

U.S. Department of Justice
Office of the Inspector General

**Review of the Edward Byrne Memorial Justice
Assistance Grant Program
Recovery Act Formula Awards
Administered by the Department of Justice's
Office of Justice Programs**



December 2009

Introduction

The Recovery Act appropriated \$2 billion in funding to the Office of Justice Programs (OJP) for the Edward Byrne Memorial Justice Assistance Grant (JAG) Program. Of the \$2 billion, OJP designated \$1.989 billion for the Byrne JAG Program formula awards and \$11 million to the National Institute of Justice and the Bureau of Justice Statistics (BJS) for work in support of the Byrne JAG Program. The Byrne JAG formula funds are awarded to states, territories, and local government jurisdictions to address crime in a variety of ways, such as training, personnel, equipment, supplies, contractual support information systems, research, and evaluation. All 50 states, the District of Columbia, and 5 U.S. territories (Puerto Rico, Guam, Northern Mariana Islands, American Samoa, and the Virgin Islands) are eligible to receive funding under the Byrne JAG Program. The Byrne JAG Program is administered by OJP's Bureau of Justice Assistance (BJA) under the applicable provisions of 42 U.S.C. § 3750 (2008) and the applicable provisions of the Recovery Act of 2009.

The objective of this Office of the Inspector General (OIG) review was to determine if OJP awarded the Byrne JAG Program Recovery Act funds in a prompt, fair, and reasonable manner.¹ We conducted the review at OJP, the BJA, and the BJS.²

Results in Brief

The BJA designed two separate solicitations to award the Byrne JAG Program Recovery Act funds – one for the states and territories and one for local government entities. We found that OJP's BJS developed the funding allocations for the Byrne JAG Program state, territory, and local awards by appropriately using the formula established in 42 U.S.C. § 3755 (2008). The formula authorized the allocation of funds based on a combination of Census Bureau population estimates for each state and violent crime data reported to the Federal Bureau of Investigation (FBI). We verified that the population and crime data used by the BJS to calculate the allocations matched the data

¹ This report is a non-audit service as defined by generally accepted government auditing standard 3.26. The report contains technical advice that is not intended to be used as the primary basis for management decisions. As a result, this report is not intended to comply with generally accepted government auditing standards.

² This report is the first interim report in a series of reports that we will issue during our ongoing review of the Department's management and oversight of the Recovery Act money allocated to the Byrne JAG formula and discretionary grant programs. In addition, we are reviewing the use of Byrne JAG funds by a selected sample of state agencies and their sub-recipients.

reported by the Census Bureau and FBI, respectively. In addition, we confirmed that the state and territory award amounts matched the allocations. We also determined that the BJA acted quickly to develop the solicitations, set reasonable deadlines for submitting applications, timely reviewed applications against solicitation requirements, and promptly made the state, territory, and local awards. Therefore, we concluded that the BJA awarded the Byrne JAG Program Recovery Act state, territory, and local funds in a prompt, fair, and reasonable manner.

While the state and territory awards were made in a prompt, fair, and reasonable manner, we noted that the BJA did not receive all elements of the application package as required by the solicitation before awarding funds to the states and territories. Items missing from the application packages included complete program narratives, project abstracts, and complete budget documents. Officials from the BJA stated that the missing or incomplete items either were not absolutely necessary or could be obtained after the award was made. However, we noted that when the BJA reviewed Recovery Act discretionary applications for its Correctional Facilities on Tribal Lands Program, the BJA rejected applications that were missing program abstracts or program narratives.

We believe the BJA should be consistent when it requires that applicants provide certain elements of the application package as a condition for receiving a formula grant award. If the BJA believes an item in the solicitation is not important to the application process, then it should consider removing it from the solicitation. Alternatively, when applicants have failed to provide information that the BJA has determined is essential, the BJA should, at a minimum, prevent grantees from using the awarded funds until they receive and approve the requested information.

The results of our review of the formula allocations, application reviews, and awards are discussed in the following sections.

Verification of Formula Allocations and Award Amounts

The BJA posted two solicitations for the Byrne JAG Program on the Grants.gov website – one for state governments and U.S. territories and the other for local governments.³ Under the Byrne JAG statute, about 60 percent of the funds are designated for state and territorial governments and 40 percent for local governments. State governments are also required

³ Grants.gov is a web site managed by the Department of Health and Human Services that contains information about finding and applying for federal grant programs.

to pass through a portion of the funds they receive to local governments within their states.

These two solicitations were posted both to the BJA's website (<http://www.ojp.usdoj.gov/BJA/>) and to OJP's website (<http://www.ojp.usdoj.gov/funding/solicitations.htm>). On its website, the BJA also provided the allocations of funds that each state, territory, and local government unit would be eligible to receive. The funding allocations for the Byrne JAG Program were developed by the OJP's BJS using the formula established in 42 U.S.C. § 3755 (2008). The formula authorized the allocation of funds based on a combination of Census Bureau population estimates for each state and violent crime data reported to the FBI.

We verified that the data used by the BJS to compute the allocations was consistent and accurate. Specifically, we obtained the population data from the Census Bureau website and the violent crime data from the FBI website and compared it to the data used by the BJS to calculate the funding allocations. We then independently calculated the allocations for all 56 states and territories, and the 5,472 local governments based on the formula established in 42 U.S.C. § 3755 (2008) and using the verified population and crime data. We concluded that the Byrne JAG Program allocations for the states, territories, and local government units were correctly calculated by the BJS in accordance with the formula established by 42 U.S.C. § 3755 (2008).

As of October 13, 2009, the BJA had awarded the Byrne JAG Program Recovery Act formula grants to all 56 states and territories, and to 3,210 of the 5,387 local government applicants. Since the state and territory awards were completed at the time we began our review, we compared the amounts provided in the allocation computations to the amounts requested in the applications by the 56 state and territorial governments to determine whether any states or territories requested more funds than allocated by the BJS. We also analyzed the award amounts for the 56 state and territory awards to verify that the award amounts did not exceed the amount allocated by BJS. We found that none of the 56 states or territories applied for more than the amount allocated and that the awarded amounts matched the requested funds for all 56 awards.

We also analyzed the time it took the BJA to develop and issue the Byrne JAG Program solicitations, obtain the applications, review the applications, and make the awards to assess whether the awards were made promptly. The Recovery Act was signed on February 17, 2009. Less than 3 weeks later on March 6, 2009, the BJA issued both the state and territory solicitation and the local solicitation. The state and territory solicitation

required that applications be submitted by April 9, 2009, and the local solicitation required that applications be submitted by May 18, 2009. The deadline for the local solicitation was subsequently extended to June 17, 2009. We found that the BJA had awarded all 56 state and territory awards by July 16, 2009. As for local awards, the BJA had awarded funds by October 13, 2009, to the 3,210 eligible grant applicants that submitted complete applications to the BJA. These timelines indicate that the BJA took prompt action to award the state, territory, and local grants.

The BJA received an additional 2,177 local government applications for which it could not award funds because the applications were duplicates, incomplete, or from localities that were not eligible to apply directly to the BJA. BJA officials informed us that, after eliminating duplicates and ineligible localities, it identified 207 eligible units of local government who either had not applied or had not submitted complete applications. BJA officials told us that they are in the process of contacting these 207 eligible units of local government and will give them until January 21, 2010, to submit complete applications. By allowing these eligible entities additional time to complete and submit their applications, BJA has helped ensure that all potential recipients of Recovery Act JAG funding have an opportunity to receive the funding.

Considering the formula allocations were calculated in accordance with the statutory guidelines, the population and crime data used to calculate the formulas matched the data from the applicable sources, the award amounts were consistent with the allocations, and the awards were made promptly, we concluded that the BJA took appropriate actions to award the Byrne JAG Program Recovery Act awards in a prompt, fair, and reasonable manner.

Review of Applications

While the BJA awarded the funds in a prompt, fair, and reasonable manner, we did identify instances where the BJA did not obtain all the information required by the solicitation before making awards. For each of the 56 state and territorial applications, we reviewed the application documentation in OJP's Grants Management System (GMS) to determine if the application was complete. We found that 1 application did not contain the required program narrative; 27 applications had program narratives that did not include required elements such as organizational capabilities and competencies, timelines or project plans, or performance measures; 3 applications did not contain the required project abstract; and 6 applications did not include budget details. We discuss the issues associated with these discrepancies below.

Missing and Incomplete Program Narratives

The application for one state did not contain a program narrative as the BJA required in the solicitation, and the BJA awarded the funds without receiving the narrative.⁴ However, the BJA placed a special condition on the award that required the state to provide a program narrative before the state could have access to the funds.

BJA staff told us that they accepted the application without the narrative because OJP and the BJA determined that it was important to process all Recovery Act grant awards as quickly as possible. BJA staff also said that using the special condition to prevent use of the funds prior to submitting and receiving approval of a program narrative is an acceptable way to process the paperwork quickly, but still ensure proper review of necessary documentation.

We agree that the special condition should ensure that the program narrative is received before the state uses the awarded funds and was a reasonable approach to attempt to obtain information from the grantee while also meeting the Recovery Act's goal of distributing funds as quickly as possible.

We also identified 27 applications with program narratives that did not include 1 or more elements listed as required in the solicitation, such as organizational capabilities and competencies, timelines, and performance measures. The incomplete program narratives are discussed below.

Organizational Capabilities and Competencies. The organizational capabilities and competencies section of the program narrative should explain how the organization will track fund drawdowns and grant expenditures separate from other funding. This requirement is important to ensure grantees maintain proper controls over funds and documentation to accurately report Recovery Act funds. However, while the BJA required in the solicitation that this information be part of the application, BJA staff told us that the organizational capabilities sections of the program narrative were not of great significance and that BJA staff would work with the grantees after the grant is awarded to obtain the information.

We believe that without evidence that the applicants can accurately track Recovery Act funds separately from other federal funds, the BJA does not have sufficient assurance that the grantees will properly manage the

⁴ As of October 29, 2009, the state's program narrative had not been documented in GMS.

Recovery Act funds they receive under the Byrne JAG Program. Thus, we believe it is important that BJA staff work with these grantees to obtain this information.

Timelines. According to the Byrne JAG program solicitation issued by BJA, the timelines section should provide dates for completing major project milestones. This data is important to show the BJA that grantees can implement the project in a timely manner. However, BJA staff told us that timelines were not a key factor and they would also work with grantees to obtain this information after the grant had been awarded. We believe that it is important that the BJA follow up to obtain the timelines because without them, the BJA does not have a way to easily identify and assess the progress of major program milestones.

Performance Measures. The grant solicitation requires each recipient to develop performance measures and include its data collection methodology in the application. However, for the 55 program narratives in the applications we reviewed, only 17 included performance measures developed by the state or territory to assess whether the project objectives were being met. Twelve of the program narratives did not mention performance measures, and the remaining 26 program narratives indicated that the grantees would either use performance measures developed by the BJA and the Recovery Act, or develop performance measures at a later date as the state awards funds to units of local governments.

While the BJA solicitation required the application to include performance measures, BJA officials told us that it was not a significant omission if the applicants did not submit measures with the application because a special condition in the award document requires each state or territory to report performance measures in the Performance Measurement Tool maintained by OJP. However, the special condition in the award document contains only a general requirement that the grantee agree to comply with all reporting, data collection and evaluation requirements, and does not specifically refer to the Performance Measurement Tool. The special condition also does not provide specific measures that the grantees will have to report. Therefore, we did not find evidence that grantees are made aware of the requirement to use the Performance Measurement Tool or to collect data on the performance measures contained therein. Thus, we concluded that the BJA needs to follow up with those grantees who failed to include performance measures with their applications to ensure that they appropriately use and report on their performance measures.

Missing Project Abstracts

The BJA required in the solicitation that applicants provide an abstract that included items such as the goals of the project, major deliverables, and coordination plans. However, the applications for three states did not contain an abstract of the project and BJA staff did not request the abstracts prior to making the grant awards. BJA staff told us that they accepted the applications without an abstract because the abstract is not required by law. BJA staff also stated that the abstract is only used to assist in developing internal write-ups of the projects and does not affect the BJA's ability to review the application or award the funds.

Based on our review of the use of the project abstract, we agree that it does not affect the BJA's ability to review the application or award funds. However, we noted that when the BJA reviewed Recovery Act discretionary applications for its Correctional Facilities on Tribal Lands Program, the BJA rejected applications that were missing program abstracts. We believe the BJA should be consistent in ensuring that applicants adhere to the requirements of the solicitation. If the BJA believes an item in the solicitation is not important to the application process, then it should be removed from the solicitation. By requiring that applicants provide only the necessary documents to make award decisions, the BJA can minimize the resources needed to review the applications and can avoid placing unnecessary burdens on applicants to prepare and submit application data.

Incomplete Budget Detail Submissions

In the solicitation, the BJA required the states and territories to submit a budget and budget narrative outlining how JAG funds, including administrative funds, if applicable, would be used to support and implement the program. The BJA provided applicants a sample budget form that provided for a detailed breakout of project costs into the following nine budget categories, as applicable: Personnel, Fringe Benefits, Travel, Equipment, Supplies, Construction, Consultants/Contracts, Other Costs, and Indirect Costs.

We found that the format and level of detail of the budgets varied significantly among the 56 state and territorial applicants. Specifically, we found that:

- 8 applicants submitted a detailed budget in accordance with the example provided in the solicitation;

- 21 applicants submitted a budget that provided a breakout of the funds by different departments or programs planned for under the grant;
- 21 applicants submitted budgets that identified only the administrative costs related to the grant and provided no details about the remaining grant funds;
- 5 applicants provided a budget with a single line item, but no breakout for any of the planned grant expenditures; and
- 1 applicant did not provide any budget.

The BJA approved and awarded the grants to all 56 applicants, although 48 states and territories submitted budgets without all requested details.⁵ Six of these 48 states and territories provided no breakout of planned grant expenditures.

We asked BJA officials to explain why they awarded funds to the states and territories with insufficient budget details without first requiring the applicants to provide more information. BJA officials told us that prior to the Recovery Act, JAG formula applicants were not required to submit a budget, and instead submitted only a budget narrative. They said that the decision to require a budget was made to put more “muscle” into the solicitation and provide a greater level of detail for the grant managers to review. However, the officials told us that while the budget information is helpful from a policy perspective, it is not required by the Byrne JAG statute. The officials also stated that all of these applicants did in fact have enough information to conform to the requirements of the law.

Without detailed budget information, the BJA has limited information to assess whether recipients will use the funds in accordance with statutory requirements.⁶ In addition, a detailed budget provides a reference point for oversight entities to later evaluate how the grantee is using awarded funds and whether they have implemented projects that adhere to the statutory requirements. Detailed budget information, including categories of planned expenditures, results in greater accountability by recipients for the use of

⁵ The application for the applicant that did not submit a budget was approved with a special condition that the recipient could not obligate or expend funds before submitting a budget narrative.

⁶ 42 U.S.C. § 3751 (2008) identifies the programs for which Byrne JAG funds may be used.

funds by making the use of the funds transparent to oversight entities and the public.

In addition, requiring states to submit detailed budget information that is not used by the BJA places an undue burden on the states to develop and submit such information. Eight states or territories provided detailed budget information as part of the award. These states likely contributed a significant amount of effort to provide the detailed budget information. However, other applicants that did not submit the full solicitation requirements were approved for awards equally as if they had fulfilled all requirements.

To enhance recipients' accountability for the use of funds and apply equal application of solicitation requirements, we believe that the BJA should enforce a consistent requirement for budgets specifying the detail and format that is required. While the BJA may not deem it necessary to require a budget detail breakdown with the standard nine budget categories, some type of budget detail, perhaps identifying the specific programs being funded and funding levels, should be required and would not impose an undue burden on grant applicants. We believe these requirements should be clearly communicated to the applicants in the solicitation and enforced consistently.

Conclusion

In summary, our review found that the funding allocations to the states, territories, and local jurisdictions were properly calculated, and that the application and award amounts for the state and territory awards were consistent with the allocations. We also found that the BJA took prompt actions to develop and issue the solicitations, set reasonable deadlines for application submissions, review the applications, and make awards. However, we noted that some applicants did not provide items required by the solicitation, or provided incomplete information, but the BJA awarded the funds regardless. The general response by BJA staff was that while it would have been helpful to have the information, which included details such as complete program narratives and budget breakdowns, they are not precluded from awarding grants to applicants who fail to provide this information. BJA officials told us that many of the missing items in the applications were either not important or that BJA officials would work with the applicants after the award to obtain the information.

We concluded that in some instances it was reasonable for the BJA to award the grant funds without first receiving all the information it requested. However, by stating that the information was required and then not

enforcing that requirement, the BJA caused the states that did comply to expend considerable effort in meeting non-mandatory requirements.

We believe the BJA should be consistent when it requires that applicants provide certain elements of the application package as a condition for receiving a formula grant award. Moreover, when the BJA has determined certain information is essential and applicants have failed to provide that information, the BJA should, at a minimum, prevent grantees from using the awarded funds until the BJA receives the requested information.

We encourage the BJA to consistently ensure that applicants submit the required information to enhance the probability that: (1) Byrne JAG grant funds are appropriately used, (2) grantees implement projects within the statutorily required project period, (3) grantees collect and report appropriate performance measures, (4) Recovery Act funds are used effectively, (5) recipients are accountable for the use of grant funds, and (6) solicitation requirements are equally applied to all applicants.

OJP's Response

We provided OJP a pre-release version of this report. After reviewing the report, OJP told us that BJA agrees that careful consideration of "required" elements in formula grant solicitations is needed. In the future, BJA plans to describe material as "required" and send back applications for additional information when the "required" information is not included. According to OJP, because the Byrne JAG Recovery Act program involved formula awards, as opposed to competitive discretionary awards, BJA sought to balance its responsibility to process awards quickly with the need for sound financial management. Therefore, BJA used special award conditions to withhold funding for those applicants who were delayed in submitting the required information.