

## Statutory Notes and Related Subsidiaries

## EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–81, title I, §105(d), Sept. 14, 2007, 121 Stat. 741, provided that: “The amendments made by section 104 [amending this section and section 207 of Title 18, Crimes and Criminal Procedure] shall take effect on the date of the enactment of this Act [Sept. 14, 2007], except that section 104(j)(2) of the Indian Self-Determination and Education Assistance Act [25 U.S.C. 5323(j)(2)] (as amended by section 104(b)) shall apply to individuals who leave Federal office or employment to which such amendments apply on or after the 60th day after the date of the enactment of this Act.”

## PRIBILOF ISLAND NATIVES EMPLOYED BY FEDERAL GOVERNMENT ON OCTOBER 28, 1983

Pub. L. 89–702, title II, §210(b), as added by Pub. L. 98–129, §2, Oct. 14, 1983, 97 Stat. 844, provided that: “Notwithstanding any other provision of law, any Native of the Pribilof Islands employed by the Federal government on October 28, 1983, shall be deemed to have been covered under chapters 81, 83, 85 and 87 of title 5, United States Code, on such date for the purposes of determining eligibility for continuity of benefits under section 105(e) of the Act of January 4, 1975 (Public Law 93–638), known as the Indian Self-Determination and Education Assistance Act [25 U.S.C. 5323(e)].”

## Executive Documents

EX. ORD. NO. 11899. PROVIDING FOR PROTECTION OF CERTAIN CIVIL SERVICE EMPLOYMENT RIGHTS OF FEDERAL PERSONNEL WHO LEAVE FEDERAL EMPLOYMENT TO BE EMPLOYED BY TRIBAL ORGANIZATIONS

Ex. Ord. No. 11899, Jan. 26, 1976, 41 F.R. 3459, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By virtue of the authority vested in me by section 105(i) of the Indian Self-Determination and Education Assistance Act (88 Stat. 2210, 25 U.S.C. 450i) [now 25 U.S.C. 5323], section 3301 of title 5 of the United States Code, section 301 of title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. The Office of Personnel Management is hereby designated and empowered to exercise, without approval, ratification, or other action by the President, but after consultation with the Department of the Interior and the Department of Health and Human Services, the authority vested in the President by Section 105(i) of the Indian Self-Determination and Education Assistance Act [25 U.S.C. 5323(i)] (hereinafter referred to as the Act), to issue regulations necessary to carry out the provisions of subsections (e)(2), (e)(3), (e)(4), (f), (g) and (h) of section 105 of the act [25 U.S.C. 5323(e)(2), (3), (4), (f), (g), (h)], to carry out the provisions of subsection (e)(1) of section 105 of the act [25 U.S.C. 5323(e)(1)] pertains to section 8151 of title 5 of the United States Code, and to protect and assure any other civil service employment rights which it finds appropriate.

SEC. 2. The Office of Personnel Management shall, after consultation with the Department of the Interior and the Department of Health and Human Services, issue regulations, as it deems appropriate, providing for the establishment, granting, and exercise of reemployment rights for employees who leave Federal employment for employment by an Indian tribal organization under provisions of the act.

SEC. 3. The Secretary of Labor is hereby designated and empowered to exercise, without approval, ratification, or other action by the President, the authority vested in the President by section 105(i) of the act [25 U.S.C. 5323(i)] to issue regulations necessary to carry out the provisions of section 105(e)(1) of the act [25 U.S.C. 5323(e)(1)], except as provided in section 1 of this order.

## § 5324. Contract or grant provisions and administration

## (a) Applicability of Federal contracting laws and regulations; waiver of requirements

(1) Notwithstanding any other provision of law, subject to paragraph (3), the contracts and cooperative agreements entered into with tribal organizations pursuant to section 5321 of this title shall not be subject to Federal contracting or cooperative agreement laws (including any regulations), except to the extent that such laws expressly apply to Indian tribes.

(2) Program standards applicable to a non-construction self-determination contract shall be set forth in the contract proposal and the final contract of the tribe or tribal organization.

(3)(A) With respect to a construction contract (or a subcontract of such a construction contract), the provisions of division B (except sections 1123, 2303, 2304, and 2313) of subtitle I of title 41 and the regulations relating to acquisitions promulgated under division B (except sections 1123, 2303, 2304, and 2313) of subtitle I of title 41 shall apply only to the extent that the application of such provision<sup>1</sup> to the construction contract (or subcontract) is—

- (i) necessary to ensure that the contract may be carried out in a satisfactory manner;
- (ii) directly related to the construction activity; and
- (iii) not inconsistent with this chapter.

(B) A list of the Federal requirements that meet the requirements of clauses (i) through (iii) of subparagraph (A) shall be included in an attachment to the contract pursuant to negotiations between the Secretary and the tribal organization.

(C)(i) Except as provided in subparagraph (B), no Federal law listed in clause (ii) or any other provision of Federal law (including an Executive order) relating to acquisition by the Federal Government shall apply to a construction contract that a tribe or tribal organization enters into under this chapter, unless expressly provided in such law.

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

(I) Chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(II) Section 6101 of title 41.

(III) Section 9(c)<sup>2</sup> of the Act of Aug. 2, 1946 (60 Stat. 809, chapter 744).

(IV) Division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

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

(VI) Chapters 21, 25, 27, 29, and 31 of title 44.

(VII) Section 3145 of title 40.

(VIII) Chapter 65 of title 41.

(IX) Chapter 67 of title 41.

(X) The Small Business Act (15 U.S.C. 631 et seq.).

(XI) Executive Order Nos. 12138, 11246, 11701 and 11758.

<sup>1</sup> So in original. Probably should be “provisions”.

<sup>2</sup> See References in Text note below.

**(b) Payments; transfer of funds by Treasury for disbursement by tribal organization; accountability for interest accrued prior to disbursement**

Payments of any grants or under any contracts pursuant to sections 5321 and 5322 of this title may be made in advance or by way of reimbursement and in such installments and on such conditions as the appropriate Secretary deems necessary to carry out the purposes of this subchapter. The transfer of funds shall be scheduled consistent with program requirements and applicable Treasury regulations, so as to minimize the time elapsing between the transfer of such funds from the United States Treasury and the disbursement thereof by the tribal organization, whether such disbursement occurs prior to or subsequent to such transfer of funds. Tribal organizations shall not be held accountable for interest earned on such funds, pending their disbursement by such organization.

**(c) Term of self-determination contracts; annual renegotiation**

(1) A self-determination contract shall be—

(A) for a term not to exceed three years in the case of other than a mature contract, unless the appropriate Secretary and the tribe agree that a longer term would be advisable, and

(B) for a definite or an indefinite term, as requested by the tribe (or, to the extent not limited by tribal resolution, by the tribal organization), in the case of a mature contract.

The amounts of such contracts shall be subject to the availability of appropriations.

(2) The amounts of such contracts may be renegotiated annually to reflect changed circumstances and factors, including, but not limited to, cost increases beyond the control of the tribal organization.

**(d) Calendar year basis for contracts**

(1) Beginning in fiscal year 1990, upon the election of a tribal organization, the Secretary shall use the calendar year as the basis for any contracts or agreements under this chapter, unless the Secretary and the Indian tribe or tribal organization agree on a different period.

(2) The Secretary shall, on or before April 1 of each year beginning in 1992, submit a report to the Congress on the amounts of any additional obligation authority needed to implement this subsection in the next following fiscal year.

**(e) Effective date for retrocession of contract**

If an Indian tribe, or a tribal organization authorized by a tribe, requests retrocession of the appropriate Secretary for any contract or portion of a contract entered into pursuant to this chapter, unless the tribe or tribal organization rescinds the request for retrocession, such retrocession shall become effective on—

(1) the earlier of—

(A) the date that is 1 year after the date the Indian tribe or tribal organization submits such request; or

(B) the date on which the contract expires; or

(2) such date as may be mutually agreed by the Secretary and the Indian tribe.

**(f) Use of existing school buildings, hospitals, and other facilities and equipment therein; acquisition and donation of excess or surplus Government personal property**

In connection with any self-determination contract or grant made pursuant to section 5321 or 5322 of this title, the appropriate Secretary may—

(1) permit an Indian tribe or tribal organization in carrying out such contract or grant, to utilize existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property owned by the Government within the Secretary's jurisdiction under such terms and conditions as may be agreed upon for their use and maintenance;

(2) donate to an Indian tribe or tribal organization title to any personal or real property found to be excess to the needs of the Bureau of Indian Affairs, the Indian Health Service, or the General Services Administration, except that—

(A) subject to the provisions of subparagraph (B), title to property and equipment furnished by the Federal Government for use in the performance of the contract or purchased with funds under any self-determination contract or grant agreement shall, unless otherwise requested by the tribe or tribal organization, vest in the appropriate tribe or tribal organization;

(B) if property described in subparagraph (A) has a value in excess of \$5,000 at the time of the retrocession, rescission, or termination of the self-determination contract or grant agreement, at the option of the Secretary, upon the retrocession, rescission, or termination, title to such property and equipment shall revert to the Department of the Interior or the Department of Health and Human Services, as appropriate; and

(C) all property referred to in subparagraph (A) shall remain eligible for replacement on the same basis as if title to such property were vested in the United States; and

(3) acquire excess or surplus Government personal or real property for donation to an Indian tribe or tribal organization if the Secretary determines the property is appropriate for use by the tribe or tribal organization for a purpose for which a self-determination contract or grant agreement is authorized under this chapter.

**(g) Performance of personal services**

The contracts authorized under section 5321 of this title and grants pursuant to section 5322 of this title may include provisions for the performance of personal services which would otherwise be performed by Federal employees including, but in no way limited to, functions such as determination of eligibility of applicants for assistance, benefits, or services, and the extent or amount of such assistance, benefits, or services to be provided and the provisions of such assistance, benefits, or services, all in accordance with the terms of the contract or grant and applicable rules and regulations of the appropriate Secretary: *Provided*, That the Secretary shall

not make any contract which would impair his ability to discharge his trust responsibilities to any Indian tribe or individuals.

**(h) Fair and uniform provision by tribal organization of services and assistance to covered Indians**

Contracts and grants with tribal organizations pursuant to sections 5321 and 5322 of this title shall include provisions to assure the fair and uniform provision by such tribal organizations of the services and assistance they provide to Indians under such contracts and grants.

**(i) Division of administration of program**

(1) If a self-determination contract requires the Secretary to divide the administration of a program that has previously been administered for the benefit of a greater number of tribes than are represented by the tribal organization that is a party to the contract, the Secretary shall take such action as may be necessary to ensure that services are provided to the tribes not served by a self-determination contract, including program redesign in consultation with the tribal organization and all affected tribes.

(2) Nothing in this subchapter shall be construed to limit or reduce in any way the funding for any program, project, or activity serving a tribe under this or other applicable Federal law. Any tribe or tribal organization that alleges that a self-determination contract is in violation of this section may apply the provisions of section 5331 of this title.

**(j) Proposal to redesign program, activity, function, or service**

Upon providing notice to the Secretary, a tribal organization that carries out a nonconstruction self-determination contract may propose a redesign of a program, activity, function, or service carried out by the tribal organization under the contract, including any nonstatutory program standard, in such manner as to best meet the local geographic, demographic, economic, cultural, health, and institutional needs of the Indian people and tribes served under the contract. The Secretary shall evaluate any proposal to redesign any program, activity, function, or service provided under the contract. With respect to declining to approve a redesigned program, activity, function, or service under this subsection, the Secretary shall apply the criteria and procedures set forth in section 5321 of this title.

**(k) Access to Federal sources of supply**

For purposes of section 501 of title 40 (relating to Federal sources of supply, including lodging providers, airlines and other transportation providers), a tribal organization carrying out a contract, grant, or cooperative agreement under this chapter shall be deemed an executive agency and part of the Indian Health Service when carrying out such contract, grant, or agreement and the employees of the tribal organization shall be eligible to have access to such sources of supply on the same basis as employees of an executive agency have such access. For purposes of carrying out such contract, grant, or agreement, the Secretary shall, at the request of an Indian tribe, enter into an agreement for the ac-

quisition, on behalf of the Indian tribe, of any goods, services, or supplies available to the Secretary from the General Services Administration or other Federal agencies that are not directly available to the Indian tribe under this section or under any other Federal law, including acquisitions from prime vendors. All such acquisitions shall be undertaken through the most efficient and speedy means practicable, including electronic ordering arrangements.

**(l) Lease of facility used for administration and delivery of services**

(1) Upon the request of an Indian tribe or tribal organization, the Secretary shall enter into a lease with the Indian tribe or tribal organization that holds title to, a leasehold interest in, or a trust interest in, a facility used by the Indian tribe or tribal organization for the administration and delivery of services under this chapter.

(2) The Secretary shall compensate each Indian tribe or tribal organization that enters into a lease under paragraph (1) for the use of the facility leased for the purposes specified in such paragraph. Such compensation may include rent, depreciation based on the useful life of the facility, principal and interest paid or accrued, operation and maintenance expenses, and such other reasonable expenses that the Secretary determines, by regulation, to be allowable.

**(m) Statutory requirements; technical assistance; precontract negotiation phase; fixed price construction contract**

(1) Each construction contract requested, approved, or awarded under this chapter, shall be subject to—

(A) except as otherwise provided in this chapter, the provisions of this chapter, other than sections 5321(a)(2), 5325(l), 5329 and 5330 of this title; and

(B) section 314 of the Department of the Interior and Related Agencies Appropriations Act, 1991 (104 Stat. 1959).

(2) In providing technical assistance to tribes and tribal organizations in the development of construction contract proposals, the Secretary shall provide, not later than 30 days after receiving a request from a tribe or tribal organization, all information available to the Secretary regarding the construction project, including construction drawings, maps, engineering reports, design reports, plans of requirements, cost estimates, environmental assessments or environmental impact reports, and archaeological reports.

(3) Prior to finalizing a construction contract proposal pursuant to section 5321(a) of this title, and upon request of the tribe or tribal organization that submits the proposal, the Secretary shall provide for a precontract negotiation phase in the development of a contract proposal. Such phase shall include, at a minimum, the following elements:

(A) The provision of technical assistance pursuant to section 5322 of this title and paragraph (2).

(B) A joint scoping session between the Secretary and the tribe or tribal organization to review all plans, specifications, engineering

reports, cost estimates, and other information available to the parties, for the purpose of identifying all areas of agreement and disagreement.

(C) An opportunity for the Secretary to revise the plans, designs, or cost estimates of the Secretary in response to concerns raised, or information provided by, the tribe or tribal organization.

(D) A negotiation session during which the Secretary and the tribe or tribal organization shall seek to develop a mutually agreeable contract proposal.

(E) Upon the request of the tribe or tribal organization, the use of an alternative dispute resolution mechanism to seek resolution of all remaining areas of disagreement pursuant to the dispute resolution provisions under subchapter IV of chapter 5 of title 5.

(F) The submission to the Secretary by the tribe or tribal organization of a final contract proposal pursuant to section 5321(a) of this title.

(4)(A) Subject to subparagraph (B), in funding a fixed-price construction contract pursuant to section 5325(a) of this title, the Secretary shall provide for the following:

(i) The reasonable costs to the tribe or tribal organization for general administration incurred in connection with the project that is the subject of the contract.

(ii) The ability of the contractor that carries out the construction contract to make a reasonable profit, taking into consideration the risks associated with carrying out the contract and other relevant considerations.

(B) In establishing a contract budget for a construction project, the Secretary shall not be required to separately identify the components described in clauses (i) and (ii) of subparagraph (A).

(C) The total amount awarded under a construction contract shall reflect an overall fair and reasonable price to the parties, including the following costs:

(i) The reasonable costs to the tribal organization of performing the contract, taking into consideration the terms of the contract and the requirements of this chapter and any other applicable law.

(ii) The costs of preparing the contract proposal and supporting cost data.

(iii) The costs associated with auditing the general and administrative costs of the tribal organization associated with the management of the construction contract.

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

(v) If the Secretary and the tribe or tribal organization are unable to develop a mutually agreeable construction contract proposal pursuant to the procedures set forth in this subsection, the tribe or tribal organization may submit a final contract proposal to the Secretary. Not later than 30 days after receiving such final contract proposal, the Secretary shall approve the contract proposal and award the contract, unless, during such period the

Secretary declines the proposal pursuant to subsections (a)(2) and (b)<sup>2</sup> of section 5321 of this title (including providing opportunity for an appeal pursuant to section 5321(b) of this title).

**(n) Rental rates for housing for Government employees in Alaska**

Notwithstanding any other provision of law, the rental rates for housing provided to an employee by the Federal Government in Alaska pursuant to a self-determination contract shall be determined on the basis of—

(1) the reasonable value of the quarters and facilities (as such terms are defined under section 5911 of title 5) to such employee, and

(2) the circumstances under which such quarters and facilities are provided to such employee,

as based on the cost of comparable private rental housing in the nearest established community with a year-round population of 1,500 or more individuals.

**(o) Patient records**

**(1) In general**

At the option of an Indian tribe or tribal organization, patient records may be deemed to be Federal records under those provisions of title 44 that are commonly referred to as the “Federal Records Act of 1950” for the limited purposes of making such records eligible for storage by Federal Records Centers to the same extent and in the same manner as other Department of Health and Human Services patient records.

**(2) Treatment of records**

Patient records that are deemed to be Federal records under those provisions of title 44 that are commonly referred to as the “Federal Records Act of 1950” pursuant to this subsection shall not be considered Federal records for the purposes of chapter 5 of title 5.

**(p) Interpretation by Secretary**

Except as otherwise provided by law, the Secretary shall interpret all Federal laws (including regulations) and Executive orders in a manner that facilitates, to the maximum extent practicable—

(1) the inclusion in self-determination contracts and funding agreements of—

(A) applicable programs, services, functions, and activities (or portions thereof); and

(B) funds associated with those programs, services, functions, and activities;

(2) the implementation of self-determination contracts and funding agreements; and

(3) the achievement of Tribal health objectives.

**(q) Technical assistance for internal controls**

(1) TECHNICAL ASSISTANCE FOR INTERNAL CONTROLS.—<sup>3</sup>In considering proposals for, amendments to, or in the course of, a contract under this subchapter and compacts under subchapters IV and V of this chapter, if the Secretary deter-

<sup>3</sup>So in original. The heading of par. (1) was probably meant for subsec. (q), the heading of which was editorially supplied.

mines that the Indian Tribe lacks adequate internal controls necessary to manage the contracted program or programs, the Secretary shall, as soon as practicable, provide the necessary technical assistance to assist the Indian Tribe in developing adequate internal controls. As part of that technical assistance, the Secretary and the Tribe shall develop a plan for assessing the subsequent effectiveness of such technical assistance. The inability of the Secretary to provide technical assistance or lack of a plan under this subsection shall not result in the reassumption of an existing agreement, contract, or compact, or declination or rejection of a new agreement, contract, or compact.

(2) The Secretary shall prepare a report to be included in the information required for the reports under sections 5372(b)(2)(A) and 5394(b)(2)(A) of this title. The Secretary shall include in this report, in the aggregate, a description of the internal controls that were inadequate, the technical assistance provided, and a description of Secretarial actions taken to address any remaining inadequate internal controls after the provision of technical assistance and implementation of the plan required by paragraph (1).

(Pub. L. 93-638, title I, §105, formerly §106, Jan. 4, 1975, 88 Stat. 2210; renumbered §105 and amended Pub. L. 100-472, title II, §204, Oct. 5, 1988, 102 Stat. 2291; Pub. L. 101-301, §2(a)(7), May 24, 1990, 104 Stat. 207; Pub. L. 101-644, title II, §203(c)-(e), Nov. 29, 1990, 104 Stat. 4666; Pub. L. 103-413, title I, §§102(10)-(13), 106, Oct. 25, 1994, 108 Stat. 4253-4255, 4270; Pub. L. 104-109, §7, Feb. 12, 1996, 110 Stat. 764; Pub. L. 106-260, §§7, 8, Aug. 18, 2000, 114 Stat. 732, 733; Pub. L. 116-180, title II, §203, Oct. 21, 2020, 134 Stat. 880.)

#### Editorial Notes

##### REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(3)(A)(iii), (C)(i), (d)(1), (e), (f)(3), (k), (l)(1), and (m)(1), (4)(C)(i), 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.

Section 9(c) of the Act of Aug. 2, 1946, referred to in subsec. (a)(3)(C)(ii)(III), was section 9(c) of act Aug. 2, 1946, ch. 744, 60 Stat. 809, which amended section 5 of former Title 41, Public Contracts, and was repealed by Pub. L. 111-350, §7(b), Jan. 4, 2011, 124 Stat. 3855, which Act enacted Title 41, Public Contracts.

Section 13 of the Act of Oct. 3, 1944 (58 Stat. 770; chapter 479), referred to in subsec. (a)(3)(C)(ii)(V), is act Oct. 3, 1944, ch. 479, §13, 58 Stat. 770, which is set out as a note under section 545 of Title 40, Public Buildings, Property, and Works.

The Small Business Act, referred to in subsec. (a)(3)(C)(ii)(X), is Pub. L. 85-536, §2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

Executive Order Nos. 12138, 11246, 11701 and 11758, referred to in subsec. (a)(3)(C)(ii)(XI), are Ex. Ord. No. 12138, May 18, 1979, 44 F.R. 29637, which is set out as a note under section 631 of Title 15, Commerce and Trade, Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319, which is set out as a note under section 2000e of Title 42, The

Public Health and Welfare, Ex. Ord. No. 11701, Jan. 24, 1973, 38 F.R. 2675, which is set out as a note under section 4212 of Title 38, Veterans’ Benefits, and Ex. Ord. No. 11758, Jan. 15, 1974, 39 F.R. 2075, which is set out as a note under section 701 of Title 29, Labor.

This subchapter, referred to in subsecs. (b), (i)(2), and (q)(1), was in the original “this title”, meaning title I of Pub. L. 93-638, known as the Indian Self-Determination Act, which is classified principally to this subchapter (§5321 et seq.). For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

Section 314 of the Department of the Interior and Related Agencies Appropriations Act, 1991, referred to in subsec. (m)(1)(B), is section 314 of Pub. L. 101-512, which is set out as a note under section 5321 of this title.

Subsections (a)(2) and (b) of section 5321 of this title, referred to in subsec. (m)(4)(C)(v), was in the original “sections 102(a)(2) and 102(b) of section 102”, and was translated as reading “subsections (a)(2) and (b) of section 102”, meaning section 102 of Pub. L. 93-638, to reflect the probable intent of Congress.

The Federal Records Act of 1950, referred to in subsec. (o), was title V of act June 30, 1949, ch. 288, as added Sept. 5, 1950, ch. 849, §6(d), 64 Stat. 583, which was classified generally to sections 392 to 396 and 397 to 401 of former Title 44, Public Printing and Documents. Section 6(d) of act Sept. 5, 1950, was repealed by Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1238, the first section of which enacted Title 44, Public Printing and Documents. For disposition of sections of former Title 44, see Table at the beginning of Title 44. Title V of act June 30, 1949, was repealed by Pub. L. 107-217, §4, Aug. 21, 2002, 116 Stat. 1303.

#### CODIFICATION

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

In subsec. (a)(3)(A), “division B (except sections 1123, 2303, 2304, and 2313) of subtitle I of title 41” substituted for “the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.)” and for “such Act” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (a)(3)(C)(ii)(I), “Chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41” substituted for “The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.)” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works, and Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (a)(3)(C)(ii)(II), “Section 6101 of title 41” substituted for “Section 3709 of the Revised Statutes” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (a)(3)(C)(ii)(IV), “Division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41” substituted for “Title III of the Federal Property and Administrative Services Act of 1949 (63 Stat. 393 et seq., chapter 288)” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (a)(3)(C)(ii)(VII), “Section 3145 of title 40” substituted for “Section 2 of the Act of June 13, 1934 (48 Stat. 948, chapter 483 [482])” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works.

In subsec. (a)(3)(C)(ii)(VIII), “Chapter 65 of title 41” substituted for “Sections 1 through 12 of the Act of June 30, 1936 (49 Stat. 2036 et seq. chapter 881)” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (a)(3)(C)(ii)(IX), “Chapter 67 of title 41” substituted for “The Service Control [Contract] Act of 1965 (41 U.S.C. 351 et seq.)” on authority of Pub. L.

111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (k), “section 501 of title 40” substituted for “section 201(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a))” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works.

#### PRIOR PROVISIONS

A prior section 105 of Pub. L. 93-638 was renumbered section 104 by Pub. L. 100-472 and is classified to section 5323 of this title.

#### AMENDMENTS

2020—Subsec. (b). Pub. L. 116-180, §203(1), substituted reference to sections 5321 and 5322 of this title for reference to section 5321 of this title, former section 103 of Pub. L. 93-638, or section 5322 of this title. For disposition of former section 103 of Pub. L. 93-638, see Prior Provisions note set out under section 5322 of this title.

Subsecs. (p), (q). Pub. L. 116-180, §203(2), added subsecs. (p) and (q).

2000—Subsec. (k). Pub. L. 106-260, §7, substituted “deemed an executive agency and part of the Indian Health Service” for “deemed an executive agency” and inserted at end “For purposes of carrying out such contract, grant, or agreement, the Secretary shall, at the request of an Indian tribe, enter into an agreement for the acquisition, on behalf of the Indian tribe, of any goods, services, or supplies available to the Secretary from the General Services Administration or other Federal agencies that are not directly available to the Indian tribe under this section or under any other Federal law, including acquisitions from prime vendors. All such acquisitions shall be undertaken through the most efficient and speedy means practicable, including electronic ordering arrangements.”

Subsec. (o). Pub. L. 106-260, §8, added subsec. (o).

1996—Subsec. (e). Pub. L. 104-109 made technical amendment to directory language of Pub. L. 103-413, §102(11). See 1994 Amendment note below.

1994—Subsec. (a). Pub. L. 103-413, §102(10), added subsec. (a) and struck out former subsec. (a) which read as follows: “Contracts with tribal organizations pursuant to section 5321 of this title 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 the provisions of sections 270a to 270d of title 40: *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: *Provided further*, That, except for construction contracts (or sub-contracts of such a construction contract), the Office of Federal Procurement Policy Act (88 Stat. 796; 41 U.S.C. 401 et seq.) and Federal acquisition regulations promulgated thereunder shall not apply to self-determination contracts.”

Subsec. (e). Pub. L. 103-413, §102(11), as amended by Pub. L. 104-109, added subsec. (e) and struck out former subsec. (e) which read as follows: “Whenever an Indian tribe requests retrocession of the appropriate Secretary for any contract entered into pursuant to this Act, such retrocession shall become effective one year from the date of the request by the Indian tribe or at such date as may be mutually agreed by the Secretary and the Indian tribe.”

Subsec. (f)(2). Pub. L. 103-413, §102(12), added par. (2) and struck out former par. (2) which read as follows: “donate to an Indian tribe or tribal organization the title to any personal or real property found to be excess to the needs of the Bureau of Indian Affairs, the Indian Health Service, or the General Services Administration, including property and equipment purchased with funds under any self-determination contract or grant agreement; and”.

Subsec. (h). Pub. L. 103-413, §106, struck out “and the rules and regulations adopted by the Secretaries of the Interior and Health and Human Services pursuant to section 5328 of this title” after “sections 5321 and 5322 of this title”.

Subsecs. (i) to (n). Pub. L. 103-413, §102(13), added subsecs. (i) to (n).

1990—Subsec. (a). Pub. L. 101-301 substituted “sub-contracts of such a construction contract” for “sub-contracts in such cases where the tribal contractor has sub-contracted the activity”.

Subsec. (c)(1)(B). Pub. L. 101-644, §203(c), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “for an indefinite term in the case of a mature contract.”

Subsec. (d). Pub. L. 101-644, §203(d), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

“(1) No later than fiscal year 1990, the Secretary shall begin using the calendar year as the basis for contracts and agreements under this Act except for instances where the Secretary and the Indian tribe or tribal organization agree on a different period.

“(2) The Secretary shall submit a report to the Congress within ninety days of October 5, 1988, on the amounts of any additional obligatory authority needed to implement this subsection in fiscal year 1989.”

Subsec. (f)(2), (3). Pub. L. 101-644, §203(e), inserted “or real” after “personal”.

1988—Subsec. (a). Pub. L. 100-472, §204(b), (c), substituted reference to section 5321 of this title for reference to section 5321 of this title and former section 103 of Pub. L. 93-638 and inserted proviso relating to nonapplication of Office of Federal Procurement Policy Act to self-determination contracts. See Prior Provisions note set out under section 5322 of this title.

Subsec. (b). Pub. L. 100-472, §204(d), which directed the amendment of subsec. (b) by substituting reference to sections 5321 and 5322 of this title for text in original Act reading “sections 102, 103, and 104”, could not be executed because text enacted by Pub. L. 93-638 read “section 102, 103, or 104”. Intended amendment was reenacted by Pub. L. 116-180, §203(1), see 2020 Amendment note above.

Subsec. (c). Pub. L. 100-472, §204(e), added subsec. (c) and struck out former subsec. (c) which related to limitation on term of any contract requested by a tribe pursuant to section 5321 of this title and former section 103 of Pub. L. 93-638 and annual renegotiation of amounts. See Prior Provisions note set out under section 5322 of this title.

Subsec. (d). Pub. L. 100-472, §204(e), added subsec. (d) and struck out former subsec. (d) which related to revision or amendment of contracts or grants at request or with consent of tribal organization and effective date for retrocession of contracts.

Subsec. (e). Pub. L. 100-472, §204(e), added subsec. (e) and struck out former subsec. (e) which authorized the Secretary to permit tribal organizations to use existing school buildings, hospitals, and other facilities and equipment therein in carrying out grants or contracts.

Subsec. (f). Pub. L. 100-472, §204(e), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 100-472, §204(f), redesignated former subsec. (f) as (g) and substituted reference to section 5321 of this title for reference to section 5321 of this title and former section 103 of Pub. L. 93-638. Former subsec. (g) redesignated (h). See Prior Provisions note set out under section 5322 of this title.

Subsec. (h). Pub. L. 100-472, §204(g), (h), redesignated former subsec. (g) as (h), substituted reference to sections 5321 and 5322 of this title for reference to section 5321 of this title, former section 103 of Pub. L. 93-638, and section 5322 of this title, and reference to Health and Human Services for reference to Health, Education, and Welfare. Former subsec. (h), which related to minimum amount of funds under terms of contracts, was struck out. See Prior Provisions note set out under section 5322 of this title.

### Statutory Notes and Related Subsidiaries

#### CONTINUED AVAILABILITY OF CERTAIN FUNDS

Pub. L. 105-277, div. A, §101(e) [title I], Oct. 21, 1998, 112 Stat. 2681-231, 2681-246, provided in part that: “hereafter funds made available to tribes and tribal organizations through contracts, compact agreements, or grants, as authorized by the Indian Self-Determination Act of 1975 [25 U.S.C. 5321 et seq.] or grants authorized by the Indian Education Amendments of 1988 (25 U.S.C. 2001 and 2008A [probably means prior versions of 25 U.S.C. 2001 and 2008a]) shall remain available until expended by the contractor or grantee”.

### § 5325. Contract funding and indirect costs

#### (a) Amount of funds provided

(1) The amount of funds provided under the terms of self-determination contracts entered into pursuant to this chapter shall not be less than the appropriate Secretary would have otherwise provided for the operation of the programs or portions thereof for the period covered by the contract, without regard to any organizational level within the Department of the Interior or the Department of Health and Human Services, as appropriate, at which the program, function, service, or activity or portion thereof, including supportive administrative functions that are otherwise contractable, is operated.

(2) There shall be added to the amount required by paragraph (1) contract support costs which shall consist of an amount for the reasonable costs for activities which must be carried on by a tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management, but which—

(A) normally are not carried on by the respective Secretary in his direct operation of the program; or

(B) are provided by the Secretary in support of the contracted program from resources other than those under contract.

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

(i) direct program expenses for the operation of the Federal program that is the subject of the contract; and

(ii) any additional administrative or other expense incurred by the governing body of the Indian Tribe or Tribal organization and any overhead expense incurred by the tribal contractor in connection with the operation of the Federal program, function, service, or activity pursuant to the contract,

except that such funding shall not duplicate any funding provided under subsection (a)(1) of this section.

(B) In calculating the reimbursement rate for expenses described in subparagraph (A)(ii), not less than 50 percent of the expenses described in subparagraph (A)(ii) that are incurred by the governing body of an Indian Tribe or Tribal organization relating to a Federal program, function, service, or activity carried out pursuant to the contract shall be considered to be reasonable and allowable.

(C) On an annual basis, during such period as a tribe or tribal organization operates a Federal

program, function, service, or activity pursuant to a contract entered into under this chapter, the tribe or tribal organization shall have the option to negotiate with the Secretary the amount of funds that the tribe or tribal organization is entitled to receive under such contract pursuant to this paragraph.

(4) For each fiscal year during which a self-determination contract is in effect, any savings attributable to the operation of a Federal program, function, service, or activity under a self-determination contract by a tribe or tribal organization (including a cost reimbursement construction contract) shall—

(A) be used to provide additional services or benefits under the contract; or

(B) be expended by the tribe or tribal organization in the succeeding fiscal year, as provided in section 13a of this title.

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

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

(B) to ensure compliance with the terms of the contract and prudent management.

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

#### (b) Reductions and increases in amount of funds provided

The amount of funds required by subsection (a) of this section—

(1) shall not be reduced to make funding available for contract monitoring or administration by the Secretary;

(2) shall not be reduced by the Secretary in subsequent years except pursuant to—

(A) a reduction in appropriations from the previous fiscal year for the program or function to be contracted;

(B) a directive in the statement of the managers accompanying a conference report on an appropriation bill or continuing resolution;

(C) a tribal authorization;

(D) a change in the amount of pass-through funds needed under a contract; or

(E) completion of a contracted project, activity, or program;

(3) shall not be reduced by the Secretary to pay for Federal functions, including, but not limited to, Federal pay costs, Federal employee retirement benefits, automated data processing, contract technical assistance or contract monitoring;

(4) shall not be reduced by the Secretary to pay for the costs of Federal personnel displaced by a self-determination contract; and

(5) may, at the request of the tribal organization, be increased by the Secretary if nec-