

under the terms of this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14, of 1950, and section 3145 of title 40.

**(b) Preference requirements for wages and grants**

Any contract, subcontract, grant, or subgrant pursuant to this chapter, the Act of April 16, 1934 (48 Stat. 596), as amended [25 U.S.C. 5342 et seq.], or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible—

(1) preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and

(2) preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 1452 of this title.

**(c) Self-determination contracts**

Notwithstanding subsections (a) and (b) of this section, with respect to any self-determination contract, or portion of a self-determination contract, that is intended to benefit one tribe, the tribal employment or contract preference laws adopted by such tribe shall govern with respect to the administration of the contract or portion of the contract.

(Pub. L. 93-638, §7, Jan. 4, 1975, 88 Stat. 2205; Pub. L. 103-413, title I, §102(3), (4), Oct. 25, 1994, 108 Stat. 4251.)

**Editorial Notes**

REFERENCES IN TEXT

This chapter, referred to in subsections (a) and (b), was in the original “this Act”, meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Act of March 3, 1921, referred to in subsection (a), probably means the act of March 3, 1931, ch. 411, 46 Stat. 1494, known as the Davis Bacon Act, which was classified generally to sections 276a to 276a-5 of former Title 40, Public Buildings, Property, and Works, and was repealed and reenacted as sections 3141-3144, 3146, and 3147 of Title 40, Public Buildings, Property, and Works, by Pub. L. 107-217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304.

Reorganization Plan Numbered 14 of 1950, referred to in subsection (a), is set out in the Appendix to Title 5, Government Organization and Employees.

Act of April 16, 1934, referred to in subsection (b), is act Apr. 16, 1934, ch. 147, 48 Stat. 596, popularly known as the Johnson-O’Malley Act, which is classified generally to section 5342 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

CODIFICATION

Section was formerly classified to section 450e of this title prior to editorial reclassification and renumbering as this section.

In subsection (a), “sections 3141-3144, 3146, and 3147 of title 40” substituted for “the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended” and “section 3145 of title 40” substituted for “section 2 of the Act of June

13, 1934 (48 Stat. 948, 40 U.S.C. 276c)” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-413, §102(3), substituted “or subcontractors (excluding tribes and tribal organizations)” for “of subcontractors”.

Subsec. (c). Pub. L. 103-413, §102(4), added subsec. (c).

**§ 5308. Grant and cooperative agreements**

The provisions of this chapter shall not be subject to the requirements of chapter 63 of title 31: *Provided*, That a grant agreement or a cooperative agreement may be utilized in lieu of a contract under section 5321<sup>1</sup> of this title when mutually agreed to by the appropriate Secretary and the tribal organization involved.

(Pub. L. 93-638, §9, as added Pub. L. 98-250, §1, Apr. 3, 1984, 98 Stat. 118; amended Pub. L. 101-301, §2(a)(5), May 24, 1990, 104 Stat. 206.)

**Editorial Notes**

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

CODIFICATION

Section 5321 of this title, referred to in text, was in the original “sections 102 and 103 of this Act”, and was translated as meaning section 102 of Pub. L. 93-638 because section 103(a) and (b) and the first sentence of section 103(c) of Pub. L. 93-638 were repealed and the remainder of section 103 of Pub. L. 93-638 was redesignated as section 102(d) by Pub. L. 100-472, title II, §201(b)(1), Oct. 5, 1988, 102 Stat. 2289.

Section was formerly classified to section 450e-1 of this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

1990—Pub. L. 101-301 substituted “chapter 63 of title 31” for “the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95-224; 92 Stat. 3)”.

**§ 5309. Use of excess funds**

Beginning in fiscal year 1998 and thereafter, where the actual costs of construction projects under self-determination contracts, compacts, or grants, pursuant to Public Laws 93-638, 103-413, or 100-297, are less than the estimated costs thereof, use of the resulting excess funds shall be determined by the appropriate Secretary after consultation with the tribes.

(Pub. L. 105-83, title III, §310, Nov. 14, 1997, 111 Stat. 1590.)

**Editorial Notes**

REFERENCES IN TEXT

Public Law 93-638, referred to in text, is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For com-

<sup>1</sup> See Codification note below.

plete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Public Law 103-413, referred to in text, is Pub. L. 103-413, Oct. 25, 1994, 108 Stat. 4250, known as the Indian Self-Determination Act Amendments of 1994, which is classified principally to subchapter IV (§5361 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 5301 of this title and Tables.

Public Law 100-297, referred to in text, is Pub. L. 100-297, Apr. 28, 1988, 102 Stat. 130, known as the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 6301 of Title 20, Education, and Tables.

#### CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1998, and not as part of the Indian Self-Determination and Education Assistance Act which comprises this chapter.

Section was formerly classified to section 450e-2 of this title prior to editorial reclassification and renumbering as this section.

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior appropriation acts:

Pub. L. 104-208, div. A, title I, §101(d) [title III, §310], Sept. 30, 1996, 110 Stat. 3009-181, 3009-221.

Pub. L. 104-134, title I, §101(c) [title III, §310], Apr. 26, 1996, 110 Stat. 1321-156, 1321-197; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.

### § 5310. Investment of advance payments; restrictions

Advance payments made by the Department of the Interior to Indian tribes, tribal organizations, and tribal consortia pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)<sup>1</sup> or the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.) may on and after December 8, 2004, be invested by the Indian tribe, tribal organization, or consortium before such funds are expended for the purposes of the grant, compact, or annual funding agreement so long as such funds are—

(1) invested by the Indian tribe, tribal organization, or consortium only in obligations of the United States, or in obligations or securities that are guaranteed or insured by the United States, or mutual (or other) funds registered with the Securities and Exchange Commission and which only invest in obligations of the United States or securities that are guaranteed or insured by the United States; or

(2) deposited only into accounts that are insured by an agency or instrumentality of the United States, or are fully collateralized to ensure protection of the funds, even in the event of a bank failure.

(Pub. L. 108-447, div. E, title I, §111, Dec. 8, 2004, 118 Stat. 3064.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), referred to in text, is

<sup>1</sup> See References in Text note below.

Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, which was classified principally to subchapter II (§450 et seq.) of chapter 14 of this title prior to editorial reclassification as this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Tribally Controlled Schools Act of 1988, referred to in text, is part B (§§5201-5212) of title V of Pub. L. 100-297, Apr. 28, 1988, 102 Stat. 385, which is classified generally to chapter 27 (§2501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

#### CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 2005, and also as part of the Consolidated Appropriations Act, 2005, and not as part of the Indian Self-Determination and Education Assistance Act which comprises this chapter.

Section was formerly classified to section 450e-3 of this title prior to editorial reclassification and renumbering as this section.

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior appropriation acts:

Pub. L. 108-108, title I, §111, Nov. 10, 2003, 117 Stat. 1266.

Pub. L. 108-7, div. F, title I, §111, Feb. 20, 2003, 117 Stat. 239.

Pub. L. 107-63, title I, §111, Nov. 5, 2001, 115 Stat. 438.

Pub. L. 106-291, title I, §111, Oct. 11, 2000, 114 Stat. 942.

Pub. L. 106-113, div. B, §1000(a)(3), [title I, §111], Nov. 29, 1999, 113 Stat. 1535, 1501A-156.

Pub. L. 105-277, div. A, §101(e), [title I, §111], Oct. 21, 1998, 112 Stat. 2681-231, 2681-254.

Pub. L. 105-83, title I, §112, Nov. 14, 1997, 111 Stat. 1562.

#### SUBCHAPTER I—INDIAN SELF-DETERMINATION

### § 5321. Self-determination contracts

#### (a) Request by tribe; authorized programs

(1) The Secretary is directed, upon the request of any Indian tribe by tribal resolution, to enter into a self-determination contract or contracts with a tribal organization to plan, conduct, and administer programs or portions thereof, including construction programs—

(A) provided for in the Act of April 16, 1934 (48 Stat. 596), as amended [25 U.S.C. 5342 et seq.];

(B) which the Secretary is authorized to administer for the benefit of Indians under the Act of November 2, 1921 (42 Stat. 208) [25 U.S.C. 13], and any Act subsequent thereto;

(C) provided by the Secretary of Health and Human Services under the Act of August 5, 1954 (68 Stat. 674), as amended [42 U.S.C. 2001 et seq.];

(D) administered by the Secretary for the benefit of Indians for which appropriations are made to agencies other than the Department of Health and Human Services or the Department of the Interior; and

(E) for the benefit of Indians because of their status as Indians without regard to the agency or office of the Department of Health and Human Services or the Department of the Interior within which it is performed.

The programs, functions, services, or activities that are contracted under this paragraph shall