

§ 36.234

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welfare or any persons, or (2) gross negligence or the mismanagement in the handling or use of funds under the contract, he will, in writing, notify the contractor of such determination and will request that the contractor take such corrective action within such period of time as the Director or his delegate may prescribe.

(b) When the Director or his delegate determines that a contractor has not taken corrective action (as prescribed by him under paragraph (a) of this section) to his satisfaction, he may, after the contractor has been provided an opportunity for a hearing in accordance with paragraph (c) of this section, rescind the contract in whole or in part and, if he deems it appropriate, assume or resume control or operation of the program, activity, or service involved.

(c)(1) When the Director or his delegate has made a determination described in paragraph (b) of this section, he shall in writing notify the contractor of such determination and of the contractor's right to request a review of such determination and of the determination described in paragraph (a) of this section. Such notification by the Director or his delegate shall set forth the reasons for the determination in sufficient detail to enable the contractor to respond and shall inform the contractor of its right to a hearing on the record before a Contract Appeals Board described in paragraph (d) of this section. Upon the request of the contractor for a hearing, the Board, established pursuant to paragraph (d) of this section shall in writing within 10 days of the establishment notify the contractor of the time, place and date of the hearing which will be held not later than 45 days after the request for a hearing.

(2) Where the Director or his delegate determines that a contractor's performance under a contract awarded under this subpart poses an immediate threat to the safety of any person, he may immediately rescind the contract in whole or in part and, if he deems it appropriate, assume or resume control or operation of the program, activity, or service involved. Upon such a decision he will immediately notify the contractor of such action and the basis therefor; and offer the contractor an

opportunity for a hearing on the record before the Contract Appeals Board established pursuant to paragraph (d) of this section to be held within 10 days of each action.

(d)(1) The Contract Appeals Board shall be composed of 3 persons appointed by the Director, Indian Health Service. Such persons may not be selected from the immediate office of any person participating in the determinations at issue. The Board shall afford the contractor the right:

(i) To notice of the issues to be considered;

(ii) To be represented by counsel;

(iii) To present witnesses on contractor's behalf;

(iv) To cross-examine other witnesses either orally or through written interrogatories; and

(v) To compel the appearance of Indian Health Service personnel or to take depositions of such persons at reasonable times and places.

(2) The Contracts Appeals Board shall make an initial written decision which shall become final with 20 days unless the Director, Indian Health Service or his representative modifies or reverses the decision. Any such decision by the Director of the Indian Health Service or his representative be in writing, shall be specific as to the reasons for such decision, and shall be considered final.

(3) Where Board is considering issues arising under paragraph (c)(2) of this section, the Board shall within 25 days after the conclusion of the hearing, notify all parties in writing of its decision, which shall be considered final.

(e) In any case where the officer has rescinded a contract under paragraphs (b) or (d) of this section, he may decline to enter into a new contract agreement with the contractor until such time as he is satisfied that the basis for the rescission has been corrected.

Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

**§ 36.234 Operation of retroceded or reassumed contracts.**

(a) The IHS shall endeavor to provide to the tribe(s) and Indians served by a

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retroceded or reassumed contract not less than the same quantity and quality of service it would have provided if there had been no contract.

(b) The IHS shall endeavor to provide to the tribe(s) and Indians served by a retroceded or reassumed contract not less than the same quantity and quality of permanent and temporary personnel that meet the U.S. Civil Service qualifications, it would have provided if there has been no contract.

(c) IHS officials cannot decline to accept a retroceded contract or to re-assume a contract because they are unable to provide the quality and quantity of service and personnel required in paragraphs (a) and (b) of this section.

### § 36.235 Contract funds.

The tribal organization shall be entitled to be funded for direct and indirect costs at a level which is not less than would have been provided if the IHS had operated the program or portion thereof during the contract period.

### § 36.236 Unexpended funds under contract.

(a) If it becomes apparent during the contract term that the estimated amount of a contract under this subpart will be in excess of actual expenditures under the contract, the identified unexpended funds will be used to provide additional services or benefits within the scope or limitations of the contract.

(b) When both the tribal organization and the IHS agree that it is not practicable to spend all contract funds during the contract term, to the extent authorized by law unexpended funds may be carried over into the succeeding fiscal year contract. Unexpended funds carried over into a succeeding fiscal year shall be added to the contract amount for that fiscal year.

### § 36.237 Contract funding and renegotiation.

The following clause shall be included in contracts awarded under the Act which have a term of more than one year:

#### CONTRACT FUNDING AND RENEGOTIATION

Funds other than those appropriated during the fiscal year in which the contract commenced, that are included in the contract amount are subject to the availability of appropriations from Congress and there shall be no legal liability on the part of the Government in regard to such funds unless and until they are appropriated. Funds appropriated during the fiscal year in which the contract commenced that are included in the contract amount but not expended at the end of such fiscal year may be carried over and used for contract purposes in the succeeding fiscal year of the contracts operation or, may be used to provide additional services upon modifications of the contract to include such services therein.

Each succeeding year of the contract may be renegotiated prior to the end of the then current fiscal year in order to reflect changes that have taken place beyond the control of the contractor since the contract was originally negotiated or last renegotiated as is applicable.

## Subpart J—Indian Health Care Improvement Act Programs

AUTHORITY: Secs. 102, 103, 106, 502, 702, and 704 of Pub. L. 94-437 (25 U.S.C. 1612, 1613, 1615, 1652, 1672 and 1674); sec. 338G of the Public Health Service Act, 95 Stat. 908 (42 U.S.C. 254r).

SOURCE: 42 FR 59646, Nov. 18, 1977, unless otherwise noted.

#### SUBDIVISION J-1—PROVISIONS OF GENERAL AND SPECIAL APPLICABILITY

### § 36.301 Policy and applicability.

(a) *Policy.* (1) It is the policy of the Secretary to encourage Indians to enter the health professions and to ensure the availability of Indian health professionals to serve Indians. The recruitment and scholarship programs under this subpart will contribute to this objective.

(2) The regulations of this subpart are intended to be consistent with principles of Indian self-determination and to supplement the responsibilities of the Indian Health Service for Indian health manpower planning and for assisting Indian tribes and tribal organizations in the development of Indian manpower programs.