

Guidance for States on the Use and Disposition Requirements for VOI/TIS-Funded Facilities

This guidance relates to correctional facilities that were constructed, in whole or in part, with funds from the federal Violent Offender Incarceration and Truth-in-Sentencing (VOI/TIS) Incentive Formula Grant Program. The VOI/TIS program was administered under the Office of Justice Programs (OJP), U.S. Department of Justice (DOJ), with grants made between 1996 and 2001.¹ The VOI/TIS grants provided states with funding to increase bed space for violent offenders, by (among other things) building new correctional facilities or jails or by expanding existing facilities or jails. No new VOI/TIS funds have been appropriated since 2001, but numerous facilities throughout the United States were built with VOI/TIS funds. This guidance is intended to address the ongoing obligations that recipients of those funds have to DOJ regarding those facilities.

For purposes of clarity, we distinguish between (1) facility use requirements and (2) property disposition requirements. The former relates to issues regarding operation of a VOI/TIS-funded facility; the latter relates to possibilities for selling or disposing of the real property associated with a VOI/TIS-funded facility. Issues regarding facility-use requirements will be addressed first, followed by a discussion of options regarding disposition of facilities, should a state choose to cease operations.

FACILITY-USE REQUIREMENTS

As a condition of funding, and in keeping with the statutory purpose of increasing correctional bed space, VOI/TIS grantees were required to agree to operate those facilities built under VOI/TIS as correctional facilities or jails. The duration of this obligation was not generally specified in grant documents, but DOJ regulations regarding property disposition provide some general guidance. Under these regulations, grantees are required to continue using DOJ-funded property, equipment, or facilities for the originally authorized purposes, for as long as they are needed for those purposes. 28 C.F.R. § 66.31(a). Thus, the need for the correctional facility dictates the length of the federal requirement for continued use.

Although grant instruments for VOI/TIS awards typically did not specifically reference a timeframe for operating funded facilities,² each grantee agreed to seek OJP's permission before making any significant modification to facility use—which would include ceasing operations. One of the General Assurances that was attached to each VOI/TIS award provided that “[t]he applicant assures and certifies that the applicant [w]ill not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site or facilities without permission and instructions from the Office of Justice Programs, U.S. Department of Justice.”

¹ The grants initially were administered by OJP's Corrections Programs Office but later were transferred to the Bureau of Justice Assistance (BJA) for administration.

² Although we do believe this to be true in most cases, if the grant instrument for any particular VOI/TIS award actually does reference a specific timeframe for operations, the terms specified in the instrument are controlling.

Although we emphasize the requirement that states request permission to cease operations or otherwise change the use of the facility, it also should be noted that BJA has general policy of granting all reasonable facility-use requests. With regard to what types of alternate uses of a facility BJA would allow, BJA has stated that any alternative use of the facility by the grantee must serve a criminal justice purpose, as a general matter, and that it must be made available for the originally authorized purpose, if the need should arise again.

PROPERTY DISPOSITION REQUIREMENTS

Rather than retain a VOI/TIS-funded facility once it is determined that it is no longer needed for its originally authorized purpose, some states would prefer to sell or otherwise dispose of the facility. Alternatively, a state may wish to retain title but extinguish its ongoing obligations associated with the grant funding. This section describes the several options regarding disposition of the property.

First and foremost, each state should be aware that, as a result of the funding provided for the construction of the facility under the VOI/TIS grant by virtue of the relevant regulations and government-wide guidance, DOJ retains a financial interest in the facility. Under the generic DOJ regulations regarding property disposition, there are three property-disposition options: (1) the state may retain title to the facility and compensate the DOJ funding agency, thus ending any obligation to DOJ associated with the facility; (2) the state may sell the facility and compensate the DOJ funding agency; or (3) the state may transfer title to the DOJ funding agency or to another entity designated/approved by the DOJ funding agency. *See* 28 C.F.R. § 66.31(c).³ A fourth option that may be available to states is to direct the proceeds of the sale of a DOJ-funded facility toward another VOI/TIS-authorized purpose. Each of these options is discussed briefly below.

(1) Retention of Title with Repayment or (2) Sale with Repayment

Pursuant to the generic DOJ regulations regarding property disposition, and consistent with the Office of Management and Budget Common Rule, VOI/TIS grantees may buy their way out of any ongoing obligations related to grant funding. *See* 28 C.F.R. § 66.31(c). Under this regulation, the amount due to DOJ would generally be calculated by applying the awarding agency's percentage in the cost of the original purchase, which may be as high as 90 percent for VOI/TIS-funded facilities, to the proceeds of the sale. The regulations do allow, however, for reductions to the amount owed based on certain expenses and facility depreciation. Arrival at the final dollar amount to be returned to DOJ would require a certain amount of fact-gathering on the grantee's part, and coordination with OJP's Office of the Chief Financial Officer.

³ It is important to note that, pursuant to the regulations (as well as under the VOI/TIS General Assurances, discussed above), it is the DOJ funding agency, rather than the award recipient, that directs which option to take. It is the general policy of BJA, however, to defer to the expressed desires of the state, as appropriate.

(3) Transferring Facility Ownership to Another Entity

Although it is unlikely that DOJ would desire a grantee to transfer the facility's title to DOJ, a transfer to another entity could be desirable under many circumstances. Generally speaking, so long as the use of the facility by the receiving entity would be for criminal justice purposes, the transfer, in principle, may be permissible. In such a situation, where the facility was transferred to another owner—either DOJ or another entity—the state would be compensated for any amount beyond that in which DOJ retained an interest, calculated as per above.

(4) Sale with Change in the Purposes of the Original Award

In certain circumstances, it may be possible for a state to sell a facility and direct the proceeds in which DOJ retains an interest toward another program purpose authorized under the VOI/TIS statute. Currently allowable VOI/TIS purposes include construction or expansion of correctional facilities, including halfway houses, and many activities related to offender reentry.

BJA appreciates all the work you do in making our communities safer, and looks forward to continuing our partnership. If you have any questions about this guidance or the ongoing financial obligation associated with your VOI/TIS-funded facility, please contact Jonathan Faley, BJA Associate Deputy Director, at Jonathan.Faley@usdoj.gov or call 202-514-2350.