

Public Law 93-638
The Indian Self-Determination and Education Assistance Act
of 1975, As Amended

Contracting

Authority to Contract

The US Government as a sovereign has the right to contract as an essential element of its sovereign powers

•Legal and Regulatory Framework

Constitution: Sec. VIII, Clause 18: “Necessary and Proper” clause, provides:

–“To make all laws which shall be ‘necessary and proper’ for carrying into execution of the foregoing powers and all other powers vested by this Constitution in the Government of the United States or in any Department or officer thereof.”

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What is a Contract?

- A promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes a duty.
- A written agreement, enforceable by law, between two or more parties for the doing of something in exchange for payment of reasonable costs incurred.

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What is a Contract?

- An agreement between two or more parties through which the parties must, by offer and acceptance, manifest assent to the terms of the agreement.
 - A mutually binding legal relationship obligating the seller to furnish the supplies or services and the buyer to pay for them.
- A mutually binding legal relationship obligating the seller to furnish the supplies or services and the buyer to pay for them.

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Type of Agreement: [31 USC Chapter 63]

Contract: The principal purpose of the relationship is to acquire by purchase, lease, or barter, property or services for the direct benefit and use of the Federal Government. (This is Federal purchase for Federal or third-party use.)

Grant: (in lieu of a Contract): The principal purpose of the relationship is to transfer money, property, services or anything of value to the recipient in order to accomplish a public purpose of support or stimulation; there will be no substantial involvement between the Federal agency and the recipient during performance of the activity. (The Federal agency is a “patron” of the grantee.)

Cooperative Agreement (in lieu of a Contract): The principal purpose of the relationship is to transfer money, property, services or anything of value to the recipient in order to accomplish a public purpose of support or stimulation; there will be

substantial involvement between the Federal agency and the recipient during performance of the activity. (The Federal agency is a ‘partner’ of the grantee.)

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History of Contracting

•**Federal Property and Administrative Services Act of 1949 (June 30, 1949; 63 Stat. 393; 41 USC 252)**

•**FPR: Federal Procurement Regulation - 41 CFR**

•**Interior Procurement Regulations - 41CFR 14**

•**BIA Procurement Regulation - 41 CFR 14H**

•**BIAPR Self Determination - 41-CFR 14H-70**

Office of Federal Procurement Policy Act (August 30, 1974; Pub. Law 93-400)

–**FAR:Federal Acquisition Regulation -48 CFR Interior Regulation, 48 CFR 1400**

•**Indian Self-Determination and Education Assistance Act of 1975 (Pub. Law 93-638; November 4, 1975; 88 Stat. 2203; 25 USC 450)**

–**Regulations- 25 CFR 273 and 276**

25 CFR Chapter V, Part 900 Subparts A-P (Federal Register, Vol. 61 No. 122, Monday, June 24, 1996)

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Elements of a Contract

•**Competent Parties**

–Adults

–Have Authority

•**Offer and Acceptance**

–Agreement

•**Mutual Consideration**

–Obligations must be reciprocal

•**Lawful Purpose**

–Prohibited or not authorized by law

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Contract Number

CTF55T43001

•**C: Contract**

•**T: Pub. Law 93-638 Contract**

•**F: Minneapolis Area Office**

•**55: Great Lakes Agency**

•**T: Tribal Contract OR**

•**X: Tribal Organization**

•**430: Tribal Specific Identifier or**

•001: Tribal Organization Identifier

•01: Contract Number

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Changed Normal Federal Procurement Relationship [Sec.102 (a) (1)]

•**Government Decision to contract:** “The Secretary is directed, upon the request of any Indian tribe by tribal resolution, to enter into a self-determination contract or contracts...”

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Changed Normal Federal Procurement Relationship [Sec.102 (a) (1)]

•**Waived Federal Procurement Laws and Regulations.** [Sec. 105 (a)]

–Negotiation without advertising

–No Bid or Performance Bond Requirement

•**Authorized Self-determination Contracts to Include Provisions for the Performance of Personal Services.** [Sec. 105 (G)]

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Contract Award Authority

•**Federal Acquisition Regulations DO NOT APPLY.** (Pub. Law 100-472)

•**Warranted Contracting Officer NOT REQUIRED.**

•**Signature Authority delegated to Awarding Official.** (Bulletin 9313; 10 BIAM 15, January 12, 1993)

AMENDMENTS

•**Pub. Law 93-638 (25 USC 450)**

•**Pub. Law 98-250 (98 Stat. 118)**

•**Pub. Law 100-202 (101 Stat. 1329)**

•**Pub. Law 100-446 (102 Stat. 1793)**

•**Pub. Law 100-472 (102 Stat. 2285)**

•**Pub. Law 100-581 (102 Stat. 2938)**

•**Pub. Law 101-301 (104 Stat. 206)**

•**Pub. Law 101-644 (104 Stat. 4662)**

•**Pub. Law 102-184 (105 Stat. 1278)**

•**Pub. Law 102-573 (106 Stat. 4591)**

•**Pub. Law 103-413 (108 Stat. 4250)**

•**Pub. Law 103-435 (108 Stat. 4566)**

•**Pub. Law 103-437 (H.R. 4777)**

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PURPOSE

- Affirms the unique and continuing Federal relationship with Indian People;
- To provide for the maximum Indian participation in the government and education of Indian People;
- to provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians;
- To encourage the development of human resources of the Indian people;
- To establish a program of assistance to upgrade Indian education; and,
- To support the right of Indian citizens to control their own educational activities.

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INTENT:

- To assure maximum participation by Indian tribes in planning and administration of Federal services, programs and activities for Indian communities..
- Through this legislation, a Tribal Governing Body has the authority to:
 - Contract for the administration and operation of a Bureau program.
 - Obtain a grant to strengthen and improve tribal government.
 - Establish a Johnson-O’Malley Indian Education Committee.
 - Redesign a Bureau service program to better meet tribally established goals and priorities.

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KEY PRINCIPLES:

•The Tribal Governing Body is the sole authority for the Tribe in regard to exercising the Self-Determination Authority.

- This authority is exercised on behalf of the Indian people the tribal governing body represents.
- No tribal organization may use the provisions of the Act unless specifically authorized to do so by the tribal governing body of the tribe.

•THE ACT AND REGULATIONS IMPOSE NO COMPULSORY REQUIREMENTS ON TRIBES TO USE THE AUTHORITY PROVIDED BY THE ACT OR TO ESTABLISH “SELF-DETERMINATION” PROGRAMS.

•The Act provides tribes with four flexible and innovative tools to help them respond to their own critical needs and priorities

- Grants to Tribal governing bodies.
- Contracting of Bureau programs
- Planning and designing programs that the Bureau continues to operate.
- Personnel options.
- Tribal Operation and direction of Bureau Programs for Indians is intended to increase.
 - Tribal Governments will, where practical and reasonable, increase their responsibilities.
 - Federal involvement will shift to technical assistance, evaluation, and monitoring.

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Public Law 98-250

April 3, 1984 (Stat. 118)

•Adds Section 9 to the Act:

–“**Sec. 9.** The provisions of this Act shall not be subject to the requirements of the Federal Grant and Cooperative Agreement Act of 1977 (Public Law 95-224; 92 Stat. 3); *Provided*, That a grant agreement or a cooperative agreement may be utilized in lieu of a contract, under sections 102 and 103 of this Act when mutually agreed to by the appropriate Secretary and the tribal organization involved.”

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Pub. Law 100-202

•Affects Indian Health Service:

–Provides two-year availability for funds made available to tribes and tribal organizations through contracts under the Act.

–Establishes an Indian Self-Determination Fund, which shall remain available until expended, for the transitional costs of initial or expanded tribal contracts, grants or cooperative agreements awarded under the Act.

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Pub. Law 100-472

•INTENT:

–REAFFIRMS THE UNIQUE AND CONTINUING FEDERAL RELATIONSHIP WITH INDIAN PEOPLE.

–TO INCREASE TRIBAL PARTICIPATION IN THE MANAGEMENT OF FEDERAL INDIAN PROGRAMS

–TO HELP ENSURE LONG-TERM FINANCIAL STABILITY FOR TRIBALLY-RUN PROGRAMS.

–TO REMOVE MANY OF THE ADMINISTRATIVE AND PRACTICAL BARRIERS THAT SEEM TO PERSIST UNDER THE INDIAN SELF-DETERMINATION ACT.

–TO INCREASE THE ABILITY OF TRIBAL GOVERNMENTS TO PLAN AND DELIVER SERVICES APPROPRIATE TO THE NEEDS OF TRIBAL MEMBERS.

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Pub. Law 100-472

•Sec. 3: DECLARATION OF POLICY

–Reaffirms and strengthens the Government-to-Government relationship.

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Pub. Law 100-472

•Sec. 4: DEFINITIONS: Added the following definitions:

–**Construction Programs:** Means programs for the planning, design, construction, repair, improvement, and expansion of buildings or facilities, including but not limited to, housing, law enforcement and detention facilities, sanitation and water systems, roads, schools, administration and health facilities, irrigation and agricultural work, and water conservation, flood control or port facilities.

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Pub. Law 100-472

•Sec. 4: DEFINITIONS: Added the following definitions:

- Contract costs**
- Contract Funding Base**
- Direct Program Costs**
- Indirect Costs**
- Indirect Cost Rate**

–**Mature Contract:** means a self-determination contract that has been continuously operated by a tribal organization for three or more years, and for which there are no significant and material exceptions in the annual financial audit of the tribal organization: *Provided,*

•Sec. 4: DEFINITIONS: Added the following definitions:

–**Mature Contract: (Cont.) *Provided,*** That upon the request of a tribal organization or tribal governing body, a contract of the tribal organization in existence on the date of the enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1988 which meets this definition shall be considered to be a mature contract.

•Sec. 4: DEFINITIONS: Added the following definitions: (Cont.)

–**Self Determination Contract:** Means a contract entered into pursuant to this Act between a tribal organization and the appropriate Secretary [for] the planning, conduct and administration of programs or services which are otherwise provided to Indian tribes and their members pursuant to Federal law: *Provided,* that no contract entered into pursuant to this Act shall be construed to be a procurement contract

•Sec. 5 REPORTING AND AUDIT REQUIREMENTS

- Provides for Reporting and Audit Requirements.
- Provides for Secretarial Reporting requirements.

•Sec. 8 CARRYOVER OF FUNDS

- Reduces requirements on Tribes.

•Title I: Indian Self-Determination Act

•Sec. 102 Self-Determination Contracts

–Tribal Resolution to request contract.

–Extends contractibility to “any program for the benefit of Indians because of their status as Indians without regard to the Agency or Office within DOI within which it is performed”.

•Title I: Indian Self-Determination Act

•Sec. 102 Self-Determination Contracts (Cont.)

- 60-90 day timeframe for Declination and Approval.

- Declination Issues
- Removes Factors
- Removes Considerations

Title I: Indian Self-Determination Act

- Sec. 102** Self-Determination Contracts (Cont.)
- Consolidation of Mature Contracts
- Liability Insurance (Federal Tort Claims Act)

Sec. 103 TECHNICAL ASSISTANCE AND GRANTS TO INDIAN TRIBAL ORGANIZATIONS

- Provide Technical Assistance on a non-reimbursable basis.**
- Provide Grants for:**
 - Third Party Technical Assistance
 - Planning, designing, monitoring, and evaluating Federal Programs and administrative functions.

•**Sec. 104 PERSONNEL**

- Direct Hire
- Intergovernmental Personnel Act
- Converts Excepted Appointment to Career Appointment

•**Sec. 105 ADMINISTRATIVE PROVISIONS**

- Federal Acquisition Regulations (FAR) Applicability
- Contract Term:
 - Non-Mature
 - Mature
- Calendar-Year Contracting and Report
- Retrocession
- Property Donation
- Personal**
- Real**

•**Sec. 106 CONTRACT FUNDING AND INDIRECT COSTS**

- Contract Funding Reductions
- Annual Report on Implementation of the Act
- Theoretical Over/under Recovery
- Indebtedness (Theoretical Over/under Recovery)
- Collection Action
- Addition of Indirect Cost Funds
- Indirect Cost for Construction Contracts

•**Sec. 107 PROMULGATION OF RULES AND REGULATIONS**

•**Sec. 108 REPORTS**

–Redesignated as Subsection 5 (f)

•**Sec. 110 APPEALS**

–Court of Claims

–No Unilateral Contract Modifications

–Equal Access to Justice Act

–Applicability of Contract Disputes

–Act

•**Sec. 111 EFFECT ON EXISTING RIGHTS**

•**TITLE III: TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT**

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Pub. Law 100-581

•Makes various technical amendments to Pub. Law 100 472.

•Provides for hearings on the record.

•Makes the Equal Access to Justice Act applicable to administrative appeals regarding self-determination contracts.

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Pub. Law 101-301

May 24, 1990 (104 Stat. 206)

•**Makes various technical amendments to Pub. Law 93-638:**

–**Section 2 (a) (5)**, removes reference to the Federal Grant and Co-operative Agreement Act (Pub. Law 95-224) and inserts Chapter 63 of Title 31, USC

–**Section 2 (b)**, provides that the Secretary of the Interior will not revise or amend a self-determination contract with a tribe without the tribe's consent.

• **Makes various technical amendments to Pub. Law 93-638: (Cont.)**

•**Section 5 (f)** amends provisions of Pub. Law 93-638 through amendments to Pub. Law 100-297 affecting administrative cost grants and indirect costs.

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Pub. Law 101-644, Title II

• **Nov. 29, 1990, Title II, (104 Stat. 4662), The Indian Self-Determination and Education Assistance Act Amendments of 1990.**

•**Sec. 202 Amends Pub. Law 93-638.**

–**Sec. 4 (h) Mature Contract.** The definition of a “mature contract” was amended to delete “*in existence on the date of enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1988*”.

- **Nov. 29, 1990, Title II, (104 Stat. 4662), The Indian Self-Determination and Education Assistance Act Amendments of 1990.**

•**Sec. 202 Amends Pub. Law 93-638.**

–**Sec. 4 (j) Self-Determination Contract.**

•**Adds “contract (or grant or cooperative agreement utilized under Section 9 of this Act.”**

Nov. 29, 1990, Title II, (104 Stat. 4662), The Indian Self-Determination and Education Assistance Act Amendments of 1990.

•**Sec. 202 Amends Pub. Law 93-638. (Cont.)**

–**Sec. 5 (d) Reporting and Audit Requirements.**

•Extends “Contract Savings” pro-vision to the entire Act, not just Sec. 102

•Repayment of unused or unexpended funds shall be to the United States Treasury through the appropriate Secretary.

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Pub. Law 101-644, Title II

•**Sec. 203 Amends Title I**

–**Sec. 102 (d)** was amended to extend Federal Tort Claims Act coverage to Indian tribes, tribal organizations or Indian contractors carrying out medical, surgical, dental or related services under this Section while operating emergency motor vehicles.

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Pub. Law 101-644, Title II

•**Sec. 203 Amends Title I**

–**Section 105 © (1) (B)** was amended to provide that a mature self-determination contract shall be for a “definite or indefinite term, as requested by the tribe (or, to the extent not limited by tribal resolution, by the tribal organization).”

•**Section 105 (d) (1) and (2) were amended:**

–**Subsection (1)** requires the Secretary to use the calendar year as the basis for any contracts and grants under the Act, unless the Secretary and the tribe or tribal organization agree on a different period.

- **Section 105 (d) (1) and (2) were amended:**

–**Subsection (2)** requires that the Secretary shall, on or before April 1 of each year beginning in 1992, submit a report to the Congress on the amount of any additional obligational authority needed to implement this subsection in the following fiscal year.

• **Section 105 (f) (2) and (3)** were amended. These subsections address the donation of excess personal property to tribes or tribal organizations. The amendments inserted the words “or real” after the word “personal” every time it appeared in these subsections.

- **Section 106 (e)** of the Act was amended to exempt tribes and tribal organizations from liability for indebtedness attributable to theoretical or actual under-recoveries or theoretical over-recoveries of indirect costs incurred for fiscal years prior to Fiscal Year 1992.

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Pub. Law 102-184

• **(105 Stat. 1278), The Tribal Self-Governance Demonstration Project Act.**

• **Amended Title III of Pub. Law 93-638:**

–to increase the number of tribes allowed to participate in the project from twenty to thirty.

–Extended the project life from five to eight years.

–Authorized planning and negotiation grants for the ten new tribes.

- **(105 Stat. 1278), The Tribal Self-Governance Demonstration Project Act.**

• **Amended Title III of Pub. Law 93-638: (Continued)**

–Required a study by the Secretary of the Interior to determine the feasibility of including certain excluded programs in the project.

Public Law 93-638

Pub. Law 102-184

• **(105 Stat. 1278), The Tribal Self-Governance Demonstration Project Act.**

• **Amended Title III of Pub. Law 93-638: (Continued)**

–Required a study by the Secretary of Health and Human Services to determine the feasibility of extending the project to activities, programs, functions and services of the Indian Health Service (HIS)

–Authorized the establishment of an office of Self-governance within the HIS.

Public Law 93-638

Pub. Law 102-573, Title VIII

• **(106 Stat. 4591), The Indian Health Amendments of 1992, October 29, 1992.**

• **Section 814, Tribal Self-Governance Project, Amended Title III of Pub. Law 93-638, as amended.**

–Makes various technical amendments to Title III of Pub. Law 93-638, as amended.

–Adds section 310. Provides for one-year planning and negotiation grants under HIS.

Authorizes appropriation of such sums as are necessary to carry out such purposes.

Authorizes the Secretary to negotiate a compact after completion of planning phase.

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Pub. Law 103-413

•(103 Stat. 4250), **The Indian Self-Determination Act Amendments of 1994, October 25, 1994.**

•**Makes extensive amendments to Pub. Law 93-638, as amended, as follows:**

•**Title I. Indian Self-Determination Contracts**

–**Section 4.** Adds a definition of “Construction Contract”. Allows for a management contract which is not a construction contract. Also, provides that HIP and Road Maintenance (BIA), and Health Facility Maintenance and Improvement (HIS), are not construction Programs.

Public Law 93-638

Pub. Law 103-413

•(103 Stat. 4250), **The Indian Self-Determination Act Amendments of 1994, October 25, 1994.**

•Makes extensive amendments to Pub. Law 93-638, as amended, as follows:

•**Title I. Indian Self-Determination Contracts (Continued)**

–Section 5 (f). Incorporates requirements for a Single-Agency Audit (31 USC 75). Limits additional reporting requirements to that which is agreed through negotiation. Disagreements regarding reports are subject to declination criteria.

•**Section 4 (j). ‘Self-Determination Contract’**

–means a contract (or grant or cooperative agreement utilized under section 9 [450e-1] of this Act) entered into under title I of this Act between a tribal organization and the appropriate Secretary for the planning, conduct and administration of programs or services which are otherwise provided to Indian tribes and their members pursuant to Federal law: *Provided:*

•**Section 4 (j). ‘Self-Determination Contract’ (Continued)**

–*Provided*, that except as provided [in] the last proviso in section 105 (a) of this Act, no contract (or grant or cooperative agreement utilized under section 9 [450e-1] of this Act) entered into under title I of this Act shall be construed to be a procurement contract;

• **Public Law 100-472 amends Section 105 (a) of the Act:**

–“Contracts with tribal organizations pursuant to section 102 of this Act shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the appropriate Secretary, such contracts may be negotiated without advertising and need not conform with provisions of the Act of August 24, 1935 (49 Stat. 793), as amended: *Provided:*

•**Public Law 100-472 amends Section 105 (a) of the Act: (Continued)**

–*Provided*, That the appropriate Secretary may waive any provisions of such contracting laws or regulations which he determines are not appropriate for the purposes of the contract involved or inconsistent with the provisions of this Act:

•**Changes to Title I:**

–**Section 102 (a) (1).** Change to ensure that the terms “programs,” functions, services, or activities (or portions thereof)” would not be narrowly interpreted. Meant to ensure that “contractibility” included the administrative activities in support of “programs, functions, services, or activities (or portions thereof)” regardless of the administrative level within the Department that carries out such functions.

- Makes proposals to amend or renew self-determination contracts subject to the timeframe for review, declination, and approval, and subsequently award.
- Removes the 60-day timeframes for declination.
- Entire process from receipt through award should be accomplished within 90 days.

•**Section 102 (a) (2).** (Continued) Adds two (2) declination criteria:

–(D) if the contract proposal is in excess of the funding available as determined under Section 106 (a).

–(E) if the proposal includes programs or services that the funding source is not lawfully authorized to provide.

Program standards must be included in the proposal.

–Specifies issues to be addressed for a construction contract.

Section 102 (a) (4). Secretary must approve any severable portion of a proposal if:

–The proposal is to contract a program that is beyond the scope of 102 (a) (1).

–The proposal proposes a level of funding in excess of that available as determined under 105 (a).

•Section 102 (b) (3). Right to full discovery and to go Federal Court rather than appeal decisions regarding the proposal.

•Section 102 (d). FTCA coverage for declination.

•Section 105 (a) (1) and (2). FAR and Cooperative Agreement laws and regulations do not apply to non-construction self-determination contracts. Applicable program standards must be included in the awarded contract document.

•Section 105 (1) (3) (A). Limits FAR applicability to construction contracts.

•Section 105 (a) (3) (B). All FAR requirements must be listed in an attachment to the contract. The content is negotiable.

•Section 105 (a) (3) (C). Provides a listing of Federal procurement laws, etc., which do not apply. No Federal procurement laws apply unless applicability is expressly provided in such laws.

•Section 105 (e). Adds “tribal organization”, allows for retrocession.

•Section 105 (f) (2).

–Title to property acquired with contract funds vests in the contractor.

–Title to Government furnished property vests in the contractor.

–Return of property with a value of \$5,000.

–For replacement purposes, property treated as Government property.

•Section 105 (I). Non-contracting tribes not to be affected by a contract.

- Section 105 (j). Program or program standard redesign, challenge subject to declination criteria and process.
 - Section 105 (k). Federal travel and lodging rates.
 - Section 105 (l). Lease of tribal facilities.
 - Section 105 (m).
 - Provides the requirements applicable to a self-determination construction contract.
 - Provides section of Pub. Law 93-638 which are not applicable to a construction contract.
 - Provides that the Secretary shall provide all information available to the Secretary regarding the construction project to the tribal contractor.
 - Section 105 (n). Quarters rental rates in Alaska.
 - Section 106 (a) (1). Tribal share of administration costs at higher levels.
 - Section 106 (a) (2) and (3). Contract Support Costs:
 - Direct Contract Support Costs.
 - Negotiable to meet need per 106 (a) (1).
 - Renegotiable as the situation warrants.
 - No change in Indirect Cost Rate process.
 - Section 105 (a) (4). Extends savings provision to funds under a cost-reimbursable self-determination construction contract.
 - Section 106 (a) (5) and (6). Includes on a one time basis, costs incurred in preparing for entering into a contract and start-up costs, as costs payable as contract support costs, if the Secretary is informed of the nature and extent of such costs prior to their incurrence.
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- Section 106 (c). Change annual report due date from March 15 to May 15.
 - Section 106 (c) (1). Adds reporting on the total amount on contract support provided in previous fiscal year.
 - Section 106 (c) (2). Changes “Indirect costs” to “contract support costs”. Report on all categories of costs covered by the term “contract support costs”.
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- Section 106 (c) (6).
 - Report any deficiency of funds needed to maintain preexisting level of services to any tribes affected by contracting.
 - Report amounts needed to convert from Federal Fiscal Year to an alternate accounting cycle under the contract, per section 105 (d) of the Act.
 - Section 106 (f). Specifies start of 365 day statute of limitations.
 - Section 106 (g). Clarifies funding of contracts.
 - Section 106 (I). Provides for tribal involvement in preparation of the annual budgets of the BIA and IHS.
 - Section 106 (j). Matching Share provision.
 - Section 106 (k). Provides listing of certain specific costs as allowable costs without the prior approval of the funding source.

- Section 106 (l). Provides procedure for suspending, withholding or delaying payment, for a thirty-day period, if a determination is made that the contractor failed to carry out the contract without good cause. The burden of proof is on the Secretary.

- Section 106 (m). Codifies current policy and practices regarding program income.

- Section 106 (n). Addresses savings to be realized from down-sizing the Federal bureaucracy. Savings is to be equitably distributed amongst contracted and non-contracted programs.

- Section 106 (o). Authorizes rebudgeting within the approved contract to meet contract requirements.

- Section 107 (a) (1) and (2). Regulations to implement Pub. Law 93-638, as amended:

- Are limited to only certain aspects of the Act;

- Must conform to 5 USC 552 and 553;

- Must be published as a single regulation in 25 CFR; and

- Must be promulgated within 18 months of enactment of this Act.

- Section 107 (d). Provides for Indian involvement in regulation drafting and promulgation:

- Provides process for promulgation;

- Regulations must be published in the *Federal Register* for comments within 180 days of enactment of this Act;

- Secretary can establish interagency committees, including advisory bodies;

- Extension of time can be requested through proposed legislation to Congress.

Section 107 (e). The Secretary can make exceptions to, or waive, any regulations promulgated to carry out this Act. Such requests are subject to the declination criteria and process.

Section 108. MODEL AGREEMENT (CONTRACT).

- Section 109. Establishes burden of proof in reassumption. Secretary can immediately rescind a contract, in whole or in part, if there is an immediate threat of harm to personal safety or an imminent substantial and irreparable harm to trust funds, trust lands, or interests in trust lands.

- Section 110 (a). Provides for contractors right to seek immediate judicial review of a declination finding or to secure award and funding of an approved contract, without first invoking further administrative levels of appeal.

- Section 110 (b). Establishes the Interior Board of Contract Appeals as the body to hear all appeals arising out of the Contract Disputes Act.

- No changes to Titles II and III.

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Title II Self-Governance

•**Tribal Self-Governance Act of 1994**

- Adds Title IV-Tribal Self-Governance.
 - Self-Governance permanent within DOI
 - Process and procedure for selection of new tribes.
 - 20 additional tribes per year may enter.
 - Identifies funds prohibited from inclusion in the Annual Funding Agreement.
 - Establishes a procedure to include construction in funding agreements.

Adds Title IV-Tribal Self-Governance (Continued)

- Funds identified for inclusion in Annual Funding Agreements are to be identified in the annual budget request of the President.
- Secretary to provide to Congress a list of all non-Bureau programs (etc.), eligible for inclusion in Annual Funding Agreements

•Adds Title IV-Tribal Self-Governance (Continued)

- The Secretary is to establish programmatic targets to ensure that a significant portion of non-Bureau programs are included in Annual Funding Agreements.
- The listing and targets are to be published in the *Federal Register* before January 1, 1995, and annual thereafter by January 1 preceding the Fiscal Year in which the targets are to be met.

•**Title II (Continued)**

- Develop a funding formula, in consultation with tribes, within 90 days after enactment of this Act to determine the individual tribal shares of funds controlled by the Central Office. The formula is to be included in the annual report to the Congress.
- Provides for promulgation of regulations, the lack of regulations does not limit the effect of this title.
- Authorizes the appropriation of such sums as may be necessary to carry out this title.

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Pub. Law 103-435

- Section 107 (b) (2): This section of the Act was struck by Pub. Law 103-413 and a new section 107 was inserted.
- Section 301: Change “eight” to “18”
- Section 302 (a): Change “The Secretaries” to “For each fiscal year, the Secretaries”.

•**ADVISORY COMMITTEES: Changes Title II of Public Law 101-644, adds a new Section 204**

- Sec. 204. Tribal and Federal Advisory Committees. Notwithstanding any other provision of law (including any regulation), the Secretary of the Interior and the Secretary of Health and Human Services are authorized to jointly establish and fund advisory committees or other advisory bodies composed of members of Indian tribes or members of Indian tribes and representatives of the Federal Government to ensure tribal

participation in the implementation of the Indian Self-Determination and Education Assistance Act (PL 93-638)

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Pub. Law 103-437

•Section 303 (a) (9): Strike “Select” and “Interior and Insular Affairs” and add “Natural Resources”.

•Section 107:

–Subsection (b): is repealed

–Subsection (c): Strike “Committees on Interior and Insular Affairs of the United States Senate and House of Representatives” and add “Committee on Energy and Natural Resources of the House of Representatives”.