

103^D CONGRESS
2^D SESSION

H. R. 4842

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 HOUSE OF REPRESENTATIVES

JULY 27, 1994

Mr. RICHARDSON (for himself and Mr. THOMAS of Wyoming) introduced the following bill; which was referred to the Committee on Natural Resources

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 Act Amendments of 1994”.

6 **SEC. 2. AMENDMENTS.**

7 The Indian Self-Determination and Education Assist-
8 ance Act (25 U.S.C. 450 et seq.) is amended as follows:

1 (1) At the beginning of section 4, insert the fol-
2 lowing new paragraph and redesignate all other
3 paragraphs accordingly:

4 “(1) ‘construction contract’ means a fixed-price
5 or cost-reimbursement self-determination contract
6 for a construction project. Contracts (i) limited to
7 providing architectural and engineering services,
8 planning services, and/or construction management
9 services; (ii) for the Housing Improvement Program
10 or roads maintenance program administered by the
11 Secretary of the Interior; and (iii) for the health fa-
12 cility maintenance and improvement program admin-
13 istered by the Secretary of Health and Human Serv-
14 ices, shall not be deemed to be construction con-
15 tracts within the meaning of this Act;”.

16 (2) Amend section 5(f) to read as follows:

17 “(f) For each fiscal year during which an Indian trib-
18 al organization receives or expends funds pursuant to a
19 contract or grant under this title, the tribal organization
20 which requested such contract or grant shall submit to the
21 appropriate Secretary a single agency audit report as re-
22 quired by chapter 75 of title 31, United States Code. Such
23 tribal organization shall also submit such additional infor-
24 mation on the conduct of the program or service involved
25 as the tribal organization may negotiate with the Sec-

1 retary. Any disagreement over reporting requirements
2 shall be subject to the declination standards and proce-
3 dures set forth in section 102 of this Act.”.

4 (3) In section 7(a) strike “of subcontractors”
5 and insert in lieu thereof “or subcontractors (exclud-
6 ing tribes and tribal organization)”.

7 (4) At the end of section 7, insert the following
8 new subsection:

9 “(c) Notwithstanding subsections (a) and (b), where
10 a self-determination contract, or portion thereof, is in-
11 tended to benefit one tribe, tribal employment or contract
12 preference laws adopted by such tribe shall govern with
13 respect to the administration of such contract or portion
14 thereof.”.

15 (5) At the end of paragraph (1) of section
16 102(a), insert the following new sentence: “Such
17 programs shall include administrative functions of
18 the Department of the Interior or the Department
19 of Health and Human Services which support the
20 delivery of services to Indians, including those ad-
21 ministrative activities related to, but not part of, the
22 service delivery program, which are otherwise
23 contractible, without regard to the organization level
24 within the Department where such functions are car-
25 ried out.”.

1 (6) Amend paragraph (2) of section 102(a) as
2 follows—

3 (A) insert “, or to amend or renew a self-
4 determination contract,” before “to the Sec-
5 retary for review”;

6 (B) in the second sentence strike “The”
7 and insert “Subject to the provisions of sub-
8 section 4 hereof, the”;

9 (C) insert “and award the contract” before
10 “unless”;

11 (D) in subparagraph (A), insert “by the
12 tribal organization” after “rendered”;

13 (E) in subparagraph (B), insert “by the
14 tribal organization” after “resources”;

15 (F) at the end of subparagraph (C) add
16 the following: “, either because (i) the amount
17 of funds proposed in the contract is in excess
18 of the funding levels specified in section 106(a)
19 of this Act, or (ii) the program (or portion
20 thereof) to be contracted is beyond the scope of
21 paragraph (1) thereof because the proposal in-
22 cludes activities which cannot be lawfully car-
23 ried out by the contractor;”; and

24 (G) insert the following new paragraph:

1 “(4) The Secretary shall approve any severable por-
2 tion of a contract proposal which does not support a dec-
3 lination finding as provided in paragraph (3) of this sub-
4 section. Whenever the Secretary determines under para-
5 graph (3) that a contract proposal (A) proposes in part
6 to plan, conduct, or administer a program that is beyond
7 the scope of paragraph (1), or (B) proposes a funding level
8 in excess of the funding levels specified in section 106(a)
9 of this Act, the Secretary shall approve the proposal to
10 the extent authorized to paragraph (1) of section 106(a)
11 of this Act, as appropriate (subject to any agreed-upon
12 alteration in the proposed scope of work). In the event
13 the tribal organization elects to operate the severable por-
14 tion of a contract proposal, subsection (b) thereof shall
15 apply only with respect to the declined portion of the con-
16 tract.”.

17 (7) In section 102(b)(3), insert before the pe-
18 riod “, subject to the tribe’s or tribal organization’s
19 option to proceed directly to Federal district court
20 as provided in section 110(a)”.

21 (8) At the end of section 102, insert the follow-
22 ing new subsections:

23 “(e) In any hearing or appeal provided under sub-
24 section (b)(3), the Secretary shall carry the burden of
25 proof to establish by clear and convincing evidence that

1 the contract proposal should be declined. Final depart-
2 mental decisions in all such appeals shall be made at a
3 level higher than the level of the agency whose decision
4 under subsection (b) is appealed.

5 “(f) A tribal organization in Alaska authorized by
6 tribal resolution or resolutions to contract under this Act
7 the operation of one or more programs may redelegate
8 that authority, by formal action of the tribal organiza-
9 tion’s governing body, to another tribal organization pro-
10 vided advance notice of such redelegation and a copy of
11 the contracting proposal, prior to its submission to the
12 Secretary, are provided to all tribes served by the tribal
13 organization. Nothing herein is to be construed as a limi-
14 tation on the authority of a tribe to limit, restrict or re-
15 scind its resolution at any time or in any manner whatso-
16 ever. A tribe receiving such notice shall have 60 days from
17 receipt of the notice to notify the tribal organization in
18 writing of its intent to adopt a limiting resolution prohibit-
19 ing or conditioning the proposed redelegation, and there-
20 after shall have 60 days to adopt and transmit such reso-
21 lution to the tribal organization. A tribal organization so
22 notified of a tribe’s intent shall not proceed with any re-
23 delegation proposal until the expiration of the 60-day pe-
24 riod.”.

25 (9) Amend section 105(a) to read as follows:

1 “(a) Contracts, grants, and cooperative agreements
2 with tribal organizations pursuant to sections 102 and 103
3 of this title shall not be subject to general Federal con-
4 tracting, discretionary grant or cooperative agreement
5 laws and regulations, except to the extent such laws ex-
6 pressly apply to Indian tribes: *Provided*, That with respect
7 to construction contracts as defined in section 4 of this
8 Act (or subcontracts of such a construction contract), the
9 Office of Federal Procurement Policy Act (88 Stat. 796;
10 41 U.S.C. 401 et seq.) and Federal acquisition regulations
11 promulgated thereunder shall apply to the limited extent
12 such statute or regulations are necessary to assure proper
13 completion of the contract, are directly relevant to the con-
14 struction activity, and are not inconsistent with the provi-
15 sions or policy of this Act: *Provided further*, That all such
16 requirements shall be negotiated between the Secretary
17 and the tribal organization and set forth as an attachment
18 to the contract: *Provided further*, That no other laws or
19 executive orders shall be applicable to construction con-
20 tracts subject to this Act unless expressly so stated in such
21 other laws or orders, including chapter 10 of title 40,
22 United States Code; section 9(a) and (c) of the Act of
23 August 2, 1946, as amended, 60 Stat. 809; sections 301–
24 310 of the Act of June 30, 1949, as amended, 63 Stat.
25 393–397; section 13 of the Act of October 3, 1944, as

1 amended, 58 Stat. 770; chapters 21, 25, 27, 29, and 31
2 of title 44, United States Code; chapter 5 of title 40, United
3 States Code, section 2 of the Act of June 13, 1934,
4 as amended, 48 Stat. 948; sections 1–12 of the Act of
5 June 30, 1936, as amended, 49 Stat. 2036–39; chapter
6 6 of title 41, United States Code; chapter 14A of title 15,
7 United States Code; and Executive Orders 12138, 11246,
8 11701, and 11758.”.

9 (10) Amend section 105(e) to read as follows:

10 “(e) Whenever an Indian tribe or tribal organization
11 requests retrocession of the appropriate Secretary for any
12 contract, or portion thereof, entered into pursuant to this
13 Act, such retrocession shall, unless the request for ret-
14 rocession is rescinded by such tribe or tribal organization,
15 become effective one year from the date of the request by
16 the Indian tribe or tribal organization, or the date of con-
17 tract expiration, whichever is earlier, or at such date as
18 may be mutually agreed by the Secretary and the Indian
19 tribe.”.

20 (11) Amend paragraph (2) of section 105(f) to
21 read as follows:

22 “(2) donate to an Indian tribe or tribal organi-
23 zation the title to any personal or real property
24 found to be excess to the needs of the Bureau of In-
25 dian Affairs, the Indian Health Service, or the Gen-

1 eral Services Administration, except that title to
2 property and equipment furnished by the Federal
3 Government for use in the performance of the con-
4 tract or purchased with funds under any self-deter-
5 mination contract or grant agreement shall, unless
6 otherwise requested by the tribe or tribal organiza-
7 tion, vest in the appropriate tribe or tribal organiza-
8 tion, and upon retrocession, rescission, or termi-
9 nation of such self-determination contract or grant,
10 title to such property having a present value in ex-
11 cess of \$5,000 and remaining in use in support of
12 the contracted program shall, at the Secretary's op-
13 tion, revert to the Secretary; and''.

14 (12) At the end of section 105, insert the fol-
15 lowing new subsections:

16 “(i) Where a self-determination contract requires the
17 Secretary to administratively divide a program which has
18 previously been administered for the benefit of a greater
19 number of tribes than are represented by the tribal organi-
20 zation that is a party to the contract, the Secretary
21 shall—

22 “(1) endeavor to minimize any adverse effect on
23 the level of services to be provided to all affected
24 tribes;

1 “(2) notify all affected tribes not party to the
2 contract of the receipt of the contract proposal at
3 the earliest possible date, and of the right of such
4 tribes to comment on how the Secretary’s program
5 should be divided to best meet the needs of all af-
6 fected tribes;

7 “(3) explore the feasibility of instituting cooper-
8 ative agreements amongst the affected tribes not a
9 party to the contract, the tribal organization operat-
10 ing the contract, and the Secretary; and

11 “(4) identify and report to Congress the nature
12 of any diminution in quality, level or quantity of
13 services to any affected tribe resulting from the divi-
14 sion of the Secretary’s program, together with an es-
15 timate of the funds which would be required to cor-
16 rect such diminution. In determining whether to de-
17 cline a contract under section 102(a)(2), the Sec-
18 retary shall not consider the effect which a contract
19 proposal will have on tribes not represented by the
20 tribal organization submitting such proposal, nor on
21 Indians not served by the portion of the program to
22 be contracted. The Secretary shall make such special
23 provisions as may be necessary to assure that serv-
24 ices are provided to the tribes not served by a self-
25 determination contract.

1 “(j) Upon notice to the Secretary, tribal organiza-
2 tions carrying out self-determination contracts are author-
3 ized to redesign programs, activities, functions and serv-
4 ices under contract, including program standards, to best
5 meet the local geographic, demographic, economic, cul-
6 tural, health and institutional needs of the Indian people
7 and tribes served under the contract. The Secretary shall
8 evaluate any redesign proposal against the declination cri-
9 teria set forth in section 102 of this Act.

10 “(k) For purposes of section 201(a) of the Act of
11 June 30, 1949 (40 U.S.C. 481(a)) (involving Federal
12 sources of supply, including lodging providers, airlines,
13 and other transportation providers), an Indian tribe or
14 tribal organization carrying out a contract, grant, or coop-
15 erative agreement under this Act shall be deemed an exec-
16 utive agency when carrying out such contract, grant, or
17 agreement.

18 “(l) Upon the request of an Indian tribe or tribal or-
19 ganization, the Secretary shall enter into leases with In-
20 dian tribes and tribal organizations which hold title to,
21 a leasehold interest in, or a beneficial interest in, facilities
22 used by Indian tribes or tribal organizations for the ad-
23 ministration and delivery of contract services under the
24 Act. The Secretary shall compensate such Indian tribes
25 or tribal organizations for the use of leased facilities for

1 contract purposes. Lease compensation may include: rent,
2 depreciation based on the useful life of the building, prin-
3 cipal and interest paid or accrued, operation and mainte-
4 nance expenses, and such other reasonable expenses deter-
5 mined by regulation to be allowable.

6 “(m) Construction contracts:

7 “(1) Construction contracts requested, ap-
8 proved, or awarded under this Act shall be subject
9 to all of the provisions of this Act, including without
10 intending any limitation, sections 7, 102(a), 102(b),
11 103(d) and (e), 105(f), 106(a), 106(f), 110, and
12 111, and section 314 of Public Law No. 101-512,
13 as amended.

14 “(2) In providing technical assistance to tribes
15 and tribal organizations in the development of con-
16 struction contract proposals, the Secretary shall pro-
17 vide a requesting tribe or tribal organization, within
18 30 days of receipt of a request, with all available in-
19 formation regarding the construction project, includ-
20 ing without intending any limitation, construction
21 drawings, maps, engineering reports, design reports,
22 plans of requirements, cost estimates, environmental
23 assessments or impact reports, and archaeological
24 reports.

1 “(3) Prior to finalization of a construction con-
2 tract proposal pursuant to section 102(a), and upon
3 request of the contracting tribe or tribal organiza-
4 tion, there shall be a precontract negotiation phase
5 which shall, at a minimum, include—

6 “(A) the provision of technical assistance
7 pursuant to section 103 and paragraph (2)
8 hereof;

9 “(B) a joint scoping session to review all
10 plans, specifications, engineering reports, cost
11 estimates, and other information available to
12 the parties, for the purpose of identifying all
13 areas of agreement and disagreement;

14 “(C) an opportunity for the Secretary to
15 revise his or her plans, designs, or cost esti-
16 mates in response to concerns raised or infor-
17 mation provided by the tribe or tribal organiza-
18 tion;

19 “(D) a negotiation session during which
20 the Secretary and the tribe or tribal organiza-
21 tion shall seek to develop a mutually agreeable
22 contract proposal;

23 “(E) upon the request of the tribe or tribal
24 organization, use of an alternative dispute reso-
25 lution mechanism to seek resolution of all re-

1 maintaining areas of disagreement pursuant to the
2 Administrative Dispute Resolution Act (5
3 U.S.C. 571); and

4 “(F) submission of a final contract pro-
5 posal pursuant to section 102(a).

6 “(4) In funding a fixed-price construction con-
7 tract pursuant to section 106(a), the Secretary shall
8 include funds for (A) the reasonable costs of the
9 tribe or tribal organization for general administra-
10 tion to be incurred in connection with the contracted
11 project, and (B) a reasonable profit in light of the
12 risk and other relevant considerations: *Provided*,
13 That the Secretary shall not be required to sepa-
14 rately identify such components in the contract
15 budget: and *Provided further*, That the total amount
16 awarded under the contract shall reflect an overall
17 fair and reasonable price to the parties, including
18 but not limited to (i) the reasonable costs to the
19 tribal organization of performing the contract given
20 the terms of the contract and the requirements of
21 this Act and any other applicable law, (ii) the costs
22 of preparing the contract proposal and supporting
23 cost data, (iii) the costs associated with the tribal
24 organization’s audited general and administrative
25 costs, and (iv) in the case of a fixed-price contract,

1 a fair profit determined in light of the relevant risks
2 and local market conditions.”.

3 (13) Amend section 106(a) as follows—

4 (A) at the end of paragraph (1), insert the
5 following “, without regard to the organiza-
6 tional level or levels within the Department at
7 which the program (or portion thereof), includ-
8 ing supportive administrative functions which
9 are otherwise contractible is operated”;

10 (B) in paragraph (2), after “consist of”,
11 insert “an amount for”, and add the following
12 at the end thereof: “Contract support costs
13 shall include, without distinction, funds to reim-
14 burse tribal contractors for reasonable and al-
15 lowable costs of contracting attributable to di-
16 rect program expenses, and reasonable addi-
17 tional administrative or other overhead expenses
18 in connection with tribal operation of Federal
19 programs. The amount of funds to which a
20 tribe or tribal organization is entitled pursuant
21 to this subparagraph shall be negotiated annu-
22 ally with the Secretary.”; and

23 (C) strike paragraph (3) and insert the fol-
24 lowing new paragraphs (3) and (4):

1 “(3) Any savings in operation under a self-de-
2 termination contract (including a cost reimburse-
3 ment construction contract) shall be utilized to pro-
4 vide additional services or benefits under the con-
5 tract or be expended in the succeeding fiscal year as
6 provided in section 8 of this Act.

7 “(4) During the initial year of a self-determina-
8 tion contract there shall be included, in the amount
9 required to be paid under paragraph (2), start-up
10 costs consisting of the reasonable costs, either pre-
11 viously incurred or to be incurred under the contract
12 on a one-time basis, necessary to plan, prepare for
13 and take over operation of the contracted program
14 and to also ensure compliance with the terms of the
15 contract and prudent management: *Provided*, That
16 previously incurred costs shall not be included to the
17 extent the Secretary was not notified in advance and
18 in writing of the nature and extent of the costs to
19 be incurred.”.

20 (14) Amend section 106(c) as follows:

21 (A) In each of paragraphs (1) and (2),
22 strike “indirect costs” and insert in lieu thereof
23 “indirect costs and other negotiated contract
24 support costs”.

1 (B) Strike “and” at the end of paragraph
2 (4).

3 (C) Strike the period at the end of para-
4 graph (5) and insert in lieu thereof “; and”.

5 (D) Insert the following new paragraph:

6 “(6) a reporting of any deficiency of funds
7 needed to maintain the preexisting level of services
8 to any tribes affected by contracting activities under
9 this Act, and the amount of funds needed for transi-
10 tional purposes to enable contractors to convert from
11 Federal fiscal year accounting to a different ac-
12 counting cycle, as authorized under section 105(d) of
13 this Act.”.

14 (15) At the end of paragraph (2) of section
15 106(d), insert the following new sentence: “Notwith-
16 standing any other provision of law, and subject to
17 the availability of appropriations, every Federal
18 agency and every State shall pay its full propor-
19 tionate share of the indirect costs associated with
20 federally funded contracts or grants awarded to
21 tribes or tribal organizations under any other law. In
22 the event that appropriations are not sufficient for
23 agencies other than the Department of the Interior
24 and the Department of Health and Human Services,
25 or for State governments or State agencies, to pay

1 their full proportionate share as provided herein, the
2 Secretary shall, subject to the availability of appro-
3 priations for this purpose, fund and pay such short-
4 falls and report all unfunded shortfalls to the Con-
5 gress, as provided in section 106(c)(2).”.

6 (16) Amend section 106(f) by inserting imme-
7 diately after the second sentence thereof the follow-
8 ing: “For the purpose of the 365-day period, an
9 audit report shall be deemed received on the date of
10 actual receipt by the Secretary, absent a notice by
11 the Secretary within 60 days of receipt that the re-
12 port will be rejected as insufficient due to non-
13 compliance with chapter 75 of title 31, United
14 States Code, or other applicable law.”.

15 (17) Amend section 106(g) to read as follows:
16 “(g) Upon approval of a self-determination contract,
17 the Secretary shall allocate to the contract the full amount
18 to which the contractor is entitled under section 106(a),
19 subject to adjustments for each subsequent year that Fed-
20 eral programs are administered by such tribe or tribal or-
21 ganization.”.

22 (18) Amend section 106(i) to read as follows:
23 “(i) The Secretary shall consult annually with, and
24 solicit the participation of, Indian tribes and tribal organi-
25 zations in the development of the budget for the Indian

1 Health Service and the Bureau of Indian Affairs, includ-
2 ing participation in the formulation of annual budget re-
3 quests to Congress.”.

4 (19) Amend section 106 by adding at the end
5 thereof the following new subsections:

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

10 “(k) Without intending any limitation, a tribal orga-
11 nization may, without approval, expend funds provided
12 under a self-determination contract for the following pur-
13 poses to the extent supportive of a contracted program—

14 “(1) depreciation and use allowances not other-
15 wise specifically prohibited by law, including depre-
16 ciation of facilities owned by the tribe or tribal orga-
17 nization and constructed with Federal financial as-
18 sistance;

19 “(2) publication and printing costs;

20 “(3) building, realty and facilities costs, includ-
21 ing rental costs or mortgage expenses;

22 “(4) automated data processing and similar
23 equipment or services;

24 “(5) cost of capital assets and repairs;

25 “(6) management studies;

1 “(7) professional services other than services
2 provided in connection with judicial proceedings by
3 or against the United States;

4 “(8) insurance and indemnification, including
5 insurance covering the risk of loss of or damage to
6 property used in connection with the contract with-
7 out regard to the ownership of such property;

8 “(9) costs incurred to raise funds or contribu-
9 tions from non-Federal sources for the purpose of
10 furthering the goals and objectives of a self-deter-
11 mination contract;

12 “(10) interest expenses paid on capital expendi-
13 tures such as buildings, building renovation, or ac-
14 quisition or fabrication of capital equipment, and in-
15 terest expenses on loans necessitated due to sec-
16 retarial delays in providing funds under a contract;

17 “(11) expenses of a tribal organization’s gov-
18 erning body to the extent attributable to the man-
19 agement or operation of programs under this Act;
20 and

21 “(12) costs associated with the management of
22 pension, self-insurance and other funds which in-
23 clude Federal participation.

24 “(l) Within 12 months following the date of enact-
25 ment of this subsection, the Office of Management and

1 Budget, with the active participation of Indian tribes and
2 tribal organizations, the Department of the Interior, Of-
3 fice of the Inspector General, and the Health and Human
4 Services Department, Cost Determination Branch, shall
5 develop a separate set of cost principles applicable to In-
6 dian tribes and tribal organizations consistent with the
7 government-to-government Federal-tribal relationship em-
8 bodied in this Act.

9 “(m) Except in connection with rescission and
10 reassumption of a contract under section 109 of this Act,
11 the Secretary shall in no circumstance suspend, withhold
12 or delay the payment of funds to a tribal organization
13 under a self-determination contract.

14 “(n) Program income earned by a tribal organization
15 in the course of carrying out a self-determination contract
16 shall be used by the tribal organization to further the gen-
17 eral purposes of the contract and shall not be a basis for
18 reducing the amount of funds otherwise obligated to the
19 contract.

20 “(o) To the extent contracting activities under this
21 Act reduce the Secretary’s administrative or other respon-
22 sibilities in connection with the operation of Indian pro-
23 grams, resulting in savings which have not otherwise been
24 included in the contract amount specified in subsection (a)
25 of this section, and to the extent that doing so will not

1 adversely affect the Secretary's ability to carry out his re-
2 sponsibilities to other tribes and tribal organizations, the
3 Secretary shall make such savings available to tribal orga-
4 nizations contracting under this Act.

5 “(p) Notwithstanding any laws or regulations to the
6 contrary, a tribal organization may rebudget within the
7 approved budget of its contract to meet contract require-
8 ments, if such rebudgeting does not have a significant and
9 adverse effect upon the level or nature of services.”.

10 **SEC. 3. CONTRACT SPECIFICATIONS.**

11 Section 108 of the Indian Self-Determination and
12 Education Assistance Act (25 U.S.C. 450j), currently re-
13 served, is amended to read as follows:

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

15 “Each Self-Determination Contract or grant entered
16 into under this Act shall contain, or incorporate by ref-
17 erence, the following provisions, with modifications where
18 indicated and the blanks appropriately filled together with
19 such other provisions as the parties may agree upon:

20 “(1) AUTHORITY AND PURPOSE.—

21 “(A) AUTHORITY.—This agreement, de-
22 noted a Self-Determination Contract (herein-
23 after referred to as the ‘Contract’), is entered
24 into by the Secretary of the Interior or the Sec-
25 retary of Health and Human Services (herein-

1 after referred to as the ‘Secretary’), for and on
2 behalf of the United States pursuant to titles I
3 and II of the Indian Self-Determination and
4 Education Assistance Act and by the authority
5 of the _____ tribal government or
6 tribal organization (hereinafter referred to as
7 the ‘Contractor’). Unless otherwise provided in
8 this agreement, all of the provisions of title I of
9 the Indian Self-Determination and Education
10 Assistance Act are incorporated herein.

11 “(B) PURPOSE.—Each and every provision
12 of the Indian Self-Determination Act and of
13 this Contract shall be liberally construed for the
14 benefit of the Contractor to transfer the fund-
15 ing and the following related functions, services,
16 activities, and programs (or portion thereof), in-
17 cluding all related administrative functions
18 from the Federal Government to the Contrac-
19 tor: (List functions, services, activities, and pro-
20 grams.)

21 “(C) TRIBAL LAW AND FORUMS.—The
22 laws and/or policies and procedures of the Con-
23 tractor shall be applied in the performance of
24 this Contract and the powers and decisions of
25 the Contractor’s Tribal Court or other dispute

1 resolution mechanism shall be binding to the
2 extent that Federal law, construed in accord-
3 ance with the applicable canons of construction
4 and the Indian Self-Determination and Edu-
5 cation Assistance Act, is not inconsistent.

6 “(2) TERMS, PROVISIONS AND CONDITIONS.—

7 “(A) TERM.—The term of this Contract
8 shall not exceed 3 years, unless the Secretary
9 and the Contractor agree on a longer period
10 pursuant to section 105(c)(1)(B) of the Indian
11 Self-Determination and Education Assistance
12 Act. Pursuant to section 105(d)(1) of the Act,
13 upon the Contractor’s election, the calendar
14 year shall be the basis for contracts under this
15 Act, unless the Secretary and the Contractor
16 agree on a different period in the annual fund-
17 ing agreement.

18 “(B) EFFECTIVE DATE.—This Contract
19 shall become effective upon approval and execu-
20 tion by the Contractor and the Secretary, un-
21 less otherwise agreed to by the Secretary and
22 the Contractor.

23 “(C) FUNDING AMOUNT.—

24 “(i) AMOUNT OF ANNUAL FUNDING
25 AGREEMENT.—Subject to the appropria-

1 tion of funds by Congress, the Secretary
2 shall make available to the Contractor the
3 total amount specified in the annual fund-
4 ing agreement incorporated by reference in
5 paragraph (6)(B), which amount shall not
6 be less than the amounts specified in sec-
7 tion 106(a) of the Act.

8 “(ii) LIMITATION OF COSTS.—The
9 Contractor shall not be obligated to con-
10 tinue performance beyond the amount of
11 funds awarded, and if at any time the Con-
12 tractor has reason to believe that the total
13 amount for performance of this contract or
14 a specific activity of this Contract will be
15 greater than the amount awarded, the
16 Contractor shall notify the appropriate
17 Secretary. If the amount awarded is not
18 increased, the Contractor may cease per-
19 formance. In such event all duties and re-
20 sponsibilities previously assumed by the
21 Contractor shall become the duties and re-
22 sponsibilities of the Secretary.

23 “(D) PAYMENT.—

24 “(i) IN GENERAL.—Payments shall be
25 made as expeditiously as possible and shall

1 include financial arrangements to cover
2 funding during periods under continuing
3 resolutions to the extent permitted by such
4 resolutions.

5 “(ii) QUARTERLY SEMIANNUAL, LUMP
6 SUM, AND OTHER METHODS OF PAY-
7 MENT.—Notwithstanding the provisions of
8 any other law, for each fiscal year covered
9 by this Contract, the Secretary is author-
10 ized to and shall make available the funds
11 specified for the fiscal year under the an-
12 nual funding agreement by paying to the
13 Contractor on a quarterly basis one-quar-
14 ter of the total amount provided for in the
15 annual funding agreement for that fiscal
16 year, by making a lump-sum payment or
17 semiannual payments, or by using any
18 other method authorized by law, as may be
19 requested by the Contractor and specified
20 in the annual funding agreement. Each
21 quarterly payment shall be made on the
22 first day of each quarter of the fiscal year
23 except that in instances where the contract
24 year coincides with the Federal fiscal year,
25 payment for the first quarter shall be

1 made not later than the date that is 10
2 calendar days after the date on which the
3 Office of Management and Budget appor-
4 tions the appropriations for the fiscal year
5 for the programs, services, functions, and
6 activities subject to the Contract. Chapter
7 39 of title 31, United States Code, shall
8 apply to the payment of funds due under
9 the contract and the annual funding agree-
10 ment.

11 “(E) RECORDS AND MONITORING.—(i) Ex-
12 cept for previously provided copies of tribal
13 records that the Secretary demonstrates are
14 clearly required to be maintained as part of the
15 recordkeeping system of the Department of the
16 Interior and/or the Department of Health and
17 Human Services, Contractor records shall not
18 be considered Federal records for purposes of
19 chapter 5 of title 5, United States Code.

20 “(ii) The Contractor shall maintain a rec-
21 ordkeeping system, and upon reasonable ad-
22 vance request provide reasonable access to such
23 records to the Secretary.

24 “(iii) Contractors are responsible for man-
25 aging the day-to-day operations of the Contract

1 and for monitoring activities to assure compli-
2 ance with the Contract and applicable Federal
3 requirements. Monitoring visits shall be limited
4 to not more than one performance monitoring
5 visit per contract by each operating division, de-
6 partmental bureau or departmental agency or
7 duly authorized representatives thereof unless
8 (I) the Contractor has agreed to such additional
9 visits, or (II) there is reasonable cause to be-
10 lieve that grounds for reassumption of the con-
11 tract or other serious contract performance de-
12 ficiency exists: *Provided, however,* That such ad-
13 ditional visits shall not be made until after rea-
14 sonable advance notice has been given to the
15 Contractor, including the nature of the problem
16 which requires the additional visits.

17 “(F) PROPERTY.—(i) As provided in sec-
18 tion 105(f) of the Act, as amended, at the re-
19 quest of the Contractor the Secretary shall
20 make available or transfer to the Contractor all
21 reasonably divisible real property, facilities,
22 equipment, and personal property that the Sec-
23 retary had previously utilized to provide or ad-
24 minister the programs, services, functions, and
25 activities covered by this Contract. A mutually

1 agreed upon list specifying the property, facili-
2 ties, and equipment so furnished shall also be
3 prepared and periodically revised. The Sec-
4 retary shall maintain a record of all such prop-
5 erty for purposes of replacement and shall re-
6 place such property on the same basis as prop-
7 erty remaining under the Secretary's control.
8 Upon the request of the Contractor, the Sec-
9 retary and the Contractor shall enter into a
10 separate joint use agreement to address the
11 parties' shared use of real or personal property
12 that is not reasonably divisible.

13 “(ii) The Secretary shall delegate to the
14 Contractor the authority to acquire such ‘ex-
15 cess’ property as may be appropriate in the
16 judgment of the Contractor to support the pro-
17 grams, services, functions, and activities oper-
18 ated pursuant to this Contract. The Secretary
19 shall assist the Contractor in obtaining such
20 confiscated or excess property as may become
21 available to tribes, tribal organizations, or local
22 governments. A screener identification card
23 (General Services Administration form 2946)
24 shall be issued to the Contractor not later than
25 the effective date of this Contract. The des-

1 ignated official shall, upon request, assist the
2 Contractor in securing the use of the card.

3 “(iii) The Contractor shall determine what
4 capital equipment, leases, rentals, property, or
5 services it shall require to perform its obliga-
6 tions under this subsection, and shall acquire
7 and maintain records of such capital equipment,
8 property rentals, leases, property, or services
9 through tribal procurement procedures.

10 “(G) SAVINGS.—Notwithstanding any
11 other provision of law, any funds provided
12 under this Contract shall remain available until
13 expended and shall require no further approval
14 by the Secretary nor further justifying docu-
15 mentation from the Contractor prior to expendi-
16 ture.

17 “(H) TRANSPORTATION.—Upon the effec-
18 tive date of this contract, the Secretary shall
19 authorize the Contractor to obtain interagency
20 motor pool vehicles and related services for per-
21 formance of any activities under this Contract.

22 “(I) REGULATORY AUTHORITY.—The Con-
23 tractor is not required to abide by Federal pro-
24 gram guidelines, manuals, or policy directives

1 unless otherwise agreed to by the Contractor
2 and the Secretary.

3 “(J) DISPUTES.—(i) In addition or as an
4 alternative to remedies and procedures pre-
5 scribed by section 110 of the Indian Self-Deter-
6 mination and Education Assistance Act, the
7 parties may jointly—

8 “(I) submit disputes under this Con-
9 tract to third-party mediation, which for
10 purposes of this section means that the
11 Secretary and the Contractor nominate a
12 third party who together choose a third
13 party mediator (‘third-party’ means a per-
14 son not employed by or significantly in-
15 volved with either the Contractor, the Sec-
16 retary, or the Department of the Interior
17 or the Department of Health and Human
18 Services);

19 “(II) submit the dispute to the court
20 of the Contractor’s adjudicatory body, in-
21 cluding but not limited to the Contractor’s
22 tribal court;

23 “(III) submit the dispute to mediation
24 processes provided for under the Contrac-
25 tor’s laws, policies, or procedures; or

1 “(IV) use the processes authorized in
2 the Administrative Dispute Resolution Act
3 (5 U.S.C. 571).

4 “(ii) The Secretary shall be bound by deci-
5 sions reached by the processes set forth in
6 clause (i) of this subparagraph of this Contract,
7 except that the Secretary shall not be bound by
8 any decision that significantly conflicts with the
9 interests of the Indians or the United States.

10 “(K) CONTRACTOR’S ADMINISTRATIVE
11 PROCEDURES.—Pursuant to the Indian Civil
12 Rights Act of 1968 (25 U.S.C. 1301 et seq.),
13 the Contractor’s laws, policies, and procedures
14 shall provide for administrative due process (or
15 its equivalent) with respect to programs, serv-
16 ices, functions, and activities that are provided
17 by the Contractor pursuant to this Contract.

18 “(L) SUCCESSOR ANNUAL FUNDING
19 AGREEMENT.—Negotiations for a successor an-
20 nual funding agreement, as provided for in
21 paragraph (6)(B), shall begin not later than
22 120 days prior to the conclusion of the preced-
23 ing annual funding agreement. Funding of suc-
24 cessor annual funding agreements shall only be
25 reduced pursuant to section 106(b) of the In-

1 dian Self-Determination and Education Assist-
2 ance Act. The Secretary shall prepare and sup-
3 ply relevant information, and promptly comply
4 with any request by the Contractor for informa-
5 tion reasonably needed to determine the funds
6 that may be available for a successor annual
7 funding agreement as provided for in paragraph
8 (6)(B) of this Contract.

9 “(M) SECRETARIAL APPROVAL.—(i) Ex-
10 cept as provided in clause (ii), for the term of
11 the Contract, section 2103 of the Revised Stat-
12 utes (25 U.S.C. 81) and section 16 of the Act
13 of June 18, 1934 (25 U.S.C. 476), shall not
14 apply to any contract entered into in connection
15 with this Contract.

16 “(ii) Each contract entered into by the
17 Contractor with third parties in connection with
18 performing its obligations under this Contract
19 shall—

20 “(I) be in writing;

21 “(II) identify the interested parties,
22 their authorities, and purposes;

23 “(III) state the work to be performed;

24 and

1 “(IV) state the process for making
2 any claim, the payments to be made, and
3 the terms of the contract, which shall be
4 fixed.

5 “(3) OBLIGATION OF THE CONTRACTOR.—

6 “(A) CONTRACT PERFORMANCE.—Except
7 as provided in paragraph (4)(B), the Contractor
8 shall perform the programs, services, functions,
9 and activities as provided in the annual funding
10 agreement under paragraph (6)(B) of this Con-
11 tract.

12 “(B) AMOUNT OF FUNDS.—The total
13 amount of funds to be paid under this Contract
14 shall be determined in an annual funding agree-
15 ment entered into between the Secretary and
16 the Contractor, which shall be incorporated in
17 its entirety into this Contract.

18 “(C) CONTRACTED PROGRAMS.—Subject to
19 the availability of appropriated funds, the Con-
20 tractor shall administer the programs, services,
21 functions, and activities identified herein and
22 funded through the annual funding agreement.

23 “(D) TRUST SERVICES FOR INDIVIDUAL
24 INDIANS.—To the extent that the annual fund-
25 ing agreement provides funding for the delivery

1 of trust services to individual Indians that were
2 formerly provided by the Secretary, the Con-
3 tractor shall maintain at least the same level of
4 service as was previously provided by the Sec-
5 retary, subject to the availability of appro-
6 priated funds for such services. Strictly for the
7 purposes of this subsection only, “trust services
8 for individual Indians” means only those serv-
9 ices that pertain to land or financial manage-
10 ment connected to individually held allotments.

11 “(E) FAIR AND UNIFORM SERVICES.—The
12 Contractor shall provide services under this
13 contract in a fair and uniform manner and
14 shall provide access to an administrative or ju-
15 dicial body empowered to adjudicate or other-
16 wise resolve complaints, claims, and grievances
17 brought by program beneficiaries against the
18 Contractor arising out of the performance of
19 the Contract.

20 “(4) OBLIGATION OF THE UNITED STATES.—

21 “(A) TRUST RESPONSIBILITY.—The
22 United States reaffirms its trust responsibility
23 to the _____ Indian tribes to protect
24 and conserve the trust resources of the Indian
25 tribes and of individual Indians. Nothing in this

1 Contract is intended to, nor shall be construed,
2 to terminate, waive, modify, or reduce the trust
3 responsibility of the United States to the tribes
4 or individual Indians. The Secretary shall act in
5 good faith in upholding said trust responsibility.
6 To the extent that health programs are in-
7 cluded in this Contract, the Secretary shall act
8 in good faith in cooperating with the Contractor
9 to achieve the goals set forth in chapter 18 of
10 title 25, United States Code.

11 “(B) PROGRAMS RETAINED.—As specified
12 in the annual funding agreement, the United
13 States hereby retains the programs, services,
14 functions, and activities with respect to the
15 tribes that are not specially assumed by the
16 Contractor in the annual funding agreement.

17 “(5) OTHER PROVISIONS.—

18 “(A) DESIGNATED OFFICIALS.—On or be-
19 fore the effective date of this Contract, both the
20 United States and the Contractor shall provide
21 each other with a written designation of a sen-
22 ior official as its representative for notices, pro-
23 posed amendments to the Contract and other
24 purposes for this Contract.

1 “(B) CONTRACT MODIFICATIONS OR
2 AMENDMENT.—To be effective any modifica-
3 tions of this Contract shall be in the form of a
4 written amendment to the Contract, and shall
5 require the written consent of the Contractor
6 and the Secretary, except for the addition of
7 supplemental funds for programs, functions,
8 and activities (or portions thereof) already in-
9 cluded in the annual funding agreement.

10 “(C) OFFICIALS NOT TO BENEFIT.—No
11 Member of Congress, or resident commissioner,
12 shall be admitted to any share or part of any
13 contract executed pursuant to this Contract, or
14 to any benefit that may arise therefrom; but
15 this provision shall not be construed to extend
16 to any contract under this Contract if made
17 with a corporation for its general benefit.

18 “(D) COVENANT AGAINST CONTINGENT
19 FEES.—The parties warrant that no person or
20 selling agency has been employed or retained to
21 solicit or secure any contract executed pursuant
22 to this Contract upon an agreement or under-
23 standing for a commission, percentage, broker-
24 age, or contingent fee, excepting bona fide em-
25 ployees or bona fide established commercial or

1 selling agencies maintained by the contractor
2 for the purpose of securing business.

3 “(6) ATTACHMENTS.—

4 “(A) APPROVAL OF CONTRACT.—Unless
5 previously furnished to the Secretary, the reso-
6 lution of the ____ Indian tribe(s) authorizing
7 the contracting of the programs, services, func-
8 tions, and activities identified herein is (are) at-
9 tached hereto as attachment 1.

10 “(B) ANNUAL FUNDING AGREEMENT.—
11 The negotiated and duly approved annual fund-
12 ing agreement shall only contain terms that
13 identify the programs, services, functions, and
14 activities to be performed or administered, the
15 general budget category assigned, the funds to
16 be provided, the time and method of payment,
17 and such other provisions, including but not
18 limited to, a brief description of the programs,
19 services, functions, and activities to be per-
20 formed (including those supported by financial
21 resources other than those provided by the Sec-
22 retary), as the Contractor may request and to
23 which the parties agree. The annual funding
24 agreement is hereby incorporated in its entirety

1 in this Contract and attached hereto as attach-
2 ment 2.”.

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

4 The Indian Self-Determination and Education Assist-
5 ance Act is further amended as follows:

6 (1) In section 109—

7 (A) strike “as prescribed by him” and all
8 that follows through “in such cases” and insert
9 “prescribed by him to remedy the contract defi-
10 ciency. The appropriate Secretary may, upon
11 written notice to a tribal organization, and the
12 tribes served thereby, immediately rescind a
13 contract or grant and resume control or oper-
14 ation of a program, activity, or service if he
15 finds that there is an immediate threat of immi-
16 nent harm to the safety of any person and that
17 such threat arises from the Contractor’s failure
18 to fulfill the requirements of the contract. In
19 such cases”; and

20 (B) insert the following immediately before
21 the last sentence: “In any hearing or appeal
22 provided for under this section, the Secretary
23 shall carry the burden of proof to establish by
24 clear and convincing evidence that the contract
25 should be rescinded, assumed, or reassumed.”.

1 (2) In section 110(a), insert before the period
2 at the end thereof the following: “(including imme-
3 diate injunctive relief to reverse a declination finding
4 under section 102(a)(2) or to compel the Secretary
5 to award and fund an approved self-determination
6 contractor)”.

7 (3) In section 110(d), insert before the period
8 at the end thereof the following: “except that all
9 such administrative appeals shall be heard by the In-
10 terior Board of Contract Appeals”.

11 **SEC. 5. REGULATIONS.**

12 Section 107 of the Indian Self-Determination and
13 Education Assistance Act is amended—

14 (1) by amending subsections (a) and (b) to read
15 as follows:

16 “(a) GENERAL.—Except as may be specifically au-
17 thorized herein and elsewhere in this Act, the Secretary
18 of the Interior and the Secretary of Health and Human
19 Services shall not promulgate any regulation, nor impose
20 any nonregulatory requirement, relating to self-determina-
21 tion contracts: *Provided, however,* That the Secretary may
22 promulgate regulations relating to the Federal Tort
23 Claims Act, the Contract Disputes Act, declination appeal
24 procedures, reassumption procedures, and retrocession
25 procedures. All regulations including those referred to in

1 this section shall be promulgated in conformity with sec-
2 tions 552 and 553 of title 5 of the United States Code
3 and with subsections (c), (d), and (e) hereof, and shall
4 be promulgated as a single set of regulations in title 25
5 of the Code of Federal Regulations. Any authorization to
6 promulgate regulations set forth in this Act shall expire
7 if such regulations are not finally promulgated within 12
8 months from the date of enactment of these amendments.

9 “(b) EXISTING REGULATIONS.—The provisions of
10 this Act shall supersede any conflicting provisions of law
11 or regulation in existence on the date of enactment of this
12 Act.”.

13 (2) Add the following new subsections:

14 “(d) In drafting and promulgating regulations as pro-
15 vided in section 107(a) of this Act (including any revisions
16 or amendments thereto), the Secretaries shall confer with
17 and allow for active participation by representatives of In-
18 dian tribes, tribal organizations, individual tribal mem-
19 bers, and representatives of other parties interested in the
20 implementation of this Act, as amended. The rulemaking
21 process shall follow the guidance of the Negotiated Rule-
22 making Act of 1990 and of the Administrative Conference
23 of the United States in Recommendations 82–094 and 85–
24 095, ‘Procedures for Negotiating Proposed Regulations’
25 (1 CFR 305.82–094 and 305.85–095), and any successor

1 recommendation, regulation, or law. Tribal participants in
2 the negotiation shall be chosen by the tribes and tribal
3 organizations participating in regional and national meet-
4 ings to be convened by the Secretary, representing the
5 groups described herein and shall include tribal represent-
6 atives from all geographic regions. The negotiations shall
7 be conducted in a timely manner and the proposed rule
8 implementing these amendments shall be published in the
9 Federal Register by the Secretaries no later than 6
10 months from the date of enactment of these amendments.
11 Notwithstanding any other law or regulation to the con-
12 trary, the Secretary of the Interior and the Secretary of
13 Health and Human Services shall be authorized to jointly
14 establish and jointly fund such interagency committees or
15 other interagency bodies, including advisory bodies com-
16 prised of tribal representatives, as may be necessary or
17 appropriate to carry out the provisions of this Act.

18 “(e) Notwithstanding any laws or regulations to the
19 contrary, the Secretary shall waive or make exceptions to
20 his regulations where the Secretary finds that such waiver
21 or exceptions is in the best interest of the Indians served
22 by the contract. The Secretary shall review a waiver re-
23 quest under the declination criteria and procedures con-
24 tained in section 102(a)(2) of this Act.”.

1 **SEC. 6. CONFORMING AMENDMENT.**

2 Section 105(h) of the Indian Self-Determination and
3 Education Assistance Act (25 U.S.C. 450j(h)) is amended
4 by striking “and the rules and regulations adopted by the
5 Secretaries of the Interior and Health and Human Serv-
6 ices pursuant to section 107 of this Act”.

○

HR 4842 IH—2

HR 4842 IH—3

HR 4842 IH—4