

performance of the activity until such time as additional funds are transferred.

(Pub. L. 93-638, title V, §508, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 722.)

#### REFERENCES IN TEXT

This chapter, referred to in subsecs. (c) and (d), 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.

The Indian Health Care Improvement Act, referred to in subsec. (j), is Pub. L. 94-437, Sept. 30, 1976, 90 Stat. 1400, which is classified principally to chapter 18 (§1601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

#### CODIFICATION

Section was formerly classified to section 458aaa-7 of this title prior to editorial reclassification and renumbering as this section.

### § 5389. Construction projects

#### (a) In general

Indian tribes participating in tribal self-governance may carry out construction projects under this subchapter if they elect to assume all Federal responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), division A of subtitle III of title 54, and related provisions of law that would apply if the Secretary were to undertake a construction project, by adopting a resolution—

- (1) designating a certifying officer to represent the Indian tribe and to assume the status of a responsible Federal official under such laws; and
- (2) accepting the jurisdiction of the Federal court for the purpose of enforcement of the responsibilities of the responsible Federal official under such environmental laws.

#### (b) Negotiations

Construction project proposals shall be negotiated pursuant to the statutory process in section 5324(m) of this title and resulting construction project agreements shall be incorporated into funding agreements as addenda.

#### (c) Codes and standards

The Indian tribe and the Secretary shall agree upon and specify appropriate building codes and architectural and engineering standards (including health and safety) which shall be in conformity with nationally recognized standards for comparable projects.

#### (d) Responsibility for completion

The Indian tribe shall assume responsibility for the successful completion of the construction project in accordance with the negotiated construction project agreement.

#### (e) Funding

Funding for construction projects carried out under this subchapter shall be included in funding agreements as annual advance payments, with semiannual payments at the option of the Indian tribe. Annual advance and semiannual payment amounts shall be determined based on

mutually agreeable project schedules reflecting work to be accomplished within the advance payment period, work accomplished and funds expended in previous payment periods, and the total prior payments. The Secretary shall include associated project contingency funds with each advance payment installment. The Indian tribe shall be responsible for the management of the contingency funds included in funding agreements.

#### (f) Approval

The Secretary shall have at least one opportunity to approve project planning and design documents prepared by the Indian tribe in advance of construction of the facilities specified in the scope of work for each negotiated construction project agreement or amendment thereof which results in a significant change in the original scope of work. The Indian tribe shall provide the Secretary with project progress and financial reports not less than semiannually. The Secretary may conduct on-site project oversight visits semiannually or on an alternate schedule agreed to by the Secretary and the Indian tribe.

#### (g) Wages

All laborers and mechanics employed by contractors and subcontractors (excluding tribes and tribal organizations) in the construction, alteration, or repair, including painting or decorating of a building or other facilities in connection with construction projects funded by the United States under this chapter shall be paid wages at not less than those prevailing wages on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141-3144, 3146, and 3147 of title 40. With respect to construction alteration, or repair work to which sections 3141-3144, 3146, and 3147 of title 40 are applicable under this section, the Secretary of Labor shall have the authority and functions set forth in the Reorganization Plan numbered 14, of 1950, and section 3145 of title 40.

#### (h) Application of other laws

Unless otherwise agreed to by the Indian tribe, no provision of division B (except sections 1123, 2303, 2304, and 2313) of subtitle I of title 41, the Federal Acquisition Regulations issued pursuant thereto, or any other law or regulation pertaining to Federal procurement (including Executive orders) shall apply to any construction project conducted under this subchapter.

(Pub. L. 93-638, title V, §509, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 724; amended Pub. L. 113-287, §5(g), Dec. 19, 2014, 128 Stat. 3269.)

#### REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

This chapter, referred to in subsec. (g), 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.

Reorganization Plan numbered 14, of 1950, referred to in subsec. (g), is set out in the Appendix to Title 5, Government Organization and Employees.

#### CODIFICATION

Section was formerly classified to section 458aaa-8 of this title prior to editorial reclassification and renumbering as this section.

In subsec. (g), “sections 3141-3144, 3146, and 3147 of title 40” substituted for “the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494)”, “sections 3141-3144, 3146, and 3147 of title 40 are” substituted for “the Act of March 3, 1931, is”, and “section 3145 of title 40” substituted for “section 2 of the Act of June 13, 1934 (48 Stat. 948)” 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.

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

#### AMENDMENTS

2014—Subsec. (a). Pub. L. 113-287, which directed substitution of “division A of subtitle III of title 54” for “the National Historic Preservation Act (16 U.S.C. 470et seq.)”, was executed by making the substitution for “the National Historic Preservation Act (16 U.S.C. 470 et seq.)” in introductory provisions to reflect the probable intent of Congress.

### § 5390. Federal procurement laws and regulations

Regarding construction programs or projects, the Secretary and Indian tribes may negotiate for the inclusion of specific provisions of division B (except sections 1123, 2303, 2304, and 2313) of subtitle I of title 41 and Federal acquisition regulations in any funding agreement entered into under this subchapter. Absent a negotiated agreement, such provisions and regulatory requirements shall not apply.

(Pub. L. 93-638, title V, §510, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 726.)

#### CODIFICATION

Section was formerly classified to section 458aaa-9 of this title prior to editorial reclassification and renumbering as this section.

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

### § 5391. Civil actions

#### (a) Contract defined

For the purposes of section 5331 of this title, the term “contract” shall include compacts and funding agreements entered into under this subchapter.

#### (b) Applicability of certain laws

Section 81 of this title and section 5123 of this title, shall not apply to attorney and other professional contracts entered into by Indian tribes participating in self-governance under this subchapter.

### (c) References

All references in this chapter to section 5201 of this title are hereby deemed to include section 82a of this title.

(Pub. L. 93-638, title V, §511, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 726.)

#### REFERENCES IN TEXT

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

#### CODIFICATION

Section was formerly classified to section 458aaa-10 of this title prior to editorial reclassification and renumbering as this section.

### § 5392. Facilitation

#### (a) Secretarial interpretation

Except as otherwise provided by law, the Secretary shall interpret all Federal laws, Executive orders, and regulations in a manner that will facilitate—

(1) the inclusion of programs, services, functions, and activities (or portions thereof) and funds associated therewith, in the agreements entered into under this section;

(2) the implementation of compacts and funding agreements entered into under this subchapter; and

(3) the achievement of tribal health goals and objectives.

#### (b) Regulation waiver

##### (1) In general

An Indian tribe may submit a written request to waive application of a regulation promulgated under section 5397 of this title or the authorities specified in section 5385(b) of this title for a compact or funding agreement entered into with the Indian Health Service under this subchapter, to the Secretary identifying the applicable Federal regulation sought to be waived and the basis for the request.

##### (2) Approval

Not later than 90 days after receipt by the Secretary of a written request by an Indian tribe to waive application of a regulation for a compact or funding agreement entered into under this subchapter, the Secretary shall either approve or deny the requested waiver in writing. A denial may be made only upon a specific finding by the Secretary that identified language in the regulation may not be waived because such waiver is prohibited by Federal law. A failure to approve or deny a waiver request not later than 90 days after receipt shall be deemed an approval of such request. The Secretary’s decision shall be final for the Department.

#### (c) Access to Federal property

In connection with any compact or funding agreement executed pursuant to this subchapter or an agreement negotiated under the Tribal Self-Governance Demonstration Project estab-