or transfer to the Contractor, all
7 reasonably divisible real property, facilities,
8 equipment, and personal property that the Sec-
9 retary has used to provide or administer the pro-
10 grams, services, functions, and activities covered
11 by this Contract. A mutually agreed upon list
12 specifying the property, facilities, and equipment
13 so furnished shall also be prepared by the Con-
14 tractor, with the concurrence of the Secretary,
15 and periodically revised by the contractor, with
16 the concurrence of the Secretary.

17 “(B) *RECORDS.*—The Secretary shall
18 maintain a record of all property referred to in
19 subparagraph (A) or other property acquired by
20 the Contractor under section 105(f)(2)(A) of such
21 Act for purposes of replacement and shall replace
22 such property on the same basis as property re-
23 maining under the control of the Secretary.

24 “(C) *JOINT USE AGREEMENTS.*—Upon the
25 request of the Contractor, the Secretary and the

1 *Contractor shall enter into a separate joint use*
2 *agreement to address the shared use by the par-*
3 *ties of real or personal property that is not rea-*
4 *sonably divisible.*

5 ““(D) ACQUISITION OF PROPERTY.—The
6 *Secretary shall delegate to the Contractor the au-*
7 *thority to acquire such excess property as the*
8 *Contractor may determine to be appropriate in*
9 *the judgment of the Contractor to support the*
10 *programs, services, functions, and activities op-*
11 *erated pursuant to this Contract.*

12 ““(E) CONFISCATED OR EXCESS PROP-
13 *ERTY.—The Secretary shall assist the Contractor*
14 *in obtaining such confiscated or excess property*
15 *as may become available to tribes, tribal organi-*
16 *zations, or local governments.*

17 ““(F) SCREENER IDENTIFICATION CARD.—A
18 *screener identification card (General Services*
19 *Administration form numbered 2946) shall be is-*
20 *sued to the Contractor not later than the effective*
21 *date of this Contract. The designated official*
22 *shall, upon request, assist the Contractor in se-*
23 *curing the use of the card.*

24 ““(G) CAPITAL EQUIPMENT.—The Contrac-
25 *tor shall determine the capital equipment, leases,*

1 *rentals, property, or services the Contractor re-*
 2 *quires to perform the obligations of the Contrac-*
 3 *tor under this subsection, and shall acquire and*
 4 *maintain records of such capital equipment,*
 5 *property rentals, leases, property, or services*
 6 *through applicable tribal procurement proce-*
 7 *dures.*

8 “‘(8) *AVAILABILITY OF FUNDS.*—*Notwithstand-*
 9 *ing any other provision of law, any funds provided*
 10 *under this contract—*

11 “‘(A) *shall remain available until ex-*
 12 *pended; and*

13 “‘(B) *with respect to such funds, no fur-*
 14 *ther—*

15 “‘(i) *approval by the Secretary, or*

16 “‘(ii) *justifying documentation from*
 17 *the Contractor,*

18 *shall be required prior to the expenditure of such*
 19 *funds.*

20 “‘(9) *TRANSPORTATION.*—*Beginning on the ef-*
 21 *fective date of this Contract, the Secretary shall au-*
 22 *thorize the Contractor to obtain interagency motor*
 23 *pool vehicles and related services for performance of*
 24 *any activities carried out under this Contract.*

1 “(10) *REGULATORY AUTHORITY.*—*Except as*
2 *specifically provided in the Indian Self-Determina-*
3 *tion and Education Assistance Act (25 U.S.C. 450 et*
4 *seq.) the Contractor is not required to abide by Fed-*
5 *eral program guidelines, manuals, or policy direc-*
6 *tives, unless otherwise agreed to by the Contractor*
7 *and the Secretary.*

8 “(11) *DISPUTES.*—

9 “(A) *THIRD-PARTY MEDIATION DEFINED.*—
10 *For the purposes of this Contract, the term*
11 *“third-party mediation” means a form of medi-*
12 *ation whereby the Secretary and the Contractor*
13 *nominate a third party who is not employed by*
14 *or significantly involved with the Secretary of*
15 *the Interior, the Secretary of Health and Human*
16 *Services, or the Contractor, to serve as a third-*
17 *party mediator to mediate disputes under this*
18 *Contract.*

19 “(B) *ALTERNATIVE PROCEDURES.*—*In ad-*
20 *dition to, or as an alternative to, remedies and*
21 *procedures prescribed by section 110 of the In-*
22 *dian Self-Determination and Education Assist-*
23 *ance Act (25 U.S.C. 450m–1), the parties to this*
24 *Contract may jointly—*

1 “(i) submit disputes under this Con-
2 tract to third-party mediation;

3 “(ii) submit the dispute to the adju-
4 dicatory body of the Contractor, including
5 the tribal court of the Contractor;

6 “(iii) submit the dispute to mediation
7 processes provided for under the laws, poli-
8 cies, or procedures of the Contractor; or

9 “(iv) use the administrative dispute
10 resolution processes authorized in sub-
11 chapter IV of chapter 5 of title 5, United
12 States Code.

13 “(C) *EFFECT OF DECISIONS.*—The Sec-
14 retary shall be bound by decisions made pursu-
15 ant to the processes set forth in subparagraph
16 (B), except that the Secretary shall not be bound
17 by any decision that significantly conflicts with
18 the interests of Indians or the United States.

19 “(12) *ADMINISTRATIVE PROCEDURES OF CON-*
20 *TRACTOR.*—Pursuant to the Indian Civil Rights Act
21 of 1968 (25 U.S.C. 1301 et seq.), the laws, policies,
22 and procedures of the Contractor shall provide for ad-
23 ministrative due process (or the equivalent of admin-
24 istrative due process) with respect to programs, serv-

ices, functions, and activities that are provided by the Contractor pursuant to this Contract.

“(13) *SUCCESSOR ANNUAL FUNDING AGREEMENT.*—

“(A) *IN GENERAL.*—Negotiations for a successor annual funding agreement, provided for in subsection (f)(2), shall begin not later than 120 days prior to the conclusion of the preceding annual funding agreement. The funding for each such successor annual funding agreement shall only be reduced pursuant to section 106(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j-1(b)).

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

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

“(A) *IN GENERAL.*—Except as provided in subparagraph (B), for the term of the Contract,

1 *section 2103 of the Revised Statutes (25 U.S.C.*
 2 *81) and section 16 of the Act of June 18, 1934*
 3 *(48 Stat. 987, chapter 576; 25 U.S.C. 476), shall*
 4 *not apply to any contract entered into in con-*
 5 *nection with this Contract.*

6 ““(B) *REQUIREMENTS.—Each Contract en-*
 7 *tered into by the Contractor with a third party*
 8 *in connection with performing the obligations of*
 9 *the Contractor under this Contract shall—*

10 ““(i) *be in writing;*

11 ““(ii) *identify the interested parties,*
 12 *the authorities of such parties, and purposes*
 13 *of the Contract;*

14 ““(iii) *state the work to be performed*
 15 *under the Contract; and*

16 ““(iv) *state the process for making any*
 17 *claim, the payments to be made, and the*
 18 *terms of the Contract, which shall be fixed.*

19 ““(c) *OBLIGATION OF THE CONTRACTOR.—*

20 ““(1) *CONTRACT PERFORMANCE.—Except as pro-*
 21 *vided in subsection (d)(2), the Contractor shall per-*
 22 *form the programs, services, functions, and activities*
 23 *as provided in the annual funding agreement under*
 24 *subsection (f)(2) of this Contract.*

1 “(2) *AMOUNT OF FUNDS.*—The total amount of
 2 funds to be paid under this Contract shall be deter-
 3 mined in an annual funding agreement entered into
 4 between the Secretary and the Contractor, which shall
 5 be incorporated into this Contract.

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

12 “(4) *TRUST SERVICES FOR INDIVIDUAL*
 13 *INDIANS.*—

14 “(A) *IN GENERAL.*—To the extent that the
 15 annual funding agreement provides funding for
 16 the delivery of trust services to individual Indi-
 17 ans that have been provided by the Secretary, the
 18 Contractor shall maintain at least the same level
 19 of service as the Secretary provided for such in-
 20 dividual Indians, subject to the availability of
 21 appropriated funds for such services.

22 “(B) *TRUST SERVICES TO INDIVIDUAL IN-*
 23 *DIANS.*—For the purposes of this paragraph
 24 only, the term “trust services for individual In-
 25 dians” means only those services that pertain to

1 *land or financial management connected to indi-*
 2 *vidually held allotments.*

3 “(5) *FAIR AND UNIFORM SERVICES.*—*The Con-*
 4 *tractor shall provide services under this Contract in*
 5 *a fair and uniform manner and shall provide access*
 6 *to an administrative or judicial body empowered to*
 7 *adjudicate or otherwise resolve complaints, claims,*
 8 *and grievances brought by program beneficiaries*
 9 *against the Contractor arising out of the performance*
 10 *of the Contract.*

11 “(d) *OBLIGATION OF THE UNITED STATES.*—

12 “(1) *TRUST RESPONSIBILITY.*—

13 “(A) *IN GENERAL.*—*The United States re-*
 14 *affirms the trust responsibility of the United*
 15 *States to the ____ Indian tribe(s) to protect and*
 16 *conserve the trust resources of the Indian tribe(s)*
 17 *and the trust resources of individual Indians.*

18 “(B) *CONSTRUCTION OF CONTRACT.*—*Noth-*
 19 *ing in this Contract may be construed to termi-*
 20 *nate, waive, modify, or reduce the trust respon-*
 21 *sibility of the United States to the tribe(s) or in-*
 22 *dividual Indians.*

23 “(C) *DUTIES OF SECRETARY.*—*The Sec-*
 24 *retary shall act in good faith in upholding such*
 25 *trust responsibility. To the extent that health*

1 *programs are included in this Contract, the Sec-*
 2 *retary shall act in good faith in cooperating with*
 3 *the Contractor to achieve the goals set forth in*
 4 *the Indian Health Care Improvement Act (25*
 5 *U.S.C. 1601 et seq.).*

6 “‘(2) *PROGRAMS RETAINED.*—*As specified in the*
 7 *annual funding agreement, the United States hereby*
 8 *retains the programs, services, functions, and activi-*
 9 *ties with respect to the tribe(s) that are not specifi-*
 10 *cally assumed by the Contractor in the annual fund-*
 11 *ing agreement under subsection (f)(2).*

12 “‘(e) *OTHER PROVISIONS.*—

13 “‘(1) *DESIGNATED OFFICIALS.*—*Not later than*
 14 *the effective date of this Contract, the United States*
 15 *shall provide to the Contractor, and the Contractor*
 16 *shall provide to the United States, a written designa-*
 17 *tion of a senior official to serve as a representative*
 18 *for notices, proposed amendments to the Contract,*
 19 *and other purposes for this Contract.*

20 “‘(2) *CONTRACT MODIFICATIONS OR AMEND-*
 21 *MENT.*—

22 “‘(A) *IN GENERAL.*—*Except as provided in*
 23 *subparagraph (B), no modification to this Con-*
 24 *tract shall take effect unless such modification is*
 25 *made in the form of a written amendment to the*

1 *Contract, and the Contractor and the Secretary*
2 *provide written consent for the modification.*

3 *“(B) EXCEPTION.—The addition of supple-*
4 *mental funds for programs, functions, and ac-*
5 *tivities (or portions thereof) already included in*
6 *the annual funding agreement under subsection*
7 *(f)(2) shall not be subject to subparagraph (A).*

8 *“(3) OFFICIALS NOT TO BENEFIT.—No Member*
9 *of Congress, or resident commissioner, shall be admit-*
10 *ted to any share or part of any contract executed pur-*
11 *suant to this Contract, or to any benefit that may*
12 *arise from such contract. This paragraph may not be*
13 *construed to apply to any contract with a third party*
14 *entered into under this Contract if such contract is*
15 *made with a corporation for the general benefit of the*
16 *corporation.*

17 *“(4) COVENANT AGAINST CONTINGENT FEES.—*
18 *The parties warrant that no person or selling agency*
19 *has been employed or retained to solicit or secure any*
20 *contract executed pursuant to this Contract upon an*
21 *agreement or understanding for a commission, per-*
22 *centage, brokerage, or contingent fee, excepting bona*
23 *fide employees or bona fide established commercial or*
24 *selling agencies maintained by the Contractor for the*
25 *purpose of securing business.*

1 “(f) ATTACHMENTS.—

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

8 “(2) ANNUAL FUNDING AGREEMENT.—

9 “(A) IN GENERAL.—The negotiated and
10 duly approved annual funding agreement under
11 this Contract shall only contain—

12 “(i) terms that identify the programs,
13 services, functions, and activities to be per-
14 formed or administered, the general budget
15 category assigned, the funds to be provided,
16 and the time and method of payment; and

17 “(ii) such other provisions, including
18 a brief description of the programs, services,
19 functions, and activities to be performed
20 (including those supported by financial re-
21 sources other than those provided by the
22 Secretary), as the Contractor may request
23 and to which the parties agree.

24 “(B) INCORPORATION BY REFERENCE.—

25 The annual funding agreement is hereby incor-

1 *porated in its entirety in this Contract and at-*
 2 *tached to this Contract as attachment 2.'''.*

3 **SEC. 4. ADDITIONAL AMENDMENTS.**

4 *The Indian Self-Determination and Education Assist-*
 5 *ance Act (25 U.S.C. 450 et seq.), as amended by sections*
 6 *2 and 3, is further amended—*

7 *(1) in section 109—*

8 *(A) by striking “action as prescribed by*
 9 *him” and all that follows through “in such cases,*
 10 *he” and inserting the following: “action as pre-*
 11 *scribed by the Secretary to remedy the contract*
 12 *deficiency, except that the appropriate Secretary*
 13 *may, upon written notice to a tribal organiza-*
 14 *tion, and the tribe served by the tribal organiza-*
 15 *tion, immediately rescind a contract or grant*
 16 *and resume control or operation of a program,*
 17 *activity, function, or service, if the Secretary*
 18 *finds that (i) there is an immediate threat of im-*
 19 *minent harm to the safety of any person, and*
 20 *(ii) such threat arises from the failure of the con-*
 21 *tractor to fulfill the requirements of the contract.*
 22 *In such cases, the Secretary”;*

23 *(B) by striking the second period after “the*
 24 *tribal organization may approve”; and*

1 (C) by inserting before the last sentence, the
 2 following new sentence: “In any hearing or ap-
 3 peal provided for under this section, the Sec-
 4 retary shall have the burden of proof to establish,
 5 by clear and convincing evidence, the validity of
 6 the grounds for rescinding, assuming, or
 7 reassuming the contract that is the subject of the
 8 hearing.”;

9 (2) in section 110(a), by inserting immediately
 10 before the period at the end the following: “(including
 11 immediate injunctive relief to reverse a declination
 12 finding under section 102(a)(2) or to compel the Sec-
 13 retary to award and fund an approved self-deter-
 14 mination contract)”; and

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

21 **SEC. 5. REGULATIONS.**

22 *The Indian Self-Determination and Education Assist-*
 23 *ance Act (25 U.S.C. 450 et seq.), as amended by sections*
 24 *2 through 4, is further amended—*

1 (1) by striking subsections (a) and (b) of section
2 107 and inserting the following new subsections:

3 “(a)(1) Except as may be specifically authorized in
4 this subsection, or in any other provision of this Act, the
5 Secretary of the Interior and the Secretary of Health and
6 Human Services may not promulgate any regulation, nor
7 impose any nonregulatory requirement, relating to self-de-
8 termination contracts or the approval, award, or declina-
9 tion of such contracts, except that the Secretary of the Inte-
10 rior and the Secretary of Health and Human Services may
11 promulgate regulations under this Act relating to chapter
12 171 of title 28, United States Code, commonly known as
13 the ‘Federal Tort Claims Act’, the Contract Disputes Act
14 of 1978 (41 U.S.C. 601 et seq.), declination appeal proce-
15 dures, reassumption procedures, and retrocession proce-
16 dures.

17 “(2)(A) The regulations promulgated under this Act,
18 including the regulations referred to in this subsection, shall
19 be promulgated—

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

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

1 “(B) The authority to promulgate regulations set forth
2 in this Act shall expire if final regulations are not promul-
3 gated within 1 year after the date of enactment of the In-
4 dian Self-Determination Contract Reform Act of 1994.

5 “(b) The provisions of this Act shall supersede any con-
6 flicting provisions of law (including any conflicting regula-
7 tions) in effect on the day before the date of enactment of
8 the Indian Self-Determination Contract Reform Act of
9 1994.”; and

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

12 “(d)(1) In drafting and promulgating regulations as
13 provided in subsection (a) (including drafting and promul-
14 gating any revised regulations), the Secretary of the Inte-
15 rior and the Secretary of Health and Human Services shall
16 confer with, and allow for active participation by, rep-
17 resentatives of Indian tribes, tribal organizations, individ-
18 ual tribal members, and representatives of other parties in-
19 terested in the implementation of this Act.

20 “(2)(A) In carrying out rulemaking processes under
21 this Act, the Secretary of the Interior and the Secretary
22 of Health and Human Services shall follow the guidance
23 of—

1 “(i) subchapter III of chapter 5 of title 5, United
2 States Code, commonly known as the ‘Negotiated
3 Rulemaking Act of 1990’; and

4 “(ii) the recommendations of the Administrative
5 Conference of the United States numbered 82–4 and
6 85–5 entitled ‘Procedures for Negotiating Proposed
7 Regulations’ under sections 305.82–4 and 305.85–5 of
8 title 1, Code of Federal Regulations, and any succes-
9 sor recommendation or law (including any successor
10 regulation).

11 “(B) The tribal participants in the negotiation process
12 referred to in subparagraph (A) shall be chosen by the tribes
13 and tribal organizations participating in regional and na-
14 tional meetings that the Secretary shall convene. The par-
15 ticipants shall represent the groups described in this para-
16 graph and shall include tribal representatives from all geo-
17 graphic regions.

18 “(C) The negotiations referred to in subparagraph (B)
19 shall be conducted in a timely manner. Proposed regula-
20 tions to implement the amendments made by the Indian
21 Self-Determination Contract Reform Act of 1994 shall be
22 published in the Federal Register by the Secretary of the
23 Interior and the Secretary of Health and Human Services
24 not later than 180 days after the date of enactment of such
25 Act.

1 “(D) Notwithstanding any other provision of law (in-
 2 cluding any regulation), the Secretary of the Interior and
 3 the Secretary of Health and Human Services are authorized
 4 to jointly establish and fund such interagency committees
 5 or other interagency bodies, including advisory bodies com-
 6 prised of tribal representatives, as may be necessary or ap-
 7 propriate to carry out the provisions of this Act.

8 “(e) Notwithstanding any other provision of law (in-
 9 cluding any regulation), the Secretary may, with respect
 10 to a contract entered into under this Act, make exceptions
 11 in the regulations promulgated by the Secretary to carry
 12 out this Act, or waive such regulations, if the Secretary
 13 finds that such exception or waiver is in the best interest
 14 of the Indians served by the contract. The Secretary shall
 15 review each request for a waiver submitted by a tribe or
 16 tribal organization under this subsection in accordance
 17 with the declination criteria and procedures set forth in sec-
 18 tion 102(a)(2).”.

19 **SEC. 6. CONFORMING AMENDMENTS.**

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

S 2036 RS——2

S 2036 RS——3

S 2036 RS——4

S 2036 RS——5