



Report to the Subcommittee on Interior,
Environment, and Related Agencies,
Committee on Appropriations, House of
Representatives

May 2017

INDIAN AFFAIRS

Actions Needed to Better Manage Indian School Construction Projects

GAO Highlights

Highlights of [GAO-17-447](#), a report to the Subcommittee on Interior, Environment, and Related Agencies, Committee on Appropriations, House of Representatives

Why GAO Did This Study

Indian Affairs is responsible for operating and maintaining 1,785 buildings at 185 K-12 BIE schools, including dormitory buildings for students, on or near reservations. These buildings had an estimated value of \$4.5 billion in 2016. Many of these schools are in poor condition and have safety hazards. GAO was asked to review Indian Affairs' processes to fund and oversee the repair and replacement of schools.

GAO examined the extent to which Indian Affairs (1) has a comprehensive plan to maintain, repair, or replace schools and ensure the efficient use of funds, and (2) ensures accountability throughout the school construction process. GAO assessed agency data on the cost and timeliness of 49 school replacement projects completed from fiscal year 2003 through 2016, and reviewed contract and grant files for 10 school construction projects selected from schools that had recent or ongoing projects. GAO also assessed Indian Affairs' practices against its policies, design standards, and federal laws and regulations and interviewed agency and school officials.

What GAO Recommends

GAO is making six recommendations, including that Indian Affairs develop a capital asset plan for school facility construction and repair, develop and implement guidance on how to use accountability measures, and improve oversight of projects. Interior agreed with five of the recommendations and disagreed with one. GAO continues to believe its recommendation is valid, as discussed further in this report.

View [GAO-17-447](#). For more information, contact Melissa Emrey-Arras at (617) 788-0534 or emreyarrasm@gao.gov.

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What GAO Found

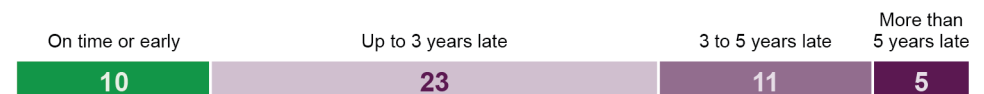
The Department of the Interior's (Interior) Office of the Assistant Secretary-Indian Affairs (Indian Affairs) does not have a comprehensive capital asset plan to guide the allocation of funding for school construction projects across its 185 Bureau of Indian Education (BIE) schools. Indian Affairs is in the process of replacing 3 schools and plans to replace 10 additional schools from a list of 54 schools that applied in 2015. However, Indian Affairs has not developed a comprehensive, long-term capital asset plan for the repair or replacement of the remaining schools in its portfolio, as required by Interior policy. Until Indian Affairs develops a capital asset plan, it risks using federal funds inefficiently and not prioritizing funds to schools with the most pressing needs.

Indian Affairs has not consistently used accountability measures or conducted sufficient oversight to ensure that BIE school construction projects are completed on time, within budget, and meet schools' needs. For instance, Indian Affairs does not always use accountability measures, such as warranties, to have builders replace defective parts or repair poor workmanship. Project managers, who are responsible for helping to ensure accountability, do not always understand how to use accountability measures because Indian Affairs has not provided guidance on when and how to use them to ensure successful completion of construction projects. In addition, Indian Affairs has not adequately overseen school projects managed by tribal organizations. Officials interviewed by GAO at three schools said Indian Affairs was not timely in reviewing new school designs, which resulted in project delays. For 49 construction projects completed from 2003 through 2016, the inconsistent use of accountability measures and inadequate oversight led to projects that took longer than expected, were sometimes over budget, or had to be scaled back to remain within their allotted budgets. For example, of the 49 projects:

- 16 were 3 or more years behind schedule (see fig. 1).
- 1 was almost 10 years behind schedule.
- 10 were 20 percent or more over budget.

Further, the new projects did not always meet schools' needs, according to school officials. In one instance, Indian Affairs planned a dormitory to house 400 students while the school it planned could only accommodate 368 students. Until Indian Affairs develops and implements guidance for ensuring accountability throughout the school construction process and improves its oversight of these projects, it will have little assurance they are completed satisfactorily and meet the needs of students and staff.

Figure 1: Timeliness of Indian Affairs' School Replacement Projects Completed, Fiscal Years 2003-2016



Source: GAO analysis of Indian Affairs' annual submissions to the President's budget. | GAO-17-447

Contents

Letter		1
	Background	4
	Indian Affairs Does Not Have a Capital Asset Plan to Guide the Efficient Allocation of Construction Funds and Has Not Provided Detailed Information to Policymakers	12
	Indian Affairs Has Not Consistently Ensured Accountability for Either Federally or Tribally Managed School Construction Projects	17
	Conclusions	34
	Recommendations	35
	Agency Comments and Our Evaluation	36
Appendix I	Comments from the Department of the Interior	39
Appendix II	GAO Contact and Staff Acknowledgments	43
Figures		
	Figure 1: Bureau of Indian Education (BIE) Schools and Dormitories, by Bureau of Indian Affairs Region	5
	Figure 2: Indian Affairs' Bureaus and Offices with Responsibilities for School Construction and Repair	6
	Figure 3: Overview of Indian Affairs' Facilities Program Funds Obligated in Fiscal Year 2016	10
	Figure 4: Schedule and Cost Performance of Federally Managed Bureau of Indian Education (BIE) School Replacement Projects Completed in Fiscal Years 2003-2016	18
	Figure 5: Schedule and Cost Performance of Tribally Managed Bureau of Indian Education (BIE) School Replacement Projects Completed in Fiscal Years 2003- 2016	31

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May 24, 2017

The Honorable Ken Calvert
Chairman
The Honorable Betty McCollum
Ranking Member
Subcommittee on Interior, Environment, and Related Agencies
Committee on Appropriations
House of Representatives

The Office of the Assistant Secretary—Indian Affairs (Indian Affairs), within the Department of the Interior (Interior), is responsible for the operation and maintenance of over 17 million square feet of space in 1,785 buildings at 185 Bureau of Indian Education (BIE) elementary and secondary schools on or near Indian reservations.¹ As of December 2016, these buildings were worth an estimated \$4.5 billion. Over a third of all BIE school locations include dormitories where students live throughout the academic year. Indian Affairs is currently in the process of replacing three schools. In April 2016, Indian Affairs chose 10 additional BIE schools for future replacement from a list of 54 schools that had applied for replacement consideration.

Over the past 20 years, we, along with Interior’s Inspector General, special commissions, and others, have reported on challenges related to Indian education, including longstanding issues regarding Indian Affairs’ management and maintenance of school facilities.² Our work in 2015 and 2016 highlighted the poor physical condition and maintenance of BIE school facilities, and how it endangered students, as well as the need for

¹These include classroom buildings, dormitories maintenance buildings, gymnasiums, cafeterias, and bus garages, among other buildings. References to schools in this report include all of the buildings that make up a school campus, including dormitories.

²GAO, *School Facilities: Reported Condition and Costs to Repair Schools Funded by Bureau of Indian Affairs*, [GAO/HEHS-98-47](#) (Washington, D.C.: Dec. 31, 1997); GAO, *Bureau of Indian Affairs Schools: New Facilities Management Information System Promising, but Improved Data Accuracy Needed*, [GAO-03-692](#) (Washington, D.C.: July 28, 2003); GAO, *Indian Affairs: Key Actions Needed to Ensure Safety and Health at Indian School Facilities*, [GAO-16-313](#) (Washington, D.C.: March 10, 2016); and GAO, *Indian Affairs: Preliminary Results Show Continued Challenges to the Oversight and Support of Education Facilities*, [GAO-15-389T](#) (Washington, D.C.: Feb. 27, 2015). U.S. Department of the Interior, Office of Inspector General, *Condition of Indian School Facilities*, [C-EV-BIE-0023-2014](#) (Washington, D.C.: Sept. 30, 2016).

more reliable national data to assess the condition of school facilities.³ We also reported on how Indian Affairs' lack of oversight and inspections of BIE schools resulted in potential health and safety hazards to students and staff. In February 2017, due to long-standing ineffective administration of Indian education and other programs, we concluded that Indian Affairs' management of these programs was a high risk area and added it to our High Risk List.⁴ In light of this history and the fact that Indian Affairs will be replacing several BIE schools in the near future, you asked us to review Indian Affairs' processes to fund and oversee the repair and replacement of schools.

This report examines the extent to which Indian Affairs (1) has a comprehensive plan to maintain, repair, or replace schools and to ensure efficient use of funds, and (2) ensures accountability throughout the school construction process.

To determine the extent to which Indian Affairs is guided by a comprehensive plan when allocating funds for BIE school construction projects, we reviewed agency documents on the selection of schools recently chosen for replacement, facility management guidance, and agency information on facility repair and replacement spending. We also reviewed Indian Affairs' annual submissions to the President's budget for fiscal years 2002 through 2017 and written descriptions and policies on its distribution of funds. In addition, we interviewed Indian Affairs officials within the Division of Facilities Management and Construction and facilities managers in select Bureau of Indian Affairs (BIA) regional offices. We compared our findings to Interior and Office of Management and Budget (OMB) policies on capital asset planning, as well as other relevant federal guidance.⁵

To determine the extent to which Indian Affairs ensures accountability throughout its school construction process, we visited eight BIE schools in Arizona and Maine. We selected three of these schools because they are currently in the process of being replaced. We selected an additional five

³[GAO-16-313](#); [GAO-15-389T](#).

⁴GAO, *High Risk Series: Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others*, [GAO-17-317](#) (Washington, D.C.: Feb. 15, 2017).

⁵A capital asset plan helps provide agencies with information and analysis to make long-term decisions about acquiring and managing capital assets.

schools that were located near those schools and had undergone repair or construction in recent years. During our visits, we observed school facilities and interviewed school and tribal officials. Our work was supported by a licensed engineer with relevant, related experience in federal facilities construction and management who accompanied us on all visits. We also used information that we collected in 2014 and 2015 during our visits to 16 schools in Arizona, New Mexico, Oklahoma, South Dakota, and Utah.⁶ Although we conducted these visits in 2014 and 2015, the information we obtained is still relevant and current given that Indian Affairs has not undertaken major school replacement projects at these schools since that time. As a result, in total, we present analysis of 24 schools on such topics as their prioritization of construction projects, experiences with construction projects, and use of contractor accountability measures, among others. The findings from these visits are not generalizable to all BIE schools.

We also reviewed contract and grant files that we requested from Indian Affairs for construction projects at 10 of the 24 schools in our analysis. We chose these files because they were for schools that had recently been replaced or renovated or were in the process of being replaced. The files also reflected a mix of projects managed by Indian Affairs and by tribal organizations. Additionally, we assessed agency data on 49 school replacement projects completed from fiscal year 2003 through 2016 as well as data on school repair spending in fiscal year 2016. We determined that these data were sufficiently reliable for the purposes of this report based on reviews of audits of Interior's financial system and interviews with knowledgeable agency officials about related internal controls. We also interviewed Indian Affairs' facilities and construction officials at headquarters and facilities managers in five of 10 BIA regions that have facilities managers.⁷ We compared our findings to Interior and Indian Affairs policies, procedures, handbooks, manuals, budget justifications, and contracts, as well as relevant federal laws and regulations.

⁶We originally selected these 16 schools to reflect geographic diversity, variation in school facility conditions, and a mix of schools directly operated by BIE and operated by tribes. About two-thirds of Indian schools are operated by tribes, primarily through federal grants, and about one-third are operated directly by BIE. See [GAO-16-313](#); [GAO-15-389T](#).

⁷There are 12 BIA regions. Two regions--Eastern Oklahoma and Pacific--do not have facilities managers of their own.

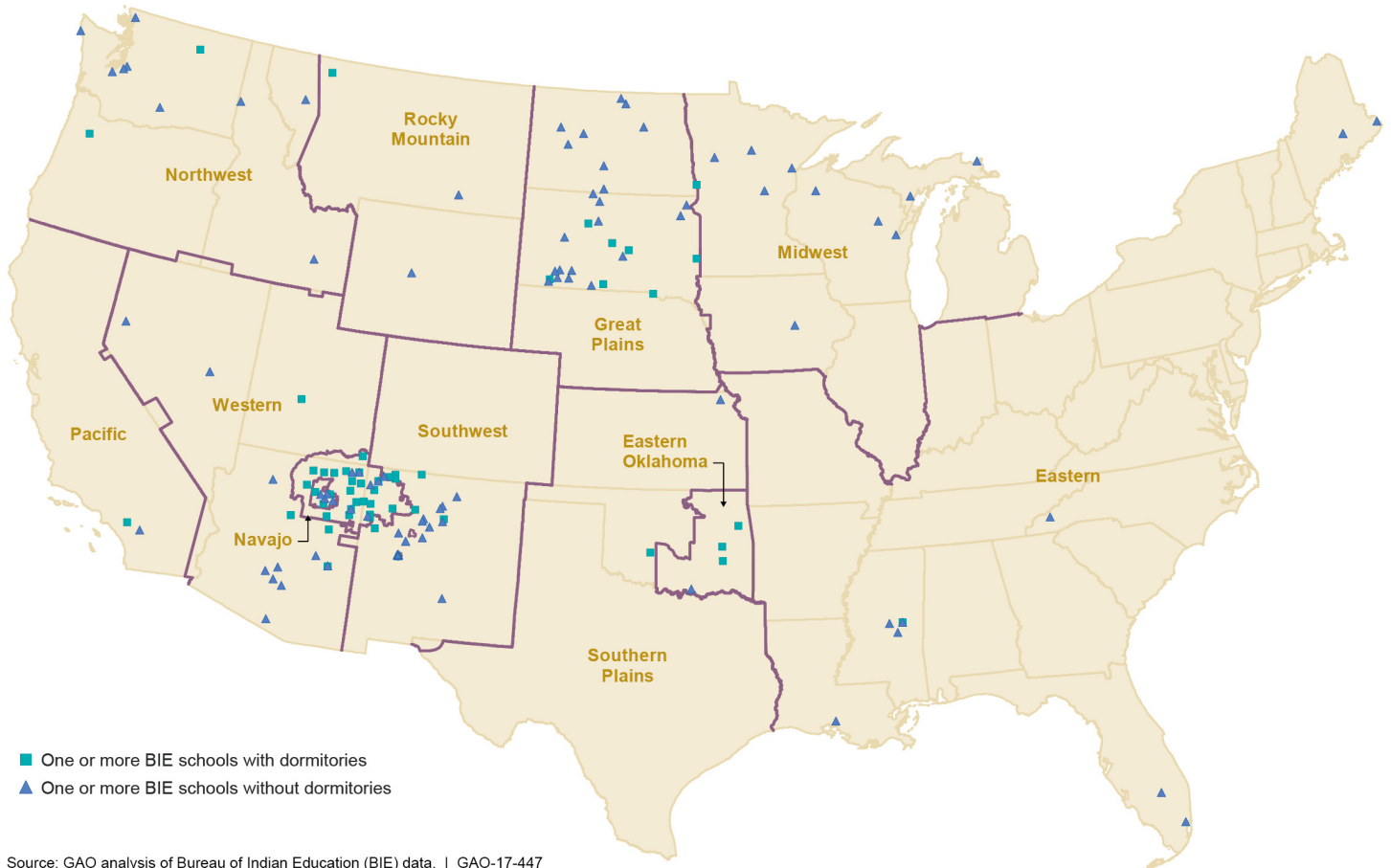
We conducted this audit from November 2015 to May 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Interior's Indian education programs derive from the federal government's trust responsibility to Indian tribes, a responsibility established in federal statutes, treaties, court decisions, and executive actions.⁸ In accordance with this trust responsibility, Interior is responsible for providing safe and healthy environments for students who attend BIE schools. These schools are located primarily in rural areas and small towns on or near Indian reservations in 23 states (see fig. 1).

⁸The federal government recognizes Indian tribes as distinct, independent political communities that possess certain powers of self-government. Federal recognition confers specific legal status on a particular Native American group, establishes a government-to-government relationship between the United States and the tribe, imposes on the federal government a fiduciary trust relationship with the tribe and its members, and imposes specific obligations on the federal government to provide benefits and services to the tribe and its members. See also, 25 U.S.C. § 2000.

Figure 1: Bureau of Indian Education (BIE) Schools and Dormitories, by Bureau of Indian Affairs Region



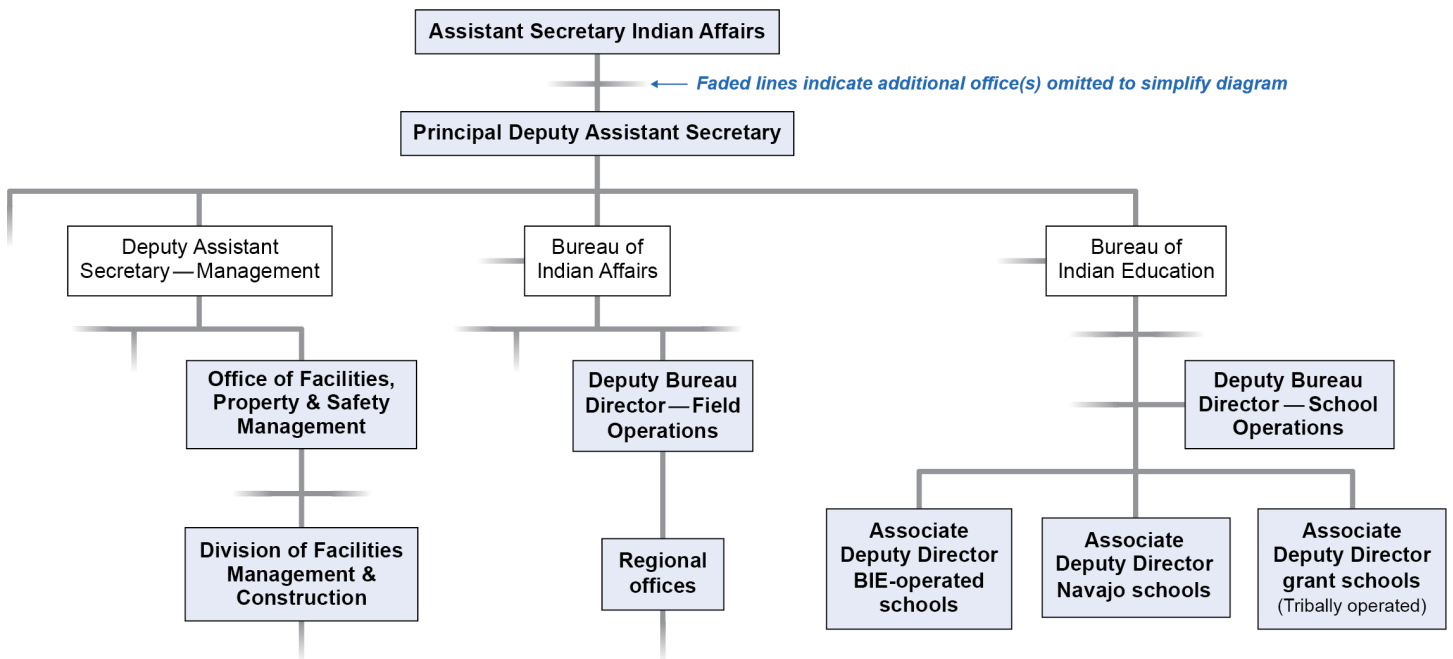
Source: GAO analysis of Bureau of Indian Education (BIE) data. | GAO-17-447

Note: There are 185 BIE schools located at 178 campuses across the country. Some schools are co-located on the same campus. The points on the map were plotted using Zip codes for BIE's 178 campuses. Individual schools that are co-located and/or reside in the same Zip code were grouped together.

Indian Affairs' Bureaus and Offices with Responsibilities for BIE School Construction and Repair

Indian Affairs oversees multiple bureaus and offices at the national and regional level that play a key role in school replacement construction and repair (see fig. 2).

Figure 2: Indian Affairs’ Bureaus and Offices with Responsibilities for School Construction and Repair



Source: GAO analysis of Indian Affairs documentation. | GAO-17-447

The Office of the Deputy Assistant Secretary—Management oversees construction and repair of BIE school facilities. The Division of Facilities Management and Construction, housed within this office, reports to the Director of the Office of Facilities, Property and Safety Management. The Division of Facilities Management and Construction provides facilities budget, planning, design, and construction services for Indian Affairs for both school replacement and renovation projects.

BIA regional facilities managers in nine of its 12 regional offices oversee the day-to-day management of some school facility projects.⁹

BIE oversees educational functions, including funding and operating BIE schools. Multiple BIE regional offices—referred to as Education Resource Centers—work directly with schools to provide technical assistance.

⁹There are 10 BIA regional offices that have facilities managers, but one region, Alaska, does not have any BIE schools.

Interior has proposed that BIE assume key responsibilities from other Indian Affairs' offices for school facilities as part of BIE's ongoing restructuring initiative. Currently, it is not clear specifically when and how such a transfer of responsibilities would take place.¹⁰

Indian Affairs' Management of School Construction Projects

Once funding for BIE school construction and repair is available, tribes may choose to have the project managed by Indian Affairs (federally managed) or they can manage it themselves (tribally managed). When a project is federally managed, Indian Affairs contracts directly with commercial vendors to plan, design, and build or repair the school. These types of contracts are subject to the Federal Acquisition Regulation (FAR) and, unless otherwise noted, when we use the term "contract" in this report, it refers to these types of contracts.¹¹ An Indian Affairs engineer, architect, or subject matter expert serves as a project manager for federally managed construction projects. The project manager oversees the technical aspects of the project and serves as the technical representative to the contracting officer, who has the authority to enter into a contract on behalf of the government.¹²

When a tribal organization manages a project, Indian Affairs awards the organization a grant or a self-determination contract to replace or repair the school.¹³ The tribal organization, in turn, contracts with commercial vendors to plan, design, and build or repair the school. Indian Affairs

¹⁰In June 2014, the Secretary of the Interior issued an order restructuring BIE to focus its efforts on providing resources, direction, and services to tribes to increase their capacity to directly operate BIE schools, among other things. To date, BIE's restructuring effort has not been fully implemented.

¹¹The Federal Acquisition Regulation is the principal set of policies and procedures used by executive agencies when acquiring goods and services.

¹²A contracting officer is an individual with the authority to enter into, administer, or terminate contracts.

¹³Tribally managed projects may be funded through a self-determination contract authorized by the Indian Self-Determination and Education Assistance Act (Pub. L. No. 93-638 (1975)), as amended, or by grant funding under the Tribally Controlled Schools Act (Pub. L. No. 100-297 (1988)). A self-determination contract is a contract between a tribal organization and the federal government for the planning, conduct and administration of programs or services which are otherwise provided to Indian tribes and their members pursuant to federal law. Self-determination contracts, as well as, grants under the Tribally Controlled Schools Act, may be awarded to tribes or tribal organizations (25 U.S.C. § 2502) but for simplicity in this report we refer only to tribal organizations.

oversees the grant or self-determination contract it has with the tribal organization, and the organization, in turn, oversees the contracts it has with vendors. When a tribal organization chooses to manage a project and receive the funds as a grant, the BIE grant officer, who is also responsible for disbursing and overseeing education funds, disburses the funding. If a tribal organization chooses to manage the project under a self-determination contract, an awarding official within Indian Affairs disburses the funding. In both cases, an Indian Affairs architect, engineer, or subject matter expert oversees the technical aspects of the grant agreement or self-determination contract and serves as the technical representative to the grant or awarding official. The technical representative and BIE grant officer or awarding official must work together to ensure that the tribal organization has made sufficient progress before funds are disbursed and to provide technical assistance when it is requested.

Indian Affairs' School Facilities Data

Indian Affairs uses a database—the Indian Affairs Facilities Management System—to collect and track data related to the condition of BIE school facilities, including unaddressed facility repair needs, which are referred to as facilities' deferred maintenance work orders. Indian Affairs' staff, contractors, and school personnel share the responsibility for entering data into the system.¹⁴ Indian Affairs is responsible for reviewing the deferred maintenance work orders that are entered. According to Indian Affairs officials, work orders are approved by several levels within Indian Affairs, including BIA regional offices, the Indian Affairs' facility condition assessment contractor, and the Division of Facilities Management and Construction. Indian Affairs bases its facilities funding decisions on this information. However, as we and Interior's Inspector General have previously reported, these data are often inaccurate, inconsistent, and incomplete. For example, as our prior work has shown, school officials often lack the capacity to properly input facility issues into Indian Affairs' data system, and the agency lacks the necessary tools to check the accuracy of the data.¹⁵ In September 2016, Interior's Inspector General made recommendations to improve the way Indian Affairs assists school staff in entering data, such as by providing consistent training to school employees, ensuring passwords for the facilities management system are

¹⁴Indian Affairs has a contract with an engineering company to conduct a condition assessment for each BIE school facility on a 3-year cycle.

¹⁵[GAO-15-389T](#).

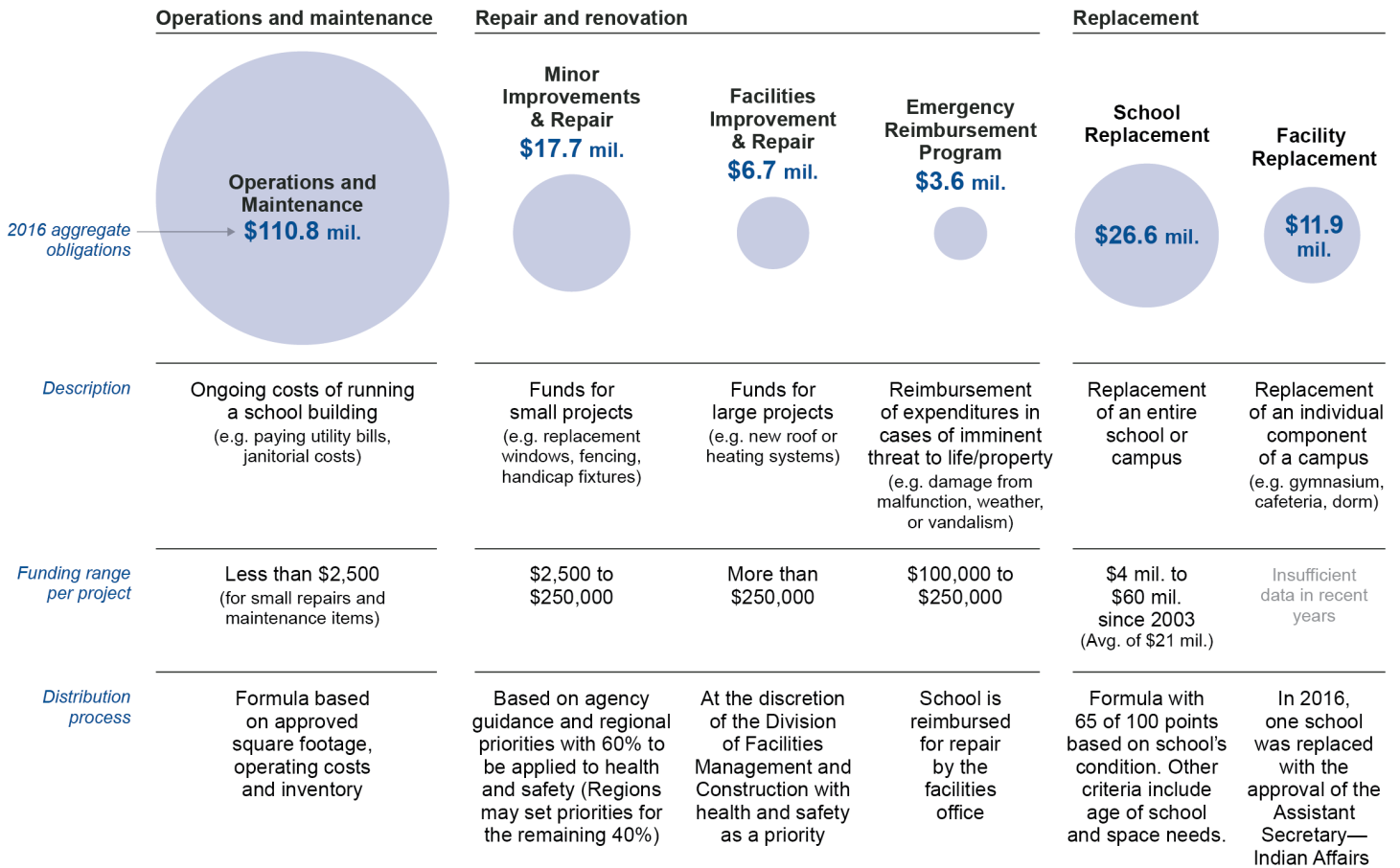
established and used, and creating a tracking and reminder system for active users.¹⁶ Interior's Inspector General also recommended revisiting Indian Affairs' condition assessment contract to ensure that these inspections are consistent, thorough, and entered into the facilities management system every three years. In February 2017, Indian Affairs indicated it would implement these recommendations.

Indian Affairs' Funding for Building Replacement and Repair

Indian Affairs distributes funding for the repair and replacement of school facilities through a variety of programs ranging from those focused on daily operations and maintenance to the replacement of entire school buildings and campuses. Each program allocates funding using a distinct formula or set of priorities (see fig. 3).

¹⁶U.S. Department of the Interior, Office of Inspector General, [C-EV-BIE-0023-2014](#).

Figure 3: Overview of Indian Affairs’ Facilities Program Funds Obligated in Fiscal Year 2016



Source: GAO analysis of Bureau of Indian Affairs (BIA) policy documents and spending data. | GAO-17-447

Note: The school replacement selection process and formula was developed by a negotiated rulemaking committee required under the No Child Left Behind Act of 2001.

Plans for Future BIE School Replacement Projects

Indian Affairs is currently in the process of replacing the final 3 of 14 schools that it selected for replacement in 2004. These schools were chosen based on Indian Affairs' assessment of its data on school conditions and on-site assessments by a contractor.¹⁷

According to the Native American Education Improvement Act of 2001, a part of the No Child Left Behind Act of 2001, the Secretary of the Interior was required to establish a negotiated rulemaking committee. Among the committee's responsibilities was a requirement to submit a report to Interior on school replacement and new construction needs and a formula for the equitable distribution of funds to address those needs.¹⁸ The committee issued its report in December 2011. To be eligible to apply for replacement, schools had to either be in "poor" condition, based on their current replacement value and total deferred maintenance, or be at least 50 years old and/or educating 75 percent or more of their students in portable classrooms.¹⁹ Based on these criteria, Indian Affairs determined that 78 schools were eligible to apply for replacement. Of those 78, 54 submitted applications in 2015. A National Review Committee then reviewed the schools' applications using the identified criteria and selected the top 10 school replacement projects.²⁰ Indian Affairs will determine the order of school replacement by a school's condition and the date by which a school completes the planning phase of the project. It is not yet clear when construction will begin on the first of the 10 schools.

In addition to these 10 schools, Indian Affairs also announced in April 2016 that it would replace a high school building at another BIE school—a

¹⁷Prior to 2004, Indian Affairs created several multi-year priority lists for school replacement. To develop these lists, Indian Affairs invited schools to submit applications and weighed them against a set of criteria with associated points that included factors such as building code deficiencies, environmental risks, building conditions, and enrollment needs, among other things. An evaluation committee reviewed schools' applications.

¹⁸Pub. L. No. 107-110, tit. X, pt. D, § 1042, 115 Stat. 1425, 2021 and 2057 (2002).

¹⁹Portable classrooms are structures temporarily placed on school sites when space is limited in permanent buildings.

²⁰The National Review Committee was comprised of employees with knowledge of BIE school facilities, selected to represent each region with BIE schools. The committee awarded points in accordance with evaluation criteria, such as condition of facilities, educational space deficiencies, crowding, declining enrollment associated with poor facilities, accreditation risk, and school age, among other factors.

K-12 school in Minnesota. Indian Affairs will use \$15.3 million from its facility replacement program for the high school building.²¹

Indian Affairs Does Not Have a Capital Asset Plan to Guide the Efficient Allocation of Construction Funds and Has Not Provided Detailed Information to Policymakers

Indian Affairs Does Not Have a Comprehensive Capital Asset Plan to Allocate Funds to Maintain, Repair, and Replace Schools

Indian Affairs does not have a comprehensive capital asset plan to maintain, repair, or replace all the BIE schools in its portfolio. While Indian Affairs has determined which 10 schools it plans to replace next, it does not have a long-term capital asset plan for the remaining 175 schools. About one-third of these schools are in poor condition, according to Indian Affairs data, resulting in thousands of students being educated or housed in unsafe facilities.²² According to OMB guidance, agencies should engage in capital asset planning and management to help ensure that their assets are acquired, operated, and maintained at the right size, cost, and condition to support agency missions and objectives.²³ OMB

²¹The facility replacement program is separate from the school replacement program, and projects are prioritized at the discretion of the Division of Facilities Management and Construction. The facility replacement program funds the replacement of individual buildings on a school campus, whereas the school replacement program funds the replacement of an entire school campus.

²²Indian Affairs classifies a school as being in poor condition if the total cost of deferred maintenance is at least 10 percent of current replacement value. In our 2015 testimony ([GAO-15-389T](#)), we reported that issues with the quality of agency data on school conditions made it difficult to determine the actual number of schools in poor condition.

²³In our discussion of capital asset planning for BIE schools, we are referring to the existing inventory of the 185 schools in Indian Affairs' portfolio, not building new schools or closing schools from the agency's inventory. Permanently closing BIE schools requires approval from tribal leaders. See, 25 U.S.C. § 2001(d)(7). Language in the Department of the Interior's appropriations has generally limited the expansion of grades and schools in the BIE system. See, e.g., Pub. L. No. 113-235, 128 Stat. 2130, 2410 (2014).

encourages agencies to develop capital asset plans as a part of their strategic planning efforts because such plans help provide agencies with information and analysis needed to make more informed long-term decisions.²⁴ Additionally, Interior requires its bureaus to have a 5-year capital improvement plan that prioritizes individual capital investment projects, and to develop such a plan 2 years before the fiscal year the plan will cover.²⁵

When we asked Indian Affairs officials for evidence that they had developed a strategic or long-term capital asset plan for BIE school facilities, they provided a general outline of how they plan to spend funds over the next 5 years in several broad categories, including construction, program management, advance planning and design, and school boiler inspections. This outline lacked key details, including a description of agency goals and plans, a prioritized list of future school repair and renovation projects, updates on the status of previous projects, and projected student enrollment numbers. In addition, in May 2017 Indian Affairs stated that the Division of Facilities Management and Construction had submitted a prioritized list of projects to be funded in 2017 to Indian Affairs' Construction Investment Review Board. Officials said that given constrained funding, they generally based their plans on the previous year's budget, rather than on need. However, a strategic approach to capital asset planning is more important when funds are limited because decision-makers must take trade-offs into account.²⁶ In November 2016 and February 2017, Indian Affairs officials told us they were developing a long-term capital management program, but they did not provide any documentation of these efforts.

Indian Affairs' lack of capital asset planning has been noted by congressional appropriations committees. In a committee report

²⁴Office of Management and Budget, *Capital Programming Guide*: Supplement to OMB Circular No. A-11: Planning, Budgeting, and Acquisition of Capital Assets (V 3.0, July 2016).

²⁵U.S. Department of the Interior, Office of Acquisition and Property Management, *2016 Budget Guidance (Attachment G) for Five-Year Deferred Maintenance and Capital Improvement Plan, Attachment G 2016 - 2020*, (Washington, D.C.: 2016).

²⁶U.S. Department of Education, National Center for Education Statistics, National Forum on Education Statistics, *Planning Guide for Maintaining School Facilities*, [NCES 2003-347](#), prepared by T. Szuba, R. Young, and the School Facilities Maintenance Task Force, Washington, D.C.: 2003.

accompanying Interior's 2017 appropriations bill, the House Appropriations Committee expressed concern over the agency's approach to school replacement, which, it stated, focuses on only a subset of schools. The Committee called for a more comprehensive long-term planning approach for every facility in Indian Affairs' portfolio.²⁷ In the same year, a Senate Appropriations Committee report directed Indian Affairs to report on the progress it has made toward implementing a long-term facilities plan.²⁸

Indian Affairs' could not readily provide us basic information that it would need to monitor the condition of school facilities and to select and prioritize repair and renovation projects, which are key components of a capital asset plan. For example, when we requested information about schools' deferred maintenance costs, current replacement values, dates of school health and safety inspections, and the prior year's repair funding allocation for each school, an Indian Affairs official told us the information we requested had to be retrieved from five separate data sources, consolidated, verified, and validated, which took over 200 staff hours to complete. OMB advises agencies to compare all assets against one another to create a prioritized portfolio, and our prior work has shown that leading organizations use defined processes for ranking and selecting projects and share the criteria with stakeholders.²⁹

Currently, Indian Affairs has separate processes for disbursing each of the different facilities program funds based, in part, on input from regional facilities managers, according to Indian Affairs officials.³⁰ These separate processes have allowed critical facility issues to go unaddressed. For example, at one BIE school we visited, officials reported that unaddressed water leaks resulted in permanent damage to all of their computer servers, and that replacement costs were over \$200,000. According to the National Research Council of the National Academies,

²⁷H.R. Rep. No. 114-632, at 47 (2016).

²⁸S. Rep. No. 114-281, at 51 (2016).

²⁹OMB Circular A-11; GAO; *Executive Guide: Leading Practices in Capital Decision-Making*, [GAO/AIMD-99-32](#) (Washington, D.C.: Dec. 1, 1998).

³⁰The minor facilities improvement and repair program provides funds directly to regions for their prioritization. In fiscal year 2016, regional facilities managers were required to spend 60 percent of funds intended for minor improvements and repairs on health and safety priorities.

each \$1 in deferred maintenance results in a long-term capital liability of \$4 to \$5.

When Indian Affairs makes project prioritization decisions without considering its entire facilities portfolio, the agency risks using its limited resources inefficiently and may fund lower priority projects before those that should have a higher priority. If Indian Affairs continues operating without a comprehensive capital asset plan, it has no assurance that it is addressing the most critical issues first.

Indian Affairs Has Not Provided Detailed Information to Policymakers on Proposed School Construction Spending

Indian Affairs has not provided specific information about how the agency plans to use school construction funds in the future and how it has used them in the past in its annual budget justifications, which support the President's budget.³¹ Congressional budget justifications help Congress gain a more complete understanding of agency needs. Congress uses budget justifications to inform appropriations decisions, conduct oversight, and provide control over funds.³² In a review of Indian Affairs' budget justifications for fiscal years 2002 to 2017, we found that the agency included fewer and fewer details in its presentation of its school facilities construction budget over time. In 2011, Indian Affairs stopped describing the deficiencies at specific schools unless they were proposed for facility or campus replacement. In 2016, information on ongoing and recently completed projects—including original planned completion dates, actual completion dates, original cost estimates, and final construction costs—was removed entirely.³³

When we asked Indian Affairs officials about the changes to its annual budget submissions, they told us they removed construction updates to streamline the submissions because there were fewer projects in progress than in previous years and the majority of the projects were complete. The House and Senate Appropriations Committees, however, have repeatedly requested that Indian Affairs provide more specific

³¹In support of the President's budget request, departments submit congressional budget justifications to help Congress make appropriations decisions. Agencies are generally required to prepare a budget justification under OMB Circular A-11.

³²Interior's budget justifications typically lay out priorities for the next 5 fiscal years.

³³These were for the 2012 and 2017 budget justifications, respectively. Budget justifications are typically prepared 1 year prior to the year in which funds are appropriated.

information in its annual submissions to the President’s budget. In 2006, the Senate Appropriations Committee stated that it expected more robust appropriations requests for Indian Affairs school construction in the future.³⁴ In 2016, the House Appropriations Committee specifically directed Indian Affairs to publish a report on the status of its education construction programs.³⁵ These requests demonstrate that having such information is useful to Congress to provide oversight of Indian Affairs’ progress in improving and maintaining BIE schools. Federal accounting standards recommend that agencies provide reliable and timely information on the full costs of their federal programs so that congressional and executive policymakers can better allocate federal resources and make more informed decisions.³⁶ In addition, *Standards for Internal Control in the Federal Government* emphasize using quality and complete information to make decisions and communicate such information externally.³⁷

Until Indian Affairs provides policymakers with details on specific needs at schools—including proposed capital expenditures and updates on previous construction—it limits the transparency needed for congressional oversight of the agency’s annual budget requests and spending plans for school construction.

³⁴S. Rep. No. 109-275, at 41 (2006).

³⁵H.R. Rep. No. 114-632, at 47 (2016). To date, Indian Affairs has not issued the requested report.

³⁶Federal Accounting Standards Advisory Board, FASAB Handbook of Accounting Standards and Other Pronouncements, as Amended, [Version 15](#) (Washington, D.C.: June 30, 2016).

³⁷GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

Indian Affairs Has Not Consistently Ensured Accountability for Either Federally or Tribally Managed School Construction Projects

For Federally Managed Projects, Indian Affairs Has Not Used All Available Accountability Measures to Ensure Projects Are on Time, Within Budget, and Meet Schools' Needs

Indian Affairs has not consistently used accountability measures included in its contracts for federally managed BIE school construction projects.³⁸ Correspondingly, the 19 federally managed BIE school construction projects completed from fiscal year 2003 through 2016 often took longer than expected, and were sometimes over budget or had to be scaled back, such as by decreasing square footage, to remain within budget.³⁹ Further, according to school officials, these projects did not always meet schools' needs.

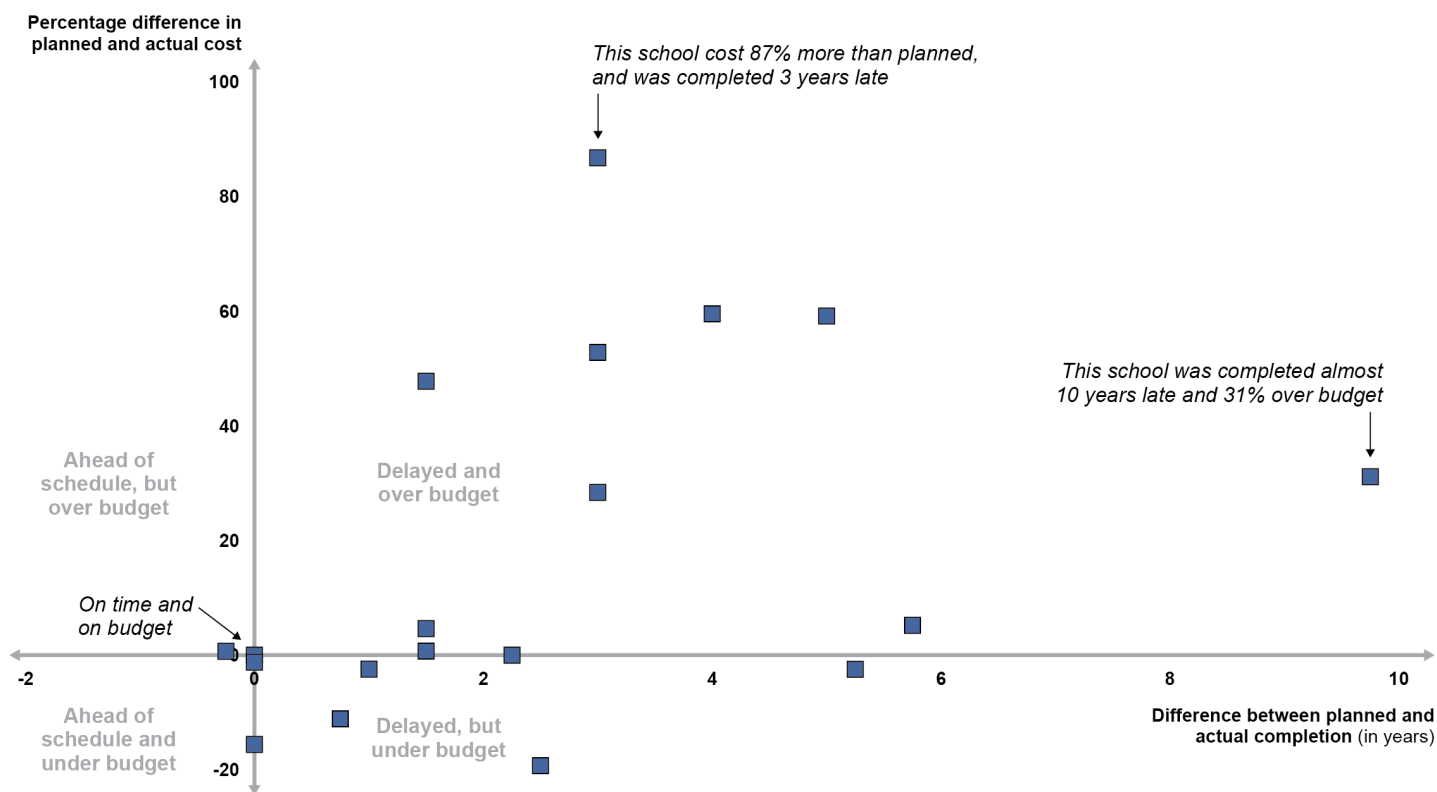
Eight of the 19 federally managed BIE school construction projects since fiscal year 2003 were completed three or more years after the estimated completion date. One school we visited in Arizona took 14 years to complete, which was almost 10 years over schedule. Indian Affairs' design manual states that it will strive to complete all school construction projects within 4 years, from planning through completion. However, Indian Affairs was unable to provide us information on when school replacement projects began, and it does not track the length of these projects. Indian Affairs officials told us they estimate that the projects generally take about 6 years, but they could provide no data on which they based these estimates.

³⁸Federal agencies are required to follow the Federal Acquisition Regulation when procuring goods and services.

³⁹Projects may be delayed or over budget for many different reasons, including a lack of oversight and accountability measures. Other reasons for delays could include problems securing the rights to the land for a new school building or the need to install additional water or power lines, among other factors.

In addition to delays, seven of the 19 federally managed projects were 20 percent or more over budget. One was more than 86 percent over budget; four others were over budget by 40 percent or more. According to school officials, Indian Affairs had to scale back some school projects by eliminating buildings or other major features to stay within budget. Since Indian Affairs does not track information on the reduction in size or scope of projects, it is not known how many of the 19 projects Indian Affairs had to reduce in size or scope. Figure 4 shows how the 19 federally managed BIE school replacement projects completed since 2003 performed with regard to schedule and cost.

Figure 4: Schedule and Cost Performance of Federally Managed Bureau of Indian Education (BIE) School Replacement Projects Completed in Fiscal Years 2003-2016



Source: GAO analysis of Bureau of Indian Affairs Budget Justifications and Performance Information for Fiscal Year 2016 and Indian Affairs construction reports. | GAO-17-447

According to senior Indian Affairs facilities officials, the agency is considering addressing cost overruns and schedule delays by using modular construction. Portions of permanent modular buildings would be manufactured off-site, transported, and then assembled at the site. This

construction technique can reduce the construction period because much of the work can be done simultaneously, rather than sequentially.⁴⁰

Officials said another way they will address schedule delays is by using a design-build approach in which the same contractor is responsible for designing and building a facility rather than having one contractor design the project and other contractors bid to build it.

Officials at the three BIE schools we visited that had recent federally managed construction projects pointed to aspects of the projects that did not meet their needs. For example, an official at a school in Oklahoma told us that when Indian Affairs managed a project to replace a high school building and dormitories, Indian Affairs planned a dormitory to house 400 students and a school that could only accommodate 368 students. Because all of the students in the dormitories would have to be educated on-site, there was not enough capacity in the school to match the capacity in the dormitory.

Accountability measures can provide incentives for contractors to meet schedule, cost, and performance goals. OMB advises agencies to include and enforce measures in contracts that reduce the risk of cost overruns, schedule shortfalls, and work that fails to meet contract requirements.⁴¹ However, we found Indian Affairs did not consistently use available accountability measures in contracts for federally managed BIE school construction projects to ensure these goals were met. In particular, in interviews with Indian Affairs and school officials and our review of contract files for recent school construction projects, we found Indian Affairs officials responsible for working with the contracting officer did not always understand how to use accountability measures.⁴² Because Indian Affairs does not have guidance on incorporating accountability measures

⁴⁰In 2016, Indian Affairs began using this approach to replace a high school building at a BIE school in Minnesota. However, Indian Affairs was not able to complete the project by January 2017, as it had initially told school officials, due to additional time needed for the planning and acquisition processes. Indian Affairs officials have set a new target date of September 2017 for completion.

⁴¹*Supplement to OMB Circular No. A-11.*

⁴²Contracting Officers are responsible for appointing trained and qualified Contracting Officer's Representatives. Indian Affairs also contracts with architectural and engineering firms to provide additional services to enhance contract oversight, such as construction administration and inspections for school replacement projects and other large projects over \$1 million.

into its school construction contracts with commercial vendors, and on properly implementing them during contract performance, facilities management officials we interviewed did not always understand which tools were available to ensure accountability in construction or how to use those tools. Specifically, they misunderstood the use of retainage and liquidated damages clauses, performance bonds, and warranties. Indian Affairs also did not always conduct robust lifecycle cost analysis of different building options to help ensure sustainability over time. Each of these issues is discussed in greater detail below.

Retainage

Retainage is one tool that agencies may use in federal construction to ensure contractors meet contract requirements. The Federal Acquisition Regulation allows agencies to retain, or withhold, a portion of the agreed upon contract price until the work is complete to ensure the contractor or subcontractor will meet its obligations and complete a construction project satisfactorily.⁴³

We found that although all three contracts for federally managed school construction projects that we reviewed contained retainage clauses, officials at each of these schools identified unresolved issues that the contractor had not yet addressed. Contracting officers, construction project managers, and a senior facilities management official with whom we discussed the use of retainage said they generally did not use this measure to ensure accountability in contracts, and they appeared to misunderstand how it could be used. Retained funds can provide an immediate source of funding for correcting problems that a contractor cannot or will not correct. When asked why they typically did not use retainage in contracts, the officials we interviewed provided various reasons. For example, one contracting officer said he often knew the contractors and they generally did not have performance problems. Two

⁴³FAR § 32.103. If satisfactory progress has not been made, FAR § 52.232-5 “Payments under Fixed-Price Construction Contracts,” when incorporated into a contract, allows the contracting officer to retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the contracting officer may retain from previously withheld funds and future progress payments an amount the contracting officer considers adequate for protection of the government and shall release to the contractor all the remaining withheld funds. FAR § 52.232-10 “Payments Under Fixed-Price Architect-Engineer Contracts” allows a contracting officer to withhold up to 10 percent of the payment due in any billing period when the contracting officer determines that such a withholding is necessary to protect the government’s interest and ensure satisfactory completion of the contract. However, withholding the entire 10 percent is not required, and no withholding is required if the contractor’s performance has been satisfactory.

project managers and the senior facilities official incorrectly believed the agency was not allowed to use retainage. A senior Indian Affairs official acknowledged there might be misunderstandings about the use of retainage across the agency.

Liquidated Damages

Liquidated damages clauses in contracts are a tool that agencies can use if they expect to incur damages as the result of delayed delivery or performance. These clauses require the contractor to pay the government a daily fixed amount agreed to by both parties to compensate the government for damages incurred due to delays in project completion. Liquidated damages are not punitive, and should be reasonable, just compensation for probable damages associated with delayed completion.⁴⁴

We found all three of the contracts for federally managed school construction projects that we examined included liquidated damages clauses, but two of the three project managers with whom we discussed liquidated damages said they generally did not use this accountability measure in their school construction projects. When we asked the project managers why they typically did not use liquidated damages, despite such clauses customarily being included in their contracts, their responses reflected a misunderstanding of the role, use, and implementation of this measure. For example, one regional facilities manager told us that using liquidated damages could harm Indian Affairs' relationship with the contractor. She saw the tool as punitive and said it reflects an assumption that the contractor is trying to take advantage of the government. However, as noted above, the Federal Acquisition Regulation specifically states that liquidated damages are not punitive and are not negative performance incentives. Further, the liquidated damages rate must be a reasonable forecast of just compensation for costs that would be incurred.⁴⁵

Performance Bonds

Performance bonds, which are required for construction contracts issued by the federal government, assure payment by a second party to the government in the event that the contractor does not fulfill its obligations

⁴⁴FAR § 11.5 outlines policies and procedures for the use of liquidated damages in federal contracting.

⁴⁵FAR § 11.501(b).

under the contract. An insurance company or bank typically provides this assurance.⁴⁶

We found that Indian Affairs does not have any written guidance for contracting officers and project managers on how to use performance bonds. As a result, senior Indian Affairs facilities officials did not always fully understand how they could use performance bonds to hold contractors accountable. Two senior Indian Affairs facilities officials we interviewed did not realize that the time period for which they could use performance bonds to ensure that contractors complete work satisfactorily was for the entire warranty period. Specifically, they told us that Indian Affairs generally releases performance bonds at the end of construction rather than at the end of the warranty period.

Warranties

Warranties are a promise given by a contractor regarding the nature or condition of the work performed under the contract.⁴⁷ Warranties aim to ensure quality, for example, by guaranteeing the owner that the builder will repair or replace defective parts or workmanship within a specified time period.

Although warranty clauses were included in the construction contracts we reviewed, senior facilities officials told us that Indian Affairs does not require project managers to perform warranty inspections before the warranty period expires. Such inspections are the primary tool to identify issues that may be covered under the contract's warranty and are a common practice in federal government construction. These officials said project managers do not always perform warranty inspections. As a result, according to school officials, federally managed school construction projects did not always meet contract requirements and quality standards, and Indian Affairs did not ensure that contractors corrected all deficiencies before the end of the warranty period.⁴⁸

⁴⁶FAR § 28.001. Bonds are written instruments executed by a contractor and a second party to, for example, secure performance of the contractor's obligations under the contract. Under 40 U.S.C. § 3131(b)(1) and 41 U.S.C. § 431a(e)(2)(B), a performance bond is required for construction contracts for federal public buildings that exceed \$150,000.

⁴⁷FAR §§ 2.101 and 46.702.

⁴⁸Warranties are typically valid for one year after completion for this type of contract.

Because contracting officials did not fully apply the accountability measures available to them under the Federal Acquisition Regulation, problems with school construction sometimes had to be corrected at Indian Affairs' expense after school construction was completed. For example, officials at four schools we visited told us they had roofs that leaked soon after installation. As a result, there was damage to the interior of the buildings which had to be repaired at additional cost to the government. At two schools, the roofs leaked from the day they were installed, officials said. Indian Affairs accepted the roofs as meeting contract requirements, even though the leaks were not satisfactorily repaired prior to acceptance. At one of the schools, officials said the new roof had to be replaced two more times.

Another school we visited in Arizona almost two years after it was built reported a long list of nonfunctioning and malfunctioning building components—including technological, electrical, and plumbing problems and issues with safety and handicap accessibility—that were not addressed when Indian Affairs accepted the building or during the warranty period. We also observed classrooms where agency officials pointed out windows that did not allow enough room for students to escape in case of emergency, and other emergency exit windows with rails that had sharp protrusions that could cause injury, among other construction and safety issues. School officials told us they found Indian Affairs to be unresponsive to their efforts to resolve warranty issues.

Lifecycle Cost Analysis

Lifecycle cost analysis is a tool to determine the most cost-effective option among competing alternatives to purchase, own, operate, maintain, and dispose of a building.⁴⁹ However, we found that some recently replaced BIE schools were planned, designed, and built without first conducting a lifecycle cost analysis.⁵⁰ Such analysis would have required the design to take into account the overall cost and the ability of school staff to operate and maintain the facility over its useful life.

⁴⁹Lifecycle cost analysis can help ensure accountability by estimating the cost of ownership over the useable life of the building and helping the owner select the most cost effective alternatives for components, including heating and cooling systems. Lifecycle cost analysis is an estimate of the initial cost of construction as well as the long-term costs of operating and maintaining the building. Such analysis can also include non-monetary factors, such as the technical capacity of staff or space limitations, to ensure the selected alternative is practicable and meets the needs and operational and management ability of school officials.

⁵⁰In this section, we are referring to both federally and tribally managed projects.

According to senior Indian Affairs officials, a lifecycle cost analysis is not routinely conducted for new school construction projects. As a result, schools have been designed and equipped with features, such as complex heating and cooling systems, that some school facility staff do not have the technical skills, training, and certification to properly operate and maintain. Officials at three schools we visited told us they sometimes had to override the systems in an attempt to address operational problems. Improper use and maintenance of these systems may ultimately result in increased costs, reduced performance, and shorter lifespans, and may potentially void the warranty. Additionally, in our review of contract files, we found a letter from a contractor recommending that one school contract with certified maintenance staff to maintain its complex heating and cooling system after school staff were unsuccessful in maintaining it themselves. Some BIE schools do not have sufficient resources to hire contractors or certified maintenance staff, or they may be in such remote locations that it is difficult to find qualified staff.

When we asked Indian Affairs officials why they did not routinely analyze the lifecycle costs of building systems and required that schools be designed with complex heating and cooling systems, they told us they believed such systems were a requirement under federal green building standards.⁵¹ However, such complex systems are not an absolute requirement under the green building certification system adopted by Indian Affairs, which allows flexibility to substitute simpler systems as long as the building's overall rating is within the acceptable range.⁵² Instead, it

⁵¹Federal agencies use green building certification systems developed by third-party entities to assess how green building elements are incorporated into a building's design and operation. The third-party entity conducts an assessment that rates a building by awarding points in different categories, such as water and energy consumption. A building may achieve different rating levels within a certification system depending on points awarded. One of these certification systems is Leadership in Energy and Environmental Design (LEED), the certification system Indian Affairs requires. Indian Affairs' School Facilities Design Handbook states that "[i]t is the explicit goal of the Bureau of Indian Affairs to apply the LEED-NC (Leadership in Energy and Environmental Design New Construction) Version 2.2 guidelines to the design of all educational and associated dormitory/residential facilities..." and that "[i]t is required that these facilities be formally certified under LEED-NC Version 2.2 to a rating of Silver." Under this system, a school must earn a certain number of points for implementing certain strategies beyond the minimum standards. To achieve a silver rating, a school must earn 33 of 69 points available across six categories, including indoor environmental quality, energy and atmosphere, water efficiency, and building materials.

⁵² Indian Affairs officials stated that there is a performance requirement that is typically achieved within the construction industry through use of programmable heating and cooling systems and that some are required as part of specific credentialing and codes.

is Indian Affairs' own School Facilities Design Handbook—which federal contractors and tribal organizations use when designing schools—that requires systems, such as those for heating and cooling, that have complex features.⁵³ However, the handbook also requires that a school's design take into account an analysis of the lifecycle costs of purchasing, installing, and operating such systems over time. In addition, the handbook requires that when selecting a heating and cooling system, factors including a system's simplicity of operation and its maintainability also be taken into account.

The design handbook's requirement to take lifecycle cost-effectiveness and other factors into consideration, and the requirement to install heating and cooling systems with complex features, could be in conflict in some situations, such as when school facility staff lack the requisite skills and training to operate and maintain such systems. Federal standards for internal control require management to define objectives so that they are consistent with external requirements and internal expectations. If Indian Affairs had ensured that a comprehensive lifecycle cost analysis was conducted, as required by its own handbook, it may have found that in some cases such systems were not cost effective or practical when compared to other alternatives. However, even if a thorough lifecycle cost analysis demonstrates that the requirement for sophisticated heating and cooling operating systems is not practicable, it is not clear from the handbook when and how school designs can deviate from this requirement. Until Indian Affairs clarifies its design handbook's requirements, the agency risks spending money on costly equipment that school officials may be unable to properly operate and maintain.

Without specific guidance for ensuring accountability in contracts, contracting officers and project managers may continue to misunderstand how and when to use accountability measures that are available to them under federal regulations. Therefore, Indian Affairs will have little assurance that contracts are consistently managed to ensure projects are completed satisfactorily, on time, and within budget. As a result, Indian Affairs could risk spending millions of dollars on new schools that do not

⁵³For example, Indian Affairs' design handbook requires "high-performance building concepts" to be included in each heating and cooling system design, including individual temperature controls for classrooms, continuous energy source measurement, occupancy sensors, and direct digital control and energy management systems that use local area networks and the Internet for remote control and monitoring.

meet the needs of students and staff in terms of their size, quality of construction, or sustainability over time.

For Tribally Managed Projects, Indian Affairs Has Not Provided Sufficient Oversight and Technical Assistance to Ensure Projects Are on Time, Within Budget, and Meet Schools' Needs

For school construction projects managed by tribal organizations under grants or self-determination contracts, Indian Affairs also has not provided sufficient oversight and technical assistance to the tribal organizations.⁵⁴ Indian Affairs' facilities management manual states that facilities management and regional facilities staff are responsible for providing technical assistance throughout the construction process. In addition, the manual notes that the Indian Affairs staff are also responsible for fiscal and programmatic oversight of facilities programs, including those operated under tribal grants and self-determination contracts.⁵⁵ In addition, according to the Guide to Opportunities for Improving Grant Accountability by the Domestic Working Group Grant Accountability Project, agencies need to oversee grants to ensure that grant funds are used for intended purposes and will lead to planned results. When grantees further distribute funds, such as to contractors, it is important for them to be able to ensure that the contractors perform in accordance with their contracts. One way agencies help ensure compliance with grant requirements is to provide technical assistance on how to manage grant funds.⁵⁶

Because tribal organizations may not always have the capacity to ensure accountability for large school construction projects, Indian Affairs policy requires an organizational capacity review before awarding school

⁵⁴We refer to the grantees as tribal organizations rather than schools because the organization that receives and manages a grant is often not the school. Other organizations, such as tribal school boards, often manage schools.

⁵⁵Indian Affairs Manual, Facilities Management Program, General Guidelines, Part 80, chapter 1.

⁵⁶Domestic Working Group Grant Accountability Project, Guide to Opportunities for Improving Grant Accountability (Washington, D.C.: October 2005).

construction grants.⁵⁷ The organizational capacity review is an assessment of the tribal organization's capacity to perform construction activities, including assessing its financial management, procurement, personnel, and property management systems. Indian Affairs contracts with a certified public accountant to conduct the review. The findings of the review help the agency determine if the tribal organization represents a high risk of not being able to complete the project satisfactorily. Indian Affairs uses the risk rating to determine its level of oversight, which is reflected in the performance, reporting, and funding schedules included as grant conditions.⁵⁸ If it determines the organization is at high risk, Indian Affairs may decide not to award the grant and manage the project itself, although Indian Affairs officials told us this rarely occurs. Instead, Indian Affairs usually adds conditions to the grant or self-determination contract with the tribal organization that are intended to increase Indian Affairs' oversight. Examples of such grant conditions we found in our grant file reviews and in interviews included Indian Affairs:

- making progress payments only after the tribal organization is able to demonstrate that it has met project requirements, rather than providing grant funds to the organization in one lump sum;
- requiring tribal organizations to provide more detailed financial reports and undergo additional project monitoring; or
- disbursing the grant on a reimbursement basis, meaning the tribal organization has to spend its own money and be reimbursed after project requirements are met.

Some tribal organizations do have the experience and capacity to manage large construction projects. For example, at two schools, we met with officials who had previously managed construction and maintenance projects for multiple tribally managed schools, and, therefore, had the

⁵⁷By comparison, if a tribe elects to manage a project under a self-determination contract between Indian Affairs and the tribal organization rather than through a grant, Indian Affairs evaluates its risk based on the organization's most recent Single Audit, an audit required by OMB's Uniform Guidance, 2 C.F.R. 200.501. Similar to the organizational capacity review, the audit findings are used as the basis for determining the financial reporting requirements and payment schedule to be included in the contract provisions. Indian Affairs is required to provide technical assistance to tribes regardless of whether they are receiving the funds through a grant or self-determination contract. Similarly, adequate oversight helps to ensure that funds are used for the purpose intended.

⁵⁸Indian Affairs Manual, Facilities Management Program, Construction Program, Part 80, chapter 2.

capacity to manage large projects. In one case, the school used a tribal grants office to manage grant funds. The school was also part of a consortium of tribal schools that obtained facilities management and architectural services through a tribally administered non-profit organization. The organization employed two experienced architects who served as project managers. The other school was also part of a consortium, this one with three schools for which the consortium manages educational as well as construction funds for the schools.

However, not all tribal organizations have such high capacity. Even though Indian Affairs evaluates the capacity of these organizations before awarding a grant or self-determination contract for school construction, it does not always provide those that lack capacity with sufficient technical assistance to improve their ability to manage construction projects. Instead, to address these capacity issues, Indian Affairs directs these organizations to hire professional project managers, construction administrators, and on-site inspectors to help them manage the construction projects. However, some tribal organizations were not able to perform basic aspects of project management, such as finding professional services providers. During our contract and grant file review, we found correspondence from a tribal organization that was struggling to hire a skilled project manager for its school and dormitory replacement project. Without sufficient technical assistance, the tribal organization selected a relatively inexperienced project manager over a more experienced one. The school subsequently had problems with the project manager and had to hire another one, resulting in delays of several months. Further, school officials said they did not know how to remedy issues that arose during or after construction was completed or which office to contact for assistance. They noted that when they reached out to Indian Affairs, Indian Affairs did not provide adequate technical assistance.

In addition, unless a tribal organization specifically asks for assistance, Indian Affairs generally does not provide technical assistance to tribal organizations on how to negotiate and administer contracts and hold contractors accountable for completing projects on time and within budget. According to Indian Affairs' guidance on overseeing tribally managed construction projects, tribal organizations must request technical assistance in writing. Tribal organizations managing school construction projects may need more oversight and technical assistance to develop contract requirements and ensure they are met. For example, an environmental audit cited one newly replaced BIE school in Arizona for having biosolids and lagoon sludge in a fenced-in area adjacent to the

school. The contractor had removed the sludge during the school construction process and renovation of a lagoon on school property. According to Indian Affairs, the school did not properly contract for renovating the lagoon, did not set aside funds for sludge disposal, and allowed the contractor to dump the sludge near the school rather than dispose of it properly. The school subsequently had to hire a new contractor to dispose of the sludge at an additional cost to Indian Affairs of \$1.8 million.

We found other instances in which tribal organizations managing BIE school construction projects would have benefited from more technical assistance from Indian Affairs to structure their construction contracts to ensure they held contractors accountable. For example, a BIE school in South Dakota that was replaced in 2009 requested technical assistance from Indian Affairs when it wanted to make a claim against a contractor for not properly testing the soil under the school, which school officials said caused structural damage to the new buildings. The officials said the school lacked the resources to hire an attorney and wanted to obtain assistance from an Interior attorney or obtain Indian Affairs funds to pay for a private attorney. However, Indian Affairs did not provide any technical assistance. Officials said the school had been built under a grant and as a result the tribal organization was responsible for settling any problems with its construction contracts. This is consistent with examples we found in our prior work. As we reported in 2015, one tribally managed project at a South Dakota school to construct a \$1.5 million building for bus maintenance and storage resulted in a building that was too small to accommodate a large school bus on a hydraulic lift when the exterior door was closed. Leaving the door open was not practical in cold South Dakota winters.⁵⁹ The tribal organization had not used financial incentives to ensure the contract performance was satisfactory. Specifically, it paid the firm nearly the full amount for the project before final completion, according to school officials, leaving it little financial leverage over the contractor. Unless Indian Affairs provides assistance to tribal organizations in structuring contracts to protect their interests, tribal organizations with low capacity may have little recourse to address poor contractor performance, possibly resulting in a waste of federal funds.

Furthermore, we found that Indian Affairs did not always provide adequate oversight for ongoing tribally managed projects. For example,

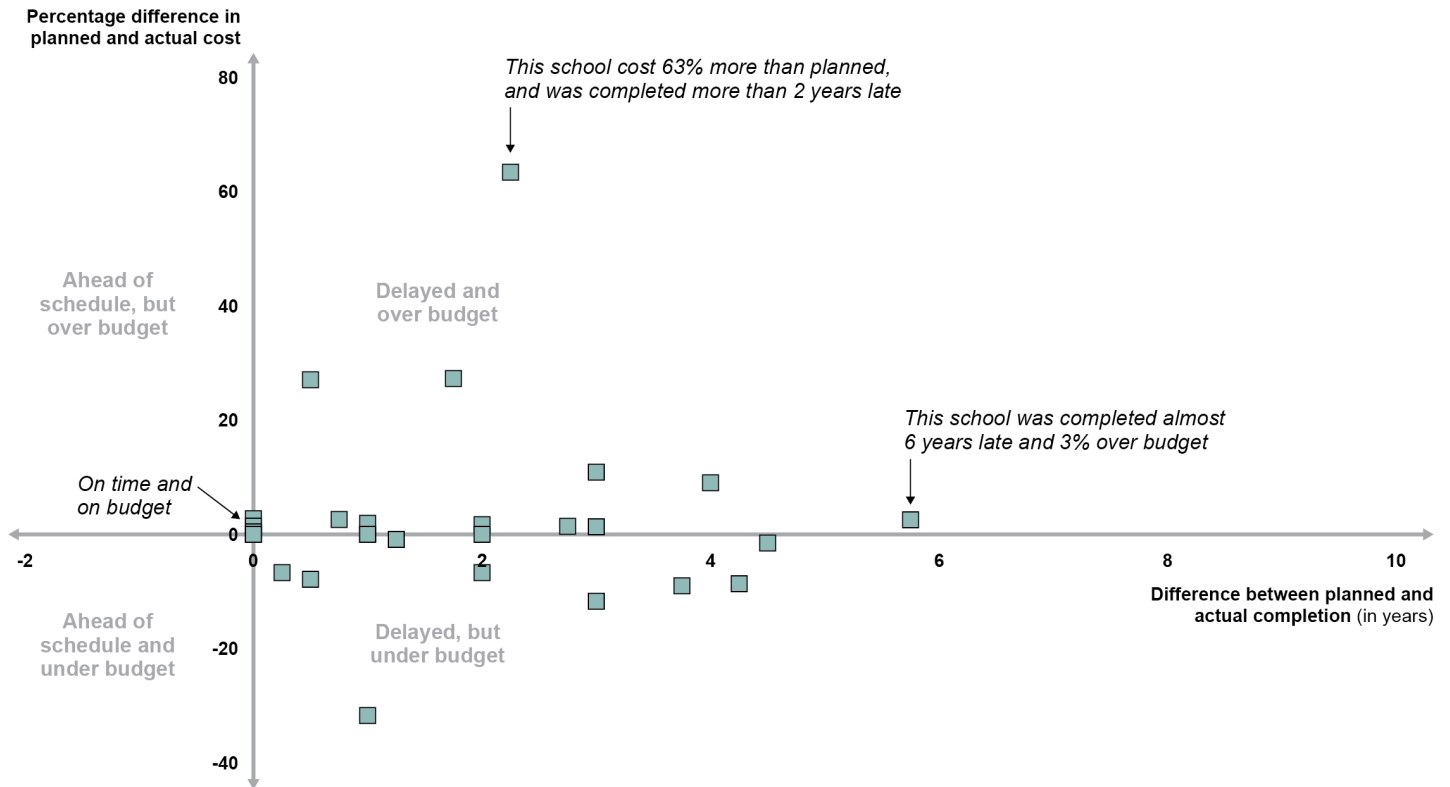
⁵⁹[GAO-15-389T](#).

an official at one school we reviewed in South Dakota told us that the Indian Affairs technical representative only visited the school once in two years when it was completing its project. Indian Affairs' policy states that the technical representative will inspect projects of this size quarterly. Officials at another school we reviewed in South Dakota told us that Indian Affairs was so slow to perform its oversight tasks that school and tribal officials had to travel to Albuquerque, where the Division of Facilities Management and Construction is located, to inquire about the delays in reviewing and approving the design of the new school. Moreover, Indian Affairs was not always able to perform oversight before payments were made to tribal organizations. Indian Affairs facilities officials told us that grant officers, the BIE officials that administer school construction grants, occasionally approve payments without proper review by Indian Affairs. For example, Indian Affairs facilities managers were sometimes informed that BIE had fully allocated funds for school construction projects before the facilities managers had a chance to review the final project.

As a result of this lack of technical assistance and oversight, some new school facility projects managed by tribal organizations took longer than expected and were over budget or had to be scaled back by eliminating buildings or major features. Eight of the 30 tribally managed school replacement projects completed since 2003 were completed three or more years after the estimated completion date. Three of the 30 projects were 20 percent or more over budget, and one was more than 60 percent over budget (see fig. 5). Some planned school designs had to be scaled back to stay within budget. For example, one replacement plan for a school in Arizona initially included both an elementary and a high school, but the tribal organization was not able to build the high school for budgetary reasons.⁶⁰ Officials at the South Dakota school that experienced delays in obtaining Indian Affairs' approval for its design told us that due to the delays, the costs of supplies and labor increased, resulting in its planned gymnasium and kitchen no longer being within budget.

⁶⁰Because Indian Affairs does not track this information, it is not known how many of the 30 tribally managed projects had to reduce their planned scope.

Figure 5: Schedule and Cost Performance of Tribally Managed Bureau of Indian Education (BIE) School Replacement Projects Completed in Fiscal Years 2003- 2016



Source: GAO analysis of Bureau of Indian Affairs Budget Justifications and Performance Information for Fiscal Year 2016 and Indian Affairs construction reports. | GAO-17-447

Delays and issues with budget may also be expected on the last three schools on BIE’s 2004 school replacement list, two of which are tribally managed replacement projects. During our visits to the three schools, we noted that Indian Affairs has not addressed tribal organizations’ requests for assistance or reviewed desired changes in a timely manner. All three schools received funds for planning and design in 2013 and 2014 and are currently at various stages of design. As of February 2017, construction had not yet begun on any of the projects. One school was concerned about rising costs, mainly because BIE was slow to review the school’s requests for changes in the type of space and square footage allowed by

BIE.⁶¹ The tribal organization waited over 2 years to obtain a waiver from BIE to build a slightly larger facility based on the reservation's current census data, which indicated larger incoming kindergarten classes than BIE had projected. Although BIE eventually granted the school more space, it did not initially grant additional funding.⁶² Until March 2017, the school and Indian Affairs were at an impasse because the cost for the new design exceeded the budget allotted by Indian Affairs. School officials were concerned that as time passed, the cost of construction continued to rise.⁶³ In March 2017, Indian Affairs approved funding to supplement the project and notified school officials that the design could proceed. For another school on the 2004 replacement list, the tribal organization asked BIE to approve additional space for its gymnasium. School officials said that after months of hearing nothing from BIE officials, the tribal organization decided to move ahead with the project with a smaller gym.

Until Indian Affairs improves its oversight of tribally managed construction projects and provides technical assistance to those tribal organizations that lack the capacity to manage major projects, tribal organizations may not be able to ensure their new schools are completed on schedule, within budget, and in accordance with schools' needs.

⁶¹The amount of space to which a school is entitled is based, in part, on projected enrollment, which uses past enrollment to project future enrollment. Specific space allowances are outlined in Indian Affairs' Educational Space Criteria Handbook. Bureau of Indian Affairs, Office of Facilities Management and Construction, Office of Indian Education Programs, *Educational Space Criteria Handbook* (Washington, D.C.: Nov. 1, 2005).

⁶²While BIE did not grant the waiver based on the census data, it revised its projected enrollment number based on information it had in its system.

⁶³Indian Affairs had suggested the school use permanent modular construction to reduce costs, but according to school officials, this type of construction would require developing another new school design. School officials noted that about \$880,000 has already been spent on the planning and design of this school.

Indian Affairs Did Not Adequately Maintain Contract and Grant Files, Making it Difficult to Ensure Accountability

Indian Affairs has not maintained copies of complete contract or grant files for recently completed BIE school and dormitory construction projects.⁶⁴ The agency was unable to provide us complete sets of key contract or grant documents for any of the 10 recently constructed schools we selected for review. Numerous key documents were missing from all of the files we requested. In one case, BIE was unable to locate any of its own grant files for a tribally managed school and dormitory construction project completed in 2014. The school faced many serious construction issues, such as non-working fire alarms and large cracks in the foundation, but because school and agency officials were unable to provide the grant documents, there was no documentation to identify how the tribal organization attempted to address these problems or how the contractor responded. Interior's Departmental Manual on Information Resources Management requires the bureaus to develop efficient and effective filing systems to organize and retrieve their records.⁶⁵ In addition, for contracts for federally managed construction projects, the Federal Acquisition Regulation requires assignment of responsibility for their maintenance, and establishment of a system to locate any contract files promptly when files are not maintained in a central location.⁶⁶ In our review, we found that different phases of major Indian Affairs construction projects were sometimes handled by different contracting offices, which each maintained the files in their respective locations. Indian Affairs officials said that it is Indian Affairs' policy that the contracting or grant officers maintain a complete set of files. They said this does not always occur. Further, they told us that contracting officers have large workloads that sometimes take precedence over maintaining contract files.

According to Indian Affairs officials, the agency has begun to maintain electronic files for contracts awarded after 2012, which could make it easier to locate certain files. However, it is unclear whether contract

⁶⁴In this section, we are referring to files for both procurement contracts for federally managed construction projects and self-determination contracts for tribally managed projects.

⁶⁵U.S. Department of the Interior, *Departmental Manual, Information Resources Management Series*, 380 DM 3 (Washington, D.C.: May 9, 1995).

⁶⁶FAR § 4.802(d). In addition, the Federal Records Act (44 U.S.C. § 3102(1)) requires agencies to establish and maintain an active, continuing program for the economical and efficient management of the records of the agency, which includes providing for effective controls over the creation, maintenance, and use of records in the conduct of current business.

administration files will be included as part of this system. Further, agency officials told us the new system will not include grant files and self-determination contract files for tribally managed construction projects.

Turnover among senior Indian Affairs' managers responsible for overseeing school construction and a resulting loss of institutional knowledge makes a set of complete contract files important in order to better manage current and future projects. Without a complete set of construction contract or grant files for recently built BIE schools, it is also difficult to use contract provisions to hold contractors accountable for problems resulting from construction. Further, without a complete set of contract files for all projects, Indian Affairs will be less likely to learn from past experience to ensure future school and dormitory construction projects are better managed. This is particularly important now as Indian Affairs is in the process of building three BIE schools from its 2004 replacement list and will soon begin replacing 10 additional schools selected for replacement in April 2016.

Conclusions

Managing BIE school facilities is a complex task. The cost of repairing, renovating, and replacing BIE's school and dormitory facilities represents a substantial liability, particularly in a resource-constrained environment. Unless Indian Affairs actively monitors its school facilities portfolio and develops a comprehensive long-term capital asset plan, it may not be able to effectively evaluate the full range of its funding priorities and identify which school construction projects should take precedence. Moreover, by including more detailed information on proposed capital expenditures for future projects and updates on ongoing and recent construction in its annual congressional budget justifications, Indian Affairs could provide Congress with more complete information on the costs of its programs. Such information could help inform decision-making about the agency's annual budget for school construction and, more generally, provide greater transparency of federal resource allocation and facilitate oversight.

It is critical that Indian Affairs develop and implement clear, specific guidance for project managers and contracting officers on the effective use of accountability measures to ensure that federally managed projects are on time, within budget, and meet schools' needs. Without such guidance, Indian Affairs may be unable to ensure that new construction meets the needs of students and staff in terms of its size, quality, or sustainability over time. In addition, unclear guidance in Indian Affairs' design handbook makes it difficult to ensure that design requirements—

such as for heating and cooling systems—are cost effective and practical. Without clarification on when and how school designs can deviate from such requirements based on lifecycle cost analysis, the agency risks planning, designing, and building school facilities that do not offer the most cost effective solutions over their lifespan or include features that school facility staff can easily operate and maintain. As a result, school facilities staff may continue to override the systems in an attempt to address operational problems causing systems to fail, operate inefficiently, or void warranties, which could lead to increased costs, reduced performance, and shorter system lifespan.

For tribally managed projects, unless Indian Affairs provides adequate technical assistance and oversight, it may not be able to ensure that tribal organizations are well positioned to effectively manage their construction projects. Finally, without proper maintenance of complete contract and grant files for all BIE school construction projects, Indian Affairs may have difficulty administering contracts and grants, including using accountability measures to ensure contractors meet contract requirements and grantees meet grant requirements.

Without taking steps to improve planning and oversight for school construction projects, Interior may be unable to ensure that limited funding for BIE school repair, renovation, and replacement will be used efficiently and effectively. As a result, thousands of Indian students may continue their education in unsafe and inadequate school facilities.

Recommendations

To ensure accountability for BIE school facility funds, we recommend that the Secretary of the Interior direct the Assistant Secretary—Indian Affairs to take the following six actions:

1. Develop a comprehensive long-term capital asset plan to inform its allocation of school facility funds. Such a plan should include a prioritized list of school repair and maintenance projects with the greatest need for funding.
2. Provide more details in Indian Affairs' annual congressional budget justifications on specific needs at BIE schools, including information on proposed capital expenditures, and updates on previous school construction projects.
3. Develop and implement guidance for its project managers and contracting officers regarding effective use of accountability measures.

-
4. Clarify Indian Affairs' design handbook requirements to explain when and how school designs can deviate from specific requirements—such as heating and cooling systems with complex features—when the life cycle cost analysis demonstrates the requirements are not cost-effective or practical given such factors as the technical capacity of school facility staff.
 5. Improve oversight and technical assistance to tribal organizations to enhance tribal capacity to manage major construction projects.
 6. Develop and implement guidance for maintaining complete contract and grant files for all BIE school construction projects.

Agency Comments and Our Evaluation

We provided a draft copy of this report to Interior for review and comment. In its written comments, reproduced in appendix I, Interior agreed with five of our recommendations and disagreed with one recommendation. Interior also provided technical comments, which we incorporated as appropriate.

Interior concurred with our recommendation to develop a comprehensive long-term capital asset plan to inform its allocation of school facility funds. Interior stated that Indian Affairs is engaged with the Office of Management and Budget to develop a more robust and prioritized capital asset management plan for school infrastructure needs, which they expect to complete before the end of the fiscal year.

Interior concurred with our recommendation to provide more details in Indian Affairs' annual congressional budget justifications on specific needs at BIE schools. Interior stated that Indian Affairs is currently engaged in an effort to comprehensively review the budget justification process with the objective of improving the quality, format, and presentation of the President's annual budget submission to Congress and that it will work to provide more detailed information on proposed capital expenditures and updates on previous construction projects. In addition, Interior stated that Indian Affairs will ensure improvements to the budgeting process are made permanent through formal policy and procedure in order to ensure that the needs of BIE schools are accurately and regularly reported in its congressional budget justification.

Interior also concurred with our recommendation to develop and implement guidance for its project managers and contracting officers regarding the effective use of accountability measures. Interior indicated that the Acquisition office and the Division of Facilities Management and Construction are working together to create and implement guidance and

were preparing and planning improvements for future construction contracts. In addition, Interior stated that Indian Affairs will develop a financial accountability workgroup with members from the Office of the Chief Financial Officer, BIA, BIE, and the Office of the Assistant Secretary—Indian Affairs to develop guidance and standards to ensure the effective use of accountability measures.

Interior did not concur with our recommendation to clarify Indian Affairs' design handbook to explain when and how school designs can deviate from specific requirements—such as heating and cooling systems with complex features—when the lifecycle cost analysis demonstrates that the requirements are not cost-effective or practical. Interior stated that it had revised its design handbook in 2017 and that the revised handbook includes a process to consider deviations that do not violate requisite codes, standards, or laws. Interior further stated that the handbook is not intended to describe every scenario where a deviation may be requested and that it is more efficient to allow designers, schools and other users to request deviations and exceptions as and when needs arise. However, based on our discussions with officials and review of excerpts of the revised handbook, the revised handbook is still in draft and is being reviewed internally and has neither been finalized nor distributed. We believe that an updated design handbook that includes a process for deviations is critical, and we agree with Interior's statement that the handbook does not need to describe every scenario where a deviation may be requested. The draft 2017 handbook indicates that when conflicts or questions arise the designer is to formally notify the Interior project manager in writing to request a waiver. However, it does not provide an explanation of the process or how life cycle cost analysis might inform that process. We continue to believe that, in addition to a process, providing guidelines and an explanation about how life-cycle cost analysis should inform such decisions in the handbook before it is finalized would be useful and help to ensure that the choices designers make with regard to design are both cost-effective and practical.

Interior concurred with our recommendation to improve oversight and technical assistance to tribal organizations to enhance tribal capacity to manage major construction projects. Interior stated that the Division of Facilities Management and Construction will develop a "high-risk" project tracking and monitoring process. The Division will work with BIA and BIE facilities managers to develop an engagement plan to better inform tribes of the extensive requirements involving the management of capital projects replacing schools or facilities. For tribes that manage projects

themselves, Indian Affairs will offer to provide them with technical assistance, particularly during key program phases.

Finally, Interior concurred with our recommendation to develop and implement guidance for maintaining complete contract and grant files for all BIE construction projects. Interior stated that Indian Affairs will develop, as part of its Financial Accountability Workgroup, guidance for maintaining all types of construction contract and grant files.

We are sending copies of this report to the appropriate congressional committees, the Secretary of the Interior, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (617) 788-0534 or emreyarrasm@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix II.

Melissa Emrey-Arras

Melissa Emrey-Arras, Director
Education, Workforce, and Income Security Issues

Appendix I: Comments from the Department of the Interior



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAY 12 2017

Melissa Emrey-Arras
Director, Education, Workforce, and
Income Security Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Emrey-Arras:

Thank you for providing the Department of the Interior (Department) the opportunity to review and comment on the draft Government Accountability Office (GAO) report entitled, *Indian Affairs: Actions Needed to Better Manage Indian School Construction Projects* (GAO-17-447). We appreciate GAO's review of Indian Affairs' processes to fund and oversee the repair and replacement of schools.

The GAO issued six recommendations to the Department to address its findings. Below is a summary of actions planned to address the implementation of the recommendations.

To ensure accountability for the Bureau of Indian Education (BIE) school facility funds, we recommend that the Secretary of the Interior direct the Assistant Secretary-Indian Affairs to:

Recommendation 1: Develop a comprehensive long-term capital asset plan to inform its allocation of school facility funds. Such a plan should include a prioritized list of school repair and maintenance projects with the greatest need for funding.

Response: Indian Affairs concurs. The Office of Facilities, Property and Safety Management (OFPSM) is engaged with the Department and the Office of Management and Budget (OMB) to develop a more robust and prioritized Capital Asset Management plan for school infrastructure needs. OFPSM has also initiated a realignment of its organizational structure to better align with asset management priorities. We expect this plan to be finalized before the end of Fiscal Year 2017.

The BIE works cooperatively with entities across Indian Affairs regarding school construction and maintenance, including the Division of Facilities Management and Construction (DFMC) to improve responsiveness and communication regarding the infrastructure needs of BIE schools. The BIE will also work in close cooperation with its agency partners as it establishes its own internal construction and maintenance capacity during Phase II of the reorganization.

Recommendation 2: Provide more details in Indian Affairs' annual congressional budget justifications on specific needs at BIE schools, including information on proposed capital expenditures, and updates on previous school construction projects.

Response: Indian Affairs concurs. The Office of Budget and Performance Management (OBPM) is currently engaged in an effort to comprehensively review the budget justification process with the overall objective of improving the quality, format, and presentation of the annual President's Budget submission. The OBPM will work with OFPSM to provide more detailed information on proposed capital expenditures and updates on previous school construction projects in the Indian Affairs' budget justifications.

The OBPM is working cooperatively with the BIE to identify school construction and maintenance, as well as other BIE current needs in the budget. Indian Affairs will ensure improvements to the budgeting process are made permanent through formal policy and procedure in order to ensure that the needs of BIE schools are accurately and regularly reported in the Indian Affairs' congressional budget justification (Greenbook).

Recommendation 3: Develop and implement guidance for its project managers and contracting officers regarding effective use of accountability measures.

Response: Indian Affairs concurs. The Acquisition Office, within the Office of the Chief Financial Officer (CFO), has attended formal meetings and training events with the Division of Facilities Management and Construction staff to create and implement guidance for project managers and contracting officers, and is currently preparing and planning improvements for future construction contracts.

The CFO staff has also made improvements in the systems and processes that are already in place, including the current Financial Business Management System (FBMS). FBMS has integrated tools to increase financial controls, including real-time funding availability updates to ensure contracts are not released without sufficient availability of funds. In addition, 20 contracting officers have taken part in construction training.

Indian Affairs will develop a Financial Accountability Workgroup with members from the Office of the CFO, the Bureau of Indian Affairs (BIA), BIE, and the Office of the Assistant Secretary – Indian Affairs to develop guidance and standards to ensure the effective use of accountability measures.

Recommendation 4: Clarify Indian Affairs' design handbook requirement to explain when and how school designs can deviate from specific requirements—such as heating and cooling systems with complex features—when the lifecycle cost analysis demonstrates the requirements are not cost-effective or practical given such factors as the technical capacity of school facility staff.

Response: Indian Affairs does not concur. The revised 2017 version of the design handbook currently includes a process to consider deviations which do not violate requisite codes, standards, or laws. Any request for deviation or exception will be reviewed by an appropriate

team of subject matter experts who will provide a recommendation. The design handbook is not intended to describe every possible situation where a deviation may be requested; rather it is more efficient to allow designers, schools, and other users to request deviations and exceptions, as and when needs arise.

Recommendation 5: Improve oversight and technical assistance to tribal organizations to enhance tribal capacity to manage major construction projects.

Response: Indian Affairs concurs. The DFMC will develop a ‘high risk’ project tracking and monitoring process for all ‘Assets Under Construction’ level projects. The DFMC will work with BIA and BIE facilities managers to develop an engagement plan to better inform tribes of the extensive requirements involving the management of capital projects replacing schools or facilities. For tribes which continue to prefer managing projects themselves, DFMC and the BIA and BIE Facilities managers will offer to provide the tribes with technical assistance, particularly during key program phases.

Recommendation 6: Develop and implement guidance for maintaining complete contract and grant files for all BIE school construction projects.

Response: Indian Affairs concurs. All contracts issued pursuant to the Federal Acquisition Regulation (FAR) are subject to various policies and procedures, including the Department’s Regulations, policies established by the Office of Acquisition and Property Management and the FAR, which in part include, monitoring and internal reviews conducted by the Bureau Procurement Chief’s office. Accordingly, school construction contracts issued pursuant to the FAR will comply with current requirements and guidance for maintenance of FAR contract files. Indian Affairs will develop as part of the Financial Accountability Workgroup, guidance for maintaining all types of construction contract files, including FAR, Self-Determination or P.L. 93-638, and P.L. 100-297 grants.

Guidance will include instructions for using the electronic filing system. At the start of calendar year 2017, Departmental policy on the use of electronic filing (eFile) took effect, which essentially requires that all new contract files from January 1, 2017 be established and maintained on the FBMS-eFile system. This electronic-based contract filing system reduces the risk of loss, ensures greater accountability substantially improving the agency’s ability to maintain and allowing for more effective review of contract files for BIE school construction projects.

Also starting in Fiscal Year 2017, the CFO acquisition office has taken the servicing support role for DFMC construction projects, which include the BIE construction projects. This has helped Indian Affairs create consistency in maintaining contract files for FAR construction contracts across DFMC projects.

The BIE will work in close cooperation with the Financial Accountability Workgroup, as well as the DFMC and other agency partners as it establishes its own construction and contracting capacity. In the interim, BIE will ensure continued collaboration with all agency partners in

drafting and implementing such guidelines and that any future transfer of construction contract and construction grant oversight responsibilities to BIE includes the transfer of such guidance.

The enclosure contains technical comments for your consideration. If you have any questions about this response, please contact Michael Oliva, Director, Division of Internal Evaluation and Assessment at (703) 390-6537.

Sincerely,



Michael Black
Acting Assistant Secretary
for Indian Affairs

Enclosure

Appendix II: GAO Contact and Staff Acknowledgments

GAO Contact

Melissa Emrey-Arras, Director, (617) 788-0534 or emreyarrasm@gao.gov

Staff Acknowledgments

In addition to the contact named above, Elizabeth Sirois (Assistant Director), Lara Laufer (Analyst-in-Charge), Ellie Klein, Liam O’Laughlin, and Jon Melhus made key contributions to this report. In addition, support was provided by Michael Armes, James Bennett, Deborah Bland, David Chrisinger, Monika Gomez, Kelsey Kennedy, Jeff Malcolm, Sheila McCoy, Kimberly McGatlin, Jean McSween, James Rebbe, Jeanette Soares, Alyssa Weir, and Tatiana Winger.

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