

103^D CONGRESS
2^D SESSION

S. 2036

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

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,*

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. CONTRACT SPECIFICATIONS.**

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

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

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

11 “(a) **AUTHORITY AND PURPOSE.—**

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

24 “(2) **PURPOSE.—**This Contract shall be lib-
25 erally construed to transfer the funding, functions,
26 and activities for the following programs from the

1 Federal Government to the _____ tribal
2 government: (List functions, activities, and pro-
3 grams.)

4 “(3) TRIBAL LAW AND FORUMS.—The laws of
5 the _____ tribal government shall be ap-
6 plied in the execution of this Contract and the pow-
7 ers and decisions of the Tribal Court shall be re-
8 spected to the extent that Federal law, construed in
9 accordance with the applicable canons of construc-
10 tion and the Indian Self-Determination and Edu-
11 cation Assistance Act, is not inconsistent.

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
15 tribe agree on a longer period pursuant to section
16 106 of the Indian Self-Determination and Education
17 Assistance Act. The calendar year is the basis for
18 contracts under this Act, unless the Secretary and
19 the tribe agree on a different period.

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

24 “(3) FUNDING AMOUNT.—Subject to the appro-
25 priation of funds by Congress, the Secretary shall

1 make available to the tribe the total amount speci-
2 fied in the annual agreement incorporated by ref-
3 erence in subsection (f)(2).

4 “(4) PAYMENT.—

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

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

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

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

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

20 “(6) PROPERTY.—(A) At the request of the
21 tribe, the Secretary shall make available to the tribe
22 reasonably divisible real property, facilities, equip-
23 ment, and personal property that the Department
24 had previously utilized to provide the programs,
25 services, functions, and activities now consolidated

1 by the tribe pursuant to subsection (c)(1) of this
2 Contract. A mutually agreed upon list specifying the
3 property, facilities, and equipment so made available
4 shall also be prepared and periodically revised.

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

21 “(C) The tribe shall, upon acquisition of excess
22 United States Government property, provide ade-
23 quate documentation to the Secretary to facilitate
24 recordation of the property in the Bureau of Indian
25 Affairs Property Inventory.

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

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

13 “(8) TRANSPORTATION.—

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

20 “(B) USE OF OTHER TRANSPORTATION
21 SERVICES.—The Secretary shall make best ef-
22 forts to obtain the concurrence of the General
23 Services Administration to provide the tribe and
24 its employees with eligibility for services and
25 supplies pursuant to General Services Adminis-

1 tration programs and contracts with private en-
2 tities, including airlines and other transpor-
3 tation carriers.

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

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

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

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

19 “(i) submit disputes under this Contract to
20 third-party mediation, which for purposes of
21 this section means that the Secretary and the
22 tribe nominate a third party who together
23 choose a third party mediator (‘third-party’
24 means a person not employed by or significantly

1 involved with either the tribe, the Secretary, or
2 the Department of the Interior);

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

5 “(iii) submit the dispute to mediation proc-
6 esses provided for under the law of the tribe.

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

12 “(11) TRIBAL ADMINISTRATIVE PROCE-
13 DURES.—Tribal law and tribal forums shall provide
14 for administrative due process with respect to pro-
15 grams, services, functions, and activities that are
16 provided by the tribe pursuant to this Contract and
17 pursuant to the Indian Civil Rights Act of 1968 (25
18 U.S.C. 1301 et seq.).

19 “(12) SUCCESSOR ANNUAL AGREEMENT.—Ne-
20 negotiations for a successor annual agreement, as pro-
21 vided for in subsection (f)(2), shall begin not later
22 than 120 days prior to the conclusion of the preced-
23 ing annual agreement. The tribe is hereby assured
24 that future funding of successor annual agreements
25 shall only be reduced pursuant to section 106(b) of

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

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

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

17 “(i) be in writing;

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

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

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

24 “(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 _____ Indian tribe shall be deter-
13 mined in an annual agreement between the Sec-
14 retary and the tribe, which shall be incorporated in
15 its entirety into this Contract and attached as pro-
16 vided in subsection (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-

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

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

11 “(1) TRUST RESPONSIBILITY.—The United
12 States reaffirms its trust responsibility to the
13 _____ Indian tribe of the
14 _____ Indian Reservation to protect and
15 conserve the trust resources of the _____
16 Indian tribe and of individual Indians of the
17 _____ Indian Reservation. Nothing in
18 this Contract is intended to, nor shall be construed,
19 to terminate, waive, modify, or reduce the trust re-
20 sponsibility of the United States to the tribe or indi-
21 vidual Indians. The Secretary pledges to practice
22 good faith in upholding said trust responsibility.

23 “(2) PROGRAMS RETAINED.—As specified in
24 the annual agreement, the United States hereby re-
25 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 _____ Indian tribe approving this
24 Contract is attached hereto as attachment 1.

1 “(2) ANNUAL AGREEMENT.—The negotiated
2 and duly approved annual agreement with respect to
3 the _____ Indian tribe which shall only
4 contain terms that identify the programs, services,
5 functions, 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”.

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