

Department of the Interior Office of Inspector General



**Zia Day School
New Mexico**



**Many Farms High School
Arizona**

School Construction Program

Bureau of Indian Affairs

**Report No. W-FL-BIA-0047-2002
February 2004**



United States Department of the Interior

Office of Inspector General
Western Region
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February 24, 2004
7430

Memorandum

To: Assistant Secretary for Indian Affairs

From: Michael P. Colombo
Regional Audit Manager 

Subject: Final Report on School Construction Program, Bureau of Indian Affairs
(Report No. W-FL-BIA-0047-2002)

The attached report presents the results of our review of the Bureau of Indian Affairs' (BIA) school construction program. We concluded that the program has improved educational opportunities for Native American students by replacing obsolete and unsafe buildings with modern facilities. We also commend BIA for the actions taken to implement its May 1999 *Plan to Ensure the Integrity of School Construction Grants*, submitted to Congress. Opportunities still exist, however, for BIA to improve controls over its school construction program in the areas of student safety and program performance. Specifically:

- ❖ We were disturbed to find that no one in BIA ensures that school buildings are not occupied until identified safety deficiencies are corrected and BIA has inspected and certified the facilities for occupancy. Ten of the schools we reviewed were occupied before approval. The unauthorized use of these buildings has subjected students to undue risk.
- ❖ Applying current school construction grant requirements to Public Law 93-638 self-determination contracts and self-governance compacts would facilitate better control of program funds, limit risk, and encourage greater program accountability.
- ❖ Establishing a project tracking system and adequate performance goals and indicators would help reduce delays in project completion. Thirty percent of the schools we reviewed exceeded BIA's goal of completing design and construction within 3 years.

We made nine recommendations that, if implemented, should improve BIA's management of its school construction program and increase the benefits of the program to the Native American community. Given the increased funding and attention to the

program by Interior, the Administration, and Congress, these improvements are critical for achieving effective program results.

We did not receive an official response to the draft report, despite an extension to of the response due date to February 18, 2004. Accordingly, all nine recommendations are considered unresolved. The legislation, as amended, creating the Office of Inspector General requires that we report to Congress semiannually on all audit reports issued, the monetary effect of audit findings (see Appendix 1), actions taken to implement our audit recommendations, and recommendations that have not been implemented.

Please provide a written response to this report by March 26, 2004. The response should supply the information requested in Appendix 5. We appreciate the cooperation shown by BIA staff during our review. If you have any questions regarding this report, please call me at (916) 978-5653.

Attachment

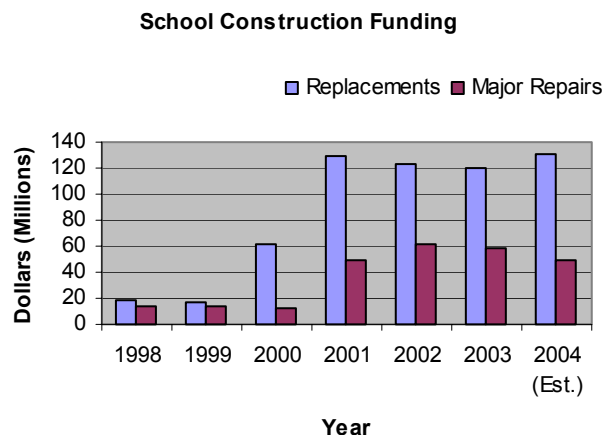
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Executive Summary

Improvements Needed to Ensure Student Safety and Program Performance

The Bureau of Indian Affairs (BIA) funds or operates 187 schools in 23 states. The schools have a combined enrollment of over 48,000 Native American students and include the full range of grades from kindergarten to high school. Many of the schools, however, were built in the 1940s and 1950s and have been poorly maintained, with inadequate roofing and floors, plumbing, heating, and lighting. They are also obsolete and lack critical capabilities such as science and computer labs.

To address the problem of inadequate facilities, Congress and the Administration increased funding to replace and repair Native American schools. This increased funding provides for about 6 replacement and 10 major repair projects each year.



BIA's school construction program has proven beneficial to Native American communities and students. Six of the

seven replacement projects funded from fiscal years 1998 through 2000 have been completed. An example is the Sac & Fox Settlement School in Tama, Iowa. The school is state of the art, with athletic fields, computer stations, library, and facilities for activities to preserve Native American cultural heritage.



Photo Courtesy of the Sac & Fox Tribe

In 1999, as a result of our audit of construction grants awarded to the Lac Courte Oreilles Ojibwe School, the House Interior Appropriations Subcommittee expressed concern over BIA's monitoring of school construction grant funds and asked BIA to develop a plan of action to strengthen monitoring. BIA subsequently submitted to Congress its May 1999 *Plan to Ensure the Integrity of School Construction Grants*.

We conducted this review to follow up on BIA's implementation of the May 1999 *Plan*. We concluded that while BIA, for the most part, has implemented the *Plan* and used Congressionally appropriated funds to replace and repair schools, it could improve controls over its school construction

program in the areas of student safety and program performance.

Student Safety

No one in BIA is responsible for ensuring that school buildings are not occupied until BIA verifies that the buildings meet all applicable codes and standards. Ten of the schools reviewed were occupied before identified safety deficiencies were corrected and the buildings approved for occupancy.

Program Performance

BIA could improve program performance by:

- ❖ Applying guidance developed for grants in its May 1999 *Plan* to construction projects awarded under Public Law 93-638 contracts and self-governance compacts. This would help limit advance or lump-sum payments that exceeded project construction needs.
- ❖ Establishing a system to better monitor project progress and avoid delays in completion. Sixteen of the projects we reviewed exceeded BIA's goal to finish design and construction within 3 years; 7 projects took more than 5 years to complete.
- ❖ Establishing systems to reconcile appropriations with individual project obligations and determine the use of project savings. We identified \$4.2 million in funds that could be put to better use: the \$2.1 million difference between funds appropriated and awarded for two schools and the \$2.1 million of

savings available as a result of replacement schools costing less than the funds awarded (see Appendix 1).

- ❖ Establishing program goals and measurable performance indicators to assess BIA's ability to bring projects to completion.
- ❖ Conducting comprehensive workload analyses to determine if current staffing is sufficient to monitor the school construction program.

We made nine recommendations that, if implemented, should improve BIA's efficiency in managing its school construction program. In effect, improved efficiencies translate into more money for school construction and better conditions for Native American students. Improved efficiencies would also help BIA balance respect for tribal self-determination with its responsibility for overseeing and administering the school construction program, for which BIA is ultimately accountable.

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Abbreviations	
BIA	Bureau of Indian Affairs
BIAM	Bureau of Indian Affairs Manual
CFR	Code of Federal Regulations
DSRM	Division of Safety and Risk Management
GAO	General Accounting Office
GOTR.....	Grants Officer Technical Representative
GPRA	Government Performance and Results Act
OCR	Organizational Capacity Review
OFMC	Office of Facilities Management and Construction
OIEP	Office of Indian Education Programs
OIG	Office of Inspector General
OMB	Office of Management and Budget
USC	United States Code

BIA's School Construction Program

Over 48,000 Native American students attend 187 BIA-operated or funded schools in 23 states. These facilities include day and boarding schools and dormitories.

Over the years, the poor condition of these schools has become an issue of national concern. Several BIA and General Accounting Office (GAO) reports have documented decaying and unsuitable buildings that not only impede learning, but threaten the health and safety of Native American students.

Improving the condition of BIA schools has been a priority of the Department of the Interior, Administration, and Congress. In its fiscal year 2004 budget, the Administration requested about \$181 million for school replacement and major repair projects.

Over the past 6 years, Congress has appropriated \$471 million for construction projects to replace schools and \$209 million to repair schools, as shown in the following table.

Fiscal Year	Replacement School Construction Projects (millions)	Major Facility, Improvement and Repair Projects (millions)
1998	\$19.2	\$13.7
1999	17.4	14.1
2000	61.8	12.1
2001	129.3	49.0
2002	122.8	61.1
2003	120.2	59.1
Totals	\$470.7	\$209.1

BIA replaces and repairs schools under its school construction program, which was established to provide safe, functional, economical, and energy-efficient facilities for Native American students.

The school construction program consists of two programs: the replacement school construction program and the major facilities improvement and repair program.

- ❖ Under the replacement school construction program, all or major portions of schools are replaced when repair is not economically feasible. Tribes and schools apply for construction funding, and BIA ranks the projects to receive available funding.
- ❖ The major facilities improvement and repair program provides funds to correct critical health and safety hazards, such as fire safety code violations, structurally unsound buildings, leaking roofs, deteriorated interiors, unhealthy restrooms, and hazardous waste. BIA selects projects using its facilities management information system.

BIA identifies school replacement and major repair projects during its budget formulation process. Congress reviews the annual Administration budget request and appropriates funds for specific projects. Once funds are appropriated, tribes can construct projects under Public

Law 93-638 self-determination contracts,¹ Public Law 100-297 grants,² or self-governance compacts.³

If the tribes choose not to do the work themselves, BIA enters into either commercial contracts or interagency agreements to construct the projects.

BIA's Office of Facilities Management and Construction (OFMC) negotiates the award of Public Law 93-638 contracts, commercial contracts, and interagency agreements⁴ and enforces the terms of the awards on behalf of the government.

BIA's Office of Indian Education Programs (OIEP) awards and enforces the terms of Public Law 100-297 construction grants,⁵ and BIA's Office of Self-

Governance is responsible for projects initiated under self-governance compacts.

OFMC project managers serve as technical representatives for contracting or grants officers and provide technical assistance on all construction projects, regardless of the funding mechanism. The project manager is key in OFMC's ability to meet its overall responsibility of ensuring that projects are completed as intended.

As technical representatives, project managers monitor architectural, engineering, and construction aspects of projects by reviewing design documents, periodically visiting construction sites, and reviewing financial and progress reports.

Project managers also coordinate with BIA's Division of Safety and Risk Management (DSRM) on safety issues and with the tribes constructing the projects on taking any required corrective actions. DSRM reviews and approves construction plans and specifications⁶ prior to construction and performs final safety inspections upon completion of construction.

Although tribes and schools are responsible for the construction of school projects via grants, contracts, or compacts, BIA remains accountable for the federal funds appropriated and retains overall responsibility to ensure that the projects are completed as intended.

In 1999, we reported on school construction grants awarded to the Lac Courte Oreilles Ojibwe School. Our report concluded that School officials had

¹ Public Law 93-638, the Indian Self-Determination and Education Assistance Act of 1975 (25 USC 450 et seq.), allows tribes to contract for programs and services previously conducted by the federal government.

² Public Law 100-297, the Tribally Controlled Schools Act of 1988 (25 USC 2501 et seq.), allows tribal organizations operating tribally controlled schools to use grants rather than self-determination contracts. In 1990, Public Law 101-301 amended the Act to allow tribal grant schools to perform education facility construction activities.

³ Public Law 103-413, the Indian Self-Determination Act Amendments of 1994 (25 USC 458aa), authorized a self-governance program allowing tribes to plan, conduct, redesign, and administer federal programs and services that best meet their needs. Annual funding agreements between participating tribes and BIA transfer control over funding and decision-making to the tribes.

⁴ Negotiations include payment method, indirect costs, equipment, property, codes and standards, bonding, and procurement.

⁵ OIEP's Director identified eight education line officers as construction grant awarding officers who are responsible for construction grants at BIA-funded schools within defined regional areas.

⁶ Construction plans are architectural drawings of the project; specifications are descriptions of specific project requirements.

not complied with the intended purpose of the grants and that BIA had not adequately monitored the use of grant funds.

As a result of our audit, the House Interior Appropriations Subcommittee requested BIA to develop a plan of action to strengthen its monitoring of the school construction grants program. In response, BIA developed and submitted to Congress a May 1999 *Plan to Ensure the Integrity of School Construction Grants*, in which BIA agreed to take 10 actions to improve its oversight of federal funds appropriated for school construction.

Audit Objectives

Our objective was to follow up on BIA's implementation of the May 1999 *Plan*. In addition, we wanted to determine whether (1) BIA had adequate systems in place to ensure that funds appropriated by Congress for replacement and repair projects were used for their intended purposes, (2) BIA monitored projects to ensure completion in a timely manner, and (3) schools were safe for students.

We reviewed the 47 school construction projects on OFMC's June 2002 status report that were shown as being in the construction stage after May 1999. These 47 projects are detailed in Appendix 2.⁷ The scope and methodology of our review, including the sites visited and prior audit reports reviewed, are detailed in Appendix 3.

⁷ Our review of the 47 projects found that 6 were still in the design phase and 2 were completed prior to May 1999.

School Construction Program Has Proven Beneficial but Improvements Needed to Ensure the Safety of Native American Students and Improve Program Performance

Benefits of Program

BIA's school construction program has provided improved educational opportunities and safer schools to Native American students by replacing obsolete and unsafe buildings with modern facilities (see photos). Increased funding for fiscal years 2001 to 2003 allowed for starting about 6 replacement projects and 10 major repair projects each year. Six of the seven replacement school projects funded from fiscal year 1998 to 2000 have been completed. In addition, 17 of 23 major facility improvement and repair projects funded during this period were completed.

BIA has also taken steps to improve its school construction program by beginning to implement the actions proposed in its May 1999 *Plan to Ensure the Integrity of School Construction Grants*, submitted to Congress (see Appendix 4).⁸

Improvements include contracting with private firms to conduct evaluations of grantee management systems before awarding grants and limiting advance payments based on the grantee's risk rating.



Shiprock Alternative School, New Mexico
OIG Photo



Seba Dalkai Boarding School, Arizona
OIG Photo



Fond du Lac Ojibwe School, Minnesota
OIG Photo

⁸ We found that BIA has implemented or partially implemented 9 of 10 action items included in the Plan.

Opportunities for Improvement

Notwithstanding the benefits of the school construction program and the actions taken by BIA to implement its May 1999 *Plan*, opportunities still exist for improvement. Specifically, the actions detailed in the following paragraphs should assist BIA in ensuring the safety of Native American students and improving the performance of its school construction program. Our recommendations in these areas, if implemented, should increase the benefits of the overall program.

Safety of Students. Under 25 USC 2005(a), all BIA school facilities are to be brought into compliance with applicable health and safety standards and the Americans with Disabilities Act (42 USC 12101 et seq.). The BIA Manual lays out requirements for ensuring the construction of safe schools and the safety of Native American students.

Key aspects of ensuring safety are BIA Manual requirements that DSRM:

- ❖ Inspect newly built facilities before they are occupied to verify that they meet applicable codes and standards (25 BIAM Supplement 18 1.5B).
- ❖ Approve construction plans and specifications before projects are advertised for bid (25 BIAM Supplement 18 1.5A).

Schools Occupied Prior to DSRM Approval. We were disturbed to find that no one in BIA ensures that school buildings are not occupied until DSRM verifies that the buildings meet all applicable codes and standards, as

required by the BIA Manual. Of the 20 schools⁹ we reviewed, 10 were occupied prior to DSRM approval, even though DSRM identified safety deficiencies that had to be corrected.¹⁰ Five of the buildings were occupied before DSRM issued a certificate of occupancy,¹¹ two were operated by BIA, and three were operated by a tribal organization under a Public Law 100-297 grant.

The unauthorized use of these buildings has subjected students to undue risk. For example:

- ❖ Regional safety officers, acting on DSRM's behalf, inspected the Many Farms High School student activity center in June 2001 and again in October 2001. Among the deficiencies noted were an inoperative fire-alarm system and a fire door that was missing a closing device. This BIA-operated facility has been in use for over 1 year without a certificate of occupancy.

⁹ Of the 47 construction projects listed on OFMC's June 2002 status report, we reviewed the 19 that were completed and ready for inspection (we also reviewed the Riverside Indian School project because it was occupied, although it had not yet been inspected for occupancy). Fifteen of the projects were not finished, and another 13 were utility system renovations or installations that did not require certificates of occupancy.

¹⁰ DSRM performed safety inspections of 8 of the 10 schools; DSRM was not asked to do a final inspection on the other two projects.

¹¹ DSRM began issuing certificates of occupancy in August 2000 to certify that school buildings were ready for use. Certificates were based on the Uniform Building Code, which is a model safety code used by most state and local governments. Five buildings were occupied before DSRM began issuing certificates of occupancy, and DSRM did not approve their use or follow up on the status of the deficiencies identified.

- ❖ The tribally operated Conehatta Elementary School was used for over a year and a half before DSRM issued a certificate of occupancy in March 2003. A DSRM inspection in June 2002 revealed numerous deficiencies related to accessibility for persons with disabilities and the fire-alarm system. The inspector found missing fire-alarm manual pull stations and was unable to verify that the fire sprinkler system was built according to the BIA-required standard.

There appeared to be confusion on who is responsible for enforcing safety codes. The BIA Manual (25 BIAM Supplement 18 1.1D), states that DSRM is responsible for enforcing BIA's Safety and Health Inspection Program, and that individual OIEP education line officers are responsible for operating schools and contracted programs in compliance with applicable safety and health codes and standards. A DSRM official stated, however, that OIEP was responsible for telling school officials not to move into unapproved buildings and would be liable in case anything happened as a result of unauthorized occupancy. An OIEP official, on the other hand, stated DSRM was responsible and that he did not know when the schools we reviewed were first occupied.

We believe it is incumbent upon BIA to assure that buildings are not occupied until identified safety deficiencies are abated. Accordingly, BIA must assign responsibility for ensuring that buildings lacking DSRM approval are not used. BIA must also ensure that OIEP education line officers and responsible BIA and tribal school personnel are aware of the requirements for DSRM approval before buildings are occupied.

Start of Construction Before DSRM Approval of Construction Plans and Specifications. Another factor for ensuring safety is DSRM's approval of construction plans and specifications before projects are advertised for bid.¹² Such assurance requires close coordination between DSRM and OFMC project managers. Our review of 44 projects,¹³ however, revealed that such coordination was not always forthcoming, with the result that safety standards were sometimes overlooked during project construction. For example:

- ❖ OFMC project managers did not request DSRM reviews for 13 projects, even though such reviews are required by the BIA Manual.
- ❖ DSRM did not approve 27 of 31 projects before the start of construction, as required by the BIA Manual.

The lack of DSRM approval before construction occurred primarily because of DSRM's agreement with OFMC to review construction documents only once. If DSRM identifies deficiencies, it does not approve the documents, but provides comments on needed corrections to the project manager. The project manager does not resubmit the documents to DSRM for approval, but instead is to ensure that the designer corrects the

¹² This practice is similar to the permitting process used by most municipal governments in that construction cannot start until the local building official issues a permit.

¹³ Of the 47 construction projects on OFMC's June 2002 status report, six projects were still in design, resulting in 41 projects for which construction plans and specifications should have been reviewed and approved. In addition, construction had begun on three projects that were still in the design phase.

deficiencies. However, because construction plans and specifications were not resubmitted for approval, deficiencies for eight projects were not corrected, and DSRM found the same deficiencies in its final safety inspections.

Program Performance. We believe that BIA could strengthen controls over its school construction program by:

- ❖ Applying the guidance in its May 1999 *Plan* to projects constructed under Public Law 93-638 self-determination contracts and self-governance compacts.
- ❖ Fully adhering to guidance in the May 1999 *Plan* on advances under Public Law 100-297 grants.
- ❖ Establishing systems or policies to monitor construction projects, track appropriations, and address project savings.
- ❖ Setting program goals and measurable performance indicators.
- ❖ Reviewing staffing levels.

Applying Guidance in May 1999 *Plan* to Contracts and Compacts. The actions outlined in the May 1999 *Plan* have improved BIA's ability to effectively monitor school construction projects awarded under Public Law 100-297 grants. For example, the *Plan* requires that BIA evaluate grantee management systems prior to grant award, limit advance payments based on the risk rating assigned to the grantee, and inform the grantee of conditions that could lead to suspension or termination of the grant.

We believe that BIA could strengthen its monitoring of construction projects awarded under Public Law 93-638 contracts and self-governance compacts by applying, to the extent possible, the standards outlined in the May 1999 *Plan* for grants. For example, at the present time, advance payments under Public Law 93-638 contracts do not require any evaluation of management systems and are based solely on negotiations between OFMC and the tribes. We believe that an evaluation of these management systems, similar in nature to the Organizational Capacity Reviews (OCR)¹⁴ used for Public Law 100-297 grants, would prove beneficial in negotiating the amount of advance payments under contracts and compacts.

We noted that the entire construction phase contract amount was advanced in one lump-sum payment in four of the seven Public Law 93-638 contracts reviewed. These advances were made without any evaluation of tribal management systems and were far in excess of current needs, as follows:

- ❖ The Navajo Nation received about \$12.8 million for the Many Farms High School project in February 1999 although construction did not begin until September 1999, and construction was not completed until October 2001. The Nation also received about \$37.2 million for the Tuba City Boarding School project in January 2002 even though construction was still ongoing as of February 2003.

¹⁴ An OCR is an evaluation of financial management, procurement, personnel, and property management systems.

- ❖ The Lower Brule Sioux Tribe received about \$2.4 million in November 1998 for the construction portion of the Lower Brule Elementary School project. However, as of January 2003, the design phase of the project had not yet been completed.
- ❖ The Hopi Tribe received about \$18.8 million for the Polacca Day School project in April 2002 even though construction had not yet commenced at the completion of our fieldwork.

While lump-sum payments are allowed by Public Law 93-638, we did not find any records in the project files of negotiations or justifications as to exactly why these amounts were advanced. In our opinion, providing lump-sum advances leaves OFMC with little leverage in obtaining delinquent performance or financial reports required by the contract. Further, lump-sum advances can pose an inherent risk of loss or unauthorized use.

Fully Adhering to Guidance in May 1999 Plan. The May 1999 *Plan* limits the amount of funds that can be advanced to a maximum of 75 percent of the award amount or \$5 million, whichever is less.¹⁵ In our review of six Public Law 100-297 grants, however, we found that BIA did not adhere to the \$5 million cap for advance payments in three grant agreements, as follows:

	Funds Advanced (millions)	Total Grant (millions)
Santa Fe Indian School (Phase I)	\$17.4	\$23.2
Second Mesa Day School	14.6	19.8
Shiprock Alternative School	13.0	26.1

We also found that the \$5 million cap had been removed from BIA's grant handbook *Implementation of P.L. 100-297 Construction Grants Exceeding \$100,000* when the handbook was amended in April 2001. We believe that BIA should either comply with the \$5 million cap or notify Congress of the basis for this change.

Establishing Systems or Policies. BIA lacked systems or policies to (1) effectively monitor construction projects and address delays, (2) reconcile appropriations with individual project obligations, and (3) determine the use of project savings.

We identified \$4.2 million in funds that could be put to better use: the \$2.1 million difference between funds appropriated and awarded for two schools and the \$2.1 million difference between funds awarded and spent for two schools (see Appendix 1).

Monitoring Construction Projects. BIA did not have a system to track project progress and therefore could not effectively monitor the status of construction projects and address delays in project completion, specifically delays in reviewing and approving design documents. Of the 47 construction

¹⁵ This percentage is based on the results of an OCR. Grantees with low risk ratings can receive a 75 percent advance payment, while grantees with higher risk ratings receive smaller advance payments.

projects we reviewed, 16 projects,¹⁶ or about 30 percent, exceeded BIA's goal to finish design and construction within 3 years. (Information on the individual projects reviewed is presented in Appendix 2.)

The Chief of OFMC's Program, Planning and Implementation Division acknowledged the problem and told us that he was considering establishing a system to "log in" design documents upon receipt and track the status of each project. He also stated that he was reviewing the current staffing and the number of ongoing projects.

Most of the delays identified in project completion occurred during the design phase. Under BIA's 3-year project completion goal, design is to be completed within 1 year. For 19 of the projects reviewed, however, the design phase ranged from 1-1/2 to 7 years.

OFMC project managers review and approve designs submitted by architect and engineering firms at several stages during project development, as follows:

Stages of Design	Estimated Percent Design Is Complete
Schematic	20
Design Development	40
Preliminary Construction Plans & Specifications	70
Completed Construction Plans & Specifications	99*
Final Construction Plans & Specifications	100*

*DSRM also reviews and approves designs at either the 99 or 100 percent stage.

We found, for example, that design work for the Sac & Fox K-8 School project was begun in 1993, but was not completed until 1999. The Sac & Fox Tribe's architect and engineering firm told us that OFMC delays in reviewing and approving designs were a significant problem in completing the project.

Tribal officials and a tribal representative involved with the Many Farms High School project expressed similar concerns, stating that OFMC's review and approval of each design submittal for the Many Farms High School took from 6 to 12 months, while private architectural firm reviews averaged 30 days.

DSRM also did not always perform its design reviews in a timely manner. DSRM estimated it should complete the construction plans and specification reviews within 15 working days. Based on our review, however, we found that 13 of 31 plans reviewed were not finished within this time frame. For example, review of the Zia Day School construction plans and specifications took over 2 months.

We believe that the lack of a system to track project progress is a serious

¹⁶ Of the 16 projects, 13 were completed, and 3 were in the design phase. For the 13 projects, completion times ranged from about 3½ years to a little over 9 years, with 7 projects having a total elapsed completion time of more than 5 years. The three projects in the design phase had been in progress from about 3 ½ years to 5 ½ years.

impediment in ensuring project performance and agree with OFMC's Chief of Program, Planning and Implementation that such a system should be established.

To meet its oversight responsibilities and accountability for the overall school construction program, BIA should use this system to report to Congress on the reasons for delays in project completion and provide options for resolution. We acknowledge that there are factors, such as tribal bureaucracy, delays in choice of location, and timely appropriations, outside of BIA's ability to ensure project completion. We believe, however, that BIA, in keeping with its accountability for federal funds, should report these factors to Congress.

Reconciling Appropriations. Of 11 replacement school construction projects reviewed, we identified about \$4.9 million of appropriated funds that were still available for expenditure. OFMC budget officials, however, did not know these funds were available because they did not reconcile project appropriations with individual project obligations.¹⁷ The \$4.9 million comprised the following replacement school projects:

Contract/ Grant	(millions)		
	Approp.	Award	Difference
Sac & Fox School	\$10.3	\$ 9.6	\$.7
Zia Day School	9.0	7.6	1.4
Tuba City Boarding School	38.5	37.2	1.3
Polacca Day School	19.9	18.8	1.1
Seba Dalkai School	20.5	20.1	.4
Total			\$4.9

Both the Sac & Fox and Zia projects were completed within the awarded amounts. OFMC's Budget Officer told us that he was not aware of the differences between the amounts appropriated and the amounts awarded for these two projects. The differences for the Tuba City, Polacca, and Seba Dalkai projects were primarily the result of OFMC retaining 50 percent of the estimated contingency funds. However, OFMC budget records did not account for these differences.

We believe the appropriated funds remaining from the Sac & Fox and the Zia projects should have been formally reprogrammed¹⁸ for use on other school construction projects in BIA's budget justifications.

We also identified an instance in which OFMC awarded funds for a school construction project that was not included in BIA's budget justifications. OFMC awarded two Public Law 93-638 contracts

¹⁷ An appropriation is an authorization by an act of Congress that permits federal agencies to incur obligations and to make payments out of the U.S. Treasury for specified purposes. Obligations represent orders placed for goods or services, contracts awarded, and similar transactions.

¹⁸ Under appropriation law, construction funds remain available until expended. BIA policy requires that unused project funds be reprogrammed for other uses. BIA can internally reprogram funds up to \$500,000, but must notify the House and Senate Committees on Appropriations of the proposed reprogramming if funds exceed \$500,000.

totaling about \$2.8 million to the Turtle Mountain Band of Chippewa Indians to pay for the design and construction of a structural repair project at the Dunseith School. OFMC officials told us that the repair project was an emergency and that funding had to be obtained from any available source.¹⁹ Although we recognize the need for emergency funding, OFMC officials did not obtain reprogramming authority or Congressional approval for the use of school construction funds or document what projects in the budget justifications were not funded when the \$2.8 million was diverted to the Turtle Mountain Band.

Using Project Savings. BIA does not have a policy for using excess project funds or “savings.” We identified about \$2.1 million of savings that remained available as a result of replacement schools costing less than the funds awarded. Although the two schools have been completed for more than a year, OFMC and the Tribes have not agreed on the use of the money, as follows:

- ❖ In December 2000, OFMC awarded the Pueblo of Zia a \$7.6 million contract to construct a replacement school. The Pueblo spent about \$6.1 million, resulting in project savings of about \$1.5 million. The school was completed in July 2002. In December 2002, OFMC requested that the Pueblo resolve how the \$1.5 million of project savings would be used. As of April 2003, OFMC and

the Pueblo had not agreed on the use of the savings.

- ❖ The Office of Self-Governance awarded the Fond du Lac Band of Lake Superior Chippewa \$14.3 million for a replacement school under the Band’s fiscal year 2000 funding agreement. The Band spent \$13.7 million for construction, resulting in project savings of about \$600,000. The school was completed in January 2002. A Band official told us that the Band had informally agreed with BIA on the use of about half of the savings and would find ways to spend the remaining savings.

Under 25 USC 450e-2, the Secretary of the Interior, after consultation with the tribes, determines the use of excess funds. OFMC’s Budget Officer told us that the first time savings had occurred was on the Zia Day School project and that OFMC had not established any formal policies or procedures to address project savings.

We believe BIA should establish a policy on how long project savings should be allowed to remain with the tribes. Savings become subject to risk of not being used for project purposes the longer they are held by the tribes. A reasonable time frame, such as 1 year from the date of the certificate of occupancy, should be established to allow the contracting or grants officers to consult with the tribes on how to use the savings for project purposes. If the savings are not used within this time frame, BIA should issue bills for collection, with the savings being returned for use on other school replacement or repair projects.

¹⁹ The design and construction contracts indicated that the project was funded with replacement school construction funds (\$2,349,000); facility, improvement and repair funds (\$265,000); and advance planning and design funds (\$235,000).

Setting Program Goals and Measurable Performance Indicators. BIA has not established annual performance goals for its school construction program against which actual achievement can be compared. The two goals for the program in BIA's fiscal year 2003 performance plan do not measure outcomes, such as the number of projects completed, but rather address only the initiation of projects.

To comply with the Government Performance and Results Act (GPRA),²⁰ agencies must establish objectives with measurable performance indicators of program results and report annually on how well these goals are met.²¹ According to Office of Management and Budget (OMB) Circular A-11, performance goals can be measured either by outcome (a description of the intended result occurring from a program activity) or by output (a description of the level of activity that will be produced over a period of time). In our opinion, BIA's performance goals do not comply with OMB Circular A-11.

In conjunction with the Department's draft strategic plan for fiscal years 2003 to 2008, BIA has recognized the need for better performance measures. BIA plans to request assistance from an outside contractor in developing a long-term operating plan and the framework for an annual plan that will include individual

increments to be achieved in compliance with the operating plan. We believe the number of replacement and major repair projects to be completed each year should be included as one of the increments to be achieved.

Reviewing Staffing Levels. OFMC and DSRM officials stated that present staffing levels were insufficient to effectively monitor performance of the school construction program. We noted that from fiscal years 1998 to 2003, program funding increased about 445 percent. During that same period, however, OFMC funding to manage the program increased only about 10 percent, and DSRM funding increased only about 13 percent.

The former chief of OFMC's Division of Program, Planning and Implementation told us that because of the lack of staff, OFMC had entered into interagency agreements with other federal agencies to perform the project design and/or construction functions. He also told us, however, that these agreements only marginally lessened the involvement and workload of the project managers.

The DSRM chief told us that staffing was the primary reason why DSRM reviewed construction documents only once. Since fiscal year 1999, DSRM has requested, but not received, additional funding for two new plan review specialist positions to help address its increased workload. In December 2002, DSRM proposed to OFMC a "permitting" process that would give DSRM the funding needed to contract out design reviews. These costs would be charged to OFMC in accordance with a proposed building permit fee schedule. OFMC has not agreed to this proposal.

²⁰ 5 USC 306 and 31 USC 1115 & 1116.

²¹ According to a February 24, 2003 *Federal Register* notice, the Department of the Interior's draft 2004 strategic plan for fiscal years 2003 to 2008 will stand as the GPRA document for the entire Department. The plan will not include goals and measures for every aspect of every program. Rather, annual or long-term operating plans or specific field planning documents for individual bureaus should contain greater specificity for discrete program elements.

DSRM reviews may take even longer in the future. A December 2002 meeting record indicated that the backlog of design documents to be reviewed was 3 to 4 weeks. In the document, the DSRM chief warned that future reviews may take as long as 3 to 4 months to complete because of staffing shortages.

While OFMC and DSRM funding has not kept pace with the school construction program, we do not know whether current staffing is appropriate to meet workload demands without comprehensive workload analyses.

Conclusion. Although tribes and schools are typically responsible for the construction of school projects via grants or contracts, BIA retains overall responsibility to ensure that the projects are completed as intended, while at the same time honoring tribal preferences to the greatest extent feasible.

The necessity of striking this balance was underscored in 1999 by the Assistant Secretary for Indian Affairs. The Assistant Secretary stated:

Somehow we have to get ourselves back in a proper course, where there is a proper respect both for the prerogatives of the Tribe, which I believe in very deeply, but also for the fact we are accountable for public money.

We believe that making the improvements discussed in this report would significantly improve BIA's management of its school construction program. Given the increased funding and attention on the program by the Department, Administration, and Congress, these improvements are critical in achieving effective program results. In our opinion, improved program efficiencies translate

into more money for school construction projects and a better learning environment for Native American students. The improvements would also assist BIA in balancing respect for tribal self-determination with its own responsibilities in overseeing and administering the school construction program, for which it is ultimately accountable.

Recommendations

We recommend that BIA:

1. Fully implement the May 1999 *"Plan to Ensure the Integrity of School Construction Grants."*
2. Ensure that BIA safety requirements are followed, including approval of construction plans and specifications prior to construction and final inspection and certification before new buildings are occupied. This should include assigning responsibility to ensure that buildings are not occupied before safety deficiencies are corrected.
3. Apply, as applicable, the guidance in the May 1999 *Plan* to projects constructed under Public Law 93-638 contracts and self-governance compacts; for example, requiring that tribal or school management systems be evaluated before negotiating payment advances.
4. Adhere to the May 1999 *Plan* submitted to Congress and require that the \$5 million advance payment limitation be followed or advise the House Appropriations Committee of the basis for the payment cap removal.
5. Implement a project tracking system to summarize milestone progress and allow for project monitoring from start

to completion to meet BIA's 3-year goal. This should incorporate detailed reporting to Congress on all projects experiencing major delays.

6. Maintain subsidiary records of available construction funding on a project-by-project basis to identify unused appropriated funds, adhere to BIA reprogramming policy for the use of these funds (including the Sac & Fox, Zia Day, and Dunseith Schools), and expand the policy to specify that the funds should be used for school construction projects identified in the budget justifications.

7. Develop a policy that establishes time frames for consulting with tribes and determining how project savings are to be used.

8. Establish performance goals for the school construction program to measure the number of replacement and major repair projects to be completed each year.

9. Conduct comprehensive workload analyses to determine OFMC and DSRM staffing needed to effectively manage the school construction program.

Appendix 1

Classification of Monetary Amounts

Finding Areas		Funds To Be Put to Better Use (Millions)
Reconciling Appropriations Difference Between Amount Appropriated and Contract/Grant Amounts awarded for construction of Sac & Fox and Zia Day Schools		\$2.1
Project Savings Difference Between Amount Awarded and Spent for Construction of the Pueblo of Zia Day School and the Fond du Lac Band of Lake Superior Chippewa School.		<u>2.1</u> <u>\$4.2</u>

Appendix 2

Construction Projects Reviewed

School Project	Start of Design	Design Completion	Elapsed Time ¹ (years)	Start of Construction	Construction Completion ²	Elapsed Time ¹ (years)	Total Elapsed Time ¹ (years)
Replacement School Construction							
1. Chief Leschi	Jun-93	Jun-95	2.1	May-95	Nov-96	1.5	3.4
2. Conehatta Elementary School	Jan-97	Jul-00	3.6	Dec-00	Jul-01	0.5	4.5
3. Fond du Lac	Jun-96	Jan-00	3.6	Oct-00	Jan-02	1.3	5.6
4. Fort Wingate Phase II ³	Dec-02	In Progress	0.2	Dec-02	In Progress	0.1	0.2
5. Many Farms	Oct-95	Jul-98	2.8	Sep-99	Oct-01	2.0	6.0
6. Paschal Sherman ³	Jan-02	In Progress	1.1	Jan-02	In Progress	1.1	1.1
7. Polacca Day School ³	Mar-02	Feb-03	1.0	N/A ⁴	N/A ⁴	N/A ⁴	1.0
8. Pyramid Lake	Jan-99	Aug-99	0.6	Sep-99	Sep-00	1.0	1.7
9. Sac & Fox	Apr-93	Jun-99	6.2	Oct-99	Jul-01	1.8	8.3
10. Santa Fe Phase I ³	Sep-01	In Progress	1.4	Nov-02	In Progress	0.3	1.4
11. Seba Dalkai	Aug-97	Jun-98	0.8	Sep-00	Jan-03	2.4	5.5
12. Second Mesa Day School	Sep-97	In Progress	5.5	N/A ⁴	N/A ⁴	N/A ⁴	5.5
13. Shiprock Alternative	Oct-98	Sep-99	0.9	Jul-00	Aug-02	2.1	3.8
14. Tuba City Boarding School	Jun-00	Oct-02	2.3	Nov-01	In Progress	1.3	2.7
15. WaHeLut	Jan-97	May-97	0.3	Jun-97	Dec-97	0.5	0.9
16. Zia Day School	Sep-98	Dec-00	2.3	Dec-00	Jul-02	1.5	3.8
Major Facility Improvement and Repair							
17. Busby Gymnasium	Jan-00	Dec-00	0.9	May-01	In Progress	1.7	3.1
18. Carter Seminary-Fire	Feb-01	Dec-02	1.8	Oct-02	In Progress	0.4	2.0
19. Chinle Boarding School	May-00	Jul-02	2.2	N/A ⁴	N/A ⁴	N/A ⁴	2.8
20. Chitimacha Addition	Aug-99	Mar-00	0.6	Jul-00	Apr-02	1.8	2.7
21. Choctaw High School	N/A ⁴	N/A ⁴	N/A ⁴	Feb-00	Dec-00	0.8	0.8
22. Eufauta-HVAC	Jun-97	Apr-99	1.8	Jun-99	Aug-00	1.2	3.2
23. Greasewood-Gymnasium	Apr-95	Jun-98	3.2	Mar-99	Jan-00	0.8	4.8
24. Haskell University	Feb-95	Jul-96	1.4	Jul-98	Aug-99	1.1	4.5
25. Hopi High School Addition	Aug-00	Aug-01	1.0	Sep-01	In Progress	1.5	2.5
26. Huerfano Dormitory Buildings	Aug-99	Sep-00	1.1	Jun-01	Oct-02	1.3	3.2
27. Hunters Point-Gasline	Feb-98	Oct-98	0.7	Sep-00	Nov-00	0.2	2.8
28. Indian Island-Heating	Jun-99	Jul-99	0.1	Jul-99	Feb-01	1.5	1.7
29. Indian Township	Dec-99	May-00	0.4	May-00	Jan-01	0.7	1.1
30. Jones Academy	Aug-96	Jan-98	1.5	Jul-98	Aug-99	1.1	3.0
31. Jones Reno Boys Dormitory	Nov-97	May-99	1.5	Jun-99	Aug-00	1.2	2.8
33. Lower Brule Elementary School	Jun-98	In Progress	4.7	N/A ⁴	N/A ⁴	N/A ⁴	4.7

School Project	Start of Design	Design Completion	Elapsed Time ¹ (years)	Start of Construction	Construction Completion ²	Elapsed Time ¹ (years)	Total Elapsed Time ¹ (years)
32. Kayenta Boarding School	Sep-99	In Progress	3.5	Sep-01	In Progress	1.5	3.5
33. Lower Brule Elementary School	Jun-98	In Progress	4.7	N/A ⁴	N/A ⁴	N/A ⁴	4.7
34. Many Farms High School-Gasline	Apr-98	Oct-98	0.5	Jul-99	Jun-01	1.9	3.2
35. Muckleshoot	N/A ⁴	N/A ⁴	N/A ⁴	Apr-00	Nov-00	0.6	0.6
36. Quileute-Gymnasium ³	Jul-00	Jul-01	1.0	Jun-01	Mar-02	0.7	1.7
37. Riverside-Gymnasium	Jan-01	Jul-01	0.4	Jul-01	In Progress	1.6	2.1
38. Sanostee Tk Farm	Feb-98	Jul-98	0.4	Sep-99	Dec-99	0.2	1.8
39. Santa Clara-Gymnasium	Dec-91	Dec-97	6.0	May-98	Aug-00	2.3	8.7
40. Santa Fe Math, Science & Tech Building ³	Jun-98	Jul-99	1.0	May-99	Aug-00	1.2	2.1
41. Santa Fe-Sprinkler System	N/A ⁴	N/A ⁴	N/A ⁴	Jun-00	Sep-00	0.3	0.3
42. Sequoya Dormitories	Jun-97	Apr-99	1.8	Jun-99	Aug-00	1.2	3.2
43. Sherman Indian High School-ADA	Jan-92	Dec-98	6.9	Mar-00	Apr-01	1.0	9.3
44. Sherman Indian High School-Safety	Jan-92	Dec-98	6.9	Mar-00	Apr-01	1.0	9.3
45. SIPI Code Compliance	Aug-01	Oct-01	0.2	Sep-01	In Progress	1.5	1.5
46. SIPI Technology Building	Jun-00	Aug-01	1.2	Feb-02	In Progress	1.0	2.7
47. Tiospa Zina Phase II	Sep-00	Aug-02	1.9	Feb-01	Sept-02	1.6	2.0

¹ Used February 2003 as the date to calculate elapsed time for projects for which design and/or construction phases were not completed.

² Includes projects determined to be substantially complete based on most current documentation, such as final safety inspections or certificates of occupancy.

³ Design-build school construction projects, where a contractor or entity is responsible for both design and construction under one prime contract.

⁴ Not applicable because construction contract was either not awarded or the design was (a) not completed or necessary, (b) funded by other means, or (c) done by tribe.

Appendix 3

Audit Scope and Methodology

Government Auditing Standards

We conducted our review, as applicable, in accordance with the *Government Auditing Standards*, issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures considered necessary under the circumstances.

As part of our review, we reviewed the Department of the Interior's Reports on Accountability for fiscal years 1998 through 2002, which included information required by the Federal Manager's Financial Integrity Act, and the BIA annual assurance statements on management controls for fiscal years 1998 through 2002. Based on that review, we determined that none of the weaknesses reported by the Department were within the objectives and scope of our review.

We did determine that the BIA annual assurance statements for fiscal years 1999 and 2000 identified the facilities management program as a "material weakness." Specifically, BIA reported that the lack of proper maintenance and repair had created health and safety hazards in schools and other facilities. The annual assurance statement for fiscal year 2001 stated that BIA had completed all corrective actions and had therefore resolved the facilities management program weakness.

We also reviewed internal controls over the school construction program and found weaknesses in the controls over ensuring student safety and project performance. These weaknesses are discussed in the body of the report. If implemented, our recommendations should improve internal controls in these areas.

Scope and Methodology

To accomplish our objectives, we reviewed various documents applicable to the BIA school construction program, including

- ❖ Pertinent legislation and annual budget justifications;
- ❖ Policies and procedures, including the Code of Federal Regulations, BIA Manual, the May 1999 *Plan* submitted to Congress, and BIA's Grants Handbook;
- ❖ OFMC and OIEP records, including project status reports, financial reports, contracts, grants, and other agreements;
- ❖ DSRM records, including the logs showing the dates of the final design reviews and final safety inspections.

We interviewed responsible program officials from BIA Headquarters and OFMC, OIEP, DSRM, and field offices. We also interviewed tribal and school project managers and accounting staffs, and representatives of the architect and engineering firms and construction management companies. We conducted our review between June 2002 and April 2003.

The scope of our audit primarily included BIA replacement school construction projects and major facility improvement and repair projects that, according to OFMC's June 2002 status report, were in the construction stage.

Prior Audit Coverage

We reviewed the following prior audit coverage of the BIA school construction program and related activities issued in the past 5 years.

December 2001

Maintaining the Department of the Interior's Facilities, A Framework for Action (No. 2002-I-0008). This OIG advisory report highlighted the critical short-term and long-term actions that the Department of the Interior needed to take to reduce the deferred maintenance backlog and develop a comprehensive, proactive and reliable facilities maintenance management program. These actions included appointing a Departmental Chief Maintenance Officer, exploring the establishment of a single maintenance budget, conducting condition assessments, establishing performance measures, and implementing an integrated facilities management system. The report did not contain any recommendations.

September 2001

BIA and DOD Schools – Student Achievement and Other Characteristics Often Differ from Public Schools (No. GAO-01-934). This GAO report addressed the academic achievement of BIA students, the condition of BIA school facilities, and the estimated per-pupil expenditures for BIA schools. The report concluded that (1) the academic achievement of many BIA students was far below the performance of students in

public schools; (2) BIA school facilities were in worse shape than public schools as school administrators at more than 60 percent of responding BIA schools reported having at least one building in inadequate condition compared with about 25 percent of responding public school administrators surveyed by the Department of Education; and (3) the estimated per-pupil expenditures for BIA schools varied widely by school type (for example, day or boarding), but were generally higher than for public schools nationally. The report did not contain any recommendations.

March 2001

Construction Costs for Chief Leschi School - Puyallup Tribe, Puyallup, Washington – Bureau of Indian Affairs (No. 01-I-237). The OIG advisory report stated that although the Tribe constructed the School within the \$28.9 million of contract and grant monies received, the facility differed from the BIA planning document for the School. The School was larger than specified, which resulted in additional construction costs of about \$666,000, and the School did not build the athletic fields provided for in the plans, which required the School to rent athletic facilities at a cost of about \$10,000 a year. The report also stated that BIA did not remove the old school buildings from its data base, which resulted in BIA overpaying the Tribe's school board by about \$785,000 to maintain the old buildings. BIA agreed with the report's two recommendations to provide more effective monitoring of school construction and to recover the erroneous payments.

March 1999

Bureau of Indian Affairs Funds Provided to the Lac Courte Oreilles Ojibwe School for the Construction of School Facilities and the Leasing of Temporary Space (No. 99-I-363). The OIG report concluded that School officials had not complied with the intended purpose of the grants to construct a facility to replace unsafe portable classrooms or to lease temporary school space to house the displaced students. Specifically, former School officials constructed a 41,358-square-foot building that was not completed rather than the 17,359-square-foot addition to the School, which had been authorized by BIA; used operation and maintenance funds that had been provided for leasing temporary space to construct another 8,500-square-foot school building; loaned grant funds to a retail operation; and awarded the contract to construct the 41,358-square-foot building without complying with federal regulations to ensure the lowest cost. The report also concluded that BIA had not adequately monitored the use of the grant funds to ensure that they were used only for intended purposes. The report's four recommendations were implemented. We visited the School during this review and found that the 41,358-square-foot building had been completed with Tribal funds.

Sites Visited

We visited BIA's OFMC, OIEP, and DSRM offices; three field education offices; and nine tribes or schools judgmentally selected, as follows:

Sites Visited	Location
<i>Offices</i>	
DSRM	Albuquerque, New Mexico
OFMC	Albuquerque, New Mexico
OIEP	Albuquerque, New Mexico
Minneapolis Field Education Office	Ft. Snelling, Minnesota
Oklahoma Field Education Office	Oklahoma City, Oklahoma
Shiprock Field Education Office	Shiprock, New Mexico
<i>Tribes/Schools</i>	
Chickasaw Nation	Ada, Oklahoma
Fond du Lac Ojibwe School	Cloquet, Minnesota
Lac Courte Oreilles Ojibwe School	Hayward, Wisconsin
Many Farms High School	Many Farms, Arizona
Sac & Fox Settlement School	Tama, Iowa
Santa Fe Indian School	Santa Fe, New Mexico
Seba Dalkai Boarding School	Seba Dalkai, Arizona
Shiprock Alternative School	Shiprock, New Mexico
Zia Day School	Zia Pueblo, New Mexico

Appendix 4

Implementation of May 1999 Plan Submitted to Congress

As a result of our 1999 audit of school construction grants awarded to the Lac Courte Oreilles Ojibwe School (see “Prior Audit Coverage,” Appendix 3), Congress (the House Interior Appropriations Subcommittee and Congressman David Obey) expressed concern that BIA’s monitoring efforts were not assuring that school construction grant funds were being spent for their intended purposes. Congress asked BIA to develop a plan of action to strengthen its monitoring of the school construction grants program. In response, BIA developed and submitted to Congress a *May 1999 Plan to Ensure the Integrity of School Construction Grants*, in which BIA agreed to take 10 actions. As shown in the following schedule, we found that BIA has implemented four of its proposed actions, partially implemented five, and not implemented one.

Proposed BIA Actions

Office of Inspector General Tests

1. ***Ensure that grantees have appropriate management systems.*** BIA will notify potential grantees of project funding and indicate that submission of a grant application requires the applicant to undergo a review of its financial management, procurement, personnel, and property management systems.

Implemented. OFMC and OIEP jointly developed a grants handbook describing the construction grant process and discussing grantee management systems. All five of the grantees reviewed received notification letters concerning project funding. Four of the five grantees received letters discussing the need for OCRs. Santa Fe Indian School did not receive this letter because the Math, Science, and Technology grant was awarded before the grants handbook was issued.

2. ***Third party review of grantee’s systems.*** BIA will contract with a private sector firm to conduct systems certifications to ensure that the appropriate systems are in place prior to awarding a construction grant.

Implemented. OFMC contracted with certified public accounting firms to conduct OCRs of grantee management systems prior to grant award. OCRs were conducted for four of the five grants reviewed. An OCR was not conducted for the Santa Fe Indian School Math, Science, and Technology project because the grant was awarded prior to issuance of the grants handbook.

3. ***Establish special conditions and payment schedules based on grantee rating.*** The assessment of the applicant’s systems and internal control procedures will be used to establish a risk rating: low, moderate, or high risk. BIA will require additional reporting from and provide increased oversight of those grantees classified as either moderate or high risk. Payments under the award will be subject to greater controls for moderate and high risk grantees.

Partially Implemented. As a result of the OCRs, the four grantees reviewed received risk ratings, and advance payment schedules for three grantees were based on the risk rating. The advance payment schedule for the Santa Fe Indian School (Phase I) project was not based entirely on the OCR rating. The School received a moderate risk rating, yet the advance payment schedule was negotiated based on a low risk rating, resulting in the School receiving a larger advance payment than it should have under the May 1999 Plan.

Proposed BIA Actions

4. *Identify tribal management as an*

option. If a school board's systems are so deficient that they cannot be certified, it is possible that the tribal government's systems will meet the federal standards identified in the regulations. In such a case, BIA will recommend that the tribe submit the grant application and manage the project on behalf of the school.

5. *Conditions that may lead to suspension or termination.*

A provision will be included in the grant awards notifying the grantee that BIA may suspend or terminate the grant for material non-compliance with the terms of the award, including the failure to submit required financial and construction progress reports or to comply with the approved scope of the project.

6. *Provide the grantee with standard*

procurement contract provisions. BIA will supply the grantee with the standard contract clauses that are to be contained in construction contracts awarded by the grantee.

7. *Review of solicitation documents and site visits to verify project scope.*

Grantees will be required to provide a copy of all solicitation documents for any construction procurement of \$100,000 or more. Grant documents will provide for two site visits by the grants officer and grants officer's technical representative (GOTR) for projects costing from \$100,000 to \$500,000 and for quarterly inspections for projects costing over \$500,000.

Office of Inspector General Tests

Implemented. The option of tribal management was included in the grants handbook. However, we did not identify any situations where a school board's systems were so deficient that the grantee failed the OCR. As such, the tribes did not have to manage any of the projects on behalf of the schools.

Not Implemented. The grants handbook stated that BIA would initiate enforcement actions (per 43 CFR Part 12.83) against grantees failing to comply with provisions of the grants.

Four of the five grants reviewed included language that the grants would be administered in accordance with the applicable financial reporting and audit requirements of 43 CFR Part 12. However, none of the grant awards contained specific provisions describing the conditions under which BIA could suspend or terminate the grants.

Partially Implemented. OFMC officials told us that grantees must use the American Institute of Architect's *Federal Supplemental Conditions of the Contract for Construction* unless the grant provided equivalent clauses. OFMC has developed standard contract clauses to be included in construction contracts awarded by grantees and has submitted these clauses to the Southwest Regional Solicitor's Office for legal review.

Partially Implemented. Four of the five grants reviewed required grantees to comply with procurement requirements in 43 CFR Part 12.76. Part 12.76(g) requires grantees to provide BIA with solicitation documents; however, only the grant for Shiprock Alternative Schools, Inc., actually included specific language requiring the grantee to provide copies of these documents.

The Shiprock grant also discussed on-site monitoring of the project during construction, yet none of the grants included specific language about the actual number of site visits to be made. Discussions with project managers indicated that solicitation documents had been reviewed for four of the five projects. In addition, reviews of the project files found documentation that grants officers and project managers visited sites for only one of the projects.

Proposed BIA Actions

8. ***Advance payments.*** Advance payments for construction projects with a total estimated cost of \$100,000 or more will be limited based upon the risk rating assigned to the grantee. In no case will BIA advance more than 75 percent of the award or \$5 million, whichever is less. Additional payments will be made only if the grantee is in compliance with the material terms of the award and is current on submitting required financial and project progress reports. As part of the financial reports, grantees will be required to provide documentation that advanced funds were held only in deposits or investments authorized by statute.

9. ***Construction grants officers identified.*** OIEP will identify specific education line officers that will receive specialized training in managing construction grants.

10. ***Expand pool of construction grants officers' technical representatives.*** BIA will expand the pool of potential GOTRs to include qualified regional facilities staff that could serve as GOTRs.

Office of Inspector General Tests

Partially Implemented. BIA negotiates advance payments with grantees based on the risk rating determined by the OCR. The current version of the grants handbook, however, does not limit advances to \$5 million. We identified two instances where advance payments to grantees far exceeded the \$5 million limitation; specifically, advance payments to Shiprock Alternative Schools, Inc., and Santa Fe Indian School (Phase I) were \$13 million and \$17.4 million, respectively. (Additional audit tests disclosed a \$14.6 million advance payment to the Second Mesa Day School.)

In addition, none of the five grants reviewed required grantees to submit financial reports documenting where advance funds were deposited or invested, and none of the financial reports submitted by the grantees included such information.

Implemented. OIEP issued a May 20, 1999 memo identifying construction grants officers. Formal training for these grants officers was conducted from March 23 through March 25, 1999. An OFMC official told us that continuous training is provided for construction grants officers every time a grant recipient is selected for project funding.

Partially Implemented. An OFMC official stated that small projects of less than \$250,000 were being implemented with GOTRs located at regional offices. The official also said that OFMC had requested additional funding of about \$5.2 million in fiscal year 2003 to address the lack of resources in regional offices but had received only about \$900,000. According to the official, these funds were used to hire additional professional staff to serve as GOTRs.

Appendix 5

Status of Audit Recommendations

Recommendation	Status	Action Required
1 - 9	Unresolved Additional Information Needed	Concur or nonconcur with each recommendation and provide information on actions taken or planned to implement each recommendation, including target date and title of official responsible for implementation.

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