



REVIEW OF THE AWARD PROCESS FOR THE BUREAU OF JUSTICE ASSISTANCE AMERICAN RECOVERY AND REINVESTMENT ACT CORRECTIONAL FACILITIES ON TRIBAL LANDS GRANT PROGRAM

CATEGORIES I THROUGH IV

**U.S. Department of Justice
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Introduction

The American Recovery and Reinvestment Act of 2009 (Recovery Act) created the Recovery Act Correctional Facilities on Tribal Lands Discretionary Grant Program (Recovery Act Correctional Facilities on Tribal Lands Program) and appropriated \$225 million to the Bureau of Justice Assistance (BJA) to fund the program.¹ Through this program, the BJA can provide funding to Indian Tribes in the following five categories:

- Category I: Construction of detention facilities for adult and juvenile offenders
- Category II: Construction of single-tribe or regional multipurpose justice centers
- Category III: Renovation of existing detention facilities
- Category IV: Construction of alternative sentencing facilities
- Category V: Training and technical assistance for Correctional Facilities on Tribal lands Program

According to the program solicitation, the goal of awards under categories I through IV is to assist tribes in constructing and renovating correctional facilities that are appropriate for the intended population, supportive of cultural and traditional values, safe and secure when completed, and in compliance with relevant Bureau of Indian Affairs (BIA) correctional standards. Category V awards for the provision of training and technical assistance are focused primarily on those tribes that receive funding in categories I through IV of the solicitation. However, category V assistance can also be provided to tribes not receiving funding in categories I through IV.

As of March 26, 2010, the BJA awarded approximately \$220 million of the \$225 million (approximately 98 percent) appropriated under the Recovery Act Correctional Facilities on Tribal Lands Program to 20 category I through IV recipients.² This report focuses only on the awards made under categories I

¹ \$225 million was appropriated to the BJA under the Recovery Act for grants under section 20109 of subtitle A of title II of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322).

² Of the remaining \$5 million, \$4.5 million was awarded to one grantee under category V for the provision of training and technical assistance, and approximately \$500,000 remains to be awarded. BJA officials informed us that they expect these additional un-awarded funds to be added to the existing category V training and technical assistance award, bringing the total award to \$5 million.

through IV of the Recovery Act Correctional Facilities on Tribal Lands Program.³ Awards made under category V will be the subject of a separate report.

The objectives of this review were to assess:

- the application evaluation process used by the BJA in its funding decision for awards under the Recovery Act Correctional Facilities on Tribal Lands Program,
- if grants awarded under categories I through IV of the Recovery Act Correctional Facilities on Tribal Lands Program were made in compliance with established policies and procedures, and
- if any awards made under the Recovery Act Correctional Facilities on Tribal Lands Program duplicated the goals and objectives of a prior year BJA Non-Recovery Act Correctional Facilities on Tribal Lands Discretionary Grant Program (Non-Recovery Act Correctional Facilities on Tribal Lands) award.⁴

Results in Brief

We reviewed each application for the Recovery Act Correctional Facilities on Tribal Lands Program to determine if the BJA had consistently enforced the solicitation requirements. We identified that 14 of the 20 award recipients did not submit all required materials with their applications at the time awards were made. The BJA placed holds on 6 of the 14 grantees with incomplete applications, but not for 8 grantees that were missing similar information. We brought this concern to the Office of Justice Programs' (OJP) attention, and its Office of the Chief Financial Officer immediately placed withholding special conditions on the grant funds for each of the eight questioned awards.

³ This report is one of a series of reports that we will issue during our ongoing review of the Department's management and oversight of Recovery Act funds allocated to the BJA's Recovery Act Correctional Facilities on Tribal Lands Program.

⁴ 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.

After the BJA's internal review, it forwarded 32 qualified category I through IV applications to a peer review panel.⁵ These applications were divided among three panels, each consisting of three peer reviewers. We used the raw peer review scores provided by the BJA to independently calculate the average scores for each application to determine if the overall score was accurately computed, and we found no discrepancies in the way the overall scores had been averaged.⁶

We evaluated the BJA's justifications for funding or not funding applications sent to peer review. One of BJA's most important considerations for funding a project was the applicant's ability to staff a correctional facility after construction. The BJA sought input from the BIA because the tribes generally seek funding through the BIA to support costs to maintain, staff, and operate the facilities. The BJA stated that tribes would not be funded if the BIA did not endorse the project and the tribe could not independently support facility operations. In light of this requirement, we compared the BIA endorsements with the final BJA award recipients. We identified one grantee not endorsed by the BIA that would rely entirely on its own funding. We discussed this concern with the BJA and were informed that the tribe was currently working with the BIA to transfer existing BIA support for detention services at an existing facility to the new facility upon completion.

We also identified potential duplicate grant funding based on prior Non-Recovery Act Correctional Facilities on Tribal Lands Program awards. We compared a list of Recovery Act grant recipients with Non-Recovery Act grant recipients from fiscal years (FYs) 2007, 2008, and 2009. We found three grantees whose Recovery Act awards potentially duplicated the goals and objectives of prior awards. The BJA informed us that these three tribes are in the process of submitting requests for Grant Adjustment Notices to repurpose the awards for related criminal justice functions.

⁵ A total of 43 applications were submitted under categories I through IV. These applications were then internally reviewed by the BJA to determine if they met the basic minimum requirements of the solicitation. Based on this review, the BJA rejected 11 applications; 5 were missing program abstracts, 4 were not federally-recognized tribes, 1 was a duplicate application, and 1 did not include sufficient and appropriate match funding.

⁶ We did not evaluate, nor do we provide an opinion, on the validity or accuracy of the each individual peer reviewer's assessment of the applications. The objective of our analysis was to determine if the overall scores assigned to applications correctly represented the average of the peer reviewers' scores for each application.

In sum, we concluded that the BJA made awards under categories I through IV of the Recovery Act Correctional Facilities on Tribal Lands Program in compliance with established policies and procedures. Our concern about the funding of eight incomplete applications has been adequately addressed by OJP. However, we still have concerns about the BJA's funding of one project not endorsed by the BIA and three Recovery Act awards that duplicate the goals and objectives of prior years' funding. In our judgment, the BJA should carefully monitor these grants and the resolution of these issues. If the issues are not resolved, the BJA should consider using the funds for other purposes.

The detailed results of our review of the BJA's award processes for categories I through IV of the Recovery Act Correctional Facilities on Tribal Lands Program are discussed in the sections below.

Overview of Award Process

The BJA received a total of 43 applications under categories I through IV of the Recovery Act Correctional Facilities on Tribal Lands Program. Prior to funding, each application undergoes a review process to ensure the most qualified applicants are awarded grants. First, BJA performs an internal review to determine if the applications meet the Basic Minimum Requirements of the solicitation. Successful applications are then sent to external peer reviewers for evaluation. Once scored, applications are again reviewed by BJA officials, funding recommendations are made and then sent to OJP's Assistant Attorney General (AAG) for approval. Once the AAG approves funding recommendations, awards are made. Table 1 below lists the applications received by the BJA under the Recovery Act Correctional Facilities on Tribal Lands Program by category.

TABLE 1: APPLICATIONS RECEIVED, SENT TO PEER REVIEW, AND AWARDED

CATEGORY	APPLICATIONS RECEIVED	APPLICATIONS FORWARDED TO PEER REVIEW	APPLICATIONS FUNDED
Category I	22	12	6
Category II	13	13	9
Category III	7	6	4
Category IV	1	1	1
Total	43	32	20

Source: Office of Justice Programs' (OJP) Grants Management System (GMS)

BJA's Internal Review of Applications

The 43 applications received were internally reviewed by the BJA to determine if they met the Basic Minimum Requirements of the solicitation.⁷ As a result of the internal review, the BJA rejected 11 applications; 5 were missing program abstracts, 4 were not federally-recognized tribes, 1 was a duplicate application, and 1 did not include sufficient and appropriate match funding. The remaining 32 of the 43 category I through IV applications were forwarded to the external peer review phase of the selection process.

As a result of the competitive review process, 12 applications were rejected and 20 applications were ultimately funded. However, we identified 14 of the 20 award recipients that did not submit all required materials with their applications at the time awards were made, indicating that the BJA did not enforce solicitation requirements consistently across all applications.⁸ The BJA placed holds on 6 of the 14 incomplete applications. We identified eight award recipients that were missing documents to meet the Basic Minimum Requirements of the solicitation for which the BJA had not imposed special conditions requiring the documents be submitted before drawdowns were allowed.

We communicated these concerns to the BJA and suggested that it be consistent when it requires that applicants provide certain elements of the application package as a condition of receiving an award. In response, the Office of Justice Programs' (OJP) Office of the Chief Financial Officer placed withholding special conditions on the eight awards that were missing

⁷ Basic Minimum Requirements are defined for each program in the solicitation developed by OJP in accordance with agency guidelines and regulations. Basic Minimum Requirements for the Recovery Act Correctional Facilities on Tribal Lands Program solicitation include: (1) a valid Data Universal Numbering System (DUNS) number and current registration in the Central Contractor Registration (CCR) database; (2) a signed tribal resolution by the application deadline (May 4, 2009); (3) a completed Standard Form 424, a core government-wide standard data set and form for grant applications; (4) project abstract; (5) project narrative; (6) project budget and budget narrative; (7) project timeline with expected completion dates, resumes of key personnel, and Memorandum of Understanding (if applicable); (8) a certification as to the Recovery Act reporting requirements; and (9) a general certification as to the requirements for receipt of funds for infrastructure investments.

⁸ We reported the issue of inconsistent enforcement of solicitation requirements for the Edward Byrne Memorial Justice Assistance Grant Program in a prior report. In its response, OJP stated that for future solicitations, the BJA plans to describe material as "required" and send back applications for additional information when the "required" information is not included. 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).

documents to meet the Basic Minimum Requirements of the solicitation. Therefore, we consider this issue adequately addressed.

Peer Review Process

The BJA contracts with a peer review logistical support provider to assist with the peer review process for applications received under the Recovery Act Correctional Facilities on Tribal Lands Program.⁹ The logistical support provider maintains a pool of potential peer reviewers, distributes access to applications in OJP's Grants Management System (GMS) to selected peer reviewers, facilitates consensus calls between subject matter experts and peer reviewers, and calculates the scores resulting from the review panels. At the request of the BJA, the logistical support provider compiled a listing of potential peer reviewers with experience working with tribes and correctional facilities. The list of potential peer reviewers and their resumes were made available to the BJA to select qualified candidates for the peer review process.

The BJA formed three review panels, with three reviewers per panel. Each panel was responsible for reviewing between 10 and 15 applications under categories I through IV of the Recovery Act Correctional Facilities on Tribal Lands Program.

Peer Review Scoring Methodology

The BJA defined the criteria and the weighting of each criterion used to evaluate applications submitted under categories I through IV of the Recovery Act Correctional Facilities on Tribal Lands Program in the program solicitation. Each peer reviewer performed an initial assessment and rated each criterion, as listed below in Table 2, on a scale of 0 (unacceptable) to 10 (excellent). Each criterion was assigned a weight (percentage) by the BJA, also identified in Table 2.

⁹ Lockheed Martin holds the current contract to provide logistical support during the peer review process.

TABLE 2. CRITERIA AND WEIGHTING FOR EXTERNAL PEER REVIEW OF CATEGORY I THROUGH IV APPLICATIONS

CRITERIA	WEIGHTED POINT VALUE
Statement of the Problem/Program Narrative	20%
Project/Program Design and Implementation	25%
Capabilities/Competencies	30%
Budget	10%
Impact/Outcomes and Evaluation/Plan for Collecting Data for Performance Measures/Sustainment	15%

Source: OJP

Peer Review Scoring Process

Using the evaluation criteria provided by the BJA, peer reviewers completed an initial assessment of each application. After the initial assessments, each peer reviewer's individual criterion scores were entered onto the Initial Assessment Form in GMS, which automatically weighted each score.¹⁰ A peer reviewer's overall application score is on a scale of 0 (unacceptable) to 100 (excellent), and is the sum of each criterion's weighted score. The logistical support provider compiled a report of all the initial comments and scores submitted by the peer reviewers. The peer reviewers then participated in a conference call facilitated by the logistical support provider to discuss their scores and comments. The solicitation manager, a BJA staff member responsible for overseeing the award process for a solicitation, also participated to provide clarification to reviewers, but was not allowed to influence the outcome of the application review.

After the consensus call, peer reviewers were able to change their scores or comments based on feedback they received from the group. While reviewers can come to a consensus during this meeting, it is not required. After the consensus call, peer reviewers then entered their final scores and comments into the Final Assessments Form in GMS. We compared the original scores to the final score submitted by the peer reviewers to identify any applications that had been significantly changed following the consensus call, and we did not identify any such changes.

¹⁰ GMS automatically weights each criterion score by multiplying each criterion score by 10 and then by the weighting percentage assigned to each criterion under the Recovery Act Correctional Facilities on Tribal Lands Program.

The final scores were then compiled by the logistical support provider.¹¹ The applications were then ranked by their overall final assessment score within each award category. Appendix II details the overall final assessment score for each application.

Peer Review Score Verification

To determine the accuracy of the final scoring report provided to the BJA by the logistical support provider and the calculations programmed into GMS to automatically average the raw peer reviewer scores, we independently averaged each application's peer review scores and compared our results to what was provided to the BJA by the logistical support provider. We determined that the overall final assessment scores for all applications reviewed under categories I through IV of the Recovery Act Correctional Facilities on Tribal Lands Program had been accurately averaged and reported. Therefore, we did not identify any material errors in the application of the BJA's peer review scoring methodology.

BJA's Award Decision

After the peer review was completed, the grant manager and the BJA program office management collaborated to recommend applications for funding. The BJA reviewed applications with a minimum average final peer review score of 70 to develop its funding recommendations for categories I through IV of the Recovery Act Correctional Facilities on Tribal Lands Program. In addition to the peer review score, the BJA officials considered several factors in their funding recommendations, such as: OJP's high risk designation, geographic and tribal distribution, number of jobs created, past performance, and input from the BIA. The BJA developed a formal recommendation memorandum for approval by the AAG for OJP based on the BJA's evaluation of the applications. This memorandum outlined which projects the BJA recommended for funding and the rationale for selection. The memorandum also included the peer review scores and justification for recommending an applicant with a lower peer review score over one with a higher score. While the BJA recommends applications for funding, the ultimate funding decision is made by the AAG for OJP.

We reviewed the BJA's Recovery Act Correctional Facilities on Tribal Lands Program funding memorandum and identified several concerns with the projects recommended by the BJA, as explained below.

¹¹ Each application received an overall final assessment score on a scale of 0 (unacceptable) to 100 (excellent), which represents the average of all three final peer reviewer scores.

Unfunded Applications Scoring Higher than Funded Applications

A prior OIG audit detailed the OJP policy requiring peer review scores and justifications for recommending an applicant with a lower peer review score over one with a higher score be documented.¹² The OJP has since included the scores and justifications in the funding memorandum sent to the AAG for OJP for approval. We reviewed the justifications for funding applications with lower peer review scores than other applications within the same funding category that were denied. Of the 32 applications sent to peer review, 12 were not funded under the Recovery Act Correctional Facilities on Tribal Lands Program. Of these 12 applications, 10 had scored higher than the lowest funded application. The justifications given for not recommending funding to these applicants are listed below:

- The BIA did not support the project, but the tribes indicated that they would need funding from the BIA to operate and maintain the completed facility;
- Tribal applicants had been recommended for funding of a similar facility. By funding only one facility of this nature for the Tribe, the BJA is allowing greater funding opportunities for other tribes;
- The applicant had received a \$24 million earmark administered by the BIA to construct a similar facility; and
- The BIA noted that applicant's proposed facility was overbuilding for the tribal population.

Our review found that the BJA had included justifications for not funding applications ranked higher than the lowest scoring funded application for each of the categories I through IV.

Funded Applications with Unsupported Staffing Resources

One of the most important considerations in creating the BJA's funding recommendations for the Recovery Act Correctional Facilities on Tribal Lands Program was the tribe's ability to staff the facilities after completion. While the BJA funds the construction of tribal correctional facilities under this program, the responsibility for the staffing, operation, and maintenance of the completed

¹² U.S. Department of Justice Office of the Inspector General, *Procedures Used by the Office of Juvenile Justice and Delinquency Prevention to Award Discretionary Grants in Fiscal Year 2007*, Audit Report 09-24 (April 2009).

facilities rests on either the BIA or the tribes themselves. In developing its funding recommendation, the BJA sought input from the BIA on funding applications from tribes that fell under the BIA's purview because tribes generally seek funding from the BIA to support costs to maintain, staff, and operate correctional facilities.¹³ The BIA's review was limited to information provided in the application materials submitted by each tribe, along with the BIA's consideration of facility need.

We found that 29 of the 32 peer reviewed applications were forwarded to the BIA for input. The three applications not forwarded to the BIA were determined to be outside of the BIA's purview.¹⁴ The BIA reviewed the applications provided by the BJA and generated a listing of applications that it endorsed in a memorandum to the BJA. The listing was based on the BIA's priority ranking of the applications and whether or not the BIA would support funding of operations and maintenance of the completed facilities.

Categories I through IV of the Recovery Act Correctional Facilities on Tribal Lands Program were designed to help improve and eliminate incarceration problems facing tribes. Program success hinges on completed facilities becoming operational, including staff and resources for maintenance. New facilities that are non-operational due to a lack of sufficient resources for operations will not address any of the correctional problems identified and could limit the success of the Recovery Act Correctional Facilities on Tribal Lands Program. To assess the consideration given to each applicant's ability to provide sufficient operation and maintenance resources for its new correctional facilities, we compared the applications funded by the BJA with the operational funding endorsements from the BIA. Based on this comparison, we identified seven funded applications that did not receive an operational funding endorsement from the BIA in addition to the two funded applications that were not reviewed by the BIA due to fact that they were outside of the BIA's purview.

¹³ Congress transferred criminal and civil jurisdiction over tribal lands from the federal government to the state government in six states (Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin). 18 U.S.C. § 1162 (2009) 28 U.S.C. § 1360 (2009). As such, tribes located in these six states are outside of the purview of the BIA.

¹⁴ Two applicants were located in California (The Pauma Band of Mission Indians and Tule River Tribal Council), and one applicant was located in Alaska (Native Village of Kwinhagak). The BJA ultimately funded two applications (Native Village of Kwinhagak and Tule River Tribal Council), and rejected one application (The Pauma Band of Mission Indians) due to a peer review score of 31 out of a possible 100. The funded applications indicated that the tribes will use tribal revenues in addition to applying for other federal grants to support the operation of the newly constructed facilities.

For any projects not endorsed by the BIA, the BJA evaluated each tribe's existing resources and its ability to provide any additional resources necessary to support staffing, operations, and maintenance of the new facilities in its funding decision. We reviewed the application materials provided by each of the nine tribes, listed in Table 4, to verify each tribe's proposed sources of operations and maintenance funds.¹⁵

TABLE 4: AWARDED APPLICATIONS FROM TRIBES NOT ENDORSED OR REVIEWED BY THE BIA

GRANTEE ORGANIZATION	CATEGORY	FUNDED AMOUNT	SOURCE OF OPERATIONS & MAINTENANCE FUNDING
Ramah Navajo Chapter	Category I	\$ 3,806,850	BIA
Puyallup Tribe of Indians	Category II	7,936,648	Tribe/Federal Grants/Contract Fees
Eastern Band of Cherokee Indians	Category II	18,000,000	Tribe/Contract Fees/Federal & State Funds
Pascua Yaqui Tribe	Category II	20,849,173	Tribe/BIA
Shoshone-Bannock Tribes	Category II	3,507,421	Tribe/BIA
Nisqually Tribe	Category II	10,720,232	Fee for Service
Eight Northern Indian Pueblos Council	Category IV	5,636,317	Federal Grants/Fee for Service/ Medicare Reimbursement
Native Village of Kwinhagak	Category II	1,350,000	City & Tribal Funds
Tule River Tribal Council	Category II	3,069,764	BIA/Tribal Revenues
Total	9	\$74,876,405	

Source: AAG Funding Memo; OJP GMS; BJA Officials

Upon review of the application materials, we found that five of the nine applications indicated that the tribes themselves would be able to provide adequate funding to staff, operate, and maintain the new facilities through other federal grant programs, tribal revenues, or fees from services provided at the new facilities.¹⁶ Three of the nine applicants stated in their applications that the tribes would provide funding, but would require at least some

¹⁵ We relied on the information presented by each tribe in its application and did not attempt to verify the accuracy of this information for this analysis, nor did we attempt to evaluate the feasibility of tribes generating sufficient revenues or obtaining future grants proposed as potential funding sources.

¹⁶ These tribes were the: Native Village of Kwinhagak, Puyallup Tribe of Indians, Eastern Band of Cherokee Indians, Eight Northern Indian Pueblos Council, and Nisqually Tribe. These tribes plan to collect fees to provide services, such as housing inmates for local and other tribal jurisdictions.

resources from the BIA to support operations and maintenance of the new facilities. However, these applications indicated that the tribes had already secured BIA funding for existing facilities and programs and would transfer these resources to the new facility upon completion. As a result, these tribes indicated that they would not need to request additional funding from the BIA to support the new facilities.¹⁷ The one remaining application from the Ramah Navajo Chapter was not endorsed by the BIA, and the tribe indicated in its application that it would need additional support from the BIA to staff, operate, and maintain the new facility.

We discussed this concern with BJA officials and they informed us that the BIA currently funds police and detention services at the Ramah Navajo Chapter through contracts authorized by the Indian Self-Determination and Education Assistance Act of 1975.¹⁸ The tribe and the BIA are currently negotiating the separation of the police services from the detention services in the contract so that the detention services currently funded through BIA contracts may be transferred to the new correctional facility funded by the Recovery Act upon completion. However, until changes to the contracts are finalized by the tribe and the BIA, the long-term viability of this project is uncertain. In our judgment, the BJA should carefully monitor drawdowns and negotiations for this grant to ensure that grant funds are not expended on an unsustainable project. If the Ramah Navajo Chapter fails to secure funding or resources to operate the new facility, the BJA should consider de-obligating these funds.

Potential Duplicate Grant Funding

The BJA awarded grants under the Non-Recovery Act Correctional Facilities on Tribal Lands Program in FYs 2007, 2008, and 2009.¹⁹ Grants awarded under this program may be used to assist tribes with the planning of a correctional facility (Planning Grant) or with the renovation of existing facilities (Renovation Grant).

To identify any program awards that appeared to duplicate the efforts of a prior year Non-Recovery Act Correctional Facilities on Tribal Lands Program award, we compared a list of all Recovery Act Correctional Facilities on Tribal

¹⁷ These tribes were the: Tule River Tribal Council, Shoshone-Bannock Tribes, and Pascua Yaqui Tribe.

¹⁸ 25 U.S.C. §450f (2009).

¹⁹ In general, prior to FY 2007 funds for the construction or renovation of correctional facilities were provided by the BJA to tribes as congressionally mandated awards or under the Edward Byrne Discretionary Grant Program.

Lands Program Grant recipients with all prior grantees from FYs 2007, 2008, and 2009 Non-Recovery Act Correctional Facilities on Tribal Lands Program. We identified eight Recovery Act Correctional Facilities on Tribal Lands Program grantees that had also been awarded Non-Recovery Act Correctional Facilities on Tribal Lands Program Planning or Renovation Grants in prior years, as shown in Table 5 below.

TABLE 5: RECOVERY ACT CORRECTIONAL FACILITIES PROGRAM GRANTEES ALSO RECEIVING NON-RECOVERY ACT CORRECTIONAL FACILITIES GRANTS

STATE	ORGANIZATION	PROGRAM	AWARD AMOUNT
AZ	Colorado River Indian Tribe	FY 2008 Renovation	\$499,400
		FY 2009 Renovation	485,980
AZ	Navajo Nation - Tuba City	FY 2008 Renovation	500,000
		FY 2008 Planning	150,000
AZ	Navajo Nation - Kayenta City	FY 2009 Planning	150,000
AZ	Pascua Yaqui Tribe	FY 2007 Planning	132,945
MT	Chippewa Cree Tribe	FY 2007 Planning	149,969
		FY 2008 Planning II	149,541
		FY 2008 Renovation	450,000
MT	Ft. Peck Assiniboine & Sioux Tribe	FY 2007 Planning	137,888
SD	Yankton Sioux	FY 2008 Renovation	500,000
WA	Confederated Tribes of the Chehalis Reservation	FY 2007 Renovation	497,900
TOTAL	8		\$3,803,623

Source: OJP GMS

For Recovery Act Correctional Facilities on Tribal Lands Program award recipients that received potentially duplicative prior year awards, we reviewed the application materials and award documentation to determine the goals and objectives of each grant and to identify any areas of overlap between the grants awarded. Of the eight tribes that received multiple awards under the programs discussed above, three appeared to have been awarded Recovery Act grants that duplicate the goals and objectives of the prior year awards. The grants that these three tribes were awarded are summarized in Table 6 below, and the relevant issues with each are discussed in the sections that follow.

TABLE 6: PRIOR YEAR GRANTS WITH GOALS DUPLICATED BY RECOVERY ACT FUNDING

STATE	ORGANIZATION	PROGRAM	AWARD AMOUNT
AZ	Navajo Nation - Tuba City	FY 2008 Renovation	\$500,000
AZ	Navajo Nation - Kayenta City	FY 2009 Planning	150,000
MT	Chippewa Cree Tribe	FY 2008 Renovation	450,000
TOTAL	3		\$1,100,000

Source: OJP GMS and BJA officials

Navajo Nation – Tuba City

On September 30, 2008, OJP awarded the Navajo Nation \$500,000 in FY 2008 Non-Recovery Act Correctional Facilities on Tribal Lands Program Renovation funding to address security deficiencies at its Tuba City Adult Detention Facility.²⁰ Specifically, this funding was to be used to upgrade and expand the security system and to extend the electronic fence and security lights around the facility's exterior. The project period for this grant is October 2008 through March 2011, and as of March 3, 2010, the Navajo Nation had not drawn any of the available funding.

On September 21, 2009, OJP awarded the Navajo Nation \$38,587,560 for the construction of a multi-purpose justice center in Tuba City, Arizona, under category II of the Recovery Act Correctional Facilities on Tribal Lands Program.²¹ According to the program narrative submitted with the Navajo Nation's application for this funding, the justice center is being constructed to replace the Tuba City Adult Detention Facility that was demolished. Since the Tuba City Adult Detention Facility has been demolished, the goals and objectives established in the 2008 Renovation Grant awarded to Navajo Nation for the renovation of the Tuba City Adult Detention Facility appear to be no longer achievable.

We brought this concern to the BJA's attention and suggested it follow up on this issue with the tribe. The BJA informed us that the facility in question has indeed been demolished and that the objectives of the FY 2008 Non-Recovery Act Correctional Facilities on Tribal Lands Program Renovation Grant are no longer applicable. BJA officials also informed us that the FY 2008 Renovation Grant funds will be repurposed to allow the Navajo Nation to renovate modular buildings that will serve as a temporary jail until the

²⁰ OJP Grant No. 2008-IP-BX-0042.

²¹ OJP Grant No. 2009-ST-B9-0089. The project period for this award is from July 2009 through June 2012.

multi-purpose justice center funded by the Recovery Act is operational.²² On February 18, 2010, the Navajo Nation submitted a request to relocate the corrections and law enforcement modular facilities to make room for the construction of the new Recovery Act-funded correctional facility. This Grant Adjustment Notice was approved by the BJA on March 22, 2010. Therefore, we consider this issue to have been adequately addressed.

Navajo Nation – Kayenta City

On September 3, 2009, the Navajo Nation was awarded \$150,000 in FY 2009 Non-Recovery Act Planning Grant to develop plans for a regional correctional facility in Kayenta, Arizona.²³ The project period for this grant is July 2009 through December 2010, and as of March 3, 2010, the Navajo Nation had not drawn any of the funding.

Additionally, on September 21, 2009, the Navajo Nation was awarded \$31,655,277 for the construction of a multi-purpose justice center in Kayenta City, Arizona, under category II of the Recovery Act Correctional Facilities on Tribal Lands Program.²⁴ According to the program narrative for the Recovery Act grant, the plans and blueprints for a replacement correctional facility in Kayenta City have already been created and the Navajo Nation is ready to build its detention center. Because the Navajo Nation stated in its Recovery Act grant application that the plans for construction of the Kayenta facility have been completed, it appeared that the 2009 Non-Recovery Act Correctional Facilities on Tribal Lands Program Planning Grant was no longer necessary.

At our request, the BJA followed up on this issue with the tribe and found that the Navajo Nation will request a change of scope for the \$150,000 FY 2009 Planning Grant from physical planning of the structure of the facility to operational planning. The proposed scope change will utilize funding to develop policies and procedures for the operation of the correctional facility as well as to train correctional facility staff. As of April 26, 2010, no request for a change of scope or Grant Adjustment Notice has been completed to propose and authorize the repurposing of FY 2009 grant funds. We recommended to the BJA that it should consider placing a hold on the FY 2009 Planning Grant until the tribe submits a request to repurpose these funds with a Grant Adjustment Notice. In

²² Renovations include site preparation for moving modular facilities and installing fencing around the temporary facilities.

²³ OJP Grant No. 2009-IP-BX-0074.

²⁴ OJP Grant No. 2009-ST-B9-0100. The project period for this award is from October 2009 through September 2014. Category II funds are for the construction of single-tribe or regional multipurpose justice centers.

May 2010, the BJA requested a funding freeze and attached a withholding special condition on the award until a Grant Adjustment Notice is submitted. If the Navajo Nation fails to submit a request to repurpose these funds, or this request for a change of scope is denied, the BJA should consider de-obligating the funds so that they may be put to better use.

Chippewa Cree Tribe

On September 30, 2008, the Chippewa Cree Tribe was awarded a \$450,000 FY 2008 Renovation Grant to renovate the Rocky Boy Detention Facility to correct structural and mechanical deficiencies, and reconfigure the building to provide an appropriate, adequate, and secure detention space.²⁵ The project period for this grant is September 2008 through February 2011, and as of March 3, 2010, only \$42,602 (approximately 9.5 percent) of the available funding had been drawn down.²⁶

The Chippewa Cree Tribe was also awarded \$12,374,177 on September 21, 2009, for the construction of a multi-purpose justice center under category II of the Recovery Act Correctional Facilities on Tribal Lands Program.²⁷ In its application for the Recovery Act funding, the Chippewa Cree Tribe stated it planned to replace the Rocky Boy facility with the new facility funded by the Recovery Act. Thus, we were concerned that the original plans identified in the 2008 Non-Recovery Act Correctional Facilities on Tribal Lands Program Grant may have changed.

At our request, the BJA followed up on this issue with the tribe and found that the BIA has designated the existing Rocky Boy detention facility as "poor" and in need of renovation. Because the Recovery Act Correctional Facilities on Tribal Lands Program funding will be used to construct a facility that will replace the existing Rocky Boy facility, the Chippewa Cree Tribe is proposing that the FY 2008 Non-Recovery Act Correctional Facilities on Tribal Lands Renovation Grant funding be used to renovate the existing Rocky Boy facility for use during the construction of the new facility. Once the new facility is completed and the existing Rocky Boy facility is no longer needed for detention, the Chippewa Cree Tribe plans to use the existing Rocky Boy facility for an alternative criminal justice purpose.

²⁵ OJP Grant No. 2008-IP-BX-0300.

²⁶ The Chippewa Cree Tribe submitted a request that was approved March 1, 2010, to extend the project period from February 28, 2010, to February 28, 2011.

²⁷ Grant No. 2009-ST-B9-0098. The project period for this award is from July 2009 to June 2011.

Depending on the specific use of the Rocky Boy facility after the new facility is constructed, the tribe may not need the full award amount of the 2008 renovation or Recovery Act construction grant. For example, the budget for the FY 2008 renovation grant includes approximately \$145,000 for equipment and supplies for a detention facility, such as commercial grade kitchen and laundry equipment, furniture for cells, and a backup generator. However, if the grantee does not use the Rocky Boy facility for detention after the new facility is constructed, OJP may be able to reduce the amount of its Recovery Act award. Specifically, many of these equipment expenses are included as part of the approximately \$1.3 million received for equipment in the Recovery Act award. In its Recovery Act application, the Chippewa Cree Tribe estimated that the new facility would be completed in 30 months. Since equipment purchased under the FY 2008 renovation grant will still have a remaining useful life after 30 months, OJP may be able to reduce the amount of Recovery Act grant funds used for equipment by transferring equipment purchased for the existing Rocky Boy facility to the new facility.

Since it was recently determined that the Rocky Boy facility will be used for an alternative purpose and may not be used for detention after the new facility has been constructed, the BJA should follow up with the Chippewa Cree Tribe to determine if the full amount of both grants awarded is still necessary.

Conclusion

Based on our review, we concluded that the BJA made awards under the Recovery Act Correctional Facilities on Tribal Lands Program in compliance with established policies and procedures. However, we had some concerns with the consistent enforcement of required application materials. However, these concerns have since been addressed by the BJA by placing withholding special conditions on the eight awards that were missing documents to meet the Basic Minimum Requirements of the solicitation.

Finally, we identified one award recipient that was not endorsed by the BIA, but will require BIA funding to operate and maintain the completed facility, and three Recovery Act awards that duplicate the goals and objectives of prior year Non-Recovery Act Correctional Facilities on Tribal Lands Program funding. The BJA is aware of these areas of concern and is currently working with the tribes to resolve these issues. However, until agreements with the BIA can be formalized by the tribes and Grant Adjustment Notices can be issued to repurpose duplicative funding, the long-term viability and effectiveness of these projects is uncertain. In our judgment, the BJA should continue their efforts to resolve these issues, and if not resolved, the BJA should consider de-obligating the funds so that they may be put to better use.

OJP's Response and OIG Analysis

We provided OJP a draft version of this report. After reviewing the report, OJP representatives stated that while the BJA works closely with the BIA to seek the BIA's input on funding decisions, the absence of BIA endorsement of a project is not in itself grounds for denying an application for funding. The BJA goals for tribal construction do not always match those of the BIA, due to factors such as legislative language, appropriations to each agency, budget cycles, and the manner in which each agency conducts business in Indian Country. Since the Ramah Navajo Chapter committed to reallocating a pre-existing commitment from the BIA for funding of operations, the BJA asserted that the Ramah Navajo Chapter should be able to move forward on this important project. In the BJA's opinion, freezing the funding would cause unnecessary delay and could adversely affect the ongoing negotiations between the BIA and the tribe.

The BJA agreed that funding to the Navajo Nation for the Kayenta Community facility should be frozen until the Navajo Nation has submitted a Grant Adjustment Notice. The BJA has requested a funding freeze and attached a withholding special condition on the award until a Grant Adjustment Notice is submitted.

Additionally, the BJA clarified that the Chippewa Cree Tribe's existing Rocky Boy facility will be used for detention purposes until the new Recovery Act-funded facility is complete. The renovation funds from the FY 2008 award will be used for renovating the existing Rocky Boy facility. When the facility is no longer needed for detention, the Tribe plans to use it for an alternative criminal justice purpose. The BJA concluded that this is consistent with the relevant property disposition regulations and the prior practice of the BJA. Because the renovation grant funding will be used as originally intended, the BJA did not consider it appropriate to freeze the funds.

In response to OJP's comments, we made minor modifications to the report. However, we continue to recommend that the BJA carefully monitors drawdowns and negotiations for the Ramah Navajo Chapter grant to ensure grant funds are not expended on an unsustainable project. In addition, we continue to recommend that the BJA follow up with the Chippewa Cree Tribe to determine if the full amount of grant funds awarded is necessary under grants 2008-IP-BX-0300 and 2009-ST-B9-0098, taking into consideration that the Rocky Boy facility may not be used as a detention facility after the new facility is constructed.

APPENDIX I

RECOVERY ACT CORRECTIONAL FACILITIES ON TRIBAL LANDS CATEGORIES I–IV AWARDS

AWARD NUMBER	STATE	GRANTEE ORGANIZATION	CATEGORY	AMOUNT AWARDED
2009-ST-B9-0097	AZ	Colorado River Indian Tribes	Category I	\$4,561,213
2009-ST-B9-0100	AZ	Navajo Nation Department of Public Safety - Kayenta Community	Category I	31,655,277
2009-ST-B9-0096	SD	Rosebud Sioux Tribe	Category I	25,000,000
2009-ST-B9-0090	MT	Ft. Peck Assiniboine & Sioux Tribes	Category I	12,683,342
2009-ST-B9-0066	NM	Ramah Navajo Chapter	Category I	3,806,850
2009-ST-B9-0088	WA	Yakama Nation	Category I	11,975,078
2009-ST-B9-0098	MT	Chippewa Cree Tribe	Category II	12,374,177
2009-ST-B9-0080	AK	Native Village of Kwinhagak	Category II	1,350,000
2009-ST-B9-0099	WA	Puyallup Tribe of Indians	Category II	7,936,648
2009-ST-B9-0076	NC	Eastern Band of Cherokee Indians	Category II	18,000,000
2009-ST-B9-0091	AZ	Pascua Yaqui Tribe	Category II	20,849,173
2009-ST-B9-0094	ID	Shoshone-Bannock Tribes	Category II	3,507,421
2009-ST-B9-0089	AZ	Navajo Nation Department of Public Safety - Tuba City	Category II	38,587,560
2009-ST-B9-0095	WA	Nisqually Tribe	Category II	10,720,232
2009-ST-B9-0093	CA	Tule river tribal council	Category II	3,069,764
2009-ST-B9-0082	AZ	White Mountain Apache Tribe	Category III	947,310
2009-ST-B9-0102	MT	Confederated Salish and Kootenai Tribes	Category III	1,335,073
2009-ST-B9-0087	SD	Yankton Sioux Tribe	Category III	5,800,000
2009-ST-B9-0103	WA	Confederated Tribes of the Chehalis Reservation	Category III	203,623
2009-ST-B9-0077	NM	Eight Northern Indian Pueblos Council	Category IV	5,636,317
Total	20			\$219,999,058

Source: OJP GMS

APPENDIX II

FINAL PEER REVIEW SCORES REPORTED BY BJA

APPLICATION NUMBER	STATE	GRANTEE ORGANIZATION	CATEGORY	FINAL PEER REVIEW SCORE
2009-G4557-AZ-ST	AZ	Colorado River Indian Tribes	Category I	93.83
2009-G6113-AZ-ST	AZ	Navajo Nation Dept of Public Safety - Kayenta City	Category I	89.33
2009-G6111-AZ-ST	AZ	Navajo Nation Dept of Public Safety - Dilkon	Category I	86.50
2009-G6286-SD-ST	SD	Rosebud Sioux Tribe	Category I	81.67
2009-F6776-MT-ST	MT	Ft. Peck Assiniboine & Sioux Tribes	Category I	81.17
2009-G4166-UT-ST	UT	The Ute Indian Tribe of Uintah and Ouray	Category I	79.00
2009-G6272-NM-ST	NM	Ramah Navajo Chapter	Category I	77.17
2009-G6131-MI-ST	MI	Sault Ste Marie of Chippewa Indians	Category I	76.33
2009-G6169-AZ-ST	AZ	The Hopi Tribe	Category I	71.67
2009-G6185-WA-ST	WA	Yakama Nation	Category I	71.17
2009-G6287-NV-ST	NV	Fallon Paiute-Shoshone Tribe	Category I	51.50
2009-G6270-CA-ST	CA	The Pauma Band of Mission Indians	Category I	31.00
2009-G4341-MT-ST	MT	Chippewa Cree Tribe	Category II	92.00
2009-G2688-AK-ST	AK	Native Village of Kwinhagak	Category II	91.33
2009-F9215-WA-ST	WA	Puyallup Tribe of Indians	Category II	88.50
2009-F4773-NC-ST	NC	Eastern Band of Cherokee Indians	Category II	84.00
2009-G6025-AZ-ST	AZ	Pascua Yaqui Tribe	Category II	82.33
2009-G5915-ID-ST	ID	Shoshone-Bannock Tribes	Category II	80.33
2009-G5844-AZ-ST	AZ	Navajo Nation Dept of Public Safety - Tuba City	Category II	79.67
2009-G6089-AZ-ST	AZ	Navajo Nation Dept of Public Safety - Crownpoint	Category II	79.67
2009-F3607-WY-ST	WY	Northern Arapahoe Business Council	Category II	79.00
2009-G6241-WA-ST	WA	Nisqually Tribe	Category II	74.83
2009-F9102-CA-ST	CA	Tule River Tribal Council	Category II	74.17
2009-G6275-WA-ST	WA	Lummi Nation	Category II	73.50
2009-G6071-SD-ST	SD	Oglala Sioux Tribe Department of Public Safety	Category II	72.50
2009-G5922-AZ-ST	AZ	White Mountain Apache Tribe	Category III	93.17
2009-G6118-AZ-ST	AZ	Navajo Nation Dept of Public Safety - Tohatchi Youth Detention Center	Category III	87.33
2009-G3023-MT-ST	MT	Confederated Salish and Kootenai Tribes	Category III	80.67
2009-F3787-SD-ST	SD	Yankton Sioux Tribe	Category III	77.17
2009-F5438-WA-ST	WA	Confederated Tribes of the Chehalis Reservation	Category III	75.83
2009-G6215-WA-ST	WA	Colville Confederated Tribes	Category III	75.50
2009-G6109-NM-ST	NM	Eight Northern Indian Pueblos Council	Category IV	79.83

Source: OJP GMS