



OFFICE OF INSPECTOR GENERAL

U.S. Election Assistance Commission

DATE: December 21, 2022

TO: U.S. Election Assistance Commission Interim Executive Director, Mark Robbins
U.S. Election Assistance Commission Acting General Counsel, Amanda Joiner

FROM: U.S. Election Assistance Commission Inspector General, Brianna Schletz

SUBJECT: Management Advisory 23-02: Procurement and Contracting Practices

We are issuing this Management Advisory to alert the U.S. Election Assistance Commission's (EAC's) Interim Executive Director and Acting General Counsel to current EAC procurement and contracting practices, which the Office of Inspector General (OIG) identified as high risk. Specifically, there is a risk that some practices may not be executed in accordance with EAC policies, the Federal Acquisition Regulations System,¹ and the Digital Accountability and Transparency Act of 2014 (DATA Act).²

Background

Each year, OIG contracts with an independent public accounting firm (IPA) for the audit of EAC's financial statements. The audit of the fiscal year 2022 financial statements was contracted to Brown & Company CPAs and Management Consultants, PLLC (Brown & Company), and a final report was issued on November 14, 2022 (Report No. F22HQ0007-23-03). In its audit of EAC, Brown & Company reported:

- the financial statements were presented fairly, in all material respects, in accordance with U.S. generally accepted accounting principles;
- no material weaknesses in internal control over financial reporting; and
- no reportable noncompliance with provisions of laws tested or other matters.

¹ The Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR) and any agency acquisition regulations that implement or supplement the FAR. Among other goals, the Federal Acquisition System is in place to ensure that the government receives the best value products and services.

² One of the aims of the DATA Act (Pub. L. No. 113-101) is to hold federal agencies accountable for the completeness and accuracy of the data submitted to USASpending.gov.

Identified Risks

While Brown & Company is responsible for the financial statement audit report and the conclusions expressed therein, OIG provided oversight of the engagement to fulfill its responsibilities under the Inspector General Act of 1978 and other related requirements. During the course of these oversight activities, OIG became aware of the following practices:

- EAC has interpreted the Help America Vote Act of 2002 (HAVA) Section 205 as the Commission having the authority to contract on behalf of the EAC for supplies and services.³ Accordingly, the Commission delegated to the Executive Director the authority and accompanying responsibility.
- Though staff may not be adhering to it, EAC maintains a Procurement Handbook that establishes guidelines for procuring supplies and services at the EAC. This handbook, which was last updated in March 2018, requires EAC to acquire supplies and services following the FAR. The handbook also specifies that only a contracting officer can obligate the Commission in procurement activities.
- While EAC has an interagency agreement with the U.S. Department of the Treasury Bureau of the Fiscal Service (BFS) for procurement services, EAC is also entering into contracts and other purchasing agreements outside of BFS processes. Three awards, which were provided to the IPA as audit support, are signed by an EAC employee who has not been delegated contracting authority and does not meet the requirements of a Contracting Officer:⁴ EAC-EAC-20-0067, EAC-EAC-21-0039, and EAC-EAC-21-0041.⁵
- As defined by FAR 1.602, and also stated in EAC's Procurement Handbook, an employee who directs a contractor to perform without Contracting Officer authority has made an unauthorized commitment. Such commitments are not binding for the government and must be ratified through a process, or they become the financial responsibility of the person who made the unauthorized commitment.
- EAC did not record the three awards signed by an EAC employee in USASpending.gov, as required by Sections 2, 3(a), and 3(b) of the DATA Act. These three transactions totaled \$491,183.

³ 52 USC 20925(e).

⁴ Office of Management and Budget, [Revisions to the Federal Acquisition Certification in Contracting \(FAC-C\)](#), May 7, 2014.

⁵ According to EAC's Acting General Counsel, only the EAC Executive Director has contracting authority via delegation by the Commission in the 2015 Election Assistance Commission Organization Management Policy Statement.

Next Steps

We are issuing this advisory so EAC management is aware of our concerns and can take timely action to address them. We urge EAC to take steps to ratify any unauthorized contracts and ensure that no one other than an authorized contracting officer enter into future contracts. If EAC determines that other EAC personnel should have contracting officer authority, such authority should be delegated using specifications outlined in the FAR and OMB guidance.

On November 28, 2022, in response to this information and other risk factors, OIG announced an Audit of the U.S. Election Assistance Commission's Contracting and Procurement Activities. The objective of the audit is to determine whether EAC has complied with selected Federal Acquisition Regulations.

EAC Response

On November 30, 2022, we provided EAC with a draft of this management advisory for its review and comment. EAC acknowledged the advisory and provided an update on its ongoing efforts to improve its contracting and procurement practices. The full text of EAC's response is included as Attachment 1, without enclosures.



U.S. ELECTION ASSISTANCE COMMISSION
633 3rd St. NW, Suite 200
Washington, DC 20001

DATE: December 20, 2022

TO: Brianna Schletz, U.S. EAC Inspector General

FROM: Mark A. Robbins, U.S. EAC Interim Executive Director
Amanda Joiner, U.S. EAC Acting General Counsel

RE: Response to Inspector General's Management Advisory: Procurement and Contracting Practices

Mark A. Robbins
Amanda Joiner

The Election Assistance Commission (EAC) appreciates the November 30, 2022 Management Advisory issued by the Inspector General which identified risks in EAC procurement and contracting practices. The advisory notes that some practices may not have historically been executed in accordance with EAC policies, the Federal Acquisition Regulations, and the Digital Accountability and Transparency Act of 2014 (DATA Act). The advisory recommends EAC management take steps to ratify any unauthorized contracts and to delegate contracting officer authority in accordance with the FAR and OMB guidance. We value the efforts of the Inspector General to identify these risks and notify EAC management of these issues. The response below serves to acknowledge the work of the Inspector General and provide an update to the EAC's ongoing efforts to improve all agency operations, including contracting and procurement practices.

Contracting and Procurement Practices

The Help America Vote Act of 2002 vested the authority and responsibility to contract for authorized supplies and services in the agency head, the Commissioners. (52 USC 20925(e)). The Commissioners may delegate broad authority to an individual to serve as the Commission's Head of Contracting Activities. (FAR 1.601(a)). Pursuant to HAVA and the FAR the Commission has delegated certain authorities and tasked with responsibilities associated with managing the EAC to the Executive Director, including contracting and procurement authority.

On February 24, 2015, the Commission adopted the enclosed "Election Assistance Commission Organization Management Policy Statement." One of the primary purposes of the 2015 policy statement is to further define the statutory duties of the Commissioners and the Executive Director, which included a separation of policymaking and day-to-day operations. The 2015 policy divided authority regarding policymaking and day-to-day operations in the following manner:

1. The Commissioners Shall Make and Take Action in Areas of Policy

Policymaking is a determination setting an overall agency mission, goals and objectives, or otherwise setting rules, guidance or guidelines. Policymakers set organizational purpose and structure, or the ends the agency seeks to achieve. The EAC makes policy through the formal voting process.

2. The Executive Director in consultation with the Commissioners is expected to:
(1) prepare policy recommendations for commissioner approval,

- (2) implement policies once made, and
- (3) take responsibility for administrative matters. The Executive Director may carry out these responsibilities by delegating matters to staff.

Accordingly, the Commission delegated to the Executive Director the authority and accompanying responsibility for managing administrative matters, including but not limited to contracting and procurement pursuant to HAVA Sec. 205. (52 USC 20925(e)).

In March 2018 and pursuant to these authorities the EAC issued the enclosed Procurement Handbook which established guidelines for procuring supplies and services at the EAC. The Handbook states that the EAC policy on procurement is to acquire all supplies and services following the Federal Acquisition Regulations (FAR), and if a strategy, practice, policy, or procedure is in the best interest of the Government and is not addressed in the FAR, nor prohibited by law, Executive Order, other regulation or the Handbook, the strategy, practice, policy, or procedure is a permissible exercise of authority.

Next Steps

In addition to the draft management advisory provided by the Inspector General, EAC management also became aware of the need to update the 2018 Procurement Handbook through a regular review of agency standard operating procedures and accompanying policies in 2022. The EAC has taken numerous steps over the past two years to review and update all agency policies and procedures, including and especially those pertaining to the identified contracting and procurement practices.

As part of these efforts, the EAC Interim Executive Director hired a Compliance Officer to staff the newly established Office of Compliance in September 2022. The Compliance Officer brings to the EAC years of experience which includes work on procurement audits for the New York City Fire Department. The Compliance Officer has already taken several steps to identify areas of improvement for the EAC, such as contacting the Small Agency Council Procurement Chairperson to request specific contracting warrant training information and best practices for small agencies. In addition to these collaborative efforts, the Compliance Officer, the Director of Finance, and the Administrative Officer have had several formal and informal meetings with the Department of Treasury Bureau of Fiscal Services and the General Services Administration on these matters.

The EAC Office of the General Counsel (OGC) is currently drafting a guidance advisory on the requirements of the Federal Funding Accountability and Transparency Act of 2006 (FFATA) and the Digital Accountability and Transparency Act of 2014 (DATA Act). OGC is also taking steps to review all current contracts, procurement activities, memorandums of understanding, and interagency agreements. This review will serve several important purposes, including the identification of any contracts requiring ratification by the Executive Director.

EAC management is appreciative of the work of the Inspector General to identify and provide feedback on these identified risks. The agency looks forward to incorporating these views into the ongoing plans to improve operations and practices.