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REPORT TO THE SENATE
AND HOUSE COMMITTEES
ON INTERIOR AND INSULAR AFFAIRS

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Selected Contracts,
Purchase Orders, And Grants
Awarded To Indian Tribes And
Organizations During Fiscal
Year 1971

B. 174868

Bureau of Indian Affairs
Department of the Interior

BY THE COMPTROLLER GENERAL
OF THE UNITED STATES

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JULY 7, 1972



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-114868

Dear Mr. Chairman:

In accordance with your request, this is our report on selected contracts, purchase orders, and grants awarded to Indian tribes and organizations during fiscal year 1971 by the Bureau of Indian Affairs, Department of the Interior.

Our principal observations are summarized in the digest at the beginning of the report. We have not obtained written comments of the Department of the Interior on these matters.

During our review certain questions arose concerning the authority of the Bureau of Indian Affairs to make grants to Indian tribes and organizations and possible violations of the Federal personnel laws. These questions still are under consideration, and we shall advise you of our views at a later date.

C2 + R This report is also being sent today to the Chairman, House Committee on Interior and Insular Affairs, who also requested our assistance in analyzing the Bureau of Indian Affairs program which calls for contracting with Indian tribes. *H1900*

We believe that this report would be of interest to the Department of the Interior and to the Office of Management and Budget. Release of this report will be made only after your agreement, or the agreement of the Chairman, House Committee on Interior and Insular Affairs, has been obtained or public announcement has been made concerning its contents.

Sincerely yours,

2 Addresses

Comptroller General
of the United States

C1 + R1
The Honorable Henry M. Jackson
Chairman, Committee on Interior
and Insular Affairs
United States Senate

S1900



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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Sincerely yours,

A handwritten signature in black ink that reads "James B. Stacks".

Comptroller General
of the United States

Cat R2

The Honorable Wayne N. Aspinall
Chairman, Committee on Interior
and Insular Affairs
House of Representatives

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ABBREVIATIONS

BIA	Bureau of Indian Affairs
CSC	Civil Service Commission
FPRs	Federal Procurement Regulations
GAO	General Accounting Office
HEW	Department of Health, Education, and Welfare
OSR	Office of Survey and Review

COMPTROLLER GENERAL'S REPORT TO
THE SENATE AND HOUSE COMMITTEES
ON INTERIOR AND INSULAR AFFAIRS

SELECTED CONTRACTS, PURCHASE
ORDERS, AND GRANTS AWARDED TO
INDIAN TRIBES AND ORGANIZATIONS
DURING FISCAL YEAR 1971

1 Bureau of Indian Affairs 6
2 Department of the Interior B-114868
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D I G E S T

WHY THE REVIEW WAS MADE

The General Accounting Office (GAO) reviewed selected contracts, purchase orders, and grants awarded by the Bureau of Indian Affairs (BIA) to Indian tribes and organizations during fiscal year 1971 at the requests of the Committee Chairmen, House and Senate Committees on Interior and Insular Affairs. These awards were made under BIA's Indian involvement program, which seeks to develop the self-management capabilities of the Indians and their maximum involvement in Federal programs being carried out for their benefit.

GAO did not obtain written comments of the Department of the Interior on the matters discussed in this report.

FINDINGS AND CONCLUSIONS

Nature of goods and services provided

GAO reviewed 77 contracts, purchase orders, and grants, totaling \$10 million, awarded to Indian tribes and organizations during fiscal year 1971. BIA procured a wide variety of goods and services from Indian tribes and organizations, ranging from educational assistance services to materials for road construction. (See app. III, pp. 33 to 37.)

These goods and services were financed by BIA appropriations and from funds transferred to BIA from the Department of Health, Education, and Welfare. Total fiscal year 1971 funding for these activities performed by both BIA and Indian groups was \$314.1 million. (See p. 8.)

Propriety of contracting

BIA relies on the so-called Buy Indian Act as authority to negotiate contracts with Indian tribes and organizations. It believes that substantive contracting authority is conferred by other acts such as the Snyder and Johnson-O'Malley Acts. Since BIA's authority to contract with Indian tribes and organizations has been questioned by the legislative committees, the Department has requested special legislation, now pending before the Congress, that would broaden its authority to contract with Indians. (See p. 12.)

The Federal Procurement Regulations provide that a purchase order is designed primarily for use for small purchases not in excess of \$2,500. Two of BIA's

Area Offices used purchase orders almost exclusively, without regard to dollar amount, and many purchase orders exceeded \$2,500. (See pp. 13 and 14.)

BIA may have made grants to recipients other than those intended by the grant authorization legislation. The Solicitor of the Department of the Interior is considering whether the authorization to make grants to needy Indians includes tribes and other Indian organizations, in addition to individuals. (See pp. 14 and 15.)

Small-dollar-value purchase orders

GAO found no evidence of widespread use of small-value purchase orders for similar items to the same Indian groups. There were three such instances in one Area Office, totaling about \$46,000. (See p. 16.)

Reprogramming of funds

BIA did not reprogram funds during fiscal year 1971 to finance the contracts, purchase orders, or grants included in GAO's review. Therefore the question as to whether the proper authority was received did not arise. The Department of the Interior's written policy, however, may need to be clarified as to the circumstances under which the reprogramming of funds should be approved. (See p. 18.)

Possible violation of Federal personnel laws

Several awards made to Indian tribes and organizations may have violated Federal personnel laws by possibly creating an employer-employee relationship between the Government and the contract personnel. If these awards resulted in such a situation, BIA would have exceeded the staff ceilings established for at least two of its Area Offices. (See p. 20.)

Contract administration

Audits by the Department of the Interior's Office of Survey and Review and GAO showed that BIA had not complied with some of the basic requirements of the Federal Procurement Regulations for negotiated procurement and that there had been weaknesses in contract administration. (See p. 23.)

Proposals for contracts and purchase orders, including contract prices, were often developed by BIA rather than by the tribe or organization receiving the award. Many contract prices were based solely on BIA cost experience. Such costs would not necessarily be a realistic estimate of a contractor's costs and a proper basis for establishing a contract price, because of

- differences between BIA and contractor labor and overhead costs,
- differences in efficiency, and
- other variables which could cause a contractor's costs to be higher or lower than those of BIA. (See pp. 25 and 26.)

Pending legislation

BIA considers desirable the legislation pending before the Congress which would remove obstacles to its contracting with Indian tribes and organizations by authorizing exceptions to the Federal Procurement Regulations.

AGENCY ACTIONS AND UNRESOLVED ISSUES

The Deputy Commissioner of BIA stated that BIA recognized that some deficiencies existed in its contracting process and that BIA had

- organized a separate contracting team responsible for negotiating all central office Indian involvement contracts;
- conducted a contracting seminar for all BIA contracting officers and Assistant Area Directors for Administration;
- released the first five parts of its Indian involvement program manual, which implements the Federal Procurement Regulations regarding contracts with Indian groups and would ensure uniformity in contracting procedures throughout BIA. (See pp. 24 and 25.)

GAO plans to review the Solicitor's decision on whether the BIA grant authorization legislation to make grants to needy Indians includes tribes and other Indian organizations, in addition to individuals, and to advise the Committee on this matter at a later date. (See p. 15.)

GAO is considering the question of whether BIA violated Federal personnel laws by making awards that possibly created an employer-employee relationship between the Government and the contract personnel, and its determination will be reported to the Committees at a later date. (See p. 20.)

CHAPTER 1

INTRODUCTION

Pursuant to the requests of the Chairmen, Senate and House Committees on Interior and Insular Affairs (see apps. I and II) and subsequent discussions with the Chairmen's offices, the General Accounting Office (GAO) reviewed selected contracts, purchase orders, and grants awarded to Indian tribes and organizations during fiscal year 1971 by the Bureau of Indian Affairs (BIA).

Our review was made to determine (1) the specific nature of the goods and services provided by the Indian groups, (2) the propriety of the use of contracts, purchase orders, and grants to obtain goods or services from Indian groups, (3) whether small-dollar-value awards were used to avoid requirements which would have applied to larger awards, (4) whether proper approval was received from the executive and legislative branches to reprogram funds to purposes other than those for which they were appropriated, and (5) whether arrangements by BIA to procure personal services from Indian groups violated the laws or Civil Service Commission regulations and, if so, whether they had the effect of causing staff ceilings established for BIA to be exceeded.

We did not evaluate the appropriateness of BIA's reliance on the so-called Buy Indian Act (25 U.S.C. 47) or other authorizing legislation cited by BIA to contract with Indian tribes and organizations for goods and services which had been provided in prior years by BIA. We also did not evaluate the contract performance of those Indian tribes and organizations receiving awards.

LEGISLATIVE AUTHORITY

BIA cited the so-called Buy Indian Act as authority to enter into negotiated contracts with Indian tribes and organizations for goods and services. The Buy Indian Act reads as follows:

"So far as may be practicable Indian labor shall be employed, and purchases of the products of Indian industry may be made in open market in the discretion of the Secretary of the Interior."

As its basic statutory authority to contract with Indians, BIA cites other legislation, including the Snyder Act (25 U.S.C. 13) and the Johnson-O'Malley Act (25 U.S.C. 452). The Snyder Act authorizes BIA to:

"*** direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States ***."

The Johnson-O'Malley Act authorizes the Secretary of the Interior to:

"*** enter into a contract or contracts with any State or Territory, *** with any appropriate State or private corporation, agency, or institution, for the education, medical attention, agricultural assistance, and social welfare, *** of Indians in such State or Territory *** and to expend under such contract or contracts, moneys appropriated by Congress for the education, medical attention, agricultural assistance, and social welfare, ***"

INDIAN INVOLVEMENT PROGRAM

In 1962, in connection with projects funded under the Accelerated Public Works Program, BIA began to increase its use of the Buy Indian Act to negotiate contracts with Indian tribes and organizations to carry out such projects whose principal objectives were to help the various Indian groups become self-managing. In a series of memorandums issued in 1964, BIA encouraged its Area Directors to develop tribal organizations capable of assuming greater responsibility and more active participation in programs on Indian reservations. These memorandums emphasized the use of negotiated contracts under the Buy Indian Act and authorized advance contract payments to the tribal organizations. They also

provided for the use of a purchase order as the basic procurement document.

In an August 22, 1968, memorandum to all Area Directors, the Deputy Commissioner of BIA set forth the BIA policy concerning the application and increased use of the Buy Indian Act. The memorandum defined the terms "Indian" and "Indian industry," required BIA personnel to help extend the program of locating and developing Indian industries, and authorized the procurement of personal services, provided that persons hired by the contractor were not under the supervision of, or would not report to, a BIA employee.

In an October 1, 1968, memorandum to the Office of Management and Budget, BIA stated that the new policy would do much to provide additional employment opportunities and business management experience to Indians. BIA cited the following examples of increased Indian involvement and corresponding decreased BIA efforts in providing for Indian needs.

- About \$4.3 million in awards to Indian industries during fiscal year 1966, including \$1 million to the Blackfeet Tribe to correct flood damage.
- About \$5.2 million in awards to Indian industries during fiscal year 1968, including \$3.8 million in local employment contracts.
- An estimated saving of 893 man-years of BIA employment and of 41 BIA employee positions in fiscal year 1968 as a result of contracts with Indian tribes and organizations.

On December 28, 1970, the Commissioner of BIA issued a clarifying memorandum concerning the Buy Indian Act policy in which he stated that the BIA policy was to provide Indian and Alaska Native groups with the option of administering any or all programs which BIA provided for these people. The Commissioner stated, however, that under no circumstances were the tribes to be pressured into assuming responsibility for operating BIA programs and that all BIA employees were forbidden from soliciting tribes to enter into such contracts.

CHAPTER 2

SPECIFIC NATURE OF GOODS AND SERVICES PROVIDED

During fiscal year 1971 BIA contracted with Indian tribes and organizations for goods and services financed from BIA's appropriations for education and welfare services, resources management, and road construction. BIA also contracted with Indian tribes and organizations to carry out special educational programs under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 236) financed with funds transferred from the Department of Health, Education, and Welfare (HEW) to BIA and managed by BIA through the consolidated working fund. The total fiscal year 1971 funding for these activities, including those performed by BIA and Indian groups, is shown below.

Education and welfare services	\$217,615,000
Resources management	64,622,000
Road construction	20,200,000
Consolidated working fund	<u>11,702,304</u>
Total	<u>\$314,139,304</u>

We reviewed 77 selected contracts, purchase orders, and grants awarded to Indian tribes or organizations by BIA's Aberdeen, Juneau, and Phoenix Area Offices and the Washington, D.C., central office during fiscal year 1971. The following table shows the number and value of these awards by appropriation or fund for each office as of June 30, 1971.

<u>Appropriation or fund</u>	<u>Phoenix Area Office</u>	<u>Aberdeen Area Office</u>	<u>Juneau Area Office</u>	<u>Central office</u>	<u>Total</u>
Education and welfare services:					
Awards	7	30	9	9	55
Value	\$1,051,079	\$4,613,601	\$ 907,723	\$774,202	\$ 7,346,605
Resources management:					
Awards	2	2	3	2	9
Value	88,611	99,000	920,000	77,485	1,185,096
Road construction:					
Awards	4	-	-	-	4
Value	644,304	-	-	-	644,304
Consolidated working fund:					
Awards	3	6	-	-	9
Value	<u>338,476</u>	<u>924,847</u>	-	-	<u>1,263,323</u>
Total awards	16	38	12	11	77
Total value	<u>\$2,122,470</u>	<u>\$5,637,448</u>	<u>\$1,827,723</u>	<u>\$851,687</u>	<u>\$10,439,328</u>

Appendix III contains a detailed listing of the 77 awards showing the contractor or grantee, the amount of the award, and a description of the nature of the award.

EDUCATION AND WELFARE SERVICES

Fifty-five awards financed from this appropriation covered seven activities: (1) educational assistance, facilities, and services, (2) adult education, (3) welfare services, (4) housing improvement, (5) employment assistance, (6) adult vocational training, and (7) law and order.

Educational assistance, facilities, and services (eight awards totaling \$1,717,119)--Awards made under this activity included (1) one award to administer a special education program for Indian schools in conjunction with title I of the Elementary and Secondary Education Act, (2) one award to provide lunches and other special meals for school children, (3) one award to provide and operate a bus service for reservation schools, (4) two awards to administer and distribute Johnson-O'Malley Act funds to various schools, (5) one award to operate a school, including the hiring of teachers and the procurement of supplies and equipment, (6) one award to provide personnel to a school system, including food service personnel, teachers, and custodial workers, and (7) one award for salaries and other related expenses to operate a kindergarten.

Adult education (one award for \$60,226)--This award was to be used for the training and placement of five community development specialists who would provide the tribe with technical assistance in negotiating tribal service contracts with BIA.

Welfare services (21 awards totaling \$2,679,187)--The 21 awards included (1) 13 awards to operate tribal work experience programs, including applicant eligibility determinations, the distribution of general assistance funds, and the development and selection of work projects, and (2) eight awards to operate general assistance programs, including the distribution of assistance payments; the alleviation of problems connected with child neglect, abuse, or abandonment and connected with excessive drinking or illness; and the operation of foster home programs.

Housing improvement (11 awards totaling \$380,240)--Under this activity, BIA made four awards for the construction or repair of Indian housing and seven awards for building supplies, materials, and labor for housing construction under various housing programs.

Employment assistance (seven awards totaling \$1,727,529)--The seven awards included (1) one award for the operation of an employment training center, (2) one award to establish a newspaper for the dissemination of information to Indian people, (3) four awards to provide various job placement, orientation, housing, or financial assistance services, and (4) one award to provide Indian youths with employment training in resource use, management, and protection.

Adult vocational training (three awards totaling \$444,723)--The three awards provided funds for (1) manpower and supplies needed to relocate and prepare housing for an employment training center, (2) transportation of Indians to places of employment, recreational services, and driver education and training courses, and (3) the training of Alaskan Natives in toolmaking, design, and woodworking and carving techniques.

Law and order (four awards totaling \$337,601)--Three awards provided funds for manpower, equipment, and other law and order services, and one award provided funding for salaries, supplies, and other related expenses for a juvenile delinquent rehabilitation program.

RESOURCES MANAGEMENT

Nine awards financed from this appropriation covered four activities: (1) extension services involving reindeer management and technical services, (2) industrial development, (3) maintenance of reservation facilities, and (4) plant operations.

Extension (two awards totaling \$190,000)--One award under this activity was for technical assistance and training to individual reindeer herd owners, and the other was for the management of grazing and husbandry, the operation of a reindeer slaughter house, and the training of slaughter and packing house workers, bookkeepers, and others.

Industrial development (two awards totaling \$77,485)-- One award was to obtain and report information to BIA regarding fishery and water resources upon which Indians are dependent, and the other was for obtaining information and reporting the needs of selected tribes to BIA by furnishing data on tribal organization, educational needs, work skills, potential employment areas, number of families on welfare, and conditions of family housing.

Maintenance of reservation facilities (three awards totaling \$124,000)--Two awards were for the administration of Indian youth corps projects involving the removal of trash and abandoned automobiles. The third award was used to pay the wages of 40 part-time student workers performing work on beautification projects, such as constructing playgrounds and parks.

Plant operations (two awards totaling \$793,611)--One award was to provide funds for labor, materials, supplies, and other related activities in connection with the maintenance and operation of a school, and the other was for the production and distribution of electricity, the distribution of natural gas, the operation of sewage treatment facilities, and the maintenance of BIA plant and equipment.

ROAD CONSTRUCTION

Three awards provided funds for all materials, labor, and equipment needed to construct roads, and a fourth award was to be used for crushed gravel aggregate.

CONSOLIDATED WORKING FUND

The nine awards financed from this fund were to be used for the administration of education programs under title I of the Elementary and Secondary Education Act, including the employment of teachers and the procurement of supplies and equipment.

CHAPTER 3

PROPRIETY OF USE OF CONTRACTS,

PURCHASE ORDERS, AND GRANTS

We reviewed 77 awards that BIA made to Indian tribes and organizations for the procurement of goods and services. Of these 77 awards, 25 were contracts, 45 were purchase orders, and seven were grants.

BIA has used purchase orders to obtain goods and services under circumstances other than those permitted by the Federal Procurement Regulations (FPRs) and may have made grants to recipients other than those intended in the legislation authorizing such grants. The question of the propriety of BIA's use of grants is presently under consideration by the Solicitor of the Department of the Interior. We plan to review the Solicitor's decision and to advise the Committees of our views on this matter at a later date.

CONTRACTS

In an April 27, 1971, memorandum to the Commissioner of BIA, the Solicitor of the Department of the Interior set forth his opinion that the Buy Indian Act permits the negotiation of contracts, where substantive contract authority exists, for the purchase by BIA of the end product of physical labor or intellectual effort and requiring skill or diligence, of, by, and from Indians.

In the Solicitor's opinion, such negotiated contract authority would include the construction and repair of roads, bridges, buildings, and similar things, as well as supplies and services. The Solicitor also noted that his views were consistent with the position of the Assistant General Counsel, Division of Business and Administrative Law, HEW, concerning the use of the authority contained in the act for negotiated contracts with Indian tribes for the products of Indian industry under HEW programs.

In May 1971 BIA released a manual implementing the Indian involvement programs. The manual reemphasized the

BIA policy of utilizing the products of Indian industry to the maximum extent possible, provided that Indian contractors comply with the requirements set forth in the manual and that the contracts comply with all applicable procurement laws, regulations, and other legal requirements.

Because the legislative committees have questioned BIA's authority under the existing legislation to contract with Indian tribes and organizations for the variety of goods and services discussed in this report, the Department has requested special legislation now pending in the Congress that would broaden its authority to contract with Indians. Also legislation was introduced for the Chairman, Senate Committee on Interior and Insular Affairs, which would provide broader authority for BIA to enter into contracts with Indian organizations to plan, conduct, and administer programs to aid Indians.

PURCHASE ORDERS

In a February 19, 1964, memorandum to Area Directors, the Deputy Commissioner of BIA directed that a purchase order be the basic document used for contracting with Indians under the authority of the Buy Indian Act and that there be an agreement between the tribe and BIA, attached to each purchase order which sets out in detail the responsibility of each party.

The FPRs place limitations on the use of purchase orders for procurement by negotiation. Section 1-3.605-2(a)(1) of the FPRs provides that standard form 147, Order for Supplies or Services, is a multipurpose form designed for use as a purchase order, delivery order, receiving and inspection report, and invoice. Section 1-3.605-2(a) further provides that:

"(3) Standard form 147 is designed primarily for use as

" (i) A purchase order for small purchases not in excess of \$2,500.

"(ii) A delivery order for ordering or scheduling deliveries against established contracts or from Government sources of supply."

The Aberdeen and Phoenix Area Offices used purchase orders almost exclusively for awards to Indian tribes and organizations regardless of dollar amount. Many of the purchase orders exceeded \$2,500. Purchase orders issued in the Aberdeen Area Office usually were supported by cost estimates, descriptions of the work to be performed, and general contracting provisions which usually accompany formal Government contracts, but purchase orders issued in the Phoenix Area Office were not supported by this type of documentation. By contrast, the Juneau Area Office and the central office generally used purchase orders in the manner prescribed by the FPRs.

We questioned the broad use of purchase orders under circumstances other than those permitted by the FPRs in one BIA Area Office. Officials there stated that purchase orders had been used because of the February 1964 instructions from the Commissioner of BIA. One of the officials stated, however, that after the issuance of the BIA manual in May 1971 which required compliance with all applicable procurement laws and regulations in the implementation of the Indian involvement program, purchase orders would no longer be used for awards in excess of \$2,500 to Indian tribes and organizations.

GRANTS

The Department of the Interior and Related Agencies Appropriation Act for fiscal year 1971 (84 Stat. 669) provides grant authority as follows.

"For expenses necessary to provide education and welfare services for Indians, either directly or in cooperation with States and other organizations, including payment (in advance or from date of admission), of care, tuition, assistance, and other expenses of Indians in boarding homes, institutions, or schools; grants and other assistance to needy Indians; maintenance of law and order, and

payment of rewards for information or evidence concerning violations of law on Indian reservations or lands; and operation of Indian arts and crafts shops ***." (Underscoring supplied.)

Similar language was contained in appropriation acts after fiscal year 1951. BIA has interpreted this portion of the appropriation acts as providing authority for grants not only to individual needy Indians but also to Indian tribes and communities to benefit needy Indians.

We reviewed seven grants, totaling \$238,000, to Indian tribes or organizations. Six of the grants, totaling \$198,000, were for the purchase of materials and labor for building, repairing, and renovating homes under the tribal work experience program or Office of Economic Opportunity housing programs. The seventh grant of \$40,000 was for salaries, supplies, and other related expenses for the operation of a rehabilitation program for juvenile delinquents by an Indian organization.

On April 10, 1972, the Commissioner of BIA requested that the Associate Solicitor of Indian Affairs, Department of the Interior, determine whether BIA's interpretation of the act on the use of grants was correct. The Commissioner pointed out that, in implementing the BIA Housing Improvement Program, BIA made grants to Indian tribes and communities for the benefit of needy Indians. According to the Commissioner, this method was used in the interest of policy, efficiency, and economy, because (1) Indian tribes and communities assume responsibility for the management of their affairs, (2) the tribal governing bodies are in a position to know the needs of the individual Indian, and (3) the issuance of one check, rather than several checks to cover various projects, reduces BIA's administrative burden.

We plan to review the Solicitor's decision and to advise the Committees of our views on this matter at a later date.

CHAPTER 4

USE OF SMALL-DOLLAR-VALUE PURCHASE ORDERS

We found no evidence of widespread use of small-value purchase orders for similar items to the same Indian groups. In our reviews at the three BIA Area Offices and at the central office, we identified three instances in one Area Office in which numerous small-dollar-value purchase orders were used during fiscal year 1971 to obtain the same type goods and services from the same Indian group.

1. Eleven purchase orders ranging from \$1,361 to \$3,078 and totaling \$19,068 were awarded to an Indian tribe for maintaining law and order and were used mainly to pay the salaries of two jailers, a policeman, and a judge.
2. Fourteen purchase orders ranging from \$165 to \$4,385 and totaling \$19,491 were issued to an Indian-owned company to perform janitorial services.
3. Twelve purchase orders ranging from \$400 to \$2,000 and totaling \$7,100 were issued to an Indian enterprise to provide groceries, clothing, and sundries for child welfare recipients.

The FPRs state that purchases and contracts may be negotiated without formal advertising if the aggregate amount involved does not exceed \$2,500. Section 1-3.203(a) of the FPRs specifically provides that:

"*** In arriving at the 'aggregate amount involved,' there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertisement. Procurements aggregating more than \$2,500 shall not be broken down into separate procurements of less than \$2,500."

Officials at one BIA Area Office explained that these purchase orders were not combined into a single contract with each supplier because (1) the FPRs did not apply to procurements under the Buy Indian Act, which permits negotiated procurement instead of competitive bidding, (2) it was administratively more convenient for BIA to control and process payments to vendors using monthly purchase orders rather than using one purchase order in the aggregate amount, and (3) it was best to use monthly purchase orders due to the Indian contractors' lack of experience and the turnover rate of the tribal employees hired to perform the services under the purchase order.

As discussed on pages 24 and 25, the Deputy Commissioner of BIA stated that the Indian involvement program manual implemented the requirements of the FPRs for contracts negotiated with Indian groups.

We believe that the use of multiple purchase orders creates an administrative burden on operating officials, and we brought this to the attention of BIA officials. BIA officials advised us that they were considering the use of a 1-year contract to procure these types of goods and services in the future.

CHAPTER 5

REPROGRAMING OF FUNDS

We found no instances in which BIA had reprogrammed funds during fiscal year 1971 to finance the contracts, purchase orders, or grants included in our review. Therefore, the question did not arise as to whether BIA obtained the proper authority from the executive and legislative branches to reprogram funds.

The Department of the Interior's policy may need to be clarified as to the circumstances under which approval for the reprogramming of funds should be obtained.

BIA assured the appropriations committees that funds would be allocated in accordance with the intent of the Congress in granting appropriations. Therefore the Department requires that reprogramming of funds be approved by appropriate officials in the Department, the Office of Management and Budget, and the appropriations committees. The Department's written policy, however, provides no criteria as to whether all amounts reprogramed need approval or only those over a certain amount.

The Deputy Director of the Department's Office of Budget informed us that only significant amounts proposed for reprogramming were reported to the appropriations committees and that decisions as to whether such amounts should be reported were made by officials of BIA or the Department's Office of Budget. BIA officials may reprogram funds without Budget Office approval within an activity but not between activities.

For example, funds could be reprogramed without Budget Office approval from one housing project to another within the housing improvement activity of the education and welfare services appropriation. However, approval of the Budget Office would be necessary to reprogram funds from the housing improvement activity to the law and order activity, even though both activities are within the education and welfare services appropriation.

On several occasions the appropriations committees have expressed concern over reprogramming of funds without seeking or obtaining the committees' approval. This concern was specifically expressed over the reprogramming of \$3,192,000 of education and welfare services funds provided in the fiscal year 1970 supplemental appropriation. These funds had been intended for new and improved education programs but were used to cover the basic operational needs of BIA's education programs.

CHAPTER 6

POSSIBLE VIOLATIONS OF FEDERAL PERSONNEL LAWS AND STAFF CEILINGS ESTABLISHED FOR BIA

Several of the contracts with Indian tribes and organizations for furnishing personal services during fiscal year 1971 may have violated the Federal personnel laws by possibly creating an employer-employee relationship between the Government and the contract personnel. If these contracts did create such a relationship, BIA would have exceeded the established staff ceilings in at least two Area Offices.

FEDERAL PERSONNEL LAWS

In Federal Personnel Manual System Letter No. 300-8, dated December 12, 1967, the Civil Service Commission (CSC) provided guidance to Federal agencies in determining the legality of personal service contracts under the Federal personnel laws. CSC listed those elements which it believed would result in unauthorized contracts or contract personnel practices circumventing the requirements and purposes of the personnel laws:

*** contracts which, when realistically viewed, contain all the following elements, each to any substantial degree, either in the terms of the contract, or in its performance, constitute the procurement of personal services proscribed by the personnel law:

"-Performance on-site

"-Principal tools and equipment furnished by the Government

"-Services are applied directly to integral effort of agencies or an organizational subpart in furtherance of assigned function or mission

"-Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel

"-The need for the type of service provided can reasonably be expected to last beyond one year

"-The inherent nature of the service, or the manner in which it is provided reasonably requires directly or indirectly, Government direction or supervision of contractor employees in order:

"-To adequately protect the Government's interest or

"-To retain control of the function involved, or

"-To retain full personal responsibility for the function supported in a duly authorized Federal officer or employee."

CSC further stated that contracts containing these elements are proscribed unless an agency possesses a specific exception from the personnel laws to procure personal services by contract.

It appeared that the elements listed by CSC were present in varying degrees in several awards by BIA to Indian tribes and organizations. We will determine whether four of these awards violated the Federal personnel laws and will inform the Committees of our decision at a later date.

STAFF CEILINGS

If we determine that the four awards violated the Federal personnel laws by creating an employer-employee relationship between the Government and the contract personnel, BIA would have exceeded the staff ceilings established for at least two of its Area Offices.

A BIA official told us that as of June 30, 1971, the staff ceilings established by BIA for the Aberdeen and Phoenix Area Offices were 1,639 and 1,626 positions, respectively,

and that the total number of actual employees for both Area Offices was identical to the staff ceilings. Three of the four awards in question were issued by the Phoenix Area Office and provided for 28 contract employees. The fourth award was issued by the Aberdeen Area Office and provided for 29 contract employees. Therefore, if an employer-employee relationship existed between BIA and the contractor-supplied personnel, the two Area Offices would have exceeded their established staff ceilings by at least 29 and 28 positions, respectively. We were unable to determine the actual extent to which the staff ceilings in the Aberdeen and Phoenix Area Offices may have been exceeded because we reviewed only a selected sample of the awards made by those Area Offices.

Our review of the awards that were issued by the central office and the Juneau Area Office did not raise questions regarding possible circumvention of the personnel ceilings. Also, because our review was restricted to awards issued by the central office and three Area Offices, we were unable to state whether the personnel ceilings established for BIA as a whole have possibly been exceeded.

CHAPTER 7

CONTRACT ADMINISTRATION

In recent reports on BIA's contracting procedures, the Office of Survey and Review (OSR), Department of the Interior, pointed out that BIA had not complied with certain requirements of the FPRs in procuring goods and services from Indian tribes and organizations. Also we noted instances of noncompliance with the FPRs and other weaknesses in contract administration.

OSR FINDINGS

In its reports dated August 20, 1971, and October 6, 1971, OSR cited deficiencies in BIA's negotiated procurement procedures in both the central office and the Area Offices. A listing of these deficiencies and the applicable section of the FPRs follows.

1. Although the Buy Indian Act authorizes negotiated procurement, FPR 1-3.101(d) requires that negotiated procurement be on a competitive basis to the maximum extent practical. OSR cited several examples of sole-source procurement when the facts indicated that ample competition had been available.
2. Advance payments for property or services may be made only upon adequate security and a determination by the agency head that it would be in the public interest to do so. FPR 1-3.302(d) requires that advance payments be supported by written findings and determinations. OSR cited several examples, however, where such findings and determinations had not been made.
3. Contracting officers did not make the written determinations of contractor technical and financial capability required by FPR 1-1.310-6.
4. Firm fixed-price contracts were used when cost-reimbursable contracts should have been used because price reasonableness could not be determined and

because performance specifications were vague (FPR 1-3.404-2).

5. Purchase orders were used for procurements over \$2,500 (FPR 1-3.605-2).
6. Required price and cost analyses were not performed, although required by FPR 1-3.807-2.
7. Contractors were not required to certify that cost or pricing data submitted was accurate, complete, and current for all contracts over \$100,000 (FPR 1-3.807-3 and FPR 1-3.807-4).
8. Defective pricing provisions were not included in contracts, although required by FPR 1-3.807-5.
9. Preaward audits were not used as pricing aids to determine the reasonableness of cost data submitted by contractors, and audit clauses affording access to contractors' records were not included in contracts, although required by FPR 1-3.809 and FPR 1-3.814-2.
10. Records of negotiation were not prepared, although required by FPR 1-3.811.
11. Utility contracts were not reviewed and evaluated, although required by FPR 1-4.411.
12. Payment and performance bonds were not required on construction contracts (FPR 1-10.104-1 and FPR 1-10.105-1).

In a memorandum dated August 25, 1971, in response to OSR's report on the central office's negotiated procurement procedures, the Deputy Commissioner of BIA stated that BIA had recognized that some deficiencies existed in its contracting process and had agreed, in general, with the OSR report. The Deputy Commissioner stated also that BIA had taken the following actions to overcome its difficulties.

1. A separate contracting team had been organized and had been given the responsibility for negotiating all central office Indian involvement contracts.

2. A contracting seminar had been conducted for all BIA contracting officers and Assistant Area Directors for Administration.
3. BIA had released the first five parts of the Indian involvement program manual which implements the FPRs concerning contracts negotiated with Indian groups and ensures uniformity in contracting procedures throughout BIA.

GAO FINDINGS

We found weaknesses in BIA's contracting procedures and noncompliance with the FPRs similar to those revealed by OSR.

1. As discussed in chapter 3, purchase orders were used under circumstances other than those permitted in FPR 1-3.203.
2. Three road construction purchase orders did not contain provisions for payment and performance bonds, although required by FPR 1-10.104-1 and FPR 1-10.105-1.
3. Records of negotiation, although required by FPR 1-3.811, were not prepared on six of the 11 contracts issued by the Central Office.

For 25 of the 70 contracts or purchase orders reviewed by us, the proposals had been developed by BIA rather than by the Indian tribe or organization receiving the award. For 21, the prices contained in the proposals were based solely on BIA costs rather than on costs independently determined by the Indian tribe or organization receiving the award.

CONCLUSIONS

The OSR and GAO findings show that BIA has not closely adhered to the FPRs and other procurement regulations in its contracting program with Indian tribes and organizations. The steps recently taken by BIA to improve its contracting procedures should correct some of these deficiencies; however, continuous surveillance on the part of BIA and the

Department will be necessary to ensure that procurement is conducted in accordance with the FPRs.

There is a need for improved BIA contracting procedures for the negotiation of proposals and prices for BIA's contracts with Indian tribes and organizations, because many contract proposals were actually developed by BIA and because many contract prices were based solely on prior BIA costs of providing similar services. Prior BIA cost experience would not necessarily be a realistic estimate of a contractor's cost of providing such goods and services because of (1) differences between BIA's and the contractor's labor and overhead costs, (2) differences in efficiency of performance, and (3) other variables which could cause the contractor's costs to be higher or lower than those of BIA.

A contractor that is competent to provide the services being contracted for should have the ability to independently develop a contract proposal and price which should then be evaluated by BIA. One of the tools that BIA should use in making such an evaluation is its cost experience in providing similar services.

Legislation pending before the Congress would authorize certain exceptions to the FPRs concerning BIA contracts with Indian tribes or organizations to carry out functions formerly performed by BIA. BIA considers such legislation desirable to promote Indian participation in programs intended to benefit Indians and to overcome some of the obstacles that prevent the goals of the Indian involvement program from being fulfilled.

CHAPTER 8

SCOPE OF REVIEW

We examined 77 selected awards (25 contracts, 45 purchase orders, and 7 grants) each in the amount of \$25,000 or more issued to Indian tribes or organizations during fiscal year 1971 by the BIA central office, Washington, D.C., and by BIA's Phoenix, Aberdeen, and Juneau Area Offices. We also determined whether small purchase orders in the amount of \$2500 or less were awarded to the same vendors for similar goods or services during fiscal year 1971. The awards examined were for activities financed from the education and welfare services, resources management, and road construction appropriations, and the consolidated working fund.

We reviewed contract, purchase order, and grant records, and other available information and documentation. We also held discussions with officials and employees of BIA and with selected Indian tribes or organizations receiving awards.

Our review was made at BIA's central office in Washington, D.C.; at its Area Offices in Aberdeen, South Dakota; Juneau, Alaska; and Phoenix, Arizona; and at selected Indian reservations.

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
House of Representatives, U.S.
OFFICE OF THE CHAIRMAN
WASHINGTON, D.C.

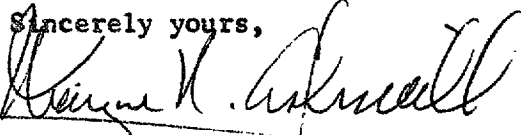
April 9, 1971

Dear Mr. Comptroller General:

Enclosed is a copy of a letter I have sent to Secretary of the Interior Morton.

I shall appreciate it if you will assist the Committee, in accordance with Section 204 of the Legislative Reorganization Act of 1970, in analyzing the program of the Bureau of Indian Affairs which calls for contracting with Indian tribes.

Sincerely yours,



WAYNE N. ASPINALL
Chairman

Honorable Elmer B. Staats
Comptroller General of the United States
Government Accounting Office
Washington, D. C.

Enclosure

APPENDIX II

HENRY M. JACKSON, WASH., CHAIRMAN
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MIKE GRAVEL, ALASKA

JERRY T. VERKLER, STAFF DIRECTOR

United States Senate

COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
WASHINGTON, D.C. 20510

May 10, 1971

Honorable Elmer B. Staats
Comptroller General of the United States
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

My dear Mr. Comptroller General:

The Senate Committee on Interior and Insular Affairs has requested and received information pertaining to contracts with Indian groups from the Bureau of Indian Affairs of the Department of the Interior. A copy of the Committee's request and the Department's reply is enclosed.

The Committee would appreciate assistance from your office in analyzing the material received from the Department.

We would also like to have you develop the following information:

1. the specific nature of the goods or services provided by the Indian groups as a result of contracts, purchase orders, and grants received from the Bureau of Indian Affairs;
2. for the major contracts, purchase orders, or grants (those amounting to \$75,000 or more), whether they were the proper means for obtaining the goods or services from Indian groups;
3. whether numerous contracts, purchase orders, or grants of small dollar value were used to obtain goods or services of the same type from the same Indian group to avoid restrictions which would have applied to a single contract in the aggregate amount;
4. the provisions of Federal and Bureau regulations showing the circumstances when it is proper to use purchase orders for obtaining goods and services and comments indicating whether such

regulations have been adhered to by the Bureau of Indian Affairs in obtaining goods and services from Indian groups;

5. examine whether, in these contracts, the Bureau secured the proper authority from the Executive and Legislative Branches to reprogram the funds used;

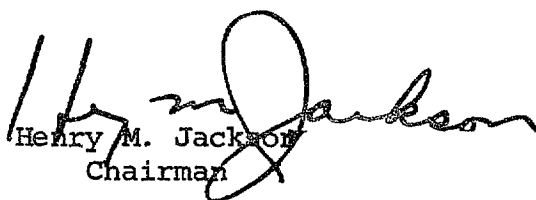
6. whether the arrangements made by the Bureau of Indian Affairs to have personal services furnished by Indian groups violate the law or regulations of the Civil Service Commission concerning the procurement of personal services and, if so, whether the effect has been to exceed the staff ceiling established for the Bureau; and

[See GAO note.]

Following the completion of your statistical analysis of the contract listing, please consult with Mr. Forrest J. Gerard, professional staff member of the Committee, to determine if further or additional analysis or inquiries may be in order.

You may disclose this request to the Bureau of Indian Affairs. Also, please obtain the comments of the Department of the Interior on your report.

Sincerely yours,


Henry M. Jackson
Chairman

HMJ:fgs
Enclosures

GAO note: The deleted comment relates to a matter which was subsequently deleted from the request.

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FISCAL YEAR 1971 AWARDS REVIEWED BY GAO

<u>Appropriation and activity</u>	<u>Grantee or contractor</u>	<u>Type of award</u>
Education and Welfare Services:		
Educational assistance, facilities, and services	United Tribes of North Dakota	Contract
	Nebraska Indian Inter-Tribal Development Corporation	do.
	Inter-Tribal Council of Lower Brule and Crow Creek Sioux Tribes	Purchase order
	Cheyenne River Sioux Tribe	do.
	Gila River Indian Community	do.
	Cherokee Boys Club, Inc.	Contract
	do. do.	do. do.
Adult education	National Indian Training and Research Center	Contract
Welfare services	Oglala Sioux Tribe	Purchase order
	Turtle Mountain Band of Chippewas	do.
	Standing Rock Sioux Tribe	do.
	Devils Lake Sioux Tribe	do.
	Crow Creek Tribal Council	do.
	Sisseton-Wahpeton Sioux Tribes	do.
	Three Affiliated Tribes	do.
	Omaha Tribe of Nebraska	do.
	Lower Brule Tribal Council	do.
	City of Mekoryuk, Alaska	Contract
	City of Wainright, Alaska	do.
	City of Barrow, Alaska	do.
	Fairbanks Native Association	do.
	City of Angoon, Alaska	do.
	Development Corporation of the United Villages of Nelson Island and vicinity	do.
	City of Yakutat	do.
	White Mountain Apache Tribe	Purchase order
	Papago Tribe of Arizona	do.
	do.	do.
	do.	do.
	Inter-Tribal Council of Nevada	do.

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<u>Amount of award</u>	<u>Nature of award</u>
\$ 522,450	Administer Johnson-O'Malley Act funds to various schools
400,000	Do.
179,760	Provide for operation of a high school
47,409	Provide dormitory night attendants, food service workers, and instructional aides for a school
27,500	Pay salaries of two people and other related expenses to operate a kindergarten
292,000	Administer a special education program in conjunction with project under title I of the Elementary and Secondary Education Act
140,000	Provide lunches and other special meals for students
<u>108,000</u>	Provide bus transportation for schools
<u>1,717,119</u>	
60,226	Train and place five community development specialists to provide Indian groups with technical assistance in the negotiation of tribal service contracts
235,800	Operate and administer tribal work expense programs, including determining eligibility, proving general assistance, and developing and selecting work projects
237,458	Do.
142,000	Do.
91,000	Do.
87,000	Do.
78,800	Do.
60,000	Do.
55,550	Do.
25,000	Do.
35,121	Administer general assistance monies; arrange for child care in emergencies; and alleviate problems connected with child abuse, neglect, or abandonment and connected with excessive drinking or illness
39,957	Do.
148,391	Do.
256,290	Do.
66,750	Do.
97,491	Do.
39,000	Do.
244,554	Pay salaries of two people to administer the tribal work experience program and to pay grants to recipients under the program
260,000	Same as above, except six people hired to administer program
75,000	Do.
75,000	Do.
329,025	Pay salaries of eight people hired to administer the general assistance program for indigent Indians, including eligibility determination and grant payments to recipients
<u>\$ 2,679,187</u>	

<u>Appropriation and activity</u>	<u>Grantee or contractor</u>	<u>Type of award</u>
Education and Welfare Services (continued):		
Housing improvement	Winnebago Tribe of Nebraska	Purchase order
	Oglala Sioux Tribe	do.
	Devils Lake Sioux Tribe	do.
	Seminole Tribe of Florida	do.
	Omaha Tribe of Nebraska	do.
	do.	do.
	Standing Rock Sioux Tribe	do.
	Three Affiliated Tribes	do.
	Cheyenne River Sioux Tribe	do.
	Yankton Sioux Tribe	do.
	Cherokee Boys Club, Inc.	Purchase order
Employment assistance	United Tribes of North Dakota	Contract
	United Sioux Tribes of South Dakota	do.
	Turtle Mountain Bank of Chippewas	Purchase order
	do.	do.
	Native American Embassy, Inc.	Contract
	Dine Baa-Hani Newspaper	do.
	Cherokee Boys Club, Inc.	do.
Adult vocational training administrative expense	United Tribes of North Dakota Development Corporation	Purchase order
Adult vocational training program execution	Alaska Federation of Natives, Inc.	Contract
	Ketchikan Alaska Native Brotherhood	do.
Law and order	Indian Development District of Arizona	Grant
	Oglala Sioux Tribe	Purchase order
	Omaha Tribe	do.
	Devils Lake Sioux Tribe	do.
Total education and welfare services		

<u>Amount of award</u>	<u>Nature of award</u>
\$ 47,240	Repair and/or construction of housing
40,000	Do.
32,000	Do.
33,000	Do.
33,000	Purchase materials for use in building houses under various housing programs
30,000	Do.
50,000	Do.
35,000	Do.
25,000	Do.
25,000	Do.
30,000	Do.
<u>380,040</u>	
1,354,600	Operation of an employment training center, vocational, basic education, and related living counseling
108,561	Job-placement services
88,992	Do.
64,400	Financial assistance to Indians who relocated to accept jobs
35,176	Provide orientation and assistance in obtaining housing and avocation services for Indians in the Washington, D.C., area
40,000	Establish a newspaper for dissemination of information to the Navajo people
35,800	Provide gainful employment in outdoor activities for 50 selected youths in order to instill an appreciation for the meaningful use, management, and protection of natural resources
<u>1,727,529</u>	
220,000	Transport 22 houses from one location to another for use as a vocational center, including necessary site preparation, supplies, and labor
198,250	Provide transportation to places of employment or training, recreational services, and driver education and training courses
26,473	Provide training in tool making, Northwest Coast Indian design, and wood-working and carving techniques
<u>224,723</u>	
40,000	Provide supplemental funding for salaries, supplies, and other related expenses of rehabilitation programs for Indian juvenile delinquents at a youth center
152,886	Provide manpower, equipment, and other law and order services
111,000	Do.
33,715	Do.
<u>337,601</u>	
<u>\$ 7,351,625</u>	

<u>Appropriation and activity</u>	<u>Grantee or contractor</u>	<u>Type of award</u>
Resources Management: Extension (note a)	Native Village of Mekoryuk, Alaska	Contract
	Northwestern Alaska Reindeer Herders Association, Inc.	do.
Industrial development	Small Tribes Organization of Western Washington	Contract
	Small Tribes Organization of Western Washington	do.
Maintenance of reserva- tion facilities	Oglala Sioux Tribe	Purchase order
	Rosebud Sioux Tribe	do.
	San Carlos Apache Tribe	do.
Plant operations	Barrow Utilities, Inc.	Contract
	Papago Tribe of Arizona	Purchase order
Total resources management		
Road Construction:		
	Floyd Mull Construction Company	Purchase order
	Floyd Mull Construction Company	do.
	Montana Construction Company	do.
	Gila River Materials Corporation	do.
Total road construction		
Consolidated Working Fund: Programs under title I of the Elementary and Secondary Education Act		
	Cheyenne River Sioux Tribe	Purchase order
	Crow Creek Sioux Tribe	do.
	Lower Brule Sioux Tribe	do.
	Oglala Sioux Tribe	do.
	Rosebud Sioux Tribe	do.
	Standing Rock Sioux Tribe	do.
	Salt River Pima-Maricopa Community Council	do.
	White Mountain Apache Tribe	do.
	Papago Tribe of Arizona	do.
Total consolidated working fund		
Total all awards		

^aCarrying out the policies and objectives of the Reindeer Act of 1937.

APPENDIX III

<u>Amount of award</u>	<u>Nature of award</u>
\$ 160,000	Management of grazing and husbandry, operation of slaughter house, and training of slaughter and packing house workers, bookkeepers, and others
<u>30,000</u>	Provide technical assistance and training to individual herd owners
<u>190,000</u>	
30,680	Obtain and report information to BIA on fishery and water resources upon which the Indians of the State of Washington are dependent
46,805	Report to BIA on needs of selected tribes, including data on tribal organization, educational needs, work skills possessed and needed, number of families on welfare, and conditions of family housing
<u>77,485</u>	
49,500	Administer Indian Youth Corps projects, including paying wages of Indian youth engaged in the program
49,500	Do.
<u>25,000</u>	Pay wages of 40 part-time student workers to perform various beautification projects
<u>124,000</u>	
730,000	Maintain plant and equipment for the production and distribution of electricity, distribution of natural gas, production and delivery of water, and treatment of sewage; and provide personnel to operate a BIA-owned school cafeteria
63,611	Provide and pay for all labor, materials, supplies, and other related expenses to perform continuous maintenance and operation of a school
<u>793,611</u>	
<u>1,185,096</u>	
218,095	Provide and pay for all labor, materials, and equipment necessary to construct roads
289,547	Do.
111,000	Do.
<u>25,662</u>	Provide crushed gravel aggregate for road construction
<u>644,304</u>	
195,211	Administer title I programs, including hiring and paying of teachers and providing necessary supplies and equipment
60,371	Do.
52,525	Do.
420,364	Do.
33,936	Do.
162,440	Do.
161,942	Do.
84,540	Do.
<u>91,994</u>	Do.
<u>1,263,323</u>	
<u>\$10,444,348</u>	

BEST DOCUMENT AVAILABLE