

(ii) has no solid waste disposal facility;

(D) level IV is an Indian tribe or community with a sanitation system which lacks either a safe water supply system or a sewage disposal system; and

(E) level V is an Indian tribe or community that lacks a safe water supply and a sewage disposal system.

(5) For purposes of this subsection, any Indian tribe or community that lacks the operation and maintenance capability to enable its sanitation system to meet pollution control laws may not be treated as having a level I or II sanitation deficiency.

(Pub. L. 94-437, title III, §302, Sept. 30, 1976, 90 Stat. 1407; Pub. L. 100-713, title III, §302, Nov. 23, 1988, 102 Stat. 4814; Pub. L. 102-573, title III, §§302, 307(b)(1), Oct. 29, 1992, 106 Stat. 4560, 4564.)

#### REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in subsec. (b)(3)(A), is Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

The Indian Self-Determination Act, referred to in subsecs. (f) and (g)(2), is title I of Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

#### AMENDMENTS

1992—Subsec. (e). Pub. L. 102-573, §302(1), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “The provisions of this section shall not diminish the primary responsibility of the Indian family, community, or tribe to establish, collect, and utilize reasonable user fees, or otherwise set aside funding, for the purpose of operating and maintaining sanitation facilities.”

Subsec. (f)(1). Pub. L. 102-573, §302(2), substituted “this section” for “subsection (h)”.

Subsec. (g)(1). Pub. L. 102-573, §302(3)(A), substituted “The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 1671 of this title, a report” for “The Secretary shall submit to the Congress an annual report”.

Subsec. (g)(2) to (6). Pub. L. 102-573, §302(3)(B), redesignated pars. (3) to (6) as (2) to (5), respectively, and struck out former par. (2) which read as follows: “The first report required under paragraph (1) shall be submitted by no later than the date that is 180 days after November 23, 1988, and, beginning in 1990, each subsequent annual report shall be submitted by the date that is 60 days after the date on which the President submits the budget to the Congress under section 1105 of title 31.”

Subsec. (h). Pub. L. 102-573, §307(b)(1), struck out subsec. (h) which authorized appropriations to carry out subsec. (b)(2) for fiscal years 1990 to 1992.

1988—Pub. L. 100-713 amended section generally, substituting subsecs. (a) to (h) relating to safe water and sanitary waste disposal facilities for former subsecs. (a) to (c) relating to construction of safe water and sanitary waste disposal facilities.

### § 1633. Preferences to Indians and Indian firms

#### (a) Discretionary authority; covered activities

The Secretary, acting through the Service, may utilize the negotiating authority of section

47 of this title, to give preference to any Indian or any enterprise, partnership, corporation, or other type of business organization owned and controlled by an Indian or Indians including former or currently federally recognized Indian tribes in the State of New York (hereinafter referred to as an “Indian firm”) in the construction and renovation of Service facilities pursuant to section 1631 of this title and in the construction of safe water and sanitary waste disposal facilities pursuant to section 1632 of this title. Such preference may be accorded by the Secretary unless he finds, pursuant to rules and regulations promulgated by him, that the project or function to be contracted for will not be satisfactory or such project or function cannot be properly completed or maintained under the proposed contract. The Secretary, in arriving at his finding, shall consider whether the Indian or Indian firm will be deficient with respect to (1) ownership and control by Indians, (2) equipment, (3) bookkeeping and accounting procedures, (4) substantive knowledge of the project or function to be contracted for, (5) adequately trained personnel, or (6) other necessary components of contract performance.

#### (b) Pay rates

For the purpose of implementing the provisions of this subchapter, the Secretary shall assure that the rates of pay for personnel engaged in the construction or renovation of facilities constructed or renovated in whole or in part by funds made available pursuant to this subchapter are not less than the prevailing local wage rates for similar work as determined in accordance with sections 3141-3144, 3146, and 3147 of title 40.

(Pub. L. 94-437, title III, §303, Sept. 30, 1976, 90 Stat. 1407.)

#### CODIFICATION

“Sections 3141-3144, 3146, and 3147 of title 40” substituted in subsec. (b) for “the Act of March 3, 1931 (40 U.S.C. 276a-276a-5, known as the Davis-Bacon Act)” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

### § 1634. Expenditure of non-Service funds for renovation

#### (a) Authority of Secretary

(1) Notwithstanding any other provision of law, the Secretary is authorized to accept any major renovation or modernization by any Indian tribe of any Service facility, or of any other Indian health facility operated pursuant to a contract entered into under the Indian Self-Determination Act [25 U.S.C. 450f et seq.], including—

(A) any plans or designs for such renovation or modernization; and

(B) any renovation or modernization for which funds appropriated under any Federal law were lawfully expended,

but only if the requirements of subsection (b) are met.

(2) The Secretary shall maintain a separate priority list to address the needs of such facilities for personnel or equipment.

(3) The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 1671 of this title, the priority list maintained pursuant to paragraph (2).

**(b) Requirements**

The requirements of this subsection are met with respect to any renovation or modernization if—

(1) the tribe or tribal organization—

(A) provides notice to the Secretary of its intent to renovate or modernize; and

(B) applies to the Secretary to be placed on a separate priority list to address the needs of such new facilities for personnel or equipment; and

(2) the renovation or modernization—

(A) is approved by the appropriate area director of the Service; and

(B) is administered by the tribe in accordance with the rules and regulations prescribed by the Secretary with respect to construction or renovation of Service facilities.

**(c) Recovery for non-use as Service facility**

If any Service facility which has been renovated or modernized by an Indian tribe under this section ceases to be used as a Service facility during the 20-year period beginning on the date such renovation or modernization is completed, such Indian tribe shall be entitled to recover from the United States an amount which bears the same ratio to the value of such facility at the time of such cessation as the value of such renovation or modernization (less the total amount of any funds provided specifically for such facility under any Federal program that were expended for such renovation or modernization) bore to the value of such facility at the time of the completion of such renovation or modernization.

(Pub. L. 94-437, title III, § 305, as added Pub. L. 96-537, § 5, Dec. 17, 1980, 94 Stat. 3175; amended Pub. L. 100-713, title III, § 303(a), Nov. 23, 1988, 102 Stat. 4816; Pub. L. 102-573, title III, § 305, Oct. 29, 1992, 106 Stat. 4563.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (a)(1), is title I of Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1992—Pub. L. 102-573 amended section generally, substituting present provisions for former provisions which related to: in subsec. (a), authority of Secretary; in subsec. (b), requirements; in subsec. (c), higher priority project; and in subsec. (d), recovery for non-use as Service facility.

1988—Pub. L. 100-713 amended section generally, substituting “Expenditure of non-Service funds for renovation” for “Authorization of appropriations” in section catchline and subssecs. (a) to (d) for former single unlettered par.

**§ 1635. Repealed. Pub. L. 100-713, title III, § 303(b), Nov. 23, 1988, 102 Stat. 4817**

Section, Pub. L. 98-473, title I, § 101(c) [title II, § 201], Oct. 12, 1984, 98 Stat. 1837, 1865, related to renovation and modernization of facilities.

**§ 1636. Grant program for construction, expansion, and modernization of small ambulatory care facilities**

**(a) Authorization**

(1) The Secretary, acting through the Service, shall make grants to tribes and tribal organizations for the construction, expansion, or modernization of facilities for the provision of ambulatory care services to eligible Indians (and noneligible persons as provided in subsection (c)(1)(C)). A grant made under this section may cover up to 100 percent of the costs of such construction, expansion, or modernization. For the purposes of this section, the term “construction” includes the replacement of an existing facility.

(2) A grant under paragraph (1) may only be made to a tribe or tribal organization operating an Indian health facility (other than a facility owned or constructed by the Service, including a facility originally owned or constructed by the Service and transferred to a tribe or tribal organization) pursuant to a contract entered into under the Indian Self-Determination Act [25 U.S.C. 450f et seq.].

**(b) Use of grant**

(1) A grant provided under this section may be used only for the construction, expansion, or modernization (including the planning and design of such construction, expansion, or modernization) of an ambulatory care facility—

(A) located apart from a hospital;

(B) not funded under section 1631 of this title or section 1637 of this title; and

(C) which, upon completion of such construction, expansion, or modernization will—

(i) have a total capacity appropriate to its projected service population;

(ii) serve no less than 500 eligible Indians annually; and

(iii) provide ambulatory care in a service area (specified in the contract entered into under the Indian Self-Determination Act [25 U.S.C. 450f et seq.]) with a population of not less than 2,000 eligible Indians.

(2) The requirements of clauses (ii) and (iii) of paragraph (1)(C) shall not apply to a tribe or tribal organization applying for a grant under this section whose tribal government offices are located on an island.

**(c) Application for grant**

(1) No grant may be made under this section unless an application for such a grant has been submitted to and approved by the Secretary. An application for a grant under this section shall be submitted in such form and manner as the Secretary shall by regulation prescribe and shall set forth reasonable assurance by the applicant that, at all times after the construction, expansion, or modernization of a facility carried out pursuant to a grant received under this section—

(A) adequate financial support will be available for the provision of services at such facility;

(B) such facility will be available to eligible Indians without regard to ability to pay or source of payment; and