



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

Memorandum

To: Kevin K. Washburn  
Assistant Secretary – Indian Affairs

From: Mary L. Kendall  
Deputy Inspector General

Subject: Report of Investigation – Drapeaux, Brian  
Case No. PI-PI-12-0084-I

The Office of Inspector General has concluded an investigation regarding a complaint submitted by the Bureau of Indian Affairs (BIA) supervisory contract specialist, who alleged that improprieties existed with the Bureau of Indian Education (BIE) organizational assessment (OA) procurement process. Specifically, she stated that she had been replaced as the contracting official after addressing a conflict of interest pertaining to BIE Chief of Staff Brian Drapeaux. Drapeaux had been employed by the OA contract recipient, Personal Group, Inc. (PerGroup), within 12 months of participating as a technical advisor on the project.

Our investigation determined that Drapeaux was employed by PerGroup on several occasions, the last one from June 2009 to September 2010. Drapeaux began employment with DOI on September 13, 2010. While the initial OA contract awarded to PerGroup was under development, Drapeaux and BIE Director Keith Moore advised a key OA evaluation panel member on what actions to take, and Drapeaux also helped write the statement of work. The supervisory contract specialist tried to remediate the conflict of interest by cancelling the initial contract and requiring key decisionmakers, including Drapeaux, to sign a procurement integrity certification before moving forward with a new procurement. The supervisory contract specialist also stipulated that, upon award, PerGroup could not participate in the OA contract at any level, whether as contractor or subcontractor.

Because of the supervisory contract specialist's insistence on these stipulations, the matter was elevated to key Indian Affairs officials, all of whom appeared to disregard the supervisory contract specialist's warnings and admonitions about the OA conflict of interest. Despite their involvement with the procurement, Drapeaux, Moore, and BIE Assistant Deputy Director for Administration David Talayumptewa would not sign the certification. The procurement was reassigned from the supervisory contract specialist to a contract specialist with no contracting experience and no warrant. The contract was eventually awarded to All Native, Inc., an 8(a) certified company. Despite the supervisory contract specialist's stipulation, PerGroup was designated as a subcontractor on the contract, responsible for 41 percent of the contractual work.

**This is a version of the report prepared for public release.**

We are providing this report to you for whatever administrative action you deem appropriate. Please send a written response to this office within 90 days advising us of the results of your review and actions taken. Also attached is an investigative accountability form that should be completed and returned with your response. Should you need additional information concerning this matter, please contact me at 202-208-5745.

Attachment

## **SYNOPSIS**

On November 23, 2011, the Office of Inspector General initiated an investigation resulting from a complaint by the Bureau of Indian Affairs (BIA) supervisory contract specialist, Gallup, NM. The specialist alleged improprieties in the Bureau of Education's (BIE) organizational assessment (OA) procurement process. Specifically, she stated that she addressed a conflict of interest created when BIE Chief of Staff Brian Drapeaux served as a technical advisor on the OA project after having been employed by contract recipient Personal Group, Inc. (PerGroup) within 12 months of accepting his BIE position. She alleged that her actions led to her removal as the contracting official and replacement by a less experienced employee, even though BIE senior officials knew of the conflict.

During our investigation, we found that Drapeaux had worked for PerGroup within 12 months of his BIE employment. We also found that this situation created a conflict of interest once Drapeaux became closely involved in the procurement process because PerGroup competed for and received the contract award. We also found that the contract specialist's efforts to mitigate that conflict, first through termination of the award and then through stipulations excluding PerGroup from participating at any level in a sole-source contract to a small, disadvantaged 8(a) company, resulted in the procurement action being transferred away from her and given to another contract specialist with limited experience and no warrant of authority. Subsequently, PerGroup was included in the OA contract as a subcontractor, despite the conflict of interest involving Drapeaux and the contract specialist's efforts to mitigate the situation. Also, Drapeaux and another BIE official, Director Keith Moore, maintained a longstanding friendship with the PerGroup president, an eventual subcontractor to the OA contract. These senior BIE officials appear to have acted in violation of Federal ethics regulations governing impartiality (5 C.F.R. § 2635.502) and the use of public office for private gain (5 C.F.R. § 2635.702). Finally, other BIE officials who knew of these conflicts of interest chose to ignore them during the procurement process.

## **BACKGROUND**

In 2009, the Office of Management and Budget (OMB) asked the Bureau of Indian Education (BIE) to conduct an organizational assessment (OA). The following year, on October 4, 2010, when BIE had not made progress on the assessment, BIE Director Keith Moore and then-new Chief of Staff Brian Drapeaux met with the chief of the Interior Branch, OMB Natural Resources Division. She expressed exasperation with BIE.

According to Moore, Secretary of the Interior Ken Salazar also considered BIE to be underperforming. To be responsive to Secretary Salazar and to OMB, Moore and Drapeaux made the assessment a high priority, intending it to become one of BIE's educational cornerstones. They anticipated that the assessment would have two phases. The first phase would determine if BIE leadership and middle management performed at appropriate levels. The second phase would determine why schoolchildren in BIE schools failed to achieve.

To move forward, Moore tasked David Talayumptewa, BIE Assistant Deputy Director for Administration since 2009, with oversight of all necessary contractual activities. This included writing the statement of work (SOW) and helping Drapeaux and Moore understand the

requirements of the multiphased project. He also charged Talayumptewa with completing the procurement, both because of his experience and because he and Drapeaux trusted Talayumptewa. Talayumptewa's familiarity with the supervisory contract specialist's work led Talayumptewa to recommend her as the contracting officer. Moore acknowledged knowing little about contracting, and so he relied on Talayumptewa.

### **DETAILS OF INVESTIGATION**

We initiated this investigation on November 23, 2011, due to concerns expressed by the BIE supervisory contract specialist regarding procurement improprieties related to the assessment contract for which she was responsible. She alleged being removed from oversight of this procurement after she terminated the original contract due to a conflict of interest with Chief of Staff Brian Drapeaux, who had worked for the awardee, Personal Group, Inc. (PerGroup), within 12 months of his BIE employment. Her efforts to mitigate the conflict and ensure that the contract was awarded without violating law, rule, or regulation led to her replacement by a new employee with limited experience and no warrant of authority.

Senior managers Moore and Drapeaux acknowledged having longstanding relationships with colleagues outside of BIE. They both freely discussed aspects of the assessment with these individuals. Drapeaux said he occasionally had coffee during the past 10 years with Moore, as well as with the Dean of Education at the University of South Dakota and the PerGroup president. As colleagues, they discussed such topics as education, Indian Country, economic development, and related matters. He described their relationships as well established, adding that their children played basketball together and ran track and cross-country races.

The president and majority stockholder of PerGroup, an organization interested in and ultimately responsible for aspects of the assessment, hired Drapeaux as the company's vice president from 2004 to 2007 and from June 24, 2009, to September 10, 2010. Drapeaux left to become BIE Chief of Staff on September 13, 2010, working for Moore. Moore also knew the PerGroup president, describing him as a professional colleague with whom he shared numerous discussions about "all things Native."

Both Moore and Drapeaux also acknowledged maintaining friendships with the Dean of Education for the University of South Dakota, who had met Moore at the South Dakota State Department of Education when his colleague was the Secretary of Education and Moore the Indian education coordinator. The Dean of Education and the PerGroup president also knew each other through their personal and professional relationships with Moore and Drapeaux. The PerGroup president acknowledged to investigators that his ties to Moore and Drapeaux might suggest to outsiders that PerGroup was favored for the contract.

### **Conflict of Interest Identified**

We interviewed the principal individuals involved in the initial OA contract to determine the sequence of events leading up to identification of the conflict of interest and the contract's termination.

The BIE contract specialist confirmed that the contract had been awarded to PerGroup on March 7, 2011. The award was protested on the basis that Drapeaux was a former vice president of PerGroup. The contract specialist considered it appropriate to terminate the contract because Drapeaux also had served as a technical evaluator during the procurement process. She said he assisted her and Talayumtewa with review of the statement of work (SOW), the Independent Government Estimate, and any market research information or suggested sources they had for the SOW requirements. Drapeaux was not a voting member of the evaluation panel, however. According to the BIE contract specialist, the contract was terminated on April 1, 2011, because of Drapeaux's involvement and his employment with PerGroup.

Drapeaux acknowledged that a panel evaluated the OA proposals and that sometime during this process Talayumtewa told him that PerGroup was among the competitors. When investigators first asked Drapeaux about the contract, he said that PerGroup had not informed him of its participation in the competition. Later, however, he said that he could not recall if PerGroup had informed him of its intention to compete. Whether or not he was told, he said the bid had not raised any red flags because he knew the PerGroup president to be someone who would do a good job and that having him on the contact would give the organization trustworthy people to work with.

Frustrated by cancellation of the contract, Drapeaux also told investigators that his PerGroup employment made no difference to the contractual process. He said that he previously asked Talayumtewa to inform the contract specialist of his PerGroup employment and that his employment had not been an issue until someone filed a complaint. He had not spoken with the contract specialist directly, however, and denied serving as a technical advisor and evaluator for SOW. He said that Moore also did not participate in the contract process.

Moore explained that the contract specialist had asked him to participate on the OA evaluation panel but that he had recused himself after realizing that he knew several bidders. He felt that his participation could pose a conflict but did not discuss his recusal with the contract specialist. He also said that he asked Talayumtewa to let the contract specialist know about Drapeaux's previous PerGroup employment but that he did not report this to her directly.

Moore said that he wanted to ensure that nothing stopped PerGroup from competing for the contract, and that he, Drapeaux, and Talayumtewa had discussed the assessment early on to define what they wanted assessed and to ensure that the results of their contract would not duplicate another large scale assessment of BIE support functions being conducted under a contract with the Bronner Group<sup>1</sup> that was ongoing at that time.

We asked Moore if he ever discussed BIE's focus with PerGroup before the OA request for proposals. Moore explained that the Assistant Secretary's office told him that senior BIE managers were not trustworthy, and so he had turned to those he knew he could trust because of his longstanding relationship with them, namely with the Dean of Education and the PerGroup president. Moore acknowledged calling the Dean of Education every couple of weeks to use him as a sounding board for issues he faced. Moore advised that their discussions would have

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<sup>1</sup> "U.S. Department of Interior – Indian Affairs Final Report: Examination, Evaluation, and Recommendations for the Support Functions" by Bronner Group, LLC, 2012.

covered the state of BIE, but not the assessment, and that he would not have shared SOW information.

We also asked Drapeaux if he advised PerGroup or gave them any procurement details. He said that he did not give the PerGroup president any insight into the process.

We explained to Drapeaux that his previous employment and his new role at BIE not only created concerns about an actual conflict of interest, but also created appearance issues. Drapeaux acknowledged this, but said that he did not agree with the perception or the complaint because he felt his previous employment issue should have been addressed earlier in the procurement process and that addressing it later upset him because it caused the project to lose time.

Investigators also spoke with the PerGroup president and the Dean of Education. The PerGroup president said that the BIE contract specialist informed him on May 9 that the contract had been terminated. The Dean of Education told investigators that he had telephone conversations about the assessment with Moore every few weeks. Moore told him that BIE was accepting bids and that PerGroup was one of several companies bidding on the contract. The Dean of Education knew of PerGroup because he lived in Pierre, SD, where PerGroup was based. The Dean of Education also said that he and Moore agreed that everything had to be aboveboard.

### **Contract Cancellation Followed By 8(a) Award**

After cancelling the initial contract, the contract specialist informed BIE managers that they could meet the OA objective by identifying an 8(a) qualified company to whom the contract could be directly awarded without competition. Shortly after this, on June 8, 2011, Talayumtewa sent the contract specialist an email, identifying Ho-Chunk, Inc., as the 8(a) company requested by Moore. According to Drapeaux, Moore had feared that the conflict-of-interest complaint and subsequent contract cancellation would force the assessment process to start over. When the contract specialist suggested making the award to an 8(a) company without competition, Drapeaux recommended Ho-Chunk, whose owner, he said, he had known for more than 18 years. Moore agreed, made the selection, and communicated his decision to Talayumtewa.

Moore confirmed for investigators that he and Drapeaux conducted research, identifying Ho-Chunk and its subsidiary, All Native, Inc. (ANI). Moore said Drapeaux's Ho-Chunk connection came from his PerGroup work. Moore said he told the contract specialist that Ho-Chunk was the 8(a) company for the procurement.

The decision to award the contract to Ho-Chunk surprised the contract specialist, she said, because Moore previously said that he wanted to wait until Drapeaux's 12-month separation from PerGroup had elapsed so that PerGroup could compete for the contract. When Talayumtewa asked her if BIE should initiate contact with Ho-Chunk, the contract specialist replied that only she should make contact. Because of the earlier conflict of interest, she did not want BIE to conduct any market research for the new SOW or otherwise contact Ho-Chunk and thus jeopardize the contract.

On June 8, 2011, the contract specialist responded back to Moore with an email that she also copied to Drapeaux, Talayumptewa, and former BIA Office of Acquisition and Property Management-Indian Affairs Director Kathy Daum. In the email, she requested clarification of Moore's previous request to delay the procurement until after Drapeaux's cooling-off period. She also informed him that she would be sending a procurement integrity certification form for Moore, Drapeaux, and Talayumptewa to sign for the protection of all parties, including the Government. The certification required them to attest that they had no conflicts of interest (e.g., financial interests, business relationships, or other conflicts) with Ho-Chunk, its subsidiaries, or its subcontractors. Her email further stipulated that she would require the prime contractor, Ho-Chunk, to identify any subcontractors. She indicated that PerGroup would not be allowed to participate in the contract at any subcontracting tier level due to the organizational conflict of interest identified under the previous contract.

When investigators questioned Drapeaux about the contract specialist's email, he said that he had tried to stay out of conversations surrounding the award. He agreed to comply with the stipulations, he said, and claimed to be completely out of the procurement loop by the time Ho-Chunk was selected on June 8, 2011. Questioned further, he admitted that he had made decisions behind the scenes but claimed that he did not talk with Ho-Chunk employees. He and Moore trusted that Ho-Chunk and PerGroup could complete the OA without a problem.

Moore said he questioned the contract specialist as to whether the certifications were based on policy or were her own requirement. She responded that her decision stemmed from the Federal Acquisition Regulations (FAR), which allowed the contracting officer to establish requirements to protect the integrity of the procurement. Moore told investigators that he could not remember the contract specialist explaining why she wanted the certifications, although he said that he did not give her an opportunity to explain because of his irritation with the process.

The contract specialist told investigators that her June 8 response emphasized the need to mitigate the appearance of a conflict of interest and to put some protections in place, essentially the procurement integrity certification. She did this because she feared BIE managers would try to back door the new process by including PerGroup.

Asked by investigators if the contract specialist stipulated any limitation regarding Ho-Chunk's status as the 8(a) contractor, Moore said that he and the contract specialist exchanged emails in which she gave detailed information. He noted that a red flag went up for him and that he became concerned that if he made any contracting mistake, an IG investigation would result. Moore said that he also told Drapeaux to step away from the project and to quit being so involved. Drapeaux stated, however, that he was not involved with the assessment contract after the contract specialist's initial directions.

Meanwhile, the contract specialist sent a follow-up email to Moore, Talayumptewa, and Drapeaux on June 16, 2011, reminding them to respond to her information request and to sign the certification. No one returned the completed form, but Moore emailed her to request a meeting to discuss the contract. She heard nothing from Moore until July 12, after sending him another email inquiry. Moore's July 12, 2011 email chain formally cited Drapeaux's recusal for the first time in writing. Drapeaux told investigators that he had not known that he needed a

formal announcement, reasoning that others should have known he was recused because of the OA procurement termination.

Contrary to Moore's statement that Drapeaux had been recused, however, investigators found that Drapeaux sent an email to Moore on August 8, 2011, stating that he had marked up the statement of objectives to be sent to All Native, Inc. (ANI), the 8(a) subsidiary of Ho-Chunk that would complete the OA. Drapeaux also said that Ho-Chunk was ready to start work.

Moore explained that Drapeaux's recusal only meant that he had been recused from internal conversations about the contract, but that Moore would continue to rely on Drapeaux's expertise, considering Drapeaux to be his strongest ally and colleague. Supervisory Contracting Specialist (later the Chief of Contracting) David Brown also confirmed that Drapeaux was involved in the procurement process, even though PerGroup was a subcontractor.

Moore also told investigators that he took the contract specialist's email concerning the certifications to the Solicitor's Office to determine if the request was standard and if he was obligated to sign. He was told that the contract specialist's request was not standard, but could not recall who told him this.

Moore said that the difficulty with the procurement bewildered him. He wondered why the contract specialist had not identified the need for certifications at the beginning of the procurement. He further said that Drapeaux's employment was a nonissue for him even though the contract specialist felt that she should have known up front. He said he felt that he had already disclosed the issue. He reported telling Talayumptewa that he wanted to ensure that all aspects associated with getting the contract in place occurred in a legal and proper manner. Moore said, however, that he had been unwilling to sign the certifications.

Drapeaux said that his interview with OIG investigators was the first time he recalled seeing the certification form. He added that if he had seen the form, he would have advised Moore and Talayumptewa to sign it because he realized it would not impact the contract. He subsequently said that he dropped the ball regarding the form and would have recommended signing it, had he not stopped performing tasks associated with the contract.

Drapeaux did not recall discussing the certification with Moore and could not explain how the procurement moved forward since the contract specialist's stipulations were not met. Drapeaux questioned why the contract specialist had not required the certifications from the beginning. The PerGroup president indicated that he heard nothing about the assessment after the award cancellation until he was contacted by the BIA contracting office. He also heard from the Dean of Education that BIE intended to award the contract to an 8(a) certified company. The PerGroup president did not know how the Dean of Education knew but suggested that the information may have come through his friendship with Moore, which dated back to their mutual employment by the State of South Dakota.

The PerGroup president, in turn, referred the information concerning the 8(a) opportunity to Ho-Chunk, because PerGroup lacked 8(a) certification and he knew that Ho-Chunk wanted to work under such a contract. The PerGroup president contacted a project manager for ANI, to tell her

what he knew about the project. He also conveyed to Ho-Chunk that PerGroup would be interested in working on the project if Ho-Chunk received the award.

The PerGroup president explained that he had met the Ho-Chunk chief executive officer through his attorney several years before. At that time, they agreed to team up on joint ventures. PerGroup and Ho-Chunk signed a nondisclosure agreement in September 2010 and a teaming agreement with ANI in August 2011.

The PerGroup president learned from ANI that ANI was working on the statement of objectives for the contract. ANI approached PerGroup to ask what it could offer. The PerGroup president did not know if ANI had approached the Dean of Education to request his participation at that point.

The PerGroup president said PerGroup helped ANI draft a proposal responding to the statement of objectives. PerGroup had responsibility for 44 percent of the labor on the contract; the Dean of Education had responsibility for 6 or 7 percent; and ANI had responsibility for the remaining 50 percent. PerGroup agreed to develop a survey and collect data—BIE stakeholders, including education line officers, assistant deputy directors, and BIE employees at all levels, were to be surveyed for their opinions of BIE leadership and structure. Once stakeholder data had been collected, PerGroup would give the information to ANI.

The Dean of Education said that he learned about ANI's involvement from the PerGroup president in July or August 2011. The PerGroup president told him that ANI was interested in the procurement but that neither PerGroup nor the Dean of Education needed to compete because they would be ANI subcontractors. The Dean of Education said that he met with ANI and PerGroup in Vermillion, SD, because ANI wanted to know about the first contract, as well as discuss the Dean of Education's background and possible involvement in the new contract. After the meeting, he learned that ANI received the contract award and wanted his involvement.

### **BIE Contract Specialist Replaced**

The contract specialist said that about August 23, 2011, she learned from Property Management-Indian Affairs Director Kathy Daum that the OA procurement was being reassigned because Moore, Talayumptewa, and Drapeaux felt they did not have to sign the certifications. The contract specialist previously had consulted with Daum about the conflict of interest surrounding Drapeaux's PerGroup employment and, at that time, Daum had supported the contract's cancellation.

Daum told investigators that the contract specialist's requirement for the signed certifications had seemed reasonable to her since contracting officers are financially and criminally liable for their procurement actions, which gives them latitude to make such decisions. Daum also said that she had agreed with the contract specialist that PerGroup should not be involved at any level in the new procurement and that she would not have awarded the contract to Ho-Chunk/ANI, knowing its connection with PerGroup and Drapeaux. Daum agreed that the contract was ultimately awarded improperly.

Responding to the contract specialist' request for signed certifications, Moore told Daum that he had elevated the issue to Paul Tsosie, Chief of Staff to the Assistant Secretary – Indian Affairs (AS-IA), who had assigned it to Special Assistant Jeannette Hanna. In response, Daum told Moore, Tsosie, and the other managers that the contract specialist had the right and authority to require the signed certifications.

Moore later confirmed for investigators that he had elevated the issue to Tsosie after trying to work through Daum and George Skibine, then Deputy Assistant Secretary for Management – Indian Affairs. Moore wanted Tsosie to know the steps taken by BIE and told him that BIE was again struggling with the contracting office. Asked if he ever discussed the contract specialist's concerns with Tsosie, Moore said he did not recall doing so, although he did recall sharing his own perspective. When investigators asked about the procurement's elevation to AS-IA, Drapeaux replied that BIE's relationship with the contracting office was a complete disaster and needed to be addressed by AS-IA.

Investigators asked Tsosie how he responded to the July 12 email. He said he received a copy but did not give it much attention. Asked further if he was responsible for emails concerning the contract, he said he received numerous emails but did not intend to get involved in the details of the contract. He added that even though it would have been a good idea, it was not his responsibility.

Tsosie recalled writing a return email stating that he wanted to be in the room for any discussions. According to Tsosie, he tasked Hanna with getting the project back on track. Tsosie said he was not aware that Moore and Drapeaux refused to sign certifications but vaguely remembered Moore saying that his team was being asked to do things that no one else was asked to do. He could not remember if he responded to Moore.

Jeanette Hanna said she received the contract specialist's emails, but did not read them in detail because she was involved only at the highest levels. She had been tasked with getting the project back on track by prompting the two sides to communicate effectively to award the contract.

Investigators asked Moore if BIE, BIA, and AS-IA senior officials discussed the contract specialist's conflict-of-interest concerns. Moore said they had not because they were down to the deadline of getting the contract in place. When asked if the senior officials disregarded the laws, rules, and regulations outlined by the contract specialist because of a time shortage, Moore said that he regarded Skibine, the contract specialist's supervisor, as the expert when he needed to interpret and respond to the contract specialist's analysis.

Daum said that, ultimately, because the contract specialist would not act on the procurement without the signed certifications, she moved the contract to the Central Office, where the procurement was assigned to Brown and a new contract specialist. Daum said she was not told to take the procurement away from the contract specialist who had previously been assigned to the job, but had been pressured to move the contract forward. She felt the reassignment was the best alternative to award the contract. When asked if these steps were proper, Daum indicated that they were not but that such things happened a lot.

The contract specialist stated that after the new contract specialist received the assignment, he had called her for documents. They briefly discussed her view. He told her that he did not agree with the actions being taken but that he was new and did not have a warrant, so was doing as he was told. The contract specialist said that she then emailed Brown to inform him of the situation. He seemed caught off guard and uninformed of the circumstances, she said, but still did not prevent the contract from going forward.

In speaking with investigators, the new contract specialist did not mention telling the former contract specialist of his concerns with the procurement. He did indicate being tentative about his involvement because he was new, the procurement set-aside was for \$840,000, and he had no contracting experience.

When asked why the contract specialist was taken off the OA procurement, Drapeaux said he did not know but speculated that Daum did not like her work. He reiterated that he did not put any stock or confidence in any of the contracting officials assigned to BIE. Moore echoed this analysis when investigators pointed out that after the July 12 email, the contract specialist was no longer included in email strings about the procurement. Moore said he did not know why she was no longer included, but that he had been fed up with the situation, and possibly said to Skibine that the contract specialist needed to be removed.

Moore said that he shared with Skibine and with others the contracting struggles BIE had experienced. When we told Moore that the contract specialist had been replaced by a new contract specialist with no prior contracting experience and no warrant, Moore said that he had no authority to remove the former specialist and no knowledge of the new contract specialist's qualifications.

Tsosie also said he had no role in the contract specialist's removal or in deciding who the contractors should be. Hanna, likewise, had no knowledge of who had directed the contract specialist's removal. She did say that she told Vicki Forrest, former BIA Deputy Director, Office of Trust Services, that she might need another contracting officer if she wanted to keep both sides talking. Hanna said that she did not directly advise transferring the contract specialist, nor did she expect her comment to have a detrimental effect.

As the person responsible for the OA procurement after the contract specialist's removal, Brown said he knew that the contract specialist had required certifications to be signed—a judgment call, he said—but did not know that she had stipulated PerGroup's noninvolvement in the contract. He thought that was not her call since he believed that the OA procurement process had been transferred away from her by then.

*Agent's Note: The OA procurement process was still assigned to the contract specialist at the time that she required the certifications; it had not yet been transferred.*

Brown later conceded that if the procurement was still assigned to the contract specialist, she could have stipulated PerGroup's noninvolvement.

When asked who from BIE had recommended the 8(a) company that was awarded the contract, Brown identified Drapeaux and Talayumtewa. Questioned about their involvement since

Drapeaux worked on the SOW, Brown replied that the OA contract was awarded to ANI. He indicated that the subcontractors they hired were up to them and that BIE's contract was with All Native, rather than All Native and their subcontractors. Brown said he did not know how PerGroup got involved with the contract but considered PerGroup to be a small business and a subcontractor.

Investigators then asked Brown if he had taken any action when he saw PerGroup's name on the ANI proposal. He said that he fell back on knowledge that the prime contractor was All Native and that whatever subcontractors they used were up to them because the Government would hold ANI responsible.

When asked why the OA procurement was transferred to the new contract specialist, who had no contracting experience, Brown said that the action was not abnormal. He conceded that assigning the new contract specialist to the procurement may have been a mistake, even though he said there was no malice in the process.

When challenged on his assertion that the procurement transfer was not abnormal, especially if the contract specialist acted in the best interest of the Government, Brown emphasized that time had been of the essence. He cited the FAR, stating that the contracting officer should avoid creating unnecessary delays, burdensome information requirements and excessive documentation. Investigators also cited FAR guidance to avoid "any conflict of interest or even the appearance of a conflict of interest." Brown said that both statements were in the FAR and that he made a business decision by choosing expediency.

### **BIE Officials Overlooked PerGroup's Inclusion as OA Subcontractor**

Keith Moore acknowledged that PerGroup ended up as a subcontractor due to Drapeaux's ties to both PerGroup and Ho-Chunk. Moore stated that PerGroup was not given any preference in the procurement process, but said that he felt irritated with the process that forced them to earn the contract. After the hours and hours of legwork that went into meeting the deadline, he noted, the applicants still could not get the contract. Even though they followed the process, he said, the contract was taken from them.

He indicated that he probably suggested to Drapeaux and Talayumtewa that PerGroup be involved as a subcontractor. He told them that if subcontractors were needed, PerGroup had earned the opportunity.

Investigators asked Drapeaux how PerGroup ended up as a subcontractor despite conflict-of-interest warnings given to senior managers. He said he did not know, but indicated that he introduced PerGroup and Ho-Chunk while working for PerGroup. He denied influencing PerGroup's participation on the contract. Asked if he discussed the assessment during events he attended with the PerGroup president, the Dean of Education, and Moore, he said he probably discussed the need for an assessment. Drapeaux said that it became evident that if they were going to do a good job—they simply needed to build a team of individuals who were experts in their fields and could help move BIE forward. Drapeaux denied building a team for the assessment, saying that he did not strategize with PerGroup or the Dean of Education to get them

on the contract and that he personally had not benefited in any way. He did say that he may have reviewed the statement of objectives to ensure no duplication with the Bronner Group assessment but did not mention it to ANI.

Talayumptewa said that once he found out that the contract went to Ho-Chunk, with PerGroup as a subcontractor, he and the contracting officer's technical representative called Moore to find out what was going on. Talayumptewa said Moore told him that the contract had been processed through Brown's office in Reston, VA. Talayumptewa acknowledged that the situation was contrary to what he knew the contracting regulations to be and that it bothered him.

Talayumptewa said that he told Moore not to deal with PerGroup because of the conflict of interest, but Moore said that the Reston office had approved of PerGroup as a subcontractor.

The new contract specialist said he also discussed the conflict of interest with Brown, who told him that a separation existed because BIE was dealing with ANI, not PerGroup. The new contract specialist then determined that a conflict of interest did not exist because PerGroup was a subcontractor. Nevertheless, the new contract specialist agreed that the relationship between BIE leadership and PerGroup presented an appearance problem. Recognizing that the assessment had been reassigned from the contracting specialist, who was an experienced contracting veteran, to an employee with 1 month of Federal experience, no experience in the contracting field, and no warrant, the newly hired contracting specialist acknowledged that the action was kind of weird.

Questioned by investigators, the PerGroup president said he did not know if Moore or Drapeaux had any influence on ANI selecting PerGroup as a subcontractor. He did not recall having participated in any discussions with Moore, Drapeaux, and ANI regarding the partnership between ANI and PerGroup.

Three ANI representatives confirmed, however, that the PerGroup president had informed them of the 8(a) opportunity and also of the conflict of interest, which, he indicated, had been resolved. ANI's Vice President for Business Development said the PerGroup president told him that Drapeaux would not be involved in the source selection, so the conflict of interest was a nonissue. Moore also explained that PerGroup ended up being a subcontractor because the PerGroup president had brought the OA procurement opportunity to ANI.

ANI's project manager said the PerGroup president also told her about the conflict of interest, but said Drapeaux was not involved in the decisionmaking, so it was not an issue. She said she did not know how PerGroup became a subcontractor, although the PerGroup president earlier told investigators that he first contacted ANI's project manager to tell her about the project.

The ANI director of operations said ANI's project manager informed him of the PerGroup conflict of interest with Drapeaux. He also said that the project manager told him that Drapeaux was not involved in the decisionmaking, so the conflict of interest was not an issue. The ANI director of operations then stated that if he had been aware that the conflict of interest still existed, he would have told his team not to pursue the contract or would have asked if there was another business with which ANI could partner on the contract. The ANI director of operations also said that it would not have been worth it for ANI to take a chance on dealing with a

company burdened with a conflict of interest, when ANI regularly deals with contracts valued at \$20 or \$30 million. He added that he did not know how ANI learned about the assessment or how PerGroup became a subcontractor.

### **Concerns Regarding Implementation of the Second OA Contract**

During the course of our investigation, we learned that the BIA contracting officer's technical representative had concerns that ANI and PerGroup held conversations about the OA contract without the contracting officer's representative and the ANI contract manager being involved. The contracting officer's technical representative said that PerGroup and either Moore or Drapeaux discussed how to conduct focus groups that were to be convened to review and discuss the validity of the OA findings and that they had input on creating the list of participants for the group. She explained that the conversations between PerGroup and Moore or Drapeaux were inappropriate and that she needed to be informed of all transactions so that contractors were not told or promised

something that was not in the SOW. The contracting officer's technical representative said that Moore and Drapeaux agreed to comply with her requirements, although she still had concerns because Drapeaux and PerGroup were friends and that, at a meeting in Phoenix, AZ, they had acted like they knew each other well.

The contracting officer's technical representative also expressed concern about documents pertaining to other outside contractors that had been requested by PerGroup under the contract and that might give it an unfair advantage for future bids. She consulted with the new contract specialist, who looked into the issue and determined that, since the requested information was available to the public, BIE could share it with ANI and PerGroup. The new contract specialist explained to investigators that ANI and PerGroup had only requested summary information, rather than anything that was privileged or proprietary, from these outside contractors. Moore also explained that PerGroup had asked to review BIE contracts to determine if BIE could save money by having the work completed by BIE employees. Moore said that those contracts cost a lot of money, so BIE wanted to diminish the number of contracts it held.

Investigators found that the concern of the contracting officer's technical representative had no bearing on the details of this investigation.

### **SUBJECT(S)**

Brian Drapeaux, Chief of Staff, Bureau of Indian Education  
Keith Moore, former Director, Bureau of Indian Education

### **DISPOSITION**

The U.S. Attorney's Office for the Eastern District of Virginia has declined to prosecute this case. We are referring this report to Laura Davis, Chief of Staff for the Secretary of the Interior, for any action deemed appropriate.