**9-1-1 ARM-Rule Making Subcommittee Meeting**

 **Thursday, Feb. 8, 2018**

**Conference Call Minutes**

**Present**

Geoff Feiss, MTA, Subcommittee Chair

Liz Brooks, Flathead Co.

Steve Hadden, Jefferson Co.

Bill Nyby, Sheridan Co.

Jennie Stapp, MSL

**Absent:**

Adriane Beck, Missoula Co.

Kim Burdick, Chouteau Co.

Denis Pitman, Yellowstone Co.

**Staff**

Don Harris, DOA Quinn Ness, PSCB

Wing Spooner, PSCB Rhonda Sullivan, PSCB

**Guests**

Sandra Barrows, Barrows Consulting

**Call to Order**: Geoff Feiss called the meeting to order. Introductions were made.

**Action Item: Adoption of Meeting Minutes:**

Motion: Jennie Stapp made a motion to approve the minutes from the Jan. 11 meeting. Geoff seconded. The minutes were approved.

**Review of DRAFT 9-1-1 Grant Program Guidelines**:

**2. Program Funding**: The revenue estimate of $3.125 million may need to be reduced to $3 million upon final publishing because last quarter 9-1-1 collections were down slightly. The decrease does not appear to be a trend—just a one-quarter blip. Second quarter collections last fiscal year were also down. Rhonda explained that the total amount of funds available each quarter can depend on when telecommunications providers remit the collected 9-1-1 fees to the Department of Revenue (DOR) and when DOR transfers the funds into the Department of Administration’s account.

**Section B. Program Glossary of Terms:**

* The definition of a “Certified Local Government” is pending the final adoption of administrative rules. A definition will be developed based on those rules and the local government certification process.
* Quinn proposed striking the definition of “Eligible Private Telecommunications Provider” because it is redundant with the definition for a “Private Telecommunications Provider.” This made sense to Geoff because the definition for a “Private Telecommunications Provider” is sufficient.
* Staff proposed moving the text of the second paragraph under “Eligible Private Telecommunications Provider” to Section C: “Eligible Applicants.”
* The “In-Kind Contribution” paragraph better fits in Section E: “Eligible Match.”
* The word “eligible” was stricken from the definition of “Resolution” because it is redundant. Geoff believes that the sentence at the end of this definition, “A resolution is required before grant funds can be committed by the Department” doesn’t belong there because it appears to be more of a rule rather than a definition. It was proposed to move that sentence to Section C: Eligible Applicants.
* Steve Hadden asked for clarification of the procedure for determining the “Start Date.” Quinn explained that the Start Date is the date that the department officially makes the award of grant funds and is typically used as the effective date of the grant contract. Steve verified that there is still an obligation on the part of a local government to sign some sort of contract that indicates their understanding of what the funds will be used for. Quinn clarified that when the Department makes an official award, typically the award date becomes the contract start date. The department will issue an award letter notifying the county that an award was made, and a grant contract would follow.

**C. ELIGIBLE APPLICANTS**

Discussion took place regarding the definition of an eligible private telecommunications provider. Geoff pointed out that to be eligible, the telecommunications provider should not have to work through a local government entity because a private telecommunications provider can apply for a grant directly if desired. Quinn explained that this is a policy issue related to whether the 9-1-1 Advisory Council and the department should make a grant to a private telecommunications company for a 9-1-1 project in a local government jurisdiction that is not supported by that jurisdiction. This is also a potential criteria by which to judge or score an application. This discussion can be moved to section **F. APPLICATION AND GRANT AWARDS**.

The following wording was agreed upon: “The two statutorily eligible applicants are: private telecommunications providers and certified local government entities. A statutory reference can be added later.”

**D. ELIGIBLE USES OF FUNDS**

This section lists the eligible uses of fund that are in statute. Geoff had suggested adding “infrastructure” to the list, but this use was not included in the statute. Geoff indicated that the key language is emergency telecommunications systems or “9-1-1 systems”, and to a certain extent, infrastructure is implied. We could add the statutory definition of a “9-1-1 system” and include it in a glossary of terms. This will be included in the next draft for review.

Technology Standards – This section is being deferred until the Statewide 9-1-1 Plan has been developed. So, this section will be revisited, and rules will need to be revised after the plan is adopted. Guidelines will need to be updated and the rule-making process repeated at a later date. All references to the Statewide Plan and its contents have been removed. Geoff noted that telecommunications providers must comply with certain federal standards, too, and we will have to make sure that when state standards are being developed, federal ones are not being broken. The FCC also has several requirements for wireless providers, such as location specifics and other operational technical requirements. Quinn clarified that the technology standards that will be in the Statewide Plan will only apply to PSAPs, not telecommunications companies. We have no regulatory authority over telecommunications providers.

Sandra Barrows expressed concern that the wording might imply that all applicants—not just PSAPs—must meet technology standards to get a grant. Once the technology standards for PSAPs are developed and adopted, then a requirement will be included in the guidelines. The purpose of this is to ensure that that when a local government receives a grant, those funds will be used to purchase 9‑1‑1 equipment that meets the minimum standards.

**Equipment Standards**: This language was stricken.

**Administrative Costs**: Quinn indicated several comments were received on this section. He also said that staff had benchmarked other state grant programs and came up with 8% as a proposed grant administrative expense that local governments can apply for. His experience has been that private companies typically do not request administrative expense reimbursement because of documentation requirements. For example, if a request were being made to reimburse an employee’s time, then information about that employee’s wage rate would be needed as well as possibly copies of their time sheet. Private companies generally do not want to release that kind of information. Quinn does not think that private companies should be excluded from requesting reimbursement of administrative costs, but typically, they may not want to request this reimbursement.

Discussion about the percentage ensued. Geoff thought that 8% seemed high. Quinn indicated that the 8% is a cap that cannot be exceeded. If an award is made, administrative expenses will not exceed 8% of eligible expenses incurred during the project (or a maximum of $30,000). The local government would have to submit documentation to support reimbursement of those administrative expenses. If there is not a cap on administrative expenses, the potential exists for them to be more than 8% or a $30,000 maximum. It’s important to provide guidance on what is an appropriate amount of administrative costs. Quinn explained that when managing grants, it is important to keep grant administration expenses separate from grant project expenses. Bill said his county’s administrative reimbursement amount on grants ranges from 4 to 7%. A recent coal mine reclamation grant was 4.5%. He is in favor of an 8% cap. Liz agreed.

The public information clause was added as follows:

*Any document prepared with public funds is subject to the public’s right to know (Article II, Section 9 of the Montana Constitution). Assisted entities Applicants need to must sign the application form acknowledging that all documents produced with 9-1-1 grant program funding are considered public documents.*

Quinn also noted that all information about a confidentially agreement was deleted. He believes that appropriate due diligence can be conducted without requesting any information that a private company would deem as confidential. The 9-1-1 Advisory Council must review all the applications, and ensuring confidentiality would be difficult to achieve. The application form, found in Appendix A, does not include a request for a private company’s financial statements or projections, which would likely be confidential.

How can a vendor be identified as a bonafide applicant? There should be some criteria to eliminate fly-by-night operators. Some sort of due diligence is needed. Quinn indicated that it will go back to the statutory definition of a telecommunications provider. Due diligence will be needed to see if the applicant meets that definition. However, nowhere in that definition does it speak to the financial condition of the telecommunications provider. The following criteria would need to be confirmed:

* If a vendor provides telephone exchange access services in Montana
* If they are authorized by the FCC to provide mobile radio service in Montana.

Geoff expressed his concern that anything shared with the State becomes public information unless it is protected. He clarified that Quinn was saying that the process will not involve asking for information that would need to be protected. **Task Item: Geoff will talk to his attorneys to see what they think about this.**

The inserted “incurring expenditures before the grant award date” clause reads: “It is important that applicants not incur costs or obligate funds which are intended to be reimbursed by a 9-1-1 program grant prior to the date of award,” which is standard language used in grant programs because grants are forward looking. Once the department officially makes an award, then that becomes the date of award and the start of the grant contract. It reminds potential applicants that they should not incur expenses before they get the official award and the grant contract is executed.

Sandra Barrows said it appears that there will be about a nine-month time period where carriers would be incurring the normal reimbursable type of expenses, such as data DIP circuits, so she believes there should be some type of one-time allowance to look backwards for the types of expenses that are typically reimbursed. Otherwise, you will be taking the ability of carriers to cover normal ongoing types of costs currently being approved because it appears there will be a nine-month period between when carriers will be reimbursed and the next time the grant will be awarded.

Quinn indicated that the recommendation has been not to include rules that would allow the department to exercise any type of discretion, such as a clause like “without prior approval by the department.” All of those types of statements were removed from these rules because of discussion about the purpose of rulemaking, which is to make things completely transparent and fixed.

Sandra said she is not suggesting a change in that philosophy. She is suggesting adding a statement to the effect of: “For the time period July 1, 2018 to when the first grant is awarded, a one-time allowance in a grant application so an entire year of provider cost recovery is not prohibited. Quinn asked a question as a point of clarification, and suggested that Sandra and Geoff do some research on the following points:

* The definition of 9-1-1 systems
* The statute for the wireless provider cost recovery program is abolished in July 1, 2018.
* The definition of allowable costs for that program is also abolished on July 1, 2018.
* First, you would want to ensure that those same costs that providers have been reimbursed for historically will again be eligible in the grant program. Research is needed as to how this falls under the definition of 9-1-1 systems.
* Second, if those costs are allowable, are we guaranteeing grants to those providers for those costs?

Geoff believes there is a transition period that has able been discussed in relation to PSAP reimbursements. He referred to informal legal information obtained by Sonja Nowakowski from the Legislative Services Division (LSD) that allowed for a look-back during the transition from current law to HB 61. He recalled that the general conclusion was that you can look back to current law when implementing the new law. There is some carry-over expense that just needs to be acknowledged and could be incorporated into the rule.

Quinn thinks that LSD’s opinion and the proposed rule are two different things. In current law we have the existing wireless provider cost recovery program. The opinion we received from LSD was that the department must reimburse providers for their state fiscal year (SFY) fourth-quarter expenditures that they incurred, and the department can make these payments after July 1, 2018. LSD also thought that the department must complete the SFY 2018 “HB 575 wireless provider payments and local and tribal government (PSAP) distribution” in August 2018. This will ensure that all providers receive payment for any approved outstanding claims and completing a final one-time distribution to local and tribal governments (PSAPs). At that time, all the statutory language for the cost-recovery program is stricken and the grant program statutorily begins. Quinn is looking for telecommunication provider representatives to help the department identify where there may be linkage between the grant program and the cost-recovery program where the same providers would be eligible to receive a grant for the same uses as the cost recovery program. Clarification is also needed that the intent of HB 61 was to continue to reimburse wireless providers for these same costs after the end of the fourth quarter of SFY 2018 and after the HB 575 payments and distributions.

Geoff believes a rule needs to be developed that allows for retroactive expense reimbursement in a grant for expenses incurred in SFY 2019. He pointed out that providers can be made whole up to July 1, 2018 for cost recovery expenses, but what happens from July 1, 2018 to June 30, 2019 or whenever a grant is approved? If a grant is only forward looking, then there is a 6 to 9 to 12 month gap, and a provision is needed to cover that.

Quinn said he is asking what the statutory basis is for a provision to cover that gap. Geoff said he has lawyers that will consider that. It appears that the desire is to have a prescriptive rule that is only for specific applicants and recipients. Quinn requested more information the telecommunications providers regarding this issue. He is not necessarily opposed to the concept; he just is asking for telecommunications providers to look at HB 61 and provide us with a statutory basis for this rule, so it can be considered. Geoff is optimistic that it can be fixed within the parameters of the law. He will have some more information by the next conference call, so discussion can take place about whether the department should allow the use of grant funds for expenditures that occur before a grant is actually awarded. Geoff clarified that it would be for the purposes of transition from current law to HB 61 law. Quinn suggested that rather than make the rule specific to providers that are currently receiving cost recovery—if this is something that will be adopted as a rule—then shouldn’t it apply to all telecommunications providers, including all providers that haven’t received cost recovery in the past? Geoff reiterated that it is a transition issue. Geoff was asked to do some more research and provide more information to the subcommittee.

**E. ELIGIBLE MATCH** – Quinn believes some of the confusion of terminology has been resolved. Matching funds must be dollar for dollar. The current text removes any discretion on the part of the department. Geoff asked if we might be exceeding statutory authority here with this section. Quinn indicated that there is no reference to matching grant funds in statute. If we are going to use matching funds the amount of investment by the grant recipient, as a criterion for prioritizing applications, then it needs to be included in the guidelines. The way it is currently written asks whether the applicant is providing a match or not. The way it is currently written would give a higher priority to applicants that commit to a match. Jennie indicated she is not comfortable using the amount of match or a percentage match as a ranking criterion, because it might have a chilling effect on smaller PSAPs. Liz was of the same mind.

Geoff pointed out the benefits of requiring matching funds, such as the conservation of funds. Perhaps matching funds could be used as a criterion among other factors, pointing out that none of the criteria by themselves alone would be a factor in determining whether or an application should receive a grant. Jennie believes having a match could one of several factors to be considered, but it should have a very low weight in the scoring system.

Geoff explained the system used by the Public Service Commission (PSC) to determine eligible telecommunications carriers, which looks at a dozen or more factors that the PSC needs to consider when identifying an eligible telecommunications carrier in Montana, with the addendum that none of these individual criteria are determinative. The applicant does not need them all. It’s up to the Commission to determine eligibility, but here are the factors that will be considered in making that decision.

Quinn referred members to the next section, **SECTION F. APPLICATION REVIEW & GRANT AWARDS**, under the heading of “Grant Awards and Funding Levels Will Be Determined by Factors Such As.” He emphasized that the term “such as. . .” leaves the list of criteria open. Matching Funds has just been included as one of those of criteria. If a PSAP does not have matching funds, it does not disqualify the PSAP from applying. This rule has been included to provide some guidance on what applicants need to submit, so the 9-1-1 Advisory Council and the department have some discretion in making grant award decisions.

Geoff suggested scratching Section E and put it in a definition. Then, you cover that base in your criteria “such as eligible matching funds. It was noted that previously this definition was struck from the Glossary of Terms and placed here.

Quinn reiterated that it is necessary to provide guidance to the applicants of what information they should submit. If Eligible Match is not a requirement, or if you don’t think the 9-1-1 Advisory Council and the department should consider that as a criterion, then we should just strike it.

Steve said that maybe the issue is the wording “are a higher priority,” so someone in a rural area or a small county may think that because they don’t have any money for matching funds, and those who do have matching funds are given higher priority, the small PSAP shouldn’t bother to apply. That wording might scare people away. He suggested deleting that phrase and simply include Eligible Match in the criteria that will be looked at as one of the factors which are weighed.

Quinn recommended going further by taking matching funds out of the criteria. Geoff thinks it is the fiscally responsible thing to do. Having a matching fund criterion encourages counties to work together with other, wealthier counties to collaborate to save money. Liz Brooks that small PSAPs would be incentivized to pursue partnerships with larger PSAPs on projects to have money for matching. Quinn said his main concern is the difficulty of applying the information consistently and fairly to all applications. If we continue to include it as a criterion, it will be difficult for the 9-1-1 Advisory Council and the department to apply it fairly, so applications may not be reviewed on the same consistent basis. The Eligible Match section will be struck, and eligible match will be eliminated from the list of criteria.

Don Harris noted that “The availability of funding” would still be listed as a criterion, so the 9-1-1 Advisory Council and the department could consider whether the entity that is requesting a grant has funding available, whether it’s matching funds or something else. Quinn said that Don made a good point. A lot of times there are not enough funds available to approve every application. It’s possible that the 9-1-1 Advisory Council and the department could choose to fund a project at a certain percent and then the local government or private telecommunications provider would just have to agree with those grant terms. Geoff has asked the question of what happens if we do have more applications than we had funds available, which might require a different process.

Quinn indicated that the subcommittee needs to develop more information about how the 9-1-1 Advisory Council is going to review and prioritize applications. Geoff was asked to send more information in for the subcommittee to review. Geoff also said he is persuaded by the other members that the matching requirement is problematic. He is okay with striking Section C, but believes the subcommittee needs to spend more time on the eligibility applicant and the grant award process.

Staff can update the document with the comments and changes discussed today and re-send it out to everyone. We can open it up for another week to received additional comments about Section F.Geoff will do more research on allowable uses. Staff will distribute the new document by the close of business on Monday and can accept additional comments by February 15, 2018. We will try to get all those comments sent out to everyone, so members will be able to review it prior to the February 22, 2018 conference call.

**Public Comment:** None

**Meeting Schedule:** Thursday, February 22, 2018: 1:00 – 3:00 PM

**Adjournment**: The meeting was adjourned at 2:20 PM.