MEMORANDUM

Date: March 19, 2019

To: Kristen Randall, Chair
Community Law Enforcement
Partnership Commission

From: C.H. Huckelberry
County Administrator

Members, Community Law Enforcement
Partnership Commission

Re: **Requested Information Regarding Operation Stonegarden Grant Issues Raised by the Arizona Border Counties Coalition**

You recently requested information regarding the Arizona Border Counties Coalition's (ABCC) February 14, 2019 letter to the Governor as well as to the Department of Homeland Security Secretary. For your reference, these letters are attached. (Attachment 1).

The State of Arizona agency that administers the Operation Stonegarden grant from the Federal Emergency Management Agency (FEMA), a unit of the Department of Homeland Security responded in a March 12, 2019 letter. (Attachment 2)

In general, the concerns expressed by the ABCC are resolvable. At the March 14, 2019 ABCC meeting, the members directed the County Managers and/or Administrators of the respective counties to meet with the Arizona Department of Homeland Security Director Gilbert Orrantia and US Department of Homeland Security Assistant Chief Patrol Agent Lou Meheda to resolve as many of the issues as possible and determine which issues require appropriate elevation to others, including federal agencies.

Regarding Director Orrantia's response, I will itemize my view of his response as follows:

1. Mileage Reimbursement – There was a great deal of reference to a number of different standards that are not applicable. There is a statement that "the reimbursement rate for mileage will continue to be calculated at $.445 cents per mile until the Arizona General Accounting Office changes and publishes the rate in the State of Arizona Accounting Manual."

I have requested information from the Arizona Department of Administration regarding the necessary actions to change this rate and will pursue appropriate modification to at least $0.58 per mile in the next grant cycle.

2. Indirect Cost Reimbursement – The response essentially admits counties are eligible to receive indirect cost reimbursement; however, the response indicates the practice will reduce the amount of funds left for the intended purpose. Such a response ignores the additional cost imposed on counties in accepting OPSG grants. If the Federal government wants more funds for the direct purpose of the grant, they need to increase the grant award to cover indirect costs.

   I expect that indirect cost reimbursement can be easily obtained in the next grant cycle.

3. Equipment Use – This is perhaps the most confusing response received and simply quotes a number of pages in the Notice of Funding Opportunity and the Code of Federal Regulations. This is an item that will require modification by the Department of Homeland Security or by FEMA. The modification requested should be fairly easy and is backed by statistics and data that indicates if the equipment purchased for OPSG, for the purpose of improving border security, continues to be used, border security outcomes are actually improved.

   Using the data from the Pima County Adult Detention Complex as of the week of March 14, 2019 we have 93 non-citizen individuals in custody. Of these, only 2 were arrested and detained under OPSG; hence, any equipment that is used continuously by the Sheriff that may have been purchased through OPSG is obviously significantly contributing to border security. Therefore, there should be no prohibition nor confusion regarding the permission of law enforcement to continuously use equipment purchased through OPSG for law enforcement purposes.

4. Local Law Enforcement a Priority – The response confirms that local law enforcement involved in an OPSG assignment may immediately respond to local law enforcement needs, if necessary.

5. Expanded Function and Mission – Clearly, this item will require discussion with US Customs and Border Protection and Department of Homeland Security officials. The primary focus for Pima County is increasing the use of law enforcement air assets that have been proven to be effective and efficient law enforcement tools.

CHH/anc

Attachments

c: The Honorable Chairman and Members, Pima County Board of Supervisors
The Honorable Mark Napier, Pima County Sheriff
The Honorable Sharon Bronson, Pima County Representative, Arizona Border Counties Coalition
The Honorable Pat Call, Cochise County Representative, Arizona Border Counties Coalition
The Honorable Bruce Bracker, Santa Cruz County Representative, Arizona Border Counties Coalition
The Honorable Martin Porchas, Yuma County Representative, Arizona Border Counties Coalition
Gilbert Orrantia, Director, Arizona Department of Homeland Security
Teresa Bravo, Coordinator of Economic Development and International Projects, Economic Development Office
Michael Racy, Racy Associates, Inc.

ATTACHMENT 1

Arizona
BORDER
COUNTIES
Coalition

February 14, 2019

The Honorable Kirstjen M. Nielsen
Secretary Homeland Security
Washington, D.C. 20528

Re: **US Border Security at County Cost**

Dear Secretary Nielsen:

We are writing to request your assistance in certain financial aspects associated with Federal grants related to border security as well as funding to help defray the enormous financial burden placed on border counties because of immigration pressures.

The Arizona Border Counties Coalition represents four counties in Arizona that are adjacent to the International Border with Mexico. Pima County has the longest border adjacent to Mexico of any county in the United States.

Because the border is not secured with either physical, electronic, technologic or manpower security measures, our border counties carry a significant additional financial burden that must be paid for by local taxpayers. These added costs take the form of pretrial detention of non-citizens accused of crimes, as well as prosecution and defense of these individuals. Previously, State Criminal Alien Assistance Program funding provided some help in offsetting pretrial detention costs; however, these revenues reimburse counties for only a small fraction of the actual cost of pretrial detention. The reimbursement amount has been decreasing dramatically over the years.

Your assistance in developing some form of equitable reimbursement for these costs is appreciated. We understand any solution to this problem will take time. We stand ready to fully cooperate with you in developing an equitable and affordable cost sharing agreement on this issue.

An issue, which we believe you may be of immediate assistance, is in ensuring existing Federal grants intended to improve border security and made to local border counties, adequately compensate counties when accepting these grants.

Enclosed is a letter we recently sent to the Arizona Governor regarding Operation Stonegarden Grant (OPSG) modifications. We believe, through the cooperation of both the Federal government and the State of Arizona, the modifications we have requested can easily be made to ensure adequate compensation for local county expenses when accepting OPSG grants.

We ask for your guidance on how best to implement these modifications to ensure counties are adequately compensated when working in partnership with the Federal government to secure our border.

Sincerely,

Arizona Border Counties Coalition

Sharon Bronson

The Honorable Sharon Bronson
Pima County Representative
Arizona Border Counties Coalition

Pat Call

The Honorable Pat Call
Cochise County Representative
Arizona Border Counties Coalition

The Honorable Bruce Bracker
Santa Cruz County Representative
Arizona Border Counties Coalition

The Honorable Tony Reyes
Yuma County Representative
Arizona Border Counties Coalition

CHH/anc

Enclosure

c: Peter Gaynor, Acting Administrator, US Department of Homeland Security, Federal Emergency Management Agency
The Honorable Martha McSally, US Senator - Arizona
The Honorable Kyrsten Sinema, US Senator - Arizona
The Honorable Ann Kirkpatrick, Congresswoman, Arizona District 2
The Honorable Raúl Grijalva, Congressman, Arizona District 3

February 14, 2019

The Honorable Douglas Ducey, Governor
State of Arizona
1700 West Washington Street
Phoenix, Arizona 85007

Re: **Federal Operation Stonegarden Grant Modifications**

Dear Governor Ducey:

As US Border County Supervisors and members of the Arizona Border Counties Coalition, we understand your desire for border security and the formation of your Border Strike Force. We appreciate your efforts in improving security and safety for the residents of Arizona, including the residents of our border counties. We know and live with these issues firsthand and your support is appreciated.

The border counties of Arizona have been the recipient of federal Operation Stonegarden (OPSG) grants and these grants have been helpful in improving border security and safety. However, we believe there are a number of modifications that can be made to these grants to improve their effectiveness and to fully reimburse border counties for costs associated with accepting an OPSG grant.

OPSG grants are from the Federal Emergency Management Agency, which is a unit of the federal Department of Homeland Security. These grants are administered by the State through your Arizona Department of Homeland Security (AZDOHS). Related to this administration, we ask for your assistance in making the following modifications:

1. Mileage Reimbursement - Increasing the mileage reimbursement for using county law enforcement vehicles in OPSG activities. The mileage rate was limited to $0.44 ½ cents per mile based on 2006 mileage reimbursement rates. The current Internal Revenue Service reimbursement is $0.58 cents per mile. However, as you know in procuring law enforcement vehicles, these vehicles are substantially more costly to operate than a typical passenger vehicle. Many of these vehicles, when including

replacement costs, average over $1 per mile to operate. We would appreciate your assistance immediately increasing the reimbursement rate to the allowable IRS rate of $0.58 as well as adding a clause that indicates that the rate can be either the IRS rate or the actual cost to counties as substantiated by audit.

2. Indirect Cost Reimbursement - Almost all federal grants allow the reimbursement of indirect costs; OPSG is one such grant. Indirect costs include the provision of central services and administrative support that benefit all activities of a department and therefore cannot be readily identified to a specific cost objective or program. Expenditures related to Information Technology infrastructure, facilities maintenance, and the recruitment and training of law enforcement officers are examples of indirect costs. In order to recoup such costs in relation to federal grant awards, local governments calculate indirect cost rates for their major departments by following federal regulations (2 CFR 200). The current Pima County Sheriff's Department indirect cost rate—just for example—is 28.58 percent. Arizona Department of Homeland Security (AZDOHS) OPSG grant applications, however, do not provide clear instructions or budget line items related to indirect cost rates. We request your assistance in directing AZDOHS to revise its OPSG grant application materials to clearly address how local government applicants can recover indirect costs.

3. Equipment Use - There is some confusion regarding the continued use of equipment purchased through OPSG by law enforcement. One county has been requested to park vehicles purchased with OPSG funds. To advance crime deterrence and assist counties in meeting their public safety mission, AZDOHS needs to clarify its OPSG grant guidelines to allow equipment purchased with OPSG funds to be used for law enforcement activities in addition to OPSG authorized purposes.

4. Local Law Enforcement a Priority – AZDOHS should also revise its OPSG grant guidelines to clearly indicate that local law enforcement officials engaged in OPSG efforts may, at any given time, respond to immediate and local law enforcement needs. Confusion has arisen regarding local law enforcement employed on OPSG activities and whether they can discontinue OPSG assignments to respond to a local law enforcement emergency.

5. Expanded Function and Mission - We also believe the federal government has not taken advantage of the sophistication and assets of local law enforcement in conducting OPSG activities—e.g., the use of air assets and surveillance equipment. We ask you to encourage the federal government to make broader and more extensive use of these technology assets that are today being used to effectively improve public safety and assist ground law enforcement response. This same technology can be of significant assistance to US Customs and Border Protection if included in OPSG grants. We ask for your assistance in conveying the importance of utilizing the full sophistication and technology of local law enforcement in border security and safety in our shared goal of maintaining and enhancing border security.

As Arizona's Border Counties, we are the frontline of border safety and security and request your assistance as outlined above.

Sincerely,
Arizona Border Counties Coalition

Sharon Bronson

The Honorable Sharon Bronson
Pima County Representative
Arizona Border Counties Coalition

Pat Call

The Honorable Pat Call
Cochise County Representative
Arizona Border Counties Coalition

The Honorable Bruce Bracker
Santa Cruz County Representative
Arizona Border Counties Coalition

The Honorable Tony Reyes
Yuma County Representative
Arizona Border Counties Coalition

CHH/anc

c: The Honorable Mark J. Dannels, Cochise County Sheriff
The Honorable Tony Estrada, Santa Cruz County Sheriff
The Honorable Leon N. Wilmot, Yuma County Sheriff
The Honorable Mark Napier, Pima County Sheriff
Edward Gilligan, Cochise County Administrator
Jennifer St. John, Santa Cruz County Manager
Susan K. Thorpe, Yuma County Administrator
Chuck Huckelberry, Pima County Administrator

ATTACHMENT 2

State of Arizona

Department of Homeland Security

Governor Douglas A. Ducey

Director Gilbert M. Orrantia

March 12, 2019

The Arizona Border Counties Coalition
Supported by the Pima County Office of Economic Development
130 W. Congress, 10th floor
Tucson, AZ 85701

RE: Arizona Border Counties Coalition Letter Dated February 14, 2019

Dear Arizona Border Counties Coalition,

The Arizona Department of Homeland Security (AZDOHS) is in receipt of the February 14th letter sent to Governor Ducey relative to the management and administration of the Operation Stonegarden Grant Program (OPSG). As the State Administrative Agency for the OPSG, the AZDOHS works closely with the United States Department of Homeland Security (USDHS), the Federal Emergency Management Agency (FEMA), Customs and Border Protection (CBP)/Border Patrol and OPSG subrecipients to ensure the most effective utilization of grant funds.

In response to the request for modifications:

1. Mileage Reimbursement

The above referenced letter points out that the current IRS reimbursement is $0.58 cents per mile and requests that the AZDOHS follow IRS rates. The IRS rates are used to calculate the deductible costs of operating an automobile for business, charitable, medical or moving purposes and not for governmental operations purposes (https://www.irs.gov/newsroom/irs-issues-standard-mileage-rates-for-2019). The U.S. General Services Administration (GSA), the agency which sets travel policy for the Federal government, has set the mileage rate at $.20 cents per mile as of January 1, 2019 for reimbursement "If Government-furnished automobile is available" (https://www.gsa.gov/travel/plan-book/transportation-airfare-rates-pov-rates/privately-owned-vehicle-pov-mileage-reimbursement-rates)

OPSG subrecipients are receiving $.445 cents per mile in accordance with State of Arizona travel policy. In addition, there is a common misperception that Federal grants received into the State should follow Federal GSA rates for reimbursement. Pursuant to State law, all Federal grants received by the State are considered "public money" and are subject to Arizona Statutes, laws, rules, rates and policies governing the expenditure of such money (https://gao.az.gov/sites/default/files/4507%20Public%20Money%20180910.pdf). It is the responsibility of the AZDOHS to manage Federal grants in accordance with State policies and the reimbursement rate for mileage will continue to be calculated at $.445 cents per mile until the Arizona General Accounting Office changes and publishes the rate in the State of Arizona Accounting Manual.

1700 West Washington Street Phoenix, Arizona 85007
Office: (602) 542-7013 Fax: (602) 542-1729 www.azdohs.gov

2. Indirect Cost Reimbursement

Given the fact that the OPSG is formula-based, award amounts for each county are determined by CBP. Although as a state we can request any amount we desire, each county receives a finite award amount. As a general practice, OPSG subrecipients have not requested indirect costs (IDC) because the inclusion of indirect costs in grant awards made to OPSG subrecipients would greatly reduce the amount of funds left for the intended purpose of the grant such as overtime, mileage and equipment for each participating agency. Less funding due to larger amounts of funding going to IDC would have negative effects on operations.

3. Equipment Use

AZDOHS follows all applicable federal grant guidelines including the Notice of Funding Opportunity (NOFO) and the Code of Federal Regulations (CFR). The NOFO states in several sections the intent of the OPSG grant program and includes allowable expenditures and activities. OPSG funds must be used to provide an enhanced law enforcement presence and to increase operational capabilities of Federal, state, local, tribal, and territorial law enforcement, promoting a layered, coordinated approach to law enforcement within Border States and territories of the United States. Eligible agencies must meet the intent of the grant program by adhering to the approved Operations Orders which outline the specific needs as dictated by CBP. These goals are accomplished by providing law enforcement presence on an overtime basis.

Page 66 of the FFY 2018 NOFO states, "Grant funds will be used to supplement existing funds, and will not replace (supplant) funds that have been appropriated for the same purpose. Applicants or recipients may be required to supply documentation certifying that a reduction in non- federal resources occurred for reasons other than the receipt or expected receipt of federal funds." At no time is a subrecipient to utilize grant funding to supplant what could be considered normal cost of doing business equipment.

Page 74 of the FFY 2018 NOFO, Unallowable Costs (OPSG) states, "OPSG funding shall not be used to supplant inherent routine patrols and law enforcement operations or activities not directly related to providing enhanced coordination between local and federal law enforcement agencies." Vehicles are allowed under the OPSG grant program; however, they must be utilized in support of the border security mission as dictated by CBP.

Page 69 of the FFY 2018 NOFO states, "Allowable purchases under OPSG include patrol cars and other mission-specific vehicles whose primary use is to increase operational activities/patrols on or near a border nexus in support of approved border security operations." Operations must be coordinated and approved by CBP and FEMA prior to execution. General law enforcement patrols are not allowed under the OPSG grant; and therefore, the equipment purchased with OPSG funds must be used for the intended purpose.

4. Local Law Enforcement a Priority

Stakeholders are reminded of the scope of the OPSG grant program on a regular basis. OPSG is an overtime grant to provide a force multiplier to further secure the border region. There is no prohibition against law enforcement responding to an immediate local need while deployed on OPSG activities. There is a general understanding that if a local response is needed, the officer deployed on OPSG may respond. If the activities associated with that response require an extended robust investment of time, the officer would go off the OPSG clock and return to agency duty time as appropriate.

AZDOHS has briefed Sheriffs' staff members regarding this understanding on several occasions including the annual OPSG Grant Information Seminar and various Integrated Planning Team (IPT) meetings.

5. Expanded Function and Mission

The AZDOHS has no standing with regard to the expansion of the OPSG function and mission. Those decisions rely within the purview of CBP/Border Patrol.

If there are any other questions or concerns involving Operation Stonegarden grant management and administration, please do not hesitate to contact the AZDOHS.

Sincerely,

Gilbert M. Orrantia
Director
Arizona Department of Homeland Security

GMO/tr

cc: The Honorable Kirstjen M. Neilsen, Secretary, U.S. Department of Homeland Security
Peter Gaynor, Acting Administrator, U.S. Department of Homeland Security, Federal Emergency Management Agency
The Honorable Martha McSally, U.S. Senator, Arizona
The Honorable Kyrsten Sinema, U.S. Senator, Arizona
The Honorable Ann Kirkpatrick, Congresswoman, Arizona District 2
The Honorable Raul Grijalva, Congressman, Arizona District 3
Roy Villareal, Chief Patrol Agent, U.S. Border Patrol, Tucson Sector
Anthony Porvaznik, Chief Patrol Agent, U.S. Border Patrol, Yuma Sector
The Honorable Mark J. Dannels, Cochise County Sheriff
The Honorable Tony Estrada, Santa Cruz County Sheriff
The Honorable Leon N. Wilmot, Yuma County Sheriff
The Honorable Mark Napier, Pima County Sheriff
Edward Gilligan, Cochise County Administrator
Jennifer St. John, Santa Cruz County Manager
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