



# **REVIEW OF THE AWARD PROCESS FOR THE BUREAU OF JUSTICE ASSISTANCE RECOVERY ACT GRANT PROGRAM FOR CORRECTIONAL FACILITIES ON TRIBAL LANDS, CATEGORY V**

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

Report 11-18  
February 2011

## Introduction

*The American Recovery and Reinvestment Act of 2009* (Recovery Act) created the Recovery Act Correctional Facilities on Tribal Lands Discretionary Grant Program and appropriated \$225 million to the Bureau of Justice Assistance (BJA) to fund the program.<sup>1</sup> 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 November 2010, the Office of Justice Programs (OJP) obligated approximately \$5 million for category V awards. The BJA awarded over \$4.7 million under the Recovery Act Correctional Facilities on Tribal Lands Program to one category V recipient, Justice Solutions Group (JSG).<sup>2</sup> The BJA awarded the remaining \$263,000 as a supplement to an existing

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<sup>1</sup> Congress appropriated \$225 million 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. Pub. L. No. 103-322 (1994).

<sup>2</sup> The remaining \$220 million was awarded to category I through IV recipients of the Recovery Act Correctional Facilities on Tribal Lands Program.

contract with the Alpha Corporation to provide National Environmental Policy Act (NEPA) compliance assistance to tribal grantees.

This report focuses only on the awards made under category V of the Recovery Act Correctional Facilities on Tribal Lands Program.<sup>3</sup> The awards made under categories I through IV of the Recovery Act Correctional Facilities on Tribal Lands Program were the subject of a previous OIG report.<sup>4</sup>

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, and
- if grants awarded under category V of the Recovery Act Correctional Facilities on Tribal Lands Program were made in an open and competitive manner.

## Results in Brief

The BJA received a total of three applications under category V of the Recovery Act Correctional Facilities on Tribal Lands Program. First, the applications were internally reviewed by the BJA to determine if they met the basic minimum requirements of the solicitation. Based on this review, one application was rejected because the applicant had applied under the wrong solicitation.<sup>5</sup> The two remaining applications were then forwarded to the peer review phase of the selection process.

The BJA formed a peer review panel comprised of one external and two internal reviewers to evaluate the two remaining category V applications. BJA officials explained that, given that there were only two

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<sup>3</sup> This report is one of a series of reports that we have issued during our ongoing review of the Department of Justice's management and oversight of Recovery Act funds allocated to the BJA's Recovery Act Correctional Facilities on Tribal Lands Program. Our future work will include a review of the use of BJA's Recovery Act Correctional Facilities on Tribal Lands Program funds by a selected sample of recipients and sub-recipients.

<sup>4</sup> U.S. Department of Justice Office of the Inspector General, *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*, Report 10-26 (June 2010).

<sup>5</sup> The internally rejected applicant had incorrectly submitted a category II application proposing the construction of a multipurpose justice center under category V.

applications to review under category V, it was more cost effective to review them internally. Additionally, BJA officials stated that it is the BJA's policy to utilize senior policy analysts within the BJA to review national training and technical assistance award applications due to the importance of these awards to the BJA's mission, and that these internal reviewers had better insight into the types of training and technical assistance that would be needed under these programs and could better assess applicants' capabilities than an external reviewer.

Scores for each reviewed application were compiled into a scoring report by the peer review logistical support provider.<sup>6</sup> We independently calculated the final peer review scores for the two applicants based upon the raw peer reviewer scores to determine the accuracy of the overall scores reported to the BJA by the logistical support provider and determined that one score had been incorrectly reported to the BJA.<sup>7</sup> We brought this discrepancy to the BJA's attention. We found that the logistical support provider had mis-keyed the score when manually entering it into the final report sent to BJA. The logistical support provider stated that it will ensure that this type of error does not occur again by conducting a quality control review of manually entered data. In order to prevent reporting errors from affecting future peer reviews, OJP should ensure that the logistical support contractor satisfactorily implements this quality control review of manually entered data.

However, neither the incorrect nor the correct final assessment score changed the overall ranking of category V applications. Therefore, this error did not appear to have a significant effect on the funding decision.

Funds totaling \$4,737,942 were provided through category V Recovery Act funding to Justice Solutions Group (JSG). We found that JSG had not submitted all required materials with its application at the time the initial

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<sup>6</sup> 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. Lockheed Martin holds the current contract to provide logistical support during the peer review process. 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.

<sup>7</sup> 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.

award was made.<sup>8</sup> Although the grant was awarded to JSG with an incomplete application, the BJA placed a hold on the award until all the required materials were submitted. The funds awarded to JSG included a \$250,607 supplement that was awarded non-competitively.<sup>9</sup>

Although the BJA represented the awarding process of the original award to JSG to be a competitive process, we identified a prior relationship between JSG and an internal peer reviewer (Peer Reviewer A).<sup>10</sup> Peer Reviewer A served as a point of contact for Recovery Act Correctional Facilities on Tribal Lands Program applicants during the application process. We obtained the Conflict of Interest Form submitted by Peer Reviewer A certifying that the reviewer had no conflicts of interest at the time applications for the Recovery Act Correctional Facilities on Tribal Lands Program were reviewed. However, during a recent OIG grant audit of JSG, we obtained documentation showing that Peer Reviewer A, while employed at DOJ, had significant involvement with JSG prior to serving on the review panel for the Recovery Act Correctional Facilities on Tribal Lands Program. Peer Reviewer A had participated in JSG's Advisory Committee. The purpose of this committee is to collaboratively support the development of curricula and publications for use by JSG, the provision of technical assistance by JSG, and the dissemination of information by JSG to assist tribal planning teams. The use of a peer reviewer who is not free from a conflict of interest with an applicant undermines the purpose of the peer review process as a means for an objective and independent review.

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<sup>8</sup> JSG had failed to submit certifications related to Recovery Act reporting and infrastructure investments. These documents were required by the solicitation but immaterial to the funding decision.

<sup>9</sup> The BJA also awarded \$263,000 as a supplement to an existing contract with the Alpha Corporation to provide National Environmental Policy Act (NEPA) compliance assistance to tribal grantees. This supplement was also awarded non-competitively.

<sup>10</sup> This peer reviewer is referred to as Peer Reviewer A throughout this report.

Additionally, we identified several concerns with the BJA's award process being open and competitive. We found that JSG and its affiliated companies have been the exclusive recipients of grants and cooperative agreements to provide training and technical assistance for correctional facilities on tribal lands since 2001. In 2001, the Federal Bureau of Prison's (BOP) National Institute of Corrections (NIC) awarded Justice Planners International, LLC a non-competitive cooperative agreement to provide training and technical assistance for the construction of correctional facilities on tribal lands. According to the funding memo provided by the BOP:

Due to a short time frame, dictated by OJP's Corrections Program Office (CPO) direction to begin providing technical assistance as soon as possible, two firms were contacted who had a reputation for strong architectural planning and design work in both juvenile and adult correctional facilities and also had experience in providing NIC training and technical assistance to Indian Tribes. The firms Mark Goldman and Associates, Inc. and International Partnerships for Youth LLC, formed a partnership entitled Justice Planners International LLC.<sup>11</sup> Following two meetings with the CPO and the NIC, the firm developed an application to provide technical assistance to Indian Tribes that contained all of the prerequisites requested of them by both the CPO and the NIC.

From 2001 through 2005, the NIC, through an interagency agreement with OJP, used a non-competitive process to award funds to Justice Planners International to provide training and technical assistance for correctional facilities on tribal lands. Since 2006, funding has been provided directly to JSG and its affiliated companies by the BJA through both competitive and non-competitive awards. Excluding Recovery Act funding, JSG and its affiliated companies have received approximately \$7.3 million since 2001 to provide training and technical assistance for correctional facilities on tribal lands. Approximately \$5.3 million of this funding has been non-competitively awarded. Appendix III provides a detailed listing of funding provided to JSG and its affiliated companies.

The Recovery Act Correctional Facilities on Tribal Lands Program solicitation states that priority consideration would be given to category V

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<sup>11</sup> International Partnership for Youth, LLC is currently using the trade name "Justice Solutions Group" to conduct business as a training and technical assistance provider for correctional facilities on tribal lands.

applicants that demonstrate specific competencies.<sup>12</sup> It appears that BJA's priority consideration, as indicated in the Recovery Act Correctional Facilities on Tribal Lands solicitation, was written specifically for JSG and it would be very difficult, if not impossible, for any other applicant of this program to meet the criteria without the support the BJA provided JSG. For example, the BJA states that priority consideration would be given to applicants that demonstrate a history of working effectively with tribal officials, tribal project managers, the BIA, the National Institute of Corrections, and other federal agencies. As previously described, JSG began work through an affiliated company with tribal corrections through a 2001 cooperative agreement with the Federal Bureau of Prison's National Institute of Corrections and OJP's Corrections Program Office, and has been the exclusive training and technical assistance provider for correctional facilities on tribal lands since 2001. Additionally, JSG was funded by the BJA through a 2008 grant to develop an Advisory Committee comprised of leadership from tribal government, tribal correctional agencies, and representatives from JSG, BJA, BIA, the National Institute of Corrections, state government, and private foundations.

As a result of our review, we are concerned that the BJA may not have complied with the requirements in the Recovery Act to award grants in a fair manner. We believe that the BJA should consider strengthening internal controls to reduce the risk of the appearance of conflicts of interest or favoritism towards a particular grantee. The BJA should also consider possible remedies or disciplinary actions that may be warranted as a result of the appearance of a conflict of interest identified in our review.

More detailed results of our review of the BJA's award processes for category V 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 three applications under category V of the Recovery Act Correctional Facilities on Tribal Lands Program. According to BJA's process, prior to funding each application goes through a review process to ensure the most qualified applicants are awarded grants. First, the BJA performs an internal review to determine if the applications meet

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<sup>12</sup> These competencies relate to substantial experience working with tribes and the planning of tribal correctional facilities, a history of working with the National Institute of Corrections and other federal agencies involved in tribal programs, access to criminal justice professionals, and a 90-day operational readiness.

the Basic Minimum Requirements of the solicitation.<sup>13</sup> Successful applications are then sent to peer reviewers for evaluation. Once scored, applications are again reviewed by BJA officials and funding recommendations are made and sent to OJP's Assistant Attorney General for approval. Once the Assistant Attorney General approves funding recommendations, awards are made.

## **BJA's Internal Review of Applications**

The three applications the BJA received were internally reviewed to determine if they met the Basic Minimum Requirements of the solicitation. BJA officials informed us that as a result of the internal review, one application was rejected because the applicant had applied under the wrong solicitation.<sup>14</sup> The remaining two category V applications were forwarded to the peer review phase of the selection process.

As a result of the competitive review process, the BJA made one award totaling \$4,487,335 to JSG.<sup>15</sup> We reviewed the application materials submitted by JSG and found that JSG had not submitted all required materials at the time awards were made, indicating that the BJA may not

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<sup>13</sup> 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 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.

<sup>14</sup> According to the solicitation, eligible category V applicants are for-profit (commercial) organizations, non-profit organizations, faith-based and community organizations, institutions of higher learning, or consortiums with demonstrated national level experience in working with tribal representatives to plan, renovate, and construct correctional facilities that serve local and regional needs. The internally rejected applicant was a tribe that had incorrectly submitted an application for the construction of a multipurpose justice center under category V.

<sup>15</sup> As of November 2010, two supplemental, non-competitive awards were made totaling \$513,607. One award was given to JSG for \$250,607, and one award was made to Alpha Corporation for \$263,000, bringing the total awarded under category V to \$5,000,942.



have fully enforced solicitation requirements.<sup>16</sup> Consequently, the grant was awarded to JSG with an incomplete application.<sup>17</sup> However, the BJA placed a hold on the award until JSG had submitted the missing material.

## 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.<sup>18</sup> 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. The list of potential peer reviewers and their resumes were made available to the BJA to select qualified candidates for the peer review process.

However, given that there were only two applications to review under category V, the BJA decided that it was more cost effective to review them internally. Additionally, BJA officials stated that it is the BJA's policy to utilize senior policy analysts within the BJA to review national training and technical assistance award applications due to the importance of these awards to the BJA's mission. BJA officials added that these internal reviewers had better insight into the types of training and technical assistance that would be needed under these programs than external reviewers and could better assess applicants' capabilities. The BJA formed one peer review panel to review category V applications, which was comprised of one external and two internal peer reviewers who were selected based on their experience with tribal matters, training, and technical assistance.

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<sup>16</sup> 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).

<sup>17</sup> JSG failed to submit certifications related to Recovery Act reporting and infrastructure investments. These documents were required by the solicitation but were immaterial to the funding decision.

<sup>18</sup> Lockheed Martin holds the current contract to provide logistical support during the peer review process.

*Peer Review Scoring Methodology*

The BJA defined the criteria and the weighting of each criterion used to evaluate applications submitted under category V 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 1, on a scale of 0 (unacceptable) to 10 (excellent). Each criterion was assigned a weight (percentage) by the BJA, also identified in Table 1.

**TABLE 1. CRITERIA AND WEIGHTED POINT VALUE FOR PEER REVIEW OF CATEGORY V APPLICATIONS**

<b>CRITERIA</b>	<b>WEIGHTED POINT VALUE</b>
Statement of the Problem/Program Narrative	15%
Project/Program Design and Implementation	20%
Capabilities/Competencies	35%
Budget	15%
Impact/Outcomes and Evaluation/Plan for Collecting Data for Performance Measures/Sustainment	15%

Source: OJP

In addition to the evaluation criteria and weighted point value listed above, the Recovery Act Correctional Facilities on Tribal Lands Program solicitation states that priority consideration would be given to category V applicants that demonstrate:

- Substantial experience working with tribes to plan, renovate, and construct facilities associated with the incarceration and rehabilitation of juvenile and adult offenders subject to tribal jurisdiction;
- Substantial experience in developing comprehensive strategic community justice plans that encompass community need, the design, use, capacity, and cost of adult and juvenile justice sanctions and services;
- An understanding of detention and correctional building options including prototypical or quasi-prototypical concepts/designs for tribal correctional facilities, multi-service centers, support offices, and regional facilities;

- A history of working effectively with tribal officials, tribal project managers, the Bureau of Indian Affairs, the National Institute of Corrections, and other federal agencies;
- Cultural competency working with Native American representatives and communities;
- An ability to develop curricula and modify training and technical assistance delivery to meet specific needs of tribal communities;
- Access to an established cadre of criminal justice professionals with substantial experience in Indian Country who can execute tasks associated with this program; and
- An operational readiness within 90 days of the award.

### *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 input into the Initial Assessment Form in GMS, which automatically weighted each score.<sup>19</sup> 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.

Following the consensus call, peer reviewers were able to change their scores or comments based on feedback they received from the group. While reviewers may 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. The final scores were

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<sup>19</sup> 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.

then compiled by the logistical support provider.<sup>20</sup> The applications were ranked by their overall final assessment score within each award category. Appendix II details the overall final assessment score for each application. 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.

### *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 in GMS, which 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.<sup>21</sup> We determined that one of the two final assessment scores had been incorrectly reported. The National Justice Center's final average score following the peer review was reported to the BJA as 77.50 out of a possible 100.<sup>22</sup> The final score calculated by the OIG using the methodology described above was 81.17 out of a possible 100.

At our request, the BJA followed up on the discrepancy with the logistical support provider and found that it had mis-keyed the score when manually entering it into the final report sent to the BJA. The logistical support provider reported that the error was most likely due to the slow response of the reviewers and that it will ensure that this does not occur again by conducting a quality control review of manually entered data. The logistical support provider concurred that the correct final assessment score for the National Justice Center's application was 81.17. However, neither the incorrect nor the correct final assessment score changes the overall ranking of category V applications. Even though in this case the reporting error by the logistical support provider did not affect the overall ranking, there is a potential for this type of error to affect future peer reviews. Therefore, OJP should ensure that the logistical support contractor

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<sup>20</sup> 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.

<sup>21</sup> We did not evaluate, nor do we provide an opinion on, the validity or accuracy of 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.

<sup>22</sup> OJP grant application No. 2009-G6019-CA-ST.

satisfactorily implements the quality control review of manually entered data mentioned above.

### **BJA's Award Decision**

After the peer review was completed, the grant manager and BJA program office management collaborated to recommend applications for funding. The BJA reviewed both applications sent to peer review and developed a formal recommendation memorandum for approval by the Assistant Attorney General for OJP. This memorandum recommended funding the application submitted by JSG because it had the highest peer review score. In addition, the memorandum recommended JSG for its proven track record of providing training and technical assistance for the BJA's Correctional Facilities on Tribal Lands Program, an established reputation among the tribal nations, effectively utilizing tribal members for its work, and its keen awareness of the issues facing tribes and tribal criminal justice systems, especially the corrections component. JSG was ultimately awarded \$4,487,335 under category V of the 2009 Recovery Act Correctional Facilities on Tribal Lands Program.<sup>23</sup>

In its funding memorandum to the Assistant Attorney General for OJP, the BJA recommended funding for only \$224,486,393 of the \$225,000,000 appropriated under categories I through V of the Recovery Act Correctional Facilities on Tribal Lands Program. The remaining \$513,607 was awarded as two non-competitive supplemental awards. One supplemental award for \$250,607 was made to JSG to deliver additional training and technical assistance to tribal grantees. BJA officials decided that a number of tribal grantees will need greater assistance than originally anticipated, and therefore recommended supplemental funding to JSG. The second supplemental award for \$263,000 was made to Alpha Corporation to provide National Environmental Policy Act (NEPA) assistance to tribal grantees. According to the funding recommendation, this supplemental award will allow Alpha Corporation to hire a NEPA Coordinator to ensure that tribal grantees are compliant with NEPA guidance and regulations in executing Recovery Act-funded construction and renovation projects.

#### *Internal Peer Reviewer's Prior Relationship with JSG*

We reviewed the names of the peer reviewers serving on the panel for category V applications and determined that one of the internal reviewers also served as one of the three points of contact for Recovery Act

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<sup>23</sup> As of November 2010, one supplemental, non-competitive award was made to JSG for \$250,607, bringing the total awarded to JSG under category V to \$4,737,942.

Correctional Facilities on Tribal Lands Program applicants.<sup>24</sup> We followed up with BJA officials on Peer Reviewer A's involvement with the Correctional Facilities on Tribal Lands Program and the training and technical assistance provider, JSG. BJA officials originally stated that Peer Reviewer A had no involvement with the Correctional Facilities on Tribal Lands Program or with any of the category V applicants and that Peer Reviewer A's duties involved setting up training and technical assistance services under the BJA's Tribal Courts Program.

According to the Conflict of Interest Form provided to peer reviewers by OJP, reviewers must declare if they "have or recently had a collaborative relationship with the proposal's author(s) or project staff." We obtained the Conflict of Interest Form submitted by Peer Reviewer A, which indicated the reviewer had no conflicts of interest at the time applications for the Recovery Act Correctional Facilities on Tribal Lands Program were reviewed. However, during a recent OIG grant audit of JSG, we obtained supporting documentation showing Peer Reviewer A had significant involvement with JSG prior to serving as a peer reviewer for category V applications under the Recovery Act Correctional Facilities on Tribal Lands Program. We were provided documentation that listed Peer Reviewer A as a participant in JSG's Advisory Committee prior to the peer review process of the Recovery Act Correctional Facilities on Tribal Lands Program. This committee is comprised of representatives from tribal governments, tribal correctional agencies, JSG, the BJA, the Bureau of Indian Affairs, the National Institute of Corrections, state governments, and private foundations. The purpose of this committee is to collaboratively support the development of curricula and publications for use by JSG, the provision of technical assistance by JSG, and the dissemination of information by JSG to assist tribal planning teams. According to BJA officials and materials provided by JSG, the committee brings tribal justice agencies and organizations together to facilitate collaboration in order to maximize the potential for successful completion of tribal correctional facilities.

In addition to serving on the Advisory Committee, we found that Peer Reviewer A had attended two Planning Correctional Facilities on Tribal Lands Training and Technical Assistance Project Meetings that were facilitated by JSG and took place on November 5, 2008, and March 23, 2009.<sup>25</sup> The purpose of these meetings was to reach a general consensus on the direction, approach, and curriculum to be used for the training and technical

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<sup>24</sup> This peer reviewer is referred to as Peer Reviewer A throughout this report.

<sup>25</sup> The funding recommendation was sent to the Assistant Attorney General for approval on July 21, 2009.

assistance provided by JSG under the Correctional Facilities on Tribal Lands Program.<sup>26</sup>

Therefore, it appears that Peer Reviewer A had a collaborative relationship with JSG staff prior to the review of their application and did not disclose this relationship during the peer review process. The use of peer reviewers who are not free from conflicts of interest with applicants undermines the purpose of the peer review process as an objective and independent review.

In our judgment, Peer Reviewer A's prior relationship with JSG may have prevented an impartial review of all category V applications and may have prevented the BJA from complying with the requirements in the Recovery Act to award grants in a fair manner. We recommend that the BJA consider reevaluating the peer review process used for awarding future funds to allow for a larger pool of eligible applicants. In addition, the BJA should consider strengthening internal controls to identify relationships between reviewers and applicants. The BJA should also consider any possible remedies, or disciplinary action, that may be warranted as a result of the prior relationship identified in our review.

### **Open and Competitive Award Process**

According to the *OJP Grant Manager's Manual*, discretionary grants are awarded on a competitive or noncompetitive basis and at the discretion of the bureau or program office head. The Recovery Act Correctional Facilities on Tribal Lands Program solicitation indicates that the grant would be awarded on a competitive basis. During our review, we identified several concerns with the competitiveness of the award process.

Officials at JSG have been involved with training and technical assistance associated with the planning, design, and construction of correctional facilities on tribal lands since 2001 through affiliated companies. In 2001, officials from JSG were invited to form a joint venture, Justice Planners International, to administer a noncompetitive cooperative agreement with the Federal Bureau of Prison's National Institute of

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<sup>26</sup> Justice Solutions Group was awarded a 2008 Non-Recovery Act Planning Correctional Facilities on Tribal Lands Training and Technical Assistance Program to fund the PACIFIC project. The OJP grant number for this award is 2008-IP-BX-K001, and the grant period is from February 2008 to September 2010.

Corrections and Correctional Program Office.<sup>27</sup> The goals and objectives of this funding were to:

- Provide tribes with an understanding of the facility development process for new, renovated and/or expanded facilities;
- Provide appropriate technical assistance and introduce tribal planning team members to operational, programmatic and organizational concepts and processes that may be used during planning, design or construction of a facility to help the client plan a facility that will function as designed and in a manner that meets its mandates and mission and the needs of the tribe; and
- Assist tribes in making well-informed planning, design, and construction decisions by providing materials and information on "best practices" in facility development planning and design for new juvenile and adult detention and correctional facilities.

In 2006, Justice Planners International was awarded a noncompetitive grant by the BJA to continue the services provided under the 2001 Federal Bureau of Prisons' cooperative agreement.<sup>28</sup> In 2008, JSG was awarded a competitive Non-Recovery Act Planning Correctional Facilities on Tribal Lands Training and Technical Assistance award (2008 grant) to continue training and technical assistance services.<sup>29</sup> The purpose of the 2008 grant was to work collaboratively with the BJA and an advisory committee to develop curricula and publications, provide technical assistance, and disseminate information to tribal planning teams that reflect an understanding of the unique attributes and challenges of tribal criminal justice systems. The advisory committee proposed in JSG's application materials for the 2008 grant is comprised of leadership from tribal government, tribal correctional agencies, and representatives from JSG, BJA, BIA, National Institute of Corrections, state government, and private foundations.

JSG has received approximately \$5.3 million in non-competitive funding since 2001 as the exclusive training and technical assistance provider for correctional facilities on tribal lands. This funding received by

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<sup>27</sup> A noncompetitive cooperative agreement is a cooperative agreement that is not competitively awarded. According to OMB Circular A-102, federal agencies award cooperative agreements instead of grants when "substantial involvement" is expected in carrying out the activity contemplated in the agreement.

<sup>28</sup> The OJP grant number for the grant is 2006-IP-BX-K001.

<sup>29</sup> The OJP grant number for the grant is 2008-IP-BX-K001.



JSG officials directly and through affiliated companies from various grants and cooperative agreements related to tribal correctional training and technical assistance over the past decade has allowed them to develop professional relationships with tribal officials, tribal project managers, BIA, National Institute of Corrections, and other federal agencies. It has also provided JSG with the opportunity to develop a competency in working with Native American representatives and communities, develop curricula and modify training and technical assistance delivery to meet specific needs of tribal communities, and develop a network of criminal justice professionals with substantial experience in Indian Country, all of which were criterion for priority consideration as listed in the solicitation under category V of the Recovery Act Correctional Facilities on Tribal Lands Program.

Additionally, as the current training and technical assistance provider to the Correctional Facilities on Tribal Lands Program under its 2008 grant, JSG would meet the solicitation criteria of being operationally ready within 90 days of the award. It appears that the priority consideration, as indicated in the solicitation, was written specifically for JSG, and it would be very difficult, if not impossible, for any other applicant of this program to meet the criteria without the support the BJA has provided to JSG.

## **Conclusion**

Based on our review, we identified concerns over the competitive nature of awards made by the BJA under category V of the Recovery Act Correctional Facilities on Tribal Lands Program. Peer Reviewer A's prior relationship with JSG during the peer review process combined with the priority consideration criteria in the solicitation potentially gave JSG an unfair competitive advantage over other applicants. We believe that the BJA should consider strengthening internal controls to reduce the risk of appearances of conflicts of interest when selecting internal reviewers. Consideration should also be given to any possible remedies or disciplinary actions that may be warranted as a result of the prior relationship identified in our review.

APPENDIX I

RECOVERY ACT CORRECTIONAL FACILITIES ON  
TRIBAL LANDS CATEGORY V AWARD

AWARD NUMBER	STATE	GRANTEE ORGANIZATION	AMOUNT AWARDED
2009-ST-B9-0101	NJ	Justice Solutions Group	\$4,737,942

Source: OJP's GMS

**APPENDIX II**

**FINAL PEER REVIEW SCORES REPORTED BY BJA**

<b>AWARD NUMBER</b>	<b>STATE</b>	<b>GRANTEE ORGANIZATION</b>	<b>CATEGORY</b>	<b>FINAL PEER REVIEW SCORE</b>
2009-G5978-NJ-ST	NJ	Justice Solutions Group	Category V	83.00
2009-G6019-CA-ST	CA	National Indian Justice Center	Category V	81.17

Source: OJP's GMS

APPENDIX III

PRIOR AWARDS TO JSG AND AFFILIATED COMPANIES

AWARD NUMBER	AWARD AMOUNT	AWARD START DATE	AWARD END DATE	AWARDING AGENCY	TYPE OF AWARD
<b>Justice Planners International</b>					
02S07GIU2	\$ 546,315	11/15/2001	11/14/2002	NIC	Non-competitive
03S07GIU2	1,597,006	4/1/2003	3/31/2005	NIC	Non-competitive
04S07GIU2	438,781	12/15/2003	6/14/2005	NIC	Non-competitive
2006-IP-BX-K001	2,369,838	10/1/2005	9/30/2010	BJA	Non-competitive
<b>Justice Solutions Group</b>					
2008-IP-BX-K001	\$ 999,871	2/1/2008	9/30/2010	BJA	Competitive
2009-IP-BX-K002	999,794	8/1/2009	7/31/2011	BJA	Competitive
2009-S4-BX-K146	369,394	9/1/2009	8/31/2011	BJA	Non-competitive
<b>TOTAL</b>	<b>\$7,320,999</b>				

Source: OJP's GMS and the BOP

OJP RESPONSE TO OIG TECHNICAL ASSISTANCE REPORT



U.S. Department of Justice

Office of Justice Programs


Office of the Assistant Attorney General

Washington, D.C. 20531

JAN 14 2011

MEMORANDUM TO: Glenn A. Fine  
Inspector General  
United States Department of Justice

THROUGH: Raymond J. Beaudet  
Assistant Inspector General for Audit  
Office of the Inspector General  
United States Department of Justice

FROM: Laurie O. Robinson   
Assistant Attorney General

SUBJECT: Response to the Office of the Inspector General's Draft Audit Report, *Review of the Award Process for the Bureau of Justice Assistance Recovery Act Grant Program for Correctional Facilities on Tribal Lands, Category V*

The Office of Justice Programs (OJP) appreciates the opportunity to review and respond to the Office of the Inspector General's (OIG's) draft audit report, entitled *Review of the Award Process for the Bureau of Justice Assistance Recovery Act Grant Program for Correctional Facilities on Tribal Lands, Category V*, transmitted on December 10, 2010. Please find below OJP's comments related to several issues noted in the draft audit report pertaining to BJA's award decision.

Although no formal recommendations were included in the draft audit report, the OIG stated that: 1) OJP should ensure that the logistical support contractor satisfactorily implements the quality control review of manually entered data; 2) Peer Reviewer A's prior relationship with the Justice Solutions Group (JSG) during the peer review process combined with the priority consideration criteria in the solicitation potentially gave JSG an unfair competitive advantage over other applicants; 3) BJA should consider reevaluating the peer review process used for awarding future funds to allow for a larger pool of eligible applicants; 4) BJA should consider strengthening internal controls to reduce the risk of appearances of conflicts of interest when selecting internal reviewers; and 5) BJA should consider possible remedies, or disciplinary action, that may be warranted as a result of the prior relationship identified in their review. OJP's response to these issues is organized by the section headers included in the draft audit report.

### **Peer Review Process – Peer Review Score Verification**

The OIG found that one of the two final assessment scores for the Category V applications had been incorrectly reported to BJA by the logistical support provider, due to an input error. Although in this case the error did not affect the overall ranking of applications, OJP agrees with the OIG that OJP must ensure that the logistical support contractor satisfactorily implement quality control procedures to prevent such data errors. Accordingly, in August 2010, OJP implemented a new process for ensuring the accuracy and reliability of peer review data. Specifically, rather than manually entering data, peer reviewers' final scores are directly uploaded into the contractor's peer review management system from OJP's Grants Management System (GMS). Reports from the two systems are then cross-checked for data accuracy. Any discrepancies are then resolved by OJP and contractor staff.

### **BJA's Award Decision – Internal Peer Reviewer's Prior Relationship with JSG**

In its draft report, the OIG states that it appeared that Peer Reviewer A had a collaborative relationship with JSG staff prior to the review of their application and did not disclose this relationship during the peer review process. In the OIG's judgment, Peer Reviewer A's prior relationship with JSG prevented an impartial review of applications and may have prevented BJA from complying with Recovery Act requirements to award grants in a fair manner. The Office of Justice Programs offers the following responses to provide further clarification and context to these issues.

First, BJA believes that Peer Reviewer A was able to provide an impartial and objective review of the Category V applications, including the one submitted by JSG. Peer Reviewer A did not have a direct personal or financial relationship with JSG, and was not engaged in the recommendation and selection process of this award. It is BJA's practice to ensure staff involved as peer reviewers do not participate in the award decision process.

Additionally, although the OIG draft audit report included the final peer review scores for the two applicants, JSG and the National Indian Justice Center (NIJC), it did not include all of the peer review score information that was provided to the OIG by BJA. Specifically, Peer Reviewer A's rating of JSG only differed from Peer Reviewers B and C, respectively, by two and four points. Further, Peer Reviewer A deducted 15 points from the JSG application and noted weaknesses in every review criterion. Moreover, Peer Reviewer A's score for a competing applicant - the NIJC - was higher than the score given to that applicant by another BJA peer reviewer. As such, BJA believes that Peer Reviewer A acted in a fair and impartial manner when evaluating the Category V applications.

It is BJA's practice to use internal subject matter experts (BJA policy advisors and senior policy advisors) to serve as internal peer reviewers on grant applications for which they have expertise. These internal reviewers are often the best qualified reviewers and, thus, BJA frequently uses them to evaluate applications for national-level training and technical assistance (TTA) projects. National level TTA projects are a high priority for BJA, and are a key to BJA's

success in building capacity among state, local, and tribal jurisdictions. As such, BJA staff members are very much aware of BJA's mission and focus on TTA projects, and have better insight into which projects will best address the needs of the field and BJA's priorities. Additionally, there are limited numbers of external subject matter experts with national level expertise and perspective, and these experts may want to apply to provide the services sought under the solicitation, or partner with an organization that is applying (which would preclude them from serving as peer reviewers).

Peer Reviewer A had subject matter expertise on tribal matters, and oversaw several high profile tribal projects for BJA. In managing other tribal related projects, on topics such as substance abuse and tribal courts, Peer Reviewer A worked with numerous tribal grantees and national-level tribal TTA providers, including JSG, to ensure that the projects were coordinated in a way to best address the needs of tribal communities. In this case, having a professional relationship with the proposal's author(s), project staff, or the organization submitting the proposal, did not preclude Peer Reviewer A (or any BJA staff member) from providing an impartial and objective review.

Additionally, the OIG notes that Peer Reviewer A was the main point-of-contact for the Category V solicitation. However, BJA listed three names as points-of-contact in the Category V solicitation, none of which is identified as the main point-of-contact. Another BJA-subject matter expert, who was noted as one of the points-of-contact in the Category V solicitation, served as the solicitation manager, facilitated the consensus call among all three peer reviewers, and authored the funding recommendation memorandum, which recommended JSG for the grant award and was sent to OJP's Assistant Attorney General for approval. To ensure that internal controls are in place to prevent conflicts of interest, it is BJA's policy that all funding recommendation memoranda adhere to the guidance provided by OJP's Assistant Attorney General, and that such memoranda are carefully reviewed and approved by the following BJA officials: the Associate Deputy Director, the Acting Deputy Director, and the Acting Director.

#### **Open and Competitive Award Process**

The OIG notes that the Category V solicitation was written specifically for JSG, and that it would be very difficult, if not impossible, for any other applicant of this program to meet the criteria without the support BJA provided to JSG. The Category V solicitation eligibility requirements were broad so as to encourage applications from tribal and non-tribal for-profit organizations, non-profit organizations, faith-based and community organizations, institutions of higher learning, and consortiums with demonstrated national level experience in working with tribal representatives to plan, renovate, and construct correctional facilities that serve local and regional needs. In addition to JSG and NIJC, BJA believes that several other national level organizations (including Fox Valley Technical College and the Native American Rights Fund) were eligible to apply and could have met the criteria outlined in the solicitation. Further, the application submitted by NIJC was very competitive, receiving a peer review score which was only 1.83 points lower than JSG's.

BJA believes that its policy and senior policy advisors, who have professional relationships with applicants, are capable of providing an impartial, objective, and independent peer review of such applications. Nonetheless, in the future, BJA plans to closely examine the composition of each peer review panel to ensure that there is no potential for conflict of interest. Additionally, OJP will consider strengthening controls to further reduce any appearances of conflicts of interest related to the selection of internal peer reviewers.

Again, thank you for the opportunity to review and comment on the draft audit report. If you have any questions regarding this response, please contact Maureen A. Henneberg, Director, Office of Audit, Assessment, and Management, on (202) 616-3282.

cc: Beth McGarry  
Deputy Assistant Attorney General  
for Operations and Management

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**OFFICE OF THE INSPECTOR GENERAL  
ANALYSIS OF THE OFFICE OF JUSTICE PROGRAMS RESPONSE**

The OIG provided a draft of this report to OJP. OJP's response is incorporated in Appendix IV of this final report. Although our report contained no formal recommendations, our review identified several areas of concern related to the award process for the Recovery Act Correctional Facilities on Tribal Lands Discretionary Grant Program, Category V. The following provides the OIG analysis of OJP's response.

**Peer Review Score Verification**

In response to our report, OJP concurred with our assessment of the inaccurate reporting of final peer review scores by the logistical support contractor, and agreed that it must ensure that the logistical support contractor satisfactorily implement quality control procedures to prevent inaccurate reporting of final peer review scores. OJP also stated that as of August 2010 it has implemented a new process for ensuring the accuracy and reliability of peer review data.

**Internal Peer Reviewer's Prior Relationship with JSG**

We also present in the report a concern that Peer Reviewer A did not disclose a prior collaborative relationship with JSG before peer reviewing JSG's application as required by OJP peer review procedures. While OJP did not disagree with our conclusion that Peer Reviewer A should have disclosed the prior relationship, OJP provided comments concerning the effect of this discrepancy.

OJP stated in its response that Peer Reviewer A's prior professional relationship did not preclude Peer Reviewer A (or any BJA staff member) from providing an impartial and objective review. Additionally, OJP stated that the BJA believes that its policy and senior policy advisors, who may have professional relationships with applicants, are capable of providing an impartial, objective, and independent peer review of such applications. However, we believe that regardless of the perceived ability of an individual to remain objective, Peer Reviewer A should have disclosed the prior professional relationship with JSG at the time of the review so that it could be evaluated as to whether it presented a potential conflict of interest. OJP did not disagree with this point in its response.

Below we discuss in more detail OJP's response related to Peer Reviewer A's failure to disclose the prior relationship with JSG.

### *Peer Review Scores*

While we do not provide an opinion on the validity of peer reviewers' assessments of the applications, in support of our objectives we conducted a limited evaluation of the objectivity of peer reviewers. Our report details our concerns about Peer Reviewer A's prior relationship with JSG and its affect on OJP's ability to ensure an impartial review of all category V applications. The focus of our concern was that Peer Reviewer A's prior relationship with JSG may have prevented an impartial review of all category V applications and thus may have prevented the BJA from complying with the requirements in the Recovery Act to award grants in a fair manner. We made a minor modification to the report to clarify that although we identified several concerns with Peer Reviewer A's objectivity in the review of JSG's application, we were not informed by Peer Reviewer A that these concerns had undoubtedly prevented an impartial review. Therefore, we clarified the report to reflect the fact that Peer Reviewer A's prior relationship may have prevented an objective review.

In its response to our draft report, OJP noted that the OIG's analysis did not include all of the peer review score information provided by the BJA. Because OJP considers specific scoring and applicant information to be confidential, we did not detail this specific information in this report even though it was part of the information that we reviewed.

OJP also stated in its response that Peer Reviewer A's overall rating of JSG only differed from Peer Reviewers B and C, respectively, by two and four points. While we agree with this analysis, Peer Reviewer A provided JSG with a higher score for one key peer review criterion, "capabilities and competencies", than the other peer reviewers. Alternatively, Peer Reviewer A rated NIJC's application significantly lower than JSG in the same criterion. According to the selection criteria stated in the solicitation, this particular criterion category relates to the capacity to complete each of the potential tasks or projects outlined. In addition, the capabilities and competencies category is the highest weighted category among the five criterion categories.<sup>30</sup> It could reasonably be expected that Peer Reviewer A's prior professional relationship with JSG resulted in an increased knowledge of or respect for JSG's capacity as a result of having previously worked with the

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<sup>30</sup> As shown in Table 1 on page 9 of our report, the "capabilities and competencies" category is weighted 35 percent while the other categories are each weighted either 15 or 20 percent.

applicant when compared to the reviewer's knowledge of or respect for NIJC's capacity.

Further, in its response, OJP states that Peer Reviewer A deducted 15 points from JSG's application and noted weaknesses in every review criterion. However, OJP's response fails to mention that Peer Reviewer A also noted weaknesses in every review criterion for NIJC, but deducted more points from NIJC's application. Therefore, the overall score that Peer Reviewer A assigned to JSG's application was several points higher than NIJC's application. It is important to note that the overall score that Peer Reviewer A assigned to JSG was the highest among the peer reviewers. Taking into account these positive scorings that Peer Reviewer A gave JSG, we reject OJP's implication that the fact that Peer Reviewer A also at times deducted points or noted weaknesses for JSG provides evidence of impartiality.

The conditions previously described, taken in consideration with Peer Reviewer A's prior relationship with JSG, casts doubt on OJP's contention that Category V applicants were reviewed in a fair and impartial manner. We conclude that Peer Reviewer A's prior relationship may have prevented an impartial review of all category V applications and may have prevented the BJA from complying with the requirements in the Recovery Act to award grants in a fair manner.

#### *Funding Recommendation Memorandum*

OJP stated that Peer Reviewer A did not have a direct personal or financial relationship with JSG and was not engaged in the recommendation and selection process of the award. OJP also stated that internal controls are in place to prevent conflicts of interest in award selection; that all funding recommendation memoranda adhere to the guidance provided by OJP's Assistant Attorney General; and that such memoranda are carefully reviewed and approved by the Associate Deputy Director, the Acting Deputy Director, and the Acting Director. Guidance provided by OJP's Assistant Attorney General dated March 10, 2009, identifies specific criteria that final award recommendation memoranda must include. Included in those requirements are that every application scoring higher than the lowest-scoring application to be funded must have an explanation of why it was not funded. Because JSG's application was scored higher than NIJC's application, an explanation for NIJC's denial was not required. However, the recommendation memoranda cited JSG's high peer review score among the reasons for providing JSG with the award. Therefore, in our opinion, the peer review scores clearly affected the award selection process.

Despite the fact that the BJA disagrees with us on the potential effects of Peer Reviewer A's prior relationship with JSG, they plan to closely examine the composition of each peer review panel to ensure that in the future, there is no similar potential for a conflict of interest. Additionally, OJP will consider strengthening controls to further reduce any appearances of conflicts of interest related to the selection of internal peer reviewers. We further encourage these efforts.

### **Open and Competitive Award Process**

In response to our discussion about the need to ensure an open and competitive award process for the category V solicitation, OJP misrepresented a statement in our report. Instead of stating that the solicitation was written specifically for JSG, we stated that the priority consideration was written specifically for JSG. We do not dispute OJP's assertion that several other national level organizations were eligible to apply. However, in our opinion, the priority consideration listed in the solicitation may have served to limit the opportunity for any organization other than JSG to obtain funding under category V. For example, the BJA states that priority consideration would be given to applicants that demonstrate a history of working effectively with tribal officials, tribal project managers, the BIA, the National Institute of Corrections, and other federal agencies. As previously described in the report, JSG began work through an affiliated company with tribal corrections through a 2001 cooperative agreement with the Federal Bureau of Prison's National Institute of Corrections and OJP's Corrections Program Office, was provided funding by the BJA to develop an Advisory Committee comprised of leadership from tribal government, tribal correctional agencies, and representatives from JSG, BJA, BIA, the National Institute of Corrections, state government, and private foundations, and has been the exclusive training and technical assistance provider for correctional facilities on tribal lands since 2001. As a result, we continue to encourage OJP to consider strengthening internal controls to reduce the risk of the appearance of favoritism towards a particular grantee.

Finally, we noted in the draft report provided to OJP that Peer Reviewer A served as the main point-of-contact for the solicitation. OJP stated in its response that the "BJA listed three names as points-of-contact in the category V solicitation, none of which is identified as the main point-of-contact." Upon further review of the solicitation, we acknowledge that the solicitation listed three individuals, none of which were listed as the main point-of-contact. As a result, we revised the final report.