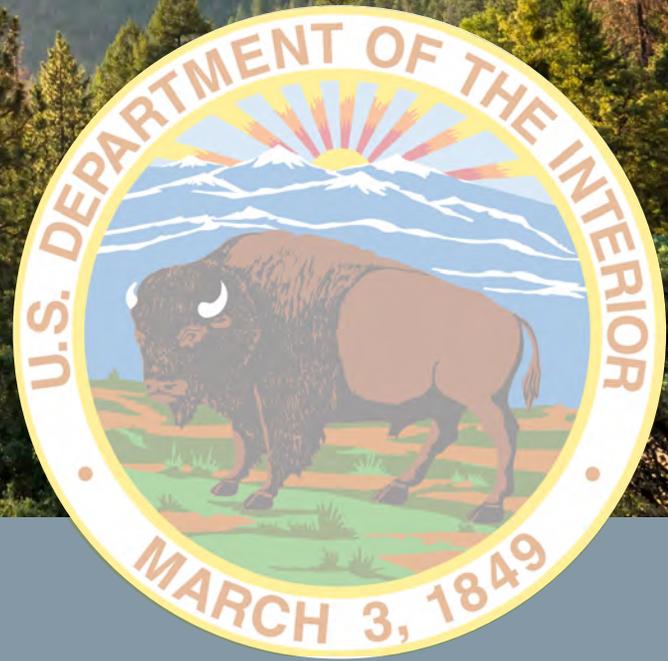




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Management Advisory



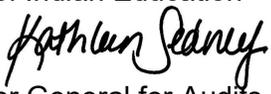
OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

FEB 10 2025

Memorandum

To: Bryan Mercier
Exercising the Delegated Authority of the Assistant Secretary – Indian Affairs

Tony Dearman
Director, Bureau of Indian Education

From: Kathleen Sedney 
Assistant Inspector General for Audits, Inspections, and Evaluations

Subject: Management Advisory – *Risks Identified With a Bureau of Indian Education Contractor*
Report No. 2024-ISP-014-A

Over the past decade we have identified inaccuracies in the Bureau of Indian Education's (BIE's) facility management system.¹ In 2022, BIE hired a contractor to assist the Bureau in resolving these issues. However, during our 2024 inspection of Tate Topa Tribal School,² we identified risks associated with this contractor. Specifically, we found that the contractor improperly closed work orders that were initially opened to address safety and health deficiencies, some of which were significant. At Tate Topa Tribal School, we found that 58 percent of work orders related to significant deficiencies were closed without the deficiencies being corrected. After reviewing additional data, we found that the same contractor closed thousands of work orders at another 127 BIE and Tribal schools during 2024. Based on our findings at Tate Topa Tribal School, we are concerned that the contractor is not obtaining adequate evidence to close work orders at the schools. In addition, we found that BIE inappropriately modified the agreement in the amount of \$535,420 to provide additional funds for services that were outside the scope of the original statement of work. We are issuing this management advisory to notify BIE of these issues so that it can take appropriate action to ensure the safety and health of students and staff and safeguard Federal funds.

Background

BIE supports and oversees a total of 183 schools—128 schools are tribally controlled and funded by BIE contracts or grants and 55 schools are BIE-operated. BIE's total appropriation for fiscal year (FY) 2024 was \$1.6 billion, of which \$160 million was allocated for facility operations and maintenance. Federal regulations³ require annual inspections for safety and health compliance at all BIE-operated or -funded schools. School officials are required to create an abatement plan to document the planned corrective measures for identified deficiencies and track the status of each deficiency identified during the inspection.

BIE maintains a facility management system to monitor school operations and maintenance, which includes tracking safety and health inspection abatement plans and corresponding work orders to correct identified deficiencies (a work order is generated for each deficiency). Generally, school facility and maintenance staff

¹ We have identified inaccurate data in BIE's facility management system in the following past reports: *Condition of Indian School Facilities* (Report No. C-EV-BIE-0023-2014), issued September 2016; *Indian Affairs Is Unable To Effectively Manage Deferred Maintenance of School Facilities* (Report No. 2022-CR-036), issued March 2024; and *The Bureau of Indian Education Must Correct Safety and Health Deficiencies and Improve Emergency Preparedness and Security at Havasupai Elementary School* (Report No. 2023-ISP-040), issued October 2024.

² *The Bureau of Indian Education Must Correct Safety and Health Deficiencies and Improve Facility Management System Accuracy at Tate Topa Tribal School* (Report No. 2024-ISP-014), issued December 2024.

³ 29 C.F.R. Part 1960, Subpart D—Inspection and Abatement.

are responsible for entering work order data in the facility management system—creating new work orders, monitoring and updating status for open work orders, and closing completed work orders. The accuracy of this data is important because it is used to calculate each school's Facility Condition Index (FCI),⁴ which BIE then uses to make funding decisions up to and including replacing a school campus or individual facilities. Generally, schools with a lower FCI receive more funding.

In September 2022, BIE executed a \$2.9 million task order (later increased to \$3.9 million) using a blanket purchase agreement (BPA)⁵ to supplement Federal staff by providing facility maintenance program support services for all 183 schools and other BIE facilities for FYs 2022 to 2025.⁶ The BPA was created for construction management support services for the Assistant Secretary of Indian Affairs, Office of Facilities, Property and Safety Management, Division of Facilities Management and Construction, and BIE. The purpose of the task order is to manage BIE construction contracts and assure that construction projects are conducted in accordance with approved plans and specifications. Specifically, Task 1 is to “provide day to day oversight to team members to implement the directions of the Branch Chief with specific focus on developing and improving the maintenance program, project oversight, and technical assistance.” Task 2 is to “review work done on projects to ensure they meet contractual requirements of repair, renovation, and construction contracts. These services include the oversight on facility projects and on projects that are contracted to outside contractors.”

The agreement provided that the contractor's quality assurance activities shall include, but not be limited to, coordinating, reading plans and specifications, monitoring, documenting, and reporting on construction contractor quality control activities and construction safety, progress, and testing. According to BIE staff, this program support includes reviewing open work orders and closing those that the contractor determines are completed or are duplicative. BIE informed us that before this task order, safety and health deficiency data in the facility management system was generally inaccurate and not truly reflective of each school's condition.

Work Orders Inaccurately Closed

We found that the contractor closed work orders that should have remained open at Tate Topa Tribal School. We statistically sampled 53 of 236 significant deficiencies⁷ reported as corrected and closed at the school between 2022 and 2024 to verify that each deficiency had been addressed. We found that 31 of the sampled deficiencies, or 58 percent, had not been corrected and remained significant; the work orders associated with these deficiencies were incorrectly closed.⁸ We found all 31 work orders that should have remained open were closed by the contractor. Many of the work orders that the contractor closed in error were related to safety or fire maintenance issues, such as:

- An unstable sidewalk due to drainage issues, which creates a slipping hazard. This deficiency is uniquely dangerous because the area is used as the loading and unloading zone for children using the school buses and is prone to freezing in cold weather.
- No annual testing of the fire alarm system or maintenance program to ensure the system operated properly.
- Inoperable roof vents that required placement of concrete blocks to prevent them from opening in the wind.

⁴ The FCI is the calculated ratio of a facility's deficiency cost versus replacement cost and represents a facility's condition as “good,” “fair,” or “poor.”

⁵ Per FAR § 13.303-1(a), a BPA is a simplified method of filling anticipated repetitive needs for supplies or services by establishing “charge accounts” with qualified sources of supply. A task order is the instrument used to make a purchase from a BPA.

⁶ The base period of performance for the task order started on September 22, 2022, with two one-year option periods. BIE exercised both options; however, BIE approved an early exercise of the second option (the final year of the task order) in May 2024 because the contractor exhausted the previous option year funding. Exercise of the first option also included a modification that added nearly \$900,000 in additional funding, which increased the total task order amount to \$3.9 million.

⁷ Generally, safety and health deficiencies are categorized based on the worst credible consequence that can occur as the result of a hazard. These categories are (in order of severity): catastrophic, critical, significant, and minor.

⁸ Because we conducted a statistical sample, this would project to 138 deficiencies across the population of 236 deficiencies.

Since the initiation of the task order, the contractor reported that it has greatly reduced the number of open work orders at the schools. According to a monthly report, between September 2022 and July 2024, the contractor reviewed a total of 85,276 work orders at 127 schools (69 percent of the 183 schools) and closed 76,122 (89 percent) of the reviewed work orders. In other words, the contractor closed work orders at a rate of 113 per day.

Given our findings at Tate Topa Tribal School and the volume of the work order closures nationally, we are concerned that the contractor is improperly closing work orders at schools throughout the country. The inaccurate status of work orders prevents issues from being fixed, impacts school FCI ratings, and projects a safe environment while dangers persist that may jeopardize the well-being of school children and staff.

Limited Evidence Collected To Support Work Order Closures

The task order did not include a clearly established methodology to assess the status of work orders at the schools nor did it include specific criteria regarding the type of evidence required to close work orders. Instead, it stated, “Projects include maintenance Work Order items, facility improvement and repairs, renovation, and quarters improvement and repair.” Without specific instruction, the contractor established its own standards for closing deficiencies. Additionally, the task order provided a \$50,000 travel allocation each year to perform onsite inspections; however, the task order also stated that travel should be considered only when telephone, email, or mail would not accomplish the purpose. In July 2024, the contractor reported physically visiting 46 of 127 schools, or 36 percent.⁹ We interviewed BIE’s Division of Facilities and Safety Management Supervisory General Engineer, who has supervisory authority over the Occupational Safety and Health Program, regarding her expectation of the contractor’s work. She stated that she believed a site visit and photographic evidence are necessary to close work orders.

At Tate Topa Tribal School, the contractor closed or canceled 682 out of 805 open work orders in 2023, including those mentioned above. According to both BIE and school staff, the contractor met with the Facilities Manager and Superintendent once through a video conference interview in which the contractor closed or canceled work orders based on (1) staff recollection of work (dating back years) and (2) if the contractor perceived individual work orders as duplicates. In addition, according to staff, the contractor did not visit the school or ask for photographic evidence to verify the work orders were appropriately closed before changing the status in the facility management system.

Modification Not Competed

In addition to the contract performance concerns we outline above, we also found that BIE improperly modified the task order. Generally, the Competition in Contracting Act requires “the use of competitive procedures” to award Government work, and once a contract is in place, a modification is allowable as a regular part of contract administration. However, a modification that changes the contract’s scope of work is an exception to this rule when there is a material difference between the modified and original contracts.¹⁰

By placing a task order against the BPA, BIE initially used competitive procedures to contract for facility maintenance support services. However, we found that during the period of performance, BIE modified the task order during the first option year to provide additional funds totaling \$535,420,¹¹ or 18 percent of the original final award amount, for 3D imaging and building information modeling services that were not specified in the original solicitation. In the modification documents, BIE categorized these services as “other duties as assigned,” referencing language described in the original statement of work section of the agreement. Further, in a memorandum for this modification, BIE also described this as “adding personnel under the Program Management Support Services.” We find this justification to be nonspecific and outside of the task order’s

⁹ BIE’s Contracting Officer’s Representative (COR) informed us that they did not accompany the contractor on any site visits, despite the BIE COR appointment memorandum’s assertion of COR responsibility for “monitoring the work site periodically to verify progress.”

¹⁰ GAO Decision B-414260 (Mar. 28, 2017), <https://www.gao.gov/assets/b-414260.pdf>.

¹¹ The third modification to the task order also included \$230,000 for training, \$72,800 for travel, and \$57,640 for other direct costs, totaling \$360,440. However, we are questioning only the 3D imaging costs because the training, travel, and other direct costs were explicitly defined in the task order.

statement of work; in addition, the 18-percent increase to the agreement is a material expansion of cost to the Government.

We determined that BIE should have assessed whether such a change was the type that reasonably could have been anticipated—and was thus potentially out of scope—and advertised the potential for a change involving these services, as legally required in the FAR when exercising an option or when there is a potential scope issue. Therefore, we question the modification of \$535,420 in its entirety.

Conclusion and Recommendations

Erroneously closing work orders could allow significant safety and health deficiencies to persist at BIE schools. Additionally, improper closures could change FCI ratings, which influence school funding. For example, according to the contractor, following the review and work order cleanup, Tate Topa Tribal School's FCI improved from "poor" to "fair."

According to BIE data, over approximately two years, the contractor has reviewed more than 85,000 work orders across BIE's portfolio and has closed 89 percent of these work orders. If the trends we observed at Tate Topa Tribal School are not unique to that school, BIE faces the risk that the contractor has inaccurately modified work order and deficiency data in the facility management system and may continue to do so in the future. Failure to accurately report the status of work orders may create inefficiencies in funding from Indian Affairs, result in inadequate monitoring, create a perception of a safe environment when risks persist, and potentially expose students and staff to adverse conditions across the country.

We provided a draft of this management advisory to Indian Affairs and BIE for review. BIE concurred with two recommendations and did not concur with one recommendation. We consider Recommendations 1 and 2 resolved and Recommendation 3 unresolved. We determined that Recommendation 1 is significant and will be reported as such in our semiannual report to Congress in accordance with the Inspector General Act.¹² Below we summarize BIE's response to our recommendations, as well as our comments on its response. See Attachment 1 for the full text of BIE's response; Attachment 2 lists the status of each recommendation.

We recommend that BIE:

1. Create and implement a plan to analyze and verify the accuracy of work orders the contractor has closed in the facility management system.

BIE Response: BIE concurred with this recommendation and stated that it "will create and implement a plan to analyze and verify the accuracy of the work orders that the contractor has closed in the facility management system." BIE stated that the "Branch of Facilities Management (BFM) will ensure the integrity of the work orders," will provide each school the opportunity to identify and reenter closed work orders, and "will provide technical assistance to ensure actionable work orders are created" for any work orders that appear to have been inaccurately closed.

BIE provided a May 31, 2025 target implementation date.

OIG Comment: Based on BIE's response, we consider this recommendation resolved. We will consider it implemented when BIE provides documentation demonstrating the implementation of a plan that verifies the accuracy of work orders closed by the contractor.

¹² The Inspector General Act of 1978, 5 U.S.C. § 405(b), requires inspectors general to prepare semiannual reports summarizing OIG activities during the immediately preceding six-month periods ending March 31 and September 30. It also states that these semiannual reports should include an identification of each "significant recommendation" described in previous semiannual reports on which corrective action has not been completed.

2. Amend the statement of work for this task order to establish assessment standards and clarify the evidence required to properly close work orders.

BIE Response: BIE concurred with this recommendation and stated that “BIE Acquisitions will collaborate with BFM and the contractor to negotiate a modification that incorporates these clarifications into the statement of work.”

BIE provided a May 31, 2025 implementation date.

OIG Comment: Based on BIE’s response, we consider this recommendation resolved. We will consider it implemented when BIE provides the negotiated modification that sufficiently clarifies the evidence required to properly close work orders.

3. Resolve the questioned costs of \$535,420.

BIE Response: BIE did not concur with this recommendation and stated, “Upon further review, the BIE found the modification to be within scope of the original contract.” BIE also stated, “The Contracting Officer made an in-scope determination at the time of the modification,” and “the Solicitor’s office reviewed the modification and found it legally sufficient.” BIE provided a copy of the Acquisition and Assistance Legal Review Form to support the Contracting Officer’s in-scope determination.

OIG Comment: Based on BIE’s response, we consider this recommendation unresolved. The Acquisition and Assistance Legal Review Form provided to support the determination that the modification was in-scope and legally sufficient was a templated form that made no mention of 3D imaging or any analysis. BIE’s response did not change our conclusion that BIE improperly modified a task order. We will consider this recommendation resolved when BIE either agrees to recoup the questioned costs or provides a formal detailed legal justification to support the execution of the modification.

We will track open recommendations for resolution and implementation. We will notify Congress about our findings, and we will report semiannually, as required by law, on actions you have taken to implement the recommendations and on recommendations that have not been implemented. We will also post a public version of this management advisory on our website.

If you have any questions about this management advisory, please contact me at aie_reports@doioig.gov.

We conducted our inspection in accordance with the *Quality of Standards for Inspection and Evaluation* as put forth by the Council of the Inspectors General on Integrity and Efficiency. We believe that the work performed provides a reasonable basis for our conclusions and recommendations.

Attachments (2)

Attachment 1: Response to Draft Management Advisory

The Bureau of Indian Education's response to our draft management advisory follows on page 7.



UNITED STATES DEPARTMENT OF THE INTERIOR
 Bureau of Indian Education
 1849 C Street NW, MIB-3610
 Washington, DC 20240

January 27, 2025

Memorandum

To: Kathleen Sedney
 Assistant Inspector General for Audits, Inspections and Evaluations

From: Tony L. Dearman *Tony L. Dearman*
 Director, Bureau of Indian Education

Subject: Management Advisory Response to Recommendations 1 through 3 in Draft
 Inspection Report (No. 2024-ISP-014-A) – *Risks Identified with a Bureau of Indian
 Education Contractor*

The Bureau of Indian Education (BIE) appreciates the opportunity to respond to the U.S. Department of the Interior Office of Inspector General (OIG) Draft Inspection Report (No. 2024-ISP-014-A) – *Risks Identified with a Bureau of Indian Education Contractor*. This memorandum outlines the BIE's response to each of the recommendations. The BIE concurs with recommendations one and two but does not concur with recommendation three in the draft audit report. The BIE's plans for corrective actions and actions taken are provided below:

Recommendation 1: Create and implement a plan to analyze and verify the accuracy of work orders the contractor has closed in the facility management system.

Response and Actions Planned: The BIE concurs with the recommendation and will create and implement a plan to analyze and verify the accuracy of the work orders that the contractor has closed in the facility management system. The BIE Branch of Facilities Management (BFM) will ensure the integrity of the work orders. BFM will provide each school the opportunity to identify work that was associated with closed work orders to be re-entered. For any work orders that appear to have been inaccurately closed, BFM will provide technical assistance to ensure actionable work orders are created.

Responsible Official: BIE Branch of Facilities Management

Target Date: May 31, 2025

Recommendation 2. Amend the statement of work for this task order to establish assessment standards and clarify the evidence required to properly close work orders.

Response and Actions Planned: The BIE concurs with the recommendation to amend the statement of work to clarify the standards and documentation for closing a work order required by the BFM. The BIE Acquisitions will collaborate with BFM and the contractor to negotiate a modification that incorporates these clarifications into the statement of work.

Responsible Official: BIE Acquisitions and BIE Branch of Facilities Management

Target Date: May 31, 2025

Recommendation 3. Resolve the questioned costs of \$535,420.

Response: The BIE does not concur with recommendation 3. Upon further review, the BIE found the modification to be within scope of the original contract. The questioned costs identified in the draft report include the use of 3D printing as an additional method to meet the original goal of the analysis of the facilities. The Contracting Officer made an in-scope determination at the time of the modification. Furthermore, the Solicitor's office reviewed the modification and found it legally sufficient. The attached Acquisition and Assistance Legal Review Form supports scope determination made by the Contracting Officer. The BIE is available to provide additional information regarding this requirement and to address any questions regarding this recommendation.

Thank you for the opportunity to review and provide a response on behalf of the Bureau of Indian Education to the U.S. Department of the Interior Office of Inspector General (OIG) Draft Inspection Report – (No. 2024-ISP-014-A) *Risks Identified with a Bureau of Indian Education Contractor*. If you have any questions or need additional information, please contact Ventura Lovato at ventura.lovato@bie.edu.

Sincerely,

TONY
DEARMAN

Digitally signed by
TONY DEARMAN
Date: 2025.01.27
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Tony L. Dearman
Director

Attachment:

- Acquisition and Assistance Legal Review

Attachment 2: Status of Recommendations

Recommendation	Status	Action Required
2024-ISP-014-A-01 We recommend that the Bureau of Indian Education (BIE) create and implement a plan to analyze and verify the accuracy of work orders the contractor has closed in the facility management system.	Resolved	We will track implementation.
2024-ISP-014-A-02 We recommend that BIE amend the statement of work for this task order to establish assessment standards and clarify the evidence required to properly close work orders.		
2024-ISP-014-A-03 We recommend that BIE resolve the questioned costs of \$535,420.	Unresolved	We will meet with BIE to further discuss resolution of this recommendation.



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