

BY THE COMPTROLLER GENERAL

Report To The Congress OF THE UNITED STATES

The Indian Self-Determination Act--Many Obstacles Remain

Federal dominance over the Indian programs and services of the Bureau of Indian Affairs and the Indian Health Service has changed little since the enactment 2 years ago of the Indian Self Determination and Education Assistance Act. This act permits Indian tribes to assume control over Indian programs through contracts.

The act allows more than is presently being done, but tribal and Federal officials have cited many obstacles that inhibit their initiatives, policies and activities on Indian self-determination.



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COMPTROLLER GENERAL OF THE UNITED STATES
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To the President of the Senate and the
Speaker of the House of Representatives

Our report concerns the implementation of the Indian Self-Determination Act. We found that the level of Federal dominance over Indian programs and services of the Bureau of Indian Affairs and the Indian Health Service has changed little since the enactment of this legislation. The report highlights the many obstacles which have inhibited tribal and Federal officials' initiatives, policies, and activities on Indian self-determination.

We made our review pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

We are sending copies of this report to the Director, Office of Management and Budget; the Secretary of Health, Education, and Welfare; and the Secretary of the Interior.

James B. Steeds

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

THE INDIAN SELF-DETERMINATION
ACT--MANY OBSTACLES REMAIN

D I G E S T

Under the Indian Self-Determination and Education Assistance Act, Federal policy permits tribes and tribal organizations to assume control over Federal Indian programs.

Through title I, the Congress established contracting as the way of achieving this self-determination, designing the act so that tribes must request contracts.

Upon such a request, the Secretaries of the Interior and Health, Education, and Welfare (HEW) are directed to contract with the tribe to plan and conduct programs which the Bureau of Indian Affairs and/or the Indian Health Service administer for the Indians.

During the time this act was first being implemented, to what extent has the control over Indian services programs shifted from the Bureau and the Indian Health Service to the Indian people? Because there was no specific data to measure the number of reasoned decisions by tribes to contract or not, GAO used the following to measure change in tribal control:

- The share of appropriations spent on tribal contracts in three Bureau and Indian Health Service areas which provided services to 72 tribes in fiscal year 1977 compared to the share spent on such contracts when the act was passed 2 years ago.
- Whether services provided by five selected tribes under contracts were previously provided by the Bureau and the Indian Health Service.
- Whether Federal employment decreased.

In the three areas, GAO found that, after title I was implemented, very little control shifted to the tribes. Combined Bureau and Indian Health Service appropriations subject to title I contracting for these areas amounted to \$387.5 million in fiscal year 1977. Of that amount, 16.2 percent (\$62.8 million) was spent for tribal contracts, in comparison to 13.7 percent in fiscal year 1975 when the act was passed.

GAO's review of all 50 title I contracts given to the five selected tribes by the Bureau and Indian Health Service during the fiscal years 1975-77 showed that only 1 resulted in a shift of services from the agency to the contracting tribe.

Forty of the 50 contracts represented renewals of contracts previously awarded under another authority, and the other 9 were for new programs, not previously provided by the agencies. Consequently, no reduction in Federal employment for the Bureau and Indian Health Service has occurred since the passage of the act.

Most tribal officials said they did not plan to request contracts for large-scale takeovers of existing Bureau and Indian Health Service programs. Future contracting, according to these officials, will be limited mostly to newly funded services not previously provided.

The officials perceived many obstacles that deter tribes from contracting. Since the tribes must originate contracts, these obstacles will, in GAO's opinion, discourage contracting under title I.

Obstacles cited by Indian spokespersons:

--Timely contracting is hampered by Federal procedures and policies, and the attitudes of Federal employees--some of whom are tribal members--who use their influence with the tribe to resist any move by the tribal government to undertake action under title I.

--Some tribal leaders believe that whoever designs, plans, and evaluates programs is more important than the person operating them, so they see no increased opportunity for self-determination by contracting to operate programs under title I.

--Tribal leaders are not certain as to which programs or program segments are available for contracting.

--Some Indians fear that contracting is the first step toward terminating Federal funding of these programs.

--Tribes often feel they lack the technical and administrative skills to take over many of the Federal programs.

--Some tribal leaders object to being accountable to the Bureau and Indian Health Service for operating programs since they will account to the same persons who previously operated the programs unsatisfactorily.

Both Federal organizations believe that any action on their part, which could be construed as encouraging the tribes to contract for programs, would be contrary to the self-determination concept that the tribes may choose not to contract for agency programs.

Both have adopted policies which require their staffs to respond rather than to act. Although these policies are permitted under the act, they leave the agencies in the position of reacting to tribal initiatives, rather than acting to overcome the obstacles which inhibit tribes.

GAO recognizes that the Bureau and the Indian Health Service could violate the concept of self-determination by pushing tribes into contracting for programs which they are not ready for or do not want. However, the act, in GAO's view, allows the agencies to encourage and assist the tribes toward contracting under title I, without violating the concept.

In working towards self-determination, tribes must eventually make more reasoned decisions to contract or not under the act (Public Law 93-638).

RECOMMENDATIONS

To resolve promptly problems and obstacles inhibiting tribes from contracting, the Secretaries of the Interior and HEW should direct the Bureau and the Indian Health Service to establish criteria for measuring progress in implementing the Self-Determination Act.

In addition, they should promptly develop and implement procedures for:

- Making sure that tribes have a full understanding of their options under title I.
- Helping tribes obtain information needed for fully informed decisions on assuming programs or program segments. This may require helping tribes assess their ability to operate and manage the contractable programs.
- Guiding the tribe in determining how to acquire the skills or resources needed to contract for a particular program or program segment, including training and assistance available from the agencies.

Some tribes may even require

- a description of the programs and program segments available for contracting under title I and
- a list or description of the services delivered to the tribe by the agencies.

AGENCY COMMENTS AND OUR EVALUATION

The Bureau of Indian Affairs and the Indian Health Service both agree with the concept of assisting tribes in making fully informed decisions and cited program actions taken to implement the Self-Determination Act. Both agencies admittedly are not fully operational in this area. However, both agencies expressed concern that some tribes perceive the act and agencies' implementation of it as an attempt by the Federal Government to terminate its responsibilities to the Indian tribes.

GAO believes that the purpose of the Self-Determination Act is, as stated in Bureau regulations, the

" * * * establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services."

GAO believes that ultimately this purpose will be achieved when Indian tribes are in the position of administering contracts and grants for programs on their reservations.

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BIA	Bureau of Indian Affairs	
GAO	General Accounting Office	
HEW	Department of Health, Education, and Welfare	
IHS	Indian Health Service	

CHAPTER 1

INTRODUCTION

The authority of Indian tribal governments has long been the subject of fluctuating Federal policies. Once recognized as sovereign nations, Indian tribes have since been subjected to two directly conflicting policies--separation and assimilation--designed at one extreme to keep Indians apart from non-Indians, and at the other extreme to blend Indians into the dominant society. The July 22, 1790, act, for example, was the first of many laws designed to keep Indians apart from non-Indians. Such laws were apparently intended to protect Indians and non-Indians from each other while ensuring westward settlement. In contrast, the General Allotment Act of 1887 was intended to assimilate the Indians by allotting tribal lands to individual Indians, making Indians citizens and ending the status of tribes.

The Indian Reorganization Act of 1934 halted land allotments and restored tribal governments. But House Concurrent Resolution 108, passed in 1953, again shifted the policy to assimilation. In this resolution the Congress declared its intention to terminate Federal responsibility for, and services to, Indian tribes. In 1953 the Congress also passed Public Law 83-280, which for the first time permitted States to assert criminal and civil jurisdiction over Indians on reservations.

Between 1953 and 1963, a series of 13 termination acts were passed, aimed at specific tribes or groups of tribes. These acts terminated Federal services to tribes, closed tribal membership rolls, and allowed tribal land to be sold.

Termination was generally regarded as a failure as a means of assimilation and was abandoned in the 1960s. The policy was repudiated again in 1970 when the President, affirming a trend that began in the previous administration, announced an official Federal Indian policy of self-determination without termination.

Following the President's announcement, the Government began to encourage tribes to become more involved in directing Federal Indian programs. As a result, hundreds of contracts for services to Indians were awarded to tribes under the Buy Indian Act of 1910 (25 U.S.C. 47). Intended and used at first as a tool to enhance tribal economic development, the Buy Indian Act was immediately adopted by the Government as the vehicle for Indian self-determination under the new

policy. However, the act apparently did not produce the degree of tribal control visualized by the Congress. Senate Report 93-762 on bill S. 1017 ^{1/} stated that "a more flexible authority is needed in order to give substance and credibility to the concept of Indian self-determination."

The report pointed out that the new legislation would correct problems caused in the past by "straining statutory language beyond its original intent."

On January 4, 1975, the policies proposed in the President's message became law with the enactment of the Indian Self-Determination and Education Assistance Act, Public Law 93-638 (25 U.S.C. 450). The Departments of the Interior and Health, Education, and Welfare (HEW) issued rules and regulations in November 1975. No contracts were awarded under this authority before the transition quarter, fiscal year 1976. The act was to establish:

"* * * a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services."

TITLE I: THE INDIAN SELF-DETERMINATION ACT

Public Law 93-638 consists of two titles. Title I was designated the "Indian Self-Determination Act;" title II, the "Indian Education Assistance Act." Title II amended the Johnson-O'Malley Act of 1934 (25 U.S.C. 452, 455) to give the Indian community more control over programs designed to meet educational needs. This report deals only with title I, the Indian Self-Determination Act.

Title I of the act gives Indian tribes the opportunity to administer Interior and HEW programs. Section 102 directs the Secretary of the Interior, if requested by any Indian tribe, to contract with any tribal organization to plan, conduct, and administer programs or program segments which the Bureau of Indian Affairs (BIA) is authorized to administer for the benefit of the Indians. Section 103 contains similar contracting provisions for programs administered by the Indian Health Service (IHS) under authority

^{1/} S. 1017 was the bill that became Public Law 93-638.

of the Secretary of HEW. These sections also establish a procedure by which the Secretary may refuse to enter into proposed contracts when not in the public interest. In such cases, however, the Secretary must help tribes overcome the obstacles which prompted the refusal, and must provide the tribes with a hearing and an opportunity to appeal.

The Self-Determination Act also authorizes the Secretary to award grants to help tribes develop the capability to operate programs for which they might eventually contract under sections 102 and 103. The Senate Committee on Interior and Insular Affairs ^{1/} contemplated that these grants, authorized under section 104, would be used

"* * * (1) to undertake orderly planning for the takeover of the more complex Federally-operated programs; (2) to train Indians to assume managerial and technical positions once the tribe has assumed control and management of Federal programs; and (3) to finance a thorough evaluation of performance following a reasonable period of time in which a former Federally-controlled program has been administered by a tribe under contract."

Other sections of title I authorize the assignment of Federal employees to tribal organizations to staff contracted programs, provide for the retention of certain Federal benefits for civil service employees who are hired by tribes, and permit contracts and grants for personal services which would otherwise be performed by Federal employees. Title I also states that none of the Self-Determination Act's provisions authorize or require the termination of any existing trust responsibility of the United States with respect to the Indian people.

THE COST AND ADMINISTRATION OF INDIAN SERVICES

In 1970 the U.S. Bureau of the Census reported 827,000 American Indians, including 34,400 Aleuts and Eskimos. While Government reports vary on the number of Indian tribes eligible for Federal services, the figure reported is usually around 480, including Native Alaskan communities.

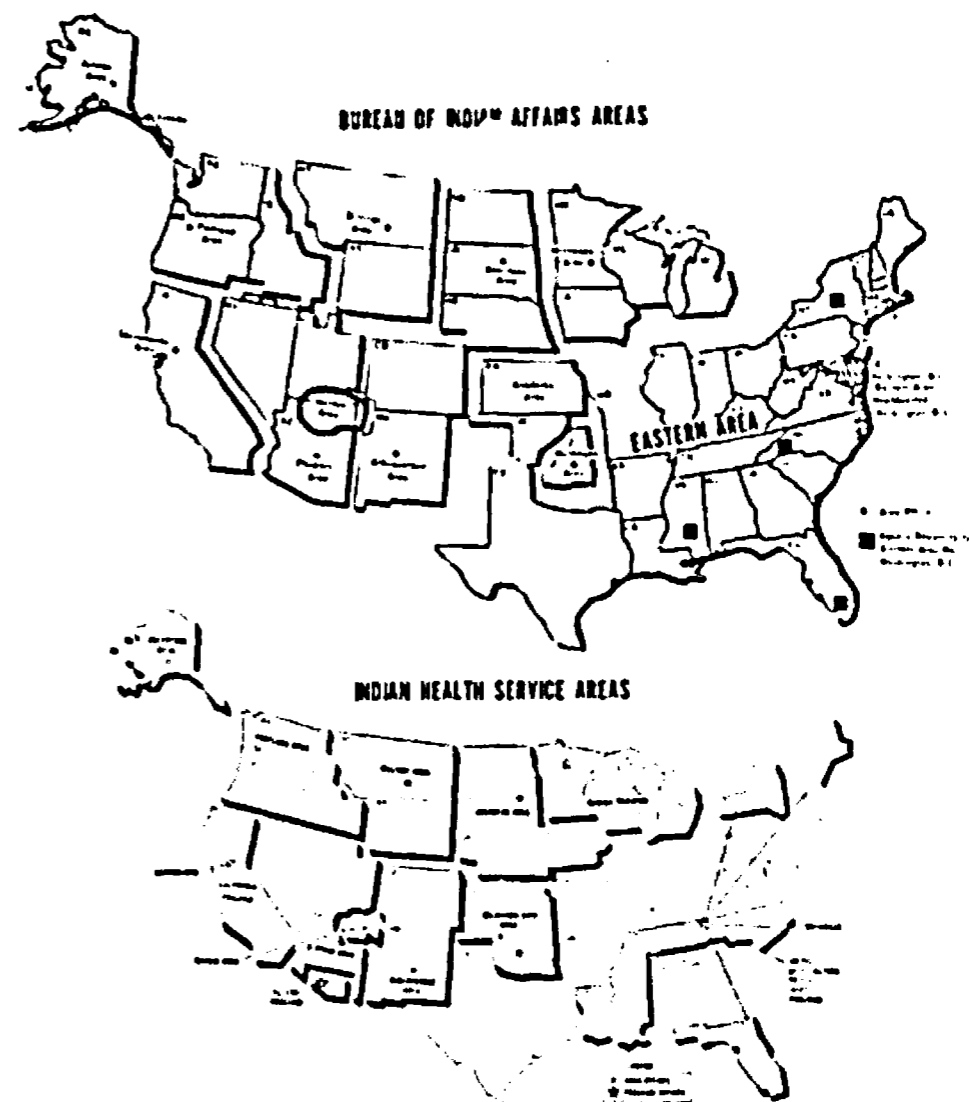
^{1/} Senate Report 93-762 on S. 1017 p. 13.

According to Interior estimates, in fiscal year 1977 Federal programs of nine departments and three agencies provided services to Indians at an estimated cost of \$1.7 billion. Interior and HEW programs accounted for 86 percent of this amount.

As noted previously, only those programs administered by Interior and HEW are contractable under title I. A brief discussion of these two agencies follows.

--BIA of the Department of the Interior, has the primary responsibility for administering Federal programs for Indians. Its principal objectives are to encourage and train Indians to manage their own affairs and to fully develop their human and natural resource potentials. The Congress has also vested in BIA various "trust" responsibilities with respect to tribal lands, moneys, and mineral rights. BIA operates and helps develop and manage public education systems on the reservations, works with the Indian people to obtain or provide social and community development programs and services, and helps establish and administer economic and natural resource development programs consistent with the principles of resource conservation. BIA has divided the United States into areas which perform administrative and housekeeping functions, and represent BIA in its dealings with the Indians, the public, State governments, and other Federal agencies with respect to each area's jurisdiction. (See BIA map on p. 5.)

--The IHS of the Indian Health Services Administration HEW, is responsible for providing comprehensive health care to Indians. IHS offers programs for hospitalization, outpatient medical care, public health nursing, school health, maternal and child health, dental and nutrition services, health education, and environmental health services. The mission of IHS is to raise the level of health of American Indians and Alaskan Natives to the highest possible level. This mission is accomplished in the field through eight area offices and four program offices. Each is responsible for operating the Indian health program within its geographical area. In addition, the area offices perform administrative support functions for the program offices, such as finance and personnel activities, to achieve economics of scale. (See IHS map on p. 5.)



SCOPE OF REVIEW

We made our review at BIA headquarters, Washington, D.C.; IHS headquarters, Rockville, Maryland; BIA and IHS area offices in Window Rock (Navajo), Arizona; Phoenix, Arizona; Portland, Oregon; and the offices of five tribes served by these area offices. (See map on p. 3.) The five tribes covered by our review were the Navajo Nation at Window Rock, Arizona; the Gila River Indian Community at Sacaton, Arizona; the Quechan Tribe at Yuma, Arizona; the Lumai Tribe at Marietta, Washington; and the Puyallup Tribe at Tacoma, Washington. These tribes were selected on the basis of population, location, and contract and program experience. This small selection was not a random sample. However, to assure the best selection possible within our resources, we discussed cross-sections of tribes with the BIA Acting Deputy Commissioner and the IHS Director of Office of Program Support.

We chose fiscal years 1975-77 as the data base for our review, in order to focus on the changes made in tribal contracting since the passage of the Self-Determination Act.

The data gathered and reviewed consisted of BIA and IHS policies, regulations, guidelines, practices, contract documents, and appropriations for implementing title I. We interviewed BIA, IHS, and tribal officials regarding perceived obstacles to implementation of the Indian Self-Determination Act. We also reviewed the testimony of several tribes and Indian organizations given before the Senate Select Committee on Indian Affairs in June 1977.

AGENCY COMMENTS AND OUR EVALUATION

Interior and HEW have been given an opportunity to review and formally comment on the report. Interior's comments are contained in appendix II. HEW could not give us written comments within the timeframe we requested. However, we did receive oral comments from officials of IHS, the Health Services Administration, and the Office of the Assistant Secretary for Health.

CHAPTER 2

TITLE I HAS HAD LITTLE IMPACT ON FEDERAL DOMINATION OF INDIAN SERVICES PROGRAMS

Ideally, progress toward implementing the Self-Determination Act should be measured by the number of informed decisions by Indian tribes to contract or not under this act. Because there was no specific data to measure the number of informed decisions, GAO identified three useful indicators to measure change in tribal control. In the early stage of the act's implementation most title I contracts replaced other contracts for services already awarded to the tribes, or they were for newly established, relatively minor programs or activities not previously funded by the Federal Government. As a result, none of the contracts awarded to the tribes we visited resulted in the displacement of federal employees.

MEASURING CHANGES IN TRIBAL CONTROL

Neither title I nor its regulations established a method or criteria for assessing the extent that the legislative objectives were being implemented.

Both BIA and IHS officials have informed us that title I activities and objectives were part of the agencies' programs before its passage. Nevertheless, the Congress and the agencies themselves in their supplemental budget requests expected title I to significantly increase tribal contracted activities. We believe that implementing the self-determination objectives should eventually result in more reasoned decisions on contracting by Indian tribes under Public Law 93-638. Therefore, we believe that the number of reasoned decisions is the ideal measure of the act's implementation. However, tribal decisions are not measurable now because:

- Data are not available which identify informed decisions in quantifiable or measurable terms; and
- Accomplishments are summarized and reported along functional and agency organizational lines, rather than by tribes.

In the case of tribal decisions to contract from programs currently operated by BIA and IHS, we believe there should be:

--An increased share of appropriations expended on tribal contracts, and a decreased share expended in BIA- and IHS-controlled programs.

--More services to the Indian people under tribally operated programs; fewer under BIA and IHS programs.

--Fewer BIA and IHS employees; more tribal employees.

In our opinion, the share of appropriations contracted by the tribes, the share of BIA and IHS services shifted to tribal contracts, and the number of Federal employees are useful indications of progress anticipated under the act.

SHARE OF APPROPRIATIONS
CONTRACTED BY TRIBES

Title I explicitly established contracting as the primary way of transferring program control from Federal agencies to tribal organizations, but gave no additional funds to the Federal agencies to provide for such contracts. (While Congress intended that funds for self-determination contracts come from existing appropriations, the agencies cited a need for additional staff to properly administer the contracts, additional funds for tribal overhead costs incurred with contracted programs, and training and technical assistance grant programs. See ch. 4.)

Our analysis of tribal control over BIA and IHS appropriations focused on agencies' operational funds, which are subject to contracting under title I. For the three areas covered by our review, \$387.5 million of BIA and IHS funds subject to title I was appropriated in fiscal year 1977. Of the \$387.5 million, \$62.8 million (or 16.2 percent) was spent for tribally contracted programs. In comparison, \$40.9 million (or 13.7 percent) of the appropriated \$297.7 million was spent for tribal contracts in 1975. Thus, there was a small increase in tribally contracted programs.

Details on the 1977 contracting levels for the areas and the tribes selected for review are shown below.

Areas	Number of contracts			Value (000 omitted)
	BIA	IHS	Total	
Navajo	19	5	24	\$39,812
Phoenix	79	25	104	12,610
Portland	<u>95</u>	<u>53</u>	<u>148</u>	<u>10,333</u>
Total	<u>193</u>	<u>83</u>	<u>276</u>	<u>\$62,755</u>
<u>Tribes</u>				
Navajo	19	5	24	37,86
Gila River	7	1	8	1,269
Quechan	1	2	3	124
Lummi	6	4	10	488
Puyallup	<u>2</u>	<u>3</u>	<u>5</u>	<u>867</u>
Total	<u>35</u>	<u>15</u>	<u>50</u>	<u>\$40,434</u>

Share of BIA and IHS services
shifted to tribal contracts

To determine whether services have shifted, we reviewed 50 individual tribal contracts. Of these, 40 (representing 84.7 percent of the \$40.4 million awarded in 1977) were renewals of Buy Indian Act contracts already in effect, and therefore did not alter BIA's or IHS' control over programs for the tribes. Nine contracts representing 3.7 percent of the \$40.4 million were for newly funded services not previously provided by the Federal Government. Only one, representing about 11.6 percent of the \$40.4 million, shifted provision of services from the Government to a tribe.

In the one case involving a tribal "takeover" of services, the Navajo tribe was awarded a \$4.7 million contract to administer the education assistance funds under the Johnson-O'Malley Act of 1934. The funds had previously been administered by BIA.

The following table shows the amounts of the nine contracts awarded under title I which were for newly funded

programs. A more detailed description is given of the two largest contracts.

<u>Tribe</u>	<u>Contract services</u>	<u>Amount</u>
Navajo	Water Resources Development	\$624,000
Puyallup	Operation of Health Clinic	606,000
Navajo	Operation of Navajo Academy	140,000
Navajo	Operation of Rehabilitation Center	99,000
Gila River	Reservation Program Services	19,000
Lummi	Health Services Coordinator	19,000
Lummi	Homebuyer Training	15,000
Lummi	Health Center Planning	6,000
Lummi	Early Education Program	6,000

--To alleviate recurring livestock water shortages, BIA, in January 1977, awarded the Navajo tribe a \$624,000 contract to drill new water wells, install water lines, increase water tank capacity, build and repair earthen water catchments, and upgrade and maintain existing wells and equipment. We were informed by the BIA Navajo Area Public Law 93-638 Coordinator that the contracted services were not previously provided by BIA. In periods of severe water shortages, the tribe operated a livestock water hauling service at its own expense.

--After losing its IHS hospital during termination, the Puyallup tribe was without directly provided IHS services for many years. Under a title I contract, the tribe now manages and operates a clinic that provides outpatient medical and dental services to the tribe. Fiscal year 1977 funds for operation of the clinic amount to \$606,000.

Level of Federal employment

We believe that the Congress expected tribal contracting to displace Federal employees progressively and not necessarily immediately in the early stages of implementation. Title I does permit tribes to contract for the "performance of personal services which would otherwise be performed by Federal employees," and also provides for retention of Federal benefits by Federal employees who accept jobs with tribes. Any future significant shift of Federal control to the tribes should, in our opinion, be accompanied by a decrease in Federal employees, though it may not be on the basis of one-for-one. At the present time, BIA and IHS employment levels

have not decreased. As noted in chapter 4, additional positions were authorized to meet the initial increased administrative workload.

Public Law 94-437 (enacted Sept. 30, 1976) gives the Secretary of HEW authority to increase IHS health services positions over a 7-fiscal-year period through 1984; we believe that implementation of the act should complement that of Public Law 93-638 within a comprehensive management plan and should encourage maximum participation of Indians, eventually leading to a new reduction in Federal employment.

None of the 50 contracts we reviewed resulted in displacement of Federal workers. This was because most contracts were (1) only carryovers of programs already operated by tribes or (2) for services not previously provided by BIA or IHS. In the one case when BIA services were taken over by a tribe, an official told us that the reduction in the BIA workload was insignificant and did not warrant staff reductions.

CONCLUSIONS

Although many title I contracts have been awarded to tribes, the contracts have done little to shift control of programs to Indians. For the most part, the contracts were either continuations of former Buy Indian Act contracts or were for new services not previously provided by BIA or IHS.

AGENCY COMMENTS AND OUR EVALUATION

Bureau of Indian Affairs

BIA agrees that Title I has not had a major impact on Federal domination of service programs provided to Indian people. BIA stated that the overall objective of the Indian Self-Determination and Education Assistance Act is to provide Indian tribes with uninhibited choices, and not to implement section 102 of the act. It stated that contracting is but one of several alternatives available to tribes. BIA believes that it was reasonable to be cautious in encouraging tribes to contract, for strong encouragement has been counterproductive in the past. BIA stated that it still believes that its policy of noninterference in the tribal decision-making policy is one of integrity, and is consistent with the intent of Public Law 93-638.

We believe that the purpose of title I is, as stated in BIA regulations, the

" * * * establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services." (25 C.F.R. § 271.4(b))

Ultimately this purpose will be achieved when Indian tribes are in the position of administering contracts and grants for programs on their reservations.

The regulations promulgated by BIA are stated as follows:

"(c) It is the policy of the Bureau to facilitate the efforts of Indian tribes to plan, conduct, and administer programs, or portions thereof, which the Bureau is authorized to administer for the benefit of Indians and to facilitate the coordination of all Federal and other programs on Indian reservations.

"(d) It is the policy of the Bureau to continually encourage Indian tribes to become increasingly knowledgeable about Bureau programs and the opportunities Indian tribes have regarding them; however, it is the policy of the Bureau to leave to Indian tribes the initiative in making requests for contracts and to regard self-determination as including the decision of an Indian tribe not to request contracts.

"(e) It is the policy of the Bureau not to impose sanctions on Indian tribes with regard to contracting or not contracting; however, the special resources made available to facilitate the efforts of those Indian tribes which do wish to contract should be made known to all tribes, as should the current realities of funding and Federal personnel limitations." (25 C.F.R. § 271.4(c), (d), and (e).)

BIA's regulations specifically authorize technical assistance to tribes or tribal organizations at their request. We do not believe this regulation precludes BIA from taking a more active role, before receiving a tribal request, by helping tribes make more informed decisions on whether or not to exercise the options available by title I of Public Law 93-638.

Indian Health Service

IHS headquarters officials believe that tribal self-determination contracting will eventually change the mix of IHS and tribal employees operating health programs, but does not interpret Congress' intent as being a one-to-one immediate replacement of IHS staff, or a reduction in the IHS workforce.

IHS also stated that Congress has recognized staff shortages relative to meeting the Indians' health needs in section 2(f) of Public Law 94-437. IHS further noted that the law authorizes additional resources, including hundreds of positions for IHS employees during the first 3 years of this legislation. IHS also believes that Congress intended this law to provide the necessary resources for IHS to implement the Self-Determination Act.

Based on our review of the legislation and hearings pertaining to the Indian Self-Determination Act, we believe Congress expected that Federal employment for Indian programs would eventually be reduced if tribes assumed a more meaningful role in these Federal programs. As noted on page 31, we believe that implementation of Public Laws 93-638 and 94-437 should complement each other and eventually lead to the overall reduction of Federal employment in Indian programs.

CHAPTER 3

TRIBAL LEADERS SEE MANY OBSTACLES

TO CONTRACTING BIA AND IHS PROGRAMS

Many tribal leaders are not convinced that contracting, the congressionally established method for achieving Indian self-determination, is an acceptable or workable mechanism. Until such Indian leaders are convinced that contracting is a workable method, many tribes are unlikely to use the act extensively. It should be noted, however, that in view of the Indian experience with the Federal Government (as discussed in ch. 1), there will be reluctance to accept the sincerity of the self-determination program, regardless of the implementing mechanism.

TRIBAL LEADERS EXPRESS SKEPTICISM ABOUT TITLE I AS A MEANS TO INDIAN SELF-DETERMINATION

As discussed on page 2, sections 102 and 103 of title I direct the Secretaries of the Interior and HEW to enter into a contract or contracts with the tribes upon the requests of the tribes. Most of the tribal officials we met with, however, said they had no plans for requesting contracts for large-scale takeovers of existing BIA and IHS programs. Future contracting, according to these officials, will be mostly limited to newly funded services not previously provided.

To determine what Indians perceive as obstacles to effective implementation of title I, we visited five tribes; and we reviewed testimony given before the Senate Select Committee on Indian Affairs in June 1977 by 19 other tribes and Indian organizations.

The most common obstacles cited are shown in the following table.

Cited Obstacles to Contracting

<u>Obstacles</u>	<u>Number of tribes/organizations</u>	
	<u>Tribes visited by GAO</u>	<u>Other tribes and organizations</u>
1. Roadblocks by BIA and/or IHS	4	18
2. Inadequate funds and/or staff	5	4
3. Contracting is not self-determination	3	3
4. Fear that contracting will lead to termination	4	1
5. Tribes don't know what can be contracted	5	0
6. Tribes lack technical and administrative skills	3	1
7. Tribes reject being accountable to BIA and IHS	3	0

Roadblocks by BIA and/or IHS

Twenty-two of the 24 tribes and Indian organizations claimed that contracting is impeded by BIA and IHS procedures, policies, or attitudes. An employee of the Puyallup Tribe explained that it was not unusual for BIA to delay the initial funding of a new contract for up to 6 months because of delays caused by a heavy workload. Another Puyallup official said that if BIA considers a proposal to be inadequate, BIA will delay action on it by addressing one point at a time instead of summarizing all the deficiencies. Other examples of roadblocks, as perceived by the tribes or organizations, follow.

--A consultant to the Oglala-Sioux Tribe testified that when BIA learned of the tribe's intention to take over the law enforcement functions on the reservation, BIA officials tried to discourage the tribe by claiming that the local BIA agency had nearly exhausted its funds available for contracting. The tribe's president testified that BIA has failed to provide needed technical assistance in an apparent effort to make the

tribe look inept. The president also testified that after the tribe expressed its intent to contract, BIA procedures seemed designed to threaten BIA employees. He testified that the tribe

* * * has been confronted by massive resistance to contracting fostered and abetted by BIA employees who are members of the Tribe. These employees seem unbridled by any local interpretation of conflict of interest regulations; the Code of Conduct for Federal employees, or simple objective explanations of the law and regulations. In fact, in many cases, their actions and conduct seemed encouraged by higher graded and paid, and sometimes by non-Indian members in the BIA who believe that Tribal members would enjoy greater license to resist.

*Some implementation procedures following the Tribal Resolutions of Intent to Contract seem overtly designed to cover and threaten employees unnecessarily. Massive RIF ^{1/} meetings are called and announced in such a manner that job abolishment appears imminent with the basically simple explanation that the Tribe is contracting and your job is on the line * * *

--The Chairman of the Navajo Tribal Council said that resistance to contracting by BIA and IHS employees can become a serious obstacle when many of the employees are also members of the tribe. He stated that on several occasions, when the council discussed taking over BIA programs, pressure from BIA employees who might be displaced--many of them tribal members--prevented the plans from getting beyond the discussion stage.

--A spokesman for the New Mexico Intertribal Health Authority, All Indian Pueblo Council, testified that (1) IHS timeframes for negotiation were too short, (2) tribes were required to come to the IHS area office in Albuquerque for negotiations, and (3) IHS did not inform the tribes that an authorized person should represent the tribes in negotiations.

--The President of the National Congress of American Indians testified that (1) BIA negotiators tend to bully tribes into accepting lower levels of funding

^{1/} RIF is the abbreviation for "reduction in force."

than needed, (2) tribes must wait a long time for contracts because of complex BIA contracting procedures, and (3) BIA is slow in reimbursing tribes for contract expenditures.

--Officials of the Cheyenne-Arapaho Tribes of Oklahoma and of the All Indian Pueblo Council of New Mexico testified that BIA has held up contract proposals in violation of the timeframes specified in the regulations.

Internal BIA documents substantiate some of the statements made by tribal officials. Problems addressed in one of these documents dealt with BIA individual personnel adjustment, possible personnel displacement, nonsupport of self-determination, misunderstanding of roles, misinterpretation of BIA responsibilities, and ineffective communication among Bureau personnel. Though the discussion in this document indicated that progress has been made in aiding tribes toward self-determination, it also stated that there is room for major improvement by alleviating the attitudinal and other problems which affect Bureau administration of self-determination.

Inadequate funds and/or staff

Officials from 9 of the 24 tribes or organizations believe that tribal contracting is impeded because BIA and IHS programs are underfunded and understaffed. Examples of their comments follow.

--The governor of the Gila River Indian Community said that the major hindrance to full implementation of title I is the limited amount of resources available to BIA and IHS to operate their existing programs. He claimed that instead of providing enough services to meet the needs of the Indian people, the Government adapts its services to the funds and staff available. According to the governor, the tribe does not want to take over programs without knowing they will be adequately staffed and fully funded. He said the tribe intends to contract when such a step will improve services, but unless this can be assured, the tribe will leave the inadequately funded programs to BIA and IHS.

--The chairman of the Navajo Tribal Council said that contracting to operate inadequately staffed and funded BIA and IHS programs is not what the council wants. In a statement prepared for the Senate Select Committee

on Indian Affairs, he stated that for contracted programs, "there simply is not enough money available to allow tribes to do the job right."

--The chairwoman of the Puyallup Tribal Council stated that inadequate funding is the major constraint on contracting under the act. She said that her tribe wants to operate many additional programs, but the tribe was told by BIA and IHS that no funds were available.

Contracting is not self-determination

Some tribal leaders question whether contracting is a meaningful way to achieve self-determination. For example, the chairman of the Navajo Tribal Council testified that title I is not an Indian self-determination law. He said that the act is an Indian contracting law, which basically allows tribes to run programs which BIA or IHS has failed to administer to the tribes' satisfaction. However, by entering into such a contract, the tribe binds itself to perform to the satisfaction of BIA and IHS. The chairman said that (1) the Navajos want to plan, design, and evaluate the services provided to the Navajo people and (2) it is not important who actually operates the program if the tribe does the planning and evaluating.

The comptroller of the Puyallup Tribe said that IHS apparently thinks that title I contracts are a way to get the tribes to operate programs for IHS. He said that because they want to retain control of contracted programs, IHS officials operate as if the contracting tribe is a branch of IHS.

Fear of termination

At each of the tribes we visited, many Indians reportedly fear that contracting will lead to termination. This fear has also been expressed by Indian leaders in conferences and in testimony before the Senate Select Committee on Indian Affairs. For example, the governor of the Gila River Indian Community Council told us that

- some tribal members are concerned about termination,
- some tribal officials are reluctant to contract because they are not sure the funding will continue when the contract expires, and

--some tribal officials believe that the risk of a contract not being renewed is much greater for tribal contracts than for BIA and IHS programs, which seem to be renewed automatically year after year.

The president of the Quechan Tribal Council said that the concern of some tribal members that contracting will lead to termination could be an obstacle to any large-scale takeover of BIA and IHS programs. The chairman of the Lummi Council said the tribe wants BIA and IHS to always have an association with the tribe as security against termination. Another Lummi official expressed suspicion of BIA motives in encouraging the tribe to contract, and said that some Lummi leaders interpret BIA's action as a plan to terminate the tribe.

In testimony before the Senate Select Committee on Indian Affairs, the principal-chief of the Eastern Band of Cherokee Indians predicted that title I "not only will do away with the Bureau of Indian Affairs in a very short order, but also will terminate the Tribes of this nation from governmental services."

The Director of IHS said that on September 12, 1977, a bill was introduced in the Congress to terminate all tribes from Federal supervision. He believes this bill could harden opposition from tribes who fear that the Indian Self-Determination Act means termination.

The bill, H.R. 9034, directs the President to abrogate all treaties entered into by the United States with Indian tribes in order to terminate Federal supervision over the property and members of Indian tribes, and for other purposes.

Tribes do not know what can be contracted

Leaders of the five tribes we visited said that they were not certain which programs were contractable. The chairman of the Navajo Tribal Council said that he could follow the BIA regulations, but the IHS regulations did not contain a clear statement of the IHS programs that are contractable. The president of the Quechan Tribe said that BIA did not clearly communicate which services could be contracted by the tribe. The governor of the Gila River Indian Community asserted that no one at BIA or IHS seems to know which services can be contracted by the tribe. The chairman and vice chairman for the Lummi Tribal Council, and the controller and planning coordinator of the Puyallup

Tribe, each said that lack of information on which programs are contractable has impeded tribal contracting.

Tribes lack technical and administrative skills

Officials of several tribes said that their tribes lack the technical and administrative skills needed to manage BIA and IHS programs. For example, the governor of the Gila River Indian Community said the tribe's leaders, managers, and department heads need more training and experience before the tribe will be ready to manage its own affairs.

The president of the Quechan Tribe said that the major need on the reservation, in terms of contracting, is more management and technical skills for tribal members. He said the tribe has not aggressively pursued contracts because its leaders do not understand the potential of title I, and because such a step requires more skilled people than the reservation has.

A nationwide survey of Indian tribes was conducted by BIA, IHS and the Office of Native American Programs to determine tribal planning and development needs under title I. The survey results, issued in October 1977, identified the need for assistance in tribal government, fiscal matters, planning, personnel, legal matters, and natural resources. The survey concluded that immediate agency attention should be given to the first three areas mentioned above.

Tribes associated their fiscal problems with difficulties in basic accounting procedures, budgeting, contract procedures, eligibility requirements, project design, evaluation of programs and funding, economic development, appropriating funds and raising matching funds.

The tribes said that problems in the planning area centered around difficulties with the planning and evaluation process--lack of information about programs for which the tribes are eligible, project design and economic development.

In the personnel area, the tribes said they need assistance in training, hiring, merit systems, and management and staff development. The tribes identified management and staff training as the major problem facing them in the future.

Although the tribal response rate to the survey was, according to the sponsors, less than desirable, the analyses indicated that the respondents were generally representative of the tribes served by BIA. In conclusion, the report stated that the survey results should be considered an accurate indication of tribal needs for training and technical assistance, and should be reviewed by agencies planning to assist tribes with title I. It pointed out that the survey results may help focus on issues and concerns most important to tribes as recipients of assistance.

Public disclosure of a BIA audit of the Lac Court Orellies band of Chippewas in Wisconsin has also led to Indian claims of having received little help from the Government in managing the influx of increased funds over the last few years. Such questioning of tribal accounting controls and the possible misuse of Federal funds have resulted in public criticism of BIA and IHS and their ability to effectively oversee the expenditure of Federal funds.

Tribes reject being accountable to BIA and IHS

BIA and IHS contracting officers routinely delegate the contract monitoring and evaluation function to persons who work in the same general program area covered by the contracts.

Three of the five tribes we visited said that tribes object to being accountable to BIA and IHS. For example, the chairman of the Navajo Tribal Council said the tribe is reluctant to contract more because the tribe's performance must be monitored and evaluated by the very people who are--in most cases--doing a poor job of running their own programs. He stated that it is unreasonable to expect the tribe to take over a poorly managed, inadequately funded and understaffed program--and then be evaluated by the former managers of that program. Similar comments were made by Gila River and Puyallup officials.

CONCLUSIONS

Tribal leaders advanced many reasons--some shared by several tribes--for not contracting to operate more BIA and IHS programs. As long as tribal leaders have serious doubts about requesting title I contracts, any significant change in Federal domination over Indian programs is unlikely.

AGENCY COMMENTS AND
OUR EVALUATION

Bureau of Indian Affairs

BIA stated that our sampling of tribes seemed quite small and may not be truly representative of practices throughout the country. It also said that the same is true of the emphasis given to the testimony from the Senate Select Committee on Indian Affairs hearing held in June 1977.

We recognize that the sample of tribes was not randomly selected in a statistical manner. However, before making the final selection, we consulted high level officials in BIA and IHS to assure the best possible representation of tribes for the purpose of this review and they did not object at that time.

CHAPTER 4

IMPLEMENTATION EFFORTS BY BIA AND IHS

BIA and IHS adopted policies which required their staffs to act only on the request of tribes for contracts or other self-determination assistance; in other words, a position of responding rather than acting. Both believe that any action on their part which could be construed as encouraging the tribes to contract would be contrary to the concept of self-determination. As a result, while both agencies have issued regulations concerning self-determination grants and contracts, awarded self-determination grants and contracts, and provided training sessions and technical assistance publications, neither has developed plans to see that tribes have a full understanding of their options under title I, or the information needed to make informed decisions on assuming programs.

In our opinion, the act allows the agencies to encourage and assist the tribe in obtaining information needed for decisions and in acquiring the capability to administer programs, without violating the concept of self-determination.

Neither BIA nor IHS has defined what its role will become as tribes assume greater control of Indian programs. If the agencies are successful in encouraging tribes to contract, they will need to redefine their roles and restructure their organizations to accommodate the roles.

HOW BIA AND IHS
IMPLEMENT POLICIES

Both agencies published final regulations on implementing title I, stating similar self-determination policies:

- "* * * to facilitate the efforts of Indian tribes to plan, conduct, and administer programs, or portions, thereof, which [BIA and IHS are] authorized to administer for the benefit of Indians * * *"
- "* * * to continually encourage Indian tribes to become increasingly knowledgeable about [BIA and IHS] programs and the opportunities tribes have regarding them; however, it is the policy of [BIA and IHS] to leave to Indian tribes the initiative in making requests for contracts and to regard self-determination as including the decisions of an Indian tribe not to request contracts."

In adopting the above policies, BIA and IHS did not establish any overall plan for shifting from Federal to tribal control of Indian programs. For example, no goals were set and no methods were developed to help the individual tribes assess or build their capabilities through a well-planned, gradually phased-in takeover of programs.

Regulations

On November 4, 1975, BIA published its rules and regulations for implementing title I. IHS published separate rules and regulations on November 18, 1975. Before publishing the rules and regulations, both BIA and IHS consulted extensively with Indian groups. Joint BIA/IHS teams met with Indian groups at 15 locations--once before the regulations were drafted, and once afterward to obtain comments on the proposed draft. Many revisions were made to the initial draft as a result of comments received during the meetings.

Our review of the act showed that BIA and IHS are not required to coordinate their responsibilities under the law. As a result, differences exist in the agencies' regulations. For example, two of these differences concern the requirements for a contract application and the ability to appeal decisions to refuse contracting with a tribe. As cited on page 19, the chairman of the Navajo Tribal Council stated that he could follow the BIA regulations but not the IHS regulations.

The IHS regulations acknowledged that the two sets of regulations "are not sufficiently similar." This has resulted from

" * * * different draftsmen working within different organizations, each striving to produce an end-product in keeping with their respective standards. It is now realized that what is needed is uniformity wherever possible, that is, in every situation where programmatic differences do not require that distinctions be made. This need for uniform language and organization is of great importance because the Indian tribes seeking to benefit from the act should not be burdened with the problem of reading different texts to derive basically the same information about closely related problems, nor should they have to trace cross-referenced material where this could be avoided. Accordingly, representatives of this Department will meet with representatives of the Bureau of Indian Affairs in an effort to achieve maximum uniformity in the regulations

of the two agencies. Thus even as these regulations are promulgated, it is anticipated that a major revision of these regulations is in order."

BIA officials informed us in February 1977 that they do not want to revise their regulations, but want to test the regulations for at least 2 years.

Once the rules and regulations were published, BIA and IHS efforts to implement their self-determination policies included: (1) the issuance of guidelines and manuals which dealt with procedures for applying for contracts and grants, (2) the provision of training and orientation sessions designed to explain how to comply with the regulations and use the manuals, (3) the award of self-determination grants for preparing tribes to contract under title I, and (4) the award of self-determination contracts.

Guidelines and training

Current views of tribal leaders (discussed in ch. 3) show that BIA and IHS grants, planning, orientation and technical assistance have not yet reduced tribal concerns about both their and the agencies' capabilities to implement title I.

The guidelines did not include an overall plan or approach on how tribes might determine which programs could best be contracted under title I. The guidelines emphasized that it is up to the tribes to initiate action.

Several orientation sessions from 1 to 5 days were scheduled in each area, and many tribes also participated in a 40-hour seminar entitled, "Initiation and Performance of Indian Self-Determination Grants and Contracts," presented by the Sterling Institute under a BIA contract. The orientation sessions dealt mostly with procedures for applying for grants and contracts.

The seminars did not provide specific information on how an individual tribe could choose a program or what would be required to assume a given program. For example, the seminars did not (1) present any list of programs or segments of programs which were contractable, (2) list the kinds of resources or expertise the tribe might need to assume control of the program, or (3) suggest any methods a tribe might use in assessing its capabilities and interests and matching them with contractable programs or program segments. The officials said that for BIA and IHS to furnish such information

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without being asked by the tribes could be interpreted as urging the tribes to contract, which is contrary to the concept of self-determination.

Grants and contracts

As noted in chapter 2, the Congress intended that funds for self-determination grants and contracts were to come from existing appropriations. However, the agencies cited a need for additional staff, to properly administer the contracts, and additional funds for training, technical assistance grant programs, and tribal overhead costs incurred with contracted programs.

For fiscal year 1977, the first full year of appropriations since enactment of self-determination legislation, the Congress appropriated about \$32 million to BIA and about \$18.5 million to IHS for self-determination activities. This included funding for an additional 48 staff positions for BIA and 50 for IHS.

The agencies reported to the Senate Select Committee on Indian Affairs in June 1977 that BIA had awarded 351 self-determination grants totaling about \$7.8 million and IHS had awarded 31 grants totaling about \$2.5 million.

In fiscal year 1977, IHS awarded 61 grants to tribes and tribal organizations totaling almost \$8.1 million. BIA, on the other hand, can only estimate that \$16.5 million was made available during fiscal year 1977 for such grants. A BIA official said that BIA's reporting systems have not enabled them to identify specific grant information at this time. Neither agency has implemented systems or methods to evaluate the success or progress of the grants. For example, BIA noted that most of its grants were for improving tribal government, and results in many cases will be measurable only over a long period of time.

BIA AND IHS LONG-TERM ROLE NOT DEFINED

Underlying the objectives of title I is the possibility that most or all of the services provided by BIA and IHS will eventually be provided by tribes under title I contracts. However, officials of both BIA and IHS stated that no plans have been developed to define their roles or to identify the organizational changes that will be needed if the tribes someday control Indian programs.

BIA and IHS have made only limited efforts to deal with the organizational changes that would be required following

extensive tribal contracting. Each agency started its planning at opposite ends of the organizational structure--BIA with one basic area, and IHS with the total organization.

BIA developed organizational models showing how its area offices would function after partial or total contracting by Indian tribes. The models depict a variety of contracting situations that might be encountered at area offices, and suggest for each situation how the remaining BIA work force should be structured. However, the models do not deal with organizational changes above the area office level.

IHS headquarters officials said that IHS area offices have, for the past 10 years, involved the tribes in the planning, evaluation, and operation of health programs, as required by the IHS mission statement. IHS' stated mission is to provide " * * * maximum involvement of American Indians in defining their health needs, setting of health priorities for their local areas and managing and controlling the program."

IHS headquarters officials' plan for implementing a self-determination program consists of three phases. Phase one provides basic information such as a contracting handbook and flow charts explaining contract application procedures regarding contract and grant provisions made available to them under the act. Phase two, when completed, will provide tribes with "Service Unit System Documents," which will describe what IHS programs are contractable at each IHS service unit (the basic field entity responsible for the day-to-day operation of IHS health programs). All IHS areas are expected to complete their service unit description documents by July 1978, and forward them to IHS' Office of Research and Development for compilation.

Phase three will provide IHS assistance to tribes in the development of Public Law 94-437 Tribal Specific Health Plans by mid-1979. IHS officials believe that Public Law 94-437 Tribal Specific Health Plans are essential for tribes to make informed decisions regarding available options under title I of the act. In January 1978, IHS issued guidelines to tribes for preparing Public Law 94-437 Tribal Specific Health Plans.

IHS headquarters officials stated that the three phases do not have distinctive break points but are integrated actions.

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According to BIA and IHS officials, it is unlikely that the act will have any impact on the overall organizational structure. Apparently this position is heavily influenced by either the agencies' belief that tribes will never opt to take over most programs, or by their experiences to date with the types of self-determination contracts awarded. In regard to this latter point, however, most title I contracts merely replace contracts previously awarded under the Buy Indian Act, and therefore no organizational change would be expected. In regard to the former point, one BIA official said that long-term planning for organizational changes is difficult because nobody knows how the tribes are going to respond to the act. He said that while no new goals or philosophies have been adopted as a result of title I, such matters are under consideration. He further stated that more experience is needed before new goals or organizational structures can be developed.

Some organizational changes have been made to handle the work involved in implementing title I. For example, BIA added two headquarters offices, with 15 positions, to handle rules, regulations, training, and technical assistance coordination. An additional 33 positions were allocated to these offices to provide tribes with grants, contract training, and technical assistance.

At IHS, the act was used to justify 50 new positions for fiscal year 1977. Ten of the positions were retained by headquarters and the rest were divided among the area and program offices. As in BIA, the positions were generally classified to provide administrative support and grant and contract expertise.

ADDITIONAL EFFORTS ARE NEEDED IF TRIBES INCREASE CONTRACT AND GRANT REQUESTS

We believe that BIA and IHS must make an additional effort to be adequately responsive to any significant increase in self-determination grant and contract requests from tribes.

We also found that inefficient agency management is hindering effective implementation of title I. Specifically, we found that neither agency is operating reliable and timely management information systems which can provide data on

- how many contracts and grants have been awarded under title I,
- the cost and results of the agencies' technical assistance under the act,
- the implementation of personnel transfers under the act, and
- the status of activity under the act on a tribe-by-tribe basis.

IHS headquarters officials informed us that they are designing implementation of the "Tribal Resource and Assistance Information System" (TRAIS) to provide comprehensive information for monitoring some or all IHS services (including grants and contracts) to tribes and tribal organizations. They state that TRAIS will provide IHS with information on the types of training and technical assistance needed by tribes. According to IHS officials, TRAIS is to become partially operational during February 1979. However, the TRAIS development document dated October 4, 1977, shows TRAIS is not scheduled for total operation until October 1978.

BIA officials said they had initiated planning for the development of a management information system; however, the system will not be fully operational for several years.

CONCLUSIONS

BIA and IHS have provided some guidelines and training to inform tribes of their rights under title I, but more action is needed. Both have taken the position that tribes must initiate requests to contract for all or any portion of programs under title I. While this position is permitted under the provisions of the act, the act does not prohibit affirmative action, such as encouraging and helping the tribes to make fully informed decisions and to acquire the capability to administer programs. We believe that additional agency efforts are necessary if significant progress is to be made in shifting control of Indian programs to Indians.

AGENCY COMMENTS AND
OUR EVALUATION

Bureau of Indian Affairs

BIA indicated that contracting is an expensive way of operating programs. BIA noted a lack of specific information regarding the ability of tribes to fully assume a program before contracting. Once the process of evaluating tribal capabilities is functional, it might be expected that the number of contracts entered into would decline, until those responsible for daily operation of the contracted program are fully trained and capable of continuing the services at the established level.

BIA believes that there simply is not enough money available to give tribes the funds they need to effectively contract programs, and at the same time, provide BIA with the funds it needs to deliver the same programs to tribes who choose not to contract.

We believe that the Congress did recognize these concerns as it appropriated additional funds and authorized more positions for the initial phases of implementing the act. We believe that better planning, more effective use of positive management strategies, operation of agency and tribal information systems for Public Law 93-638 and more efforts to bring about Indian self-determination would accomplish the act's intent.

Indian Health Service

IHS officials cited the hundreds of workshops and other advisory and instructional meetings which have been presented to Indian tribes in an effort to assure implementation of the Self-Determination Act.

We recognize that IHS has presented many training workshops to provide basic information regarding the available options under title I of the act. These training sessions concentrated on filling out the necessary forms to apply for IHS contracts and grants. However, our review found that tribes needed to know what IHS programs were contractable before they could use the training received from IHS. (See ch. 3.)

IHS headquarters officials stated that IHS does not have an overall plan (objectives and planned implementation

dates) for implementing and tying together the complementary legislation--title I of Public Law 93-638 and Public Law 94-437. They said these legislative initiatives are being woven into all existing IHS programs rather than isolated into separate activities. IHS officials said they have planned the development of Public Law 94-437 Tribal Specific Health Plans, which tribes can use for making informed decisions on available options under title I of the act.

We believe a comprehensive management plan should be developed to assure that the staffing and funding resources authorized over a 7-fiscal-year period through 1984 by Public Law 94-437 are effectively integrated into existing IHS programs on a timely basis. Thus, the resultant improvements in IHS health care programs should attract greater Indian participation.

CHAPTER 5

OVERALL CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

As mentioned before, we found that title I of the act had done little to reduce Federal domination over Indian programs and services. In 1977 the share of appropriations contracted by tribes was only slightly higher than it was before title I was enacted. Although many tribal contracts were awarded in 1977, the contracts either continued programs already contracted by the tribes, or authorized new services not previously funded by the Federal Government.

BIA and IHS believe that to measure their progress in Indian self-determination, consideration should be given to their self-initiated efforts which preceded the act. Although we do not disagree with this position, we expected the new legislation to serve as an impetus to increase the rate of progress. Therefore, our study used as points of reference data that were current when the act was enacted. We do not believe that the act was intended to be the Congress' affirmation of these agencies' past activities; rather the act was meant to stimulate more action and inspire new starting points.

Tribes seem willing to continue to operate established contracts and to take on additional contracts for minor programs not previously provided by BIA and IHS. However, tribes appear to be reluctant to contract for programs and services currently provided by BIA and IHS.

Although BIA and IHS provided some guidance and training to inform tribes of their rights under title I, more action is needed. Both agencies believe that any action on their part which could be construed as encouraging the tribes to contract would be contrary to the concept of self-determination (that the tribes may choose not to contract). Although these policies are permitted under the act, they leave the agencies in the position of only reacting to tribal initiatives, rather than taking positive steps to overcome the obstacles which inhibit tribes from contracting.

We recognize that BIA and IHS could violate the concept of self-determination by pushing tribes into contracting for programs the tribes are not ready for or do not want. We

believe, however, that these agencies could take many additional steps to encourage and assist the tribes toward contracting under title I, without violating the concept of self-determination.

RECOMMENDATIONS TO THE SECRETARIES OF THE INTERIOR AND HEW

To promptly resolve the problems and obstacles inhibiting tribes from contracting under title I, we recommend that the Secretaries of the Interior and HEW direct BIA and IHS to establish criteria for measuring their progress in implementing the Self-Determination Act. In addition, they should promptly develop and implement procedures for:

--Ensuring that tribes have a full understanding of their options under title I.

--Helping tribes obtain the information needed for fully informed decisions on assuming programs or program segments. Specifically, the agencies should use their own survey results and provide the training and technical assistance needed by the tribes. This may require

--helping tribes assess their ability to operate and manage the contractable programs and

--guiding the tribe in determining how to acquire the skills or resources needed to contract for a particular program or program segment, including training and assistance available from the agencies.

In addition, some tribes may even require

--a description of the programs and program segments available for contracting under title I and

--a list or description of the services delivered to the tribe by the agencies.

AGENCY COMMENTS AND OUR EVALUATION

Bureau of Indian Affairs

BIA said this report did not consider BIA's massive effort to acquaint the tribes with the provisions of the

act, both before and after the regulations were written for its implementation. In particular, BIA conducted training sessions by the Washington Office staff after publication of the regulations, and subsequent sessions were conducted by area staff at agency locations. BIA believes that training sessions will still be needed when tribal elections result in changes in administration. It noted that this process is both time consuming and expensive.

We realize that BIA has conducted many training sessions; however, we believe that tribes do not yet have a full understanding of their options under title I. We think that more effective efforts are needed to lucidly explain the different alternatives available to the tribes.

BIA concurred and strongly supported the concept of assisting tribes in obtaining information needed for fully informed decisions on assuming programs or program segments, when responding to a specific request for contracting. BIA admittedly is not fully operational in this area, but the Assistant Secretary--Indian Affairs has taken a position which BIA believes will strengthen the Indian self-determination policy. In a letter to Tribal Chairmen, dated December 6, 1977, he stated:

*** we will strengthen Tribal Governments and the Bureau of Indian Affairs capacity to fulfill our obligations to the American Indian Tribes and Alaska Native groups. This will demand revisions of existing management practices and policies of the Bureau. You have repeatedly expressed your concern that the present budget system does not adequately reflect Tribal priorities, nor does it provide for operational flexibility or for fiscal accountability. Therefore, I am proposing a new budget planning procedure for the Bureau which substantially revises the Bureau's budget formulation process to meet your concerns.

"I believe your participation in the budget process is critical and therefore the new system has been designed to reflect your individual Tribal priorities. The new budget structure is built on a location basis rather than the current program basis of the current system. Responsibility for budgeting of annual operations at the tribe/agency level will be on a government-to-government basis so that you can make budget decisions that directly affect the welfare of your Tribal members.

The location basis will give Congress and other reviewing offices an opportunity for the first time to consider Tribal needs and priorities individually rather than on a Bureau-wide basis.

"This budget proposal is also consistent with the Presidential initiative of incorporating the Zero-Base Budgeting (ZBB) concept throughout the Federal Government.

"The draft proposal revising the Bureau's budget formulation process is enclosed for your review and comments. I want to emphasize that this paper represents a proposal, and the final product will require approval by the Department of the Interior and the Office of Management and Budget. Your analysis and recommendations will, therefore, be vital to our success in implementing the proposed process for the fiscal year 1980 budget formulation *** 1/

BIA further agrees with the concept of helping tribes assess their ability to operate and manage contractable programs and guiding tribes in determining how to acquire the skills or resources needed. BIA assured us that providing this type of assistance is of great concern to the Bureau and is receiving priority consideration in conjunction with restructuring the Bureau. BIA stated that these are additional responsibilities mandated by Congress to be accomplished without increased staff support. BIA admitted that much remains to be accomplished in these areas in responding to tribal initiatives.

As stated in chapter 4 of this report, an additional 48 self-determination staff positions were authorized by the Congress to BIA for fiscal year 1977. We believe that increased staff support was provided for these additional responsibilities.

In response to our view that some tribes may even require a description of the programs and program segments available for contracting under title I, BIA stated that because the act permits tribes to "redesign" or contract for program portions, the possibilities for "what may be contracted" are endless. BIA believes that expending the

1/GAO is analyzing the Bureau's budget formulation process as part of another review being conducted in response to an August 9, 1977, request of the Chairman, Subcommittee on the Department of the Interior and Related Agencies, Senate Committee on Appropriations.

resources now available to engage in such an effort would not be cost effective. BIA stated that it must, therefore, respond to specific requests from the tribes.

We do not intend that the agency be placed in a position of preparing costly, endless lists of programs. However, undertaking the task of what the agency believes are contractable programs, anticipating the possibility of requests for contracts, is consistent with the basic intent of the act to achieve greater Indian self-determination. In addition, the policy stated in BIA's regulations provides general authority for BIA to engage in such activities.

BIA concurred with our recommendation that it should provide a list or description of the services delivered to the tribe by the agency.

Indian Health Service

Agency officials stated that they concurred with our recommendations and cited program initiatives undertaken to implement the Self-Determination Act.

However, IHS believes that measuring progress in implementing the act would falsely imply that all tribes are expected to take over programs, and, when some tribes choose not to take over programs, it would look as though IHS was not meeting its own criteria. Moreover, IHS believes the report might be perceived by some tribes as a confirmation that the Self-Determination Act is an attempt by the Federal Government to abrogate its responsibilities to Indian tribes.

Our report highlighted appropriations, contracts, and employment to show that the Self-Determination Act has resulted in minimal shifting from Federal to tribal control of programs and services for the Indian people. We believe IHS needs to initiate more efforts to help tribes make more informed decisions on whether or not to exercise the options made available by title I of the Indian Self-Determination Act. We believe that tribes' informed decisions would be one of the most valid criteria for measuring progress toward self-determination. However, a sound methodology would need to be developed.

IHS officials agreed that tribes' informed decisions would be valid criteria and they said it could be measured if requisite resources were available to IHS. Also, they said more time is needed to study and establish criteria for measuring tribal progress toward self-determination.

APPENDIX I

APPENDIX I

PRINCIPAL AGENCY OFFICIALS RESPONSIBLE FOR ACTIVITIES DISCUSSED IN THIS REPORT

	<u>Tenure of office</u>		
	<u>From</u>	<u>To</u>	
SECRETARY OF HEALTH, EDUCATION, AND WELFARE:			
Joseph A. Califano	Jan. 1977		Present
David Mathews	Aug. 1975		Jan. 1977
Caspar W. Weinberger	Feb. 1973		Aug. 1975
Frank C. Carlucci (acting)	Jan. 1973		Feb. 1973
Elliot L. Richardson	June 1970		Jan. 1973
ASSISTANT SECRETARY FOR HEALTH:			
Julius B. Richmond	July 1977		Present
James F. Dickson III (acting)	Jan. 1977		July 1977
Theodore Cooper	May 1975		Jan. 1977
Theodore Cooper (acting)	Feb. 1975		April 1975
Charles C. Edwards	Mar. 1973		Jan. 1975
ADMINISTRATOR, HEALTH SERVICES ADMINISTRATION:			
George I. Lythcott	Sept. 1977		Present
John H. Kelso (acting)	Jan. 1977		Sept. 1977
Louis M. Hellman	May 1976		Jan. 1977
Robert Van Hoek (acting)	Feb. 1975		May 1976
Harold O. Buzzell	July 1973		Jan. 1975
DIRECTOR, INDIAN HEALTH SERVICE:			
Emery A. Johnson	Dec. 1969		Present
SECRETARY OF THE INTERIOR:			
Cecil Andrus	Jan. 1977		Present
Thomas S. Kleppe	Oct. 1975		Jan. 1977
Kent Frizzell (acting)	July 1975		Oct. 1975
Stanley K. Hathaway	June 1975		July 1975
Kent Frizzell (acting)	May 1975		June 1975
Rogers C. B. Morton	Jan. 1971		May 1975

APPENDIX I

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	Tenure of office	
	From	To
ASSISTANT SECRETARY--INDIAN AFFAIRS:		
(note a) Forrest Gerard	Oct. 1977	Present
COMMISSIONER OF INDIAN AFFAIRS:		
(note a) Raymond Butler (acting)	Jan. 1977	Present
Ben Rifle (acting)	Dec. 1976	Jan. 1977
Theodore Kienzke (acting)	Nov. 1976	Dec. 1976
Morris Thompson	Dec. 1973	Nov. 1976

a/Effective September 26, 1977, the Office of Commissioner of Indian Affairs was abolished and its responsibilities were transferred to the newly established position of Assistant Secretary--Indian Affairs.

APPENDIX II

APPENDIX II



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JAN 12 1978

Mr. Henry Exchange
Director, Community and
Economic Development Division
U. S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Exchange:

This responds to the GAO draft report, "Many Obstacles Remain to be Overcome in Implementing the Indian Self-Determination Act."

I. GENERAL COMMENTS

In general, the Bureau of Indian Affairs concurs with the draft report that:

- Title I has not had a major impact on the Federal domination of service programs provided to Indian people;
- many tribes have been cautious on rapidly expanding contract participation;
- the reasons for this inhibition are varied.

The GAO draft report advances the point of view that the Bureau of Indian Affairs should act as an advocate of Indian contracting and should be more assertive in encouraging Tribes to assume direct control of Indian programs through the contracting mechanism. Related to this is the absence of a significant increase in contracting, under the P.L. 93-638 authority, for the 3-year period selected for review and is viewed by GAO as a failure to effectively implement the policy of self determination.

--The Bureau of Indian Affairs believes that GAO has provided useful general information.

--However, the inferences drawn from the data collected, without specific accurate qualification, have resulted in some inaccurate conclusions.



Mr. Henry Enclosure, Page 2

II. SPECIFIC COMMENTS

A. Policy

The Department does not share the GAO point of view with regard to the overall objectives of self determination. Contracting is but one of several alternatives available to tribes. As a matter of policy, BIA is explicitly precluded from attempting to influence tribal decisions to contract or not to contract. The overall objective of the Indian Self-Determination and Education Assistance Act is to provide Indian tribes with uninhibited "choices" and is not the implementation of Section 102 of the Act. It was reasonable for the BIA to be somewhat cautious considering the strong policy of encouraging the Tribes to contract. We have considered implementing the strong policy of encouraging the Tribes to contract; however, the Bureau has learned this approach has been historically counterproductive.

B. Measurement Criteria

The measurement of the relative success or failure of self determination should not be determined by computation of the number of contracts let, the number of contracting tribes or the sum of contracting dollars. While we recognize that these are useful indicators, they should not be considered the overriding criteria. Tribes making a conscious decision not to contract have indeed participated in self determination. Therefore, the "results" which should properly be measured may not be those used in the report. Tribal control of Federal monies under Title I may be obtained by operating them through other options provided by the Act, i.e., planning, designing, evaluating and monitoring BIA operations under Section 104. More sophisticated and tangible criteria must be developed and used, in order to obtain measurement of the BIA's relative success or failure, other than those used in the report. BIA's effectiveness in carrying out the mandate of the Act at this time is not susceptible to objective measurement. While BIA should certainly be prepared to furnish complete and accurate information to Tribes in order that they may make informed decisions, BIA remains convinced that any attempt on its part to engage in the hard-sell approach to contracting will be counterproductive. Reference is made to page 25 of the draft report regarding suspicion of BIA motives in encouraging Tribes to contract; in fact it is viewed as termination of Federal relationship by some Tribes. It should be noted that this approach was tried several years ago under the "Buy Indian Act" and was viewed with suspicion. For these reasons the Bureau continues to believe that its policy of noninterference in the tribal decision-making process is one of integrity and is consistent with the intent of P.L. 93-638.

C. Objective of the Report

It would appear by the title of the report, the information gathering techniques employed, and the choice of information reported, that the purpose of this report is to identify the particular and "many obstacles" that must be over-

Mr. Henry Enclosure, Page 3

come in implementing the Indian Self-Determination Act. If this is the stated purpose, then many of GAO's observations are helpful and valid. If, however, the purpose of the audit was to determine "how well we are proceeding" with the implementation in terms of successes and failures, then we must object to the choice of sampling, methods of observation and data collection. For example, results will vary between an instrument utilizing an open-ended, fixed-alternative, or scale items questions with regard to the success of P.L. 93-638 as opposed to what the obstacles are.

D. Sampling Survey

The Bureau's opinion is that final conclusions made from the survey research of four area offices and the five Tribes are subject to an inaccurate assessment of the entire Indian population though acknowledging that a true random sample has the capability of furnishing accurate information. The Tribes cited in the report do not represent a true cross section of the Tribes served by the BIA: (1) NAVAJO (in a class by itself and not representative of other Tribes); (2) GILA RIVER (good choice); (3) LUMBI (too small, member of a multi-tribe agency) presents a number of specialized administrative practices in contracting, i.e., concurrence of all Tribes served by the agency; (4) TITIAN (same as LUMBI); (5) RYALLIP (same as LUMBI and Quechan; in addition, they are landless). The sampling areas quite small and may not be truly representative of practices throughout the country. The same is true of the weighting given to the testimony from the Senate Select Committee on Indian Affairs hearing held in June, 1977.

E. Time Period Considered

Although the Act was passed in January of 1975, the regulations necessary for its implementation were not officially effective until December of 1975. Publication of the implementing regulations were in strict compliance with the time table established by the Act. The report implies that the provisions of the Act have been operational for a period of two years. However, the Act has only been operational for slightly over a year. The Bureau recommends that this fact should be included since the current draft leaves the clear impression that implementation did not occur until the transition quarter of FY 76-77. It is the Bureau's strong opinion that considerably more time and Bureau/Tribal experience with this legislation is necessary before accurate measurement of the overall statutory objective, that of Tribal choice, will be meaningful.

F. Economics of Scale

As indicated throughout the Report, GAO seems to believe that one of the primary purposes of the Act was to displace Federal employees. Specifically, the report notes that none of the 50 contracts reviewed resulted in displacement of Federal workers. That statement is followed by the observation that

Mr. Henry Enclosure, Page 2

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Mr. Henry Pacheco, Page 4

reductions did not occur because the contracts (1) were carryovers of programs already operated by Tribes, (2) were for new services, or (3) were too insignificant to warrant staff reductions. It is assumed that the cited portion of the report is intended to be self-explanatory. However, it could easily be interpreted as criticism of BIA's failure to achieve staff reductions.

We feel that it is imperative that GAO and others reading this report understand that by its very nature contracting is a more, not less, expensive means of program operations. In the early stages of implementation, it should be expected that an increase rather than a decrease in employment should occur due to a shift from a relative constant to increased administration costs for pre-contract evaluation, contract processing, training/technical assistance, grants and thus the loss of economies of scale. As GAO notes, in some cases a BIA staff reduction may not be possible because the contracting action may be too insignificant in a relative sense. This is particularly true where BIA uses the same staff to deliver the same program to multiple locations and one location elects to contract. In addition, contracting results in additional costs for these implementation activities. In some cases, these additional costs offset the in-house savings associated with direct program costs. Genuine to this problem is the lack of specific information regarding the relative ability of Tribes to assume the total responsibility of a program prior to contracting. Once this evaluation process is totally functional it might be expected, at least initially, that the number of contracts entered into would decline until it could be determined that those responsible for the daily operations of the contracted program are fully trained and capable of continuing the services at the established level.

Contracting out has resulted in substantial reductions in the BIA work force in the past and additional reductions may eventually occur. However, these reductions are not one-for-one and will not be one-for-one in the future. This is one of the major problems in effectively implementing P.L. 93-638. There simply is not enough money available to provide Tribes the funds they need to effectively contract programs and at the same time provide BIA with the funds they need to deliver the same programs to Tribes who do not choose to contract.

III. RESPONSE TO RECOMMENDATIONS

--Ensuring that Tribes have a full understanding of their options under Title I.

Authors of the report gave very little consideration to the massive effort made by the BIA to acquaint the Tribes with the provisions of the Act, both before and after the regulations were written for its implementation. Particularly the training sessions in the areas by Washington Office Staff after publication of the regulations and the subsequent sessions conducted by Area Staff at agency locations. Processing training sessions, following tribal elections resulting in changes in administrations, may be necessary. This process is both time consuming and expensive.

Mr. Henry Pacheco, Page 5

--Assisting Tribes in obtaining the information needed for fully informed decisions and/or plans covering the assumptions of programs or program segments. Specifically, the agencies should act upon their own survey results and provide the identified training and technical assistance needed by the Tribes.

With regard to responding to a specific request for contracting, we concurred and strongly support this concept. Admittedly, we are not fully operational in this area. As a step in this direction, the Assistant Secretary--Indian Affairs has taken a position which will strengthen the Indian Self-Determination policy. In a letter to Tribal Chairmen dated December 6, 1977, he states:

... we will strengthen Tribal Governments and the Bureau of Indian Affairs capacity to fulfill our obligations to the American Indian Tribes and Alaska Native groups. This will demand revisions of existing management practices and policies of the Bureau. You have repeatedly expressed your concern that the present budget system does not adequately reflect Tribal priorities, nor does it provide for operational flexibility or for fiscal accountability. Therefore, I am proposing a new budget planning procedure for the Bureau which substantially revises the Bureau's budget formulation process to meet your concerns.

I believe your participation in the budget process is critical and therefore the new system has been designed to reflect your individual Tribal priorities. The new budget structure is built on a location basis rather than the current program basis of the current system. Responsibility for budgeting of annual operations at the tribal agency level will be on a government-to-government basis so that you can make budget decisions that directly affect the welfare of your Tribal members. The location basis will give Congress and other reviewing offices an opportunity for the first time to consider Tribal needs and priorities individually rather than on a Bureau-wide basis.

This budget proposal is also consistent with the Presidential initiative of incorporating the Zero-Base Budgeting (ZBB) concept throughout the Federal Government.

The draft proposal revising the Bureau's budget formulation process is enclosed for your review and comments. I want to emphasize that this draft represents a proposal, and the final product will require approval by the Department of the Interior and the Office of Management and Budget. Your analysis and recommendations will, therefore, be vital to our success in implementing the proposed process for the fiscal year 1980 budget formulation. . . .

Mr. Henry Fackweh, Page 6

- Helping the tribe to assess its capabilities to create and manage the contractable programs.
- Guiding the tribe in determining how to acquire the skills or resources needed to contract for a particular program or program segment, including for the training and assistance available from the agencies.

We agree with these concepts. You may be assured that providing this type of assistance is one which is the subject of considerable concern to the Bureau and is receiving priority consideration in conjunction with restructuring the Bureau. As was noted earlier, however, these are additional responsibilities mandated by Congress to be accomplished without increased staff support. Admittedly, such remains to be accomplished in these areas in conjunction with responding to tribal initiatives.

- Provision of a description of the programs and program portions available for contracting under Title I.

Because the Act provides that Tribes may "re-design" or contract for program portions, the possibilities for "what may be contracted" are endless. Expenditure of the limited resources now available to engage in such an effort would not be cost effective. The Bureau must, therefore, respond to specific requests from the Tribes. The request initiative rests with the Tribes.

- Provision of a listing or description of the services delivered to the Tribe by the agencies.

We concur.

We appreciate the opportunity to respond to comments made in the report.

Sincerely,

 Acting Assistant Secretary
 Policy, Budget and Administration

Mr. Henry Fackner, Page 6

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 Acting Assistant Secretary
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