

**Comparison of Title I to Title V
of the Indian Self-Determination and Education Assistance Act,
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Table of Contents

General Provisions

Establishment 1
 Congressional Findings 1
 Policy 2
 Definitions 2
 Construction of Isda’s Provisions 5
 Construction of Other Laws 5
 Trust Responsibility 5
 Billing Indians 6
 Trust Resources 6
 Fair and Uniform Services 6
 Designated Officials 7
 Call for States to Facilitate Agreements 7
 Third-party Contracts with Tribes 7

Audits, Records, and Reports

Audits 8
 Disallowance Action 8
 Repayment 8
 Records 9
 Records of the Federal Government 9
 Monitoring 11
 Report to Tribes 11
 Annual Reports 11
 Annual Report on Title V 12
 Miscellaneous Reports 13
 Development of Budget 13
 Structure and Content of Budget 13

Contracts, Compacts, and Funding Agreements

Eligible Tribes 14
 Transition from Title III to Title V 14
 Contents of the Contract 15
 Contract / Compact Amendments 15

Funding Agreements 15
 Application of Sections of Title I 16
 Miscellaneous Applicable Federal Laws 16
 Non-Applicable Federal Laws 16
 Subsequent Funding Agreements 16
 Redesign, Reallocation and Consolidation 17
 Consolidation of Mature Contracts 17
 Withdrawal 17
 Dividing Administration of a Program 18
 Term and Effective Date of Contract / Compact 18
 Multiyear Contracts / Funding Agreements 19
 Funding in out Years of Mutli-year Contracts 19
 Calendar Year Contracts 19
 Retrocession 19
 Others Benefitting from Contract 20

Planning, Proposing, and Declining

Eligible Pfsa’s or Portions Thereof 20
 Nonduplication 21
 Grant Agreements 21
 Provision of Personal Services 21
 Programs Retained 22
 Planning Phase 22
 Negotiation Phase 22
 Technical Assistance 23
 Funds for Planning Phase 23
 Submitting a Proposal / Final Offer 24
 Timing of Declination of Proposal 24
 Timing of Rejection of Final Offer 24
 Declination of Tribe’s Proposal /Rejection of Tribe’s Final Offer 24
 Rights Post-declination / Rejection 24
 Provisions Relating to Declination / Rejection Hearings 25
 Reassumption 26

Funding

Mandatory Addition of Funds to the Contract	27
Amount of Funding	27
Prohibitions Regarding Funding Matters	28
Prohibition Against Reductions in Funding Amounts	28
Exception to Prohibition Against Reductions	30
Payment	30
Stable Base Budget	31
Suspension of Funding	31
Interest Earned on Funds	31
Program Income	32
Savings	32
Savings Due to Reduction in Secretary's Duties	32
Carryover of Funds	32
Prudent Investment	33
Permissible Expenditure of Funds Without Approval	33
Theoretical Under- and Over-Recoveries	34
Matching Shares	34
Limitation of Costs	35
No Reductions in Funding to Other Tribes	35
Additional Services on a Reimbursable Basis	35

Construction Contracts

Applicable Isda Provisions	36
Definitions	36
Technical Assistance	37
Negotiation and Approval	37
Standards	38
Assumption of Responsibility	38
Funding	39
Budget	39
Final Offer	40
Advance Payments	40
Indirect Costs	40
Use of Excess Funds	40
Procurement Laws	42
Wage and Hour	42

Other Federal Laws	42
Reports and Monitoring	43

Property, Transportation, & Housing

Access to Federal Property	43
Federal Sources of Supply	44
Lease of Tribal Facilities	44
Employee Housing	45
Transportation	45

Regulations and Rules

Regulations	45
Nonregulatory Rules	46
Expiration of Authority to Regulate	46
Effect of Failure to Regulate	46
Rulemaking Procedures / Committee	46
Advisory Bodies	47
Repeal or Revise Conflicting Laws And Regulations	47
Regulation Waiver	48
Conflicts of Interest	48

Disputes

Disputes	49
Administrative Procedures of Contractor	49
Civil Actions under § 110	49
Burden on Secretary	50
Equal Access to Justice Act (EAJA)	50
Contract Disputes Act	50
Prompt Payment Act	50
Sovereign Immunity	50
Authorization of Appropriations	50

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Title I	Title V	Comments
The Indian Self-Determination Act	Tribal Self-Governance Amendments of 2000	
	ESTABLISHMENT Section 502, 25 U.S.C. § 458aaa-1 The Secretary shall establish & carry out a program within the IHS to be known as the ‘Tribal Self-Governance Program.’	
<p style="text-align: center;">CONGRESSIONAL FINDINGS</p> <p>Section 2, 25 U.S.C. § 450</p> <p>(a) The Congress, after careful review of the Federal Government’s historical & special legal relationship with, & resulting responsibilities to, American Indian people, finds that-</p> <ul style="list-style-type: none"> • the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people & their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, & has denied to the Indian people an effective voice in the planning & implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities; & • the Indian people will never surrender their desire to control their relationships both among themselves & with non-Indian governments, organizations, & persons. <p>(b) The Congress further finds that-</p> <ul style="list-style-type: none"> • true self-determination in any society of people is dependent upon an educational process which will insure the development of qualified people to fulfill meaningful leadership roles; • the Federal responsibility for & assistance to education of 	<p style="text-align: center;">CONGRESSIONAL FINDINGS</p> <p>Section 2, 25 U.S.C. § 458aaa note, 42 C.F.R. § 137.2</p> <p>Congress finds that -</p> <ol style="list-style-type: none"> (1) the tribal right of self-government flows from the inherent sovereignty of Indian tribes & nations; (2) the U.S. recognizes a special government-to- government relationship with Indian tribes, including the right of the Indian tribes to self-governance, as reflected in the Constitution, treaties, Federal statutes, & the course of dealings of the U.S. with Indian tribes; (3) although progress has been made, the Federal bureaucracy, with its centralized rules & regulations, has eroded tribal self-governance & dominates tribal affairs; (4) the Tribal Self-Governance Demonstration Project, established under Title III of the ISDA was designed to improve & perpetuate the government-to-government relationship between Indian tribes & the U.S. & to strengthen tribal control over Federal funding & program management; (5) although the Federal Government has made considerable strides in improving Indian health care, it has failed to fully meet its trust responsibilities & to satisfy its obligations to the Indian tribes under treaties & other laws; & (6) Congress has reviewed the results of the Tribal Self-Governance Demonstration Project & finds that transferring 	<p>Title V recognizes that although under Title I self-determination contracts tribes may run programs, Federal bureaucracy and oversight of self-determination contracts erode self-governance.</p>

Title I	Title V	Comments
<p>Indian children has not effected the desired level of educational achievement or created the diverse opportunities & personal satisfaction which education can & should provide; &</p> <ul style="list-style-type: none"> parental & community control of the educational process is of crucial importance to the Indian people. 	<p>full control & funding to tribal governments, upon tribal request, over decision making for Federal programs, services, functions, & activities (or portions thereof) -</p> <ul style="list-style-type: none"> is an appropriate & effective means of implementing the Federal policy of government-to-government relations with Indian tribes; & strengthens the Federal policy of Indian self-determination. 	
<p style="text-align: center;">POLICY</p> <p>Section 3, 25 U.S.C. § 450a</p> <ul style="list-style-type: none"> Assure maximum Indian participation in the direction of Federal services to Indian communities; Maintain the Federal Government’s “unique & continuing relationship” with Indian tribes & people; Permit an orderly transition from the Federal domination to meaningful Indian participation in the direction of Federal services to Indian people; Assist Indian tribes in the development of strong & stable tribal governments; Provide for educational services & opportunities that will permit Indian children to excel in the life areas of their choice, & to achieve the measure of self-determination essential to their social & economic well-being. 	<p style="text-align: center;">POLICY</p> <p>Section 3, 25 U.S.C. § 458aaa note, 42 C.F.R. § 137.2</p> <ul style="list-style-type: none"> Permanently establish tribal self-governance within DHHS; Call for full DHHS cooperation to maintain the Federal Government’s “unique & continuing relationship” with tribes & to permit tribes to choose the extent of participation in self-governance; Ensure the continuation of the trust responsibility of the U.S. to tribes & Indian individuals; Strengthen U.S. & tribal government-to-government relationships; Permit an orderly transition from Federal domination to tribal control over Federal funding & programs management; Provide for a measurable reduction in the Federal bureaucracy; Encourage the Secretary to identify all DHHS programs that may be managed by a tribe & to assist tribes in assuming them at the earliest opportunity. 	<p>Title 1: Develop tribal management capabilities; maintain Federal Government’s “unique & continuing” relationship; orderly transition from Federal domination to Indian participation in providing Federal services to Indians.</p> <p>Title V: Tribally-driven initiative; remove administrative & practical barriers; formalize government-to-government relationship.</p>
<p style="text-align: center;">DEFINITIONS</p> <p>Section 4(i), 25 U.S.C. § 450b ‘Secretary,’ unless otherwise designated, means either the Secretary of HHS or the Secretary of the Interior or both.</p>	<p style="text-align: center;">DEFINITIONS:</p> <p>Section 501(a)(6), 25 U.S.C. § 458aaa, 42 C.F.R. § 137.10 ‘Secretary’ means the Secretary of HHS.</p>	<p>Title I involves both DOI & HHS. Title V involves HHS only.</p>
<p>Section 4(e) - ‘Indian tribe’ means any tribe, band, nation, or other organized group or community, including any Alaska Native village or ANCSA Native corporation, recognized as eligible for special programs & services provided by the U.S. to Indians because of their status as Indians.</p>	<p>Section 501(b) - ‘Indian Tribe’ - In any case in which an Indian tribe has authorized another tribe, an inter-tribal consortium, or a tribal organization to plan for or carry out programs on its behalf, the authorized tribe, inter-tribal consortium, or tribal organization shall have the rights &</p>	<p>Title V appears to be broader, as including “inter-tribal consortium”. Title V makes clear that the rights of the authoring</p>

Title I	Title V	Comments
	responsibilities of the authorizing tribe (except as otherwise provided in the authorizing resolution or in Title V). In such event, the term ‘ <i>Indian tribe</i> ’ as used in Title V shall include such other authorized Indian tribe, inter-tribal consortium, or tribal organization.	tribes vest in the consortium or organization.
<p>Section 4(l) - ‘<i>Tribal organization</i>’ means the tribes’ recognized governing body; any legally established Indian organization 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 & which includes the maximum participation of Indians in all phases of its activities. Where a contract or grant is made to an organization performing services benefitting more than one tribe, the approval of each tribe is required.</p>		This term is used in Title V . We believe it is likely that the Title I definition applies to Title V .
	<p>Section 501(a)(5) - ‘<i>Inter-tribal consortium</i>’ means a coalition of two more separate Indian tribes that join together for the purpose of participating in self-governance, including tribal organizations.</p>	Title I does not use this term.
<p>Section 4(b) - ‘<i>contract funding base</i>’ means the base level from which contract funding needs are determined, including all contract costs.</p>		This term is not used in either Title I or Title V .
<p>Section 4(c) - ‘<i>direct program costs</i>’ means costs that can be identified specifically with a particular contract objective.</p>		Title V uses this term and refers back to Title I, suggesting the Title I definition would apply.
<p>Section 4(d) - ‘<i>Indian</i>’ means a person who is a member of an Indian tribe.</p>		We believe this definition would apply to Title V as well.
<p>Section 4(f) - ‘<i>indirect costs</i>’ means costs incurred for a common or joint purpose benefitting more than one contract objective, or which are not readily assignable to the contract objectives specifically benefitted without effort disproportionate to the results achieved.</p>		Title V uses the term “contract support costs”, which includes “indirect costs.” The Title I definition likely applies to Title V .

Title I	Title V	Comments
<p>Section 4(g) - ‘<i>indirect cost rate</i>’ means the rate arrived at through negotiation between an Indian tribe or tribal organization & the appropriate Federal agency.</p>		<p>Title V does not use this term.</p>
<p>Section 4(h) - ‘<i>mature contract</i>’ means a self-determination contract that has been continuously operated by a tribal organization for three or more years, & for which there are no significant & material audit exceptions in the annual financial audit of the tribal organization: Provided, That upon the request of a tribal organization or the tribal organization's Indian tribe for purposes of § 102 (a), a contract of the tribal organization which meets this definition shall be considered to be a mature contract.</p>		<p>This term is used in Title V regarding “regaining mature contract status.” We believe the Title I definition likely applies to Title V.</p>
<p>Section 4(j)- ‘<i>self-determination contract</i>’ means a contract (or grant or cooperative agreement utilized under § 9 of this Act) entered into under Title I between a tribal organization & the appropriate Secretary for the planning, conduct & administration of programs or services which are otherwise provided to Indian tribes & their members pursuant to Federal law: Provided, That except as provided in the last proviso in § 105(a), no contract (or grant or cooperative agreement utilized under § 9) entered into under Title I shall be construed to be a procurement contract.</p>		<p>This term is used throughout Title I and in several provisions of Title V. Though it is not expressly clear in Title V, we believe that the Title I definition likely applies to Title V.</p>
<p>Section 4(k) - ‘<i>State education agency</i>’ means the State board of education or other agency or officer primarily responsible for supervision by the State of public elementary & secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.</p>		<p>This term is not used in either Title I or Title V.</p>
	<p>Section 501(a)(4) - ‘<i>inherent Federal functions</i>’ means those Federal functions which cannot legally be delegated to Indian tribes.</p>	<p>This term is not used in Title I.</p>
	<p>Section 501(a) (7) - ‘<i>self-governance</i>’ means the program of self-governance established under § 502.</p>	<p>This term is not used in Title I.</p>
	<p>Section 501(a)(8) - ‘<i>tribal share</i>’ means a tribe’s portion of all funds & resources that support secretarial programs that are not</p>	<p>This term is not used in Title I.</p>

Title I	Title V	Comments
	required by the Secretary for performance of inherent Federal functions.	
<p align="center">CONSTRUCTION OF ISDA’S PROVISIONS</p> <p>Section 108(c) (sec. 1(a)(2)), 25 U.S.C. § 450/(c) (sec. 1(a)(2)) Each provision of the ISDA & each provision of the contract shall be liberally construed for the benefit of the Contractor to transfer the funding & the following related programs, that are otherwise contractible under § 102(a), including all related administrative functions, from the Federal Government to the Contractor: (List functions, services, activities, & programs).</p>	<p align="center">CONSTRUCTION OF ISDA’S PROVISIONS</p> <p>Section 512(f), 25 U.S.C. § 458aaa-11(f), 42 C.F.R. § 137.2(d) Each provision of Title V & of a compact or FA shall be liberally construed for the benefit of the tribe participating in self-governance & any ambiguity shall be resolved in favor of the tribe.</p>	<p>Title V’s provision, when read in conjunction with Section 512(a), <i>infra</i>, places the same requirements on the Secretary as Title I.</p>
	<p align="center">CONSTRUCTION OF OTHER LAWS</p> <p>Section 512(a), 25 U.S.C. § 458aaa-11(a), 42 C.F.R. §137.2(c) The Secretary shall interpret all Federal laws, Executive orders, & regulations in a manner that will facilitate the inclusion of programs & funds associated therewith in the agreements, the implementation of compacts & FAs, & the achievement of tribal health goals & objectives.</p>	<p>Title V requires the Secretary to interpret all laws (not merely the ISDA) to facilitate the transfer of programs & funds.</p>
<p align="center">TRUST RESPONSIBILITY</p> <p>Section 108(c) (sec. 1(d)(1)(B)), 25 U.S.C. § 450/(c) (sec. 1(d)) The Secretary shall act in good faith in upholding the U.S.’s trust responsibility to tribes or individual Indians Section 108(c) (sec. 1(d)(2)) - To the extent that health programs are included in the contract, & within available funds, the Secretary shall act in good faith in cooperating with the Contractor to achieve the goals set forth in the Indian Health Care Improvement Act.</p>	<p align="center">TRUST RESPONSIBILITY</p> <p>Section 504(a), 25 U.S.C. § 458aaa-3(a), 42 C.F.R. § 137.3(b) The Secretary shall negotiate & enter into a written FA with each tribe participating in self-governance in a manner consistent with the Federal Government’s trust responsibility, treaty obligations, & the government-to-government relationship between tribes & the U.S. Section 507(e), 25 U.S.C. § 458aaa-6(e), 42 C.F.R. § 137.2(h) In the negotiation of compacts & FAs the Secretary shall at all times negotiate in good faith to maximize implementation of the self-governance policy. The Secretary shall carry out Title V in a manner that maximizes the policy of tribal self-governance, in a manner consistent with the purposes specified in Title V, § 3.</p>	<p>Title I: Good faith in cooperating with the tribe to meet the goals of the IHCIA & good faith in upholding the trust responsibility. Title V: Good faith in negotiating compacts & FAs to maximize self-governance & negotiate & enter into FAs consistent with trust responsibility .</p>
<p>Section 108(c) (sec. 1(d)(1)(B)), 25 U.S.C. § 450/(c) (sec.</p>	<p>Section 507(g), 25 U.S.C. § 458aa a-6(g), 42 C.F.R. § 137.2(f)</p>	<p>Title I focuses on the</p>

Title I	Title V	Comments
<p>1(d)(1)(B) - Nothing in this Contract may be construed to terminate, waive, modify, or reduce the trust responsibility of the U.S. to the tribe(s) or individual Indians.</p>	<p>The Secretary is prohibited from waiving, modifying, or diminishing in any way the trust responsibility of the U.S. with respect to Indian tribes & individual Indians that exists under treaties, Executive orders, other laws, or court decisions. Section 515(b), 25 U.S.C. §458aaa-14(b), 42 C.F.R. § 137.2(e) Nothing in Title V shall be construed to diminish in any way the trust responsibility of the U.S. to Indian tribes & individual Indians that exists under treaties, Executive orders, or other laws & court decisions.</p>	<p>interpretation of the contract, while Title V focuses on any actions of the Secretary & the interpretation of the ISDA.</p>
<p>Section 111(2), 25 U.S.C. § 450n(2), - Nothing in this Act shall be construed as authorizing or requiring the termination of any existing trust responsibility of the U.S. with respect to the Indian people.</p>	<p>Section 516(a), 25 U.S.C. § 458aaa-15(a), Section 111(2) applies to Title V.</p>	<p>There is no difference between Title I and Title V.</p>
	<p style="text-align: center;">BILLING INDIANS</p> <p>Section 515(c), 25 U.S.C. § 458aaa-14(c), 42 C.F.R. § 137.2(g) - IHS shall neither bill nor charge Indians who may have the economic means to pay for services, nor require any tribe to do so.</p>	<p>Title I contains no similar provision (although the Indian Health Care improvement Act contained one at one time). Title V appears to protect Indians and tribes better than Title I.</p>
<p style="text-align: center;">TRUST RESOURCES</p> <p>Section 108(c) (sec. 1(d)(1)(A)), 25 U.S.C. § 450(c) (sec. 1(d)(1)(A)) - The U.S. reaffirms the trust responsibility of the U.S. to the tribe to protect & conserve the trust resources of the tribe & the trust resources of individual Indians.</p>		<p>This provision is most generally directed at Department of the Interior contracts.</p>
<p style="text-align: center;">FAIR AND UNIFORM SERVICES</p> <p>Section 105(h), 25 U.S.C. § 450j(h) - Contracts & grants shall include provisions to assure the fair & uniform provision by such tribal organizations of the services & assistance they provide to Indians under such contracts & grants. Section 108(c) (sec. 1(c)(5)), 25 U.S.C. § 450(c) (sec. 1)(c)(5) The Contractor shall provide services under the contract in a fair & uniform manner & shall provide access to an</p>		<p>Title V contains no comparable provisions. Presumably, compacting tribes are not required by the ISDA to provide fair & uniform services or to have an administrative</p>

Title I	Title V	Comments
<p>administrative or judicial body empowered to adjudicate or otherwise resolve complaints, claims, & grievances brought by program beneficiaries against the Contractor arising out of the performance of the contract.</p>		<p>body which resolves complaints.</p>
<p align="center">DESIGNATED OFFICIALS</p> <p>Section 108(c) (sec. 1(e)(1)), 25 U.S.C. § 450(c) (sec. 1(e)(1)) Not later than the effective date of this Contract, the U.S. shall provide to the Contractor, & the Contractor shall provide to the U.S., a written designation of a senior official to serve as a representative for notices, proposed amendments, & other purposes.</p>		<p>Title V contains no similar requirement.</p>
	<p align="center">CALL FOR STATES TO FACILITATE AGREEMENTS</p> <p>Section 512(e), 25 U.S.C. § 458aaa-11(e) - States are hereby authorized & encouraged to enact legislation, & to enter into agreements with tribes to facilitate & supplement the initiatives, programs, & policies authorized by Title V & other Federal laws benefitting Indians & tribes.</p>	<p>Title I contains no similar encouragement, though this provision may in fact have no effect on compacting.</p>
<p align="center">THIRD-PARTY CONTRACTS WITH TRIBES</p> <p>Section 108(c) (sec. 1(b)(15)(A)), 25 U.S.C. § 450(c) (sec. 1(b)(15)) Except as provided in (B), for the term of the contract, 25 U.S.C. § 81 & IRA, § 16 shall not apply to any contract entered into in connection with the contract.</p> <p>Section 108(c) (sec. 1(b)(15)(B)) - Each contract entered into by the Contractor with a third party in connection with performing the obligations of the contractor under the contract shall be in writing; identify the interested parties, the authorities of such parties, & purposes of the contract; state the work to be performed under the contract; & state the process for making any claim, the payments to be made, & the terms of the contract, which shall be fixed.</p>	<p align="center">THIRD-PARTY CONTRACTS WITH TRIBES</p> <p>Section 511(b), 25 U.S.C. § 458aaa-10(b), - 25 U.S.C. § 81 & IRA, § 16, shall not apply to attorney & other professional contracts entered into by Indian tribes participating in self-governance.</p> <p>Section 511(c), 25 U.S.C. § 458aaa-10(c), - all reference in this Act to § 1 of the Act of June 26, 1936 are hereby deemed to include the first section of the Act of July 3, 1952.</p>	<p>Title V contains no standards for third-party contracts with Tribes.</p>
<p align="center">AUDITS</p> <p>Section 5(f)(1), 25 U.S.C. § 450c(f)(1) For each fiscal year during which a tribal organization receives or expends funds pursuant to a contract or grant, the tribal</p>	<p align="center">AUDITS</p> <p>Section 506(c), 25 U.S.C. § 458aaa-5(c), 42 C.F.R. § 137.165 The provisions requiring a single agency audit report apply to FAs under Title V. Any claim by the Federal Government</p>	<p>There is no difference between Title I and Title V's audit provisions.</p>

Title I	Title V	Comments
<p>organization that requested such contract or grant shall submit to the appropriate Secretary a single-agency audit report required by U.S.C. Title 31. A tribal organization shall submit such additional information concerning the conduct of the program carried out as the tribal organization may negotiate with the Secretary. Any disagreement over reporting requirements shall be subject to the declination criteria & procedures set forth in § 102. <i>See also Section 5(a)(2), 25 U.S.C. § 450c (a)(2)</i> (requiring single-agency audits reports to be retained as records)</p>	<p>against the tribe relating to funds received under a FA based on any audit under this subsection shall be subject to the provisions of § 106(f).</p>	<p>Title I’s additional provisions regarding “reporting requirements” and “declination” do not apply to Title V.</p>
<p>DISALLOWANCE ACTIONS Section 106(f), 25 U.S.C. § 450j-1(f) - Any right of action or other remedy relating to any disallowance of costs shall be barred unless the Secretary has given notice of any such disallowance within 365 days of receiving any required annual agency single audit report. Such notice shall set forth the right of appeal & hearing to the board of contract appeals pursuant to § 110. An audit report shall be deemed to have been received on the date of actual receipt by the Secretary, if, within 60 days after receiving the report, the Secretary does not give notice of a determination by the Secretary to reject the single-agency report as insufficient due to noncompliance. Nothing in this subsection shall be deemed to enlarge the rights of the Secretary with respect to the IRA, § 16.</p>	<p>DISALLOWANCE ACTIONS Section 516(a), 25 U.S.C. § 458aaa-15(a), 42 C.F.R. § 137.169-.174 - Section 106(f) applies to Title V. Section 506(c), 25 U.S.C. § 458aaa-5(c), 42 C.F.R. § 137.169 Any claim by the Federal Government against the tribe relating to funds received under a FA based on any audit under this subsection shall be subject to the provisions of § 106(f).</p>	<p>There is no difference between Title I and Title V.</p>
<p>REPAYMENT Section 5(d), 25 U.S.C. § 450c(d) - Except as provided in §§ 8 or 106(a)(3) of this Act, funds paid to a financial assistance recipient & not expended or used for the purposes for which paid shall be repaid to the U.S. Treasury through the Secretary.</p>		<p>Title V contains no similar provision.</p>
<p>RECORDS Section 5(a), 25 U.S.C. § 450c(a) - A recipient of Federal funds shall keep the records the Secretary requires by regulation, including records disclosing the amount & disposition of the funds, the cost of the project for which the</p>	<p>RECORDS Section 506(d), 25 U.S.C. § 458aaa-5(d), 42 C.F.R. § 137.175-.177 - The tribe shall maintain a recordkeeping system, &, after 30 days advance notice, provide the Secretary with reasonable access to such records to enable the DHHS to</p>	<p>Title I lists specific records required but allows for regulations on recordkeeping; Title I’s</p>

Title I	Title V	Comments
<p>funds were given or used, the amount of that portion of the cost of the project supplied by other sources, & such other information as will facilitate an effective audit. Such records for a mature contract consist of quarterly financial statements for the purpose of accounting for Federal funds, the annual single-agency audit required by U.S.C. Title 31 & a brief annual program report.</p> <p>Section 5(b), 25 U.S.C. § 450c(b) - The Comptroller General & the Secretary shall, for 3 years after completion of a project, have access (for the purpose of audit & examination) to any books, documents, papers, & records of such recipients which in the opinion of the Comptroller General or the Secretary may be related or pertinent to the grants, contracts, or other arrangements.</p> <p><i>See also Section 108(c) (sec. 1(b)(7)(B)), 25 U.S.C. § 450(c) (sec. 1(b)(7)(B)),</i> (The Contractor shall maintain a recordkeeping system &, upon reasonable advance request, provide reasonable access to such records to the Secretary.)</p>	<p>meet its minimum legal recordkeeping system requirements under 44 U.S.C. §§ 3101-3106.</p> <p>Section 516(a), 25 U.S.C. § 458aaa-15(a) - Subsection 5(b) of Title I applies to Title V.</p>	<p>reference to ‘reasonable’ advance request to view records is vague.</p> <p>Title V requires 30-day advance request.</p>
<p>RECORDS OF THE FEDERAL GOVERNMENT</p> <p>Section 108(c) (sec. 1(b)(7)(A)), 25 U.S.C. § 450(c) (sec. 1(b)(7)(A)) - Except for previously provided copies of tribal records that the Secretary demonstrates are clearly required to be maintained as part of the recordkeeping system of the DOI or DHHS (or both), records of the Contractor shall not be considered Federal records for purposes of U.S.C. Title 5. <i>See also Section 108(b), 25 U.S.C. § 450(b),</i> (records of the tribal government or organization shall not be considered Federal records for purposes of U.S.C. Title 5.)</p> <p>Section 105(o), 25 U.S.C. § 450j(o) - At the option of a tribe, patient records may be deemed to be Federal records under those provisions of the ‘Federal Records Act of 1950’ for the limited purposes of making such records eligible for storage by Federal Records Centers to the same extent & in the same manner as other DHHS patient records. Patient records that are deemed to be Federal records under the ‘Federal Records Act of 1950’ shall not be considered Federal records for the purposes of U.S.C. Title 5.</p>	<p>RECORDS OF THE FEDERAL GOVERNMENT</p> <p>Section 506(d), 25 U.S.C. § 458aaa-5(d), 42 C.F.R. § 137.177</p> <p>Unless a tribe specifies otherwise in the compact or FA, records of the tribe shall not be considered Federal records for purposes of U.S.C. Title 5.</p> <p>42 C.F.R. § 137.178-180 - At the option of a tribe, patient records may be stored at the Federal Records Center to the same extent and in the same manner as other IHS records in accordance with § 105(o). A tribe may make agreements with the Federal Records Centers regarding disclosure and release of the patient records stored. A tribe must consider the potential application of Tribal, Federal and state law and regulations that may apply to Tribal patient records.</p>	<p>Title I provides the Secretary with some ability to determine tribal records that may be considered Federal records.</p> <p>Title V permits tribes to make certain records, such as medical records, subject to the protections of the Federal Privacy Act.</p>

Title I	Title V	Comments
<p style="text-align: center;">MONITORING</p> <p>Section 108(c) (sec. 1(b)(7)(C)), 25 U.S.C. § 450(c) (sec. 1(b)(7)(C)) - The Contractor shall be responsible for managing the day-to-day operations conducted under this Contract & for monitoring activities conducted under this Contract to ensure compliance with the contract & applicable Federal requirements. With respect to the Secretaries’ monitoring activities, the routine monitoring visits is limited to not more than one performance monitoring visit by the head of each operating division, departmental bureau, or departmental agency, or duly authorized representative of such head unless the Contractor agrees to more visits or the appropriate official determines that there is a reasonable cause to believe that grounds for reassumption of the Contract, suspension of contract payments, or other serious contract performance deficiency may exist. No additional visit may be made until such time as reasonable advance notice that includes a description of the nature of the problem that requires the additional visit has been given to the Contractor.</p>		<p>Title V has no monitoring provision.</p>
<p style="text-align: center;">REPORT TO TRIBES</p> <p>Section 5(e), 25 U.S.C. § 450c(e) - The Secretary shall report annually in writing to each tribe regarding projected & actual staffing levels, funding obligations, & expenditures for programs operated directly by the Secretary serving that tribe.</p>		
<p style="text-align: center;">ANNUAL REPORTS</p> <p>Section 106(c), 25 U.S.C. § 450j-1(c) - By May 15 of each year, the Secretary shall prepare & submit to Congress an annual report on the implementation of this Act. The report shall include:</p> <ul style="list-style-type: none"> • an accounting of the total amounts of funds provided for each program & the budget activity for direct program costs & contract support costs of tribal organizations under self-determination; • an accounting of any deficiency in funds needed to provide required contract support costs to all contractors for the fiscal year for which the report is being submitted; • the indirect cost rate & type of rate for each tribal 	<p style="text-align: center;">ANNUAL REPORTS</p> <p>Section 516(a), 25 U.S.C. § 458aaa-15(a) - Section 106(c) applies to Title V.</p>	<p>There is no difference between Title I and Title V.</p>

Title I	Title V	Comments
<p>organization that has been negotiated with the appropriate Secretary;</p> <ul style="list-style-type: none"> • the direct cost base & type of base from which the indirect cost rate is determined for each tribal organization; • the indirect cost pool amounts & the types of costs included in the indirect cost pool; & • an accounting of any deficiency in funds needed to maintain the preexisting level of services to any tribes affected by contracting activities, & a statement of the amount of funds needed for transitional purposes to enable contractors to convert from a Federal fiscal year accounting cycle, as authorized by § 105(d). 		
	<p style="text-align: center;">ANNUAL REPORT ON TITLE V</p> <p>Section 514, 25 U.S.C. § 458aaa-13, 42 C.F.R. § 137.405 By January 1 each year, the Secretary shall submit to the Senate Committee on Indian Affairs & the House Committee on Resources a written report regarding the administration of Title V. The report shall</p> <ul style="list-style-type: none"> • include a detailed analysis of the level of need being presently funded or unfunded for each tribe, either under Title I or Title V. No additional reporting requirements may be imposed on participating tribes. • be compiled from information contained in FAs, annual audit reports, & Secretary data regarding the disposition of Federal funds; • identify <ul style="list-style-type: none"> • the relative costs / benefits of self-governance, • all funds that are related to the Secretary’s provision of services & benefits to self-governance tribes & their members, • the funds transferred to each self-governance tribe & the corresponding reduction in the Federal bureaucracy, • the funding formula for individual tribal shares of all headquarters funds together with the comments of affected tribes, & • amounts expended in the preceding fiscal year to carry 	<p>Title V specifically requires accounting of Federal bureaucracy & Federal functions (areas that compact funding cannot be reduced for under Section 106(b) & 508(d)(1)(C)).</p>

Title I	Title V	Comments
	<p>out inherent Federal functions, listing those functions by type & location.</p> <ul style="list-style-type: none"> • contain a description of the method(s) used to determine the individual tribal share of funds controlled by all IHS components (including funds assessed by any other Federal agency) for inclusion in compacts or FAs (this report is also required within 180 days of enactment of Title V); • be distributed to the tribes for comment (for at least 30 days); & • include the separate views & comments of the tribes. 	
<p style="text-align: center;">MISCELLANEOUS REPORTS</p> <p>Section 5(c), 25 U.S.C. § 450c(c) - Each recipient of Federal funds shall make such reports & information available to the Indian people served or represented by such recipient in a manner determined to be adequate by the Secretary.</p>	<p style="text-align: center;">MISCELLANEOUS REPORTS</p> <p>Section 507(a)(1), 25 U.S.C. § 458aaa-6(a)(1), 42 C.F.R. § 137.200-207 - Compacts or FAs negotiated between the Secretary & a tribe shall include a provision that requires the tribe to report on health status & service delivery to the extent such data is not otherwise available to the Secretary & specific funds for this purpose are provided by the Secretary under the FA; & if such reporting shall impose minimal burdens on the participating tribe & such requirements are promulgated under § 517.</p>	<p>Title I: Requires reports to be available to the Indian people; the Secretary must report to the tribe spending on programs IHS runs.</p> <p>Title V: The tribe must report on health status & service delivery, however specific limitations were imposed to be sure that the amount of reporting would be the minimum necessary.</p>
<p style="text-align: center;">DEVELOPMENT OF BUDGET</p> <p>Section 106(i), 25 U.S.C. § 450j-1(i) -On an annual basis, the Secretary shall consult with, & solicit the participation of, tribes & tribal organizations in the development of the budget for the IHS & the BIA (including participation of tribes & tribal organizations in formulating annual budget requests that the Secretary submits to the President for submission to Congress under to 31 U.S.C. § 1105).</p>	<p style="text-align: center;">DEVELOPMENT OF BUDGET</p> <p>Section 516(a), 25 U.S.C. § 458aaa-15(a), 42 C.F.R. §137.401 Section 106(i) applies to Title V.</p>	<p>There is no difference between Title I and Title V.</p>
	<p style="text-align: center;">STRUCTURE AND CONTENT OF BUDGET</p> <p>Section 513, 25 U.S.C. § 458aaa-12 The President shall identify in his annual budget request, all</p>	

Title I	Title V	Comments
	<p>funds necessary to fully fund all FAs authorized, including funds for tribal base budgets. Funds so appropriated shall be apportioned to IHS, provided to the Office of Tribal Self-Governance, & thereafter distributed. (Nothing in this subsection shall be construed to authorize IHS to reduce the amount of funds that a self-governance tribe is otherwise entitled to receive.) The President shall identify the level of need presently funded & any shortfall (including direct program & contract support costs) for each tribe, either directly by the Secretary of HHS, or under contracts, compacts & FAs.</p>	
<p style="text-align: center;">ELIGIBLE TRIBES</p> <p>Section 102(a)(1), 25 U.S.C. § 450f(a)(1) - The Secretary is directed to enter into a contract with any tribe or tribal organization upon that tribe’s request with an authorizing resolution of the tribal governing body.</p> <p>Section 108(c) (sec. 1(f)(1)), 25 U.S.C. § 450l(c) (sec. 1(f)(1)) The resolution of the tribe authorizing the contracting of the programs identified in the Contract is attached to the Contract as attachment 1.</p>	<p style="text-align: center;">ELIGIBLE TRIBES</p> <p>Section 503, 25 U.S.C. § 458aaa-2, 42 C.F.R. § 137.15-.23 Title III tribes may elect to participate under Title V by tribal resolution. Each year an additional 50 tribes meeting eligibility criteria are entitled to participate. (A tribe that has withdrawn from participation in an inter-tribal consortium or tribal organization is entitled to participate if eligible.) Eligible tribes include those that have successfully completed the planning phase, have requested participation in self-governance by resolution or other official action by the governing body of each tribe to be served; & have demonstrated (for 3 fiscal years) financial stability & financial management capability (conclusively demonstrated by no uncorrected significant & material audit exceptions in the required annual audit of the tribe’s contracts or FA’s). (See also Section 504(a), 25 U.S.C. § 458aaa-3(a), requiring the Secretary to negotiate & enter into the compact with each tribe participating in self-governance.)</p>	<p>Title I: Any tribe or tribal organization is eligible with the authorizing resolution of the tribal governing body.</p> <p>Title V: Provides for continuing participation of Title III tribes. Up to 50 new tribes that meet eligibility criteria (which includes completion of a planning phase, a tribal resolution, & financial stability & management capabilities), may participate per year .</p>
	<p style="text-align: center;">TRANSITION FROM TITLE III TO TITLE V</p> <p>Section 504(c); 505(f), 25 U.S.C. §§ 458aaa-3(c), 458aaa-4(f) Title III tribes have the option of retaining the Title III compact and/or FA in whole or in part to the extent that the provisions are not contrary to Title V OR to negotiate a new compact and/or FA under Title V.</p>	<p>Not relevant to Title I.</p>
<p style="text-align: center;">CONTENTS OF THE CONTRACT</p> <p>Section 108(a), 25 U.S.C. § 450l(a) - Each contract shall</p>	<p style="text-align: center;">CONTENTS OF THE COMPACT</p> <p>Section 506(a), 25 U.S.C. §§ 458aaa-5(a) - The provisions of</p>	<p>Title I: The contract sets</p>

Title I	Title V	Comments
<p>contain, or incorporate by reference, the provisions of the model agreement (with modifications where indicated) & contain such other provisions as are agreed to by the parties. Section 102(a)(1), 25 U.S.C. § 450f(a)(1) - The contract will indicate the programs or portions thereof to be planned, conducted & administered by the tribe, & the standards the tribe agrees to conform to. Section 108(c) (sec. 1(b)(3)), 25 U.S.C. § 450/(c) (sec. 1(b)(3)) The Contractor agrees to administer the programs listed in the contract in conformity with the following standards: (list here). Section 105(a)(2), 25 U.S.C. § 450j(a)(2) - Program standards applicable to a nonconstruction contracts shall be set forth in the contract proposal & the final contract of the tribe.</p>	<p>§ 506 shall apply to compacts & FAs negotiated under Title V & a tribe may, at its option, include provisions that reflect such requirements in a compact or FA. Section 504(b), 25 U.S.C. §§ 458aaa-3(b), 42 C.F.R. § 137.31 Each compact shall set forth the general terms of the government-to-government relationship between the tribe & the Secretary, including such terms as the parties intend shall control year after year.</p>	<p>out the program(s) & the applicable standards. The details of a contract are found in the ISDA’s model contract. Title V: the compact merely sets out the terms of the relationship & the FA sets out the programs.</p>
<p style="text-align: center;">CONTRACT AMENDMENTS</p> <p>Section 110(b), 25 U.S.C. § 450m-1(b) - The Secretary shall not revise or amend a contract with a tribal organization without the tribal organization’s consent. Section 108(c) (sec. 1(e)(2)), 25 U.S.C. § 450/(c) (sec. 1(e)(2)) A modification must be made by written amendment, with written consent by the parties, except the addition of supplemental funds for programs already included in the AFA & the reduction of funds pursuant to § 106(b)(2), is not subject to this rule.</p>	<p style="text-align: center;">COMPACT AMENDMENTS</p> <p>Section 511(a), 25 U.S.C. § 458aaa-10(a) - Section 110(b) applies to Title V. Section 504(b), 25 U.S.C. § 458aaa-3(b) - Compacts may only be amended by mutual agreement of the parties.</p>	<p>Title I: requires the tribe to agree to unilateral amendment in two situations.</p>
<p style="text-align: center;">FUNDING AGREEMENTS</p> <p>Section 108(c) (sec. 1(f)(2)), 25 U.S.C. § 450/(c) (sec. 1(f)(2)) The AFA shall contain terms that identify the programs, the general budget category assigned, the funds to be provided, & the time & method of payment; & such other provisions, including a brief description of the programs, to which the parties agree. The AFA is incorporated into the contract & attached as attachment 2. Section 108(c) (sec. 1(c)(1)-(3)), 25 U.S.C. § 450/(c) (sec. 1(c)(1)-(3)) - The tribe shall perform the programs as provided in the AFA. The total amount of funds to be paid under the contract shall be determined in an AFA, which shall be incorporated into the contract. Subject to the availability of</p>	<p style="text-align: center;">FUNDING AGREEMENTS</p> <p>Section 505(d), 25 U.S.C. § 458aaa-4(d), 42 C.F.R. § 137.40 Each FA contain terms that generally identify the programs; & for each the general budget category assigned, the funds to be provided including those funds to be provided on a recurring basis, the time & method of transfer of the funds; the responsibilities of the Secretary; & any other provision with respect to which the tribe & the Secretary agree.</p>	<p>*(Section 108(c) (sec. 1(c)(4)) is not included as it applies to DOI & “trust services”.)</p>

Title I	Title V	Comments
<p>appropriated funds, the tribe shall administer the programs identified in the contract & funded through the AFA.</p>		
<p>APPLICATION OF SECTIONS OF TITLE I Section 108(c) (sec. 1(a)(1)), 25 U.S.C. § 450(c) (sec. 1(a)(1)) The provisions of Title I of the ISDA are incorporated in this agreement.</p>	<p>APPLICATION OF SECTIONS OF TITLE I Section 516(b), 25 U.S.C. § 458aaa-15(b), 42 C.F.R. § 137.47 At the request of a tribe, any provision of Title I that does not conflict with Title V shall be made a part of a FA or compact. If incorporated, such provisions have the same force & effect as if set out in Title V. If a tribe requests incorporation at the negotiation stage of a compact or FA, incorporation shall be deemed effective immediately & shall control the negotiation & resulting compact & FA.</p>	
<p>MISCELLANEOUS APPLICABLE FEDERAL LAWS Section 102(c), 25 U.S.C. § 450f(c), LIABILITY INSURANCE Section 102(d), 25 U.S.C. § 450f(d), FTCA PROVISIONS Section 104, 25 U.S.C. § 450i, VARIOUS PERSONNEL AMENDMENTS Section 6, 25 U.S.C. § 450d, PENALTIES Section 7, 25 U.S.C. § 450e, WAGES AND LABOR STANDARDS</p>	<p>MISCELLANEOUS APPLICABLE FEDERAL LAWS Section 516(a), 25 U.S.C. § 458aaa-15(a) These provisions apply to Title V. 42 C.F.R. §137.220 - FTCA</p>	<p>There is no difference between Title I and Title V in these provisions.</p>
<p>NON-APPLICABLE FEDERAL LAWS Section 105(a)(1), 25 U.S.C. § 450j(a)(1) - The contracts & cooperative agreements entered into with tribal organizations shall not be subject to Federal contracting or cooperative agreement laws except to the extent that such laws expressly apply to Indian tribes.</p>		
<p>SUBSEQUENT FUNDING AGREEMENTS Section 108(c) (sec. 1(b)(14)), 25 U.S.C. § 450(c) (sec. 1(b)(14)) - Negotiations for a successor AFA shall begin less than 120 days prior to the conclusion of the preceding AFA. Except as provided in § 105(c)(2) the funding for each such successor AFA shall only be reduced pursuant to § 106(b). The Secretary shall prepare & supply relevant information, & promptly comply with any request by the Contractor for</p>	<p>SUBSEQUENT FUNDING AGREEMENTS Section 505(e), 25 U.S.C. § 458aaa-4(e), 42 C.F.R. §137.55-56 Absent notification from a tribe that is withdrawing or retroceding the operation of one or more programs identified in a FA, or unless otherwise agreed to by the parties, each FA shall remain in full force & effect until a subsequent FA is executed, & the terms of the subsequent FA shall be retroactive</p>	<p>Title I: set dates for renegotiations; does not indicate effect of failure to come to agreement on successor AFA. Title V: FA does not</p>

Title I	Title V	Comments
<p>information that the Contractor reasonably needs to determine the amount of funds that may be available for a successor AFA.</p>	<p>to the end of the term of the preceding FA.</p>	<p>‘expire’ at years end;</p>
<p>REDESIGN, REALLOCATION AND CONSOLIDATION Section 105(j), 25 U.S.C. § 450j(j) - Upon providing notice to the Secretary, a tribal organization that carries out a nonconstruction contract may propose a redesign of a program, including any nonstatutory program standard, in such manner as to best meet the local geographic, demographic, economic, cultural, health, & institutional needs of the Indian people & tribes served under the contract. The Secretary shall evaluate any redesign proposal, & shall apply the criteria & procedures in § 102 if declining to approve a redesigned program. Section 106(o), 25 U.S.C. § 450j-1(o) - A tribal organization may, with respect to allocations within the approved budget of the contract, rebudget to meet contract requirements, if such rebudgeting would not have an adverse effect on the performance of the contract.</p>	<p>REDESIGN, REALLOCATION AND CONSOLIDATION Section 506, 25 U.S.C. § 458aaa-5, 42 C.F.R. § 137.185 A tribe may redesign or consolidate programs included in a FA & reallocate or redirect funds for such programs in any manner which the tribe deems to be in the best interest of the health & welfare of the Indian community being served, only if the redesign or consolidation does not have the effect of denying eligibility for services to population groups otherwise eligible to be served under applicable Federal law.</p>	<p>Title I: Tribe proposes program redesign; review procedures apply; tribe may reallocate so long as no adverse impact on performance. Title V: Under the terms of the FA the tribe may redesign, consolidate & reallocate, so long as it does not deny population groups otherwise eligible.</p>
<p>CONSOLIDATION OF MATURE CONTRACTS Section 102(a)(3), 25 U.S.C. § 450f(a)(3) Upon the request of a tribal organization that operates 2 or more mature contracts, those contracts may be consolidated.</p>		
	<p>WITHDRAWAL Section 506(g), 25 U.S.C. § 458aaa-5(g), 42 C.F.R. § 137.235-.239 - A tribe may fully or partially withdraw from a participating inter-tribal consortium or tribal organization its share of any program included in a compact or FA. The withdrawal is effective within the timeframe specified in the resolution authorizing transfer to the participating tribal organization or inter-tribal consortium. In the absence of such a timeframe, it is effective the earlier of 1 year after the date of submission of the request or the date on which the FA expires OR a mutually agreed upon date between the Secretary, the withdrawing tribe, & the participating tribal organization or consortium that has signed the compact or FA on behalf of the withdrawing tribe, inter-tribal consortium, or tribal</p>	<p>Title V: focus is on getting the compacting tribe its tribal share of the programs it will be taking over individually.</p>

Title I	Title V	Comments
	<p>organization.</p> <p>When a tribe eligible to enter into a Title I contract or a Title V compact or FA fully or partially withdraws from a participating inter-tribal consortium or tribal organization, the withdrawing tribe shall be entitled to its tribal share of funds supporting those programs that the tribe will be carrying out under its own contract or compact (calculated on the same basis as the funds were initially allocated in the FA of the inter-tribal consortium or tribal organization). The funds will be transferred from the FA of the inter-tribal consortium or tribal organization, on the condition that the provisions of §§ 102 & 105(i) shall apply to that withdrawing tribe.</p> <p>If a tribe elects to operate all or some programs carried out under Title V through a Title I contract, at the option of the tribe, the resulting contract shall be a mature contract. <i>See also</i> Section 503(b))</p>	
<p>DIVIDING ADMINISTRATION OF A PROGRAM Section 105(i)(1), 25 U.S.C. § 450j(i)(1) - If a 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 than are represented by the tribal organization that is a party to the contract, the Secretary shall take such action as may be necessary to ensure that services are provided to the tribes not served by a self-determination contract, including program redesign in consultation with the tribal organization & all affected tribes.</p>		<p>Title I: focus is on the non-contracting tribes remaining.</p>
<p>TERM AND EFFECTIVE DATE OF CONTRACT Section 108(c) (sec. 1(b)(1)), 25 U.S.C. § 450i(c) (sec 1(b)(1)) Pursuant to § 105(c)(1), the term of this contract shall be ___ years. Pursuant to § 105(d)(1), upon the election by the Contractor, the period of this Contract shall be determined on the basis of a calendar year, unless the Secretary & the Contractor agree on a different period in the AFA. Section 108(c) (sec. 1(b)(2)), 25 U.S.C. § 450i(c) (sec 1(b)(2)), This Contract shall become effective upon the date of the approval & execution by the Contractor & the Secretary, unless the Contractor & the Secretary agree on an effective date other</p>	<p>TERM AND EFFECTIVE DATE OF COMPACT Section 504(d), 25 U.S.C. § 458aaa-3(d), 42 C.F.R. § 137.35 The effective date of a compact shall be the date of the approval & execution by the tribe or another date agreed upon by the parties, & shall remain in effect for so long as permitted by Federal law or until terminated by mutual written agreement, retrocession, or reassumption.</p>	

Title I	Title V	Comments
<p>than the date specified in this paragraph.</p>		
<p align="center">MULTIYEAR CONTRACTS</p> <p>Section 105(c)(1), 25 U.S.C. § 450j(c)(1) - A contract shall be for a term not to exceed 3 years (in the case of other than a mature contract), unless the appropriate Secretary & the tribe agree that a longer term would be advisable, & for a definite or an indefinite term, as requested by the tribe or tribal organization (in the case of a mature contract).</p>	<p align="center">MULTIYEAR FUNDING AGREEMENTS</p> <p>Section 508(b), 25 U.S.C. § 458aaa-7(b) - The Secretary is authorized to employ, upon tribal request, multiyear FAs. References in Title V to FAs shall include such multiyear FAs.</p> <p>42 CFR § 137.56. Tribes are entitled to “all recurring increases received and continuing eligibility for other increases” during any period in which a funding agreement is in effect.</p>	<p>Title I focuses on the length of the contract (which may be indefinite), while Title V focuses on the length of an FA and guaranteeing continued funding until a subsequent funding agreement is executed.</p>
<p align="center">FUNDING IN OUT YEARS OF MULTIYEAR CONTRACT</p> <p>Section 105(c)(2), 25 U.S.C. § 450j(c)(2) - The amounts of such contracts shall be subject to the availability of appropriations & may be renegotiated annually to reflect changed circumstances & factors, including, but not limited to, cost increases beyond the control of the tribal organization.</p>		
<p align="center">CALENDAR YEAR CONTRACTS</p> <p>Section 105(d), 25 U.S.C. § 450j(d) - Upon election of a tribe, the Secretary shall use the calendar year as the basis for any contracts or agreements, unless the Secretary & the tribe or tribal organization agree on a different period. The Secretary shall, by April 1 of every year, submit a report to the Congress on the amounts of any additional obligation authority needed to implement this subsection in the next following fiscal year.</p>		
<p align="center">RETROCESSION</p> <p>Section 105(e), 25 U.S.C. § 450j(e) - If a tribe, or a tribal organization authorized by a tribe, requests retrocession for any contract or portion of a contract, unless the tribe or tribal organization rescinds the request for retrocession, such retrocession shall become effective on the earlier of the date that is 1 year after the date the tribe or tribal organization submits such request or the date on which the contract expires OR such date as may be mutually agreed by the Secretary & the tribe.</p>	<p align="center">RETROCESSION</p> <p>Section 506(f), 25 U.S.C. § 458aaa-5(f); 42 C.F.R. § 137.245-.251 - A tribe may retrocede, fully or partially, to the Secretary programs included in the compact or FA. Unless the tribe rescinds the request for retrocession, such retrocession will become effective within the timeframe specified by the parties in the compact or FA. In the absence of such a specification, such retrocession shall become effective on the earlier of 1 year after the date of submission of such request or the date on which the FA expires OR a date mutually agreed upon by the Secretary & the tribe.</p>	<p>There is no difference between Title I and Title V.</p>
<p align="center">OTHERS BENEFITTING FROM CONTRACT</p>		

Title I	Title V	Comments
<p>Section 108(c) (sec. 1(e)(3)), 25 U.S.C. § 450/(c) (sec. 1(e)(3)) No member of Congress, or resident commissioner, shall be admitted to any share or part of any contract executed pursuant to this Contract, or to any benefit that may arise from such contract. This paragraph may not be construed to apply to any contract with a third party entered into under this Contract if such contract is made with a corporation for the general benefit of the corporation.</p> <p>Section 108(c) (sec. 1(e)(4)), 25 U.S.C. § 450/(c) (sec. 1(e)(4)) The parties warrant that no person or selling agency has been employed or retained to solicit or secure any contract executed pursuant to this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.</p>		<p>No similar Title V provisions.</p>
<p style="text-align: center;">ELIGIBLE PFSA’s OR PORTIONS THEREOF (programs)</p> <p>Section 102(a)(1), 25 U.S.C. § 450f(a)(1) - The Secretary shall enter into a contract to plan, conduct, & administer programs, including construction programs under the authority of the</p> <ul style="list-style-type: none"> • Johnson-O’Malley Act (1934); • Synder Act (1921), & any Act subsequent thereto; • Transfer Act (1954); • any other Act administered by the Secretary for the benefit of Indians for which appropriations are made to agencies other than DHHS or DOI; & • for the benefit of Indians because of their status as Indians without regard to the office of DHHS or DOI within which it is performed. <p>The programs shall include administrative functions of the DOI & DHHS that support the delivery of services to Indians, including those administrative activities supportive of the service delivery programs described above, without regard to the organizational level carrying them out.</p>	<p style="text-align: center;">ELIGIBLE PFSA’s OR PORTIONS THEREOF</p> <p>Section 505(b), 25 U.S.C. § 458aaa-4(b), 42 C.F.R. § 137.41 Each FA shall, as determined by the tribe, authorize the tribe to consolidate & receive full tribal share funding, as well as plan, conduct, & administer a program, including grants, under</p> <ul style="list-style-type: none"> • the same specified Acts as Title I, & • the authority of the Indian Health Care Improvement Act & the Indian Alcohol & Substance Abuse Prevention & Treatment Act. • any Act authorizing any agency of the DHHS to administer, carry out, or provide financial assistance to such a program that is carried out for the benefit of Indians because of their status as Indians. • any Act authorizing a program carried out for the benefit of Indians under which appropriations are made available to any agency other than an agency within the DHHS, in any case in which the Secretary administers that program. <p>Limited to programs & grants where tribes or Indians are primary or significant beneficiaries, & those administered by IHS without regard to the IHS office within which the program is performed. It is not a requirement that a tribe or Indians be</p>	<p>Title I: Agency directed to enter into contracts with tribes to plan, conduct & administer programs. Authorizes the contracting of “administrative activities supportive of” programs that are otherwise contractible at all organizational levels.</p> <p>Title V: Tribes decide what programs it will include in FA. Secretary directed to enter into FA authorizing tribes to plan, conduct, consolidate, administer, & receive full tribal share funding for programs administered through the IHS at all</p>

Title I	Title V	Comments
	<p>identified in the authorizing statute for a program or element of a program to be eligible for inclusion in a compact or FA under Title V.</p>	<p>organization levels. Programs limited to those where tribes or Indians are primary or significant beneficiaries.</p>
	<p style="text-align: center;">NONDUPLICATION</p> <p>Section 506(h), 25 U.S.C. § 458aaa-5(h), 42 C.F.R. § 137.190</p> <p>For the period & to the extent to which funding is provided under Title V, the compact or FA, the tribe cannot contract for funds under Title I, except for new programs the same as other tribes.</p>	<p>No similar Title I provision is necessary.</p>
<p style="text-align: center;">GRANT AGREEMENTS</p> <p>Section 9, 25 U.S.C. § 450e-1 - The provisions shall not be subject to the requirements of the Federal Grant and Cooperative Agreement Act of 1977. A grant agreement or a cooperative agreement may be utilized in lieu of a contract when mutually agreed to.</p> <p>Section 103(b), 25 U.S.C. § 450h(b) - Grants are for the development, construction, operation, provision, or maintenance of adequate health facilities or services including the training of personnel for such work, from funds appropriated to the IHS for Indian health services or Indian health facilities.</p>		<p>*Section 103(a) is not included as it refers to DOI grants.</p>
<p style="text-align: center;">PROVISION OF PERSONAL SERVICES</p> <p>Section 105(g), 25 U.S.C. § 450j(g) - Contracts & grants may include provisions for the performance of personal services which would otherwise be performed by Federal employees including, but in no way limited to, functions such as determination of eligibility of applicants for assistance, benefits, or services, & the extent or amount of such assistance, benefits, or service to be provided & the provisions of such assistance, benefits, or services, all in accordance with the terms of this contract or grant & applicable rules & regulations of the appropriate Secretary: Provided, That the Secretary shall not make any contract which would impair his ability to</p>	<p style="text-align: center;">PROVISION OF PERSONAL SERVICES</p> <p>Section 517(e), 25 U.S.C. § 458aaa-16(e)</p> <p>Unless expressly agreed to by the participating Indian tribe in the compact or FA, the participating Indian tribe shall not be subject to any agency circular, policy, manual, guidance, or rule adopted by the IHS, except for the eligibility provisions of § 105(g) and regulations promulgated under § 517.</p>	<p>It appears that Title V has incorporated whatever “eligibility provisions” are in Title I, § 105(g).</p>

Title I	Title V	Comments
<p>discharge his trust responsibilities to any Indian tribe or individuals.</p>		
<p align="center">PROGRAMS RETAINED</p> <p>Section 108(c) (sec. 1(d)(3)), 25 U.S.C. § 450(c) (sec. 1(d)(3)) The model contract: the U.S. hereby retains the programs with respect to the tribe(s) that are not specifically assumed by the Contractor in the AFA.</p>		
	<p align="center">PLANNING PHASE</p> <p>Section 503(d), 25 U.S.C. § 458aaa-2(d), 42 C.F.R. § 137.20 Each Indian tribe seeking participation in self-governance shall complete a planning phase. The planning phase shall be conducted to the satisfaction of the tribe & shall include legal & budgetary research, & internal tribal government planning & organizational preparation relating to the administration of health care programs.</p>	<p>Under Title V, the tribe prepares through planning activities. The agency provides budgetary information & the tribe reorganizes its administration where necessary.</p>
	<p align="center">NEGOTIATION PHASE</p> <p>Section 504(a), 25 U.S.C. § 458aaa-3(a), 42 C.F.R. § 137.3(b) The Secretary shall negotiate & enter into a written FA with each tribe participating in self-governance in a manner consistent with the Federal Government’s trust responsibility, treaty obligations, & the government-to-government relationship between tribes & the U.S.</p> <p>Section 507(e), 25 U.S.C. § 458aaa-6(e), 42 C.F.R. § 137.2(h) In the negotiation of compacts & FAs the Secretary shall at all times negotiate in good faith to maximize implementation of the self-governance policy. The Secretary shall carry out Title V in a manner that maximizes the policy of tribal self-governance, in a manner consistent with the purposes specified in Title V, § 3.</p>	<p>Title V: government-to-government negotiation over compact & FA terms.</p>
<p align="center">TECHNICAL ASSISTANCE</p> <p>Section 103(d), 25 U.S.C. § 450h(d) - The Secretary is</p>		<p>Title I: assistance from</p>

Title I	Title V	Comments
<p>directed, upon the request of any tribal organization & subject to the availability of appropriations, to provide technical assistance on a nonreimbursable basis to a tribal organization to develop a new contract, to provide for the assumption of a program, or to develop modifications to a proposal for a contract which the Secretary has declined.</p>		<p>the Secretary to develop a new contract.</p>
<p style="text-align: center;">FUNDS FOR PLANNING PHASE</p> <p>Section 103(e), 25 U.S.C. § 450h(e) -The Secretary is authorized, upon the request of a tribe, to make a grant to any tribal organizations for</p> <ul style="list-style-type: none"> • obtaining technical assistance from providers designated by the tribal organization, including tribal organizations that operate mature contracts, for the purposes of program planning & evaluation, including the development of any management systems necessary for contract management, & the development of cost allocation plans for indirect cost rates; & • the planning, designing, monitoring, & evaluating of Federal programs serving the tribe, including Federal administrative functions. 	<p style="text-align: center;">FUNDS FOR PLANNING PHASE</p> <p>Section 503(e), 25 U.S.C. § 458aaa-2(e), 42 C.F.R. §137.24-25</p> <p>Subject to the availability of appropriations, any tribe requesting participation in self-governance by resolution or other official action by the governing body & has demonstrated for 3 fiscal years financial stability & financial management capability, shall be eligible for grants</p> <ul style="list-style-type: none"> • to plan for participation in self-governance; & • to negotiate the terms of participation by the Indian tribe or tribal organization in self-governance, as set forth in a compact & a funding agreement. <p>Receipt of a grant is not a requirement of participation in self-governance.</p>	<p>Title I: Tribal management & contract planning grants Title V: Tribal management grants; planning & <i>negotiation</i> grants under Section 503(e). *Contract support funds are available under both Titles for pre-award planning & preparation. See §§ 106(a)(5), (6).</p>
<p style="text-align: center;">SUBMITTING A PROPOSAL</p> <p>Section 102(a)(2), 25 U.S.C. § 450f(a)(2) - If authorized by a tribal resolution, a tribal organization may submit a proposal for a contract, or a proposal to amend or renew a contract, to the Secretary for review. The contractor shall include in the proposal the standards under which the tribal organization will operate the contracted program, including specific standards for construction contracts.</p> <p>Section 105(a)(2), 25 U.S.C. § 450j(a)(2) - Program standards applicable to a nonconstruction contracts shall be set forth in the contract proposal & the final contract of the tribe.</p>	<p style="text-align: center;">SUBMITTING A FINAL OFFER</p> <p>Section 507(b), 25 U.S.C. § 458aaa-6(b), 42 C.F.R. § 137.131</p> <p>In the event the Secretary & a participating tribe are unable to agree, in whole or in part, on the terms of a compact or FA (including funding levels), the tribe may submit a final offer to the Secretary.</p>	<p>Title I: Tribe submits proposal, including proposed program standards. Title V: Contemplates negotiations but allows tribes to cease them; no ‘final offer’ is necessary if the parties reach agreement through negotiations.</p>
<p style="text-align: center;">TIMING OF DECLINATION OF PROPOSAL</p> <p>Section 102(a)(2), 25 U.S.C. § 450f(a)(2) - The Secretary shall, within 90 days after receipt of a proposal, approve the proposal & award the contract unless the Secretary provides written notification to the applicant declining the proposal.</p>	<p style="text-align: center;">TIMING OF REJECTION OF FINAL OFFER</p> <p>Section 507(b), 25 U.S.C. § 458aaa-6, 42 C.F.R. §137.134-.37</p> <p>Not more than 45 days after such submission, or within a longer time agreed upon by the tribe, the Secretary shall review</p>	<p>Title I: 90-day review which the Secretary may extend with consent. Title V: 45-day review; and failure to determine is</p>

Title I	Title V	Comments
<p>The Secretary may extend or alter the 90-day period if before the expiration of such period, the Secretary obtains the voluntary & express written consent of the tribe to do so.</p>	<p>& make a determination with respect to such offer. In the absence of a timely rejection of the offer, in whole or in part, the offer shall be deemed agreed to.</p>	<p>deemed agreement. *Title V's system is used in Title I construction contracts.</p>
<p align="center">DECLINATION OF TRIBE'S PROPOSAL</p> <p>Section 102(a)(2), 25 U.S.C. § 450f(a)(2) - The Secretary's declination must contain a specific finding that clearly demonstrates that, or that is supported by a controlling legal authority that --</p> <ul style="list-style-type: none"> • the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory; • adequate protection of trust resources is not assured; • the proposed project or function to be contracted for cannot be properly completed or maintained by a proposed contract; • the amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under § 106(a); or • the program is beyond the scope of programs covered; the proposal includes activities that cannot lawfully be carried out by the contractor. 	<p align="center">REJECTION OF TRIBE'S FINAL OFFER</p> <p>Section 507(c)(1)(A), 25 U.S.C. § 458aaa-6(c)(1)(A), 42 C.F.R. § 137.140 - If the Secretary rejects a final offer (or one or more provisions or funding levels), the Secretary shall provide a timely written notification to the tribe that contains a specific finding that clearly demonstrates, or that is supported by a controlling legal authority, that</p> <ul style="list-style-type: none"> • the amount of funds proposed in the final offer exceeds the applicable funding level to which the tribe is entitled; • the program is an inherent Federal function that cannot legally be delegated to a tribe; • the tribe cannot carry out the program in a manner that would not result in significant danger or risk to the public health; or • the tribe is not eligible to participate in self-governance under § 503. 	<p>Title I proposal may be declined if the service will not be satisfactory, protection of trust resources is not assured, or the proposed project or function to be contracted for cannot be properly completed or maintained. Title V final offer may be rejected if (1) the tribe cannot carry out the program without resulting in significant danger of public health, or (2) the tribe is not eligible to participate.</p>
<p align="center">RIGHTS POST-DECLINATION</p> <p>Section 102(b), 25 U.S.C. § 450f(b) - Whenever the Secretary declines to enter into a contract, the Secretary shall</p> <ul style="list-style-type: none"> • state any objections in writing to the tribal organization, • provide assistance to the tribal organization to overcome the stated objections, & • provide the tribal organization with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter & the opportunity for appeal on the objections raised, under such rules & regulations as the Secretary may promulgate, except that the tribe or tribal organization may, in lieu of filing such appeal, exercise the option to initiate an action in a Federal district court & proceed directly to such court pursuant to § 110(a). <p>Section 102(a)(4), 25 U.S.C. § 450f(a)(4) - The Secretary will</p>	<p align="center">RIGHTS POST-REJECTION</p> <p>Section 507(c)(1), 25 U.S.C. § 458aaa-6(c)(1), 42 C.F.R. § 137.140-.148 - If the Secretary rejects an offer (or one or more provisions or funding levels in such offer), the Secretary shall provide</p> <ul style="list-style-type: none"> • a timely written notification to the tribe that contains specific finding that clearly demonstrates, or that is supported by a controlling legal authority the reason for the rejection; • technical assistance to overcome the objections stated in the notification; • the tribe with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter & the opportunity for appeal on the objections raised, except that the tribe may, in lieu of filing such 	<p>Title I & Title V incorporate similar standards.</p> <p>However, Title V requires the Secretary's notice to clearly demonstrate, with specific findings, the reason for rejection. Title I may only require that at the hearing stage.</p>

Title I	Title V	Comments
<p>approve any severable portion of a contract proposal that does not support a declination finding. If the Secretary determines that a contract proposal proposes in part to plan, conduct, or administer a program beyond the scope of programs covered, or proposes a level of funding in excess of the applicable level, subject to any alteration in the scope of the proposal that the Secretary & the tribe agree to, the Secretary will approve the portion of the program as is authorized or approve a level of funding authorized. If a tribe elects to carry out a severable portion of a contract proposal, the above declination procedures apply to the declined portion of the contract.</p>	<p>appeal, directly proceed to initiate an action in a Federal district court pursuant to § 110(a); &</p> <ul style="list-style-type: none"> the tribe with the option of entering into the severable portions of a final proposed compact or FA, or provision thereof, (including a lesser funding amount, if any), that the Secretary did not reject, subject to any additional alterations necessary to conform the compact or FA to those provisions. <p>Section 507(c)(2), 25 U.S.C. § 458aaa-6(c)(2) - If a tribe exercises the option of entering into the severable portions of a final proposed compact or FA, that tribe shall retain the right to appeal the Secretary’s rejection as to the rejected portions, & the declination procedures above apply to that portion of the proposed final compact, FA, or provision thereof that was rejected by the Secretary.</p>	
<p align="center">PROVISIONS RELATING TO DECLINATION HEARINGS</p> <p>Section 102(e)(1), 25 U.S.C. § 450f(e)(1) - With respect to any post-declination hearing or appeal, or any civil action conducted pursuant to § 110(a), the Secretary shall have the burden of proof to establish by clearly demonstrating the validity of the grounds for declining the contract proposal (or portion thereof).</p> <p>Section 102(e)(2), 25 U.S.C. § 450f(e)(2) - A decision by an official of the DOI or DHHS that constitutes final agency action & that relates to an appeal within the Department shall be made either by an official of the Department who holds a position at a higher organizational level within the Department than the level of the departmental agency (such as the IHS or BIA) in which the decision that is the subject of the appeal was made OR by an administrative judge.</p>	<p align="center">PROVISIONS RELATING TO REJECTION HEARINGS</p> <p>Section 507(d) & (h), 25 U.S.C. § 458aaa-6(d) & (h), 42 C.F.R. § 137.150-.151 - With respect to any hearing or appeal or civil action conducted pursuant to this section, the Secretary shall have the burden of demonstrating by clear & convincing evidence the validity of the grounds for rejecting the offer (or a provision thereof).</p> <p>A decision that constitutes final agency action & relates to an appeal within DHHS shall be made either by an official of DHHS who holds a position at a higher organizational level within DHHS than the level of the departmental agency in which the decision that is the subject of the appeal was made OR by an administrative judge.</p> <p>Section 518, 25 U.S.C. § 458aaa-17, 42 C.F.R. § 137.150 In any appeal (including civil actions) involving decisions made by the Secretary under Title V, the Secretary has burden of proof of demonstrating by clear & convincing evidence—</p> <ol style="list-style-type: none"> the validity of the grounds for the decision made; & that the decision is fully consistent with provisions & policies of this title. 	<p>Title I: “clearly demonstrating”</p> <p>Title V: “demonstrating by clear & convincing evidence”</p> <p>This differing language may nonetheless provide the same standard.</p>
<p align="center">REASSUMPTION</p> <p>Section 109, 25 U.S.C. § 450n -Each contract or grant</p>	<p align="center">REASSUMPTION</p> <p>Section 507(a)(2), 25 U.S.C. §§ 458aaa-6(a)(2), 42 C.F.R. §</p>	<p>Similar standards in both</p>

Title I	Title V	Comments
<p>agreement shall provide that in any case where the appropriate Secretary determines that the tribal organization’s performance under such contract or grant agreement involves</p> <ul style="list-style-type: none"> • the violation of the rights or endangerment of the health, safety, or welfare of any persons; or • gross negligence or mismanagement in the handling or use of funds provided to the tribal organization, or in the management of trust fund, trust lands or interests in such lands, <p>such Secretary may, under regulations prescribed by him & after providing notice & a hearing on the record to the tribe, rescind such contract or grant agreement, in whole or in part, & assume or resume control or operation of the program involved if he determines that the tribal organization has not taken corrective action as prescribed by the Secretary to remedy the contract deficiency, except that the appropriate Secretary may, upon written notice to a tribe, immediately rescind a contract or grant, in whole or in part, & resume control or operation of a program, if the Secretary finds that</p> <ul style="list-style-type: none"> • there is an immediate threat of imminent harm to the safety of any person, or imminent substantial & irreparable harm to trust funds, trust lands, or interests in such lands, & • such threat arises from the failure of the contractor to fulfill the requirements of the contract. <p>The Secretary shall provide the tribal organization with a hearing on the record within 10 days or such later date as the tribal organization may approve. Such Secretary may decline to enter into a new contract or grant agreement & retain control of such program until such time as he is satisfied that the violations of rights or endangerment of health, safety, or welfare which necessitated the rescission has been corrected. In any hearing or appeal under this section, the Secretary shall have the burden of proof to establish, by clearly demonstrating the validity of the grounds for rescinding, assuming, or reassuming the contract that is the subject of the hearing. Nothing in this section shall be construed as contravening OSHA.</p>	<p>137.255-.265, 137.440-.445 - Compacts or FAs shall include a provision authorizing the Secretary to reassume operation of a program & associated funding if there is a specific finding relative to that program of</p> <ul style="list-style-type: none"> • imminent endangerment of the public health caused by an act or omission of the tribe, & the imminent endangerment arises out of a failure to carry out the compact or FA; or • gross mismanagement with respect to funds transferred to a tribe by a compact or FA, as determined by the Secretary in consultation with the Inspector General, as appropriate. <p>The Secretary shall not reassume operation of a program unless</p> <ul style="list-style-type: none"> • the Secretary has first provided written notice & a hearing on the record to the tribe; & • the tribe has not taken corrective action to remedy the imminent endangerment to public health or gross mismanagement. <p>The Secretary may, upon written notification to the tribe, immediately reassume operation of a program if</p> <ul style="list-style-type: none"> • the Secretary makes a finding of imminent substantial & irreparable endangerment of the public health caused by an act or omission of the tribe; & • the endangerment arises out of a failure to carry out the compact or FA. <p>If the Secretary reassumes operation of a program the Secretary shall provide the tribe with a hearing on the record within 10 days after such reassumption. In any hearing or appeal involving a decision to reassume operation of a program the Secretary shall have the burden of proof of demonstrating by clear & convincing evidence the validity of the grounds for the reassumption.</p> <p>Section 501(a)(3), 25 U.S.C. §§ 458aa a-(a)(3), 42 C.F.R. § 137.10 - ‘Gross mismanagement’ means a significant, clear, & convincing violation of a compact, FA, or regulatory, or statutory requirements applicable to Federal funds transferred to a tribe by a compact or FA that results in a significant reduction of funds available for the programs assumed by a tribe.</p>	<p>Titles. However, Title V requires “imminent endangerment of public health” for reassumption, rather than merely violation of the rights of or endangerment of the health, safety, or welfare of any persons. Also, Title I covers matters that involve the DOI (trust assets & natural resources).</p> <p>Finally, Title V defines “gross mismanagement” as resulting in a significant reduction of funds available for the programs assumed.</p>

Title I	Title V	Comments
<p>MANDATORY ADDITION OF FUNDS TO CONTRACT Section 106(g), 25 U.S.C. § 450j-1(g) - Upon the approval of a contract, the Secretary shall add to the contract the full amount of funds to which the contractor is entitled under § 106(a), subject to adjustments for each subsequent year that such tribe administers a Federal program.</p>	<p>MANDATORY ADDITION OF FUNDS TO CONTRACT Section 516(a), 25 U.S.C. § 458aaa-15(a) - This provision applies to Title V.</p>	<p>There is no difference between Title I and Title V.</p>
<p>AMOUNT OF FUNDING Section 106(a), 25 U.S.C. § 450j-1(a) - (1) The amount of funds shall not be less than the appropriate Secretary would have otherwise provided for the operation of the programs for the period covered by the contract, without regard to any organizational level within the DOI or DHHS at which the program, including supportive administrative functions, is operated. (2) There shall be added contract support costs which shall consist of an amount for the reasonable costs for activities which must be carried on by a tribal organization as a contractor to ensure compliance with the terms of the contract & prudent management, but which</p> <ul style="list-style-type: none"> • normally are not carried on by the respective Secretary in his operation; or • are provided by the Secretary from other resources. <p>(3) Eligible contract support costs include the reasonable & allowable costs of direct program expenses & any additional administrative or other expense related to the overhead. The tribe shall have the option to annually negotiate with the Secretary the amount of funds the tribe is entitled to. (5) During the initial year that a contract is in effect, the amount required to be paid shall include startup costs consisting of the reasonable costs that have been incurred or will be incurred on a one-time basis necessary -- (A) to plan, prepare for, & assume operation of the program, function, service, or activity that is the subject of the contract; & (B) to ensure compliance with the contract terms & prudent management. (6) However, costs incurred before the initial year that a</p>	<p>AMOUNT OF FUNDING Section 516(a), 25 U.S.C. § 458aaa-15(a) - Section 106(a) applies to Title V. Section 508(c), 25 U.S.C. § 458aaa-7(c), 42 C.F.R. § 137.79 The amount of funds includes amounts under §§ 106(a)(1), (2), (3), (5), & (6), including any funds that are specifically or functionally related to the provision by the Secretary of services & benefits to the tribe or its members, all without regard to the organizational level within the DHHS where such functions are carried out.</p>	<p>Title V: Funding includes funds that are specifically or functionally related to the provision by the Secretary of services & benefits to the tribe & its members; also CSC funding also is without regard to the level with DHHS where the functions are carried out.</p>

Title I	Title V	Comments
<p>contract is in effect may not be included in the amount if the Secretary does not receive a written notification of the nature & extent of the costs prior to the date on which such costs are incurred. (See also Section 108(c) (sec. 1(b)(4)), 25 U.S.C. §§ 450I(c), (indicating funding amount).)</p>		
	<p>PROHIBITIONS REGARDING FUNDING MATTERS Section 508, 25 U.S.C. § 458aaa-7, 42 C.F.R. § 137.85 The Secretary is expressly prohibited from:</p> <ul style="list-style-type: none"> • failing or refusing to transfer to a tribe its full share of any central, headquarters, regional, area, or service unit office or other funds due, except as required by Federal law; • withholding portions of such funds for transfer over a period of years 	<p>This Title V provision suggests that suspension of funding is never allowed. Suspension is sometimes allowed under Title I, § 106I.</p>
<p>PROHIBITIONS AGAINST REDUCTIONS IN FUNDING AMOUNTS Section 106(b), 25 U.S.C. § 450j-1(b) - The amount of funds</p> <ul style="list-style-type: none"> • shall not be reduced to make funding available for contract monitoring or Secretarial administration • shall not be reduced in subsequent years except pursuant to <ul style="list-style-type: none"> • a reduction in appropriations from the previous fiscal year for the program or function to be contracted • a directive in the statement of the managers accompanying a conference report on an appropriation bill or continuing resolution • a tribal authorization • a change in the amount of pass-through funds needed under a contract • completion of a contracted project, activity, or program; • shall not be reduced to pay for Federal functions, including, but not limited to, pay costs, employee retirement benefits, automated data processing, contract technical assistance or contract monitoring; • shall not be reduced to pay for costs of Federal personnel displaced by a contract • may, at the request of the tribal organization, be increased if necessary to carry out Title I or as provided in § 105(c). 	<p>PROHIBITION AGAINST REDUCTIONS IN FUNDING AMOUNTS Section 516(a), 25 U.S.C. §§ 458aaa-15(a) - Section 106(b) applies to Title V. Section 508, 25 U.S.C. §§ 458aaa-7, 42 C.F.R. § 137.87-90 The Secretary is expressly prohibited from reducing the amount of funds required [¶ (1)(C)]</p> <ul style="list-style-type: none"> • to make funding available for monitoring or Secretarial administration • in subsequent years, except pursuant to <ul style="list-style-type: none"> • a reduction in appropriations from the previous fiscal year for the program or function to be included in a compact or FA, • a congressional directive in legislation or accompanying report, • a tribal authorization, • a change in the amount of pass-through funds subject to FA terms, • completion of a project for which such funds were provided • to pay for Federal functions, including pay costs, employee retirement benefits, automated data processing, contract technical assistance, & contract 	

Title I	Title V	Comments
	<p>monitoring</p> <ul style="list-style-type: none"> • to pay for costs of Federal personnel displaced by Title I or Title V; <p>The funds described in paragraph (1)(C) may be increased by the Secretary if necessary to carry out Title V or as provided in § 105(c)(2).</p>	

Title I	Title V	Comments
<p style="text-align: center;">EXCEPTION TO PROHIBITIONS AGAINST REDUCTIONS</p> <p>Section 106(b), 25 U.S.C. § 450j-1(b) - Notwithstanding any other provision in this Act, the provision of funds under this Act is subject to the availability of appropriations & the Secretary is not required to reduce funding for programs, projects, or activities serving a tribe to make funds available to another tribe or tribal organization under this Act.</p>	<p style="text-align: center;">EXCEPTION TO PROHIBITION AGAINST REDUCTIONS</p> <p>Section 519(b), 25 U.S.C. § 458aaa-18(b) - Notwithstanding any other provision of this Act, the provision of funds under this Act shall be subject to the availability of appropriations & the Secretary is not required to reduce funding for programs, projects, or activities serving a tribe in order to make funds available to another tribe or tribal organization under this Act.</p>	<p>There is no difference between Title I and Title V.</p>
<p style="text-align: center;">PAYMENT</p> <p>Section 105(b), 25 U.S.C. §§ 450j - Payments of grants or contracts may be made in advance or by reimbursement & in such installments & on such conditions as the appropriate Secretary deems necessary to carry out Title I. The transfer of funds shall be scheduled consistent with program requirements & Treasury regulations, so as to minimize the time elapsing between the transfer of such funds from the U.S. Treasury & the disbursements by the tribal organization, whether occurring prior to or subsequent to such transfer of funds.</p> <p>Section 108(c) (sec. 1(b)(6)(A)), 25 U.S.C. §§ 450l(c) Payments shall be made as expeditiously as practicable, & include financial arrangements to cover funding during periods covered by Joint Resolutions.</p> <p>Section 108(c) (sec. 1(b)(6)(B)(i)), 25 U.S.C. §§ 450l(b) The Secretary shall make the funds available by paying on a quarterly basis, one-quarter of the total amount provided for in the AFA, in a lump-sum payment OR as semi-annual payments, OR any other method of payment authorized by law, as requested by the Contractor & specified in the AFA.</p> <p>Section 108(c) (sec. 1(b)(6)(B)(ii)) - For quarterly payments, each payment made shall be made on the first day of each quarter of the fiscal year, except that in any case in which the contract year coincides with the Federal fiscal year, payment for the first quarter shall be made not later than the date that is 10 calendar days after the date on which the OMB apportions the appropriations for the fiscal year for the programs. <i>See also Section 108(b)</i> (The Secretary may make payments pursuant to § 1(b)(6) of the model agreement.)</p>	<p style="text-align: center;">PAYMENT</p> <p>Section 508, 25 U.S.C. § 458aaa-7, 42 C.F.R. § 137.76-.77 Pursuant to the terms of any compact or FA, the Secretary shall transfer to the tribe all funds provided for in the FA, & provide funding for periods covered by joint resolution adopted by Congress making continuing appropriations. In any instance where a FA requires an annual transfer of funding to be made at the beginning of a fiscal year, or requires semiannual or other periodic transfers of funding to be made commencing at the beginning of a fiscal year, the first such transfer shall be made not later than 10 days after the apportionment of such funds by the OMB to DHHS, unless the FA provides otherwise.</p>	<p>Title I allows for quarterly, annual or semi-annual advance payments at tribe’s discretion.</p> <p>Title V allows for annual or semi-annual advance payments at tribe’s discretion.</p>

Title I	Title V	Comments
	<p style="text-align: center;">STABLE BASE BUDGET</p> <p>Section 505(g), 25 U.S.C. § 458aaa-4(g), 42 C.F.R. § 137.120 At the option of a tribe, a FA may provide for a stable base budget specifying the recurring funds (including, for purposes of this provision, funds available under § 106(a)) to be transferred to the tribe, for such period as may be specified in the FA, subject to annual adjustment only to reflect changes in congressional appropriations by sub-subactivity excluding earmarks.</p>	<p>Title V provides for a stable base budget, which specifies the recurring funds to be transferred for a period specified in the funding agreement.</p>
<p style="text-align: center;">SUSPENSION OF FUNDING</p> <p>Section 106(l), 25 U.S.C. § 450j-1(l) -The Secretary may only suspend, withhold, or delay the payment of funds for a period of 30 days beginning on the date the Secretary makes a determination that the tribal organization has failed to substantially carry out the contract without good cause. The Secretary shall provide the tribal organization with reasonable advance written notice, technical assistance (subject to available resources) to assist the tribal organization, a hearing on the record not later than 10 days after the date of such determination or such later date as the tribal organization shall approve, & promptly release any funds withheld upon subsequent compliance. With respect to any hearing or appeal conducted pursuant to this subsection, the Secretary shall have the burden of proof to establish by clearly demonstrating the validity of the grounds for suspending, withholding, or delaying payment of funds.</p>		<p>Title V does not provide for suspension of funding.</p>
<p style="text-align: center;">INTEREST EARNED ON FUNDS</p> <p>Section 105(b), 25 U.S.C. § 450j(b) - Tribal organizations shall not be held accountable for interest earned on such funds, pending their disbursement by such organization.</p>	<p style="text-align: center;">INTEREST EARNED ON FUNDS</p> <p>Section 508(h), 25 U.S.C. § 458aaa-7(h), 42 C.F.R. § 137.100 A tribe is entitled to retain interest earned on any funds paid under a compact or FA to carry out governmental or health purposes & such interest shall not diminish the amount of funds the tribe is authorized to receive under its FA in the year the interest is earned or in any subsequent fiscal year.</p>	<p>Title V makes clearer that interest cannot be used to diminish the amount of funds the tribe is authorized to receive.</p>

Title I	Title V	Comments
<p align="center">PROGRAM INCOME</p> <p>Section 106(m), 25 U.S.C. § 450j-1(m) -Program income earned by a tribal organization in the course of carrying out a contract shall be used by the tribal organization to further the general purposes of the contract & shall not be a basis for reducing the amount of funds otherwise obligated to the contract.</p>	<p align="center">PROGRAM INCOME</p> <p>Section 508(j), 25 U.S.C. § 458aaa-7(j), 42 C.F.R. § 137.110 All Medicare, Medicaid, or other program income earned by a tribe shall be treated as supplemental funding to that negotiated in the FA. The tribe may retain all such income & expend such funds in the current year or in future years except to the extent that the Indian Health Care Improvement Act provides otherwise for Medicare & Medicaid receipts. Such funds shall not result in any offset or reduction in the amount of funds the tribe is authorized to receive under its FA in the year the program income is received or for any subsequent fiscal year.</p>	<p>There is no difference between Title I and Title V.</p>
<p align="center">SAVINGS</p> <p>Section 106(a)(4), 25 U.S.C. § 450j-1(a)(4) - For each fiscal year during which a contract is in effect, any savings attributable to the operation of a Federal program by a tribe (including a cost reimbursement construction contract) shall be used to provide additional services or benefits under the contract or be expended by the tribe in the succeeding fiscal year, as carryover funding.</p>	<p align="center">SAVINGS</p> <p>Section 516(a), 25 U.S.C. § 458aaa-15(a) - Section 106(a)(4) applies to Title V.</p>	<p>There is no difference between Title I and Title V.</p>
<p align="center">SAVINGS DUE TO REDUCTION IN SECRETARY’S DUTIES</p> <p>Section 106(n), 25 U.S.C. § 450j-1(n) To the extent that programs carried out by tribal organizations pursuant to contracts reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs & result in savings that have not otherwise been included in the amount of contract funds determined under subsection (a), the Secretary shall make such savings available for the provision of additional services to program beneficiaries, either directly or through contractors, in a manner equitable to both direct & contracted programs.</p>	<p align="center">SAVINGS DUE TO REDUCTION IN SECRETARY’S DUTIES</p> <p>Section 507(f), 25 U.S.C. § 458aaa-6(f), 42 C.F.R. §137.210 To the extent that programs carried out by tribes reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs & result in savings not otherwise been included in the amount of tribal shares & other funds determined under § 508(c), the Secretary shall make such savings available to the tribes, inter-tribal consortia, or tribal organizations for the provision of additional services to program beneficiaries in a manner equitable to directly served, contracted, & compacted programs.</p>	<p>There is no difference between Title I and Title V.</p>
<p align="center">CARRYOVER OF FUNDS</p> <p>Section 8, 25 U.S.C. §§ 13a - Funds not obligated prior to the next fiscal year shall remain available for obligation during such succeeding fiscal year. If the funds are to be expended in the succeeding fiscal year for the purpose for which they were</p>	<p align="center">CARRYOVER OF FUNDS</p> <p>Section 508(i), 25 U.S.C. § 458aaa-7(i), 42 C.F.R. § 137.105 All funds paid to a tribe in accordance with a compact or FA shall remain available until expended. In the event that a tribe elects to carry over funding from 1 year to the next, such</p>	<p>Title I is unclear whether the funds are available until expended. Title V is clear that the</p>

Title I	Title V	Comments
<p>originally contracted or for which they are authorized to be used pursuant to § 106, no additional documentation need be provided by the tribe to the Secretary.</p> <p>Section 108(c) (sec. 1(b)(9)), 25 U.S.C. §§ 450/(c) - Any funds provided shall remain available until expended, & no further approval by the Secretary, or justifying documentation from the tribe, is required prior to the expenditure of such funds.</p>	<p>carryover shall not diminish the amount of funds the Indian tribe is authorized to receive under its funding agreement in that or any subsequent fiscal year.</p>	<p>funds remain available & the proper use of the funds, although in practice Title I may be as flexible as Title V.</p>
	<p style="text-align: center;">PRUDENT INVESTMENT</p> <p>Section 508(h), 25 U.S.C. § 458aaa-7(h), 42 C.F.R. § 137.101</p> <p>Funds transferred under this title shall be managed using the prudent investment standard.</p>	<p>Title V requires tribes to invest and manage funds as a prudent investor would. This standard was added in the regulations to limit the discretion of IHS to impose more restrictive investment standards.</p>
<p style="text-align: center;">PERMISSIBLE EXPENDITURE OF FUNDS WITHOUT APPROVAL</p> <p>Section 106(k), 25 U.S.C. § 450j-1(k) - A tribal organization may, without the approval of the Secretary, expend funds for the following purposes if supportive of a contracted program:</p> <ul style="list-style-type: none"> • Depreciation & use allowances, including depreciation of tribal facilities. • Publication & printing costs. • Building, realty, & facilities costs, including rent or mortgage. • Automated data processing & similar equipment or services. • Costs for capital assets & repairs. • Management studies. • Professional services, other than for proceedings by or against the U.S. • Insurance & indemnification, including risk of loss of or damage to property used for the contract without regard to ownership of it. • Costs incurred to raise funds or contributions from non- 	<p style="text-align: center;">PERMISSIBLE EXPENDITURE OF FUNDS WITHOUT APPROVAL</p> <p>Section 516(a), 25 U.S.C. §§ 458aaa-15(a) - Section 106(k) applies to Title V.</p> <p>Section 506(c), 25 U.S.C. §§ 458aaa-5(c) - A tribe shall apply cost principles under the applicable OMB circular, except as modified by § 106, other provisions of law, or by any exemptions to applicable OMB circulars subsequently granted by the OMB. No other audit or accounting standards shall be required by the Secretary.</p>	<p>No difference between Title I and Title V.</p>

Title I	Title V	Comments
<p>Federal sources for the purpose of furthering the goals & objectives of the contract.</p> <ul style="list-style-type: none"> • Interest expenses paid on capital expenditures & interest expenses on loans necessitated due to delays by the Secretary in providing funds. • Expenses of the governing body attributable to the operation of programs. • Costs associated with managing pension, self-insurance, & other funds of the tribal organization providing for Federal participation. 		
<p>THEORETICAL UNDER- AND OVER-RECOVERIES Section 106(d), 25 U.S.C. § 450j-1(d) - Where a tribal organization’s allowable indirect cost recoveries are below the level of indirect costs that the tribal organizations should have received for any given year pursuant to its approved indirect cost rate, & such shortfall is the result of lack of full indirect cost funding by any Federal, State, or other agency, such shortfall in recoveries shall not form the basis for any theoretical over-recovery or other adverse adjustment to any future years’ indirect cost rate or amount for such tribal organization, nor shall any agency seek to collect such shortfall from the tribal organization. (Nothing in this subsection shall be construed to authorize the Secretary to fund less than the full amount of need for indirect costs associated with a contract.)</p> <p>Section 106(e), 25 U.S.C. § 450j-1(e) - Tribes & tribal organizations shall not be held liable for amounts of indebtedness attributable to theoretical or actual under-recoveries or theoretical over-recoveries of indirect costs, as defined in OMB Circular A-87, incurred for fiscal years prior to FY1992.</p>	<p>THEORETICAL UNDER- AND OVER-RECOVERIES Section 516(a), 25 U.S.C. § 458aaa-15(a) - Title I provisions apply to Title V.</p>	<p>There is no difference between Title I and Title V.</p>
<p>MATCHING SHARES Section 103(c), 25 U.S.C. § 450h(c) - Any funds made available under grants pursuant to may be used as matching shares for any other Federal grant programs which contribute to the purposes for which grants under this section are made. Section 106(j), 25 U.S.C. § 450j-1(j), A tribal organization</p>	<p>MATCHING SHARES Section 512(d), 25 U.S.C. § 458aaa-11(d), 42 C.F.R. §137.217 All funds provided under compacts, FAs, or grants, shall be treated as non-Federal funds for purposes of meeting matching or cost participation requirements under any other Federal or</p>	<p>There is no difference between Title I and Title V.</p>

Title I	Title V	Comments
<p>may use funds provided under a contract to meet matching or cost participation requirements under other Federal & non-Federal programs.</p>	<p>non-Federal program. <i>See also</i> Section 516(a) (making 106(j) applicable to Title V.)</p>	
<p align="center">LIMITATION OF COSTS</p> <p>Section 108(c) (sec. 1(b)(5)), 25 U.S.C. § 450(c) - The Contractor shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds awarded under this Contract. If, at any time, the Contractor has reason to believe that the total amount required for performance of this Contract or a specific activity conducted under this Contract would be greater than the amount of funds awarded under this Contract, the Contractor shall provide reasonable notice to the appropriate Secretary. If the appropriate Secretary does not take such action as may be necessary to increase the amount of funds awarded under this Contract, the Contractor may suspend performance of the Contract until such time as additional funds are awarded.</p>	<p align="center">LIMITATION OF COSTS</p> <p>Section 508(k), 25 U.S.C. § 458aaa-7(k), 42 C.F.R. § 137.115</p> <p>An Indian tribe shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds transferred under a compact or funding agreement. If at any time the Indian tribe has reason to believe that the total amount provided for a specific activity in the compact or funding agreement is insufficient the Indian tribe shall provide reasonable notice of such insufficiency to the Secretary. If the Secretary does not increase the amount of funds transferred under the funding agreement, the Indian tribe may suspend performance of the activity until such time as additional funds are transferred.</p>	<p>There is no difference between Title I and Title V.</p>
<p align="center">NO REDUCTIONS IN FUNDING TO OTHER TRIBES</p> <p>Section 105(i)(2), 25 U.S.C. § 450j(i)(2) - Nothing in Title I shall be construed to limit or reduce in any way the funding for any program, project, or activity serving a tribe under this or other applicable Federal law. Any tribe or tribal organization that alleges that a self-determination contract is in violation of this section may apply the provisions of § 110.</p>	<p align="center">NO REDUCTIONS IN FUNDING TO OTHER TRIBES</p> <p>Section 515(a), 25 U.S.C. § 458aaa-14(a), 42 C.F.R. § 137.4</p> <p>Nothing in Title V shall be construed to limit or reduce in any way the funding for any program, project, or activity serving a tribe under this or other applicable Federal law. Any tribe that alleges that a compact or FA is in violation of this section may apply the provisions of § 110.</p>	<p>There is no difference between Title I and Title V.</p>
	<p align="center">ADDITIONAL SERVICES ON A REIMBURSABLE BASIS</p> <p>Section 508(f), 25 U.S.C. § 458aaa-7(f), 42 C.F.R. § 137.95</p> <p>With respect to functions transferred by the IHS to a tribe, the IHS shall provide goods & services to the tribe, on a reimbursable basis, including payment in advance with subsequent adjustment. The reimbursements received from those goods & services, along with the funds received from the tribe pursuant to Title V, may be credited to the same or subsequent appropriation account which provided the funding, such amounts to remain available until expended.</p>	<p>No similar Title I provision.</p>

Title I	Title V	Comments
<p align="center">CONSTRUCTION CONTRACTS / Applicable ISDA Provisions</p> <p>Section 105(m)(1), 25 U.S.C. § 450j(m)(1) - Each construction contract requested, approved, or awarded under this Act shall be subject to (except as otherwise provided) the provisions of this Act other than sections 102(a)(2), 106(I), 108 & 109; & the FY91 Appropriations Act, § 314.</p>		
<p align="center">CONSTRUCTION CONTRACTS / Definitions</p> <p>Section 4(a), 25 U.S.C. § 450b - ‘<i>construction programs</i>’ means programs for the planning, design, construction, repair, improvement, & expansion of buildings or facilities, including, but not limited to, housing, law enforcement & detention facilities, sanitation & water systems, roads, schools, administration & health facilities, irrigation & agricultural work, & water conservation, flood control, or port facilities</p>	<p align="center">CONSTRUCTION CONTRACTS / Definitions</p> <p>Section 501(a)(1)(A), 25 U.S.C. § 458aaa(a), 42 C.F.R. § 137.280 - ‘<i>construction project</i>’ means an organized noncontinuous undertaking to complete a specific set of predetermined objectives for the planning, environmental determination, design, construction, repair, improvement, or expansion of buildings or facilities, as described in a construction project agreement</p>	<p>Several of the examples in Title I are applicable only to Interior contracts, & thus not Title V.</p>
<p>Section 4(m) - ‘<i>construction contract</i>’ means a fixed-price or cost-reimbursement contract for a construction project, except that such term does not include any contract -</p> <ul style="list-style-type: none"> (1) that is limited to providing planning services & 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 & improvement program administered by the Secretary of HHS. 	<p>Section 501(a)(1)(B) - ‘<i>construction project</i>’ does not include construction program administration & activities described in paragraphs (1) through (3) of § 4(m), that may otherwise be included in a funding agreement under this title.</p>	
	<p>Section 501(a)(2) - ‘<i>construction project agreement</i>’ means a negotiated agreement between the Secretary & a tribe, that at a minimum -</p> <ul style="list-style-type: none"> (A) establishes project phase start & completion dates; (B) defines a specific scope of work & standards by which it will be accomplished; (C) identifies the responsibilities of the Indian tribe & the Secretary; (D) addresses environmental considerations; (E) identifies the owner & operations & maintenance entity of 	

Title I	Title V	Comments
	<p>the proposed work; (F) provides a budget; (G) provides a payment process; & (H) establishes the duration of the agreement based on the time necessary to complete the specified scope of work, which may be 1 or more years.</p>	
<p>CONSTRUCTION CONTRACTS / Technical Assistance Section 105(m)(2), 25 U.S.C. § 450j(m)(2) - In providing technical assistance to tribes in the development of construction contract proposals, the Secretary shall provide, not later than 30 days after receiving a request from a tribe, all information available to the Secretary regarding the construction project, including construction drawings, maps, engineering reports, design reports, plans of requirements, cost estimates, environmental assessments or environmental impact reports, & archaeological reports.</p>	<p>CONSTRUCTION CONTRACTS / Technical Assistance *Section 509(b), 25 U.S.C. § 458aa-8(b) Construction project proposals shall be negotiated pursuant to the statutory process in § 105(m) & resulting construction project agreements shall be incorporated into FAs as addenda.</p>	<p>Title I's provision is probably subsumed within the broad reference to § 105(m), & Title I's inclusion of technical assistance in the negotiation process described in § 105(m)(3).</p>
<p>CONSTRUCTION CONTRACTS / Negotiation & Approval Section 105(m)(3), 25 U.S.C. § 450j(m)(3) - Prior to finalizing a construction contract proposal under § 102(a), & upon request of the tribe, the Secretary shall provide for a precontract negotiation phase in the development of a contract proposal, at a minimum including:</p> <ul style="list-style-type: none"> • The provision of technical assistance pursuant to § 103 & paragraph (2). • A joint scoping session between the Secretary & the tribe to review all plans, specifications, engineering reports, cost estimates, & other information available to the parties, for the purpose of identifying all areas of agreement & disagreement. • An opportunity for the Secretary to revise the plans, designs, or cost estimates of the Secretary in response to concerns raised, or information provided by, the tribe or tribal organization. • A negotiation session during which the Secretary & the tribe or tribal organization shall seek to develop a mutually agreeable contract proposal. 	<p>CONSTRUCTION CONTRACTS / Negotiation & Approval Section 509(b), 25 U.S.C. § 458aa-8(b) - Construction project proposals shall be negotiated pursuant to the statutory process in § 105(m) & resulting construction project agreements shall be incorporated into FAs as addenda.</p> <p>Section 509(f), 25 U.S.C. § 458aaa-8(f) - The Secretary shall have at least one opportunity to approve project planning & design documents prepared by the tribe in advance of construction of the facilities specified in the scope of work for each negotiated construction project agreement or amendment thereof which results in a significant change in the original scope of work.</p>	

Title I	Title V	Comments
<ul style="list-style-type: none"> • Upon the request of the tribe or tribal organization, the use of an ADR mechanism to seek resolution of all remaining areas of disagreement pursuant to the dispute resolution provisions under U.S.C. Title 5. • The submission to the Secretary by the tribe of a final contract proposal pursuant to § 102(a). 		
<p align="center">CONSTRUCTION CONTRACTS / Standards</p> <p>Section 102(a)(2), 25 U.S.C. § 450f(a)(2) - The contractor shall include in the proposal the standards under which the tribal organization will operate the contracted program, including in the area of construction, the tribe must list in the proposal the provisions regarding the use of licensed & qualified architects, applicable health & safety standards, adherence to applicable Federal, State, local, or tribal building codes & engineering standards. These standards shall ensure structural integrity, accountability of funds, adequate competition for subcontracting under tribal or other applicable law, the commencement, performance, & completion of the contract, adherence to project plans & specifications (including any applicable Federal construction guidelines & manuals), the use of proper materials & workmanship, necessary inspection & testing, & changes, modifications, stop work, & termination of the work when warranted.</p>	<p align="center">CONSTRUCTION CONTRACTS / Standards</p> <p>Section 509(c), 25 U.S.C. § 458aaa-8(c), 42 C.F.R. § 137.328 The tribe & the Secretary shall agree upon & specify appropriate building codes & architectural & engineering standards (including health & safety) which shall be in conformity with nationally recognized standards for comparable projects.</p>	
	<p align="center">CONSTRUCTION CONTRACTS / Assumption of Responsibility</p> <p>Section 509(d), 25 U.S.C. § 458aaa-8(d) - The tribe shall assume responsibility for the successful completion of the construction project in accordance with the negotiated construction project agreement.</p>	<p>Title V suggests no monitoring of construction projects.</p>
<p align="center">CONSTRUCTION CONTRACTS / Funding</p> <p>Section 105(m)(4)(A), 25 U.S.C. § 450j(m)(4)(A) - In funding a fixed-price construction contract pursuant to § 106(a), the Secretary shall provide for the following:</p> <ul style="list-style-type: none"> • The reasonable costs to the tribe or tribal organization for general administration incurred in connection with the project that is the subject of the contract. 	<p align="center">CONSTRUCTION CONTRACTS / Funding</p> <p>43 C.F.R. § 137.337 - The Secretary must provide funding for a construction project agreement in accordance with §§ 106 & 508(c).</p>	

Title I	Title V	Comments
<ul style="list-style-type: none"> The ability of the contractor that carries out the construction contract to make a reasonable profit, taking into consideration the risks associated with carrying out the contract & other relevant considerations. 		
<p style="text-align: center;">CONSTRUCTION CONTRACT / Budget</p> <p>Section 105(m)(4)(B), 25 U.S.C. § 450j(m)(4) - In establishing a contract budget for a construction project, the Secretary shall not be required to separately identify the components in § 105(m)(4)(A).</p> <p>Section 105(m)(4)(C)(i)-(iv) - The total amount awarded under a construction contract shall reflect an overall fair & reasonable price to the parties, including the following costs:</p> <ul style="list-style-type: none"> The reasonable costs to the tribal organization of performing the contract, taking into consideration the terms of the contract & the requirements of this Act & any other applicable law. The costs of preparing the contract proposal & supporting cost data. The costs associated with auditing the general & administrative costs of the tribal organization associated with the management of the contract. In the case of a fixed-price contract, a fair profit determined by taking into consideration the relevant risks & local market conditions. 	<p style="text-align: center;">CONSTRUCTION CONTRACT / Budget</p> <p>42 C.F.R. § 137.335 - Regardless of whether a construction project agreement is fixed price or cost-reimbursement, budgets may include costs or fees associated with the following:</p> <ul style="list-style-type: none"> construction project proposal preparation conducting community meetings to develop project documents architects, engineers, an other consultants to prepare project planning documents, to develop project plans & specifications, & to assist in oversight of the design during construction real property lease or acquisition development of project surveys project management, superintendence, safety & inspection travel, including local travel incurred as a direct result of conducting the construction project agreement & remote travel in conduction with the project consultants, project site development project construction cost general, administrative overhead & indirect costs securing & installing moveable equipment, telecommunications & data processing equipment other costs directly related to performing the project project contingency 	
<p style="text-align: center;">CONSTRUCTION CONTRACT / Final Offer</p> <p>Section 105(m)(4)(C)(v), 25 U.S.C. § 450j(m)(4)(C)(v) - If the Secretary & tribe are unable to develop a mutually agreeable construction contract proposal pursuant to the negotiation procedures, the tribe may submit a final contract proposal to the Secretary. Not later than 30 days after receiving the proposal, the Secretary shall approve it & award</p>		

Title I	Title V	Comments
<p>the contract, unless, during such period the Secretary declines the proposal under declination & appeal procedures.</p>		
	<p>CONSTRUCTION CONTRACTS / Advance Payments Section 509(e), 25 U.S.C. § 458aaa-8(e), 42 C.F.R. §137.341 Funding for construction projects carried out under this title shall be included in funding agreements as annual advance payments, with semiannual payments at the option of the Indian tribe. Annual advance & semiannual payment amounts shall be determined based on mutually agreeable project schedules reflecting work to be accomplished within the advance payment period, work accomplished & funds expended in previous payment periods, & the total prior payments. The Secretary shall include associated project contingency funds with each advance payment installment. The Indian tribe shall be responsible for the management of the contingency funds included in funding agreements.</p>	
<p>CONSTRUCTION CONTRACTS / Indirect Costs Section 106(h), 25 U.S.C. §450j-1(h) - In calculating the indirect costs associated with a construction program contract, the Secretary shall take into consideration only those costs associated with the administration of the contract & shall not take into consideration those moneys actually passed on by the tribal organization to construction contractors & subcontractors.</p>	<p>CONSTRUCTION CONTRACTS / Indirect Costs Section 516(a), 25 U.S.C. § 458aaa-15(a) - Section 106(h) applies to Title V.</p>	
<p>CONSTRUCTION CONTRACTS / Use of Excess Funds Title III, Section 310, 25 U.S.C. § 450e-2 - Where the actual costs of construction projects under self-determination contracts, compacts, or grants, are less than the estimated costs thereof, use of the resulting excess funds shall be determined by the appropriate Secretary after consultation with the tribes.</p>	<p>CONSTRUCTION CONTRACTS / Use of Excess Funds 42 C.F.R. § 137.342-.343 - For lump sum fixed price construction project agreements, all funds remaining at the conclusion of the project are considered profits and belong to the tribe. For fixed price construction projects agreements with unit price components, all funds remaining that are associated with overestimated unit price quantities are savings and may be used by the tribe to provide additional services for the purpose for which the funds were originally appropriated. All other funds remaining at the conclusion of the project are considered profit and belong the tribe.</p>	

Title I	Title V	Comments
<p>CONSTRUCTION CONTRACTS / Procurement Laws Section 105(a)(3), 25 U.S.C. § 450j(a)(3) - With respect to a construction contract (or a subcontract of such a construction contract), the provisions of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) & the regulations relating to acquisitions promulgated under such Act shall apply only to the extent that the application of such provision to the construction contract (or subcontract) is necessary to ensure that the contract may be carried out in a satisfactory manner, directly related to the construction activity, & not inconsistent with this Act. A list of Federal requirements that meet these requirements shall be included in an attachment to the contract pursuant to negotiations between the Secretary & the tribal organization. Otherwise, no other provision of Federal law relating to acquisition by the Federal Government shall apply to a construction contract that a tribe enters into, unless expressly provided in such law.</p>	<p>CONSTRUCTION CONTRACTS / Procurement Laws Section 509(h), 25 U.S.C. § 458aaa-8(h), 42 C.F.R. § 137.377 Unless otherwise agreed to by the tribe, no provision of the Office of Federal Procurement Policy Act, the Federal Acquisition Regulations issued pursuant thereto, or any other law or regulation pertaining to Federal procurement shall apply to a Title V construction project. Section 510, 25 U.S.C. § 458aaa-9, Regarding construction programs or projects, the Secretary & tribes may negotiate for the inclusion of specific provisions of the Office of Federal Procurement & Policy Act (41 U.S.C. 401 et seq.) & Federal Acquisition Regulations in a FA. Absent a negotiated agreement, such provisions & regulatory requirements shall not apply.</p>	<p>Similar provisions.</p>
	<p>CONSTRUCTION CONTRACTS - Wage & Hour Section 509(g), 25 U.S.C. § 458aaa-8(g), 42 C.F.R. § 137.378 All laborers & mechanics employed by contractors & subcontractors (excluding tribes & tribal organizations) in the construction, alteration, or repair, including painting or decorating of a building or other facilities in connection with construction projects funded by the U.S. shall be paid wages at not less than those prevailing wages on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. With respect to construction alteration, or repair work to which the D-B Act is applicable, the Secretary of Labor shall have the authority & functions set forth in the Reorganization Plan numbered 14, of 1950, & § 2 of the Act of June 13, 1934 (48 Stat. 948).</p>	
	<p>CONSTRUCTION CONTRACTS - Other Federal Laws Section 509(a), 25 U.S.C. § 458aaa-8(a), 42 C.F.R. § 137.285-.312 - Tribes may carry out construction projects if they elect to assume all Federal responsibilities under NEPA, the National Historic Preservation Act, & related provisions of law that would apply if the Secretary were to undertake a</p>	

Title I	Title V	Comments
	<p>construction project, by adopting a resolution designating a certifying officer to represent the tribe & to assume the status of a responsible Federal official under such laws & accepting the jurisdiction of the Federal court for the purpose of enforcement of the responsibilities of the responsible Federal official under such environmental laws.</p>	
	<p>CONSTRUCTION CONTRACT / Reports & Monitoring Section 509(f), 25 U.S.C. § 458aaa-8(f), 42 C.F.R. § 137.366 The tribe shall provide the Secretary with project progress & financial reports not less than semiannually. The Secretary may conduct onsite project oversight visits semiannually or on an alternate schedule agreed to by the Secretary & the tribe.</p>	
<p>ACCESS TO FEDERAL PROPERTY Section 105(f), 25 U.S.C. § 450j(f) - In connection with a contract or grant under Title I, the Secretary may permit a tribe to utilize existing facilities, equipment, & other personal property owned by the Government within the Secretary’s jurisdiction under such terms & conditions as may be agreed upon for their use & maintenance. The Secretary may donate to a tribe title to any personal or real property found to be excess to the needs of the BIA, IHS, or the GSA, except that title to property & equipment furnished by the Federal Government for use in the performance of the contract or purchased with funds under a contract or grant agreement shall, unless otherwise requested by the tribe, vest in the appropriate tribe. However, if property has a value in excess of \$5,000 at the time of the retrocession, rescission, or termination of the contract or grant agreement, at the option of the Secretary title to such property & equipment shall revert to the DOI or DHHS. All property shall remain eligible for replacement on the same basis as if title to such property were vested in the U.S. The Secretary may acquire excess or surplus Government personal or real property for donation to a tribe if the Secretary determines the property is appropriate for use by the tribe for a purpose for which a contract or grant agreement is authorized. <i>See also Section 108(c) (sec. 1(b)(8)), 25 U.S.C. § 450l(c),</i> (referring to all reasonably divisible property that the Secretary</p>	<p>ACCESS TO FEDERAL PROPERTY Section 512(c), 25 U.S.C. § 458aaa-11(c) - In connection with a compact or FA, upon the request of a tribe, the Secretary shall permit a tribe to use existing facilities, equipment & other personal property owned by the Government within the Secretary’s jurisdiction under such terms & conditions as may be agreed upon by the Secretary & the tribe for their use & maintenance. The Secretary may donate to a tribe title to any personal or real property found to be excess to the needs of any DHHS agency, or the GSA, except that title to property & equipment furnished by the Federal Government for use in the performance of the compact or FA or purchased with funds under any compact or FA shall, unless otherwise requested by the tribe, vest in the appropriate tribe. However, if property has a value in excess of \$5,000 at the time of retrocession, withdrawal, or reassumption, at the option of the Secretary title to such property & equipment shall revert to the DHHS. All property shall remain eligible for replacement, maintenance, & improvement on the same basis as if title to such property were vested in the U.S. The Secretary shall acquire excess or surplus Government personal or real property for donation to a tribe if the Secretary determines the property is appropriate for use by the tribe for any purpose for which a compact or FA is authorized.</p>	<p>Essentially the same provisions in both Titles, although the last sentence of Title V says ‘shall’.</p>

Title I	Title V	Comments
<p>has used to administer the programs; a list specifying them shall be prepared & periodically revised by the Secretary, with concurrence of the Contractor; Contractor shall maintain a record of all this property for purposes of replacement; separate joint use agreement to address the shared use of property not reasonably divisible; Contractor’s authority to acquire excess property as the Contractor determines appropriate to support the contracted programs; Secretary assisting the Contractor in obtaining confiscated or excess property; the Contractor’s use of a screener ID card; Contractor shall determine the capital equipment, leases, rentals, property, or services the Contractor requires & shall acquire & maintain records of it through applicable procurement procedures of the Contractor.)</p>		
<p align="center">FEDERAL SOURCES OF SUPPLY</p> <p>Section 105(k), 25 U.S.C. § 450j(k) - Regarding Federal Property & Administrative Services Act § 201(a) relating to Federal sources of supply, a tribal organization carrying out a contract, grant, or cooperative agreement shall be deemed an executive agency & part of the IHS when carrying it out & the employees of the tribal organization shall be eligible to have access to sources of supply on the same basis as employees of an executive agency. The Secretary shall, at the request of a tribe, enter into an agreement for the acquisition, on behalf of the tribe, of any goods, services, or supplies available to the Secretary from the GSA or other Federal agencies that are not directly available to the tribe under this section or under any other Federal law, including acquisitions from prime vendors. All such acquisitions shall be undertaken through the most efficient & speedy means practicable, including electronic ordering arrangements.</p>	<p align="center">FEDERAL SOURCES OF SUPPLY</p> <p>Section 516(a), 25 U.S.C. § 458aaa-15(a), 42 C.F.R. §137.215 Section 105(k) applies to Title V. Section 508(e), 25 U.S.C. § 458aaa(7)(e) - In the event a tribe elects to carry out a compact or FA with the use of Federal personnel, Federal supplies (including supplies available from Federal warehouse facilities), Federal supply sources (including lodging, airline transportation, & other means of transportation including the use of interagency motor pool vehicles) or other Federal resources (including supplies, services, & resources available to the Secretary under any procurement contracts in which the Department is eligible to participate), the Secretary shall acquire & transfer such personnel, supplies, or resources to the tribe.</p>	<p>Title V provides for the transfer of personnel, as well as supplies or resources.</p>
<p align="center">LEASE OF TRIBAL FACILITIES</p> <p>Section 105(l)(1), 25 U.S.C. § 450j(l) - Upon the request of a tribe, the Secretary shall enter into a lease with the tribe that holds title to, a leasehold interest in, or a trust interest in, a facility used by the tribe for the administration & delivery of services.</p>	<p align="center">LEASE OF TRIBAL FACILITIES</p> <p>Section 516(a), 25 U.S.C. § 458aaa-15(a) - Section 105(l)(1) applies to Title V.</p>	<p>There is no difference between Title I and Title V.</p>

Title I	Title V	Comments
<p>Section 105(I)(2) - The Secretary shall compensate each tribe entering into a lease for the use of the facility leased, which compensation may include rent, depreciation based on the useful life of the facility, principal & interest paid or accrued, operation & maintenance expenses, & such other reasonable expenses that the Secretary determines, by regulation, to be allowable.</p>		
<p style="text-align: center;">EMPLOYEE HOUSING</p> <p>Section 105(n), 25 U.S.C. § 450j(n) - The rental rates for housing provided to an employee by the Federal Government in Alaska shall be determined by (1) the reasonable value of the quarters & facilities to such employee, & (2) the circumstances under which such quarters & facilities are provided to the employee, as based on the cost of comparable private rental housing in the nearest established community with a year-round population of 1,500 or more individuals.</p>		
<p style="text-align: center;">TRANSPORTATION</p> <p>Section 108(c) (sec. 1(b)(10)), 25 U.S.C. § 450I(c) (sec. 1(b)(10)) - Beginning the effective date of the contract, the Secretary shall authorize the tribe to obtain interagency motor pool vehicles & related services for performance of activities under the contract.</p>	<p style="text-align: center;">TRANSPORTATION</p> <p>Section 508(e), 25 U.S.C. § 458aaa-7(e) - In the event a tribe elects to carry out a compact or FA with the use of Federal supply sources (including lodging, airline transportation, & other means of transportation including the use of interagency motor pool vehicles) the Secretary shall acquire & transfer such resources to the tribe.</p>	<p>No significant difference between Title I and Title V.</p>
<p style="text-align: center;">REGULATIONS</p> <p>Section 107(a)(1), 25 U.S.C. § 450k(a)(1) - Except as specifically authorized in this subsection, the Secretaries may not promulgate any regulation, nor impose any nonregulatory requirement, relating to contracts or the approval, award, or declination of such contracts, except that they may promulgate regulations relating to</p> <ul style="list-style-type: none"> • the “Federal Tort Claims Act,” the Contract Disputes Act, • declination & waiver procedures, appeal procedures, reassumption procedures, discretionary grant procedures, • property donation procedures arising under § 105(f), • internal agency procedures relating to the implementation of this Act, 	<p style="text-align: center;">REGULATIONS</p> <p>Section 517(a), 25 U.S.C. § 458aaa-16(a) - Not later than 90 days after the date of the enactment of Title V, the Secretary shall initiate procedures under U.S.C. Title 5, to negotiate & promulgate such regulations as are necessary to carry out this title. Proposed regulations to implement this title shall be published in the Federal Register by the Secretary no later than 1 year after the enactment of Title V.</p>	<p>Title I: limited subject areas; 18-month rulemaking authority</p> <p>Title V: Rulemaking authority, if adopted by the negotiated rulemaking process.</p> <p>Title I allows for conflicts of interest regulations, whereas Title</p>

Title I	Title V	Comments
<ul style="list-style-type: none"> • retrocession & tribal organization relinquishment procedures, • contract proposal contents, conflicts of interest, construction, • programmatic reports & data requirements, financial management standards, procurement standards, property management standards <p>Section 107(a)(2)(A), 25 U.S.C. § 450k(a)(2)(A) - The regulations promulgated under this Act, including the regulations referred to in this subsection, shall be promulgated in conformance with 5 U.S.C. §§ 552 & 553 & subsections (c), (d), & (e) of this section; & as a single set of regulations in 25 C.F.R.</p>		<p>V leaves it to tribes to address conflicts of interest through their own internal systems. <i>Infra.</i></p>
<p style="text-align: center;">NONREGULATORY RULES</p> <p>Section 108(c) (sec. 1(b)(11)), 25 U.S.C. §450l(c)(sec. 1(b)(11)) Except as specifically provided in the ISDA the Contractor is not required to abide by program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Contractor & the Secretary, or otherwise required by law.</p>	<p style="text-align: center;">NONREGULATORY RULES</p> <p>Section 517(e), 25 U.S.C. § 458aaa-16(e), 42 C.F.R. § 137.5 Unless expressly agreed to by the participating tribe in the compact or FA, the tribe shall not be subject to any agency circular, policy, manual, guidance, or rule adopted by the IHS, except for the eligibility provisions of § 105(g) & regulations promulgated under § 517.</p>	<p>Title V may require tribes to follow even non-regulatory rules regarding § 105(g)'s eligibility provision.</p>
<p style="text-align: center;">EXPIRATION OF AUTHORITY TO REGULATE</p> <p>Section 107(a)(2)(B), 25 U.S.C. § 450k(a)(2)(B) - The authority to promulgate regulations set forth in this Act shall expire if final regulations are not promulgated within 18 months after the date of enactment of the 1994 amendments.</p>	<p style="text-align: center;">EXPIRATION OF AUTHORITY TO REGULATE</p> <p>Section 517(a), 25 U.S.C. § 458aaa-16(a) - The authority to promulgate regulations shall expire 21 months after the enactment of Title V.</p>	<p>There is no relevant difference between Title I and Title V.</p>
	<p style="text-align: center;">EFFECT OF FAILURE TO REGULATE</p> <p>Section 517(d), 25 U.S.C. § 458aaa-16(d) - The lack of promulgated regulations shall not limit the effect of this title.</p>	
<p style="text-align: center;">RULEMAKING PROCEDURES</p> <p>Section 107(d)(1), 25 U.S.C. § 450k(d) - In drafting & promulgating regulations (including any revised regulations), the Secretaries shall confer with, & allow for active participation by, representatives of tribes, tribal organizations, & individual tribal members.</p>	<p style="text-align: center;">RULEMAKING COMMITTEE</p> <p>Section 517(b) & (c), 25 U.S.C. § 458aaa-16(b) & (c) - A negotiated rulemaking committee established pursuant to 5 U.S.C. § 565 to carry out this section shall have as its members only Federal & tribal government representatives, a majority of whom shall be nominated by & be representatives of tribes</p>	<p>Title I: process to provide for tribal participation following guidance of the Negotiated Rulemaking</p>

Title I	Title V	Comments
<p>Section 107(d)(2)(A) - In carrying out rulemaking processes, the Secretaries shall follow the guidance of U.S.C. Title 5 & the CFR “Procedures for Negotiated Proposed Regulations.”</p> <p>Section 107(d)(2)(B) - The tribal participants in the negotiation process shall be nominated by & shall represent the groups described in this paragraph & shall include tribal representatives from all geographic regions.</p> <p>Section 107(d)(2)(C) - The negotiations shall be conducted in a timely manner. Proposed regulations to implement the 1994 amendments shall be published in the FR by the Secretaries not later than 180 days after the date of passage. If the Secretary believes an extension is appropriate, the Secretary may submit proposed legislation to Congress for the extension.</p> <p>Section 107(d)(2)(D) - The Secretaries are authorized to jointly establish & fund such interagency committees or other interagency bodies, including advisory bodies comprised of tribal representatives, as may be necessary or appropriate to carry out the provisions of this Act.</p>	<p>with FAs under this Act. The committee shall confer with, & accommodate participation by, representatives of tribes, inter-tribal consortia, tribal organizations, & individual tribal members.</p> <p>The Secretary shall adapt the negotiated rulemaking procedures to the unique context of self-governance & the government-to-government relationship between the U.S. & tribes.</p>	<p>Act.</p> <p>Title V: federal & tribal representations to adopt negotiated rulemaking process to Self-Governance context & relationships.</p>
<p style="text-align: center;">ADVISORY BODIES</p> <p>Title II, Section 204, 25 U.S.C. § 450a-1 - The DOI & HHS Secretaries may establish & fund advisory bodies composed of tribal members &/or Federal Government representatives to ensure tribal participation in the implementation of the ISDA.</p>		
<p style="text-align: center;">REPEAL OR REVISE CONFLICTING LAWS AND REGULATIONS</p> <p>Section 107(b), 25 U.S.C. § 450k(b) - Provisions of Title I supersede any conflicting provisions of law (including conflicting regulations) in effect on the day before the date of enactment of the ISD Contract Reform Act of 1994, & the Secretary is authorized to repeal any regulation inconsistent with the provisions of this Act.</p> <p>Section 107(c), 25 U.S.C. § 450k(c) - The Secretaries of the Interior & of Health Education & Welfare are authorized, with the participation of tribes & tribal organizations, to revise & amend any rules or regulations promulgated pursuant to this §: Provided, That prior to doing so, the respective Secretaries present the proposed revision or amendments to the</p>		

Title I	Title V	Comments
<p>Committees on Interior & Insular Affairs of the U.S. Senate & the House &, to the extent practicable, consult with appropriate national or regional Indian organizations & shall publish any proposed revisions in the Federal Register not less than 60 days prior to the effective date of such rules & regulations in order to provide adequate notice to, & receive comments from, other interested parties.</p>		
<p style="text-align: center;">REGULATION WAIVER</p> <p>Section 107(e), 25 U.S.C. § 450k(e) - The Secretary may make exceptions in the regulations promulgated to carry out Title I, 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 Title I, & is not contrary to statutory law. In reviewing each request, the Secretary shall follow the timeline, findings, assistance, hearing, & appeal procedures set forth in § 102.</p>	<p style="text-align: center;">REGULATION WAIVER</p> <p>Section 512(b), 25 U.S.C. § 458aaa-11(b), 42 C.F.R. § 137.225-.231 - A tribe may submit a written request to waive application of a regulation or the authorities specified in § 505(b) for a compact or FA, identifying the applicable regulation sought to be waived & the basis for the request. The Secretary shall either approve or deny the waiver in writing within 90 days after receipt. A denial may be made only upon a specific finding by the Secretary that such waiver is prohibited by Federal law. Failure to approve or deny a waiver request within 90 days shall be deemed an approval. The Secretary’s decision shall be final for DHHS.</p>	<p>Title I: waiver must be in the best interests of the Indians served.</p> <p>Title V: waiver is mandatory unless prohibited by law; a waiver is deemed approved if not denied within 90 days.</p>
	<p style="text-align: center;">CONFLICTS OF INTEREST</p> <p>Section 506(b), 25 U.S.C. § 458aaa-5(b), 42 C.F.R. § 137.160 Indian tribes participating in self-governance under this title shall ensure that internal measures are in place to address conflicts of interest in the administration of programs.</p>	<p>Title I allows for conflicts of interest regulations, whereas Title V leaves it to tribes to address conflicts of interest through their own internal systems.</p>
<p style="text-align: center;">DISPUTES</p> <p>Section 108(c) (sec. 1(b)(12)(B)), 25 U.S.C. § 450l(c) (sec. 1(b)(12)) - In addition or as an alternative to remedies & procedures prescribed by § 110, the parties to the contract may jointly submit disputes under this Contract to third-party mediation; submit the dispute to the adjudicatory body of the Contractor, including the tribal court of the Contractor; submit the dispute to mediation processes provided for under the laws, policies, or procedures of the Contractor; or use the ADR processes authorized in U.S.C. Title 5.</p>		<p>Title V has no similar provision, although under Title V the compacting tribe can request any Title I provision it wishes to incorporate.</p>

Title I	Title V	Comments
<p>Section 108(c) (sec. 1(b)(12)(C)) - The Secretary shall be bound by decisions made pursuant to these processes, except not by any decision that significantly conflicts with the interests of Indians or the U.S.</p> <p>Section 108(c) (sec. 1(b)(12)(A)) - The term "third-party mediation" means a form of mediation whereby the Secretary & the Contractor nominate a third party who is not employed by or significantly involved with the Secretary of the Interior, the Secretary of HHS, or the Contractor, to serve as a third-party mediator to mediate disputes under this Contract.</p>		
<p>ADMINISTRATIVE PROCEDURES OF CONTRACTOR</p> <p>Section 108(c) (sec. 1(b)(13)), 25 U.S.C. § 450(c) (sec. 1(b)(13)) - Pursuant to the ICRA, the Contractor’s laws, policies, & procedures shall provide for administrative due process (or the equivalent) with respect to programs that are provided by the Contractor.</p>		<p>Title V has no similar requirement.</p>
<p>CIVIL ACTIONS UNDER § 110</p> <p>Section 110(a), 25 U.S.C. § 450m-1(a) - U.S. district courts shall have original jurisdiction over any civil action or claim against the appropriate Secretary arising under Title I &, & concurrent with the U.S. Court of Claims, over any civil action or claim against the Secretary for money damages arising under contracts authorized by this Act. District courts may order appropriate relief including money damages, injunctive relief against any action by an officer of the U.S. or agency thereof, or mandamus to compel an officer or employee of the U.S., or agency thereof, to perform a duty (including immediate injunctive relief to reverse a declination finding under § 102(a)(2) or to compel the Secretary to award & fund an approved contract).</p>	<p>CIVIL ACTIONS UNDER § 110</p> <p>Section 511(a), 25 U.S.C. § 458aaa-10(a), 42 C.F.R. §137.410 For the purposes of § 110, the term ‘contract’ shall include compacts & funding agreements entered into under Title V.</p> <p>42 C.F.R. § 137.412 - The regulations as 25 C.F.R. Part 900, Subpart N apply to compacts, funding agreements, and construction project agreements entered into under Title V.</p>	<p>There is no difference between Title I and Title V.</p>
	<p>BURDEN ON SECRETARY</p> <p>Section 518, 25 U.S.C. § 458aaa-17, 42 C.F.R. § 137.430 In any appeal (including civil actions) involving decisions made by the Secretary under this title, the Secretary shall have the burden of proof of demonstrating by clear & convincing evidence—</p>	<p>Title V likely provides significant benefit to tribes. Under Title I, this standard only expressly applies to declination proceedings. It is unclear</p>

Title I	Title V	Comments
	(1) the validity of the grounds for the decision made; & (2) that the decision is fully consistent with provisions & policies of this title.	whether a court would extend it to any “decision[] made by the Secretary under this title.
<p align="center">EAJA</p> <p>Section 110(c), 25 U.S.C. § 450m-1(c) - The Equal Access to Justice Act shall apply to administrative appeals pending on or filed after the date of enactment of the ISDA Amendments of 1988 by tribal organizations regarding contracts.</p>	<p align="center">EAJA</p> <p>Section 511(a), 25 U.S.C. § 458aaa-10(a), 42 C.F.R. §137.450 Section 110(c) applies to Title V.</p>	There is no difference between Title I and Title V .
<p align="center">CONTRACT DISPUTES ACT</p> <p>Section 110(d), 25 U.S.C. § 450m-1(d) - The Contract Disputes Act shall apply to the payment of funds due under this Contract & the AFA.</p> <p>Section 110(e), 25 U.S.C. § 450m-1(e) - provides the effective date of Section 110(d.)</p>	<p align="center">CONTRACT DISPUTES ACT</p> <p>Section 511(a), 25 U.S.C. § 458aaa-10(a) Section 110(d) applies to Title V.</p>	There is no difference between Title I and Title V .
<p align="center">PROMPT PAYMENT ACT</p> <p>Section 108(c) (sec. 1(b)(6)(B)(iii)), 25 U.S.C. § 450(c) - The Prompt Payment Act shall apply to the payment of funds due under the contract & AFA.</p>	<p align="center">PROMPT PAYMENT ACT</p> <p>Section 508(g), 25 U.S.C. § 458aaa-7(g), 42 C.F.R. § 137.96 The Prompt Payment Act applies to the transfer of funds due under a compact or FA.</p>	There is no difference between Title I and Title V .
<p align="center">SOVEREIGN IMMUNITY</p> <p>Section 111(1), 25 U.S.C. § 450n(1) - Nothing in this Act shall be construed as affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by a tribe.</p>	<p align="center">SOVEREIGN IMMUNITY</p> <p>Section 516(a), 25 U.S.C. § 458aaa-15(a), 42 C.F.R. §137.3(a) Section 111 applies to Title V.</p>	There is no difference between Title I and Title V .
	<p align="center">AUTHORIZATION OF APPROPRIATIONS</p> <p>Section 519(a), 25 U.S.C. § 458aaa-18(a) - There are authorized to be appropriated such sums as may be necessary to carry out this title.</p>	