



To: Bay Area UASI Approval Authority
From: Mary Landers, Regional Grants Manager
Date: May 12, 2016
Re: Item 5: Controlled Equipment Requirements

Staff Recommendations:

No recommendation – for discussion only

Action or Discussion Items:

Discussion

Discussion:

Background: For many decades, the Federal Government has provided surplus equipment to state, local, and tribal law enforcement entities through various transfers, programs, and grants. This equipment has provided assistance to law enforcement entities as they carry out their public safety mission. The equipment acquired includes many different types of equipment, including military and military-style equipment, firearms, and tactical equipment, called “controlled equipment”. Executive Order 13688, issued on January 16, 2015, standardizes procedures for providing controlled equipment to law enforcement entities.

This Executive Order also called for the formation of a Law Enforcement Equipment Working Group, co-chaired by the Secretary of Defense, the Attorney General, and the Secretary of Homeland Security, and comprised of high ranking federal government officials. This group was tasked with developing guidelines to ensure that controlled equipment is appropriate for the needs of the community, that law enforcement agencies are properly trained to use the equipment, that agencies purchasing controlled equipment adopt organizational and operational practices and standards that prevent the misuse/abuse of the controlled equipment and, that agencies meet all civil rights requirements. The working group was tasked with providing a report with their recommendations as well as an implementation plan.

Information Bulletin 407 (IB 407) was first issued to all stakeholders by DHS/FEMA on February 16, 2016 and provided guidance regarding the requirements for applying for, or expending grant funds for, controlled equipment using federal funds. IB 407 not only defines controlled equipment,

but also provided a list of prohibited equipment as well. The equipment on the prohibited list has never been allowable under the UASI grants, therefore, the region is unaffected by this.

Subsequent to the issuance of IB 407, DHS conducted several webinars to provide guidance on the purchase of controlled equipment. The following steps must be taken in order to obtain approval:

1. The requesting agency must first obtain explicit approval or concurrence from their governing body and provide evidence of that approval or concurrence. However, if the head of the requesting agency is an elected official (i.e. Sheriff), they are not required to seek permission, but must notify the governing body and provide reasonable opportunity for the governing body to review the controlled equipment purchase request. Silence or inaction by the governing body will constitute tacit approval.
2. Once this approval/notification process is complete, the requesting agency completes FEMA Form 87-0-0-1. Narratives must include:
 - a. ... ***“a clear and persuasive explanation demonstrating the need for the controlled equipment and the purpose that it will serve”***, and requires other information about inventory acquired through Federal programs and any findings of federal civil rights violations involving controlled equipment.
 - b. Written policies and protocols specifically governing the use, supervision of use, effectiveness evaluations, auditing and accountability, and transparency and notice considerations. Law enforcement agencies must also provide written policies and procedures on community policing, constitutional policing and community input and impact considerations.
 - c. Information on training to demonstrate technical proficiency in the use of the equipment, use scenario-based training, and conduct annual training on the 1st, 4th, and 14th Amendments. Law enforcement agencies must also annually conduct training on general policing standards.
 - d. Record-keeping requirements, including After-Action Reports following a “Significant Event”, all written policies and procedures, and all training records.
3. The requesting jurisdiction is responsible for completing the FEMA Form and the Bay Area UASI will submit this form to Cal OES for review and approval. Cal OES will then submit the form to the DHS/FEMA Program Analyst for review and approval. Review and approval time is estimated at 30 calendar days, barring additional reviews by the Department of Justice or DHS Civil Rights and Civil Liberties.