



EAC MANAGEMENT DECISION:

Resolution of the OIG Audit Report on the Administration of Payments Received Under the Help America Vote Act by the Colorado Secretary of State for the Period April 28, 2003 Through September 30, 2012 Report No. E-HP-CO-05-12

March 26, 2013

BACKGROUND

The EAC is an independent, bipartisan agency created by the Help America Vote Act (HAVA). EAC assists and guides state and local election officials in improving the administration of elections for Federal office. EAC distributes HAVA funds to States for the acquisition of voting systems, and supports the establishment of statewide voter registration lists, and other activities to improve the administration of elections for Federal office. EAC monitors State use of HAVA funds to ensure funds distributed are being used for authorized purposes. To help fulfill this responsibility, the EAC determines the necessary corrective actions to resolve issues identified during Single Audit Act and Office of Inspector General (OIG) audits of state administration of HAVA funds. The EAC OIG has established a regular audit program to review the use of HAVA funds by States. The OIG's audit plan and audit reports can be found at www.eac.gov.

The EAC Audit Follow-up Policy authorizes the EAC Executive Director to issue the management decision for OIG audits of Federal funds to state and local governments, to non-profit and for-profit organizations, and for single audits conducted by state auditors and independent public accountants (external audits). The Executive Director has delegated the evaluation of final audit reports provided by the OIG and single audit reports to the Director of the HAVA Grants Division of EAC. The Division provides a recommended course of action to the Executive Director for resolving questioned costs, administrative deficiencies, and other issues identified during an audit. The EAC Executive Director issues the EAC Management Decision that addresses the findings of the audit and details corrective measures to be taken by the State.

States may appeal the EAC management decisions. The EAC Commissioners serve as the appeal authority. A State has 30 days to appeal the EAC management decision. All appeals must be made in writing to the Chair of the Commission. The Commission will render a decision on the appeal no later than 60 days following receipt of the appeal or, in the case where additional information is needed and requested, 60 days from the date that the information is received from the State. The appeal decision is final and binding.

Please note with four Commissioner vacancies, the Commission presently lacks a quorum to conduct appeals. The 30 day period to file an appeal remains in place. However, the 60 day period for a decision will toll until a Commission quorum is reestablished.

AUDIT HISTORY

The OIG issued an audit report on the administration of payments received under the Help America Vote Act (HAVA) by Colorado Secretary of State (Office) on January 28, 2014. Based on the audit procedures performed, except for the matters discussed below, the auditors concluded that the Office generally accounted for and expended the Grant funds in accordance with grant and audit requirements for the period from April 28, 2003 through September 30, 2012.

Finding 1 – Financial Reporting

The Office's procedures to demonstrate the accuracy and completeness of Federal financial reports Forms 269 and 425, filed with the EAC, should be fully documented and include retention of submitted reports including underlying reconciliations to the formal accounting records.

Accurate and complete Federal financial reports are required by the grant award agreements and Federal regulations including specifically HAVA regulations. The EAC provides guidance on the preparation of the annual reports on its website.

The terms and conditions of the HAVA awards require the submission of accurate and complete Federal Forms 269 (Financial Status Report) and 425 (Federal Financial Report) which reflect the uses of award funds and the interest and program income generated from those funds. HAVA Title IX, Section 902. AUDITS AND REPAYMENT OF FUNDS, Part (a) – Recordkeeping Requirement states, "Each recipient of a grant or other payment made under this Act shall keep such records with respect to the payment as are consistent with sound accounting principles, including records which fully disclose the amount and disposition by such recipient of funds, the total cost of the project or undertaking for which such funds are used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit."

Recipients of federal assistance for HAVA Section 101, 102 and 251 program activities are required to file with EAC annual SF-269s for each type of funding. The SF-269 for HAVA Section 101 funds is due at the end of February covering the prior calendar year.

A prior audit conducted by an independent certified public accounting firm and also reported by the State Auditor in its 2007 Single Audit Report conducted pursuant to Office of Management and Budget Circular A-133 reported instances of incorrectly reporting HAVA expenditures and interest income earned on HAVA funds and inability of the Office to completely reconcile accounting records to Federal reports. The Office subsequently submitted revised reports which the EAC found to be acceptable and indicative of appropriate corrective action.

This audit validated on a test basis the correction of the deficiencies identified by prior auditors and reviewed selected Federal financial reports files subsequent to the prior audit period. We found that the Federal financial reports submitted by the Office could not be readily reconciled to the accounting records for reasons that consisted primarily of differences in the fiscal year end used for reporting purposes from that used by the State's accounting system and year-end accounting entries to transfer costs from the EAC fund to other funds, and records other correcting entries. For example, the Section 101 expenditures were reported on a calendar year basis, the Section 251 expenditures were reported on a fiscal year ending September 30, and the State's fiscal year ends, and the general ledger is closed, on June 30.

The Office was initially unable to provide Federal Forms 269 and 425 for all years of the awards and was unable to provide documentation as to how the reports reconciled to or were supported by the general ledger. This limited documentation was largely caused by the retirement of the HAVA Budget/Policy at June 30, 2012, and an inadequate understanding of the filing system and accounting documentation related to the EAC award.

The Office has not had specific procedures to guide and explain the reconciling items necessary to support the Federal reports. Documented reconciliations between the accounting records and the Federal reports exist; however, reconciling items are not consistently explained. Accordingly, agreement of the Federal reports to the accounting records requires verbal explanation, research and assistance from Office staff. With the assistance of the former HAVA Budget/Policy, we were able to determine that the Federal reports tested were in substantial agreement with the accounting records, with only a minor difference of approximately \$5,845 on the 2010 Federal Financial Report for Title I, Section 101.

The difficulty encountered in validating the Federal reports highlights the need for procedures to ensure that periodic reconciliations are performed and reconciling items fully explained in order to confirm that the disbursements listed on spreadsheets of expenditures used as a basis for the Federal reports agree with amounts listed in the State's accounting system for the Election Fund used to account for HAVA-related revenues and expenditures.

We also noted that the Federal reports for fiscal year 2012, although due 90 days after the September 30, 2012 year end, were not submitted until May 2013, resulting in a delinquency of approximately 5 months.

The absence of written guidelines for the preparation, documentation and timely submission of Federal reports and related policies for their review and approval may allow inaccurate or noncompliant reports to be submitted to the EAC, placing the Office at risk for sanctions.

The retirement of the HAVA Budget/Policy Analyst left the Office without personnel knowledgeable about the location, content or basis for reports submitted to the EAC in

prior years. This situation was exacerbated by the absence of complete and detailed written documentation to support Federal reports submitted throughout the award. Further, the absence of an individual charged with ensuring compliance with grant administrative requirements has likely contributed to the delinquency in preparing and submitting subsequent reports.

Recommendation:

The auditors recommend that the EAC require the Office to strengthen its controls over HAVA fund management by implementing the following procedures:

1. Creating and documenting procedures which ensure all expenditures of EAC funds can be reconciled to the general ledger and that all adjustments are fully documented and submitted to management review;
2. Implementing a supervisory review process to ensure the Federal reports are reviewed and agreed to the underlying reconciliation by management personnel independent from the preparer, and that such reports properly apply relevant EAC regulations; and
3. Resolving the \$5,845 of excess expenditure of Section 101 funds reported on the fiscal year 2010 report.

Secretary of State’s Response:

The Office agreed with the auditor’s findings and also agreed with the auditor’s recommendations. The Office stated that it would work with the EAC to resolve the \$5,845 discrepancy identified on the Section 101 federal financial report for fiscal year 2010.

EAC Response:

EAC is working with the Office to resolve the discrepancy identified on the Section 101 federal financial report. EAC will ensure appropriate corrective action.

Finding 2 – Equipment Management

The Office’s systems for monitoring EAC-funded equipment residing at county locations should be strengthened, and inventory records of equipment residing at the State’s offices should be expanded, to ensure compliance with Federal regulations.

The terms of the HAVA award required the Office to adhere to certain federal laws and regulations. The counties, by approving the Intergovernmental Subgrant Agreement with the Office, also agree to adhere to “all terms and conditions that CDOS (the Office) has agreed to as a condition of receiving federal funding under HAVA.” One of these, 41 CFR 105-71.132 (d), (the Common Rule) states that, “Procedures for managing

equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements: (1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds the title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the data of disposal and sale price of the property. (2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.”

The Office purchased EAC-funded equipment for use at the Office and also for use by Colorado counties. The counties received reimbursement for HAVA-eligible equipment pursuant to an agreement with the Office which outlined each county’s responsibilities as it related to performance and compliance with applicable regulations. Counties were required to submit proof of purchase in order to request and receive reimbursement from the Office. Each county was required to sign confirmation of receipt for any equipment received from the State related to the goals of the grant.

Subsequent to acquisition, the counties (and the Office) were required to prepare and maintain complete inventory records setting forth the specific information required by the Common Rule as noted above. The Office’s inventory listing omitted the location, use and condition of the property, or disposition data including the date of disposal and sale price of the property. Our review of inventory procedures at county locations revealed that, while the equipment was found to be consistent with the inventory listing, affixed with an identifying inventory tag, in usable condition and in fact being used as intended, county officials were not uniformly aware of the Common Rule inventory requirement with respect to the information to be maintained on property records.

The Common Rule also requires a bi-annual inventory of Federally-financed equipment. Colorado counties are required to conduct an inventory of all election-related equipment prior to each election. The Office required the counties to submit inventory listings and assigned individuals from the Office’s Elections Division to visit selected counties, validate the listing, and observe security measures. The resulting inventory listings documenting the procedures performed by Election Division personnel revealed that all EAC-funded equipment was accounted for, or, if not located, was identified as either broken, transferred to another county, or, in the case of one county, sold back to the original vendor. This last instance occurred because the voting machines were found to be in excess of those required for elections, and the county considered the equipment to be fully depreciated. Remaining equipment included comparable voting machines which had been financed with County monies (not EAC funds) and, accordingly, the minor amount of proceeds from the sale of equipment was more than offset by the County’s contribution to the cost of comparable equipment.

The Office’s equipment inventory monitoring process generally revealed that equipment located at the counties was accounted for. It did, however, identify weaknesses in the extent and content of inventory records and highlighted the importance of noting on the

inventory tags that equipment was financed with Federal funds, in order to ensure that the proceeds from disposition of such equipment are properly returned to the Federal government or used for eligible program purposes. Additionally, while the Office's county monitoring process provided assurance with respect to the existence of the EAC-financed equipment, this one-time effort does not meet the requirements for a bi-annual inventory as required by the Common Rule.

Inventory records maintained by the Office do not include the location, use and condition of the property, or disposition data including the date of disposal and sale price of the property. Additionally, a documented bi-annual physical inventory including inventory held at county locations is not completed by the Office.

Adequate property records and bi-annual physical inventories aid in the safeguarding of equipment purchased with Federal funds. A documented physical inventory also provides assurance that inventory items actually exist, are in working condition and are being used for their intended purpose.

The exceptions noted with respect to the Office's equipment management system occurred because of confusion with respect to the accounting and physical inspection requirements associated with Federally-financed equipment.

Recommendation:

The auditors recommend that the EAC require the Office to implement the following procedures:

1. Populate all fields included in the Office's inventory system and add fields to document use and condition, and disposal information;
2. Inform counties of the Common Rule requirements with respect to equipment management, accounting, safeguarding and disposition; and
3. Complete a physical observation of all inventory items on at least a bi-annual basis, including procedures to ensure compliance with the Common Rule.

Secretary of State's Response:

The Office disagreed with the premise that inventory records and inspections are required for equipment purchased in 2006, asserting that, because the EAC had not issued guidelines specific to election equipment depreciation, this equipment could be considered fully depreciated and no further inventory or record-keeping procedures were required. However, the Office agreed to work with the Colorado County Clerks and Recorders to complete the inventory records in accordance with the Common Rule, and to implement procedures to ensure that Office personnel conduct a physical inventory of equipment purchased with HAVA dollars on a bi-annual basis in accordance with federal requirements.

EAC Response:

The Office agreed to work with the Colorado Clerks and Recorders to complete the inventory records in accordance with the Common Rule that was adopted by EAC Commissioners on June 11, 2004. The Office has agreed to implement a procedure to ensure personnel conduct a physical inventory of the equipment purchased with HAVA dollars on a bi-annual basis in accordance with federal requirements. EAC will work with the Office to ensure an appropriate procedure is implemented and disseminated.

Finding 3 – Improper Use of HAVA Award Funds

The Office expended HAVA funds for purposes that are not allowable under the award's terms and conditions or HAVA regulations.

HAVA authorizes payments to states under Titles I and II as follows:

- Title I, Section 101 payments are for activities such as complying with Title III of HAVA for uniform and nondiscriminatory election technology and administration requirements, improving the administration of elections for Federal office, educating voters, training election officials and poll workers, and developing a state plan for requirements payments.
- Title I, Section 102 payments are available only for the replacement of punch card and lever action voting systems.
- Title II, Section 251 requirements payments are for complying with Title III requirements for voting system equipment; and for addressing provisional voting, voting information, statewide voter registration lists, and voters who register by mail.

The EAC, in its Funding Advisory Opinion FAO-08-005, concluded that HAVA funds may be used for voter registration activities as follows:

- Section 101(b)(1)(C) allows Section 101 funds to be used for educating voters concerning voting procedures.
- Section 251(b)(1) allows Section 251 funds to be used to implement and maintain a computerized statewide voter registration list and to publicly post on the day of each election for Federal office instructions on how to vote, including how to cast a vote and how to cast a provisional ballot. HAVA also mandates that the states adhere to various federal regulations with respect to grants management and apply sound accounting practices, including effective internal control systems, related to the receipt and use of Federal HAVA funds.

In its 2003 Help America Vote Act State Plan submitted by the then Secretary of State, the Office stated that the EAC Fund “will be administered by the Secretary of State in accordance with the financial controls and accounting standards required by Colorado and federal law. Such controls and standards involve legal responsibilities carried out by the State Controller, the State Treasurer, and the State Auditor. (See, for example, sections 2-3-103, 24-22-107, and 24-30-201, Colorado Revised Statutes.)”

The Code of Federal Regulations, specifically 41 CFR §105-71, *Uniform Administrative Requirements For Grants And Cooperative Agreements With State And Local Governments*, addresses Standards for Financial Management and Procurement Standards to be used by recipients of federal funds. Selected requirements include the following:

- Section 105-71.120, Standards for Financial Management Systems, (a) A State must expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds.
- Section 105–71.136 Procurement. (a) States. When procuring property and services under a grant, a State will allow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations.

The Code of Federal Regulations, specifically 2 CFR 225, *Cost Principles for State, Local and Indian Tribal Governments*, Appendix A to Part 225 - General Principles for Determining Allowable Costs states the following:

- Section 2. Policy guides, a.(1) Governmental units are responsible for the efficient and effective administration of Federal awards through the application of sound management practices.
- Section C. Basic Guidelines, 1. Factors affecting allowability of costs. To be allowable under Federal awards, costs must meet the following general criteria:
 - a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.
 - e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.
- Section C. Basic Guidelines, 2. Reasonable costs. In determining reasonableness of a given cost, consideration shall be given to:
 - a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award.

- b. The restraints or requirements imposed by such factors as: Sound business practices; arm's-length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award.
- c. Market prices for comparable goods or services.
- d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.
- e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.

The State of Colorado Fiscal Rules has, as its stated purpose “to set forth policies for state agencies and institutions of higher education concerning internal controls, accounting policies, and financial reporting for the State of Colorado.” These rules include Rule 2-2, Section 3 which requires that disbursements by State Agencies larger than \$5,000 in amount be supported by a commitment voucher. The commitment voucher must adequately define the requirements, respective performance obligations of the parties, and pricing; include certain terms and conditions; comply with applicable statutes, executive orders, rules and policies; and include prices or rates that are fair and reasonable. Section 4 presents the State requirement that all agreements for services exceeding \$100,000 in value must be in the form of a State Contract.

The State of Colorado Procurement Manual addresses competitive procurement processes, noting “Service and construction projects costing between \$25,000 and \$150,000 may be purchased using the document quote process under R §24-103-204-03. The Procurement Rules require formal Solicitation of competitive Bids for Procurements in excess of \$150,000”. The document quote process is a process of soliciting informally for fulfilling the State’s need for a specific products or service and receiving and evaluating vendor responses. This process may be conducted only by a procurement officer or designee, and quotes obtained using the document quote process must be published in BIDS. BIDS is a web site designed to notify interested suppliers of the State of Colorado's intent to purchase goods or services competitively. Colorado BIDS acts as a centralized clearing house of information on bidding opportunities for State agencies and interested, prospective vendors. In the event of negotiated contracts, the Procurement Manual requires that “After selection, the Agency/IHE must then document the discussion and the basis for making its determination”.

The State of Colorado Procurement Manual also provides a framework for “improving procurement related processes and practices”, and includes a Procurement Code of Ethics. It addresses the Statement of Work to be included in each contract for services, noting “SOWs are critical to Contracts and should include as clear, comprehensive, and concise a statement of the Vendor’s Obligations, i.e. what they are to do, as possible.

SOWs should also (a) delineate performance measures for Vendors and the State's Obligations, if any beyond payment, and (b) to the extent relevant, set forth the how, where, when, and by whom of performance. Clear, comprehensive and concise SOWs are the key to avoiding Disputes and possible litigation with Vendors".

During the summer of 2012, the Office charged \$356,846 to an account entitled "Marketing – Public Relations", for activities associated with an initiative described on the Office's web site as the "2012 Voter Registration Campaign". These costs included small payments to media outlets and \$348,480 of payments to three contractors, none of which were made pursuant to a contract or through competitive solicitation.

The nature of the 2012 Voter Registration Campaign costs were media communications consisting of advertisements and communications through media including newspapers, television, radio and web-site video postings. The media spots were focused primarily on encouraging eligible residents to register to vote. Messages included statements such as "Go to GoVoteColorado.com" and "Make Colorado #1 in Voter Registration". Television and radio advertisements included numerous interviews with members of the public, asking whether they were registered to vote.

As described by the Deputy Secretary of State, the print ads include the deadline for voter registration and the web site url for voter registration, which she deemed to be the "educational" component. She noted that she had insisted that this portion of the message be included.

In its above-referenced Funding Advisory Opinion, the EAC noted that, while Section 101 funds may be used for educating voters concerning voting procedures, the phrases "educating voters on voting procedures" and "how to cast a vote" would include providing instruction on how to register to vote as one could not vote if not registered. However, voter registration activities do not qualify for funding under the umbrella of improvements to the administration of elections for Federal office because the activities do not directly contribute to the administration of a Federal

The Funding Advisory Opinion further notes that "Neither Section 101 nor 251 funds may be used to conduct voter registration drives or get out the vote efforts; including advertising for the event, setting up booths, and paying salaries of employees who register new voters. Neither Section 101 nor 251 funds can be used for "get out the vote" activities. In those cases where it is not clear whether a registration activity is educational or a get out the vote effort (i.e. encouraging citizens to vote on Election Day), the State should contact EAC for a determination on the basis of the specific circumstances." Of the three firms used for this campaign, only one of the firms had previously provided services to the Office. Another firm was created on June 28, 2012, and was selected to coordinate the media efforts beginning in July of 2012. A third firm was brought to the project by the newly created campaign coordinating contractor.

Considering that there was no formal solicitation for services, during which the vendors could have provided and documented their ability to perform the specific services

requested, it is unclear how the Office determined that these firms were in fact responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement, as required by federal regulations. Further, absent an open solicitation for services from qualified vendors, the procurement was not conducted in a manner to provide, to the maximum extent practical, open and free competition and ensure that market rates were paid for the services rendered, and was not consistent with the State's Procurement Manual.

The absence of any contracts for these three firms, two of which was paid more than \$100,000 for their services, setting forth the requirements and obligations of the vendors and the Office, even though mandated by federal regulations, also places the Office in violation of the State's own Fiscal Rules which require contracts for purchases of services in excess of \$100,000.

Finally, adequate procurement records were not prepared or maintained, as required by federal regulations and the State's Procurement Manual, documenting the basis for contractor selection; justification for lack of competition when competitive bids or offers are not obtained; and basis for award cost or price.

In addition to the \$356,846 of "Public Relations" costs including \$348,480 in payments to these three firms between July and September 2012, we noted that additional media-related costs approximating \$500,000 were recorded in the general ledger as expenditures charged to the HAVA fund through January 2013.

We were advised by Office management, including the Deputy Secretary of State and the Office's Chief of Staff, that the reason for these sole source vendor selections was due to a lack of time to create the voter registration campaign prior to the Oct 9 voter registration deadline. The State does not mandate adherence to the State of Colorado Fiscal Rules or the State's Procurement Manual by elected State officials, including the Secretary of State. However, all of the charges to the HAVA award tested, other than those pertaining to the Voter Registration/Media Campaign, followed the procedures set forth in the Fiscal Rules and Procurement Manual. Selection of the 3 firms providing media-related services did not follow these established procedures, which specify, among other subjects, content and required approvals for State contracts and requirements for competition, accounting and monitoring of contracts. Rather, the documentation accompanying payment to these 3 vendors notes that, per the Office's Chief of Staff, the Secretary of State is exercising his "Elected Official Exemption" and is therefore not required to adhere to the procedures contained in the State's Fiscal Rules or Procurement Manual.

Colorado Revised Statutes Section 24-101-105 is referenced in the State's Procurement Manual, which states the following:

The Procurement Code applies to all publicly funded Contracts entered into by all governmental bodies of the State executive branch, with the exception of: iv) Procurements by Legislative and Judicial Branches and the four elected officials

in the Executive Branch: Governor, Treasurer, Secretary of State, and Attorney General. This exemption is personal to the elected official and may not be used by departments, offices, or Agencies under their direction.

The exercise of an exemption from the financial management and internal control processes established for use by the State of Colorado is not consistent with federal award requirements for the following reasons:

1. The exemption is personal to the elected official. As noted above, Federal regulations, specifically the Common Rule, 41 CFR 105-71.136, provide that, a State may follow the same policies and procedures it uses for procurements from its non-Federal funds. The HAVA award was made to the State of Colorado, not to the elected Secretary of State, and the State's approved policies and procedures were applicable to the administration of the award; not a special exemption available only to certain elected officials of the State.
2. Utilizing this exemption to incur costs charged to the HAVA award is inconsistent with the Office's HAVA State Plan, which commits that the EAC Fund "will be administered by the Secretary of State in accordance with the financial controls and accounting standards required by Colorado and federal law". Federal law does not allow a State to opt out of any adopted system of internal controls.
3. There was no documentation from the Secretary of State or his deputy justifying the decision not to adhere to the State's Fiscal Rules or to applicable federal regulations.

Sound business practices and internal control concepts recognize that decisions to ignore approved and established policies and procedures should be justified and documented. Federal regulations establish that all procurement transactions should be conducted in a manner providing full and open competition. Noncompetitive procurements should only be used in situations in which the use of competitive proposals is not feasible, the service is available only from one vendor, or the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; the awarding agency authorizes noncompetitive proposals, or, after solicitation of a number of sources, competition is determined inadequate. Regulations also state that cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required. Further, grantees must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. All pre-award procurement documents may be reviewed by the awarding federal agency upon request.

In addition to the absence of a written contract, invoices submitted did not provide the level of detail to support whether the State or Federal governments had received comparable value in exchange for the amounts billed and paid. We were provided examples of the broad requests set forth on sample invoices, including one vendor's

invoice for \$82,515 which described the service rendered as “50% of Media Campaign Production - Delivered Director’s Treatment.”

The description provided by another vendor of its proposed services did not include any services that would likely be considered an allowable use of HAVA funds.

One purchase order description was limited to “Media Campaign”. The related proposal in the amount of \$850,000 identified deliverables to be “Television, Newspaper, Radio, Interactive”. The objective, as stated by this vendor, was to “create an integrated awareness campaign targeting Colorado residents that:

- Increases voter registration in Colorado
- Educates residents on why registering and voting is so important
- Creates recognition for the work being done by Colorado Department of State
- Raises the profile of the Secretary of State’s office
- Launches our new communications strategy and messaging.”

None of the objectives cited above constitute an allowable use of HAVA funds.

Our audit procedures revealed that both the HAVA Budget/Policy Analyst and the Chief Financial Officer questioned the use of HAVA funds for a voter registration/media campaign and advised Office management against charging the costs to the HAVA award. Documentation of these communications include emails setting forth the results of specific inquiries to the EAC during a web-based seminar, noting that “The basic answer was that costs for voter registration activities are not allowable costs under HAVA” and advising management to “ask the EAC for a determination if the costs are allowable” prior to charging any voter registration-related costs. We also viewed a Weekly Update memorandum to the Secretary of State, Deputy Secretary of State, Chief of Staff and other top management which cited allowable uses of HAVA funds and highlighted as an *unallowable use* “encouraging citizens to register to vote or to vote”.

We were also advised by the Deputy Secretary of State that the Office had requested the media outlets to run the media spots as public service announcements, but the outlets refused to do so, stating that they did not believe the advertisements met the requirements associated with this category. One television channel noted that they viewed the advertisements as too political in nature to qualify for public service treatment.

The above-described contractual services associated with the voter registration campaign include only an incidental educational component; accordingly these costs are not eligible for reimbursement from HAVA award funds. These costs are further questioned because the Office did not adhere to the internal control and financial management practices mandated by Federal law. Therefore, costs of \$315,830 charged through September 30, 2012, are questioned as to their allowability under the terms of the HAVA award.

Failure to adhere to internal control concepts and Federal and state laws with respect to procurement and contracting practices increases the likelihood that unallowable costs and noncompliance with grantor and regulatory requirements may occur and remain undetected.

The charging of the above-described questioned costs to the HAVA award occurred because the Office did not adhere to prescribed practices and controls surrounding the purchasing and payment processes. Senior management of the Office initiated, directed and approved the expenditure of HAVA funds for unauthorized purposes, in violation of competitive procurement procedures, required Federal regulations, and State Fiscal Rules, over the objections of the Chief Financial Officer and the HAVA Budget/Policy Analyst.

Recommendation:

The auditors recommend that the EAC require the Office to implement the following procedures:

1. Establish, document and communicate internal control policies and procedures that ensure adherence to applicable Federal regulations
2. Establish, document and communicate internal control policies and procedures that ensure any use of the Election Official Exemption is permitted by federal grantors, if involving federal award, authorized in accordance with the State's Fiscal Rules and that the rationale for its use is documented,
3. Establish, document and communicate internal control policies and procedures that preclude the opportunity for management override of established internal control procedures,
4. Establish, document and communicate internal control policies and procedures that ensure no payments are made without appropriate detail as to the rates, quantities, costs, deliverables, and authority supporting such payments,
5. Remove all costs associated with the Voter Registration Campaign charged through the end of this audit period, September 30, 2012,
6. Request a certification that no costs associated with the Voter Registration Campaign, other than the \$356,846 of costs discussed above, have been charged to the HAVA award for the period from award inception in April 28, of 2003 to September 30, 2012, and
7. Request a certification that no costs associated with the Voter Registration Campaign have been charged to the HAVA award subsequent to September 30, 2012, and also request supporting verification of this certification in the form of a detail general ledger for the HAVA Election Fund. To the extent that Voter Registration Campaign costs have been charged to the HAVA award subsequent to September 30, 2012, these costs should be evaluated for potential disallowance and return to the EAC.

Secretary of State's Response:

The Office disagreed with the finding, stating that the media campaign was sufficiently focused on educating voters as to be an allowable use of HAVA funds, and that the HAVA Budget/Policy Analyst agreed with this assessment and the CFO approved the expenditures. The Office also noted that the Secretary of State has the option of asserting the Elected Officials Exemption, properly exercised that option and was therefore exempt from the State's Fiscal Rules and Procurement Code. The Office states that "nothing in law required the Secretary to document or justify his use of the elected officials exemption." The Office also asserted that, "By complying with Colorado law, the Secretary of State necessarily complied with federal law when expending the HAVA funds."

EAC Response:

At the request of the Office, EAC has requested a legal opinion to determine whether the Office properly exercised the option of asserting the Elected Officials Exemption. Regardless, the Office should have established and documented internal control policies and procedures that preclude the opportunity for management to override their existence.

After reviewing the materials forwarded by the Office, EAC has determined that the media materials were sufficiently focused on educating voters and not focused on a voter registration campaign. EAC will review any additional materials and certifications forwarded by the Office.

EAC will review all recommendations and ensure appropriate corrective action.