

# Indian Health Service ISDEAA Proposals

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# Disclaimer

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This presentation reflects my opinions and not those of the Office of General Counsel, the Indian Health Service, or the U.S. Department of Health and Human Services.



# What Constitutes a Proposal Under the Indian Self- Determination and Education Assistance Act?

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ISDEAA STATUTE & REGULATIONS  
PROPOSAL ISSUES

# The ISDEAA Program

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- In 1975, Congress enacted the ISDEAA to allow Tribes and Tribal Organizations to enter into contracts with the Federal government, under which the government transfers funding for Tribes to carry out previously federally-operated programs. Pub. L. No. 93-638, 88 Stat. 2203 (1975). The ISDEAA has been expanded over the years and is now codified at 25 U.S.C. §§ 5301-5399.
- Title I vs. Title V
- In Fiscal Year 2023, Tribes nationwide contracted for over 60 percent of IHS resources through ISDEAA agreements, either directly or through Tribal Organizations. IHS used the remaining funds to deliver health services directly to Tribes and eligible beneficiaries, and to perform Federal functions.



# ISDEAA Statutory Language – Title I

- For the initial contract proposal, a Tribe must notify IHS of its intent to enter into an ISDEAA agreement and propose the terms for the agreement.
- Title I Contract & AFA -- 25 U.S.C. §§ 5321(a), 5324, 5329

Section 5321(a)(1) - The Secretary is directed, upon the request of any Indian tribe by tribal resolution, to enter into a self-determination contract or contracts with a tribal organization to plan, conduct, and administer programs or portions thereof . . . .

Section 5329 - Each self-determination contract entered into under this chapter shall include the model agreement and other agreed-upon provisions. The statute references the annual funding agreement.

# ISDEAA Statutory Language – Title V

- Title V Compact and FAs – 25 U.S.C. §§ 5383, 5384, 5385

Section 5383(c)(1)(A)&(B): After a planning phase with IHS, the Tribe requests participation in self-governance “by resolution or other official action by the governing body” of each Indian tribe to be served  
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Section 5384: The Secretary shall negotiate and enter into a written compact . . . . [that] shall set forth the general terms of the government-to-government relationship between the Indian tribe and the Secretary, including such terms as the parties intend shall control year after year.

Section 5385: The Secretary shall negotiate and enter into a written funding agreement that includes specific terms.

# Requirements for Renewal

- Title I contracts & AFAs

Section 5324(c) limits the contract duration to 3 years, except “mature” contracts that can be indefinite.

Annual funding agreements must be renegotiated each year.

- Title V compacts & FAs

Section 5383(d) authorizes compacts to remain in effect so long as permitted by Federal law.

Section 5385(e) states that FAs remain in effect until a successor agreement is executed.

# Regulations and IHS Policy

- Title I regulations – 25 C.F.R. Part 900

Section 900.8 – Initial contract proposal requirements are detailed and specific

Section 900.12 – Explains the simple contract renewal process

- Title V regulations – 42 C.F.R. Part 137

- Indian Health Manual provisions – Part 6

Chapter 1 - Internal Agency Procedures – IAP Handbook

Chapter 3 - Contract Support Costs



# Title I Proposal Issues

- What constitutes receipt of a proposal that triggers the 90-day deadline for the Secretary's response?

Case Law

- What proposals must the Secretary decline?

ISDEAA criteria

Case law

# Title V Proposal Issues

- What timeframe does the Secretary have to respond to a Title V proposal?
- What is a Final Offer under 25 U.S.C. § 5387?

Case Law

- What proposals must the Secretary decline?

ISDEAA criteria

Case law

# Section 105(l) Lease Proposals

- 25 U.S.C. § 5324(l)(1) - IHS “shall enter into a lease” at the request of the tribe and compensate the tribe for costs including “rent, depreciation based on useful expenses, and such other reasonable expenses that the Secretary determines, by regulation, to be allowable.”
- Detailed regulatory provisions at 25 C.F.R. Part 900, Subpart H (Sections 900.69-.74) include what the lease could cover and how to determine valuation.
- Issues may include the Tribe’s interest in the property, valuation, or inclusion of shared space and indirect space in a lease.

# Miscellaneous

- Bemidji Area Portal for Title I Tribes
- ISDEAA issues addressed recently: TA is available in different contexts; programs must be “for Indians because of their status as Indians” eligible for inclusion in an ISDEAA agreement.
- Others?

# Resources

- The ISDEAA: 25 U.S.C. 25 U.S.C. §§ 5301-5399.
- The Regulations: 25 C.F.R. Part 900; 42 C.F.R. Part 137.
- The Indian Health Manual, Part 6.
- IHS fact sheets and guidance available online.

Questions?

