Successful Connections Lasting Partnerships

Differences Between Title I Contracting and Title V Compacting Under the Indian Self-Determination Education Assistance Act (ISDEAA)

This document is a quick reference guide for illustrative purposes.
Citations are provided to assist the reader, not to replace the statute, regulations or legal counsel.

	Title I	Title V
Program Authority	Title I of the ISDEAA 25 U.S.C. § 450 et seq. 25 C.F.R. § 900 et seq.	Title V of the ISDEAA 25 U.S.C. § 458aaa et seq. 42 C.F.R. § 137 et seq.
Program Summary	Federally recognized Tribes or Tribal Organizations contract with the IHS to plan, conduct, and administer one or more individual programs, functions, services or activities (PFSAs), or portions thereof, that the IHS would otherwise provide for Indians because of their status as Indians. 25 U.S.C. § 450f	Federally recognized Tribes or Tribal Organizations compact with the IHS to assume full funding and control over programs, services, functions or activities (PSFAs), or portions thereof, that the IHS would otherwise provide for Indians because of their status as Indians. 25 U.S.C. § 458aaa-3-4(b)
Eligibility	Any federally recognized Tribe or Tribal Organization is eligible for Title I contracting upon request of the Tribe by Tribal resolution. 25 U.S.C. § 450f(a)(1) 25 C.F.R. § 900.8	Eligibility for Title V requires that the Tribe or Tribal Organization (1) successfully complete a planning phase, (2) request participation in the Tribal Self-Governance Program by Tribal resolution or other official action by the governing body of each Tribe to be served, and (3) demonstrate three fiscal years of financial stability and financial management capability. 25 U.S.C. § 458aaa–2 42 C.F.R. §§ 137.15-23
Documents Required	(1) A Contract that includes the model agreement in the ISDEAA and any other provisions agreed to by the parties, and (2) an Annual Funding Agreement (AFA) describing all PFSAs to be performed or administered, the associated funding, and method of payment. 25 U.S.C. § 450l 25 C.F.R. § 900.8	(1) A Compact that sets forth the general terms of the nation-to-nation relationship between the Tribe or Tribal Organization and the Secretary, and (2) an annual or multi-year Funding Agreement (FA) that generally identifies the PSFAs to be performed or administered by the Tribe, the financial terms and conditions, and the responsibilities of the Secretary. There is no model Compact, but the ISDEAA does require some mandatory provisions. 25 U.S.C. §§ 458aaa–3-4 42 C.F.R. §§ 137.30-46
Process	The eligible Tribe or Tribal Organization submits a Letter or Notice of Intent. Technical assistance is provided as necessary. The Tribe or Tribal Organization submits a Self-Determination Contract proposal for review. A draft Contract and AFA are produced, and negotiations are held with the Tribe or Tribal Organization. Within 90 days after receipt of the proposal, the IHS Area contracting officer must either approve the proposal and award the Contract or provide written declination of the proposal based on the five ISDEAA declination criteria. In the event of a declination, the IHS must sever and award any portion of the proposal not declined. *See generally* 25 U.S.C. § 450f–n 25 C.F.R. § 900 et seq.	The Tribe or Tribal Organization produces a draft Compact and FA. The IHS Agency Lead Negotiator (ALN) assembles a negotiation team and reviews the draft. Following pre-negotiation discussions, the ALN negotiates with the Tribe or Tribal Organization on behalf of the IHS Director. *See generally* 25 U.S.C. § 458aaa et seq. 42 C.F.R. § 137.1 et seq.

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	Title I	Title V
Appeal	If a Contract proposal is declined, the Tribe or Tribal Organization must be provided with a written statement of any objections, assistance to overcome the stated objections, and a hearing on the record with the opportunity for appeal on the objections raised. 25 U.S.C. § 450f(b) 25 C.F.R. §§ 900.28-31	If issues arise on which the parties cannot reach agreement, the Tribe or Tribal Organization may submit a final offer to the IHS. Within 45 days, the Agency must make a determination on the final offer in accordance with the ISDEAA. 25 U.S.C. §§ 458aaa-6(b)-(d) 43 C.F.R. §§ 137.131-150
Redesign and Funding Reallocation	A Tribe or Tribal Organization may redesign PFSAs with IHS approval and may rebudget funding to meet Contract requirements without IHS approval in accordance with the ISDEAA. 25 U.S.C. §§ 450j(j) & 450j-1(o)	A Tribe or Tribal Organization may redesign or consolidate PSFAs and reallocate or redirect funding without IHS approval in accordance with the ISDEAA. 25 U.S.C. §§ 458aaa-4 & 458aaa-5(e) 42 C.F.R. § 137.185
Performance Monitoring	Generally, for routine monitoring, the IHS is limited to not more than one performance-monitoring visit per Contract; exceptions may apply. 25 U.S.C. § 450l(c)(b)(7)(C)	No routine monitoring is required. No citation.
Mandatory Reporting	For mature Contracts, an annual agency audit as required by the Single Agency Audit Act of 1984 and a brief annual program report. All other reporting requirements are negotiable. 25 U.S.C. § 450(c) 25 C.F.R. § 900.65	Annual single agency audit as required by the Single Agency Audit Act of 1984 and Health Status Reports. 25 U.S.C. §§ 458aaa-5(c) & 458aaa-6(a)(1) 42 C.F.R. §§ 137.165–173 & 137.200–207
Grants	Grants cannot be added to Title I Contracts or AFAs. No citation.	Statutorily mandated grants may be included in FAs. 25 U.S.C. § 458aaa-4(b) 42 C.F.R. §§ 137.75-77
Retrocession	A Tribe or Tribal Organization may choose to retrocede individual PFSAs or the entire Contract award to the IHS. 25 U.S.C. § 450j(e) 25 C.F.R. §§ 900.240-245	A Tribe or Tribal Organization may choose to partially or fully retrocede to the IHS any PSFA, or portion thereof, included in the FA. 25 U.S.C. § 458aaa-5(f) 42 C.F.R. § 137.185
Reassumption by the IHS	The IHS may rescind a Contract, in whole or in part, and take control of the PFSA involved if there is: (1) a violation of rights or endangerment of the health, safety, or welfare of any persons, or (2) gross negligence or mismanagement in the handling or use of Contract funds. 25 U.S.C. § 450m 25 C.F.R. §§ 900.246-256	The IHS may reassume operation of a PSFA and its associated funding if there is a specific finding of: (1) imminent endangerment of the public health caused by an act or omission of the Tribe or Tribal Organization and arising out of a failure to carry out the Compact or FA, or (2) gross mismanagement of the funds transferred to the Tribe or Tribal Organization by the Compact and FA. 25 U.S.C. § 458aaa-6(a)(2) 42 C.F.R. §§ 137.255-265
Funding Available for Planning and Negotiation	Tribal Management Grants are available for planning purposes. They cannot be added to Title I Contracts or AFAs and may not be used for Title V planning or negotiation activities. 25 U.S.C. §§ 450h(a) & (b)	Cooperative Agreements are available for Title V planning and negotiation activities. Receipt of a Cooperative Agreement is not required to participate in Title V. 25 U.S.C. § 458aaa-2(e) 42 C.F.R. §§137.24-26

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