

(j) “self-determination contract” means a contract (or grant or cooperative agreement utilized under section 5308 of this title) entered into under subchapter I of this chapter between a tribal organization and the appropriate Secretary for the planning, conduct and administration of programs or services which are otherwise provided to Indian tribes and their members pursuant to Federal law: *Provided*, That except as provided¹ the last proviso in section 5324(a)² of this title, no contract (or grant or cooperative agreement utilized under section 5308 of this title) entered into under subchapter I of this chapter shall be construed to be a procurement contract;

(k) “State education agency” means the State board of education or other agency or officer primarily responsible for supervision by the State of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law;

(l) “tribal organization” means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: *Provided*, That in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant; and

(m) “construction contract” means a fixed-price or cost-reimbursement self-determination contract for a construction project, except that such term does not include any contract—

(1) that is limited to providing planning services and construction management services (or a combination of such services);

(2) for the Housing Improvement Program or roads maintenance program of the Bureau of Indian Affairs administered by the Secretary of the Interior; or

(3) for the health facility maintenance and improvement program administered by the Secretary of Health and Human Services.

(Pub. L. 93-638, §4, Jan. 4, 1975, 88 Stat. 2204; Pub. L. 100-472, title I, §103, Oct. 5, 1988, 102 Stat. 2286; Pub. L. 100-581, title II, §208, Nov. 1, 1988, 102 Stat. 2940; Pub. L. 101-301, §2(a)(1)-(3), May 24, 1990, 104 Stat. 206; Pub. L. 101-644, title II, §202(1), (2), Nov. 29, 1990, 104 Stat. 4665; Pub. L. 103-413, title I, §102(1), Oct. 25, 1994, 108 Stat. 4250.)

REFERENCES IN TEXT

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

¹ So in original. Probably should be “provided in”.

² See References in Text note below.

The Alaska Native Claims Settlement Act, referred to in subsec. (e), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43, and Tables.

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

Section 5324(a) of this title, referred to in subsec. (j), was repealed and a new subsec. (a) of section 5324 was added by Pub. L. 103-413, title I, §102(10), Oct. 25, 1994, 108 Stat. 4253, which does not contain provisos.

CODIFICATION

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

AMENDMENTS

1994—Subsec. (g). Pub. L. 103-413, §102(1)(A), substituted “indirect cost rate” for “indirect costs rate”.
Subsec. (m). Pub. L. 103-413, §102(1)(B)-(D), added subsec. (m).

1990—Subsec. (e). Pub. L. 101-301, §2(a)(1), inserted a comma before “which is recognized”.

Subsec. (h). Pub. L. 101-644, §202(1), struck out “in existence on October 5, 1988,” before “which meets this definition”.

Subsec. (j). Pub. L. 101-644, §202(2), substituted “contract (or grant or cooperative agreement utilized under section 5308 of this title) entered” for “contract entered” in two places.

Pub. L. 101-301, §2(a)(2), (3), substituted “under this chapter” for “pursuant to this Act” in two places and struck out “the” before “Secretary”.

1988—Pub. L. 100-472 amended section generally, substituting subssecs. (a) to (l) for former subssecs. (a) to (d) and (f) which defined “Indian”, “Indian tribe”, “Tribal organization”, “Secretary”, and “State education agency”.

Subsec. (h). Pub. L. 100-581, §208(a)(1), substituted “by a tribal organization” for “by tribal organization”.

Pub. L. 100-581, §208(a)(2), which directed the amendment of subsec. (h) by substituting “a tribal organization or the tribal organization’s Indian tribe for purposes of section 5321(a) of this title” for “a tribal organization or a tribal governing body” was executed by substituting the new language for “a tribal organization or tribal governing body” to reflect the probable intent of Congress.

Subsec. (j). Pub. L. 100-581, §208(b), substituted “the Secretary for the planning” for “Secretary the planning” and “except as provided the last proviso in section 5324(a) of this title, no contract” for “no contract”.

§ 5305. Reporting and audit requirements for recipients of Federal financial assistance

(a) Maintenance of records

(1) Each recipient of Federal financial assistance under this chapter shall keep such records as the appropriate Secretary shall prescribe by regulation promulgated under sections 552 and 553 of title 5, including records which fully disclose—

(A) the amount and disposition by such recipient of the proceeds of such assistance,

(B) the cost of the project or undertaking in connection with which such assistance is given or used,

(C) the amount of that portion of the cost of the project or undertaking supplied by other sources, and

(D) such other information as will facilitate an effective audit.

(2) For the purposes of this subsection, such records for a mature contract shall consist of quarterly financial statements for the purpose of accounting for Federal funds, the annual single-agency audit required by chapter 75 of title 31¹ and a brief annual program report.

(b) Access to books, documents, papers, and records for audit and examination by Comptroller General, etc.

The Comptroller General and the appropriate Secretary, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in the preceding subsection of this section, have access (for the purpose of audit and examination) to any books, documents, papers, and records of such recipients which in the opinion of the Comptroller General or the appropriate Secretary may be related or pertinent to the grants, contracts, subcontracts, subgrants, or other arrangements referred to in the preceding subsection.

(c) Availability by recipient of required reports and information to Indian people served or represented

Each recipient of Federal financial assistance referred to in subsection (a) of this section shall make such reports and information available to the Indian people served or represented by such recipient as and in a manner determined to be adequate by the appropriate Secretary.

(d) Repayment to Treasury by recipient of unexpended or unused funds

Except as provided in section 13a or 5325(a)(3)² of this title, funds paid to a financial assistance recipient referred to in subsection (a) of this section and not expended or used for the purposes for which paid shall be repaid to the Treasury of the United States through the respective Secretary.

(e) Annual report to tribes

The Secretary shall report annually in writing to each tribe regarding projected and actual staffing levels, funding obligations, and expenditures for programs operated directly by the Secretary serving that tribe.

(f) Single-agency audit report; additional information; declination criteria and procedures

(1) For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract entered into, or grant made, under this chapter, the tribal organization that requested such contract or grant shall submit to the appropriate Secretary a single-agency audit report required by chapter 75 of title 31.

(2) In addition to submitting a single-agency audit report pursuant to paragraph (1), a tribal organization referred to in such paragraph shall submit such additional information concerning the conduct of the program, function, service, or activity carried out pursuant to the contract or

grant that is the subject of the report as the tribal organization may negotiate with the Secretary.

(3) Any disagreement over reporting requirements shall be subject to the declination criteria and procedures set forth in section 5321 of this title.

(Pub. L. 93-638, §5, formerly §5 and title I, §108, Jan. 4, 1975, 88 Stat. 2204, 2212; renumbered and amended Pub. L. 100-472, title I, §104, title II, §208, Oct. 5, 1988, 102 Stat. 2287, 2296; Pub. L. 100-581, title II, §209, Nov. 1, 1988, 102 Stat. 2940; Pub. L. 101-301, §2(a)(4), May 24, 1990, 104 Stat. 206; Pub. L. 101-644, title II, §202(3), Nov. 29, 1990, 104 Stat. 4665; Pub. L. 103-413, title I, §102(2), Oct. 25, 1994, 108 Stat. 4250.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (f)(1), 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 5325(a)(3) of this title, referred to in subsec. (d), was repealed and a new subsec. (a)(3) of section 5325 was added by Pub. L. 103-413, title I, §102(14)(C), Oct. 25, 1994, 108 Stat. 4257. See section 5325(a)(4) of this title.

CODIFICATION

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

AMENDMENTS

1994—Subsec. (f). Pub. L. 103-413 added subsec. (f) and struck out former subsec. (f) which read as follows: "For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract or grant under this chapter, the Indian tribe which requested such contract or grant shall submit to the appropriate Secretary a report including, but not limited to, an accounting of the amounts and purposes for which Federal funds were expended, information on the conduct of the program or service involved, and such other information as the appropriate Secretary may request through regulations promulgated under sections 552 and 553 of title 5."

1990—Subsec. (a)(2). Pub. L. 101-301 substituted "chapter 75 of title 31" for "the Single Audit Act of 1984 (98 Stat. 2327, 31 U.S.C. 7501 et seq.)."

Subsec. (d). Pub. L. 101-644 substituted "Except as provided in section 13a or 5325(a)(3) of this title," for "Any" and inserted "through the respective Secretary" before period at end.

1988—Subsec. (a). Pub. L. 100-472, §104(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Each recipient of Federal financial assistance from the Secretary of Interior or the Secretary of Health, Education, and Welfare, under this chapter, shall keep such records as the appropriate Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit."

Subsec. (e). Pub. L. 100-581 substituted "to each tribe" for "to tribes".

Pub. L. 100-472, §104(b), added subsec. (e).

Subsec. (f). Pub. L. 100-472, §208, redesignated former section 450f of this title as subsec. (f) of this section and inserted "through regulations promulgated under sections 552 and 553 of title 5".

¹ So in original. Probably should be followed by a comma.

² See References in Text note below.

§ 5306. Criminal activities involving grants, contracts, etc.; penalties

Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any recipient of a contract, subcontract, grant, or subgrant pursuant to this chapter or the Act of April 16, 1934 (48 Stat. 596), as amended [25 U.S.C. 5342 et seq.], embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds, assets, or property which are the subject of such a grant, subgrant, contract, or subcontract, shall be fined not more than \$10,000 or imprisoned for not more than two years, or both, but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(Pub. L. 93-638, §6, Jan. 4, 1975, 88 Stat. 2205.)

REFERENCES IN TEXT

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

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

CODIFICATION

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

§ 5307. Wage and labor standards

(a) Similar construction in locality

All laborers and mechanics employed by contractors or subcontractors (excluding tribes and tribal organizations) in the construction, alteration, or repair, including painting or decorating of buildings or other facilities in connection with contracts or grants entered into pursuant to this chapter, shall be paid wages at not less than those prevailing 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 the Act of March 3, 1921¹ is applicable under the terms of this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14, of 1950, and section 3145 of title 40.

(b) Preference requirements for wages and grants

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

(1) preferences and opportunities for training and employment in connection with the ad-

ministration of such contracts or grants shall be given to Indians; and

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

(c) Self-determination contracts

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

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

REFERENCES IN TEXT

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

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

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

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

CODIFICATION

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

In subsec. (a), "sections 3141-3144, 3146, and 3147 of title 40" substituted for "the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended" and "section 3145 of title 40" substituted for "section 2 of the Act of June 13, 1934 (48 Stat. 948, 40 U.S.C. 276c)" on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

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

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

§ 5308. Grant and cooperative agreements

The provisions of this chapter shall not be subject to the requirements of chapter 63 of title 31: *Provided*, That a grant agreement or a cooperative agreement may be utilized in lieu of a contract under section 5321¹ of this title when mu-

¹ See References in Text note below.

¹ See Codification note below.