

Comparison of Tribal Self-Governance to Self-Determination Contracting—As of 3/27/18

Category	Tribal Self-Governance	Self-Determination Contracting
Selection of Participating Tribes	Tribes must request participation in self-governance by resolution or other official action by the tribal governing body.	Tribes must request a self-determination contract by resolution or other official action by the tribal governing body.
Selection of Participating Tribes	Tribes must demonstrate, for the previous three fiscal years, financial stability and financial management capability as shown by the tribe having no material audit exceptions in the required annual audit of the self-determination contracts of the tribe. A material audit exception exists if any of the audits submitted identifies: (1) a material weakness; or (2) a single funding of known questioned costs subsequently disallowed by a contracting officer or awarding official that exceeds \$10,000	Upon the request of a tribal organization or the tribal organization's Indian tribe, mature contracts status is granted to tribes that, in effect, demonstrate financial stability and financial management capability. A mature contract is a self-determination contract that has been continuously operated by a tribal organization for three or more years, and for which there are no significant and material audit exceptions in the annual financial audit of the tribal organization.
Selection of Participating Tribes	Tribes must complete a planning phase which includes (1) legal and budgetary research; and (2) internal tribal government planning and organizational preparation. A planning report must be submitted which (a) identifies BIA and non-BIA programs which may be included in the tribe's AFA; (b) describes the tribe's BIA and non-BIA planning activities; (c) identifies the major benefits derived from the planning activities; (d) identify the process to be used by the tribe to resolve any complaints by service recipients; and (e) identify any organizational planning completed by the tribe in anticipation of implementing tribal self-governance.	Under self-determination contracting, no explicit planning phase is required to be complete.
Selection of Participating Tribes	If each tribe requests, two or more otherwise eligible tribes may be treated as a single tribe for the purpose of participating in self-governance as a consortium.	If each tribe requests, two or more otherwise eligible tribes may be treated as a single tribe for the purpose of participating in self-determination as a consortium.
Statutory Basis	Statutory requirements are contained at 25 U.S.C. § 5361 et seq.	Statutory requirements are contained at 25 USC § 5301 et seq.
Statutory Basis	An annual funding agreement (AFA) is negotiated between the tribe and the Secretary of Interior consistent with federal laws and the trust relationship. A tribe may also negotiate a multi-year funding agreement (MYFA)	A contract proposal is submitted by the tribe subject to declination criterial contained at 25 U.S.C. § 5321. Technical assistance must be provided by the Secretary to correct identified deficiencies. A self-determination contract shall not exceed three years in the case of other than a mature contract, unless the Secretary and the tribe agree that a longer term would be advisable.

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Statutory Basis	A negotiated rule making process was used. Applicable regulatory requirements have been published at 25 CFR Part 1000.	A negotiated rule making process was used. Applicable regulatory requirements have been promulgated at 25 CFR Part 900.
Statutory Basis	A compact may be negotiated to identify the operational framework and responsibilities of the Secretary and the tribe.	No compact is used under self-determination contracting.
Statutory Basis	Each AFA is required to authorize the tribe to plan, conduct, consolidate and administer programs, services, functions, and activities administered by the BIA at the agency, area, and central office level under authority of the Indian Reorganization Act (IRA) of 1934, Snyder Act, and other non-Department of the Interior (DOI) Indian program authorities. A tribe may be selected to negotiate a non-BIA AFA [under section 403(b)(2)] without having or negotiating a BIA AFA [under section 403(b)(1)]. A tribe may not be selected to negotiate an AFA which includes a program which is of special geographic, cultural, or historical significance to the tribe [under section 403(c)(1)] without negotiating a BIA AFA [under section 403(b)(1)] and/or a non-BIA AFA [under section 403(b)(2)].	Each self-determination contract authorizes the tribe to plan, conduct, consolidate and administer programs, services, functions, and activities administered by the BIA at the agency, region, and central office level under the authority of the Indian Reorganization Act (IRA), Snyder Act, and other non-DOI program authorities.
Non-BIA DOI Programs	Subject to negotiated terms, an AFA is required to authorize the tribe to plan, conduct, consolidate and administer programs, services, functions, and activities administered by non-BIA Agencies within DOI that are otherwise available to Indians. No preference may be considered unless it is provided by law.	A self-determination contract between the Secretary of the Interior and the tribe may be negotiated from programs, services, functions, and activities administered by non-BIA Agencies within DOI that are otherwise available to Indians.
Non-BIA DOI Programs	An AFA may include other programs, services, functions, and activities administered by the Secretary which are of special geographic, historical, or cultural significance to the participating tribe.	A non-self-governance agreement could be negotiated between a contracting tribe and the Secretary which include other programs, services, functions, and activities administered by the Secretary which are of special geographic, historic, or cultural significance to the tribe.
Non-BIA DOI Programs	Tribes need not be identified in an authorizing statute for a non-BIA program to be included in an AFA.	Tribes need not be identified in an authorizing statute for a non-BIA program to be included in a self-determination contract or non-self-governance agreement.

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Non-BIA DOI Programs	The Secretary is required to publish annually a listing of non-BIA programs, services, functions, and activities eligible to be included in AFAs and programmatic targets, after consultation with self-governance tribes to encourage non-BIA bureaus of DOI to assure that a significant portion are actually included in AFAs.	The Secretary is not required to publish a listing of non-BIA programs, services, functions, and activities eligible to be included in self-determination contracts and non-self-governance agreements.
Required AFA Provisions	Each AFA is required to specify the services to be provided, the functions to be performed, and the respective responsibilities of the tribe and the Secretary.	A self-determination contract contains a scope of work to identify the programs, services, functions, and activities to be administered by the tribe. The scope of work provides greater detail.
Required AFA Provisions	Subject to the terms of the agreement, each AFA is required to authorize the tribe to redesign or consolidate programs, services, functions, and activities, and reallocate funds for such programs, services, functions, and activities.	Tribes may propose a redesign of a program, service, function, or activity carried out under the self-determination contract, which is subject to the declination criteria contained in 25 U.S.C. § 5321 (a)(2).
Required AFA Provisions	Each AFA is required to authorize the tribe and the Secretary to reallocate funds or modify budget allocations within any year, and specify the procedures to be used.	Under a self-determination contract, tribal reallocation of funds or modification of budget allocations must be approved by the Secretary.
Required AFA Provisions	Each AFA is required to allow for the retrocession of programs pursuant to 25 U.S.C § 5324(e).	Under a self-determination contract, a program may be retroceded pursuant to 25 U.S.C. § 5324(e).
Required AFA Provisions	Participating tribes are responsible for the administration of programs, services, functions, and activities identified in the AFA.	Contracting tribes are responsible for the administration of programs, services, functions, and activities identified in the contract.
Required AFA Provisions	The Secretary is required to submit AFAs to other Agency tribes, the Senate Committee on Indian Affairs and the House Committee on Natural Resources not later than 90 days before the proposed effective date.	Self-determination contracts are not required to be submitted to other Agency tribes and Congressional committees.
Required AFA Provisions	All provisions of § 6 [penalties for misapplying, stealing, or fraud]; § 102(c) [provision of liability insurance]; § 104 [personnel]; § 105(f) [real and personal property provisions including donation of excess/surplus property]; § 110 [administrative appeals and disputes]; and § 111 [effect on existing rights] of P.L. 93-638, as amended are applicable to AFAs.	The same provisions are applicable to self-determination contracts.
Required AFA Provisions	Self-governance tribes have the option of incorporating any title I provisions into its AFA.	Title I provisions automatically apply to self-determination tribes.
Required AFA Provisions	The tribe is required to perform the programs, services, functions, and activities as provided for in its AFA.	The tribe is required to perform the programs, services, functions, and activities as provided for in its self-determination contract.

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General Provisions	Except as otherwise provided by law, the Secretary is required to interpret each federal law and regulation in a manner that will facilitate the inclusion of the programs, services, functions, and activities into the AFAs and implementation of the AFAs.	Each provision of P.L. 93-638, as amended is required to be liberally construed for the benefit of the contractor to transfer the funding and the related programs, services, functions, and activities that are otherwise contractible, from the federal government to the contractor.
General Provisions	Modifications to the AFA are required in the form of a written amendment signed by the tribe and the Secretary.	Modifications to the self-determination contract are required in the form of a written revision signed by the tribe and the Secretary.
General Provisions	The tribe and the Secretary agree to take corrective action when errors in calculation or other mistakes are made.	Actions to correct a self-determination contract are taken when errors in calculation or other mistakes are made.
General Provisions	Nothing is intended or shall be construed to expand or alter the inherent federal functions or the type of participation permitted by statute. Services related to inherent federal functions are required to be available to self-governance tribes on the same basis as other tribes.	Self-governance and contracting tribes are eligible to receive the same inherent functions from the Secretary. The Secretary is authorized to transfer non inherent federal functions and associated tribal shares to self-governance and contracting tribes.
General Provisions	The tribe is not required to abide by federal program guidelines, manuals, and policy directives, except for those it specifically agrees to.	The tribe is not required to abide by federal program guidelines, manuals, and policy directives, except for those it specifically agrees to.
General Provisions	Nothing shall be construed to limit or reduce in any way the services, contracts, or funds that any other tribe or tribal organization is eligible to receive under 25 U.S.C. § 5321 or any other federal law.	If a self-determination contract requires the Secretary to divide the administration of a program that has previously been administered for the benefit of a greater number of tribes, the Secretary is required to take such action as may be necessary to ensure that services are provided to the tribes not served by a self-determination contract.
General Provisions	Tribal law and tribal forums are required to provide administrative due process rights pursuant to the Indian Civil Rights Act of 1968, 25 U.S.C. § 1301, et seq. with respect to programs, services, functions, and activities provided by the tribe under its AFA.	Tribal law and tribal forums are required to provide administrative due process rights pursuant to the Indian Civil Rights Act of 1968, 25 U.S.C. § 1301, et seq. with respect to programs, services, functions, and activities provided by the tribe under its self-determination contract.
Funding Provisions	The Secretary is required to provide funds to the tribe under an AFA in an amount equal to the amount the tribe would have been eligible to receive under contracts and grants under P.L. 93-638, as amended. This includes amounts for direct program and contract support costs and any funds specifically or functionally related to the provision by the Secretary of services and benefits to the tribe and its members.	Tribes are eligible to receive the same amount of funding under an AFA or self-determination contract.

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Funding Provisions	BIA residual funds are those necessary to carry out functions that only BIA employees could perform if all tribes were to assume responsibilities for all BIA programs that the Act permits. Each regional office and the central office is required to compile a single document for distribution each year that contains all the residual information of that respective office. The BIA is required to (1) develop uniform residual information to negotiate residuals; (2) ensure functional consistency throughout BIA in the determination of residuals; (3) make the determination of residuals based upon functions actually being performed by BIA at that office; (4) annual consult with tribes on a region-by-region basis as requested by tribes; and (5) notify tribal leaders each year by March 1 of the availability of residual information.	The analysis of BIA residual funds is required to be performed by the BIA under tribal self-governance regulations. However, the inherent federal functions and tribal shares information generated by the analysis is applicable to all tribes, including those contracting under P.L. 93-638, as amended.
Funding Provisions	Funds provided for elementary and secondary schools under the formula developed pursuant to section 1128 of the Education Amendments of 1978 (25 U.S.C. 2008) are statutorily prohibited from being included in an AFA.	Funds provided for elementary and secondary schools under the formula developed pursuant to section 1128 of the Education Amendments of 1978 (25 U.S.C. 2008) are authorized to be included in self-determination contracts.
Funding Provisions	Funds provided pursuant to the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 et. seq.) are statutorily prohibited from being included in an AFA.	Funds provided pursuant to the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 et. seq.) are authorized to be included in self-determination contracts.
Funding Provisions	Self-governance tribes are eligible to receive contract support funding on the same basis as other tribes.	Contracting tribes are eligible to receive contract support funding on the same basis as other tribes.
Funding Provisions	Self-governance tribes are eligible to receive funding for new programs on the same basis as other tribes.	Self-governance and compacting tribes are eligible to receive funding for new programs on the same basis.
Funding Provisions	All funds provided under AFAs are required to be treated as non-federal funds for purposes of meeting matching requirement under any other federal law.	Notwithstanding any other provision of law, a tribe may use funds provided under a self-determination contract to meet matching or cost participation requirements under other federal and non-federal programs.
Funding Provisions	AFAs are required to provide for advance payments to the tribes in the form of annual or semi-annual installments at the discretion of the tribe.	Self-determination contracts may provide for advance payments to the tribes in the form of quarterly, semi-annual, or other methods of payment authorized by law.

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Funding Provisions	The Secretary is required to identify in the annual budget request of the President to the Congress any funds proposed to be included in the AFAs	On an annual basis, the Secretary is required to consult with, and solicit the participation of tribes in the development of the budget for the BIA (including the formulation of annual budget requests that the Secretary submits to the President for submission to Congress under 31 U.S.C. § 1105).
Funding Provisions	Under an AFA, a tribe is not authorized to redesign or to reallocate any of the funds for programs, services, functions, or activities which are subject to special restriction imposed by the Appropriations Act or which were awarded to the tribe based on competition or a special identified need.	Under a self-determination contract, a tribe is not authorized to redesign or to reallocate any of the funds for programs, services, functions, or activities which are subject to restriction imposed by the Appropriations Act or which were awarded to the tribe based on competition or a special identified need.
Funding Provisions	Amounts identified in AFAs are based on the President's request to Congress and are subject to Congressional action on appropriations and are adjusted accordingly. Notification to the tribe of such adjustments is to occur as soon as practicable following Congressional action.	Funding for self-determination contracts is provided consistent with Congressional action on appropriations.
Funding Provisions	The base budget of a self-governance tribe consists of recurring funds which, subsequent to apportionment from the Office of Management and Budget (OMB) to BIA, are transferred from BIA budget accounts to Office of Self-Governance (OSG) accounts.	The base budget of a contracting tribe consist of recurring funds which subsequent to apportionment from OMB to BIA are transferred within the BIA from central office accounts to regional and agency office accounts.
Funding Provisions	Non-recurring funds and any other one-time funding are not eligible to be included as part of the tribe's base.	Non-recurring funds and any other one-time funding are not eligible to be included as part of the tribe's base.
Funding Provisions	Any funds not expended during the term of any of the fiscal years of the compact may be carried over to the succeeding fiscal year or in any subsequent fiscal year.	Any funds provided under a self-determination contract shall remain available until expended. No further approval by the Secretary or justification from the contractor is required prior to the expenditure of the funds.
Funding Provisions	Future funding of successor AFAs may only be reduced pursuant to the provisions of 25 U.S.C. § 5325(b).	Future funding successor self-determination contracts may only be reduced pursuant to the provisions of 25 U.S.C. § 5325(b).
Funding Provisions	Consistent with 31 U.S.C. § 1301(a), appropriations are required to be applied only to the objects for which the appropriations were made except as provided by law. AFA funds may only be used for purposes of the AFA and in accordance with the appropriations for which they were received.	Consistent with 31 U.S.C. § 1301(a), appropriations are required to be applied only to the objects for which the appropriations were made except as provided by law. Self-determination contract funds may only be used for purposes of the contract and in accordance with the appropriations for which they were received.

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Funding Provisions	Under an AFA, reallocation of funds from one program, service, function, or activity to another within a general budget category or from one general budget category to another is to be governed only by tribal law and procedure and does not require Secretarial consent.	Under a self-determination contract, reallocation of funds from one program, service, function, or activity within a general budget category or from one general budget category to another must be approved by the Secretary.
Funding Provisions	The Secretary is required to prepare and supply relevant information, and to promptly comply with the tribe's request for information reasonably needed to determine the funds that may be available for a successor AFA.	The Secretary is required to prepare and supply relevant information, and to promptly comply with the tribe's request for information reasonably needed to determine the funds that may be available for a successor self-determination contract.
Trust Provisions	Nothing in tribal self-governance is to be construed to diminish the federal trust responsibility to Indian tribes, individual Indians, or Indians with trust allotments. Under an AFA, the Secretary is prohibited from waiving, modifying, or diminishing in any way the trust responsibility of the United States that exists under treaties, executive orders, and other laws.	Under a self-determination contract, the United States reaffirms the trust responsibility of the United States to the tribe to protect and conserve the trust resources of the tribe and the trust resources of individual Indians.
Trust Provisions	AFAs are required to include provisions to monitor the performance of trust functions by the tribe through an annual trust evaluation.	Routine visits by the Secretary for all programs under a self-determination contract are limited to not more than one performance monitoring visit. No additional visits can be made until reasonable advance notice is provided to the tribe which includes a description of the nature of the problem that requires the additional visit.
Trust Provisions	AFAs are required to include provisions for the Secretary to reassume a program, service, function, or activity, if there is a finding of imminent jeopardy to a physical trust asset, natural resources, or public health and safety.	The Secretary may, upon providing written notice to a tribe, immediately rescind a contract or grant and resume control or operation of a program, service, function, or activity, if the Secretary finds that (1) there is an immediate threat of imminent harm to the safety of any person, or imminent substantial and irreparable harm to trust funds, trust lands, or interest in such lands, and (2) such threat arises from the failure of the contractor to fulfill the requirements of the contract.
Trust Provisions	Funds for trust services to individual Indians shall be available under the AFA only to the extent that the same services that would have been provided by the Secretary are provided to individual Indians by the tribe.	To the extent that a self-determination contract provides funding for the delivery of trust services to individual Indians that have been provided by the Secretary, the contractor is required to maintain at least the same level of services as the Secretary provided for such individual Indians, subject to the availability of appropriated funds for such services.

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Audit Provisions	A self-governance tribe is required to provide to the designated official, within nine months after the end of the period audited, an annual single organization-wide audit as prescribed by 31 U.S.C. § 75 and is required to adhere to generally accepted accounting principles and OMB Circular A-133.	A contracting tribe is required to provide to the designated official, within nine months after the end of the period audited, an annual single organization-wide audit as prescribed by 31 U.S.C. § 75 and is required to adhere to generally accepted accounting principles and OMB Circular A-133.
Audit Provisions	Allowable costs are determined in accordance with the costs principles set forth in OMB Circular A-87. Costs consist of direct and support costs, including indirect costs, actually incurred in the performance of the AFA.	Allowable costs are determined in accordance with the costs principles set forth in OMB Circular A-87. Costs consist of direct and support costs, including indirect costs, actually incurred in the performance of the self-determination contract.
Audit Provisions	OMB Circular A-133 requires that a schedule of expenditures of federal awards be prepared for the period covered by the financial statements. A tribe must identify in its accounts all federal awards received and expended and the federal programs under which they were received.	OMB Circular A-133 requires that a schedule of expenditures of federal awards be prepared for the period covered by the financial statements. A tribe must identify in its accounts all federal awards received and expended and the federal programs under which they were received.
Audit Provisions	The tribe must maintain management systems that are determined to be adequate by an independent audit through the annual single agency audit report that is required by the Act and OMB Circular A-133.	The tribe must maintain management systems that are determined to be adequate by an independent audit through the annual single agency audit report that is required by the Act and OMB Circular A-133.
Audit Provisions	Federal funds may only be used for the purposes identified in the AFA. Advance payments of funds can only be used for the programs covered by the AFA. These are restricted funds and the cash must be accounted for in the Special Revenue Fund. Advance payments may not be used to meet cash flow problems with other federal awards in the Special Revenue Fund.	Federal funds may only be used for the purposes identified in the self-determination contract. Advance payments of funds can only be used for the programs covered by the contract. These are restricted funds and the cash must be accounted for in the Special Revenue Fund. Advance payments may not be used to meet cash flow problems with other federal awards in the Special Revenue Fund.
Audit Provisions	Advance payments made under an AFA may be invested before the funds are expended for the purposes of the AFA so long as the funds are: (1) invested only in obligations of the United States or in obligations or securities that are guaranteed or insured by the United States, or mutual (or other) funds registered with the Securities and Exchange Commission and which only invest in obligations of the United States or securities that are guaranteed or insured by the United States; or (2) deposited only into accounts that are insured by an agency or instrumentality of the United States, or are fully collateralized to ensure protection of funds.	Advance payments made under an AFA may be invested before the funds are expended for the purposes of the contract so long as the funds are: (1) invested only in obligations of the United States or in obligations or securities that are guaranteed or insured by the United States, or mutual (or other) funds registered with the Securities and Exchange Commission and which only invest in obligations of the United States or securities that are guaranteed or insured by the United States; or (2) deposited only into accounts that are insured by an agency or instrumentality of the United States, or are fully collateralized to ensure protection of funds.

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Audit Provisions	There are no prohibitions on pooling investments as long as AFA funds are separately accounted for in the Special Revenue Fund and the investment and deposit requirements are met. Income earned from these investments and deposits are not accountable to the DOI or the Special Revenue Fund, except at the option of the tribe.	There are no prohibitions on pooling investments as long as self-determination contract funds are separately accounted for in the Special Revenue Fund and the investment and deposit requirements are met. Income earned from these investments and deposits are not accountable to the DOI or the Special Revenue Fund, except at the option of the tribe.
Audit Provisions	Unless restricted by the AFA, interest or income earned on investments or deposits of self-governance awards may be: (1) placed in the tribe's general fund and used for any purpose approved by the tribe; or (2) used to provide expanded services under the self-governance AFA and to support some or all of the costs of investment services.	Unless restricted by the self-determination contract, interest or income earned on investments or deposits of contract awards may be: (1) placed in the tribe's general fund and used for any purpose approved by the tribe; or (2) used to provide expanded services under the self-determination contract and to support some or all of the costs of investment services.
Waiver Provisions	Not later than 60 days after receipt by the Secretary of a written request by a tribe to waive the application of a federal regulation for an AFA, the Secretary is required to either approve or deny the requested waiver in writing to the tribe.	Not later than 90 days after receipt by the Secretary of a written request by a tribe to waive the application of a federal regulation for a self-determination contract, the Secretary is required to either approve or deny the requested waiver in writing to the tribe.
Waiver Provisions	The Secretary may deny the request by a tribe to waive the application of a federal regulation only upon a specific finding by the Secretary that the identified language in the regulation may not be waived because such waiver is prohibited by federal law.	The Secretary may, with respect to a self-determination contract, make exceptions in the regulations promulgated, or waive such regulations, if the Secretary finds that such exception or waiver is in the best interest of the Indians served by the contract or is consistent with the policies of P.L. 93-638, as amended, and is not contrary to statutory law.
Waiver Provisions	The tribe is required to abide by all federal regulations as published in the Federal Register unless they are waived in accordance with 25 U.S.C. 5363(i)(2).	The tribe is required to abide by all federal regulations as published in the Federal Register unless they are waived in accordance with 25 U.S.C. 5328(e).

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Reporting Requirements	<p>Self-governance tribes are required to provide all information required by applicable statutes and regulations that have not been waived. 25 CFR Part 1000.381 and 382 identify information the Secretary is required to include in annual reports to Congress. Tribal submission of information for the Secretary's annual report to Congress is optional. However, realizing the importance of submitting information on self-governance activities, a tribal self-governance data collection and planning work group developed a form for voluntary reporting of self-governance information to the OSG for inclusion in the annual report to Congress (including tribal expenditures, tribal goals, and outcome measures). Self-governance tribes also submit data for budget formulation and fund distribution purposes.</p>	<p>A contracting tribe is required to submit such additional information concerning programs, functions, services, or activities carried out pursuant to the self-determination contract as the tribe may negotiate with the Secretary. Any disagreement over reporting requirements is subject to the declination criteria and procedures set forth in 25 U.S.C. § 5321.</p>
Record Keeping Requirements	<p>Except for previously provided copies of tribal records that the Secretary demonstrates are clearly required to be maintained as part of the DOI record keeping system, tribal records are not to be considered federal records for purposes of 5 U.S.C. § 5.</p>	<p>Except for previously provided copies of tribal records that the Secretary demonstrates are clearly required to be maintained as part of the DOI record keeping system, tribal records are not to be considered federal records for purposes of 5 U.S.C. § 5.</p>
Record Keeping Requirements	<p>At the option of the tribe, section 108(b) of P.L. 93-638, as amended, provides that records of the tribe must not be considered federal records for the purposes of the Privacy Act.</p>	<p>At the option of the tribe, section 108(b) of P.L. 93-638, as amended, provides that records of the tribe must not be considered federal records for the purposes of the Privacy Act.</p>
Record Keeping Requirements	<p>Access to records maintained by the Secretary is governed by the Freedom of Information Act (5 U.S.C. 552) and other applicable law. At the option of the tribe under section 108 of P.L. 93-638, as amended, except for previously provided copies of tribal records that the Secretary demonstrates are clearly required to be maintained as part of the Department's record keeping system, records of the tribe shall not be considered federal records for the purpose of the Freedom of Information Act. The Freedom of Information Act does not apply to records maintained solely by the tribe.</p>	<p>Access to records maintained by the Secretary is governed by the Freedom of Information Act (5 U.S.C. 552) and other applicable law. At the option of the tribe under section 108 of P.L. 93-638, as amended, except for previously provided copies of tribal records that the Secretary demonstrates are clearly required to be maintained as part of the Department's record keeping system, records of the tribe shall not be considered federal records for the purpose of the Freedom of Information Act. The Freedom of Information Act does not apply to records maintained solely by the tribe.</p>
Record Keeping Requirements	<p>The tribe is required to maintain a record keeping system, and provide reasonable access to records to the Secretary which permits DOI to meet its minimum legal record keeping requirements under the Federal Records Act, 44 U.S.C. § 3301 et seq.</p>	<p>The contractor is required to maintain a record keeping system and, upon reasonable advance request, provide reasonable access to such records to the Secretary.</p>

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Record Keeping Requirements	Under self-governance, the tribe is required to maintain in its record keeping system all documents necessary for the annual audit requirement and provide the Secretary reasonable access to the records.	Under self-determination contracts, documents necessary for the annual audit requirements are part of the tribe's record keeping system and the Secretary is provided reasonable access to the records.
Property Provisions	At the request of the tribe, the Secretary is required to make available to the tribe reasonable divisible real property, facilities, equipment, and personal property that the DOI had previously utilized to provide the programs, services, function, and activities now consolidated by the tribe.	At the request of the contractor, the Secretary may make available, or transfer to the contractor, all reasonable divisible real property, facilities, equipment, and personal property that the Secretary has used to provide or administer the programs, services, functions, and activities covered by the self-determination contract.
Property Provisions	Under self-governance, the tribe may acquire excess property on the same basis as other tribes to support the programs, activities, functions, and services performed under its AFA. A Screener Identification Card is issued to the Tribe. The BIA Regional Property Officer is responsible for assisting the tribe in securing the use of the card and acquiring excess property.	Under self-determination contracting, the tribe may acquire excess property on the same basis as other tribes to support the programs, activities, functions, and services performed under its contract. A Screener Identification Card is issued to the tribe. The BIA Regional Property Officer is responsible for assisting the tribe in securing the use of the card and acquiring excess property.
Property Provisions	A mutually agreed upon list specifying the property, facilities, and equipment to be used is to be prepared and periodically revised so that such property can be properly recorded in the BIA property inventory.	A mutually agreed upon list specifying the property, facilities, and equipment furnished to be used is to be prepared by the Secretary, with the concurrence of the contractor, and periodically revised by the Secretary, with concurrence of the contractor.
Property Provisions	The tribe is required to determine what capital equipment, leases, rentals, property or services it requires to perform its obligations under its compact and is to acquire and maintain records of such capital equipment, property rentals, leases, property or services through tribal procurement procedures.	The contractor is required to determine the capital equipment, leases, rentals, property, or services the contractor requires to perform the obligations of the contractor and is to acquire and maintain records of such capital equipment, property rentals, leases, property, or services through applicable procurement procedures of the contractor.
Property Provisions	Property and equipment furnished by the federal government for use in the performance of the compact and AFA or purchased with AFA funds is required to remain eligible for replacement on the same basis as if title to such property were vested in the United States.	The contractor is required to maintain a record of acquired property for purposes of replacement.

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Category	Tribal Self-Governance	Self-Determination Contracting
Property Provisions	Property and equipment furnished by the federal government for use in the performance of the compact and AFA or purchased with AFA funds which has a value in excess of \$5,000 at the time of retrocession, rescission, or termination of the AFA, and is not donated, is subject to reversion with the title reverting to the Secretary at the option of the Secretary.	Property and equipment furnished by the federal government for use in the performance of a self-determination contract or purchased with funds under any self-determination contract which has a value in excess of \$5,000 at the time of retrocession, rescission, or termination of the AFA, and is not donated, is subject to reversion with the title reverting to the Secretary at the option of the Secretary.
Construction Provisions	The Secretary is required to ensure that with regard to all construction projects or programs performed under self-governance, proper health and safety standards are provided for in the AFAs.	The contractor is required to include in its proposal the standards under which the tribe will operate, including provisions regarding the use of licensed and qualified architects, applicable health and safety standards adherence to federal, state, local, or tribal building codes and engineering standards. The standards are required to ensure structural integrity, accountability of funds, adequate competition for subcontracting under tribal or other applicable law, the commencement, performance, and completion of the contract, adherence to project plans and specifications (including any applicable federal construction guidelines and manuals), the use of proper materials and workmanship, necessary inspection and testing, and changes, modifications, stop work, and termination of the work when warranted.
Construction Provisions	Absent a negotiated agreement, regarding construction programs or projects, provisions of the Office of Federal Procurement and Policy Act and Federal Acquisition Regulation (FARs) do not apply.	Provisions of the Office of Federal Procurement and Policy Act and Federal Acquisition Regulations (FARs) apply. If the Secretary and the tribe are unable to develop a mutually agreeable construction contract, the tribe may submit a final contract proposal to the Secretary which is subject to the declination criteria contained in 25 U.S.C. 5321(a)(2).
Construction Provisions	BIA funding for construction of education and non-education facilities are authorized to be included in AFAs.	BIA funding for construction of education and non-education facilities are authorized to be included in self-determination contracts.

Comparison of Tribal Self-Governance to Self-Determination Contracting—As of 3/27/18

Category	Tribal Self-Governance	Self-Determination Contracting
Construction Provisions	Pass-through funding received by BIA from the Federal Highway Administration for the Indian Reservation Roads, and other highway and bridge programs, is authorized to be included in AFAs in accordance with Title IV of P.L. 93-638, as amended and Title 23 of the U.S.C. as amended on August 10, 2005 by the Safe, Accountable, Flexible, Efficient Transportation and Equity Act: A Legacy for Users (SAFETEA-LU). P.L. 109-58	Pass-through funding received by BIA from the Federal Highway Administration for the Indian Reservations Roads, and other highway and bridge programs, is authorized to be included in self-determination contracts.
Miscellaneous Provisions	Every contract entered into by the tribe in connection with a program, service, function, or activity encompassed by its compact, is required to (1) be in writing; (2) identify the interested parties, their authorities and purposes; (3) state the work to be performed; and (4) state the basis for any claim, the payments to be made, and the terms of the contract, which shall be fixed.	Each contract entered into by the contractor with a third party in connection with performing the obligations of the contractor under the self-determination contract shall (1) be in writing; (2) identify the interested parties, their authorities and purposes of the contract; (3) state the work to be performed under the contract; and (4) state the process for making any claim, the payments to be made, and the terms of the contract, which shall be fixed.
Miscellaneous Provisions	Contracts which might be void without Secretarial approval under 25 U.S.C. § 81 are to be expeditiously reviewed by the Secretary.	For the term of the self-determination contract, section 2103 of 25 U.S.C. § 81 does not apply to any contract entered into in connection with the self-determination contract.
Miscellaneous Provisions	For the period of the AFA, the provisions of 25 U.S.C. § 82a and 25 U.S.C. § 476 do not apply to attorney and other professional contracts by tribes participating in self-governance. This exemption applies to all attorney/professional services, without regard as to whether they are connected with the AFA. All contracts entered into under a self-governance AFA are exempt from the provisions of 25 U.S.C. § 476.	All contracts entered into under a self-determination contract are exempt from the provisions of 25 U.S.C. § 81 and 25 U.S.C. § 476.
Miscellaneous Provisions	Tribes operating under an AFA are eligible to obtain Interagency Motor Pool vehicles and related services, and receive federal discounts on equipment, supplies, and services.	Tribes operating under self-determination contracts are eligible to obtain Interagency Motor Pool vehicles and related services, and receive federal discounts on equipment, supplies, and services.
Miscellaneous Provisions	Tribes operating under an AFA are fully covered by such liability insurance or equivalent coverage provided or obtained by the Secretary pursuant to 25 U.S.C. § 5321(c).	Tribes operating under a self-determination contract are fully covered by such liability insurance or equivalent coverage provided or obtained by the Secretary pursuant to 25 U.S.C. § 5321(c).
Miscellaneous Provisions	Tribes operating under an AFA are fully covered by such liability coverage under the Federal Tort Claims Act that is made available by the Secretary or to P.L. 93-638 contractors and their employees under federal law and are to be responsible in the same manner as P.L. 93-638 contractors.	Self-governance and contracting tribes have the same liability coverage under the Federal Tort Claims Act that is made available by the Secretary or to P.L. 93-638 contractors and their employees under federal law and are to be responsible in the same manner.

Comparison of Tribal Self-Governance to Self-Determination Contracting—As of 3/27/18

Category	Tribal Self-Governance	Self-Determination Contracting
Miscellaneous Provisions	Tribal law governs the provision of Indian preference in employment, contracting, and subcontracting pursuant to a tribe's compact.	With respect to a self-determination contract 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.
Miscellaneous Provisions	Criminal penalties set forth in 25 U.S.C. §5306 apply to all activities conducted pursuant to a tribe's compact.	Criminal penalties set forth in 25 U.S.C. §5306 apply to all activities conducted pursuant to a tribe's self-determination contract.
Miscellaneous Provisions	Wage and labor provisions set forth in 25 U.S.C. § 5307 apply to all laborers and mechanics employed by contractors or subcontractors in the construction, alteration, or repair, including painting or redecoration of buildings or other facilities in conjunction with the tribe's compact.	Wage and labor provisions set forth in 25 U.S.C. § 5307 apply to all laborers and mechanics employed by contractors or subcontractors in the construction, alteration, or repair, including painting or redecoration of buildings or other facilities in conjunction with the tribe's self-determination compact
Miscellaneous Provisions	Administrative appeals and disputes made pursuant to AFAs are subject to remedies and procedures prescribed in 25 U.S.C. § 5331.	Administrative appeals and disputes made pursuant to self-determination contracts are subject to remedies and procedures prescribed in 25 U.S.C. § 5331. All administrative appeals relating to self-determination contracts are heard by the Interior Board of Appeals established pursuant to 40 U.S.C. § 607
Miscellaneous Provisions	Equal Access to Justice Act claims against the DOI are heard by Interior Board of Indian Appeals (IBIA) or the Interior Board of Contract Appeals (IBCA), as appropriate under 43 CFR § 4.601 through 4.619, Equal Access to Justice Act (P.L. 96-481, 92 Stat. 2325, as amended), section 504 of Title 5, U.S.C. and Section 2412 of Title 28, U.S.C. applies to administrative appeals pending or filed after the date of enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1988 by tribal organizations regarding self-determination contracts.	The Equal Access to Justice Act (P.L. 96-481, Act of October 1, 1980; 92 Stat. 2325, as amended), section 504 of Title 5, U.S.C. and Section 2412 of Title 28, U.S.C. applies to administrative appeals pending or filed after the date of enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1988 by tribal organizations regarding self-determination contracts.
Miscellaneous Provisions	For Title IV pre-award disputes, including those involving programs, functions, services and activities that are not Title I—eligible, appeals may be filed with the bureau head/Assistant Secretary or IBIA. However, the tribe may not avail itself of both paths for the same dispute.	For Title I—eligible programs, functions, services and activities pre-award disputes, appeals may only be filed with IBIA under the provisions set forth in 25 CFF § 900.150(a) through 9h) and 25 CFR § 900.152 through 900.169.