



INVESTIGATIVE REPORT
(Public per AS 24.55.200)
Ombudsman Complaint J2003-0087
September 13, 2005

SUMMARY OF THE COMPLAINT

In August 2003, a representative of the Juneau chapter of Mothers Against Drunk Driving (Juneau MADD) contacted the Office of the Ombudsman. Juneau MADD had applied for a victim services grant from the Council on Domestic Violence and Sexual Assault (CDVSA or Council) for fiscal year 2004, and had been turned down by the CDVSA.

The CDVSA awards victims services grants through a competitive Request for Proposal process (RFP). The victim services grants primarily fund programs for victims of domestic violence and sexual assault, and most of the grant applicants are women's shelters. However, some of the funds distributed in the Council grants are federal dollars provided through the Victims of Crime Act (VOCA), and 10 percent of the VOCA funds are supposed to be allocated to victims of crimes other than domestic violence and sexual assault. The complainant alleged that the CDVSA had failed to distribute this fraction of the grant money for the benefit of "other" victims, such as victims of drunk drivers. The complainant alleged that the CDVSA had awarded the "ten percent for other victims" funds to women's shelters, but that those shelters did not provide services to victims of drunk drivers or other crimes unrelated to domestic violence or sexual assault, except for cursory referrals.

The complainant believed that the Council's priorities ignored the need to distribute the VOCA funding according to the federal requirements. She argued that the Council's process, from the grant application requirements to Council members' deliberations, was biased in favor of programs addressing domestic violence and sexual assault, so that MADD's application did not receive fair consideration.

In addition to alleging failure to properly distribute VOCA funds, the complainant alleged that the process was biased and unfair in the following respects:

- Problems with the RFP format: The complainant said that the proposal requirements were so tailored to sexual assault and domestic violence programs that it was difficult for Juneau MADD to even complete the application, even though they were entitled to compete for some of the grant funds.
- Arbitrary grant scoring: MADD's application was submitted timely, except for the cover sheet, which was left out due to error by a copying service. The CDVSA staff allowed MADD to submit the cover sheet after the application deadline, apparently waiving the issue of technical noncompliance with the application

requirements. But one of the Council members subsequently refused to grade MADD's proposal and gave the proposal zero points, due solely to the late cover sheet, while all of the other members graded MADD's proposal. The one zero score lowered MADD's final score relative to other applicants. The complainant argued that it was inappropriate for one of the Council members to refuse to evaluate MADD's proposal after the Council staff accepted MADD's proposal for consideration.

- **Bias:** The complainant said that at least one of the Council members had overly close ties to one of the programs competing for a grant, creating the appearance of a conflict of interest. She argued that, in general, the Council members had too much affiliation with the domestic violence and sexual assault response programs, and that this biased their evaluation of grant proposals.
- **Discourtesy:** The complainant alleged that the Council's bias was illustrated by a Council member asking MADD's representatives "what right" MADD had to seek funding from the CDVSA. The complainant was unable to identify the Council member. Because this issue revolved around an alleged remark by an unidentified Council member, the ombudsman declined to further investigate this aspect of the complaint.

AS 24.55.150 provides that the ombudsman may investigate administrative acts that the ombudsman has reason to believe may be contrary to law, unreasonable, unfair, oppressive, arbitrary, capricious, an abuse of discretion, unnecessarily discriminatory, based on mistake of fact, based on improper or irrelevant grounds, unsupported by an adequate statement of reasons, performed in an inefficient or discourteous manner, or otherwise erroneous. The ombudsman investigated the following allegations, in accordance with AS 24.55.160:

Allegation 1: CDVSA unreasonably failed to distribute federal VOCA funds in accordance with federal standards.

Allegation 2: CDVSA unreasonably required Juneau MADD to use a grant application tailored to domestic violence/sexual assault victim services, which meant that Juneau MADD had unnecessary difficulty submitting an application for victim services funding.

Allegation 3: CDVSA unfairly allowed one Council member to refuse to score Juneau MADD's grant proposal, lowering Juneau MADD's score in the evaluation process.

Allegation 4: CDVSA unfairly allowed a Council board member with ties to a grant applicant to make decisions about which grant proposals the CDVSA would fund.

Assistant Ombudsman Beth Leibowitz investigated these allegations. Ms. Leibowitz gave verbal notice of investigation to Barbara Mason, Executive Director of the CDVSA, on February 9, 2005 in accordance with AS 24.55.140.

BACKGROUND

Structure and Funding of the CDVSA Victim Services Grant Program

The CDVSA accepts victim services grant applications/proposals every two years. For the FY04-05 grant cycle, the applications were due in March 2003, and the Council made funding decisions at its June 2003 meeting. Successful grantees received funding for FY04, and could expect to receive continuation funding for FY05, contingent upon the CDVSA's funding sources and upon the grantee's compliance with grant conditions. Only grantees already funded for FY04 were eligible for FY05. The Council funded 21 grantees in FY04; in FY05 all of these grantees received continuation funding at FY04 levels. As of February 2005, the Council has issued the RFP for FY06-07 and is accepting applications for the upcoming grant cycle.

CDVSA funds come from several state and federal sources. In FY04, the Council awarded a total of \$6,995,800 in victim services grants. These funds originated from the following state and federal sources:

- State of Alaska PFD's
- State of Alaska other general funds¹
- Family Violence Prevention Services Act (FVPSA)
- Victims of Crime Act (VOCA)
- Rural Domestic Violence and Child Victimization (RDVCV)
- Safe Visitation and Safe Exchange Program – Safe Havens (SVSEP-SH)
- Grants to Encourage Arrest (GTEA)
- Violence Against Women Act (VAWA)

For the most part, Council practice is to make awards looking only at the total dollar amount available. The staff then decides which of the sources, or "buckets," to draw money from for each grant award. For example, for FY04, the Council allocated \$489,641 to the grantee Aiding Women in Abuse and Rape Emergencies (AWARE), a crisis intervention and shelter program in Juneau. The Council staff then drew the \$489,641 from the following "buckets": PFD, \$216,596; I/A-HSS-Alc Tax, \$73,440; VOCA (federal fiscal year 2003), \$199,605. Another program, Women in Safe Homes (WISH) received a FY04 grant of \$517,183, which was drawn from the following "buckets": PFD, \$281,463; GTEA Award, \$20,000; I/A-HSS-RPE,² \$10,000; VOCA (federal fiscal year 2002), \$152,805; VOCA (federal fiscal year 2003), \$52,915.

Of course, some of these funding sources, or "buckets," have strings attached. For example, the Rape Prevention Education funds (part of the funding from DHSS via interagency agreement) are described as follows in the FY04-05 RFP: "RPE monies are to be used for sexual assault prevention activities. RPE monies are designated for

¹ Some of these funds are transferred to the CDVSA by other state agencies, such as the Department of Health and Social Services (DHSS), via interagency agreements.

² This abbreviation indicates that the funds are provided to the Council by the Department of Health and Social Services (DHSS) via an interagency agreement.

statewide activities and will fit under the Council's priority D, education/support programs, including education, outreach, prevention, information and referral."³

In attachments to the FY04-05 RFP, the Council included grant award conditions particular to various funding sources. These restrictions were in addition to the Council's own general grant conditions. Grant applicants were expected to educate themselves about the various restrictions on how funds could be used, although the RFP was the same regardless of whether the applicant was seeking money from a particular funding source.

Summary of Victims of Crime Act (VOCA) Funding

VOCA⁴ funding is channeled to the states through the United States Department of Justice Office for Victims of Crime (OVC). The OVC provides formula grants to all of the states and territories. The formula grants are divided between victim compensation and victim assistance programs. The governor in each state is expected to designate agencies to administer the victim assistance and victim compensation funds. In Alaska, the Violent Crime Compensation Board administers the VOCA victim compensation funds, and the CDVSA administers the victim assistance funds.⁵ This report addresses the allocation of the VOCA victim assistance funds.

The formula grants are issued to the states once a year. The federal fiscal year (FFY) is October 1 through September 30, and so funds are theoretically available in the fall of each calendar year. CDVSA Administrative Manager Jo Griggs clarified that the actual warrants do not necessarily arrive until later. Because the state fiscal year (FY or SFY) runs from July 1 to June 30, VOCA funds provided to Alaska for a given federal fiscal year are not used until the following state fiscal year. For example, funds awarded to Alaska for FFY 2004 were not allocated to victim services grants until state FY 2005.

The OVC has published program guidelines for VOCA victim assistance formula grants. First, the state may use up to five percent of the VOCA victim assistance funds for administrative costs. Then up to one percent to the remainder of the grant may be used by the state for training costs (0.95 percent of the total grant).⁶ After administrative and training costs are subtracted, the rest of the VOCA grant to the state (94.05 percent of the total) is intended for subgrants to entities providing direct victim services. The funding allocation is governed in part by four priority categories, each of which must receive 10 percent of the VOCA funds available for subgrants⁷:

³ FY04-05 Request for Proposal Grant Application Kit, Community Based Victims Services Programs, p. 9. In this report, this document will generally be referred to as the "FY04-05 RFP."

⁴ Victims of Crime Act of 1984, as amended, 42 U.S.C. § 10601, et seq.

⁵ In several states, the Attorney General administers the VOCA victim assistance funds.

⁶ In an email dated March 1, 2005, Vanessa Alston of the OVC indicated that the "one percent" for training costs is actually one percent of the net grant funds remaining after the state has taken up to five percent of the total federal grant for administrative costs. Also, the state is not required to use VOCA funds for administration or training; the state can devote the total federal VOCA grant to subgrants for service providers.

⁷ Ms. Leibowitz asked Vanessa Alston of the OVC to clarify how OVC calculated the 10 percent required for each priority category. In an email on February 9, 2005, Ms. Alston responded that each priority

services to victims of domestic violence;
services to victims of sexual assault;
services to abused children; and
services to previously underserved victims of violent crime.

After these priority categories are satisfied, the CDVSA may allocate the rest of the VOCA victim assistance funds without regard to the categories listed above, as long as the funds are used to provide direct services to crime victims.

The OVC explains the category of “previously underserved victims of violent crime” as follows:

4. "Previously Underserved" Priority Areas. An additional 10% of each VOCA grant will be allocated to victims of violent crime (other than "priority" category victims) who were "previously underserved." These underserved victims of either adult or juvenile offenders may include, but are not limited to, victims of federal crimes; survivors of homicide victims; or victims of assault, robbery, gang violence, hate and bias crimes, *intoxicated drivers*, bank robbery, economic exploitation and fraud, and elder abuse. [Emphasis supplied]

For the purposes of this program, a victim of federal crime is a victim of an offense that violates a federal criminal statute or regulation. Federal crimes also include crimes that occur in an area where the federal government has jurisdiction, such as Indian reservations, some national parks, some federal buildings, and military installations.

For the purposes of this program, elder abuse is defined as the mistreatment of older persons through physical, sexual, or psychological violence, neglect, or economic exploitation and fraud.

To meet the underserved requirement, state grantees must identify crime victims by the types of crimes they have experienced (e.g., drunk driving, sexual assault, or domestic violence). States are encouraged to also identify gaps in available services by victims' demographic characteristics. For example, in a given state, "underserved" victims may be best defined according to their status as senior citizens, non-English speaking residents, persons with disabilities, members of racial or ethnic minorities, or by virtue of the fact that they are residents of rural or remote areas, or inner cities. Each state grantee has latitude for determining the method for identifying "previously underserved" crime victims, which may include public hearings, needs assessments, task forces, and meetings with statewide victim services agencies.

Each state grantee must meet this requirement, unless it can justify to OVC that (a) services to these victims of violent crime are receiving significant amounts of financial assistance from the state or other funding sources; (b) a smaller amount of financial assistance, or no assistance, is needed from the VOCA victim

category was to receive 10 percent of the VOCA victim assistance funding remaining after the state has deducted the percentages allowed for state administrative and training costs.

assistance grant program; and (c) crime rates for these victims of violent crime have diminished.⁸

Alaska has not attempted to obtain a waiver of the requirement that 10 percent of the VOCA grant money be reserved for “previously underserved” victims of crime.

Within the overall definition that “previously underserved” victims are outside the first three priority categories, the OVC program guidelines make it clear each state has discretion to define the “previously underserved” victims category. This category is usually defined by types of crime (i.e. survivors of drunk driving crimes), but may be defined by geographic location or ethnic group.

In the FY04-05 RFP, the CDVSA explained the VOCA category for underserved victims as follows:

A minimum of ten percent (10%) of the Council’s VOCA allocation must be made available for grants to programs that serve previously underserved populations of victims of violent crime. These underserved victims of either adult or juvenile offenders may include, but are not limited to, victims of federal crimes; survivors of homicide victims; or victims of assault, robbery, gang violence, hate and bias crimes, intoxicated drivers, bank robbery, economic exploitation and fraud, and elder abuse.⁹

In the RFP for FY06-07, the CDVSA explained the VOCA priority categories as follows:

Priority is given to eligible victims assistance programs that provide services to victims of sexual assault, spousal abuse, child abuse or other crimes that VOCA has designated as underserved (victims of assault, robbery, elder abuse, DWI/DUI, survivors of homicide victims, adults molested as children, and other violent crimes). At a minimum, each priority category must receive 10% of the Council’s VOCA allocation.¹⁰

Juneau MADD Applies for a Grant

In December 2002, Juneau MADD requested an application kit for the community based victim services program. The CDSVA provided a Request for Proposals Grant Application Kit, Fiscal Year 2004-2005. In March 2003, Juneau MADD submitted its proposal. The proposal packet was submitted on time, except that the cover sheet was inadvertently omitted. Apparently Juneau MADD had prepared the cover sheet before the deadline, but the copying service had left it out of the packet. CDVSA staff allowed Juneau MADD to submit the cover sheet soon after the deadline, before the proposal packets were sent to Council members.

⁸ Final Program Guidelines, Victims of Crime Act Victim Assistance Grant Program, Office of Justice Programs, Office for Victims of Crime, Department of Justice. Located at <http://www.ojp.usdoj.gov/ovc/welcovc/scad/guides/vaguides.htm>.

⁹ RFP FY04-05, p. 8.

¹⁰ RFP FY06-07, p. 9.

Juneau MADD applied for \$142,092 from CDVSA. Juneau MADD anticipated that if the CDVSA awarded MADD the grant, then the CDVSA would fund the grant out of the 10 percent of VOCA funds reserved for “other” crime victims, i.e. those victimized by crimes other than domestic violence and sexual assault.

Juneau MADD proposed to use CDVSA funds primarily to hire and train a victim advocate, and a court monitor coordinator.¹¹ Both of these paid staff members would also recruit and organize volunteers. CDVSA would also have helped fund a statewide toll-free hotline for victims of intoxicated drivers.

The Council Reviews the Proposals

After the CDVSA received the FY04-05 grant proposals, CDVSA staff checked each proposal for completeness. All Council members received the proposal packets, and all Council members were expected to grade all the proposals, using the scoring criteria included in the RFP. Also, two Council members, a primary and secondary reviewer, reviewed each proposal in-depth by.¹² However, Barbara Mason reported that Council Chairman William Bobrick did not participate in grading the proposals.¹³

During the June 2003 meeting, the Council voted on motions to fund various proposals, and voted against funding Juneau MADD’s grant application. The Council minutes note that “On a raised-hand vote, the motion to fund MADD failed.” The number of votes for or against was not given. The Council minutes are excerpted below:

Community-Based Victim Services Programs

Chair Bobrick informed fellow Council members that it is customary to express motions in the affirmative so that a yes vote would approve funding for a program and a no vote would not.

MOTION BY BARBARA THOMPSON THAT THE COUNCIL CONSIDER THE FUNDING REQUESTS FROM NEW PROGRAMS FIRST. SECONDED BY SUSAN PARKES.

The motion passed without objection.

MADD-Juneau Chapter

Request.....\$142, 092

¹¹ It is not clear whether the court monitoring program was eligible for VOCA victim assistance funds. Although VOCA funds may be used for victim support such as accompanying a crime victim to a court hearing, a program studying patterns rather than supporting specific victims may not be eligible for VOCA funds.

¹² The reviewers assigned to Juneau MADD’s proposal were Susan Parkes and Karlene Jackson.

¹³ This is consistent with the grant scores for Juneau MADD’s proposal, as provided to Juneau MADD. The Council has seven members, but Juneau MADD’s scoresheet shows scores by only six members, even including the member who awarded zero points. There is no column for a seventh Council member, indicating that one member did not participate in grading the proposal.

MOTION BY SUSAN PARKES THAT THE COUNCIL FUND THE MADD JUNEAU CHAPTER PROGRAM [FOR \$142,092] IN FY04. SECONDED BY BARBARA THOMPSON.

Parkes said MADD's proposal looked like a great program, and, as a prosecutor, she would love to have the MADD people monitoring what happens in court because it would benefit DUI victims and society in general. But in looking at the Council's priority for victims services, MADD's program falls low on the list. Further, \$142,092 is more than other programs get that are providing vital direct victims services. The FY04 budget does not have enough money to fund this new program, and she recommended a no vote.

Jackson asked staff for clarification on the percentage allowed or designated for this type of service. Satterfield [the acting executive director] stated that VOCA money requires using 10% for victims of other violent crimes. Meeting that 10% requirement can be done through a program that strictly serves other victims or violent crimes or through the sexual assault and domestic violence programs, because some of them also serve victims of other violent crimes.

Tandeske asked how much 10% of VOCA funds represented in dollars. Staff indicated about \$120,000. They also clarified that past grants to Victims for Justice have applied toward that 10% requirement for victims of other violent crimes. Satterfield explained that once the Council has awarded all the grants, staff will allocate the money according to the federal dollars received and require that programs provide reporting to demonstrate they are complying with those federal requirements.

Larson inquired if MADD had met all the RFP criteria. Agnew [staff] said the proposal was submitted on time, but the face sheet was not submitted until after the deadline.

On a raised-hand vote, the motion to fund MADD failed.

Cathy Satterfield, the CDVSA's then-acting executive director, wrote to Juneau MADD on June 16, 2003 to inform Juneau MADD that it was not selected for funding.

MADD Appeals the Council Decision; the Appeal is Denied

The CDVSA regulations allow for a grant applicant to appeal the denial of funding within 15 days of receipt of the denial. See 13 AAC 95.350.

Juneau MADD did not initially appeal the funding decision. However, the complainant, on behalf of Juneau MADD, requested the scores awarded to Juneau MADD's proposal, other applicants' scores, and the application packets submitted by grantees who received VOCA funds for services to underserved victims of violent crime. The CDVSA provided this information.

On September 29, 2003, CDVSA Acting Executive Director Cathy Satterfield wrote to Juneau MADD's then-director and invited her to request to make a late-filed appeal.

Juneau MADD filed an appeal on October 9, 2003. Juneau MADD appealed on grounds that (1) it was improper for a grader to award zero points to Juneau MADD's proposal based solely on the late cover sheet, after Council staff had allowed Juneau MADD to turn in the cover sheet late; and (2) CDVSA grant priorities favored programs serving victims of domestic violence and sexual assault and did not provide for proper allocation of the 10 percent of VOCA funds reserved for victims of other crimes.

In the meantime, Department of the Public Safety Commissioner William Tandeske responded to Juneau MADD himself. (It is unclear whether he was responding on behalf of the Council or as commissioner of the department). Mr. Tandeske wrote in part:

In FY04, nineteen victims services programs are receiving VOCA funds as a part of the agency's total funding. Of the nineteen programs, eight include service plans that contain specific goals and objectives that address offering support services to the "under served" population of crime victims. These eight programs receive a total of \$617,000 in VOCA funds or 26 percent of the \$2,325,550.

Aside from Victims for Justice, the programs mentioned by Commissioner Tandeske were all first and foremost DV/SA programs. The commissioner did not distinguish VOCA funds awarded to the grantees to provide services to DV/SA victims from VOCA funds intended for extending services to underserved victims. Instead, he counted all VOCA funds awarded to these programs as if all of those funds were intended for services to under served victims, with none for DV/SA victims.

An appeals committee of the Council¹⁴ denied Juneau MADD's appeal. CDVSA Chair Barbara Thompson¹⁵ wrote to Juneau MADD on December 18, 2003:

We have discussed your concerns regarding VOCA funding and find that they do not form a basis for an appeal. In his October 15, 2003 letter to Ms. Connie McKenzie, copied to you, council member Public Safety Commissioner Tandeske addressed the concerns that you had raised regarding the VOCA monies. We concur with the Commissioner's statements that there is no irregularity with how the council has managed its VOCA funding. Rather than repeat the discussion here, we refer you to the Commissioner's letter for a full explanation; your appeal on this basis is denied.

Ms. Thompson then explained why the appeals committee also rejected Juneau MADD's appeal based on one Council member's refusal to score the MADD application. Essentially, the committee denied the appeal on grounds that any error in the scoring process was harmless because the scores are merely advisory:

As explained in Cathy Satterfield's letter to you of September 29, 2003, the scoring sheets used by the council are tools to assist in the review process; awards

¹⁴ 13 AAC 95.350(d) provides for an appeals committee composed of the Council chair and two other Council members. The appeals committee was composed of Barbara Thompson, Susan Parkes, and Dorothy Larsen.

¹⁵ William Bobrick was chair of the Council during the June 2003 funding meeting, but by December 2003 he had resigned from the Council.

are not made based upon the scoring of the applications. As a review of the entire funding meeting will reveal, council members rarely discuss scores during the decision making process. A review of the council discussion regarding your program, reveal that the decision to not fund was not based on a problem with the timeliness of the grant application. The council looked at the amount of funding available, weighed the priorities of the council, and made judgment calls about what funding decision would best serve victims. Because the decision of one council member to not score your program did not impact this decision, an appeal on this basis is denied.

INVESTIGATION, ANALYSIS AND FINDINGS

The ombudsman investigator reviewed relevant statutes and regulations, agency policies and procedures, and interviewed the following:

Denise Henderson, former executive director, CDVSA

Barbara Mason, executive director, CDVSA

Jo Griggs, administrative manager, CDVSA

Tim Workman, statistical technician, CDVSA

Debbie Weir, MADD National

Vanessa Alston, program specialist, Office for Victims of Crime, US Department of Justice

The complainant.

Allegation 1: CDVSA unreasonably failed to distribute federal VOCA funds in accordance with federal standards.¹⁶

The complainant alleged that the CDVSA had violated federal standards for distribution of VOCA funds. The ombudsman investigator, Ms. Leibowitz, contacted the Office for Victims of Crime (OVC), the federal agency overseeing the provision of VOCA funding to the states. The program specialist assigned to review Alaska's VOCA award is currently Vanessa Alston. Ms. Alston noted that the OVC had conducted a site visit to Alaska in 1999, and that Alaska was in compliance with OVC's standards at that point. Ms. Leibowitz read the 1999 site visit report. Although the OVC reviewer made several minor recommendations for corrective action, the CDVSA's administration of VOCA funds was substantially in compliance with federal requirements in 1999. Another site visit is expected in 2005.

CDVSA Receipt and Expenditure of Federal VOCA Funds After 1999

¹⁶ The Office of the Ombudsman Policies and Procedures manual at 4040(2) defines unreasonable as:

(A) a procedure adopted and followed by an agency in the management of a program is inconsistent with, or fails to achieve, the purposes of the program,

(B) a procedure that defeats the complainant's valid application for a right or program benefit, or

(C) an act that is inconsistent with agency policy and thereby places the complainant at an disadvantage to all others.

Ms. Leibowitz asked for information on recent spending patterns (since 1999). CDVSA Administrative Manager Jo Griggs provided Ms. Leibowitz with two sets of spreadsheets: the first shows expenditures of federal funding, FY2001-2005;¹⁷ the second set of spreadsheets shows CDVSA grant awards to victim services providers FY2002-2005,¹⁸ including a portion of the CDVSA grant composed of VOCA funding (versus funding from other state or federal “buckets”).

To avoid confusion, it is important to realize that although the VOCA funding provided to Alaska in *federal* fiscal year 2004 was \$1,224,000, the CDVSA’s expenditure of VOCA funds in *state* fiscal year 2004 is a different number, \$2,342,000. The state’s FY04 began in July 2003, but federal fiscal year 2004 began in October 2003. Therefore *federal* fiscal year 2004 VOCA funds were not expended by the CDVSA until state FY05. Second, in any given state fiscal year, the CDVSA has generally been spending VOCA funds from both the most recent federal award (in state FY04, that was federal fiscal year 2003), and from previous years’ VOCA awards (carry-over from 2002 and 2001).¹⁹ For example, in state FY04, the CDVSA expended \$2,342,000 in VOCA funds: \$331,000 from federal fiscal year 2001; \$1,172,700 from federal fiscal year 2002, and \$838,000 from federal fiscal year 2003. Funding provided to the state for federal fiscal year 2004 was not available until almost halfway through the state fiscal year 2004, and therefore was not expended until state fiscal year 2005.

Out of the VOCA funds expended (after deducting the administrative and training costs allocated to the CDVSA), 10 percent of the VOCA funding is supposed to be a special “bucket” used to fund services to “previously underserved” victims of crime, a category which is usually defined as victims of crime other than domestic violence, sexual assault, and child abuse (the other three priority categories under VOCA). The spreadsheets provided by the CDVSA do not track this particular “bucket” reserved for services to other crime victims; the spreadsheets only track VOCA spending as a single category, a general “VOCA bucket.”

The core issue of the complaint is that the CDVSA has been allocating funds from the VOCA “underserved victims” bucket to domestic violence and sexual assault victims’ services. The complainant contended that the DV/SA programs do not adequately serve victims of other crimes, particularly victims of intoxicated drivers. The Council, however, has maintained that the DV/SA programs, especially the crisis lines, respond to

¹⁷ *Council on Domestic Violence and Sexual Assault, FY2001-2005 Federal Grants*. This was accompanied by a second spreadsheet titled *CDVSA FY04/06 – Shelter Funding*, which illustrated expenditures from various funding sources in FY04 and FY05, and projected funding for FY06.

¹⁸ *Council on Domestic Violence and Sexual Assault, FY05 Awards; Council on Domestic Violence and Sexual Assault, FY04 Awards; FY03 Victim Services Grants – Coding; Victim Services FY02 Grant Awards*.

¹⁹ Barbara Mason noted that a legislative change has resulted in the Council being obliged to spend all of the currently available funds instead of holding some to carry over for the next year. Therefore, in FY06, the CDVSA will not have any carry-over funds, but only the funds provided by the OVC for federal fiscal year 2005. In comparison, in state FY05, \$487,000 out of the \$1,711,000 expended was carried over from federal fiscal years 2003 and 2002. In state FY04, \$1,503,700 out of the \$2,342,000 expended was carried over from federal fiscal years 2002 and 2001.

victims of other types of crime and thus earn VOCA funds from the “other victims’ bucket.”²⁰

Ms. Leibowitz compiled the table shown below to determine how much of the VOCA funding in FY02 through FY05 was being spent on general jurisdiction victim services, compared to programs aimed primarily at assisting victims of sexual assault and domestic violence. Of the various victim services programs to which the CDVSA allocated VOCA funds, two programs were general jurisdiction: Victims for Justice (VFJ) (category E on the table below), and an interagency reimbursement agreement in which the CDVSA funded a criminal justice technician in the Department of Corrections Victim Services Unit (Category D on the table).²¹ The other Council grants that used VOCA funds were made to programs whose primary mission is service to DV/SA victims, although some of these programs extend services to other victims of violent crime.

A	B	C	D	E	F	G	H
State FY	VOCA \$ expended for that State FY (Including carryovers from prior FY’s)	VOCA \$ awarded in subgrants	VOCA \$ provided to DOC (per RSA)	Subgrant to Victims for Justice (VFJ)	<i>Total VOCA \$ awarded -- subgrants plus DOC RSA (C+D)</i>	<i>10% of total VOCA awards (10% of F) (“Other” victims’ VOCA bucket)</i>	<i>VOCA \$ to VFJ and DOC; % of VOCA awards used for DOC and VFJ (D&E as % of F)</i>
2002	912,800	811,400	55,000	26,078	866,400	86,640	81,078; 9.36%
2003	1,231,700	1,166,563	55,000	52,156	1,221,563	122,156	107,126; 8.77%
2004	2,342,000	2,325,500	---	26,078	2,325,500	232,550	26,078; 1.12%
2005	1,711,000	1,563,662.50	---	26,078	1,563,662.50	156,366	26,078; 1.68%

In FY02 and FY03, almost 10 percent of the VOCA funding that the CDVSA allocated to victim assistance went to two programs that clearly assist victims of all types of crime, Victims for Justice and the Department of Corrections Victim Service Unit. Then, in FY04 and FY05, the CDVSA continued to fund the criminal justice technician at the Department of Corrections, but did so using state general funds and Permanent Fund Dividends (PFDs).

In the last four fiscal years, the CDVSA has allocated part of the “other” or “underserved” victims’ portion to VOCA funds to DV/SA programs. This is based on the

²⁰ This position was articulated during the June 2003 Council meeting, when then-Acting Executive Director Satterfield said that while VOCA money requires using 10 percent for victims of other violent crimes, meeting that 10 percent requirement can be done through a program that strictly serves other victims or violent crimes or through the sexual assault and domestic violence programs, because some of them also serve victims of other violent crimes. Barbara Mason also pointed out that in many areas of Alaska, the DV/SA crisis line is the only local or regional form of victim services available, and is thus the most viable way of serving all crime victims.

²¹ The funding to the Department of Corrections was awarded separately from other grants.

belief that the DV/SA programs assist these crime victims by expanding beyond their primary mission, especially in remote areas where any victim services are scarce.

Services Provided to Crime Victims: CDVSA Incident Reports

The Council requires its grantee programs to provide “incident reports” documenting the contacts with individuals seeking assistance. The DOC Victim Service Unit is not included in this reporting requirement. CDVSA’s statistical technician, Tim Workman, has compiled a database of the incident reports from July 2000 through November 2004. More recent reports are being compiled in a new database with improved features. For purposes of this report, Ms. Leibowitz referenced the 2000-2004 data.

The database contains a category labeled “CI,” which is intended to stand for “crime intervention.” Mr. Workman said that this category was intended to list contacts by victims of crime other than domestic violence, sexual assault and related crimes (i.e. violation of a domestic violence protective order). However, many of the incident reports filed by grantees (service providers) used “CI” to refer to “crisis intervention”; thus, a number of incident reports in this category actually involve victims of DV/SA.

Mr. Workman sorted the database to extract all incident reports labeled “CI.” There were 4,450 incident reports in this category. Each “CI” entry also contains a more specific reference to the type of crime, e.g. robbery, DUI, sexual abuse of a minor. Mr. Workman and Ms. Leibowitz removed all “CI” entries that listed sexual assault, attempted sexual assault, sexual abuse of a minor, attempted sexual abuse of a minor, or interfering with a domestic violence report. The number of “CI” incident reports that appeared to reflect actual contacts by victims of non-DV/SA crimes was 3,237.

Mr. Workman sorted the database for “CI” incident reports provided by Victims for Justice (VFJ).²² There were 1,372 reports in that category. Mr. Workman and Ms. Leibowitz then removed “CI” reports linked to sexual assault, sexual abuse of a minor, etc., as was done for the entire “CI” list. The adjusted number was 1,217.

Ms. Leibowitz used the above calculations as an estimate of the number of victims of “other” crimes served by CDVSA grantees. Over the reporting period (2000-2004), VFJ accounted for 37.6 percent of these incident reports. The DV/SA programs accounted for 62.4 percent. For purposes of this report, it is assumed that the distribution of incident reports did not vary significantly from one year to another.

Conclusion

The incident reports alone do not provide information on the extent or quality of the services provided in each case. “Service provided” reports also required by the CDVSA provide limited information regarding the extent of services provided to each crime victim. However, the incident reports standing alone demonstrate that the DV/SA programs are in fact providing at least crisis line response to victims of crimes unrelated

²² It was not possible to sort for victim contacts with DOC’s Victim Service Unit, because that agency is not included in the database.

to DV/SA. The CDVSA's decision to support the DV/SA programs with money from the other-crime-victims' "bucket" is justified, at least in part.

The problem is that VFJ alone served approximately 37 percent of these victims of "other" crimes, but in FY04 and FY05, VFJ received 1.12 percent and 1.68 percent of the VOCA funding expended in victim services grants. In other words, VFJ carried 37 percent of the load yet received only a tenth of the money from the specialized "bucket" dedicated to victims of crimes other than DV/SA. The Council's funding policy is not yielding a good return on investment, given the intended purpose of this particular "bucket" of funds.

The ombudsman therefore finds Allegation 1 *justified*. Although the Council has allocated the VOCA funds reserved for underserved crime victims in a way intended to provide services to these crime victims, the results have not effectively fulfilled the intended purpose of the funding.

Allegation 2: CDVSA unreasonably required Juneau MADD to use a grant application tailored to domestic violence/sexual assault victim services, which caused Juneau MADD unnecessary difficulty in submitting an application for victim services funding.

The complainant said that it was extremely difficult to write the grant proposal, because the entire RFP was tailored for services to domestic violence and sexual assault victims; therefore, although Juneau MADD could legitimately apply for victim services funding, the application process itself discriminated against Juneau MADD and any other applicant that was not a shelter program for victims of domestic violence or sexual assault.

Ms. Leibowitz reviewed the RFP issued for FY04-05. The RFP began:

Statement of Purpose. The primary mission of the Council on Domestic Violence and Sexual Assault Community Based Victim Service Grant program is to provide immediate safety and support to victims of domestic violence and sexual assault in life-threatening situations and to reduce the incidence of domestic violence and sexual assault in Alaska. The Council also provides limited funding for services to victims of other crimes, such as assault, driving while intoxicated, and victims of homicide. [p. 3]

The RFP discussed the various funding sources, and stated, "All proposals will be considered for funding under all funding sources." [p. 7]. Regarding VOCA funding, the RFP stated in part:

A minimum of ten percent (10%) of the Council's VOCA allocation must be made available for grants to programs that serve previously underserved populations of victims of violent crime. These underserved victims of either adult or juvenile offenders may include, but are not limited to, victims of federal crimes; survivors of homicide victims; or victims of assault, robbery, gang violence, hate and bias crimes, intoxicated drivers, bank robbery, economic exploitation and fraud, and elder abuse. [p. 8]

Section II.2 of the RFP listed the Council's grant priorities:

Council Grant Priorities: Listed in the order of priority. The Council has developed and approved the following list of service priorities. First priority is given to programs that have a proven ability to provide services to people affected by family and sexual violence, and for the continuation of existing services deliveries throughout the state before increasing service delivery. Although the Council has agreed upon these priorities, they are not strictly binding upon the Council should the Council decide that other factors dictate some deviation from the numerical ranking in the case of a particular grant or a particular region.

- A. Programs that provide immediate safety to victims of domestic violence and sexual assault;
 - B. Programs that provide crisis intervention services to victims of domestic violence, sexual assault, and other violent crimes including counseling, advocacy, information, and referral. This component includes services to other family members and significant others;
 - C. Programs that specifically address the needs of child victims or children of victims;
 - D. Education/support programs. Including community education, outreach, prevention, information and referral; and
 - E. Transitional housing for victims of domestic violence and sexual assault.
- [p. 9]

Then Section II.3 provided examples of these priorities:

Service Provision Components: In order to determine the levels of service provision, the Council requires its applicants to submit proposals based on the five (5) prioritized components. While the Council deems it important to have comprehensive services to all areas of Alaska, it acknowledges that it is not feasible for all programs to provide all level of service delivery. The Council is more concerned that programs provide quality services that are realistic to the local resources and needs, rather than to attempt to provide comprehensive services with inadequate resources.

* * *

The component definitions are as follows:

* * *

- B. Crisis Intervention services to Victims of Domestic Violence, Sexual Assault and Other Violent Crimes: The provision of services to victims while they are undergoing trauma due to domestic violence, sexual assault or other violent crimes.

Examples:

- Individual and group counseling to provide victims with emotional support and guidance to help them cope with a given situation and determine future goals and action
- Advocacy for clients in crisis with the legal, medical, social, law enforcement and mental health systems

- Twenty-four hour crisis line
- Information and referral for victims to ensure effective utilization of community resources
- Advocacy and accompaniments
- Assistance with Protective Orders

* * *

- D. Education and Support Programs: Specifically address the outreach to local communities to increase the level of understanding of family and sexual violence and other violent crimes, and prevent the continued cycles of violence.

Examples:

- Public presentation to schools, civic groups and the general public of information concerning domestic violence and sexual assault
- Development of a working relationship with media sources
- Professional training on domestic violence, sexual assault, and other violent crimes
- Technical assistance to community groups to help them design and provide services
- Community based task forces to address the coordinated response to family and sexual violence
- Court watch programs
- Development and coordination of Sexual Assault Response Teams (SART) [RFP, pp. 9-10]

The first of the listed priorities – immediate safety for victims of domestic violence and sexual assault – is inapplicable to Juneau MADD’s program. However, Juneau MADD’s proposed crisis line, victim advocacy and court monitoring program all fit within the priorities listed in categories B. and D.

The FY04-05 RFP required the following substantive sections in each proposal: a statement of needs, including the target population to be served by the program; the services to be provided (program goals and objectives, and evaluation of program’s performance of the objectives); community coordination (including letters of support for new applicants); agency management (governing board, staffing, supervisory structure; use of volunteers); budget (including sources of required matching funds, and proposed allocation of the grant money). This report includes two of the RFP attachments: Attachment A is the submission requirements for a complete application. Attachment B is the scoring criteria to be used by the graders.

The proposal format (statement of needs, services provided, etc.) did not appear to disadvantage Juneau MADD. Also, MADD’s proposal satisfied some of the listed priorities of the Council, because the Council priorities included crisis intervention and education programs relating to victims of other violent crimes (crimes other than domestic violence and sexual assault). However, the statement near the beginning of the RFP made it clear that the CDVSA’s highest priorities were response to victims immediately endangered by domestic violence or sexual assault, and continuing funding

for programs already supported by the CDVSA.²³ Juneau MADD, as a program not responding specifically to domestic violence and sexual assault, and as a new grant applicant, appeared to have two strikes against it before even starting the application process.²⁴

Conclusion

The overall RFP format is fair. The ombudsman, however, believes that the RFP's statement of priorities leaves the impression that the RFP was not intended for programs outside the DV/SA shelter model, despite the reference to limited funding being available for assistance to other crime victims. The impression that the RFP was simply not designed for programs outside the DV/SA shelter model was probably reinforced by the Council debate in June 2003, in which Council member Parkes stated that MADD's program fell low on the list of Council priorities. It is possible that the Council was debating the value of MADD's specialized services versus, for instance, Victims for Justice, a general jurisdiction victim services provider, but this is not at all clear from the Council minutes. It was very easy for the public to believe that the Council was simply relying on its overall priority for DV/SA victim services, without considering the priorities required when allocating the VOCA funds.

In short, the problem is not really the *format* of the RFP, but the mismatch between the priorities assigned to the "other victims" VOCA funds and the priorities listed in the Council's RFP.

The ombudsman finds that Allegation 2 is ***unsupported***, but the ombudsman remains concerned that the RFP's introductory material will discourage applicants who would be appropriate competitors for the "underserved victims" VOCA funds. The premise of the RFP process is that it is in the public interest for the Council to compare a full range of available victim services programs, and the Council cannot do that if a significant number of qualified potential grantees do not enter the pool.

²³ These priorities are similar in the Victims Services Grant Program RFP for FY06-07.

²⁴ It is worth noting that the OVC Program Guidelines specifically give each state discretion to decide whether VOCA funding should be used to sustain a limited number of programs over the long-term, or awarded to new programs. It is well within the state's discretion to decline to fund new programs in favor of maintaining funding to previous grantees.

Allegation 3: CDVSA unfairly allowed one Council member to refuse to score Juneau MADD's grant proposal, lowering Juneau MADD's score in the evaluation process.²⁵

The deadline for FY 04-05 proposals was March 14, 2003. Juneau MADD's proposal was signed March 13, 2003, and turned in on time, except for the cover sheet. As the complainant described the situation in her August 28, 2003 letter to the ombudsman:

The grant was turned in on time. The cover sheet was turned in 16 hours later after it was discovered the copy center had mistakenly left it out. We rushed copies of the cover sheet over to the CDVSA office and the executive director assured us this was not a problem as it was not our fault and the grants were not going out to the reviewers for some time.

In the CDVSA file, Juneau MADD's cover sheet, or facesheet, is stamped as received March 18, 2003, via walk-in.

The executive director in March 2003 was Susan Scudder. Ms. Scudder left the CDVSA shortly after the RFP deadline. Several months later, then-acting executive director Cathy Satterfield explained Ms. Scudder's position as follows:

I first became aware of your call to former executive director, Susan Scudder, regarding MADD's missing application fact sheet when you called me in late June. For clarity, the face sheet is a document requiring a signature by a person authorized to enter into a legal agreement on behalf of the applicant. Since Susan left the Council in March 2003, I was unable to confirm her agreement with you, but I did talk to another staff member who did the preliminary review of MADD's application. Her recollection of Susan's position was to accept the missing face

²⁵ The Office of the Ombudsman's Policies and Procedures Manual at 4040(3) defines *unfair* as including any of the following:

- (A) adequate and reasonable notice of the matter was not provided to the complainant;
- (B) adequate opportunity has not been given for a person having an interest in a decision to be heard or, if applicable, to conduct an examination or cross-examination to secure full disclosure of the facts;
- (C) the decision maker is not without bias or other disqualification;
- (D) the decision is not made on the record: the action or decision has been made without consideration of pertinent facts and circumstances, or the testimony, evidence, or point of view of those having a legitimate interest in the decision has been disregarded;
- (E) the decision is not supported by reasons or by a statement of evidence relied on; or
- (F) the agency is inconsistent in its application of standards or principles in the making of a decision.

sheet, but leave it up to the Council members to determine if MADD's grant proposal would be eligible.²⁶

The cover sheet is listed on the RFP's Submission Requirements for Complete Application, Attachment B. The Juneau MADD proposal was incomplete when submitted without the cover sheet. The Council's RFP for FY 04-05 contained the following language:

Proposals MAILED or HAND-DELIVERED after the specified time will be considered INELIGIBLE and will NOT be reviewed by the Council.²⁷

* * *

The Council will not consider late information sent after the complete application is due.²⁸

In addition, Attachment B to the RFP listed the submission requirements for a complete application, including the application facesheet, and stated: "All items must be included for the proposal to be reviewed. Any missing items may render the proposal non-responsive."

It appears from the directions that a proposal that failed to meet the requirements for a complete application by the due date would be disqualified and not considered further. However, Ms. Scudder apparently decided to waive this rule in the case of Juneau MADD's technical noncompliance with the RFP requirements. Given that the cover sheet was the top of a 115-page application that was otherwise compliant, Ms. Scudder's willingness to allow Juneau MADD to submit the cover sheet after the deadline is understandable.

Juneau MADD's officers apparently believed that once the Council staff accepted the proposal – including the late cover sheet – Juneau MADD's application would be treated like all the other applications. This was not the case. Six Council members had graded Juneau MADD's proposal. Five graders used the criteria on the score sheet and gave scores ranging from 28 to 43 points, but one grader awarded the application zero points. That score sheet contains the note, "Council member #4 didn't score based on lateness of face sheet, considered grant incomplete." Because the "total score" used to rank Juneau MADD's application was simply the sum of all points awarded by the individual council members, one grader's refusal to award any points substantially lowered the application's rank relative to the other applications.

During the Council debate on funding, the late cover sheet was brought up again, although it is not clear what, if any, effect this point had on the funding decision. The Council minutes from Monday, June 9, 2003 state in part:

²⁶ Letter from Cathy Satterfield, CDVSA Acting Executive director, to MADD Juneau Chapter, September 29, 2003.

²⁷ Community Based Victim Services Programs: Request for Proposals Grant Application Kit Fiscal Year 2004-2005, p. 4.

²⁸ *Id.*, p. 5.

[Dorothy] Larson inquired if MADD met all the RFP criteria. Agnew said the proposal was submitted on time, but the face sheet was not submitted until after the deadline.

On a raised-hand vote, the motion to fund MADD failed.

The ombudsman concludes that the CDVSA's treatment of Juneau MADD's application was unfair because of the lack of any predictability or consistency in how the application was treated. The CDVSA staff could have rejected the application based on its incompleteness when initially submitted. However, when the Council's executive director decided to allow Juneau MADD's application to enter the competition (with the late-submitted cover sheet), Juneau MADD's staff and officers could reasonably believe that the CDVSA would treat the application just like the others from that point onward. Instead, one Council member made a unilateral decision to award zero points to Juneau MADD's application, based on the lateness of application, even though the scoring criteria did not provide for awarding or denying a score based on that consideration. Other Council members apparently graded the application using the criteria on score sheet, and did not base their scores on the late submission of the face sheet. The scoresheets are intended to provide graders with uniform criteria on which to base their scores, but that purpose was defeated by one grader's decision to award zero points based on the lateness of the cover sheet without using any of the scoring criteria.²⁹

The Council and staff did not follow any discernible rule when handling Juneau MADD's application and its tardy cover sheet. It appears that the executive director, and each individual Council member, each made a separate rule for how to treat MADD's late cover sheet.

Barbara Mason, the current executive director of the CDVSA, said that even prior to the ombudsman investigation, the Council recognized that the handling of Juneau MADD's application represented a procedural problem, and the Council is developing a standard for handling technically non-conforming grant proposals.

The ombudsman finds Allegation 3 *justified*. However, the ombudsman recognizes that the Council has already begun to rectify the lack of consistent procedure that led to this allegation.

Allegation 4: CDVSA unfairly allowed a Council board member with ties to a grant applicant to make decisions about which grant proposals the CDVSA would fund.

The complainant alleged that the chair of the Council, William Bobrick, was biased because he was on the board of directors of a grant applicant, Standing Together Against Rape (STAR). The complainant provided a July 2003 printout from STAR's website that showed William Bobrick on the list of STAR's Board of Directors.

Mr. Bobrick Was Not Serving on the Board of a Grant Applicant in 2003.

²⁹ Finally, additional ambiguity is provided by the fact that the late cover sheet was discussed again immediately before the Council's vote on whether to fund Juneau MADD, with no indication of how this affected the funding decision.

The printout was a red herring. Although it was printed in 2003, the printout provided by the complainant stated at the bottom of the page, "This site was last updated 6/30/02 at 11:22 PM." (In February 2005, STAR's web site still listed the same board of directors, and the web site still indicated that it was last updated in June 2002.) In search of more reliable information, Ms. Leibowitz checked STAR's biennial corporation filings with the Department of Commerce, Community and Economic Development. As of July 2000, William Bobrick was indeed a long-standing member of STAR's board of directors, but by the next filing, in July 2002, he was no longer a director or officer of STAR.³⁰

Ms. Mason said that Mr. Bobrick was appointed to the CDVSA as a public member in March 2002, and that he resigned from STAR's board when he became a Council member. By 2003, when Juneau MADD applied for a FY04-05 grant, Mr. Bobrick was no longer affiliated with STAR.

Mr. Bobrick Did Not Score Grant Proposals for FY04-05.

Six Council members scored Juneau MADD's grant proposal. A seventh member did not participate. Ms. Mason said that Mr. Bobrick was the non-participating member: not only did he not score Juneau MADD's proposal, he did not score any of the proposals for FY04-05. Nor did he vote on the funding decisions. For all practical purposes, Mr. Bobrick was inactive during the grant evaluation and funding process. His past affiliation with STAR did not create a conflict of interest under those circumstances.

Complainant's General Allegation of Bias in CDVSA Membership

The complainant felt that an applicant such as Juneau MADD could not get a fair review with the Council, because Council members had too many ties to DV/SA organizations that were both past grant recipients and current grant applicants. On her complaint form to the ombudsman, she requested that the CDVSA, "use a non-biased system of grant reviews" by having panel evaluation committees (PEC) "who have not been and are not involved with the agencies applying for funding."

The statutory structure of the CDVSA makes it very likely that some of the Council members will have past or present connections to programs addressing domestic violence and sexual assault. AS 18.66.020 contains the following relevant requirements for Council appointees:

- (a) The council consists of
 - (1) three persons appointed by the governor after consultation with the Network on Domestic Violence and Sexual Assault, a nonprofit corporation; the Network on Domestic Violence and Sexual Assault shall submit a list to the governor of persons recommended for appointment;

* * *

- (b) The term of office of a member appointed under (a)(1) of this section is two years. A member appointed under (a)(1) of this section serves at the pleasure of

³⁰ STAR was unable to confirm exactly when Mr. Bobrick resigned from STAR's board of directors. However, even if he did not resign immediately upon appointment to the CDVSA in March 2002, he left STAR's board by July 2002. In 2002, the CDVSA was not making competitive funding awards, but was merely offering continuing funding for the FY02-03 grant cycle.

the governor and may not serve more than two consecutive terms. A vacancy on the council shall be filled for the unexpired term by appointment by the governor after consultation with the Network on Domestic Violence and Sexual Assault. (c) A person who receives compensation from or is an employee of a domestic violence, sexual assault, or crisis intervention or prevention program may not be appointed to the council.

AS 18.66.020 does not specify whether a member of a program's volunteer board of directors (who does not necessarily receive compensation for that service) may be appointed to the Council. But, given that appointment of uncompensated directors is not prohibited along with appointment of employees, it appears that the statute allows appointment of an unpaid member of a program's board of directors.

The statute expressly connects appointment of the Council's public members to nomination by the Network on Domestic Violence and Sexual Assault, which is in turn composed of member programs, all or most of whom are DV/SA victim services programs, and likely CDVSA grant recipients. In other words, the statutory mechanism for appointing the CDVSA's members makes the connection between DV/SA programs and the CDVSA's composition part of the CDVSA's statutory structure. The connection appears intended to guarantee that the public members of the CDVSA are both knowledgeable about domestic violence and sexual assault, and sympathetic to the CDVSA's purpose.

Given the CDVSA's structure, it is reasonable that Council members might have at least past affiliations with DV/SA programs. To expect the Council members to be devoid of such associations is unreasonable and counterproductive.

Conflict of Interest Standards for Grant Evaluators: Would Mr. Bobrick's Participation Have Been a Conflict of Interest Due to his Past Affiliation with an applicant?

As discussed above, Council members are likely to have some association or past affiliation with one or more of the grantee programs. In these circumstances, when should a Council member recuse him or herself from the proceedings? A Council member who stands to benefit financially from a grant decision is obviously conflicted; the Alaska Executive Branch Ethics Act prohibits a council or board member from benefiting financially from his or her decision on a contract or grant. However, the situation in this case did not involve any financial or personal benefit. Instead, the potential conflict is the likelihood of bias in favor of an applicant based on familiarity with and belief in the applicant's program, or possible social ties with the applicant's staff.

Ms. Leibowitz spoke with representatives of three other grant-administering agencies to learn how they selected and screened grant evaluators, and the role that grant evaluators played in the funding decisions.

Department of Health and Social Services (DHSS)

Darla Madden of DHSS explained her department's procedure for competitive RFP's. First, staff screen all of the received proposals to determine whether they are responsive, i.e. proposer meets the minimum years of experience required etc., has required licenses,

etc. Then the proposals go to a proposal evaluation committee (PEC); the PEC may be composed of staff from the division administering the funding, staff from other divisions, and/or members of the public. Each PEC member scores all of the proposals; then the PEC meets as a group, and members may change their scoring based on information or arguments made in the meeting. Each proposal's score is the mean of the scores awarded by the PEC members at the end of the meeting.

The scores resulting from the PEC proceedings are not, however, binding. Ms. Madden described the PEC as basically an advisory body for the division staff. The PEC scores, the staff's tentative funding allocations based on the scores, and any separate staff recommendations, are sent to the division director. Although the scores have weight, the division director is not required to strictly adhere to them. Then, although the division director will award funding, the commissioner of DHSS must approve the decision before it can be considered final or binding.

Ms. Madden said that PEC members are screened for conflicts of interest. They cannot be affiliated or have a "close" former affiliation with a proposer. If a PEC member's conflict is discovered after the member is appointed to the PEC, then that individual is disqualified and cannot remain on the PEC, and the individual's scores are thrown out. For example, a PEC member who had sat on a proposer's board of directors two years before would be disqualified from the PEC. She also added that this was seldom a problem because she had a large pool of potential PEC members.

Alaska State Council on the Arts (ASCA)

Saunders McNeil, the Native Arts Program Director for ASCA, provided a summary of ASCA's competitive grant procedure. ASCA generally appoints an advisory panel to score the grant proposals. There are usually 10 panelists, eight of whom are "public" and two of whom are usually Council members. The public members are expected to be knowledgeable about or active in the arts. For each proposal, the average of the panelists' individual scores is used as the final score. The proposer can appeal the score to ASCA's executive director.

The Council considers the scores, but, although the scores are important, the scores are not binding and the Council uses its discretion to make the grant awards.

ASCA requires advisory panel members to complete a conflict of interest declaration: provides all advisory panel members with the following:

Panelists should avoid any action which could be interpreted as a use of panel membership to further their own interests, interests of family or household members, or those of an organization with which they have, or have had a beneficial relationship or affiliation in the last calendar year. Panel members may remain present, but must withhold comments during discussion of applications from organizations with which they or family/household members are affiliated or through whom they have benefited.

Definitions:

Benefit: Anything that furthers a person's financial interest or from which a person hopes to gain in any way.

Financial Benefit: Any property, ownership, management, professional or private interest from which a board or commission member or the board or commission member's immediate family expects or receives a financial benefit.

Immediate Family: Spouse, blood relation up to and including the second degree of kindred (parents, grandparents, children and grandchildren), and a regular household member.

A past affiliation older than one year is not considered a conflict. The same standard apparently applies to ASCA council members. Ms. McNeil noted that given the need for advisory panel members to be knowledgeable about the arts, it is common for panelists to have a connection with an arts group applying for a grant. ASCA chooses to ignore affiliations ended more than a year prior to the panelist's appointment.

Alaska State Museum

The Alaska State Museum administers grants-in-aid to museums, historical societies, and related groups. Ken DeRoux, the curator of museum services at the Alaska State Museum, described the grant process. A panel of four or five individuals scores the proposals. The panel generally consists of Mr. DeRoux; the Alaska State Museum conservator; the director of the Division of Libraries and Museums; a public member with reasonable familiarity with museum programs; and sometimes the registrar of the Alaska State Museum. The panelists individually score the proposals, and then meet. A panelist may change his or her scoring of a proposal during the meeting. The average of the individual panelists' scores is used to rank the proposals.

Mr. DeRoux said that the panel usually follows the ranking, but may vary slightly from the given scores, based on availability of funds that the amount the proposer has requested. For example, if the 14th place proposal requires only \$2,000 to accomplish its goals, and the 13th place proposal requests \$10,000, the panel may prefer the 14th place proposal, assuming that the difference in scores is minimal (no more than one or two points). Panel decisions are final, especially because the division director sits on the panel. The regulations provide for an appeal process, but Mr. DeRoux has never seen it used.

The Museum program does not use formal conflict of interest screening. However, occasionally a panelist must refrain from discussing or scoring a particular proposal, because of ties to a grant applicant.

The CDVSA

The CDVSA resembles the Alaska State Council on the Arts (ASCA), or the Alaska State Museum more closely than it does DHSS. Both ASCA and the museum draw their "public" members from a relatively small pool of people knowledgeable about the funded programs. In fact, the museum's panel is mostly predetermined, with only one "public" member, and that "public" member is expected to be familiar with museum work – leaving a limited pool of potential members in Alaska. In contrast, DHSS has a large pool of potential PEC members, so it is relatively easy to screen out anyone with even an historical connection to a grant applicant.

ASCA's rule is that affiliation with an applicant is a conflict if the affiliation terminated less than a year ago. The museum does not appear to apply any clear standard regarding past ties to grant applicants.

Given the CDVSA's statutory structure, the CDVSA can reasonably seat a member who was previously a board member for one of the grantee organizations. However, using ASCA's rule, if the Council member sat on a grantee's board less than a year ago, then the Council member should not participate in any funding decisions related to the organization to which he or she had ties. Mr. Bobrick had resigned from the STAR's board of director's roughly a year before the June 2003 Council meeting. Depending on the exact date of his resignation from STAR's board, the ASCA rule would have prohibited him from making a funding decision affecting STAR. Mr. Bobrick reportedly avoided this conflict by abstaining from scoring or voting on the grant applications. However, Mr. Bobrick was appointed as a reviewer on several applications, although not STAR's; it is unclear to what extent he fulfilled this role.

Conclusions

The ombudsman finds this allegation ***not supported***, because the one Council member with an identifiable recent link to a grant applicant did not participate in the grant scoring or vote. The structure of the CDVSA makes it almost inevitable that some of the members will have connections with grantee programs, and this is not necessarily inappropriate. But, as a corollary of accepting those connections, the Council needs a clearer process for identifying and avoiding conflicts of interest and the appearance of bias.

AGENCY RESPONSE TO FINDINGS

After receiving two extensions of time to respond the ombudsman's preliminary report, the Council approved a three-page letter by Executive Director Barbara Mason, dated June 21, 2005.

Allegation 1: CDVSA unreasonably failed to distribute federal VOCA funds in accordance with federal standards.

In the preliminary report, the ombudsman proposed to find this allegation justified. On behalf of the CDVSA, Ms. Mason responded:

The federal Office for Victims of Crime and the Ombudsman determined that CDVSA's administration of VOCA funds is substantially in compliance with federal standards. The Ombudsman appears to be applying an unclear and unidentified standard. Because no basis, definition, or authority is offered for this alternate standard, CDVSA objects to the subjectivity of this finding. Because CDVSA has met the applicable federal standard, this allegation is unsupported.

Ombudsman comments on agency response: The finding in this case was based on the fact that in FY04 and FY05, one program (VFJ) handled over a third of the contacts by victims of crimes other than DV/SA, but received approximately one-tenth of the VOCA funding intended for "underserved victims," a term generally taken to refer to victims of

crimes other than DV/SA. This is not subjective. It is based on data provided by the CDVSA. It can, of course, be argued that this pattern in the funding does not represent a real problem, as it is merely a matter of proportion instead of a complete failure to fund assistance to underserved crime victims.

The ombudsman's standard of "unreasonable" includes cases where "a procedure adopted and followed by an agency in the management of a program is inconsistent with, or fails to achieve, the purposes of the program." This standard is used when the agency's conduct fails to achieve the agency's purpose, but does not reach the level of "contrary to law." The ombudsman provided this finding to the CDVSA to point out that the CDVSA did not appear to be completely achieving the federal mandate to provide ten percent of the VOCA funding to "underserved victims."

The CDVSA asserts that it is currently "in substantial compliance" with the minimum standards for federal funding, and apparently concludes that it therefore has no need for improvement. The CDVSA did not attempt to explain whether the federal Office for Victims of Crime found the CDVSA "substantially in compliance" in 2005, or whether this conclusion is based on a previous site visit several years ago. In either case, the ombudsman has asked for improvement, rather than minimum compliance. The ombudsman finds Allegation 1 ***justified***.

Allegation 2: CDVSA unreasonably required Juneau MADD to use a grant application tailored to domestic violence/sexual assault victim services, which meant that Juneau MADD had unnecessary difficulty submitting an application for victim services funding.

In the preliminary report, the ombudsman proposed to find this allegation partially justified. The proposed finding was based on the discrepancy between the RFP's stated priorities (DV/SA victim services, and continuing funding to prior grantees) and the priorities mandated for the VOCA funds designated for underserved crime victims.

On behalf of the CDVSA, Ms. Mason wrote:

The Ombudsman determined that the RFP format is fair, and that it did not disadvantage MADD. MADD's application – as well as an application from another program that serves victims of crimes other than domestic violence and sexual assault - identified the relevant priorities and matched the program services to those priorities. The Ombudsman's finding that the statement of priorities is "discouraging" to applicants who are providing non DV/SA services is inconsistent with the facts, subjective, and based on an unclear and unidentified standard. CDVSA therefore believes this allegation is also unsupported.

Ombudsman comments on agency response: The ombudsman acknowledges the CDVSA's argument. Because the requirements for a complete grant application did not appear to substantively disadvantage MADD or other grant applicants, the ombudsman has changed the finding on Allegation 2 to ***unsupported***. The ombudsman remains concerned that introductory language and instructions in the RFP will mislead some potential applicants for VOCA funds into believing that it is futile for them to apply, and

thus reduce the CDVSA's opportunity to learn about and review available service programs in Alaska.

Allegation 3: CDVSA unfairly allowed one Council member to refuse to score Juneau MADD's grant proposal, lowering Juneau MADD's score in the evaluation process.

In the preliminary report, the ombudsman proposed to find this allegation justified. On behalf of the CDVSA, Ms. Mason responded:

The Council's board members read the proposals on their own prior to the meeting. One member independently chose not to read or score the MADD proposal, based on that member's interpretation of the RFP that states, "All items must be included for the proposal to be reviewed. Any missing items may render the proposal non-responsive." This was not something that was affirmatively allowed by the Council; it was a reasonable exercise of one Board member's independent judgment. More importantly, although this may have had an impact on the overall score of the program, it is clear that the numerical scores are not dispositive. The Council chose not to fund MADD based on an overall determination of the merits of the program in relation to all programs, the available funding, and the funding priorities. As the Ombudsman recognized, similar funding panels in other agencies and departments (e.g., DHSS and ASCA) exercise similar discretion in regard to the utilization of scores. The Council is in the process of clarifying its rules regarding late and noncompliant applications, as reflected in Recommendation 5 below, but the Council does not agree that the variation in scoring in regard to MADD had a meaningful impact on the Council's funding decision in this case.

Ombudsman comments on agency response: The ombudsman did not find that the one Council member's refusal to score MADD's application was the reason MADD did not receive a grant. The ombudsman merely pointed out that the Council's scoring procedure lacked the predictability and consistency that makes a scoring system fair enough to be respected by both applicants and the public. The Council is rectifying this problem. There does not appear to be a disagreement here over the need for change. The ombudsman finds Allegation 3 *justified*.

Allegation 4: CDVSA unfairly allowed a Council board member with ties to a grant applicant to make decisions about which grant proposals the CDVSA would fund.

In the preliminary report, the ombudsman proposed to find this allegation unsupported. The CDVSA did not respond to that finding.

FINDING OF RECORD

The ombudsman finds Allegation 1 justified, Allegation 2 unsupported, Allegation 3 justified, and Allegation 4 unsupported. The CDVSA objected to the findings regarding Allegations 1 and 3. The preliminary report's finding regarding Allegation 2 was modified in response to the CDVSA's comments on the preliminary report.

In a multi-allegation complaint, when the ombudsman finds one allegation in justified and another unsupported, the finding of record becomes *partially justified*. This complaint will be closed as **partially justified**.

RECOMMENDATIONS

AS 24.55.150 directs that the ombudsman may provide recommendations to resolve an individual's problems with government and to prevent the recurrence of similar problems. In this case, the ombudsman does not make any recommendations regarding Juneau MADD's grant application. The recommendations are all intended to improve the CDVSA's grant application process prospectively, beginning in FY06 where possible.

Recommendation 1: Consider a separate RFP for awarding the VOCA funds dedicated to serving underserved victims.

The problem is that the CDVSA's RFP is primarily aimed at serving and protecting victims of domestic violence and sexual assault, but a small "bucket" labeled for "victims of other violent crime" is mixed in with all of the other funding sources used by the CDVSA. There is nothing wrong with the CDVSA's basic priorities, which are completely appropriate for the CDVSA's original mission, but those priorities are not the same as the priorities attached to this particular funding source. If the funding in this specialized bucket was distributed through a separate RFP process then the Council could sidestep the potential for confusion between the CDVSA's overall priorities and the federal priorities assigned to this portion of VOCA funding. DV/SA programs serving as general jurisdiction crisis lines and advocacy centers could apply for this funding to support their services to victims of crimes other than domestic violence and sexual assault.

Another approach would be to retain a single RFP, but to require applicants who wish to use "underserved victims" VOCA funds to specify the amount of specialized funds that they are requesting, and provide a breakdown of how those funds will be used – a mini-proposal within the basic application. This forces both applicants and the Council to be clear about how these particular funds will be used to serve victims other than DV/SA victims.

The Council has already taken a step in this direction by making a change to the RFP for FY06-07. In the FY04-05 RFP, applicants were advised that they would be considered for all sources of funding. In the current RFP for FY06-07, the applicant will be considered "ONLY for those funding sources that it indicates on the applicant cover sheet that it is interested in receiving." This should help both applicants and Council members increase their awareness of the specialized requirements of some of the funding sources. But it is an incomplete solution, because the VOCA funding "bucket" for underserved victims of "other" crimes is not discussed as a funding source separate from other VOCA funds. Applicants are not necessarily encouraged to clarify their interest in receiving money from the "underserved victims" VOCA "bucket" or explain how they will use money from that "bucket" differently than VOCA money allocated for the basic DV/SA program.

In the alternative, if the CDVSA believes that “other” victim services in Alaska are adequately funded without VOCA funding, then the CDVSA should work with the federal Office for Victims of Crime (OVC) to obtain a waiver of requirement that Alaska use 10 percent of the VOCA subgrants for “other” or “underserved” victims.

The CDVSA responded:

CDVSA objects to this recommendation. Agencies such as MADD and Victims for Justice have competently completed the standard RFP. In doing so, they have documented that they serve non-DV/SA populations. Many if not most of the DV/SA programs that complete the standard RFP document in their applications that they also serve non-DV/SA populations. Furthermore, only a relatively small percentage of funding (10% of the VOCA funds) is reserved to the underserved population. To create a new RFP and ask the majority of programs to submit two RFPs will increase the work and double the paperwork for applicants, yet will result in no commensurate improvement in the funding process for applicants or for the funding panel. The CDVSA’s current RFP adequately addresses the VOCA underserved requirements.

Ombudsman Comments on Agency Response: This recommendation contained three courses of possible action, only one of which involved a separate RFP. The other two options offered a remedy with far less work. The ombudsman also agrees that recent grant applications have included plans to serve victims of crimes other than DV/SA; what has been missing from some of these applications is any quantitative measure of how much of the grant will be used for that purpose.

Recommendation 2: Use public notice and outreach to increase the pool of applicants for victim services grants, expanding the applicant pool beyond the DV/SA shelter programs that have historically applied for CDVSA grant funds.

Barbara Mason explained that it was appropriate to provide “other victims” VOCA funding to DV/SA shelters because they were the only local victim services provider in many areas of Alaska. This is probably true in some areas, but currently, the CDVSA does not have much information from which to draw this conclusion. The CDVSA has limited information about which services are available because, with two or three exceptions over several years, providers outside the DV/SA arena are simply not applying for CDVSA victim services grants. Because the CDVSA is responsible for allocating funds for victim services outside the DV/SA area, the CDVSA needs to obtain a larger, more competitive applicant pool for those funds. At that point, the CDVSA will be better able to determine when a DV/SA program is the most appropriate recipient for the funds for underserved victims in a region.

The CDVSA responded:

CDVSA objects to this recommendation, which is not reasonably based on the allegations or findings. The Council receives new applications in each funding cycle and always has more applicants than can be funded. There is no evidence to support a claim (and no such claim was made) that the applicant pool is too narrow. Speculating that there are programs that do not know about the funding

opportunity, and expending time and resources to attempt to broaden the applicant pool for a very limited resource will result in no commensurate improvement in the funding process for applicants or for the funding panel. In the FY '06 funding cycle the Council received applications from six programs that have not been previously funded. The CDVSA employs standard public notice practices used by other state granting agencies.

The agency's response does not rectify the recommendation.

Recommendation 3: Review Alaska's definition of "underserved victims" to determine if it encompasses crime victims outside the first three VOCA priority categories, and whether the definition is tailored to the Council's information on which crime victims are underserved by existing programs.

The federal government provides the states with considerable discretion to define "underserved victims." According to the RFP for FY06-07, the CDVSA currently designates "underserved victims" as "victims of assault, robbery, elder abuse, DWI/DUI, survivors of homicide victims, adults molested as children, and other violent crimes."³¹ The inclusion of adults molested as children in the "other" category" differs from the FY04-06 RFP, which did not include adults molested as children in the "other" or "previously underserved" category.³²

This portion of the definition of underserved victims warrants reexamination. Adults dealing with crimes of sexual assault committed against them as children are coming from a different viewpoint than victims of a sexual assault that has just occurred. But despite differences, they are still victims of sexual assault and child abuse, which are both VOCA priority categories in their own right. In contrast, the "underserved" category is intended to fund services to victims of *other* violent crimes, victims who are not addressed in the first three VOCA priority categories (sexual assault, domestic violence, and child abuse).

At the very least, the Council needs to revise this portion of its definition of "underserved victims" for whom the VOCA "other victims" funding is reserved.

Also, conversations with Barbara Mason raised the point that crime victims in rural Alaska do not have access to services to the same extent as crime victims in Anchorage, Juneau, and Fairbanks. For example, although Victims for Justice operates state-wide, with a toll-free number and an advocate dedicated to rural crime victims, the program is based in Anchorage, and cannot be face-to-face with many of the people it serves. The OVC program guidelines indicate that within the overall requirement that the "previously underserved" category fund services to victims not already covered by another priority

³¹ CDVSA Request for Proposals – FY06-07, p. 9.

³² Juneau MADD provided what appears to be a copy of the Council's report of VOCA funding for FY2000, titled "State-wide Analysis for Fiscal year 2000 VOCA Victim Assistance Grants for the State of Alaska." In this document, adults molested as children were listed among the types of crime victim served by "VOCA Funds Used for Underserved." Apparently, the inclusion of adults molested as children in the "other violent crime" category is not a new practice, but is instead one that has been followed and dropped, and readopted.

category, each state may use demographic characteristics to identify underserved victims. If the Council believes that location is a major factor in victims not receiving needed services, then the Council may wish to incorporate that factor into the definition of underserved crime victims, and allocate funding accordingly.

The CDVSA responded:

CDVSA agrees with this recommendation. We are actively working with the federal funding agency (VOCA) to clarify the standards by which the state may determine who may be included in Alaska's "underserved victims" category. A review of this category will be made when federal clarification is received.

Recommendation 4: Periodically survey the services provided to victims of crime other than DV/SA, to assure that grantees receiving "underserved victims" VOCA funding are handling a number of incidents proportional to the funding received, and that the services provided are more extensive than simple referral to other victim services providers.

The CDVSA responded:

CDVSA objects to this recommendation. As discussed above, once we receive federal clarification regarding "underserved victims" we will modify the client database (if necessary) and track this population. In the absence of federal requirements, however, it is not clear whether or how CDVSA might have the authority or identify the standards by which the services can be determined to be proportional to the funding available.

Recommendation 5: Develop a uniform rule for how the CDVSA will treat grant proposals that are technically incomplete at the deadline, but substantially in compliance with the RFP.

As of the date of this preliminary report, the Council is already addressing this issue.

The CDVSA responded:

CDVSA agrees with this recommendation, and we are in the process of reviewing and clarifying the existing rule on noncompliant proposals.

Recommendation 6: Provide Council members with conflict of interest screening, with a public record of any conflict of interest declarations.

The reasons for this recommendation are discussed in the analysis of Allegation 4. In this case, the evidence did not indicate a conflict of interest or undue bias due to associations with an applicant; however, the complaint illustrated that the Council would probably benefit from a more formal process to determine when a member must abstain from a funding decision.

CDVSA responded, “CDVSA complies with existing State Ethic Standards applicable to all state programs.”

* * * * *

Because CDVSA took some steps to rectify some but not all of the problems uncovered in this investigation, this complaint will be closed as **partially justified** and **partially rectified**.