



**U.S. ELECTION ASSISTANCE
COMMISSION
OFFICE OF INSPECTOR GENERAL**

FINAL REPORT:

**AUDIT OF EXPENDITURES
OF HELP AMERICA VOTE ACT FUNDS
BY THE CALIFORNIA OFFICE OF THE
SECRETARY OF STATE**

**Report No.
E-HP-CA-01-06
December 2005**



U.S. ELECTION ASSISTANCE COMMISSION
OFFICE OF INSPECTOR GENERAL
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

December 19, 2005

Memorandum

To: Mr. Thomas Wilkey
Executive Director, U.S. Election Assistance Commission

From: Roger La Rouché
Acting Inspector General

Subject: Audit Report on the Expenditures of Help America Vote Act Funds by the California Office of the Secretary of State

The Election Assistance Commission (Commission) contracted with the Office of Inspector General, U.S. Department of the Interior (DOI-OIG), to audit the expenditure of payments authorized by the Help America Vote Act of 2002 (HAVA) by the California Office of the Secretary of State (Office). The Commission arranged for the audit to follow up on a prior report by the California Bureau of State Audits (BSA) that identified questionably uses of HAVA funds by the Office.

Summary of DOI-OIG Audit Findings

The DOI-OIG audit (Attachment 1) questioned the Office's use of HAVA funds totaling \$3,860,361 because:

- The expenditures (\$777,502) did not conform to federal costs principles. For example, the Office used HAVA funds for salaries and benefits applicable to non HAVA-related activities, unreasonable postage costs, improper promotional items and memorabilia, and costs outside of contract terms.
- The expenditures (\$3,082,859) lacked supporting documentation required by federal and California state requirements. This consisted principally of charges for personnel costs that were not substantiated by employee activity reports or certifications and the costs of consultant contracts that were awarded without adequate competition.

Response from the Office of the Secretary of State

In its November 30, 2005 response to the report (Attachment 2), the Assistant Secretary of State, Operations, said that the current administration has "implemented many of the BSA recommendations, which we understand served as a basis for some of

these findings, and continue to make changes to improve the program's effectiveness, achieve compliance with HAVA's mandates, and restore public confidence in the SOS [Office of the Secretary of State]."

Regarding the questioned costs, the Office agreed with findings totaling \$1,714,477 and disagreed with findings totaling \$2,145,884. The principal area of disagreement is with the \$1,994,922 of consultant contracts that the audit classified as unsupported because the purchases did not meet the State's competitive bidding requirements or were not adequately substantiated by invoices. The response states that the Office followed the appropriate requirements for the award of the consultant contracts, and that the costs of services invoiced under the contracts were sufficiently documented.

Comments from the DOI-OIG

At our request, the DOI-OIG reviewed the Office's response. In regard to the consultant contracts, the DOI-OIG said:

the findings pertaining to the Office's questionable practices when procuring goods and services . . . parallel the findings of the Bureau of State Audits (BSA) report. . . . Based on our review of documents, we concur with BSA's audit findings and conclusions.

Regarding the issue of insufficient invoices, . . . [w]e do not believe that the Office could have adequately evaluated the consultant services invoices against each individual contract because the invoices did not identify the specific activity being billed or how much time was spent on each activity.

Recommendations to the Executive Director

We recommend that the Executive Director:

1. Resolve the questioned costs.
2. Take other action as appropriate to ensure that the Secretary of State complies with requirements for the use of HAVA funds.

Please provide us with your written response to the recommendations by March 3, 2006. Your response should include a copy of the final determination that was communicated to the Secretary of State and a description of any oversight or additional reporting requirements imposed on the Office. If corrective actions will be completed over time, submit a plan of action, which includes milestone dates and the names of responsible officials.

The legislation, as amended, creating the Office of Inspector General requires that we report to Congress semiannually on all audit reports issued, actions taken to implement our recommendations, and recommendations that have not been implemented. Therefore, this report will be included in our next semiannual report.

If you have any questions about this report, please contact me at (202) 566-3121.

Attachments (2)



United States Department of the Interior
Office of Inspector General
Western Region
Federal Building
2800 Cottage Way, Suite E-2712
Sacramento, California 95825

October 11, 2005
7430

Ms. Gracia Hillman, Chair
U. S. Election Assistance Commission
1225 New York Avenue, N.W., Suite 1100
Washington, D.C. 20005

Dear Ms. Hillman:

In response to your request for an audit and in accordance with the May 11, 2005 Memorandum of Understanding, we are enclosing the report *Audit of Expenditures by the California Secretary of State's Office Under the Help America Vote Act of 2002*, Report No. W-RR-OIG-0005-2005. Our audit of expenditures totaling \$8,733,552 made by the State of California's Office of the Secretary of State under Title I, Section 101, of the Help America Vote Act (HAVA) of 2002, resulted in questioned costs of \$3,860,361. This audit is a follow on to a report by the California Bureau of State Audits that identified deficiencies in administering HAVA funds by the Office of the Secretary of State.

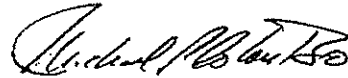
Of the questioned amount, we took exception to \$777,502 because the expenditures did not conform to federal cost principles, that is, they were related to the purchase of capitalized general purpose equipment and promotional items or memorabilia, were not related to HAVA, or were contract costs paid that were outside the terms of the contract. We classified expenditures of \$3,082,859 as unsupported because they lacked the support documentation required by both federal and California state regulations.

On July 7, 2005, we met with officials of the Secretary of State's Office, who generally concurred with our findings and bases for questioned costs. These officials also provided additional information or supporting documents regarding questioned costs, which we incorporated into the draft as appropriate.

We incorporated, as appropriate, the U.S. Election Assistance Commission's (EAC) September 23, 2005 comments. As requested, we also are providing, under separate cover, schedules detailing the cost exceptions and unsupported costs and our bases for questioning these costs.

We appreciate the opportunity to assist the EAC in its efforts to improve the administration of federal elections. If you have any questions, please do not hesitate to call me at (916) 978-5653.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. Colombo". The signature is fluid and cursive, with the first name being the most prominent.

Michael P. Colombo
Regional Audit Manager

Enclosure

cc: Roger La Rouche, Acting Inspector General
U. S. Election Assistance Commission

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Abbreviations:

BSA.....	Bureau of State Audits
CMAS	California Multiple Award Schedule
DGS.....	Department of General Services
EAC.....	U.S. Election Assistance Commission
GSA.....	General Services Administration
HAVA.....	Help America Vote Act of 2002
IT.....	Information Technology
Office	Office of the Secretary of State
OIG	Office of Inspector General
OMB	Office of Management and Budget
PAM.....	Purchasing Authority Manual
State.....	State of California

Background

The U.S. Election Assistance Commission (EAC) is an independent, bipartisan agency authorized by the Help America Vote Act of 2002¹ (HAVA) to assist states and insular areas with improving the administration of federal elections and to provide funds to states and insular area governments to help implement these improvements. The EAC serves as a national clearinghouse to provide information regarding federal elections. In fiscal year 2003, the U.S. General Services Administration (GSA) disbursed \$27,340,830 to the State of California (State), pursuant to HAVA Title I, Section 101, for activities to improve the administration of elections. The State of California, through the Office of the Secretary of State (Office), has expended approximately \$5.3 million of these funds, and obligated approximately \$9.6 million, as of December 31, 2004, for a total expenditure and obligation amount of about \$14.9 million. See Table 1 below.

Table 1
HAVA Title I, Section 101, Funds Disbursed, Expended, Obligated, & Unexpended
(Amounts as of December 31, 2004)

Disbursed		\$27,340,830
Expended	\$5,335,268	
Obligated	9,587,599	
Expended & Obligated		14,922,867
Unexpended/Unobligated		\$12,417,963

Source: Amounts shown per Financial Status Report (SF-269) provided by the Office to EAC.

When the funds were disbursed by GSA, the State of California was notified that the funds were to be used in keeping with HAVA, Office of Management and Budget (OMB) Circulars A-87, A-102 and A-133,² the Cash Management Improvement Act, and the Uniform Administrative Requirements for Grants and Cooperative Agreements With State and Local Governments (“Common Rule,” Administrative Requirement, 53 FR 8087, March 11, 1988).³

¹ Public Law 107-252 (42 U.S.C. 15301). In addition to establishing the EAC, the Act established a program to provide funds to states to replace punch card voting systems and established minimum election administration standards for states and units of local government with responsibility for the administration of federal elections.

² OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments; OMB Circular A-102, Grants and Cooperative Agreements With State and Local Governments; and OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.

³ In lieu of 53 FR 8087, we used GSA’s uniform administrative requirements for grants and cooperative agreements with state and local governments (“Common Rule,” Code of Federal Regulations, Title 41, Subtitle C, Section 105-71) because regulations have not yet been formulated for EAC.

Prior Audit Coverage

The Bureau of State Audits (BSA) for the State of California conducted an audit of HAVA funds expended or obligated by the Office as of June 30, 2004.⁴ The objective of the audit was to review and evaluate relevant laws, rules, and regulations to determine whether the Office (1) used HAVA funds only for allowable purposes and in accordance with Section 28 of the State's Budget Act of 2003 and (2) implemented HAVA in compliance with federal requirements. The audit also evaluated the Office's policies and procedures for administering HAVA funds, including the process of awarding and disbursing those funds, and determined whether the Office effectively oversaw the use of funds it awards to ensure that recipients use them only for allowable purposes.

BSA's audit found problems with regard to the Office's administration of HAVA funds. Specifically, the Office:

- Had inadequate planning and poor management practices, which hampered its efforts to implement HAVA provisions promptly.
- Disregarded proper controls, and its poor oversight of staff and consultants led to questionable uses of HAVA funds.
- Avoided competitive bidding for many contracts paid with HAVA funds by improperly using a State of California, Department of General Services (DGS) exemption from competitive bidding and by not following the State's procurement policies.
- Bypassed the Legislature's spending approval authority when it executed consultant contracts and then charged the associated costs to its HAVA administration account.
- Failed to disburse HAVA funds to counties for the replacement of outdated voting machines within the time frame outlined in its grant application package and county agreements.

Based on a sampling of HAVA Title I, Section 101 expenditures, the BSA audit found several instances in which the Office paid employees or contractors with HAVA funds for activities that did not appear to relate to the acceptable uses outlined in Section 101 and did not comply with other applicable state and federal laws and regulations. The BSA audit covered about 25 percent of the approximately \$3.4 million in HAVA Title I, Section 101 expenditures as of June 30, 2004. BSA made 17 recommendations in its audit report to the Office. In its June 16, 2005 letter to BSA, the Office reported that 11 of the recommendations have been implemented and it is working to implement the remaining 6 recommendations. The EAC contracted with the Department of the Interior, Office of Inspector General (OIG), to audit more expenditures than previously covered, and to include expenditures reported as of December 31, 2004.

⁴ *Office of the Secretary of State: Clear and Appropriate Direction Is Lacking in Its Implementation of the Federal Help America Vote Act*, issued December 2004 (Report No. 2004-139).

Objective and Scope

The objective of this audit is to (1) identify those transactions in which funding was used for an unallowable purpose or without required documentation or support and (2) estimate the total amount of money, if any, that the Office spent on unallowable purposes or that was not supported by required documentation. The scope of this audit was all HAVA Title I, Section 101 funds expended or obligated by the State of California, Office of the Secretary of State, as of December 31, 2004. We also reviewed obligations paid after December 31, 2004.

Our audit was performed, as applicable, in accordance with the *Government Auditing Standards* issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures as we considered necessary under the circumstances. Because of the narrow objective and scope of our audit, we performed a limited review of the system of internal controls. Further, we did not rely upon the system of internal controls over the procurement and accounts payable processes because BSA, in its December 2004 and March 2005⁵ audit reports, found that the Office overrode and, in many cases, lacked adequate controls to ensure that it appropriately administered HAVA Title I, Section 101, funds. We conducted our fieldwork from June 2005 through July 2005 at the Office of the Secretary of State in Sacramento, California.

Results of Audit

Of the \$14,922,867 in expended and obligated HAVA Title I, Section 101, funds as of December 31, 2004, we reviewed \$4,977,829 in expenditures and \$3,755,723 in paid obligations⁶ for a total of \$8,733,552 in reviewed expenditures. The \$4,977,829 represents about 93 percent of the \$5,335,268 in total reported expenditures, and the \$3,755,723 represents about 39 percent of the \$9,587,599 in total reported obligations.

Of the \$4,977,829 in reviewed expenditures, we classified \$3,269,791 as questioned costs,⁷ consisting of \$509,325 in cost exceptions and \$2,760,466 in unsupported costs; and of the \$3,755,723 in reviewed obligations, we classified \$590,570 as questioned costs, consisting of \$268,177 in cost exceptions and \$322,393 in unsupported costs. In total, we questioned \$3,860,361 in HAVA expenditures, consisting of \$777,502 in cost exceptions and \$3,082,859 in unsupported costs.

⁵ *State of California: Internal Control and State and Federal Compliance Audit Report for the Fiscal Year Ended June 30, 2004*, issued March 2005 (Report No. 2004-002).

⁶ These were obligated amounts as of December 31, 2004, and paid after that date.

⁷ A cost is questioned if the cost: (1) resulted from a violation or possible violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the use of federal funds; (2) at the time of the audit, was not supported by adequate documentation; or (3) appeared unreasonable and did not reflect the actions a prudent person would take in similar circumstances.

In broad terms, we took exception to those expenditures related to the purchase of capitalized general purpose equipment, promotional items and memorabilia, costs not related to HAVA, contract costs paid that were outside the terms of a contract, and costs that did not conform to federal cost principles. In addition, we classified as unsupported those expenditures lacking adequate support documentation, including expenditures related to personal service costs, procurement awards, indirect costs, and other costs.

Procurement award expenditures were generally classified as unsupported because competitive bidding requirements were not met. The expenditures we specifically classified as cost exceptions and unsupported costs and the reasons why we questioned such costs are detailed in Table 2 and the explanatory notes. To assist your review, please see Appendix 1 for a listing of accounts that comprise the cost categories used. Findings pertaining to personal services (the lack of time and attendance records and required certifications) and the failure of the Secretary of State's Office to follow State procurement policy, including competitive bidding, parallel the findings of BSA.

Table 2
State of California
Office of the Secretary of State
Results of Audit by Cost Category

(Expended Amounts as of December 31, 2004)

Cost Category	Amount Reviewed	Questioned Costs		Explanatory Notes
		Cost Exceptions	Unsupported Costs	
Consultant Services	\$2,429,684	\$43,306	\$1,672,529	(1)
Personal Services Costs	1,173,596	88,421	937,269	(2)
Printing, Postage and Shipping	866,549	308,388	9,261	(3)
County Grants	230,041	68,901		(4)
Administrative Indirect Costs	108,077		108,077	(5)
Interagency Costs	103,781		25,616	(6)
Office Equipment	28,081		7,289	(7)
Travel	18,068	294		(8)
Other	19,952	15	425	(9)
Subtotal	\$4,977,829	\$509,325	\$2,760,466	

(Obligated Amounts Paid After December 31, 2004)

County Grants	\$3,009,395	\$104,519		(10)
Consultant Services	746,328	163,658	322,393	(11)
Subtotal	\$3,755,723	\$268,177	\$322,393	
Total	\$8,733,552	\$777,502	\$3,082,859	

Explanatory Notes:

(1) **Consultant Services: Cost Exceptions - \$43,306; Unsupported Costs - \$1,672,529.**

Cost Exceptions. We took exception to attorneys' fees of \$43,306, consisting of \$42,256 in paid legal services in excess of the hours allowed under the contract with the law firm and \$1,050 in paid legal services for non-HAVA related speech writing. Under OMB Circular A-87, Attachment A, Section C, costs that are allowable and chargeable to a federally funded program must be necessary, reasonable, allocable to that program, and authorized or not prohibited under state or local laws or regulations. In addition, the Code of Federal Regulations, Title 41, Subtitle C, Section 105-71.136, requires that grant recipients and subrecipients maintain a contract administration system ensuring contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Unsupported Costs. We classified as unsupported \$1,672,529 because of questionable Office practices when procuring consultant services, and insufficient invoices. We classified as unsupported \$1,440,567 in expenditures arising from 34 contracts not meeting the State's competitive bidding requirements.* The Office bypassed these requirements by (a) inappropriately using a DGS exemption from competitive bidding; (b) not obtaining the required number of comparison quotes when making California Multiple Award Schedule (CMAS) and other procurements; and (c) splitting purchase orders to avoid CMAS procurement limits and competitive bidding requirements. Our findings parallel the findings of BSA's December 2004 audit report, which stated that the Office did not follow State procurement policies for many HAVA purchases, including competitive bidding and may not have obtained the best value for goods and services purchased with HAVA funds (see Appendix 2). In addition to the OMB Circular A-87 requirement that costs charged to a federal grant be in consonance with State law, the Code of Federal Regulations, Title 41, Subtitle C, Section 105-71.136, requires states to follow the same policies and procedures to procure property and services whether non-federal or federal funds are used to make the procurements.

In addition, we classified as unsupported \$231,962 charged to HAVA without sufficient invoices. Under OMB Circular A-87, Attachment A, Section C.1.j, costs that are allowable and chargeable to a federally funded program must be adequately documented. Further, under the California Department of General Services, Procurement Division's December 2004 *Purchasing Authority Manual* (PAM), (Chapter 9, Section A, Topic 1-Payment Fundamentals), a Department cannot process or release payment to any supplier for goods and/or services without having all of the following in its possession:

- A properly authorized purchase document.
- Documentation verifying the goods/services were satisfactorily received and/or performed.
- An accurate and correct supplier invoice.

PAM (Chapter 9, Section A, Topic 5-Payment of Invoices) defines an “accurate” invoice as including the following:

- Agency order number or contract number.
- Identification of goods acquired, quantities, unit price, extension, description, etc.
- Sales tax and/or use tax as a separate line item from goods.
- Services provided, service period, unit price (i.e. hourly, monthly) and quantity applicable to the service.
- Accurate billing address as stated on the purchase order or contract.
- Supplier invoice number.
- Supplier invoice date.
- Company name and remittance address.
- Payment terms offered.

* The total procurement award for the questionable contracts reviewed is \$3,021,400. As of July 26, 2005, the procurement award amount not yet spent is \$1,058,056.

(2) Personal Services Costs: Cost Exceptions - \$88,421; Unsupported Costs - \$937,269.

Cost Exceptions. We took exception to \$88,421 in personal service costs for the period of July 2003 through June 2004. This amount represents a portion of three employees’ salaries and benefits that were incorrectly charged to HAVA. Specifically, these employees had 100 percent of their time charged as devoted to HAVA-related activities. However, upon reflection, these employees told us that they each spent only part of their time on HAVA duties. As a result, we subtracted the percentage of their time spent on non-HAVA duties from their salaries and benefits and took exception to these amounts. OMB Circular A-87, Attachment A, Section C, requires costs charged to federally funded programs be necessary, reasonable, and allocable to that program.

Unsupported Costs. We classified \$937,269* in personal service costs charged to HAVA from July 2003 to June 2004, as unsupported because the Office did not use timesheets or the certifications required by federal cost principles to support the time 22 employees spent on HAVA activities. OMB Circular A-87, Attachment B, Section 8.h, requires that salary charges for employees working only on a single federal award be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. Certifications are to be prepared at least semi-annually and signed

by the employee or supervisor. Salaries and wages for employees working on more than one federal award or on one federal and one non-federal award are to be distributed and supported by personnel activity reports or equivalent documentation that reflect an after-the-fact distribution of each employee's actual activity.

* The \$937,269 amount is less the \$88,421 in cost exceptions. The entire \$1,025,690 (\$937,269 + \$88,421) in personal service costs charged to HAVA from July 1, 2003 to June 30, 2004, was questioned.

(3) Printing, Postage and Shipping: Cost Exceptions - \$308,388; Unsupported Costs - \$9,261.

Cost Exceptions. We took exception to \$308,388, consisting of (a) \$224,632 for postage to mail absentee ballot applications and (b) \$83,756 for promotional items and memorabilia (T-shirts, buttons, balloons, and other souvenirs), which are not allowed under OMB Circular A-87, Attachment B, Section 1.f(3). In July 2004, the Office paid \$727,500 in postage to mail 3.75 million permanent absentee ballot applications. It did not consult county election officials, who by law process all absentee applications. After county registrars expressed concerns about applications sent to voters already registered as permanent absentee voters, the Office canceled mailing any remaining applications and received a credit of \$502,868 from the U.S. Postmaster, leaving a cost of \$224,632 for postage already expended. We found the \$224,632 cost unreasonable and therefore not allowable under OMB Circular A-87, Attachment A, Section C, which defines allowability, in part, by "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." Since county election officials normally process all permanent absentee voter applications, we concluded that the \$224,632 cost was not ordinary or necessary for performing the HAVA award.

Unsupported Costs. We classified as unsupported \$9,261, consisting of (a) \$9,187 in printing charges for pollworker brochures arising from a purchase order that did not meet the State's requirement to obtain at least two informal bids for non-information technology (IT) purchases valued from \$5,000 to \$25,000, and (b) \$74 in charges that lacked a detailed invoice. Please see Unsupported Costs, Explanatory Note (1), for PAM requirements for accurate and correct invoices.

(4) County Grants: Cost Exceptions - \$68,901.

Cost Exceptions. We took exception to \$68,824 in grant payments to counties for voter education and/or pollworker training, which were used to purchase capitalized general purpose equipment, such as an envelope printer and mail processing system. OMB Circular A-87, Attachment B, Section 15.b(1), states that capital expenditures for general purpose equipment are not allowed as direct charges to a federal grant, except where approved in advance by the awarding

	<p>agency. Section 15.b(4) further states that federal awarding agencies are authorized at their option to waive or delegate the prior approval requirement. We determined that the Office did not obtain advance approval for its purchases of capitalized equipment nor did it obtain a waiver for the prior approval requirement from the EAC. We also took exception to \$77 in promotional items and memorabilia (stickers).</p>
(5)	Administrative Indirect Costs: Unsupported Costs - \$108,077.
	<p>Unsupported Costs. We classified all of the indirect costs of \$108,077 as unsupported because the Office did not prepare an indirect cost rate proposal. The Office charged indirect costs of \$108,077 to HAVA, Title I, Section 101 for fiscal years 2003 and 2004, using an indirect cost rate of 10 percent. Although the indirect cost rate appeared reasonable, the Office did not prepare an indirect cost rate proposal to support the rate used. OMB Circular A-87, Attachment E, Section D, states that all departments or agencies of a governmental unit desiring to claim indirect costs under federal awards must prepare a certified indirect cost rate proposal and related documentation to support those costs. In addition, the proposal and related documentation must be retained and available for audit.</p>
(6)	Interagency Costs: Unsupported Costs - \$25,616.
	<p>Unsupported Costs. We classified \$25,616 as unsupported because the Office lacked detailed invoices for some interagency agreements with the California State University, Sacramento, the California Senate Rules Committee, and DGS.</p>
(7)	Office Equipment: Unsupported Costs - \$7,289.
	<p>Unsupported Costs. We classified as unsupported \$7,289, consisting of (a) \$6,802 in laptop purchases arising from a purchase order that did not meet the State's requirement to obtain at least two informal bids for IT goods and services valued from \$5,000 to \$100,000, and (b) \$487 in phone charges that did not have sufficient support documentation.</p>
(8)	Travel: Cost Exceptions - \$294.
	<p>Cost Exceptions. We took exception to \$294 because an invoice did not have an approval to pay signature. The State's PAM requires a properly authorized purchase document prior to the release of payment.</p>
(9)	Other: Cost Exceptions - \$15; Unsupported Costs - \$425.
	<p>Cost Exceptions. We took exception to \$15 for the purchase of a frame because the expense was non-HAVA related.</p>

Unsupported Costs. We classified \$425 as unsupported because the supporting invoices did not include legible item descriptions, making it impossible to determine allowability.

(10) County Grants, Cost Exceptions - \$104,519.

Cost Exceptions. From our review of county grant purchases of general purpose equipment costing \$5,000 or more, we took exception to \$34,707 in capitalized equipment because prior approval or a waiver for the prior approval requirement was not obtained from EAC. From our review of county grant purchases of general purpose equipment costing less than \$5,000 (non-capitalized equipment), we noted numerous charges, specifically by Los Angeles County, related to the purchase of over 100 laptops and carrying cases, personal computers, monitors, printers, over 4,500 cell phones (to be distributed among the County's 5,000 voting precincts), and an array of other electronic and audio equipment, including a pressure washer. Of the almost \$2.5 million grant provided to Los Angeles County for voter education and pollworker training assistance, we identified \$478,101 or 19 percent spent on capitalized and non-capitalized equipment. We did not evaluate whether the counties followed appropriate policies and procedures when using HAVA grant funds to procure goods and services because the procurement award documents were located at the county level, and time constraints did not allow for this type of review. In addition to taking exception to the \$34,707 in capitalized equipment, we took exception to \$69,812 in promotional items and memorabilia (e.g., T-shirts, pens, and buttons).

(11) Consultant Services: Cost Exceptions - \$163,658; Unsupported Costs - \$322,393.

Cost Exceptions. We took exception to \$163,658 in audit costs. In October 2004, the Office solicited for an array of administrative consulting services, including general auditing and reporting services. The scope of work to the \$798,890 consulting services contract that was later awarded included four components: internal control evaluation/compliance auditing, performance measurement, project management, and project oversight. We took exception to the consultant services fees associated with the internal control evaluation/compliance auditing component because audit costs are not allowed as a direct cost to a federal grant. OMB Circular A-87, Attachment B, Section 4, provides that only the following types of audits may be directly charged to a federal grant award:

- Audits required by, and performed in accordance with, the Single Audit Act, as implemented by OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
- Audits approved by the awarding agency as a direct cost to an award.

- Agreed-upon procedures engagements to monitor subrecipients who are exempted from OMB Circular A-133 under Section 200(d), subject to the conditions listed in A-133, Section 230(b)(2). These engagements must be conducted in accordance with either the American Institute of Certified Public Accountants' generally accepted auditing standards or attestation standards. The engagements must be paid for and arranged by a pass-through entity and address only one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; matching, level of effort, earmarking; and, reporting.

Since the general auditing services provided to the Office did not meet any of the above criterion, we took exception to the audit costs associated to this consulting service contract.

Unsupported Costs. We classified as unsupported \$322,393 in expenditures arising from contracts not meeting the State's competitive bidding requirements. Please see Unsupported Costs, Explanatory Note (1). The \$322,393 in consultant contract expenditures were incurred from January 1, 2005 through July 26, 2005, and are in addition to the \$1,672,529 in unsupported expenditures incurred as of December 31, 2004.

State of California Office of the Secretary of State	
Cost Category Composition	
Cost Category	Included Accounts
Consultant Services	<ol style="list-style-type: none"> 1) Administrative Fees 2) Voting Systems and Procedures
Personal Services Costs	<ol style="list-style-type: none"> 1) Personal Services Costs
Printing, Postage and Shipping	<ol style="list-style-type: none"> 1) Paper, Forms and Stationery 2) Freight and Drayage 3) Courier Service 4) Postage Meter Rental, Repair and Supplies
County Grants	<ol style="list-style-type: none"> 1) County Grants
Administrative Indirect Costs	<ol style="list-style-type: none"> 1) PFA Expenditures
Interagency Costs	<ol style="list-style-type: none"> 1) Administrative Consultants 2) DGS Fees 3) Attorney General
Office Equipment	<ol style="list-style-type: none"> 1) Minor EDP Equipment 2) Photography 3) Minor Office Equipment 4) Maintenance Purchases 5) Service Equipment and Install 6) CALNET/CALDEX 7) Pagers 8) Voice Mail
Travel	<ol style="list-style-type: none"> 1) Commercial Air Transportation 2) Per Diem 3) Private Car 4) Rental Car 5) Rail, Bus, Taxi, Parking and Toll 6) Overtime Mileage – Taxable
Other	<ol style="list-style-type: none"> 1) Miscellaneous Non-EDP Supplies 2) Meetings and Conferences 3) Advertising 4) Building Security 5) Tuition and Registration Fees 6) Miscellaneous Expense In-State 7) State Vehicles – DGS 8) Pamphlets and Brochures 9) Office Equipment Rental Repair and Supplies 10) Hearings and Investigation

Competitive Bidding Requirements

In its December 2004 audit report, *Office of the Secretary of State: Clear and Appropriate Direction Is Lacking in Its Implementation of the Federal Help America Vote Act*, BSA found, among other things, that the Office used questionable practices when procuring goods and services using HAVA Title I, Section 101 funds. Specifically, the Office used an exemption from competitive bidding it had requested and received from DGS for 46 of the 77 HAVA contracts it entered into between June 2003 and September 2004. These 46 contracts totaled more than \$1.5 million. The justification the Office provided DGS for this exemption was the urgent need to meet deadlines set forth in HAVA. However, most of the contracts entered into under the no-bid exemption were for services that did not relate to any specific HAVA deadline and could have been competitively bid had the Office planned better. Because the Office used the no-bid exemption rather than competitively bidding, the State has less assurance that it received the best value for its HAVA expenditures.

BSA found the Office did not follow its policy and obtain competitive offers for most of its CMAS procurements. Specifically, BSA found the Office did not obtain comparison quotes from other qualified vendors for 10 of the 12 HAVA-expensed purchase orders it made using CMAS. As the entity that oversees the CMAS program, DGS is responsible for developing the program's policies and procedures. In May 2003, DGS issued a management memorandum requiring state agencies to solicit three price quotations for CMAS purchases over \$5,000. Although the memorandum explained that all constitutional officers, including the Office, were exempt from the requirements it imposed, the Office's policies* state that the Office will go along with the spirit of the management memorandum and comply with its intent. Nevertheless, the Office did not attempt to obtain any comparison quotes from qualified vendors for two of the three HAVA-expensed CMAS purchase orders BSA reviewed, and the Office's contracts officer could only document that one of the other nine CMAS purchase orders had comparison quotes.

In addition, State procurement policy requires State agencies to obtain at least two informal bids for all commodity purchases over \$5,000. Of the three commodity purchases BSA reviewed, two were for more than \$5,000, yet the Office did not seek informal bids for either of them. By not adhering to State procurement rules, the Office failed to assure that it received the best value for its use of HAVA funds.

BSA also found that the Office appeared to have split purchase orders to avoid CMAS procurement limits and competitive bidding requirements. Rather than obtain competitive bids and use one contract, the Office used multiple CMAS contracts to procure IT consulting services totaling \$631,000 from one vendor and \$1,145,000 from another. In January 2003, DGS set the CMAS order limit at \$500,000 on all IT purchases and stipulated that if the total of multiple purchase orders exceeds that limit, state

* *Contracts and Procurements: Policy and Procedure Manual*, distributed by the Office of the Secretary of State, Management Services Division (Revised February 29, 2004).

agencies should document why the orders are separate. Nevertheless, no documentation was evidenced explaining why the CMAS purchase orders for IT consulting services were separate and not combined. As a result of these practices, the State is less sure that the Office obtained the best value for the purchases it made with HAVA funds.

Glossary:

Term	Definition
Capitalized Equipment	Capitalized equipment is an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or \$5,000. The Office's capitalization level is \$5,000.
CMAS	This is a procurement method allowing State agencies to avoid administrative time and expense of a formal competitive bid process by purchasing goods and services under pre-established contracts awarded and maintained by DGS.
Indirect Costs	Indirect costs are those incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective. Indirect costs are normally charged to federal awards by the use of an indirect cost rate. Typical examples of indirect costs may include certain state/local-wide central service costs, general administration of the grantee department or agency, accounting and personnel services performed within the grantee department or agency, depreciation or use allowances on buildings and equipment, and the costs of operating and maintaining facilities.
Indirect Cost Rate	An indirect cost rate is the ratio (expressed as a percentage) of the indirect costs to a direct cost base (normally consisting of either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures).
Indirect Cost Rate Proposal	An indirect cost rate proposal is the documentation prepared by a governmental unit to substantiate its request for the establishment of an indirect cost rate.
Obligations	Obligations are the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.
PAM	The <i>Purchasing Authority Manual</i> ensures the application of consistent and sound business practices in State purchasing. It contains purchasing authority requirements, including statutes, regulations, policies, procedures and best practices applicable to acquiring goods and services and provides State procurement and contracting officers and procurement staff with the requirements for obtaining and maintaining delegated purchasing authority.



BRUCE McPHERSON | SECRETARY OF STATE | STATE OF CALIFORNIA
MANAGEMENT SERVICES
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November 30, 2005

Mr. Roger La Rouche
Acting Inspector General
U.S. Election Assistance Commission
1225 New York Avenue, N.W., Suite 1100
Washington, D.C. 20005

Dear Mr. La Rouche:

The Office of the Secretary of State (SOS) has reviewed the U.S. Election Assistance Commission's (EAC) draft report, "Audit of Expenditures by the California Secretary of State's Office Under the Help America Vote Act of 2002" (HAVA) and submits the attached comments regarding the draft for the EAC's consideration.

This office has been subject to audits of its performance by the Bureau of State Audits (BSA), and now the EAC to evaluate the SOS' use and planned use of HAVA federal funds. In its review of SOS' performance for meeting a critical HAVA requirement, the U.S. Department of Justice recognized, "A lack of adequate planning and action by the prior leadership of the Office of the Secretary had put the state in imminent danger of not having a HAVA-compliant statewide voter registration system in place by the January 1, 2006 deadline." As our response to the BSA's report in December 2004 indicated, "This office was overburdened by a cyclone of unprecedented and historic forces:

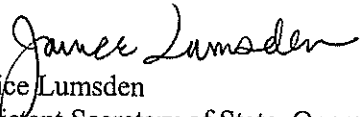
- a combination of three elections – a first-ever statewide recall election, a presidential primary, and a presidential general election;
- a nation-wide controversy over electronic voting that threatened to undermine public confidence in the equipment used to cast and count ballots; and
- the management of HAVA, a complex law with built-in ambiguities and little administrative guidance. This office historically has not administered federally funded programs."

We note that both of these perspectives are fundamentally accurate on their face. But it is no less true of the circumstances faced by this administration, and it is fair to say that during the eight months of this administration the SOS has taken significant steps to better monitor expenditures and abide by grant administration requirements in order to comply with relevant laws, regulations, and policies. We've implemented many of the BSA's recommendations, which we understand served as a basis for some of these findings, and continue to make changes to improve the program's effectiveness, achieve compliance with HAVA's mandates, and restore public confidence in the SOS.

Mr. Roger La Rouche
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November 30, 2005

We appreciate the opportunity to review and comment on the draft report. Please contact Dora Mejia, Chief of the Management Services Division to discuss this response.

Sincerely,

A handwritten signature in cursive script that reads "Janice Lumsden".

Janice Lumsden
Assistant Secretary of State, Operations

Enclosure

Response to Questioned Costs

Consultant Services

Cost Exceptions: \$43,306 and \$163,658

The Secretary of State's Office (SOS) does not disagree with this finding. Costs were disallowed because payment was made in excess of the hours allowed under the contract and a contract amendment was executed after the fact that increased the number of available contract hours. While it is true that the administration of this contract failed to comply with the State's procurement standards, the costs charged were reasonable and necessary to move toward compliance with HAVA mandates.

Unsupported Costs: \$1,672,529 and \$322,393

The SOS disagrees with this finding. The EAC classified as unsupported consultant contracts because it found, "The office bypassed these requirements by (a) inappropriately using a DGS exemption from competitive bidding; (b) not obtaining the required number of comparison quotes when making California Multiple Award Schedule (CMAS) and other procurements; and (c) splitting purchase orders to avoid CMAS procurement limits and competitive bidding requirements."

In response to Item (a) - The SOS applied for and was awarded a Contract Advertising Exemption Request (SCR) for HAVA related contracts from the Department of General Services (DGS). Our review of the contract files confirmed that every one of the referenced contracts and purchase orders met the parameters as stated in the SCR based upon the urgent need to timely meet the State's HAVA requirements mandated for the past two federal elections of March 2004 and November 2004. Though the act was signed into law in October 2002, funding was not provided until February 2003 via an omnibus bill. At the time of the request, the deadline for implementing these reforms was January 1, 2004, consequently, the prior SOS sought an exemption for the one-year contract period beginning September 1, 2003 through August 30, 2004

In response to Item (b) - On May 28, 2003 DGS issued Management Memo 03-10 requiring state agencies to solicit three price quotations for CMAS purchases over \$5,000. The memo exempted constitutional officers from these requirements. While historically the SOS Office operates in compliance with the spirit of the management memos, it appears that the previous management relied on its exemption in order to procure services for translation services and technical support for its database systems.

In response to Item (c) - While four contracts were awarded to the same contractor for services, these contracts were awarded for four distinct and separate projects.

- The first contract was entered into to complete a statewide inventory of all voting systems hardware, firmware and software including county specific unique systems used by counties to conduct an election, specifically the March 2, 2004 statewide primary election.
- The second contract was for the creation of the Voting Systems Advisory Project Work Plan. The work plan consisted of the following: (1) project management and administration; (2) testing and examination of new or modified voting systems and periodic retesting of installed voting systems; (3) On-site review of county voting

systems and procedures; (4) sample testing of voting system components in select counties on election day; and (5) on-site observation of voting systems used in selected counties on election day.

- The third contract was to conduct a parallel monitoring program to test the accuracy of the Direct Recording Electronic voting systems to record, tabulate and report votes under simulated voting conditions on election day.
- The fourth contract was for review, analysis, and evaluation of all aspects of voting systems security for both external and internal voting system applications.

The January 2003 CMAS agency packet cited in the audit is not specific as to types of documentation required, it simply states "document why the orders are distinct", which consisted of the purchase order and supporting scope of work, and the contract request form submitted by the Division. We believe these three documents meet the documentation requirement.

In addition, costs were disallowed because of insufficient invoices. The referenced invoices are for consultant contract services received for HAVA related activities. Specifically, the report cites DGS' December 2004 Purchasing Authority Manual (PAM) that dictates DGS' payment fundamentals. The invoices are for consultant contract services received. Per the December 2004 PAM Manual, Section I.2 Scope of Manual, "The PAM contains purchasing authority requirements, including statutes, regulations, policies, procedures and best practices applicable to the acquisition of non-information technology (non-IT) goods and information technology (IT) goods and services. Also included is how departments may apply for purchasing authority, maintain compliance with the purchasing authority program and the 'how's and why's' of competitive bidding, non-competitive contracting and leveraged procurement agreements (LPA)." The manual does not apply to non-IT services. We believe that the costs for non-IT consulting services were adequately documented in accordance with OMB Circular A-87 as each individual contract specifically details the services to be provided.

We would like to point out that our current process requires the relevant Division Chief to approve all invoices for payment confirming that services were received. Lastly, to ensure the costs are accurately charged, the HAVA Coordinator must also approve all invoices for HAVA related activities.

Personal Services Costs

Cost Exception: \$88,421

The SOS does not disagree with this finding.

Unsupported Costs: \$937,269

The SOS does not disagree with this finding. As noted in your report, monthly personnel activity reports were not implemented during the period under review and, in place of the activity reports, time surveys were used to support the charged pay. The lack of personnel activity reports supporting HAVA activities makes it impossible to confirm that time was actually spent by employees on HAVA activities as approved by the prior management. Timesheets have since been developed to ensure appropriate record keeping of time spent on HAVA activities, including instructions for completing the timesheets.

Printing, Postage and Shipping

Cost Exception: \$308,388

The SOS does not disagree with this finding.

Unsupported Costs: \$9,261

The SOS disagrees with this finding. Please see our discussion under consultant services, Item (b) regarding the prior administration's reliance on an exemption from the bid requirement for constitutional officers.

County Grants

Cost Exception: \$68,901 and \$104,519

The SOS does not disagree with this finding. Per OMB Circular A-87, general-purpose equipment is not allowed as a direct charge to a federal grant, except where approved in advance by the awarding agency. While the EAC is authorized to waive or delegate the prior approval requirement this office has been unable to confirm that a waiver was requested by the prior administration.

Administrative Indirect Costs

Unsupported Costs: \$108,077

The SOS disagrees with this finding. In May 2005, an Indirect Cost Rate Proposal was prepared by the SOS and submitted to the EAC for final approval. The SOS is awaiting EAC approval of the plan. Not having an approved plan, the SOS used a conservative estimate in applying an indirect rate. The SOS proposes to adjust the 10% rate and use the rate justified in the indirect cost rate proposal once the Indirect Cost Rate Proposal receives EAC approval.

Interagency Costs

Unsupported Costs: \$25,616

The SOS disagrees with this finding. We believe that the costs were adequately documented in accordance with OMB Circular A-87 as each individual contract specifically states the services to be provided. Please see our discussion under consultant services regarding insufficient invoices.

Office Equipment

Unsupported Costs: \$7,289

The SOS disagrees with this finding. This purchase was competitively bid. Two quotes were documented within the procurement file, both from Leverage Purchasing Vehicles, CMAS and Western States Contract Alliance. The CMAS vendor was chosen based upon lowest price.

Travel

Cost Exception: \$294

The SOS disagrees with this finding. The invoice does contain the approval signature.

Other

Cost Exception: \$15

The SOS does not disagree with this finding.

Unsupported Costs: \$425

The SOS disagrees with this finding. These HAVA purchases were for paper for the Voter Outreach Project, name badges for hearings, flyers, and signage for a public hearing