



Working Effectively with American Indian Populations: Contracting and Compacting

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The federal government has managed Indian affairs for decades. However, in 1975, federal Indian policy shifted in an effort to promote Indian self-governance. This fact sheet explains the contracting and compacting processes that enable tribes to **manage** federally funded programs historically **managed** by the federal government under the 1975 legislation. It is important to acknowledge and understand how federal funding flows to American Indian tribes to facilitate productive relationships and build programming efforts.

American Indian Self-Determination

A key goal of the Self-Determination Era of federal Indian policy (1965-present) is that Indians provide more input and direction to those federally-funded programs that impact them. Between 1969 and 1973 this concept was championed further by Commissioner of Indian Affairs, Louis R. Bruce, the second American Indian to hold this post. Bruce promoted the idea of autonomous tribal governance, specifically in decision-making that impacted Indian reservation lands and tribes (Quetone, 1984).

Bruce's service to the Nixon administration coincided with a number of violent confrontations between Indians and non-Indians across the country. Indians demanded reforms within the Bureau of Indian Affairs (BIA). Indian activists desired to see the BIA change its role from that of manager of Indian affairs and service provider to that of only a provider of financial resources. The civil unrest

helped to motivate a major shift in federal Indian policy, resulting in the Indian Self-Determination and Education Assistance Act of 1975.

Indian Self-Determination and Education Assistance Act of 1975

The goal of this legislation was to increase Indian participation in planning and implementation of service programs, enabling these programs to become more responsive to the needs of tribal communities (U.S. Federal Register, 1996). The legislative language emphasized that Indian self-governance and self-determination depends upon the education of Indian people in order to increase the capacity of Indian individuals to assume leadership roles.

Title I of the legislation authorized Indian tribes to contract and operate federal service programs within the Bureau of Indian Affairs (BIA) and Indian Health Services (IHS). This allowed tribes to oversee their education and social programs using federal funds. Title II allowed Indian parents to provide increased input regarding their children's education by guaranteeing their participation in the education process on reservations.

Amendments to the Indian Self-Determination and Education Act in 1988 added Title III, which created a tribal self-governance demonstration project to consider the feasibility for tribes to enter into a **compact** to contract several federal programs simultaneously. Additional

amendments in 1994 made tribal self-governance permanent and established Title IV. Title IV provided for a self-governance feasibility study that increased the number of self-governance demonstration projects.

The 1975 legislation and subsequent amendments have allowed tribes to use BIA funds to address education, social and health service program needs directly (Castile, 1998). By 2000, self-determination contracts comprised nearly 50 percent of BIA tribal funding obligations. Tribal governments have used these funds to develop such services as mobile health clinics, alcohol and drug-abuse clinics, and diabetes programs (Clarkin, 2001). By 2006, more than 90 percent of all federally recognized Indian tribes either contracted individual programs from the federal government or compacted federal services, becoming fully self-governing tribes (Sinclair, 2004).

Contracting

A contract for an Indian service program is called a **self-determination contract** or, as it is better known today, a **638 contract**. A 638 contract entered into under Title I of the 1975 legislation exists between a defined tribal government and the Department of Interior.

The Indian Self-Determination Amendments Act of 1988 sought to increase tribal government participation in contracting programs and make the contracting process easier by removing federal administrative barriers and stabilizing contracted programs. The BIA and IHS developed joint regulations, and contracting federal agencies did issue timelines for acting on contract requests. Contracting opportunities were extended to non-BIA eligible programs within the Department of Interior. **Mature contracts** were defined as having three successful years of existence (U.S. Bureau of Land Management, 2006).

Self-Governance

The 1988 amendments created the establishment of a self-governance demonstration project in order for the BIA and IHS to improve the federal government-to-government relationship. Self-governance took self-determination contracting one step further. Under self-governance, a compact is entered into between a tribe and the Secretary of Interior. The tribe then has the ability to contract several programs and services at the same time (U.S. Bureau of Land Management, 2006).

Tribes successfully lobbied for the Indian Self-Determination Act Amendments of 1994 due to dissatisfaction with the way the contracting and compacting processes were working. Under the 1994 amendments, a contract was to be awarded within a 90-day period unless it was declined based on specified criteria, and self-governance was made permanent under the department of Interior (U.S. Bureau of Land Management, 2006).



Indian Village at the Pendleton Round-up in Pendleton, Ore.

Self-Determination Contract (638-Contract):

A Self-Determination contract was created under the original Indian Self-Determination and Education Assistance Act of 1975 (P.L. 93-638). These contracts can also be known as a "638 Contract." Under this Act, a federally recognized tribe has the ability to contract for a program otherwise operated by the Bureau of Indian Affairs and Indian Health Service. The 1988 Amendments also extended contracting options to non-Bureau of Indian Affairs agencies within the Department of Interior (U.S. Code of Federal Regulations, 2006).

The 1994 amendments to the 1975 Indian Self-Determination Act made self-governance permanent.

Annual Funding Agreement (AFA):

A document that represents the negotiated amount the Secretary agrees to fund, on an annual basis, for a program or services contracted by a tribe.

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Self-Governance: Established under the Indian Self-Determination Amendments Act of 1988 in the Self-Governance demonstration project for the Bureau of Indian Affairs and Indian Health Service. Self-Governance allowed an approved tribe to enter into a Compact with the Secretary of Interior to take over multiple federal programs and responsibilities. A tribe must meet a certain criteria to be a Self-Governance tribe and have entered into the Compact with the Secretary (U.S. Code of Federal Regulations, 2006).

Compact: An executed document that affirms the government-to-government relationship between a self-governance tribe and the United States. A compact is different from an annual funding agreement in that parts of the compact apply to all bureaus within the Department of the Interior and an annual funding agreement applies to one bureau.

Summary

The federal government encourages Indians to **administer** programs previously **administered** by the federal government under the Department of Interior. The Indian Self-Determination and Education Assistance Act of 1975 authorizes Indian tribes to enter into a self-determination contract (638 contract) for a particular federal program. Alternatively, a tribe may elect self-governance and choose to compact and implement several different 638 contracts simultaneously.

Each tribe may conduct self-governance differently. A tribe may be fully self-governing, contracting several programs at once. Another tribe may contract their land office, but not their irrigation system. Another tribe may elect not to contract any natural resource programs. Professionals must work with tribal departments to determine which programs are contracted and the extent of tribal jurisdiction and self-governance.

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