



Edward Byrne Memorial Justice Assistance Grant (JAG)

Prohibited and Controlled Expenditures

Overview: This document is broken into four sections and should be reviewed in its entirety:

1. Table of all prohibited expenditures (strictly unallowable expenditures under JAG);
2. Table of all controlled expenditures (expenditures which require prior written approval from BJA under JAG);
3. Controlled Expenditures Justification Template (must be completed and submitted for any JAG controlled expenditures request to be considered for approval by BJA); and
4. Overall Controlled Expenditure/Equipment Guidance (should be reviewed in conjunction with the template prior to controlled expenditures request(s) being submitted to BJA).

1. Prohibited Expenditures under JAG:

- Any items listed below or projects related to these items are **strictly prohibited** under JAG per the Executive Order 13688 on Federal Support for Local Law Enforcement Equipment Acquisition. **These projects and/or items cannot be approved under any circumstances.**

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| 1. Tracked armored vehicles |
| 2. Weaponized aircraft, vessels and vehicles of any kind |
| 3. Firearms and/or ammunition with a caliber of .50 or higher |
| 4. Grenade Launchers |
| 5. Bayonets |
| 6. Camouflage Uniforms (digital pattern) *Woodland and desert patterns are allowable based on operational needs. Camouflage may not be worn in urban or populous areas. |

2. Controlled Expenditures under JAG:

- Any projects and/or items listed within the “Controlled Expenditures” table below are only allowable under JAG with prior written approval from BJA. This list is a combination of items controlled under Executive Order 13688 on Federal Support for Local Law Enforcement Equipment Acquisition and/or statutorily by the JAG Program. **To submit a request for approval to purchase a controlled item, please follow the instructions on page three of this document.**

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| 1. Unmanned Aircraft (UA), Unmanned Aerial Vehicle (UAV) and/or Unmanned Aerial System (UAS) |
| 2. Armored Vehicles (wheeled) |
| 3. Command and/or Control Vehicles (Bus, Recreational Vehicle, etc.) |
| 4. *Boats (Non-Police Patrol) |
| 5. *Tactical and/or passenger SUVs, Vans, Trucks, and Sedans (excluding SUVs and Sedans that are used for Police Patrol) |
| 6. Manned aircraft, fixed and/or rotary wing |
| 7. Specialized firearms and ammunition under .50 caliber (excludes firearms/ammunition for routine duties) |
| 8. Breaching Apparatus (battering ram or similar entry device) |
| 9. Riot Helmets, shields and/or batons (excluding service-issued telescopic or fixed-length straight batons) |
| 10. Explosives and pyrotechnics |
| 11. Luxury items and Real estate |
| 12. Construction projects (other than penal/correctional institutions) |
| 13. *Segway, ATV and Golf Cart (Non-Police Patrol) |
| *Controlled Expenditure request is required if the vehicle is not being used in the ordinary course by police forces in the United States for patrol activities. Additionally, Segways, ATVs and golf carts never require a controlled expenditure request in states which do not require licensing and registration for those vehicle types. |

3. JAG Controlled Expenditures Justification Template

This template is based on recommendations pursuant to Executive Order 13688 on Federal Support for Local Law Enforcement Equipment Acquisition. To utilize JAG funds to support a project and/or purchase an item listed within the “**Controlled Expenditures**” table above, applicants/grantees must attach a letter on their agency’s letterhead, addressed to the BJA Director. The letter can be included as an attachment to an application pre-award or a Program Office Approval Grant Adjustment Notice (GAN) post-award. **This letter must fully address all 11 elements listed below and applicants/grantees may not obligate and/or expend any JAG funds until prior written approval has been granted by BJA to do so.**

1. A general description of the requesting agency;
2. A detailed justification for supporting the controlled project and/or acquiring the controlled items, including a clear and persuasive explanation of the need for and appropriate criminal justice purpose that it will serve. (If applicable, please describe any previous instance in which the controlled item was used in a manner that deviated from the detailed justification supporting the application for that equipment.);
3. The number of units of the requested controlled item(s) that are currently in your agency’s inventory;
4. Categories of other controlled equipment acquired through Federal programs during the past three (3) years that the requesting agency currently has in its inventory;
5. Whether the requested controlled equipment currently could reasonably be accessed through loans or mutual assistance or mutual aid agreements;
6. Certification (written assurance) that the requesting agency has adopted required protocols (see Recommendation 2.1: Agencies that acquire controlled equipment through Federal programs must adopt robust and specific written policies and protocols governing General Policing Standards and Specific Controlled Equipment Standards.) or will adopt those protocols before physical acquisition or purchase of controlled equipment or transfer of funds;
7. Certification (written assurance) that the requesting agency has provided required training (see Recommendation 2.2: Agencies that acquire controlled equipment through Federal programs must ensure that its personnel are appropriately trained and that training meets the specified requirements.) or will provide that training before physical acquisition or purchase of controlled equipment or transfer of funds;
8. Evidence of civilian governing body’s review and approval or concurrence of the requesting agency’s acquisition of the requested controlled equipment;
9. Whether the requesting agency has applied, or has a pending application(s), for this type of controlled equipment from another Federal agency during the current fiscal year;
10. Whether any prior application for controlled equipment has been denied by a Federal agency during the past three (3) years, and, if so, the reason for the denial; and
11. Whether the requesting agency has been found to be in violation of a Federal civil rights statute or programmatic term during the past three (3) years and, if so, whether any disposition was reached or corrective actions were taken. LEAs must disclose any finding by a Federal court or a Federal government agency, including an agency’s Office of Civil Rights or the Civil Rights Division of the U.S. Department of Justice, that the LEA has violated a Federal civil rights law with respect to their policing functions. LEAs must also disclose any admissions of liability they have made regarding violations of Federal civil rights law in their policing functions.

4. Controlled Equipment Implementation Guidance

The following issues have been identified for your review as the Department of Justice continues to implement the recommendations from the “Federal Support for Local Law Enforcement Equipment Acquisition”. Any additional updates will be provided via email to all grantees, and will be made available at BJA’s website.

Transition Period:

The Working Group will implement a six-month transition period while working to comply with new training and policy requirements. The transition period provides LEAs the opportunity to examine their policies and training programs and make adjustments so they are in compliance with the Report’s recommendations. During the transition period, LEAs will be permitted to apply for controlled equipment by certifying that they will be in compliance with the appropriate policies, training, and other requirements by April 1, 2016. LEAs will not be able to use any controlled equipment they receive during this six-month period, except for training purposes, until they have certified that the appropriate policies and training are in place. Final approval of all controlled equipment requests remains with the Director of BJA.

Equipment issues:

MODIFICATIONS. LEAs may not modify equipment acquired using Federal resources that would cause it to be considered prohibited equipment, or, absent specific approval from the Federal agency and adherence to all relevant requirements, controlled equipment.

CAMOUFLAGE UNIFORMS.¹ Federally-acquired camouflage-patterned uniforms are not authorized to be worn in environments where they do not actually camouflage the wearer, including cities, towns, and other urban or populous areas.

TRANSFER / SALE OF CONTROLLED EQUIPMENT TO NON-LEAs. Recommendation 4.2 limits the type of equipment that LEAs can transfer or sell to non-LEAs to fixed-wing aircrafts, rotary-wing aircrafts, and command and control vehicles.² The Working Group has added a fourth category of vehicles to this list – Tactical Vehicles, such as HMMWVs, which are not armored vehicles. Consistent with the Report, any equipment in these four categories must be stripped of law enforcement insignias and markings prior to transferring or selling the equipment; sensitive or potentially dangerous components must also be removed. The LEA also must notify and receive written approval from the Federal agency through which it acquired the controlled equipment. The receiving LEA must follow the same pre or post-award procedures for acquiring the controlled equipment as noted on Page 3 of this document.

Compliance and Oversight:

CIVILIAN GOVERNING BODY REVIEW.³ The Working Group has amended this requirement for LEAs where the chief executive is popularly elected (e.g. Sheriffs). Such LEAs must provide official written notice to – but is not required to obtain approval from – its civilian governing body at least 30 days in advance of any application to acquire controlled equipment from the Federal Government. This change takes into account the fact that popularly elected heads of LEAs are directly accountable to their community-constituency.

¹ Report, p. 13.

² Report, p. 31.

³ Report, p. 28, Recommendation 3.1.

EFFECT OF FINDINGS OF CIVIL RIGHTS VIOLATIONS. As the Report indicates, LEAs are required to state in their application to acquire controlled equipment “whether they have been found to be in violation of a Federal civil rights statute or programmatic term during the past three (3) years and, if so, whether any disposition was reached or corrective actions were taken.”⁴ Accordingly, LEAs must disclose any finding by a Federal court or a Federal government agency, including an agency’s Office of Civil Rights or the Civil Rights Division of the U.S. Department of Justice, that the LEA has violated a Federal civil rights law with respect to their policing functions. LEAs must also disclose any admissions of liability they have made regarding violations of Federal civil rights law in their policing functions. Federal agencies will obtain as much information as possible about the violation, which, along with any effort the LEA has taken to cure the violation, will be considered in determining whether the LEA should acquire controlled equipment.

Policies and Protocols:

MODEL POLICIES AND DEFINITION OF POLICY GUIDELINES.⁵ DOJ has provided funding to a group led by the International Association of Chiefs of Police (IACP), in partnership with the National Tactical Officers Association and the Commission on Accreditation for Law Enforcement Agencies, to provide more detailed definitions for the General Policing and Specific Controlled Equipment Standards and to develop model policies. The IACP-led group has consulted a number of subject matter experts during this process and has produced the detailed definitions, which the Working Group has accepted. These definitions apply to both the General Policing Standards and the Specific Controlled Equipment Standards, and are to this document for your use.

The model policies will be available at the end of Calendar Year 2015, and BJA will make those available upon publication.

⁴ Report, p. 26.

⁵ Report, p. 20.

STANDARDS FOR STATE, LOCAL, AND TRIBAL LAW ENFORCEMENT AGENCIES FOR THE ACQUISITION OF CONTROLLED EQUIPMENT WITH FEDERAL RESOURCES

Developed by the International Association of Chiefs of Police (IACP),
in collaboration with the Commission on Accreditation for Law Enforcement
Agencies, Inc. (CALEA) and the National Tactical Officers Association (NTOA)

Funding provided by the Bureau of Justice Assistance,
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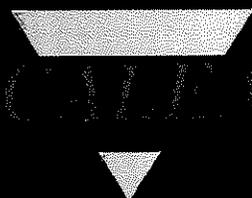


Table of Contents

| | |
|---|----|
| General Policing Standards | 3 |
| Standard 1.0: Community Policing..... | 3 |
| Standard 2.1: Constitutional Policing..... | 4 |
| Standard 2.2: Fair and Impartial Policing (Federal and State Legal Requirements)..... | 4 |
| Standard 3.0: Community Input and Impact..... | 5 |
| | |
| Specific Controlled Equipment Standards | 6 |
| Standard 1.0: Appropriate Use of Controlled Equipment..... | 6 |
| Standard 2.0: Supervision of Use | 7 |
| Standard 3.0: Effective Evaluation | 8 |
| Standard 4.0: Auditing and Accountability | 8 |
| Standard 5.0: Transparency and Notice Considerations | 9 |
| | |
| Expert Panel | 10 |

These standards were developed in response to Executive Order 13688 – Federal Support for Local Law Enforcement Equipment Acquisition, released by President Barack Obama on January 16, 2015. The standards follow the guidelines developed by the Law Enforcement Working Group in their Recommendations Pursuit to Executive Order 13688 – Federal Support for Local Law Enforcement Acquisition.

The opinions and statements contained herein do not necessarily represent the official position or policies of the International Association of Chiefs of Police (IACP), the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA), the National Tactical Officers Association (NTOA), or the members of the Expert Panel and the agencies they represent.

General Policing Standards

Standard 1.0: Community Policing

The law enforcement agency (LEA) establishes policies and procedures that are consistent with the principles of community policing and problem solving.

Commentary

Community Policing is a philosophy that promotes organizational strategies that support the systematic use of partnerships and problem-solving techniques to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime. Community Policing has three key components:

- (1) **Community Partnerships:** Collaborative partnerships between the LEAs and the individuals and organizations they serve to develop solutions to problems and increase trust in police;
- (2) **Organizational Transformation:** The alignment of organizational management, structure, personnel, and information systems to support community partnerships and proactive problem solving; and
- (3) **Problem Solving:** The process of engaging in the proactive and systematic examination of identified problems to develop and evaluate effective responses.

Community Policing impacts a wide array of policies and procedures across an LEA, from agency management, to organization, personnel protocols, and information systems. Community Policing can be incorporated in different ways, taking into account the broad LEA service demands; personnel and equipment availability; contractual arrangements or binding agreements; and differing state laws, administrative rulings, local ordinances and codes. However, the Community Policing principles can reasonably be applied at all levels of law enforcement, including state, local and Tribal.

Therefore, Standard 1.0 requires that LEAs embrace a management system that supports transparency by, among other things, sharing relevant information with the community; engaging in strategic agency planning that involves community stakeholders; seeking to develop strategic community partnerships; promoting creative officer decision making and proactive problem solving to address public safety issues; and fostering an agency culture that is service oriented. Community Policing also encourages the use of modern technologies such as social media to enhance relationships with the community and provide a two-way mechanism to share information and discuss matters of public safety and quality of life.

Standard 2.1: Constitutional Policing

The LEA supports and promotes, through policy, procedures, and training, the rights embodied in the First Amendment concerning freedom of speech and freedom of assembly; the principles required by the Fourth Amendment concerning privacy and unreasonable searches and seizures of persons, places and things; and the Fourteenth Amendment's requirements for providing all persons with due process and equal protection of the law.

Commentary

A LEA's basic law enforcement training will provide instruction on the principles of the First, Fourth, and Fourteenth Amendments and the resulting procedural law requirements that flow from these rights. Documentation of the successful completion of these courses of study are memorialized in order to support the recruit's completion of basic law enforcement training and certification as a law enforcement officer.

LEA's shall demonstrate adherence to the requirements attached to each of these Constitutional rights in their policies, practices, and procedures. Further, the LEA must demonstrate that it has provided in-service training updates to officers where federal or state laws have changed.

Standard 2.2: Fair and Impartial Policing (Federal and State Legal Requirements)

The LEA supports and promotes, by means of agency policies, procedures and training, as appropriate, adherence to fair and impartial policing. This requires that all persons be treated fairly and equitably irrespective of race, ethnic background, national origin, gender, gender identity, sexual orientation, religion, socioeconomic status, age, disability, cultural group or political status.

Commentary

A number of federal and corresponding state civil rights laws and regulations protect individuals from bias. These laws require that LEAs enforce the law equitably and deliver police services even-handedly.¹ These laws also include penalties for engaging in conspiracies to injure, oppress, threaten or intimidate based on class or other personal distinction;² disparate treatment of or imposing penalties on a person because he or she is an alien;³ and engaging in patterns and practices of conduct that deprive persons of their rights, privileges or immunities under the Constitution.⁴

¹ Title VII of the Civil Rights Act of 1964

² Title 18, Section 241

³ Title 18, Section 242

⁴ 42 U.S. Code § 14141(a)

As in the foregoing standard, basic law enforcement training typically provides instruction on both federal and state laws and regulations on these issues. The LEA shall provide training on any changes to such laws and regulations where necessary and maintain a record of such training. In addition, department policies and procedures should conform to changes in the law.

Standard 3.0: Community Input and Impact

The LEA must provide opportunities for the community to receive information about any controlled property that has been acquired. This includes explanations from the LEA concerning the need for such equipment, as well as potential uses and benefits to the agency and the community. Information gathered from the community can be used to review trends related to the deployment of controlled equipment, especially in areas that are frequently impacted by such deployment, or high crime areas.

Commentary

LEAs should provide the community with information about controlled equipment acquired through requisition from the federal government or purchased with federal funds, and, when practical, allow opportunities for community members to offer feedback. This is not intended to require LEAs to obtain full community endorsement of equipment prior to its acquisition. Rather, it is a measure designed to maintain agency transparency by providing notice to the community, in conjunction with the rationale for obtaining the equipment.

There are a wide variety of forums that LEAs can use for the exchange of such information with the community to include, but not limited to,

- Community surveys (web-based, telephonic, hard copy);
- Social media (agency accounts, leadership accounts, public affairs office);
- Notification to legislative bodies;
- Public presentations (town hall meetings, LEA forums, LEA presence at community events); and
- Legacy media (newspapers, newsletters, radio).

LEAs should seek to provide outreach particularly in those areas of the community that are frequently impacted by the deployment of controlled equipment.

Specific Controlled Equipment Standards

Standard 1.0: Appropriate Use of Controlled Equipment

The LEA will establish guidelines, including written policies, directives and procedures, before deploying federal controlled equipment. Upon the acquisition of federally-acquired controlled equipment, the law enforcement agency (LEA) shall use such equipment in a way that keeps its communities and personnel safe while also protecting the rights of community members. It is incumbent upon the LEA acquiring controlled equipment to use the equipment responsibly and in accordance with the General Policing Standards.

Commentary

The LEA uses federally-acquired equipment to conduct a variety of law enforcement operations including, but not limited to, hostage rescue, special operations, response to threats of terrorism, fugitive apprehension, search and rescue, and response to natural disasters. This equipment enhances the LEA's mission to protect and serve its community.

Written policies, directives and procedures, shall be established for use of controlled equipment, and all personnel who will use or authorize use of the equipment will be trained on these policies. These should recognize the broad differences in LEA demographics; service demands; personnel; and state laws, administrative rulings, local ordinances and codes.

Certain controlled equipment, including but not limited to aircraft, unmanned aerial vehicles, armored/tactical vehicles, specialized firearms, and explosives require documented training regarding appropriate use. Existing annual specialized firearms qualifications, flight recertifications, in-service and out-service training and education can be used to verify the proficiency of agency personnel who may use or are authorized to use such controlled equipment. All requisite documentation shall be kept on file for compliance reviews as requested by the relevant federal agency.

On an annual basis, the LEA shall review how it is using controlled equipment and whether the use of that equipment continues to be necessary and appropriate. The LEA shall keep data on the use of the equipment.

Standard 2.0: Supervision of Use

The LEA supervises the use of the controlled equipment, to include when and where the equipment will likely be deployed and the decision-making processes that will determine whether controlled equipment is used.

Commentary

The decision to deploy and use controlled equipment is paramount to the safety of the public, law enforcement, and property. Additionally, it is incumbent upon the LEA to effectively and efficiently use these resources judiciously and in accordance with the General Policing Standards. LEA policies and directives shall be in place to describe what level of supervision is required for the use of the equipment. Moreover, supervision of the use of controlled equipment shall include an assessment that would consider alternatives to the use of such equipment and tactics to minimize negative effects on the community, while preserving officer safety.

Where applicable, the LEA shall develop appropriate agreements, protocols and procedures for support relationships between and among neighboring agencies for the handling of extraordinary incidents which exceed the capabilities and resources of the primary jurisdictional agency. Agencies deploying federally controlled equipment are responsible for its use and compliance with the General Policing Standards.

As in all LEA operations, supervision shall be tailored to the type of equipment being used and the nature of the engagement or operation during which the equipment will be used. The use of certain controlled equipment, such as aircraft, unmanned aerial vehicles, armored/tactical vehicles, specialized firearms, explosives, and riot equipment may require high level agency decision-making, in conjunction with close supervision and oversight.

Standard 3.0: Effective Evaluation

The LEA will evaluate and review the effectiveness, applicability and value of controlled equipment to determine whether continued deployment and use is warranted on operational, tactical, and technical grounds.

Commentary

LEAs should routinely review after-action reports in the use and deployment of controlled equipment. This evaluation helps examine the continuing need for, and use of, controlled equipment in communities and operational areas.

Evaluation should include a review of the equipment fielded to determine any trends, such as use in specific neighborhoods, types of crimes or operations. This information should be analyzed and may be used to update existing deployment or operational plans. This data can also be used to determine the need for future equipment purchases or transfers.

LEAs shall adopt policies and procedures to address the appropriation, care, maintenance and inventory of controlled equipment. They should also address normal life cycle wear, removal, and/or replacement of obsolete or faulty equipment.

Standard 4.0: Auditing and Accountability

The LEA shall establish and maintain a system of controls, policies, and procedures that are designed to prevent misuse, unauthorized use, and loss of controlled equipment.

Commentary

The LEA's written policies shall include processes for managing equipment inventories and/or grant funds for all federally-acquired controlled equipment. Additional reporting, monitoring, or audit procedures may be applicable depending on the agency that provided the equipment. The LEA shall receive approval from the federal agency that supplied the funds or equipment before selling or transferring controlled equipment.

LEA policies shall also include provisions to hold individual officers and/or operators of the controlled equipment accountable for any misuse or unauthorized use as well as compliance with the General Policing and Specific Controlled Equipment standards outlined under these policies.

Standard 5.0: Transparency and Notice Considerations

The LEA will engage with the community to provide information on federally-acquired controlled equipment to the community.

Commentary

The LEA will provide its community information regarding the acquisition of federally-acquired controlled equipment. LEAs should be transparent in providing as much information to the public as possible, with limitations on the disclosure of law enforcement sensitive information as deemed by the LEA and applicable state laws and local policy. There is no requirement for review and approval by community members prior to equipment acquisition; however, LEAs are encouraged to be open and transparent about the types of equipment used by the law enforcement community.

The tenets set forth in the General Policing Standards (including community policing and community input and impact) can be useful in facilitating engagement with the community on controlled equipment purchases. LEAs should consider potential disparate impacts of equipment deployment on different portions of the community being served.

Expert Panel

This project could not have been completed without the professional assistance and oversight of Expert Panel. Our special thanks to the following members of the Panel.

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