



EAC MANAGEMENT DECISION:

Resolution of the OIG Audit Report on the Administration of Payments Received Under the Help America Vote Act by the Nebraska Office of Elections for the Period April 22, 2003 Through September 30, 2012 Report No. E-HP-NE-07-12

November 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 the Nebraska Secretary of State's Office (Office) on September 12, 2013. 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 22, 2003 through September 30, 2012.

Finding 1 – Financial Reporting

The Nebraska Secretary of State's Office (Office) submitted financial reports that could not be supported by underlying accounting records.

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.”

Recommendation:

We recommend that the EAC address and resolve the following recommendations that the Nebraska Secretary of State's Office:

(a) Perform a reconciliation of the grant activity for the Section 101 and Section 251 funds and ensure that all program income earned and expenditures incurred are fully disclosed.

(b) Prepare and submit revised financial reports to the EAC for Section 101 and Section 251 activities as of September 30, 2012.

Secretary of State Response:

We have performed additional analysis of the SFRs submitted for Section 101 and Section 251 activities. Based upon this analysis and additional information received from the auditors, particularly information regarding their analysis of program income, we agree that amended SFRs will be necessary. The primary differences relate to how expenditures of state matching funds and interest on state matching funds were reported

and the auditor has provided additional guidance as to the proper recording of those items. Additionally, for 2009, the Title I report appears to contain an error. That year the Title I SFRs were revised to reflect a fiscal year period rather than a calendar year period. We will work with EAC Audit Resolution to determine which reports are necessary to amend.

EAC Response:

The Office will submit revised financial reports as necessary. EAC will continue to work with the Office throughout this process to ensure appropriate corrective action.

Finding 2 – Unsupported Payroll Costs Charged to the Grant

The Office did not accurately charge payroll costs to the grant based on percentage of effort for each of the State employees.

Office of Management and Budget (OMB) Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*, Attachment B.8.h.(5)(e), states that, “Budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to Federal awards but may be used for interim accounting purposes, provided that: (i) The governmental unit's system for establishing the estimates produces reasonable approximations of the activity actually performed; (ii) At least quarterly, comparisons of actual costs to budgeted distributions based on the monthly activity reports are made. Costs charged to Federal awards to reflect adjustments made as a result of the activity actually performed may be recorded annually if the quarterly comparisons show the differences between budgeted and actual costs are less than ten percent; and (iii) The budget estimates or other distribution percentages are revised at least quarterly, if necessary, to reflect changed circumstances.”

Attachment B.8.h.(4), states that “Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection (5)... Such documentary support will be required where employees work on... (b) A Federal award and a non Federal award”

Attachment B.8.h.(5), states that “Personnel activity reports or equivalent documentation must meet the following standards: (a) They must reflect an after the fact distribution of the actual activity of each employee, (b) They must account for the total activity for which each employee is compensated, (c) They must be prepared at least monthly and must coincide with one or more pay periods, and (d) They must be signed by the employee.”

The Office charges salaries to the grant based on annual budget estimates and makes adjustments as deemed necessary. The Office requires each employee to complete a timesheet on a monthly basis recording the hours worked and leave hours. This timesheet

includes a column for work performed on HAVA activities. Although, the timesheet used by the Office is compliant with the above mentioned requirements, it is not mandated for employees to record their hours for HAVA activities. Additionally, there was no evidence that the Office made quarterly comparisons of actual costs to budgeted distributions. This resulted in the Office likely overallocating personnel cost to the grant.

The audit sampled eight monthly pay periods and compared the effort recorded on each employee's timesheet to the estimate used by the Office. The amount charged to the grant in excess of actual work effort reported on the timesheet totaled \$38,617, or 40% of the \$96,722 of salaries charged to the grant during those periods. Therefore, we question costs of \$38,617 of the salaries allocated to HAVA. Of the \$38,617 overallocated, \$33,262 were for employees who did not record any hours on their timesheet in the column provided for HAVA activities. The Office charged approximately \$1.37 million in salary costs to the grant during the period under review.

The eight payroll periods tested provided 33 transactions. The audit requested documentation of approved pay rates for each transaction selected for testing. The Office was not able to provide 11 of the 33 approved rates. It was noted that 9 of the 11 were for pay periods prior to June 2006. Additionally, there were four approved pay rates provided that did not agree with the annualized salary calculated from the supporting payroll documentation. The approved salary rates ranged from \$269 to \$4,244 less than what was supported on the payroll register.

Recommendation:

We recommend that the EAC address and resolve the following recommendations that the Nebraska Secretary of State's Office:

- (a) Transfer into the election fund \$38,617 for the questioned costs cited above.
- (b) Perform and provide additional analysis for all payroll charges allocated to HAVA to determine the extent of any excess allocations.
- (c) Implement written policies and provide training to ensure that employees who expend efforts on Federal activities to accurately record their time on the Office provided timesheet.
- (d) Implement procedures to reconcile charges allocated to the grant to the percentage of time expended by employees on a periodic basis, no less than quarterly.

Secretary of State Response:

This Office does not disagree with the Finding but does disagree with the Recommendations and offers a response to the specific recommendations as indicated below.

(a) The findings reflect that the Office charged \$1.37 million in salary costs to the grant during the 8 year period under review, and only \$38,617 is contested. The disputed amount of \$38,617 arises from the lack of allocation of time on the time sheets to HAVA activities for the Deputy for Elections and his Administrative Assistant for 8 payroll periods tested after 2009.

Specifically, the Office contests the findings that the “amount charged to the grant in excess of actual work reported to the time sheets totaled \$38,617, or 40% of the \$96,722 of salaries charged to the grant during those periods”; and the further finding that \$33,262 of the claimed over-allocation were for employees who did not record any hours on their timesheets in the column provided for HAVA activities.

Despite the considerable time spent by both on HAVA related activities prior to 2009, they did not allocate time to HAVA as a precaution to preserve HAVA funds for the Central Voter Registration System and Vote Tabulation equipment’s ongoing costs for future years since state funding to take over those costs was not assured. When these two employees began allocating, they did not make the monthly allocations of their time to HAVA and non-HAVA on their time sheets as provided, although percentage allocations were designated for salary purposes.

The two employees, the Division Deputy and Administrative Assistant, were the two employees who were most engaged in and directing and supporting Division staff and HAVA activities being performed by the staff of that Division. To say that they were not detailing their time sheets to reflect allocation of time is a proper conclusion, a ministerial error on their part. However, to say their percentage allocation was excessive by \$33,262 is unwarranted. If anything, they were underestimating their percentage of allocation to HAVA, in an effort to continue preserving as much HAVA funds as possible for future costs.

Per the exit conference, the Secretary of State will work with EAC Audit Resolution to determine any necessary corrective action.

(b) The Secretary of State’s Office will work with EAC Audit Resolution to perform or provide any required additional analysis of the questioned costs of \$38,317 using meaningful and objective standards based upon work performed and duties required of the employees during the period under review.

(c) The Office agrees with this recommendation and has already implemented the recommendation.

(d) The Office agrees with this recommendation and will implement the recommendation at the completion of each quarter.

EAC Response:

EAC substantially agrees with the Finding and will work with the Office to ensure appropriate corrective action.

Finding 3 – Inadequate Equipment Management

The Office property records are not adequate.

The *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments* 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 date of disposal and sale price of the property.”

The official inventory listing provided for review did not detail the cost or location for all inventory items. The inventory listing identified 44 items paid for with HAVA funds that did not have the cost populated. Additionally, AutoMARKs purchased for each of the counties did not identify the location of the assets. The Office does maintain a separate listing identifying the location.

Recommendation:

We recommend that the EAC require the Office to populate all fields included in their inventory system.

Secretary of State Response:

During 2004, several servers and other HAVA equipment items were added to the Secretary of State’s equipment inventory under one tag number and dollar amount. In August of 2012, our IT Manager traveled to the equipment site, separately tagged each equipment item and then correctly separated this equipment in our statewide inventory system. As this employee did not have access to the state’s financial system, he was only able to add the new tag numbers, location, description, etc. for these pieces of equipment.

As communicated to the auditors during their period of audit fieldwork, state policy requires each state agency to reconcile their equipment inventory by June 30 of each year. We explained to the auditors that costs associated with those 44 pieces of equipment would be added to the fixed asset system during June, 2013. On June 25, 2013 our office processed the appropriate accounting entries to add cost to the HAVA equipment referenced above.

We have since sent the auditors an updated fixed asset listing for the items in question. As a result, we believe this audit finding is no longer relevant and should be removed from the final audit report.

EAC Response:

As indicated by the auditor’s response, the corrective action has resolved this finding.

EAC considers this matter closed.

Finding 4: Unallowable Cost

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

HAVA Section 101 (b)(1) states, “A State shall use the funds provided under a payment made under this section to carry out one or more of the following activities: (C) Educating voters concerning voting procedures, voting rights, and voting technology.

The EAC, in its Funding Advisory Opinion FAO-08-005, concluded that:

- Neither Section 101 nor 251 funds may be used to conduct voter registration drives or get out the vote efforts

The Office expended \$10,000 of Section 101 funds on advertising in October 2004. The script approved for use in this advertisement shows that the main message communicated in the commercial was to “get out the vote.” Therefore, we question the \$10,000 spent in order to create this advertisement.

Additionally, the Office hired a consultant to provide public relation services. He was compensated for activities such as, Vote in Honor of a Veteran Video, drafting news releases, drafting letters to county officials, etc. The audit requested additional documentation on these activities but it was not provided. Without this additional documentation it cannot be determined whether these activities comply with program requirements. Total disbursements made to the consultant were \$29,828. Therefore, we question the \$29,828 paid to the consultant.

Recommendation:

We recommend that the EAC address and resolve the following recommendations that the Nebraska Secretary of State’s Office:

- (a) Transfer to the election fund \$39,828 for the questioned costs cited above.
- (b) Determine if public relation services paid for with Section 101 funds are allowable due to the lack of documentation provided by the Office.

Secretary of State Response:

The Nebraska Secretary of State’s Office disagrees with Finding No. 4, which consists of two parts. The first portion addresses the production of a Public Service Announcement

targeting young voters in October of 2004. The Office disagrees with the finding's characterization of the PSA as solely a "Get Out the Vote" advertisement. The PSA was intended to pique young voters' interest in the process and used scenes of a staged rally by 18-25 year olds. The signs used in the PSA were of a generic nature and did not address any issue that was on the ballot in 2004 or in subsequent years.

The finding references and partially quotes the EAC's FAO-08-005, which was issued almost four years after production of the PSA. It should also be noted that FAO-08-005 (p. 2, #4) recognizes that this area is not always clear and suggests that the EAC should be contacted "for a determination on the basis of the specific circumstances." Obviously it is impossible to "pre-clear" an activity that occurred almost four years prior. The Secretary of State will work with EAC Audit Resolution as to further action relative to this finding (Recommendation (a)).

The Secretary of State Office also disagrees with the second portion of this finding. The auditors, in addressing the communications contractor's one invoice, apparently have jumped to the conclusion that none of the contractor's work was allowable and the resulting recommendation merely compiles all costs of the invoices attributed to HAVA over a 9 year period.

The independent communications contractor providing the questioned services was a trained attorney and a career journalist prior to contracting to provide services to the Secretary of State Office, and his services were contracted for over nine years from 2003 through 2012. He was required by contract to provide a detailed reporting of his hours of work on a monthly basis to justify his contract payments, which he did. However, the contracts did not provide for how the contractor would designate his time for funding allocation purposes.

The Secretary of State reviewed and approved those monthly invoices for purposes of confirming the work done and the invoice cost. The invoices were for work as communications director for the Office and covered all five divisions of the Office; the contractor worked directly for the Secretary of State for that reason, and the Secretary reviewed the time allocations monthly. The Secretary of State only reviewed the invoices for purposes of confirming the projects worked on and the total time expended on such projects; the Secretary was not reviewing the invoices for payment allocation purposes, which was done by the Controller of the Office.

It is unlikely that the contractor was intentionally indicating which funds should be used in his designation of how his time was spent. Based on the one invoice questioned, where the designation "HAVA" was used may have included covered HAVA and non-HAVA election matters, certainly a good portion of such designations did arise from HAVA projects directly or indirectly. While some transfer may be needed to the election fund, only a full review of the contractor's nine years of invoices can determine what was properly HAVA and what was not. The Office is willing to perform a full item by item review to confirm what might be a proper allocation of the contractor's time to HAVA

and what was not. Per the exit conference, we will work with EAC Audit Resolution as to any necessary corrective action.

EAC Response:

EAC will review the script of the Public Service Announce and provide guidance on the allowability of the charges. The Office will conduct a full review of the invoices for the consultant and provide the results of that review to EAC. EAC will ensure appropriate corrective action.

Finding 5 – Procurement of Contract Services

The Office does not have written policies and procedures relating to procurement of services. Without written policies and procedures that require documentation for selection of services it cannot be assured that the best value is received with HAVA funds.

The *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments* 41 CFR § 105-71.136 (a) (the “Common Rule”) states that, “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 of Nebraska has written procurement policies for contract services that are outlined by the Department of Administration (DAS) Materiel Division. However, Nebraska Statute provides an exemption to the Secretary of State’s Office from those procurement policies. Although the Office is exempt from using the State’s procurement policies there should be fully developed written policies that achieve the same objectives when soliciting contractual services. Written policies allow for contractual services to be sought in a fair and consistent manner.

The audit reviewed ten service contracts entered into by the Office. Of these ten contracts, nine contracts were entered into without the use of competitive bidding. There were 173 payments made to these vendors totaling \$1,067,634.

The State Auditor of Public Accounts issued a finding in 2004 relating to one of the contracts that was selected for review and noted no documentation was maintained to support the basis for the selection of the consultant.

Recommendation:

We recommend that the Office implement and document written policies and procedures that ensure that services purchased with Federal funds are solicited through fair and open bidding. Documentation should be maintained to support that interested bidders were evaluated and that the best value is achieved with Federal funds.

Secretary of State Response:

The Nebraska Secretary of State follows all statutes and procedures that apply to the agency and adheres to and employs sound business practices. However, we do understand the merit of written policies to ensure and document a fair and transparent process for the procurement of contractual services. Therefore, the Secretary of State will develop written policies for the procurement of contractual services by December 31, 2013.

EAC Response:

The Office will forward the policies and procedures to EAC when they are developed. EAC will ensure appropriate corrective action.