

## § 36.119

(b) Authorize, require or permit the termination of any existing trust responsibility of the United States with respect to the Indian people;

(c) Permit significant reduction in services to Indian people as a result of this subpart.

### § 36.119 Penalties.

Section 6 of Pub. L. 93-638, 25 U.S.C. 450(d) provides:

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 Act or the Act of April 16, 1934 (48 Stat. 596), as amended, 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.

### § 36.120 Use of Indian business concerns.

Grants awarded pursuant to this subpart will incorporate the following:

Use of Indian business concerns.

(a) As used in this clause, the term "Indian organizations of an Indian-owned economic enterprise" as defined in section 102(g) of this subpart.

(b) The grantee agrees to give preference to qualified Indian business concerns in the awarding of any contracts, subcontracts or subgrants entered into under the grant consistent with the efficient performance of the grant. The grantee shall comply with any preference requirements regarding Indian business concerns established by the tribe(s) receiving services under the grant to the extent that such requirements are consistent with the purpose and intent of this paragraph.

NOTE: This section is an exception to 45 CFR part 74, required by section 7(b) of Pub. L. 93-638.

[40 FR 53143, Nov. 14, 1975, as amended at 50 FR 1855, Jan. 14, 1985]

### § 36.121 Indian preference in training and employment.

(a) Any grant made under this subpart, or a contract or subgrant made

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under such a grant shall require that, to the greatest extent feasible preferences and opportunities for training and employment in connection with the administration of such grant, or contract or subgrant made under such grant, shall be given to Indians.

(b) The grantee shall include the requirements of paragraph (a) of this section in all contracts and subgrants made under a grant awarded under this subpart.

### Subpart I—Contracts Under the Indian Self-Determination Act

AUTHORITY: Secs. 103, 107, 25 U.S.C. 450g, 450k; sec. 3, Pub. L. 83-568, 42 U.S.C. 2003.

SOURCE: 40 FR 53147, Nov. 14, 1975, unless otherwise noted.

### § 36.201 Policy and applicability.

(a) *Policy.* (1) The Congress has recognized the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

(2) The Congress has declared its commitment to the maintenance of the Federal Government's unique and continuing relationship with the responsibilities to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.

(3) It is the policy of the Secretary of the Department of Health and Human Services to facilitate the efforts of Indian tribes to plan, conduct, and administer programs, or portions thereof, which the Indian Health Service is authorized to administer for the benefit of Indians.

(4) It is the policy of the Secretary to continually encourage Indian tribes to become increasingly knowledgeable

about Indian Health Service programs and the opportunities Indian tribes have regarding them; however, it is the policy of the Indian Health Service to leave to Indian tribes the initiative in making requests for contracts and to regard self-determination as including the decision of an Indian tribe not to request contracts.

(5) It is the policy of the Indian Health Service not to impose sanctions on Indian tribes with regard to contracting or not contracting; however, the special resources made available to facilitate the efforts of those Indian tribes which do wish to contract should be made known to all tribes, as should the current realities of funding and Federal personnel limitations.

(6) Contracting is one of several mechanisms by which Indian tribes can exercise their right to plan, conduct, and administer programs or portions thereof which the Secretary is authorized to administer for the benefit of Indians. Another mechanism afforded Indian tribes is the use of a grant, as provided in subpart H of this part, or other resources, to plan the manner in which it wishes the Indian Health Service to operate a program or portion thereof.

(7) The regulations in this subpart are not meant to and do not change the eligibility criteria which individuals must meet to be eligible for any program currently operated by the Indian Health Service.

(b) The regulations of this subpart are applicable to contracts awarded pursuant to section 103 of Pub. L. 93-638, 25 U.S.C. 450g to carry out any or all of the functions, authorities, and responsibilities of the Secretary of Health and Human Services under the Act of August 5, 1954 (68 Stat. 674), as amended, 42 U.S.C. 2001 *et seq.*

**§ 36.202 Effect on existing rights.**

The regulations in this subpart are not meant to and do not:

(a) Affect, modify, diminish, or otherwise impair the sovereign immunity from suit enjoyed by an Indian tribe.

(b) Authorize, require or permit the termination of any existing trust responsibility of the United States with respect to the Indian people.

(c) Permit significant reduction in services to Indian people as a result of this subpart.

(d) Nothing in these regulations shall be construed to require a tribe to apply for a contract or contracts with the Secretary to carry out under the Indian Self-Determination Act any of the Secretary's functions, authorities and responsibilities under the Act of August 5, 1954, as amended, 42 U.S.C. 2001, *et seq.* Such applications under these regulations are voluntary.

(e) Nothing in these regulations shall be construed to preclude the making of contracts under any other authority of law nor to restrict contracts with Indian tribes or tribal organizations to contracts entered into under section 103 of the Act.

**§ 36.203 Amendment of regulations.**

Before revising or amending the regulations in this subpart, the Secretary will take the following actions:

(a) Consult with Indian tribes and national and regional Indian organizations to the extent practicable about the need for revision or amendment and consider their views in preparing the proposed revision or amendment.

(b) Present the proposed revision or amendment to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

(c) Publish the proposed revisions or amendments in the FEDERAL REGISTER as proposed rulemaking to provide adequate notice to receive comments from all interested parties.

(d) After consideration of all comments received, publish the regulations in the FEDERAL REGISTER in final form not less than 60 days before the date they are made effective.

**§ 36.204 Definitions.**

(a) *Act* means Title I of the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638 (25 U.S.C. 450f *et seq.*).

(b) *Secretary* means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.