

MEMORANDUM OF LAW

DATE: October 4, 1996

NAME: Kent Lewis, Assistant Personnel Director

FROM: City Attorney

SUBJECT: Agreement for the Use of the State and Local Overtime and Authorized Expense Program Between the Federal Bureau Investigation and the San Diego Police Department

You have asked this office to review an Agreement for the Use of the State and Local Overtime and Authorized Expense Program between the Federal Bureau Investigation and the San Diego Police Department in order to determine if it is a contract subject to 38 U.S. Code, section 4212 which requires affirmative action programs for Vietnam veterans.

You have indicated that an officer of the Department of Labor indicates that this agreement requires that the San Diego Police Department and the City of San Diego develop an affirmative action program for Vietnam era veterans. Initially, it should be noted that the document which you submitted to this office for review expired on March 31, 1996 and any dispute concerning the adoption of an affirmative action program during the life of the agreement is now moot.

However, as you have informed us that the Department of Labor continues to require that the City of San Diego adopt an affirmative action program for Vietnam era veterans, we will analyze this issue on other grounds. Federal law clearly provides that for any contracted amount of \$10,000 or more entered into by any agency with the federal government for the procurement of personal property and nonpersonal services including construction for the United States shall contain a provision requiring that the party contracting with the United States shall take affirmative action to employ and advance in employment qualified specially disabled veterans and veterans of the Vietnam era. 38 U.S. Code, section 4212 (a). The agreement you provided to us is neither a contract for the procurement of personal property nor for nonpersonal services. Clearly, the agreement pertains only to reimbursing the City of San Diego for any additional overtime expenses incurred in its support of the Federal Bureau of Investigation.

Furthermore, the regulations adopted pursuant to this Federal statutory scheme clearly indicate that federally assisted contracts of this nature are not included within the term of "government contract" as it is used in the statute. 41 C.F.R., section 60-250.2. In order to avoid

any further confusion in this regard, it might be wise to forward a copy of this memorandum to the appropriate Department of Labor official and inquire upon what statutory scheme the Department of Labor is relying on in assuming it has jurisdiction over the City of San Diego in this matter. If you have further questions in this regard, please feel free to contact me.

JOHN W. WITT, City Attorney

By

John M. Kaheny
Assistant City Attorney

JMK:js:580.6(x043.2)

ML-96-48

L:\KAHENY\MOLS\LEWIS.WPD